

FINAL EXAMINATION
PROFESSIONAL RESPONSIBILITY
PROFESSOR MINKUS
FALL 2005

1. You have **two (2)** hours and **thirty minutes (30)** to complete the exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of two parts.

Part I consists of **thirty (30)** multiple-choice questions. Please mark your responses to the multiple choice questions on the separate ParSCORE TEST FORM using pen or pencil and following the instructions on that form. If you change your answer, place a clear X through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer. Your grade on the multiple-choice portion will be based solely on the number of correct answers. Therefore, there is no penalty for an incorrect answer, so you should answer all 30 questions. The first eighteen (18) questions are to be answered according to the most recent version of the ABA Model Rules of Professional Conduct; the second twelve (12) questions are to be answered according to the California Rules of Professional Conduct, the State Bar Act, found in the California Business and Professions Code, and/or the California Rules on Multijurisdictional Practice.

Part II consists of **one (1)** essay question. Please write your response in the blue book provided. Please write clearly. Write on every other line and every other page to permit instructor comments. Your answer to the essay question should be based on the ABA Model Rules; in addition, if there is a California Rule that differs, you should discuss it as well.

4. **MUST** or **SUBJECT TO DISCIPLINE** asks whether to conduct subjects the attorney or judge to discipline under the appropriate set of Rules. **SHOULD** asks whether the conduct at least conforms to the level of conduct expected of the attorney or judge under the appropriate set of Rules, regardless of whether the obligation arises under the Disciplinary Rules or the Comments following those Rules. **MAY** or **PROPER** asks whether the conduct is professionally appropriate in that it (1) would not subject the attorney or judge to discipline and (2) is not inconsistent with the Comments to the relevant set of Rules. **SUBJECT TO LIABILITY FOR MALPRACTICE** asks whether the conduct would subject the

- attorney to liability for damages under the generally applicable principles of the law of malpractice.
5. Write your exam number on your exam envelope. Put student exam # at the top of this page, each page of questions, your ParScore answer form and each bluebook. Do not use your name, student ID number, Social Security Number, or in any other way identify yourself on any exam materials.
 6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.
 7. The essay and the multiple-choice portions will each count for 50% of your final grade. Your answer to the essay question should be based on the ABA Model Rules; in addition, if there is a California Rule that differs, you should discuss it as well..

GOOD LUCK!

Part II (50%)

Attorneys Able and Baker share office space, with each maintaining his own files, though they occasionally collaborate on some cases. The business cards displayed on the receptionist's counter refer to them as Able and Baker, Attorneys-at-Law.

Charlie, an old friend of both Able and Baker, asks if they will represent him in a dispute with George over the ownership of a gambling casino. They agree to do so and enter into written fee agreement providing that they would be paid \$200 per hour. Neither Able nor Baker has had any experience in the law relating to gambling casinos, but Able's daughter Donna has been working as a management trainee in a casino for several years and is currently attending law school on a part time basis. At Able's request, Donna takes a leave of absence from her job and begins working on Charlie's case. The case involves a good many meetings and discussions with state gaming commission in order to determine whether Charlie is in compliance with the relevant laws. The legal research as well as all factual research was conducted by Donna, who worked entirely on her own.

Donna's conclusion is that Charlie has about a 50-50 chance of successfully establishing his ownership. When she reports this to Able and Baker, they relate the information to Charlie and explain that the fees to litigate the issue would probably be approximately \$100,000. Charlie tells them that he has recently suffered financial reversals and could not possibly pay that much. He suggests that they change the fee agreement to a contingent fee, pointing out that if they win there will be substantial value in the casino. Able believes that this is a good idea, but Baker has no interest in continuing under a contingent fee agreement. As a result, Baker withdraws from the representation and the fee agreement is amended to provide that if Charlie is successful, Able's fee will consist

of a 25% interest in Charlie's interest in the casino. The agreement also acknowledges that Donna will receive 1/3 of Able's interest. Charlie signs the agreement and Donna prepares a complaint which Able signs and files with court.

Meanwhile, Baker is hired by the firm of Ed and Fran. Shortly after his hiring, George, who has been served with the complaint retains Ed and Fran to represent him. Baker is unaware of the firm's representation of George and neither Ed nor Fran asked Baker about his former clients. Eventually the case is settled with Charlie and George agreeing to each take one half of the casino. Shortly thereafter, Able learns of Baker's employment by Ed and Fran and informs Charlie.

Discuss the Professional Responsibility issues raised by the above scenario. You may assume that the ABA Model Rules apply, but if you know of California rule of decision that would require a different result, you should mention that.

END OF EXAM