

**FINAL EXAMINATION
PROFESSIONAL RESPONSIBILITY
PROFESSOR MINKUS
FALL 2006**

- 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.

EXAM# _____

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%)

Attorney Ann was a college classmate of Ed, a local engineer. Ed asked Ann to represent him in starting up a new business. Because Ed was having difficulty raising the necessary capital, he asked Ann if he could pay her fee over a period of years with interest at the going rate. Ann was reluctant to wait that long to be paid, but because she believed that Ed's business plan was likely to succeed, she suggested that Ed pay her by giving her a 25% interest in the corporation to be formed as payment for all start-up work and all non-litigation work for the first year of the company's existence. Although Ed has some misgivings about the arrangement, he agreed to it, whereupon Ann prepared the Articles of Incorporation, the By-Laws, and a Shareholder's agreement between her and Ed.

After a year the company was doing well enough to allow Ed to build a plant in a nearby parcel, the plant would be very likely to attract other businesses. He asks Ann to handle the necessary legal work. Ann agrees and tells Ed that she will charge him \$ 250 per hour, her normal rate. Ed tells Ann that he does not want his plans known to anyone; for fear that the price of the land would rise considerably if his plans were known. Ann realizes that if Ed's plan comes to fruition, the land surrounding the plant would likely increase in value substantially. She does some investigation and finds a nearby parcel of land that is for sale. Believing that Ed probably does not intend to buy that parcel, she purchases it herself.

The business continues to thrive. The plant is built and, as Ann surmised, the parcel of land that she bought doubles in value. One day Ed tells Ann that he believes that the business success is due in large measure to Ann's good counsel. To show his appreciation, he tells Ann that he is buying a new car and he wants her to have his present car – a two year old Jaguar convertible worth about \$ 50,000, and asks her to draw up the necessary papers to consummate the gift.

Their personal relationship has also blossomed and they have been talking about getting married. In the meantime, Ann, while keeping her apartment, has moved in with Ed.

Discuss the professional responsibility issues raised by the above scenario, under both the ABA Model Rules and (if they differ) the California Rules of Professional Conduct and/or the State Bar Act. You need not cite the rules or statutory provisions by number, and you need not discuss the California provisions if they do not differ from the ABA Model Rules.

END OF EXAM