

**FINAL EXAMINATION
PROFESSIONAL RESPONSIBILITY
PROFESSOR MINKUS
SPRING 2005**

1. You have two (2) hours and thirty minutes (30) to complete the exam.
2. This is a closed book exam. No materials may be used during the exam.
3. The exam consists of one essay question and thirty (30) multiple choice questions. 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. 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 answers are to be marked on the ParScore answer sheet form provided 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.
4. 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.
5. **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.
6. 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.
7. 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.

GOOD LUCK!

Part II (50%)

Able is a partner in Able, Baker & Charlie, a three-partner, one-associate law firm. For some time, he has been representing Dan in an acrimonious divorce action. In which, virtually every issue is hotly contested. Dan is a very sophisticated real estate investor and is the sole shareholder of Little Corp., through which many of his real estate deals are made.

When Able was first retained, his fee agreement with Dan included two provisions not in the firm's standard fee agreement. The first provided for a minimum fee of \$25,000, which would be owed even if the firm was discharged. The second gave Able's firm a mortgage on a large piece of property owned by Dan to secure the fees to be incurred. Dan signed the agreement without bothering to read it and without any discussion.

Baker, Able's partner, is approached by Earl, who has a judgment against Little Corp., and asks whether Baker's firm would represent him in his effort to collect the judgment. Baker ran the corporation's name through the firm's computerized conflict check system, which did not show Little Corp. as a client.

Baker thereupon accepted the representation, entered into the firm's standard fee agreement, and assigned the case to Grunt, the associate. Shortly thereafter, Grunt learned that Able's client was the sole shareholder of Little Corp. He immediately went to Baker and told him that, in his opinion, the firm had a conflict of interest. Baker explained that the firm's client was Dan, not Little Corp., that the two matters (divorce action and a collection action) were entirely different, and that in Baker's opinion, there was no conflict of interest. He also told Grunt not to tell Able or Charlie about this. Grunt then prepared a complaint alleging, among other things, that the corporation had fraudulently transferred property to avoid payment of the judgment.

When the complaint was filed and served on Little Corp., Dan was furious and immediately discharged the firm. At that time, the firm had billed, and Dan had paid, \$6,000 in the divorce action. When Dan demanded his files, Able told him that the firm was still owed \$19,000 and, if necessary, it would bring suit to collect it, and if the amount was not paid, they would foreclose on the mortgage. When Dan refused to pay, Able asked Grunt to prepare a complaint and explain the basis for the suit. Grunt prepared and filed the complaint against Dan.

Discuss the Professional Responsibility issues raised by the above factual situation. If you believe that the same analysis and conclusion apply to more than one person, for any issue or issues, you may discuss them collectively.

END OF EXAM