

PROFESSIONAL RESPONSIBILITY

FINAL EXAM

PROFESSOR LOIS SCHWARTZ

SPRING 2006

INSTRUCTIONS

1. You will have **two (2) hours** to complete this examination. It is recommended that you spend one hour working on Part One, the multiple-choice portion of the exam, and one hour working on Part Two, the essay portion.
2. This is a **closed book** examination. You may only use your **rule** book during the exam, but no other outside materials. You may not speak with anyone during the exam.
3. The exam consists of two parts.
 - a. **PART ONE** consists of **26 multiple-choice questions**, the total of which is worth 50 percent of your final exam grade. Answer each multiple-choice question by indicating one letter corresponding to the response you believe to be most correct. Correct multiple choice answers are to be marked 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 wrong answers.
 - b. **PART TWO** contains **one essay** which is worth 50 percent of your final exam grade. Time limits are suggested for each section. If you are hand writing your essay, please write in the blue book(s) provided. Write only on the right side of each page, and on every other line. Please write legibly. If you are typing your response using exam software, be sure to save your work frequently to the diskette.
4. Write your exam number on your exam envelope; at the top of this page and every page of questions hereafter; your ParSCORE test form; and each blue book you use. **Do not** use your name, student ID number or Social Security number on any exam materials.

5. At the conclusion of the exam, turn in **all** exam materials including the ParSCORE form, blue books, computer disks, scratch paper and the exam in the envelope provided and submit them to the exam 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 TWO

Essay

Recommended time: 1 hour

Attorney Arnold is an associate at Law Firm, which employs 40 lawyers. Law Firm accepts court-appointed juvenile representations in addition to its other work.

Attorney Arnold was assigned to represent 17-year-old Lloyd S. in a juvenile dependency hearing. No jury is present for this type of proceeding. On October 15, 2005, Lloyd S. allegedly threatened to cut 16-year-old Tommy V. with a broken bottle unless Tommy handed over his jacket. Lloyd was charged with robbery, theft, and possession of an instrument of crime.

When he received the appointment, Arnold informed the court that he had a problem with representing Lloyd S. He stated that Law Firm already represented Tommy V. in an unrelated criminal case that was scheduled for trial the day after Lloyd's hearing. The judge stated that Tommy could simply waive any conflict of interest that resulted from this dual representation.

At the outset of the hearing, the judge called Tommy's mother to the stand and asked her if she objected to Law Firm's representation of her son. She said that she had no objection.

Arnold again attempted to persuade the court that the conflict of interest prevented him from effectively cross-examining Tommy. He orally moved to withdraw as counsel. The motion was denied.

At the hearing, the district attorney called Tommy as her sole witness. On direct examination, Tommy testified that Lloyd stole his coat. Attorney Arnold asked a few preliminary questions on cross-examination, and then addressed the court:

Arnold: Your Honor, I have a problem, I know things about Tommy V.

The Court: He has no objection to your cross-examining him about his background. Go right ahead.

Arnold: The problem is ...

The Court: It has no other effect on him in his case for trial tomorrow, and he has waived any objection to Law Firm representing both him and Lloyd S., so you can do everything you can to do to represent this defendant. Anything you may know about him, he's waived. You can tell me about all of his cases, if that is relevant. There is no way to avoid dual representation with kids like this -- they are all in neighborhood gangs that are sworn enemies and they all know each other and they all knife each other.

Arnold: I am reluctant to cross examine him because of things I learned about him through a colleague at the law firm.

The Court: He's waived that. You are perfectly free to represent Lloyd, and use any conversation that you may have to as to Tommy's past problems.

Arnold continued to protest the court's decision. He concluded by stating: Your Honor, really, in good conscience, I can't go further on the cross. I guess we should move on.

Arnold then put Lloyd on the stand. During preparation for the hearing, Lloyd and Arnold discussed that Lloyd would testify that he thought the jacket was his own and that he was just taking back what was his; he happened to have a bottle in his hand that he had picked up in the street to recycle. Arnold believed this was a reasonable version of the events. Instead, Lloyd suddenly testified that he had been home that night with his brother, who would confirm his story, and Tommy mixed him up with someone else. Arnold could not contain his surprise and asked Lloyd, How can that possibly be true? He continued to question him on direct examination but could not budge him from this story. He attempted to do damage control by making sure his closing argument was consistent with his client's testimony.

The court adjudged Lloyd S. delinquent and ordered him committed to juvenile hall for a year. At a post adjudication hearing, Arnold again stressed that in his capacity as an attorney with Law Firm, he was privy to confidential information about Tommy. In particular, he said that he had learned: (1) that Tommy had been in a school for disturbed children; (2) that Tommy had tried to bite off his own finger; and (3) that Tommy had been committed to a mental hospital for three years prior to January 2006. The court denied relief.

1. Did Tommy V.'s mother have the authority to waive the conflict for her son? Assume she was paying for Law Firm's services, and discuss the relevant ethical rules.
2. Was Arnold correct in concluding that there was a violation of conflict of interest rules in the dual representation of Lloyd and Tommy? Discuss the relevant rules. What are Arnold's options?

3. Did Arnold violate an ethical duty to Lloyd by failing to fully cross-examine Tommy? Discuss the relevant ethical rules.
4. Did Arnold handle Lloyd's testimony properly? What is the general rule, and what is the California rule?
5. Did the Judge violate any of the Canons of Judicial Conduct in the hearing? Discuss.

END OF EXAM