

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW  
Professional Responsibility  
Fall 2009

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FINAL EXAMINATION: PART II

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**Limited open-book. One hour.**

Write your exam number here: \_\_\_\_\_

All exam materials (including this booklet, any scratch paper, and your response) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above. **Do not turn the page until instructed to begin.**

**Notes and Instructions**

1. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
2. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
3. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
4. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam.
5. Assume that the facts recited herein occur within one or more hypothetical states within the United States. Base your exam answer on the general state of the law in the United States, including all rules, procedures, and cases as presented in class.
6. Keep this in mind: The weight of Part II is specified, but the issues in Part II will not all be given equal weight. Thus, it may be entirely appropriate for one to be answered with considerable brevity, while another might require very detailed analysis. You should divide your time according to which ones require the most discussion and analysis.
7. Organization counts.
8. Feel free to use abbreviations, but only if the meaning is entirely clear.
9. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page.
10. **Computers:** Please clearly label your answers.
11. This exam is “limited open book.” The only materials to which you may refer during the exam, other than this exam booklet, scratch paper provided as part of the exam administration, and any special references specifically authorized by the Dean of Students office, are: (a) the authorized copy of the Professional Responsibility Wypadki, which will be distributed to you in the exam session, and (b) a “reference sheet,” consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which anything may be written and/or printed, including on both sides, front and back. You may not consult or access any other piece of paper, including, but not limited to, a copy of the wypadki that you have printed out yourself. No materials may be shared during the exam.
12. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
13. Good luck.

**Part II**  
**40 points**

Attorney Ally has just joined the law offices of Fresh & Friendly, having left her old firm of Mean & Meaner after a disagreement with her former boss stemming from his effort to fondle her behind while she searched for a book in the office library. Hmmm. Bygones.

On her first day in the new office, Ally spots Donnie Draco, the CEO of Danger Incorporated, in the lobby. Mean & Meaner has for several years been involved in a class-action lawsuit against Danger Incorporated, representing children aged 3 to 7 who have allegedly been injured on Danger-built playground equipment. Ally was not involved in the Danger lawsuit at Mean & Meaner; her practice has always focused on employment litigation and not personal injury. But she'd met Donnie in passing.

Donnie: "Ally, it's great to see you. I heard you had left Mean & Meaner. I didn't realize you'd moved to Fresh & Friendly. I'm here looking for new counsel on the playground equipment matter."

Ally: "It's great to see you, too. You should meet with Odd Orlick. He's a world-class personal injury attorney. He's never lost a jury trial, it says so right here in his yellow pages ad. Take a look.

With that, Ally hands Donnie the following ad, copies of which are at the receptionist's desk:

**FRESH & FRIENDLY  
PRESENTS  
ODD ORLICK**

**THE RIGHT ATTORNEY FOR RIGHT NOW  
NEVER LOST A JURY TRIAL**



**CALL NOW!**

**1-888-U-WILL-WIN**

Donnie: "He sounds like just the guy we've been looking for."

At that moment, Odd walked into the lobby.

Ally: "Odd! Come here and meet Donnie Draco. He's considering you for a big case on behalf of Danger Incorporated."

Odd: "Flibbertygibbit."

Donnie: "Excuse me?"

Odd: "Excellent. I'll do it. Why don't you come to my office, so we can get the paperwork started."

Donnie: "Sure thing, I'll be there in a minute."

As soon as Odd leaves, Donnie leans over to Ally and whispers: "Listen, would you like to have dinner tonight, and, maybe, breakfast tomorrow?"

Ally has a momentary hallucination in which her face turns fluorescent red and steam pours out of her ears. She shakes her head and the image is gone. She blushes and heartily agrees to meet Donnie in a few hours for dinner.

The next morning, Ally arrives in the office flush with the excitement of a night of lovemaking. She's wearing the same clothes she wore on her first day in the office, but no one seems to notice.

Around 10:00 a.m., a former college roommate, Moxie Mirage, comes to visit.

Moxie: "Ally. I have a problem. I'm being sexually harassed at work. Can you help me sue my employer?"

Ally: "Of course."

Moxie: "Oh thank you! It's been so traumatizing. Last night, I was so upset, I ran a red light on the way home and actually hit something at the corner of 4th and Elm. I don't know what it was. Umm, it might have been a person. But that can't possibly be the case, right?"

Ally: "Oh my! I don't think so, but don't worry. I'm a lawyer and your friend. I'll help you through whatever comes your way."

Moxie: "You're the best! Hey, I'm a little short on cash at the moment, can you represent me on a contingency fee basis?"

Ally: “Absolutely on the sexual harassment case. If you’re looking at criminal charges for your conduct last night, though, I’ll need to get a written waiver from you, and I must advise you in connection with the waiver to seek separate counsel.”

Moxie: “Sure thing.”

When Moxie leaves, Ally decides to head over to Elm and 4th to check out the scene of Moxie’s accident. When she gets there, she doesn’t see anything out of the ordinary. Then she notices some yellow plastic on the ground, as if from a car turn signal. She also sees a small break in the hedges by the side of the road. Ally peers steps into the hedges and sees a man lying facedown on the ground. He’s dressed in expensive heather grey pants and a black wool coat. He’s also, quite clearly, dead. Ally leaves the gentleman undisturbed, assured that no one will ever stumble upon the scene of this crime. She picks up the yellow plastic from the ground and tells no one, not even Moxie, what she has seen.

*Identify and analyze all possible and colorable professional responsibility issues stemming from what has been described above. To the extent practicable, please do so in the order in which the issues occur.*