



**The Law Governing Lawyers (Law 473 §1001) Final Exam**

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This exam has 4 questions. Questions 1 and 2 are each worth 3/8 of the final score, and Questions 3 and 4 are each worth 1/8. You should allocate your time accordingly.

Type your answer. Include page numbers and your exam number on every page of your answer, but do not otherwise include any information that would identify yourself in the answer. At the beginning of each question's answer, give me a word count for that answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR INACCURATELY REPORTING A WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES.

This is a take-home exam. You must return your answer to me via the Assignment Drop Box in TWEN (not via email, not via hard copy). For your answer to be deemed "received," I must be able to open and print it using Microsoft Office Word for Windows 2003. At 6:30 pm Monday Central time (as measured by Westlaw's internal system clock), TWEN's Assignment Drop Box will automatically close, and it will be impossible to submit your answers after that time.\* IF I DO NOT HAVE YOUR ANSWER BEFORE THE ASSIGNMENT DROP BOX CLOSSES, YOU WILL FAIL THE COURSE. **THERE IS NO GRACE PERIOD. NO EXCUSES!**

NO TIME EXTENSIONS WILL BE GIVEN DUE TO COMPUTER, EQUIPMENT OR POWER FAILURES, BECAUSE I CANNOT OPEN OR PRINT YOUR FILE, OR BECAUSE OF DIFFICULTIES TRANSMITTING THE FILE VIA THE INTERNET (although I might make special adjustments for widespread power or email failures or problems with TWEN).

If you submit multiple versions of your answer, I will grade only the last version, and I will ignore all other versions.

This is an "open book" exam, meaning that you may use any written material you want. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise).

Unless otherwise specified, assume that all parties (including you) are located in Wisconsin. Apply the Wisconsin Rules of Professional Conduct currently in effect. You may discuss differences between those rules and the Model Rules or the Ethics 2000 proposals if you want.

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\* If for some reason the assignment drop box does not automatically close, the Westlaw-assigned submission timestamp shall be determinative.

If you believe that a client waiver or consent is appropriate, discuss the specific details you would communicate to the client to obtain that waiver/consent, such as the actual and reasonably foreseeable consequences to the client of granting the consent.

I have the following additional thoughts for you:

- Please spend adequate time reading the question and outlining a response.
- Read each question very carefully. Make sure you answer the questions actually asked. Do not answer questions that I did not ask.
- Some potential efficiency techniques:
  - Bullet points, short citation forms and unambiguous abbreviations are OK
  - Please quote statutes or cases only as necessary to make your point
- If any additional information would be useful in your analysis, indicate what information would be helpful (and why it would help) and then state your assumptions in order to proceed with your analysis.
- While generally your answers should be based on legal principles, feel free to address other perspectives and concerns as you think appropriate.
- The word count cap is a maximum, not a target.

GOOD LUCK AND HAVE A GREAT SUMMER!

Question #1 (maximum of 1,200 words)

Your client is Mojo, Inc. Henry is Mojo's president and owns 80% of Mojo's stock. Henry also owns other businesses, including 75% of Dharma, Inc. Mojo is running out of cash and desperately needs a loan. Kontiki will loan money to Mojo, but it views this loan as high-risk. Therefore, to reduce the risk of not getting its money back, Kontiki demands: (1) if Mojo fails to repay the loan, Henry must repay Mojo's loan from his personal assets (we say that Henry is "guaranteeing" repayment of Mojo's loan), and (2) Dharma must also guarantee Mojo's loan out of Dharma's corporate assets.

Mojo asks you to draft the following 3 documents, all of which must be completed before Kontiki will make the loan:

- the loan agreement between Mojo and Kontiki
- Henry's personal guarantee of Mojo's loan
- Dharma's guarantee of Mojo's loan

Q1A: To minimize costs and complexity, neither Henry nor Dharma plan to use attorneys on these matters. What must you do? What would you prefer to do (if different)?

Q1B: Now, assume that Henry and Dharma want you to represent them concurrently along with Mojo. What must you do? What would you prefer to do (if different)?

(Feel free to combine your answers to Q1A and Q1B to reduce overlap if you want).

END OF QUESTION 1

Question #2 (maximum of 1,200 words)

You are Excel Inc.'s in-house attorney. Diane is an Excel employee. When Diane joined the company, she bought 10,000 shares of Excel stock for \$10 per share (for a total purchase price of \$100,000). Unfortunately, since then, the company's value is decreased. The current value of Excel stock is \$2 per share.

Diane has run into financial difficulties and she needs cash quickly. She wants to raise cash by selling her Excel stock. However, Excel's stock is not publicly traded on any stock exchange, so securities laws, and the difficulty of finding an interested buyer, make it almost impossible for Diane to resell her stock to another person. Instead, Diane wants to sell her stock back to Excel for the \$100,000 she paid to buy it, even though her stock is now worth \$20,000.

Excel's CEO (and your boss) is Vijay. He thinks Diane is a valuable Excel employee, and he and Diane are close personal friends. Therefore, Vijay is willing to consider her request.

Unfortunately, the tax consequences of Excel's repurchase of Diane's stock aren't clear. IRS rules say that if Diane isn't an employee, the \$100,000 repurchase isn't taxable (it would be a "return of capital"). However, because Diane is an employee, there is a high (but not absolute) risk that the IRS will characterize \$80,000 of the \$100,000 (i.e., the amount above market value) as taxable income. After doing some research, you conclude that Excel should treat the \$80,000 as taxable income. This will cost Diane over \$25,000 in taxes.

Diane wants to avoid these taxes, so she appeals to Vijay. Vijay has a friend, Lucy, who is an attorney, and Vijay asks Lucy for her opinion on this matter. (You are not included in this conversation). Lucy tells Vijay that (a) the law is debatable, so Excel should not characterize the \$80,000 as taxable income, and (b) even if Excel gets audited, the IRS auditor probably will not notice this issue, so the risk of getting caught due to a mischaracterization is low. Based on this conversation, Vijay orders you to prepare the repurchase paperwork and says that Excel will not report the \$80,000 as taxable income to the IRS.

What must you do? What would you prefer to do (if different)? What consequences do you expect from your choices?

Note: Do not discuss any issues related to Sarbanes-Oxley.

END OF QUESTION 2

Question #3 (maximum of 400 words)

The Bigg Bergs firm bills clients for work performed by summer law clerks (i.e., students between their second and third years of law school) under the name of the supervising attorney. For example, assume that attorney Jane supervises summer law clerk Kelly's work for Halcyon. In July, Jane bills 30 hours to Halcyon at \$300/hour (a total of \$9,000), and Kelly bills 10 hours to Halcyon at \$100/hour (a total of \$1,000). Bigg Bergs' July invoice to Halcyon will read:

Legal Services for July		
Jane	40 hours	\$10,000

Bigg Bergs drafts bills this way for 2 reasons: (1) its bills that are less complex and therefore easier for clients to read, and (2) some clients are concerned about being billed for work performed by summer law clerks because summer clerks are sometimes inefficient.

Can Bigg Bergs bill Halcyon in this manner?

END OF QUESTION 3

Question #4 (maximum of 400 words)

Inspired by *Erin Brockovich*: Judy hires attorney Manly to represent her in a mass toxic tort claim. Judy tells Manly that her neighbor Frank may have suffered injuries like hers, so Manly should talk to Frank about bringing an identical lawsuit. Judy then calls Frank and recommends that Frank hire Manly. Under what circumstances can Manly drop by Frank's house to discuss representing Frank in the toxic tort lawsuit?

Eric's note: Do not discuss any possible conflicts arising from a simultaneous representation of Judy and Frank.

END OF QUESTION 4

END OF EXAM