



## **Law and Ethics of Lawyering (Law 473 §1001) Final Exam**

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This exam has 3 questions with a total time limit of 4 hours. Question 1 is worth 55% of the final score, Question 2 is worth 25% and Question 3 is worth 20%. You should allocate your time according to the specified time for each question. The total time limit includes 60 minutes of discretionary time to use for transportation, printing, unforeseen delays or whatever you'd like (but please, not to spew unorganized thoughts!).

This is a "take-home" exam, meaning that you can take the exam anywhere you like. For your convenience, I have reserved Room 204 for using laptops, Room 210 for handwriting exams, and the Miller computer lab for using the school's desktop computers or printers. However, you can take the exam in the library, another open classroom or outside the law school.

You must return the exam to me in my office (Room 109) or by email (see below) by 12:30 pm Central time. [www.time.gov](http://www.time.gov) provides the official time for the exam. Because I have already given you ample discretionary time for unforeseen problems, THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES!

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).

If you use a computer:

- You may return your answer by delivering a printed copy to Room 109 or by emailing it to [eric.goldman@marquette.edu](mailto:eric.goldman@marquette.edu). Include page numbers and your exam number on every page of your exam, but do not otherwise include any information that would identify yourself in the exam.
- If you email your answer, your answer is not received until your exam is in my inbox *and* I can successfully open and print the file using Microsoft Word for Windows 2000. I will promptly reply to confirm that I can print your answer, in which case my reply email confirms receipt of your exam. However, if you do not promptly receive a reply from me, I expect you to take all necessary steps to turn in your answer before the deadline. You can reach me by phone at (414) 288-5232.
- 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).

- At the top of each question's answer, you must tell me the number of words in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.
- If you submit multiple versions of your answer, I will randomly select one to grade unless you clearly and unambiguously indicate which version I should grade. In either case, I will toss all other versions of your answer without reviewing or grading them.

If you are hand-writing your exam, please write legibly! Also, include your exam number on every bluebook and tell me how many bluebooks you are submitting. Hand-written exams are not word-limited and do not require a word count.

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

In any question where you believe that a client waiver or consent is appropriate, you should 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:

- I recommend that you 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 are OK
  - Short citation forms are OK
  - You can use abbreviations if you define them and they are not ambiguous
  - 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 then state your assumptions in order to proceed with your analysis
- While generally your answers should be based on legal principles, you are welcome to address other perspectives and concerns.

GOOD LUCK AND HAVE A GREAT SUMMER!

Question #1<sup>1</sup> (99 minutes; typed exams are limited to 1,800 words)

In March 2000, Epinions ran a TV ad campaign showing actual users presenting their opinions about products. In one ad, a woman calls her Chrysler mini-van a lemon. As she describes its various problems, she walks around San Francisco trying, unsuccessfully, to give the keys away. In one scene, she puts the keys in a homeless person's hat; he gives them back.<sup>2</sup>

In another ad, a man standing in a firing range explains why he does not like his Apple iMac computer. He puts on earmuffs and goggles, puts the computer on a target and pulls out a large-caliber pistol. He then lists his complaints and punctuates each one with a gunshot; each time, the camera cuts to show a piece of the computer flying off.<sup>3</sup>

The ads were produced by Goodby Silverstein, an advertising agency famous for the "Got Milk?" campaign. Goodby, in turn, asked the law firm of Dewey Cheatem ("DC") to assist with the ad campaign. Advertising agencies often seek legal review of ad campaigns because advertising agencies can have legal liability for the ads they produce. DC billed Goodby for DC's legal services, and Goodby passed through all ad campaign-related out-of-pocket expenses (including DC's fees) to Epinions (plus Goodby's standard administrative mark-up fee of 15%).

Everyone knew the ads had some legal issues. First, ads must be truthful or they can violate false advertising laws. Second, these ads criticized actual brand names; therefore, there was a risk that Chrysler and Apple would sue for trade disparagement and violation of their trademark rights. To mitigate these risks, Goodby conducted a factual investigation to see if the users were telling the truth; for example, Goodby asked the Chrysler owner to provide her service records.

In addition, DC reviewed the advertisements and wrote a memo that analyzed potential legal claims and recommended some changes. The memo was addressed and sent to Goodby, and Goodby forwarded a copy to Epinions. Epinions, Goodby and DC then held a conference call to discuss the memo and agree upon changes to the ads.

Based on these facts, please discuss concerns<sup>4</sup> you have from each of the following three perspectives: (1) DC, (2) Goodby, and (3) Epinions. From each perspective, address what (if anything) you think the party should have done differently. You can organize your answer however you want (such as by legal issue rather than by party if that's more logical). Just make sure you address all three perspectives!

END OF QUESTION 1

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<sup>1</sup> Though this question is based on real events, some facts have been added, changed or embellished.

<sup>2</sup> Many TV stations ultimately did not air the ad out of fear of jeopardizing more lucrative advertising contracts with Chrysler.

<sup>3</sup> In light of its violent theme, Epinions asked its users if they thought we should air it. Apple enthusiasts got wind of the poll and stacked the vote. The ad was never broadcast.

<sup>4</sup> By "concerns," I mean any potential problems under the Wisconsin Rules of Professional Conduct or under other legal doctrines applicable to attorney behavior or attorney-client relationships that we addressed in the course.

Question #2 (45 minutes; typed exams are limited to 800 words)

You represent Honeypie, a Wisconsin corporation. Honeypie competes with RatBiz and SealTime. All three competitors have big problems with customer bad debt. As a result, the in-house accountants at each of the companies collectively decide to create a “blacklist” of deadbeat customers. That way, if a customer burns one company, the other competitors can avoid the deadbeat. If the blacklist works properly, Honeypie could save \$250,000 of bad debt loss every year.

Honeypie asks for your legal advice about the blacklist. You are concerned about the blacklist’s implications under antitrust law (among others). Antitrust legal analysis is always fact-specific, so it is never completely predictable. However, you think there’s a high probability (90%+) that the blacklist would violate both civil and criminal antitrust law. Because all three companies are very small, you also think the chance of any antitrust claim being brought is miniscule (<1%).

What do you advise/do?

END OF QUESTION 2

Question #3 (36 minutes; typed exams are limited to 700 words)

Previously, you worked at a private law firm. One of your clients was DudeDots, a widget manufacturer. As part of representing DudeDots, you drafted DudeDots’ form sales agreements for widgets.

You left the law firm and are now the only in-house attorney at BabyCakes. BabyCakes wants to buy widgets from DudeDots. DudeDots sends its form sales agreement (the same one you drafted) to BabyCakes for review. Explain the circumstances where you can represent BabyCakes on the widget acquisition from DudeDots. Also, discuss what you will do in other circumstances.

END OF QUESTION 3

END OF EXAM