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DO NOT WRITE YOUR EXAMINATION NUMBER ON THIS PAGE.

LAW OF LAWYERING

Final Examination

December 10, 1996

Professor Claxton

This examination is composed of five sections. It has an overall time limit of 2 ½ hours. **YOU MUST NOT EXCEED THE OVERALL TIME LIMIT.** When you complete the examination, **PLEASE HAND IN YOUR ANSWERS AND THE COVER SHEET (PAGE A) THAT NOW IS IN FRONT OF YOU.** The cover sheet is to be placed in a separate box from the box in which you will place your answers. Your name should be printed on the cover sheet. Your examination number should appear only on your answers.

It is important that you follow these instructions carefully. TO REPEAT:

1. You are to return the cover sheet that now is before you.
2. Your name should be printed on the cover sheet (Page A).
3. The cover sheet is to be placed in a separate box from the box in which your answers will be placed.
4. DO put your examination number on your answers, but DO NOT put your examination number on the cover sheet.

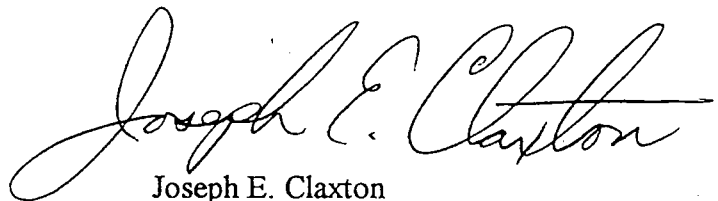
I suggest that you quickly scan the entire examination before you begin writing. Particularly note the announcement on Page A-1. That announcement was distributed to you on November 22. You must be in compliance with the terms of the announcement.

November 22, 1996

LAW OF LAWYERING**Professor Claxton**

As most of you will be aware, this notice repeats an announcement made orally in the class on several occasions. Students enrolled in my section of Law of Lawyering are authorized to use the *assigned* supplement during the final examination. The *assigned* supplement is the 1996 Gillers and Simon supplement published by Little, Brown and Company. You may write anything from any source in your supplement, but you must write the material *with your own hand*. You may use tabs to help you organize the supplement. Writing on the tabs also must be *in your own hand*.

Please do not foul up with regard to this matter! These instructions are short, simple, straight-forward, and written in the English language. If you have any doubt about the terms of these instructions, see me.



Joseph E. Claxton
Professor of Law

I.

Client asks Attorney to represent Client in a transaction. In the course of this representation, Attorney uncovers secret information. Pursuant to an investigation by a grand jury, Court later orders Attorney to reveal this information to the grand jury on the grounds that the information is not protected by the evidentiary privilege. Attorney reveals the information in the grand jury room. Later, reporters ask him: "Did you comply with the court order?" He answers: "Yes." Then they ask him: "What did you say to the grand jury?" Attorney responds to the latter inquiry in considerable detail. Has Attorney committed a disciplinary violation? Explain your response.

II.

The textual excerpt set forth below is drawn from a presentation that was part of a recent conference entitled "Legal Ethics: The Core Issues" which was held at the Hofstra University School of Law. (Questionable linguistic constructions in the excerpt are not the work product of the author of this examination!)

Let me get to the American Airlines case. American Airlines was a case in which a Houston law firm had given some legal advice to American Airlines in a very important matter. American Airlines was thinking of buying Continental Airlines. They wanted antitrust advice on it for obvious reasons. The lawyer's advice was that the acquisition would probably run afoul of the antitrust guidelines of the Justice Department unless they delayed at least a year to make the acquisition. American said thank you for the advice. The representation was ended. Halt. Over. Now American Airlines is a former client. That representation ended in January of 1991. In June, 1992, a year and a half later, Northwest Airlines comes to the same Houston law firm and asks them to sue American Airlines, their former client, in an antitrust matter. The antitrust matter had not, I think, very much ... to do with the former matter. It had to do with American's maintenance of a nationwide computer system which Northwest was claiming was monopolistic in its own way, quite apart from the questions of monopoly involved in the possible acquisition of Continental Airlines which had to do with their overlap of service in the Denver market.

American Airlines moved to disqualify the Houston law firm from its representation of Northwest Airlines. What result and why? Explain your response.

III.

Prepare a presentation for your local bar association on the fact pattern set forth below.

Assume that the new chief executive officer of a corporation has heard rumors that "various employees" of the corporation have destroyed important documents pertaining to illegal activities by certain senior and middle managers of the corporation. The CEO hires a large law firm to conduct an internal investigation of the rumors. During the course of the investigation, attorneys from the law firm interview hundreds of employees of the corporation ranging from senior vice presidents to maintenance workers. The United States Department of Justice, having launched its own investigation of possible illegalities within the corporation, seeks a judicial order requiring that the transcripts of all the interviews be turned over to the Department. The CEO and the corporation's board of directors instruct the law firm to resist. What result and why? Explain your response.

IV.

Attorney Gamma was a member of the law firm of Alpha, Beta & Gamma. She then left Alpha, Beta & Gamma and became a member of a law firm now known as Bama, Slamma & Gamma. Her "new firm" is asked to represent Jones in a lawsuit against Smith, who has been a client of Gamma's "old firm" almost since that firm's inception. As a senior associate of Bama, Slamma & Gamma, you have been instructed to review whether it is appropriate for the firm to represent Jones. Please prepare a written report on this matter for the Management Committee. Be thorough.

V.

The facts in "Part A" (set forth below) were outlined orally by the local prosecutor in a conversation with the defense attorney who has been appointed to represent one Adolf Stalinski. These facts were confirmed by Stalinski in his first conversation with the attorney. Stalinski blurted out his confirmation of the facts in Part A without even giving his attorney a chance to ask a question.

The facts in "Part B" (set forth below) are *not* known to the police department and the prosecutor. Stalinski obviously was enjoying himself when he revealed the chilling facts in Part B to his attorney.

FACTS: PART A

Stalinski kidnapped a 12-year-old girl from her own bed shortly after midnight. Physical evidence indicates that within a matter of hours he sexually assaulted and murdered the child in a horribly vicious manner. As yet, however, the police have been unable to find the child's remains. The girl's parents have made a tearful public plea for Stalinski to give them their child's body. Stalinski's only response was to laugh. He has been charged with various crimes, including kidnapping and murder.

FACTS: PART B

Stalinski confirmed all aspects of the account of the prosecutor, and included every awful detail of his 12-year-old victim's final hours. He sneeringly reminded his defense attorney that "you have to keep your big mouth shut." Stalinski also told the defense attorney that he had disposed of the child's body by dumping it down the shaft of an abandoned well that was in a place where "those fools will never look."

Stalinski then stunned his defense attorney by revealing that there was a witness to the murder of the 12-year-old girl. He stated that he had picked up a teenage boy on the interstate highway while the girl lay bound and gagged in the trunk of Stalinski's car. The teenager had told Stalinski a story about being a runaway who had left home two years earlier and had no intention of ever returning. The boy said that no one in his family knew where he was. When Stalinski sexually assaulted the 12-year-old girl he tried to get the boy to participate, but the "little wimp" (Stalinski's term) broke into tears and begged Stalinski not to hurt the girl. Stalinski tied the boy to a tree and forced him to watch as the girl was brutalized. He also forced the boy to help dump the girl's body down the well shaft. Stalinski then beat the boy severely and locked him in the concrete cellar of an isolated house that had been abandoned for over a decade. The cellar has no exit except a steel door that was left firmly locked by Stalinski. One end of the cellar was covered to a depth of a couple of inches with muddy

water, "so the wimp can have a drink whenever he wants one." Stalinski did not leave any food in the cellar.

The defense attorney's many years of experience tell her that the prosecutor will not seek the death penalty, even for such a heinous crime, unless the body of the 12-year-old girl is located. The attorney believes that there is a substantial likelihood that the teenage boy is still alive, although doomed to a slow and agonizing death if left in the cellar. Obviously, if the boy is rescued he will be able to lead investigators to the girl's body. The attorney also is convinced that the boy would be a devastating witness against Stalinski in a courtroom.

The defense attorney is in a terrible quandary. What should she do? Explain your response.

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