

PROFESSIONAL RESPONSIBILITY

AGENDA FOR CLASS OF 1/21/2009

1. Overview of Professional Responsibility;
 - a. Professional Responsibility concerns are often different than personal ethics judgments. Thus, the purely moral lawyer will still have some ethical dilemmas;
 - b. Consider in light of lawyer in *Sprung* and Problem-- What happened in *Sprung*,
 - c. CROFT, and notes following:
 - i. History of professional rules in this country;
 - ii. What rules do we follow today? That's a little confusing!!!
 - (1) Rules of Professional Conduct;
 - (2) 2002 Rules
 - (3) ALI Restatement
 - d. For our purposes
 - II. Is question dissenting judges in *Sprung* are asking: "Can, or perhaps Should, these rules take into consideration the moral precepts of earlier Canons and Code?"
 1. Review of questions demonstrates why this question might be important;
 - a. Question d. is designed to make lawyer realize that the lawyer has three main duties, as set out in the Preamble to the Model Rules; duties;
 2. Questions e and f, are to lead into the WASSERSTROM article;
 - B. WASSERSTROM article and notes following,
 1. Two criticisms of practice of law:
 - a. Role-Differentiated position of attorney;
 - b. The lawyer-client relationship is flawed from the outset;
 - C. SIMON--two models for the profession; Libertarian & Regulatory;
 1. Simon advocates "discretionary approach;"
 - D. Consider these criticisms in light of the lawyer in *Sprung*;
 1. How might Wasserstrom suggest that a lawyer deal with the dilemma facing the *Sprung* lawyer?
 2. Are either of these views part of the Model Rules of Professional Conduct: Look at Rule 2.1; Rule 1.2(b);
 - E. *Sprung* Lawyer is not said to have failed to comply with the ideals expressed in Note 2;
 - F. If lawyer complied with Wasserstrom, possibly considered the discretion of Simon and did not violate any rules, how can the dissent criticize the actions?
 - G. Part of answer involves discussion of Adversary System;
 1. SHAFFER, and ARONSON
 - H. What, then, is the real criticism of the *Sprung* lawyer?
 - I. TERRELL & WILDMAN partially help;
- III. **Chapter 2: The Legal Profession and the Practice of Law**

- A. Judicial Regulation and Doctrine of Inherent Power; question,
1. *Succession of Wallace*, appears to reject general role of legislature when dealing with lawyers;
 2. Court sees its power as coming from three sources:
 - a. Louisiana State Constitution;
 - b. The inherent power of any court; and
 - c. The power court has to discipline members of the bar;
 3. How does court have power to reject this statute?
 4. This inherent power is found in Missouri in first part of Missouri Court Rules book:
 5. Inherent power and the "club" nature of the profession; WOLFRAM, note; Affirmative v. Negative Inherent Power;