

Professional Responsibility

Fletcher Winter 2020

Assignment Document #1

As explained in class, each practice group will be assigned a fact pattern. This is the first of four of these types of assignments. Those fact patterns are here, attached to the team names. Due dates are here, too. You will have two weeks after the presentation to deliver the memo.

Identify all legal issues in play, explain the relevant law, analyze the issues given the law, and articulate any possible recommendations to the client. Answer any questions presented in the question itself, as well.

There are a lot of dates here, so if there is an error, let me know. Let me know if you want to trade a presentation spot with another group.

Team Alderaan (Caitlin, Emily S., Simonne, Kelsea)

A lawyer knows that her client is innocent of the murder with which he is charged, but she also knows that the prosecutor has a convincing eyewitness who will not be shaken and who will testify that he saw the client commit the crime. The lawyer knows that she can obtain a forged hotel register from a city several hundred miles away that will “prove” that her client was in the other city at the time of the event; the lawyer firmly believes that she will not be caught if she engages in this fraud. If you were the lawyer, what would you do?

Presentation – January 13

Memorandum due – January 27

Team Bespin (Hannah, Victoria, Lindsey, Elise, Mitchell)

Harold Smithers was a commissioner with the Federal Trade Commission for several years until 10 months ago when his term expired.

Prior to his appointment as a commissioner he had spent about 15 years—over half of his professional life—on the staff of the F.T.C.

Smithers retired from the Government at the end of his term and became a partner in the well-respected firm of Able & Baker in Washington, D.C. Smithers became familiar with Able & Baker because it engages in a great deal of F.T.C. work and has a reputation for excellence. In fact, for the last year, the firm has been representing the subject of a major investigation before the F.T.C. Although he disagreed with the strategy that Able & Baker was using in that case, he carefully avoided discussing that case while he was quietly negotiating with Able & Baker about his future employment at the firm.

Now that Smithers has moved to Able & Baker, P.D. Quick, Chief Executive Officer of Quick, Inc., has come from California to seek Able & Baker's help. The Commission staff has threatened to file an action in United States District Court seeking a preliminary injunction pending institution of a proceeding before the Commission alleging consumer fraud by Quick, Inc. The fraud is minor, but Quick is personally worried about it and wants to end the matter as soon as possible.

Neither Quick nor Quick, Inc., had ever before consulted with Able & Baker about this matter. P.D. Quick, during his initial conference with Smithers, mentioned in passing that the reason he decided to come to Able & Baker was because Smithers was there and a recent article about Smithers in Forbes Magazine (published as he was leaving the F.T.C.) said that Smithers had been one of the most influential and hardworking members in the history of the Commission. The article quoted one F.T.C. staff member who said that "even today when Smithers calls me on the phone, I instinctively straighten my tie and call him 'Sir!' "

The actual drafting of papers to be filed with the Commission staff will be handled by another partner of Able & Baker, but Smithers has been asked by the client and the active partner to give "a topside look" at the client's problems and to sign the important papers that will be filed with the Commission. Smithers also has agreed to call several staff members and a current commissioner or two who "owe their jobs to me." This last remark was made in an off-hand way in the presence of P.D. Quick who appeared pleased.

Presentation – January 20

Memorandum due – February 3

Team Coruscant (Pfeiffer, Josh, Mark, Mike, Brennan)

MEMORANDUM TO THE BAR

You have been in practice for a few years in the city where you went to law school. Gerry Smith, a third year law student, has come to you for help. "I have been accused of cheating on the final exam in my advanced tax class," he tells you. "I did it. I had not had time to study, and I wanted to get a good grade. The exam proctor will testify that he thought he saw me cheat, but I have denied everything. I'm afraid of what this could do to my chances of being admitted to the bar. Please help me."

In addition, Smith has told you, "I changed my name when I was a senior in college. My name then was Patrick Saville. Under that name, I was convicted of a misdemeanor for possession of marijuana. Do I have to report something like that? Will the bar ever catch me?"

You are an old friend of the law school dean. The dean has offered not to charge Smith and force him to a hearing on the charge of cheating if Smith agrees to accept a failing grade in the course. He can make up the course in summer school (for which he will have to pay tuition), and that will let him graduate in time to take the bar with the rest of his class. The dean also offers to agree not to disclose the incident to the character and fitness committee of the bar. Smith is happy to be able to get off so lightly.

Presentation – January 29

Memorandum due – February 12

Team Dagobah (Alex, Andrew, Bobbi, Senara)

Morris Andrews has been watching his contemporary and good friend Harold Black slowly lose his battle with a drinking problem. Andrews knows from long association that Black was once an able lawyer but that a series of personal crises have stimulated a case of alcoholism that has greatly reduced his effectiveness. In a recent case, Andrews' client had a less-than-even chance of winning, but won easily because Black seemed simply unable to represent his own client effectively.

Andrews resolved to go to Black and encourage him to withdraw from practice until he had gotten himself together. Black took the suggestion as an officious insult. "I represent my clients better than you do," Black said. "At least I don't take on more work than I can handle. You never finish anything. All your cases are on the back burner and you only appear in court to get continuances. I lay off the bottle when I have a big case, and as for that recent one when you beat me, you were just lucky."

Andrews did not consider Black's outburst wholly responsive to the main issue, but he did have to admit that Black was right about his caseload. Indeed, Andrews made a mental note to settle some of his minor cases so as to spend more time on the rest. But he was still left uncertain about what, if anything, to do about Black.

Presentation – January 20

Memorandum due – February 3

Team Endor (Dominic, Victor, Sam)

Your long-time client, John Carter, came to your office to tell you that he expected to be sued by the person who bought his house. He had told the buyer that the house had a dry basement. Although the basement had never flooded in the five years he had lived there, Carter had been told by a prior owner that the basement regularly flooded after a heavy rain. There was such a rain this year, and the buyer's furniture suffered major damage.

Shortly before his death, you were able to interview the prior owner of the house, who told you what he had told Carter about the tendency to flood. You have notes of that interview in which you comment on the former owner's likely credibility at trial. In addition, while at a party at a friend's home, Carter's banker let slip that Carter is in bad financial condition. You mentally filed that away as important to your settlement posture in case Carter is sued.

The buyer has now filed suit against Carter. You have been subpoenaed by the buyer to give a discovery deposition in the case. You expect to be asked what Carter told you about whether his house tended to flood.¹ You have also been asked to produce your notes of the statement of the prior owner. Someone else has asked you informally if the rumors that Carter has suffered financial reverses are true.

Presentation – January 27

Memorandum due – February 10

Team Fett (Emily A., Drake, Amira)

Sarah Field is a young lawyer with a great future. She has attracted several clients with a wide range of interests and problems. Her outstanding record before juries is the envy of the local bar. Sometimes, however, she is not as careful as she might be.

Field is active in local politics. At a party picnic, an acquaintance of hers, Mary Moore, took her aside and told Field, "My doctor really messed me up two years ago. He performed supposedly minor surgery but cut the wrong things and now I can never have children." Field put her arm around Mary and said, "That's terrible. I know how to handle doctors like that. Leave everything to me." When Field got back to her office, she wrote a nasty letter to the doctor demanding that he "fully compensate my client." By return mail, she received a settlement offer of \$25,000. Mary, the client, said she was delighted and Field was impressed at how intimidated the doctor seemed to be by her letter. Field did not have Mary examined by an independent physician. Had she done so, both would have learned that Mary's injuries were much worse than she believed. Field recommended that Mary accept the settlement, which she did. Now, Mary has learned the full extent of her injuries, and she realizes how inadequate her settlement really was.

Field does very little tax work. One of her wealthy clients heard that income can be made taxable to her children, instead of herself, by the use of certain trusts. She asked Field to see that the trusts were properly prepared. Field researched the problem as well as her small office library would permit and discussed the issues over coffee with a CPA from down the hall. The client later learned that Field's handiwork was not good enough to accomplish her objectives, and a large tax deficiency was assessed. "Don't blame me," Field said defensively, "If you wanted tax advice you should have called a specialist. I told you I was not positive of the tax consequences."

In yet another incident, this time a criminal trial in which she was appointed counsel, Field had gone on a vacation and failed to appear when the case was called. The case was reset for the following morning. Field's office reached her and she quickly returned. The next day, although she was physically present for the trial, she was not prepared and did a terrible job. The client was convicted and sentenced to a long prison term.

Presentation – January 27

Memorandum due – February 10

Team Geonosis (Tessa, JJ, Austin P., Andrea)

You are a lawyer in a private firm. Morris Cannell, an elderly man whom you had never met before, came to you complaining about the handling of his investment account by a local broker. Cannell told you that the broker invested over \$200,000 of Cannell's pension money in speculative stocks and the account's value has now been reduced to less than \$20,000. Cannell claimed that the broker engaged in a great deal of buying and selling of stocks, with the result that the broker made a lot in commissions while the client sold when the stocks were low and purchased when they were high. Cannell told you in no uncertain terms, "I want you to throw the book at my broker. He showed me no mercy and I don't want you to show any to him."

The more you talked to Cannell, the more you concluded that he is unsophisticated in financial matters. Further, his mind seemed to wander during your discussions, and you believe he may lack even average mental ability.

In researching the problem before deciding whether to take the case, you developed several arguments. You planned to argue that the broker engaged in illegal churning (excessive buying and selling), and that he violated federal rules relating to an investor's suitability (what stocks are suitable to meet a given investor's objectives, here safety and income). With respect to both arguments you planned to focus on Cannell's lack of sophistication and ability, and thus his reliance on the broker.

When you told Cannell the results of your analysis, however, he was angry and wanted you to do more. "He must have a license," Cannell said. "Do everything you can to get him suspended. See what you can do to tie up his bank accounts." The statute of limitations was about to run on all state and federal claims and you told Cannell you would only represent him if you would be required to raise no more than the churning and suitability issues. You refused to seek suspension of the broker's license or to try to harass him financially. Cannell reluctantly agreed and signed your retainer agreement.

You entered an appearance as Cannell's attorney and filed suit on his behalf. Now, however, after several months, you have grown tired of dealing with Cannell and want to withdraw from the case.

Presentation – January 27

Memorandum due – February 10

Team Hoth (Dakota, Adara, Jeff, Adam)

A well-known local psychiatrist has a contract claim for about \$100,000 against a local firm. The matter appears to be of average complexity. She has brought her case to attorney Paul T. Novak. "I'll take your case," Novak says. "My fee will be only 44 per cent of the amount recovered." Shocked, the psychiatrist says that she has never heard of even psychiatrists charging such high fees. "One-third is average," Novak tells her. "I am giving you a bargain. I am only charging you one-third more than the going rate and I am at least twice as good as the average lawyer."

Novak also has been asked to be counsel for the executor of the estate of Hiram Paulsen, late of Novak's city. Paulsen died in a nursing home with few personal effects and an estate consisting of unimproved land worth \$50,000 which he had owned in joint tenancy with his daughter, \$150,000 in corporate securities held by his broker and \$50,000 in life insurance payable to his daughter. The daughter was executor and sole beneficiary. Novak took all proper steps to settle the estate, including payment of taxes. He sent a bill for \$15,000. "Lawyers in this town have charged 6 per cent as long as I can remember," he said. "If word got around I was shaving the price, think what that would do to my reputation."

Novak also has agreed to represent a plaintiff in a personal injury suit for a "discount" contingent fee of one-third of the amount recovered. The other side has offered, before Novak begins work, to pay his client \$15,000. Based on what he knows about the case, Novak believes the actual damages that a jury would award would be more like \$60,000, but it would take him about 200 hours of work to recover that amount, and, of course, the client might possibly not recover anything at all. Novak has concluded that it is best to recommend to the client that he accept the \$15,000 immediately so that Novak can pocket a \$5,000 fee with little effort and go on to the next case.

Presentation – January 13

Memorandum due – January 27

Team IG-11 (Bradley, Charlie, Rachel, Matt)

Mr. and Mrs. Wilson have been married for 12 years. They have children ages 10, 8, and 6. They both consider that their marriage has not been going well for the past four years, and while they consider each other friends, they no longer wish to remain married. They have come to attorney Wayne Green's office and have asked Green to help them secure a divorce.

The Wilsons tell Green they have agreed that Mr. Wilson will be the custodial parent of the 8-year-old son and Mrs. Wilson will be custodial parent of the two daughters. Each will have liberal rights of contact with the children living with the other. Mrs. Wilson wants \$1000 a month child support, and Mr. Wilson considers that a bargain.

Neither of the Wilsons wants a separate attorney called into the case because of the added expense. "We both trust you," they say. "Why create problems when there aren't any now?"

Presentation – January 29

Memorandum due – February 12

Team Jakku (Angelica, Lizzy, Stephanie, Steffen)

You represent the First National Bank in its commercial lending work. A large mortgage loan was made by the bank to International Bolts Co., a parts manufacturer, for construction of a new plant. The loan has now gone into default, and you have been directed by the bank to commence foreclosure proceedings.

International Bolts has occasionally hired you over the last few years to write opinion letters on labor law matters. You do not now happen to be drafting any opinion for that company. You have never represented International Bolts in connection with this loan, but when you mention to the President of International Bolts that you will soon be handling the foreclosure of his plant, he is personally offended. "I really would not like you to be the one that does that to us," he says, "after all we've been through together."

Meanwhile, a neighbor has consulted you with respect to a "prepayment penalty" in the residential mortgage loan he has with the Second National Bank. Second National is not one of your clients, and you agree with the neighbor that "prepayment penalties" seem not to be in consumers' best interests. Thus, as a favor to your neighbor, you have agreed to file a declaratory judgment action challenging the validity of such agreements under state and federal law.

You have informed the Second National Bank of the impending suit, and you have now received a call from the President of your client, the First National Bank. "I've heard about your proposed law suit against the Second National Bank. We do not want the law of prepayment penalties changed," the President tells you. "You owe it to us to withdraw from representing the plaintiff in the pending suit."

Presentation – January 15

Memorandum due – January 29

Team Kashyyyk (Katie, Mollie, Lauren, Alex)

Barbara Bentley regularly represents Bitter Creek, Inc, the defendant in a case charging price fixing, a criminal violation of the federal antitrust laws. Chuck Carson, manager of the widget division at Bitter Creek is accused of conspiring with Mary Morton, his counterpart at Widgetech, Inc., a major competitor. In Bentley's first interview with Carson, Carson told Bentley he was unrepresented and asked her to represent him. Carson told Bentley that Mary Morton also needed a lawyer and thought it would be best if Bentley would represent her as well. Widgetech, Inc., has in-house counsel and Bentley already has been meeting with him to share information and develop a joint defense.

Bentley confirmed Morton's interest in retaining her and she has now entered an appearance on behalf of Bitter Creek, Carson and Morton. The United States Attorney is interested in demonstrating his commitment to consumers because he plans to run for Governor next year. Thus, he is determined to obtain convictions, although he does not care who takes the fall. He proposes to Bentley that she get Carson and Morton to plead guilty to charges for which he will recommend no jail time. In exchange, he will drop the felony charge against Bitter Creek. Because this will reduce the chance of subsequent treble damage actions against the corporation, Bentley finds the proposal attractive. She recommends that Carson and Morton accept it, accurately telling them that if they were found guilty after a trial, their sentences could be more severe.

Presentation – January 15

Memorandum due – January 29

Team Lando (Akunnaya, Gray, Alex, Kylee)

Terry Tenant is the son-in-law of Larry Landlord. Tenant rented an apartment in one of Landlord's apartment complexes. Landlord has a liability insurance policy with the All-Mutual Company covering all accidents in the apartment complex up to \$100,000. One cold evening in January 1993, Tenant injured himself when he slipped on some ice just outside the main entrance. Landlord saw the accident and rushed to help Tenant, but Tenant said that he would "be all right." Thus, Landlord did not report the accident to All-Mutual. Unknown to Landlord, Tenant took several weeks off from work claiming back injuries. In June 1993, Tenant sued Landlord, his father-in-law, for \$175,000 for his alleged pain and suffering and expenses in connection with the resulting back injury.

All-Mutual's liability insurance policy has several standard clauses. First, a "Notice of Accident" clause requires the insured to notify the

carrier promptly of any accident for which it will expect coverage; failure to so notify is said to be a waiver of coverage. Second, the policy requires All-Mutual to provide and pay for a lawyer to defend the insured from any claim arising under the policy and to pay any claim within the monetary limits of the policy. Third, the policy requires the insured to cooperate with All-Mutual in defending against any claims.

After Tenant filed suit, Landlord notified All-Mutual, and All-Mutual retained Sara Henderson to investigate and prepare the defense. All-Mutual also wrote Landlord that it "was not waiving any defenses under the policy." Henderson interviewed Landlord and Tenant but was unable to find any other witnesses who had a clear recollection of the accident. Landlord's and Tenant's version of the events were almost identical and very favorable to Tenant. Henderson, on the other hand, has wondered how Tenant could be so careful and suffer such severe injuries, and yet have an immediate reaction that he would "be all right." Moreover, because Landlord and his son-in-law seem to be on good terms, she has wondered why Tenant neither told Landlord of the alleged "serious complications" nor, at least prior to filing, that Tenant was going to bring a lawsuit.

Tenant has offered to settle for \$50,000, and Landlord has told Henderson that he would prefer All-Mutual's agreeing to that amount rather than going to trial and placing Landlord at risk for the \$75,000 in excess of policy coverage.

Henderson believes that Landlord's failure to notify All-Mutual about the accident at the time it happened has so hampered factual development of the case that All-Mutual should deny coverage under its prompt notice clause. She has not told either Landlord or All-Mutual of her opinion. She also believes that Landlord is not cooperating, although she also has not said this to Landlord or All-Mutual either. During one interview Landlord told Henderson: "Just between you and me, my son-in-law and I remain the best of friends, but I wouldn't want All-Mutual to know that."

Henderson has communicated Tenant's settlement offer to both Landlord and All-Mutual. All-Mutual has asked for her advice on whether it should accept the offer.

Presentation – January 29

Memorandum due – February 12

Team Mandalore (Gage, Peter, Josh, Konrad)

~~THE LAWYER~~

Martha Heath has a wide reputation for her success handling medical malpractice cases for plaintiffs. She is in great demand and is rightly feared by doctor defendants.

Recently, Linda Parker came to Heath with a claim against Dr. Charles Abraham. Heath investigated the facts, found they seemed sound, and proceeded to go to work on the matter. Until she had worked on the matter for about 90 days, Heath had not recalled that about five years earlier she had represented Dr. Abraham in the routine adoption of his wife's children.

Heath might have forgotten Dr. Abraham but he had not forgotten her. "How could you of all people—my own lawyer—sue me?" he said. More to the point, he had his malpractice defense counsel move to disqualify Martha Heath from handling Parker's claim.

Presentation – January 15

Memorandum due – January 29

Team Naboo (Neal, Alexandra, Linden, Mitch)

Charles & Burls (C & B) is a prestigious, 200-person Wall Street firm with a national clientele. It represents World Wide Container Corp. in many matters, one of which is a suit by National Gasket Co. against World Wide for contribution in a products liability case. The case is to be tried in New Orleans, and C & B is cooperating with Willis & Xeres (W & X), the law firm that World Wide uses as local counsel in New Orleans.

Willis of W & X is the only lawyer actively working on the case. His only role is to file papers, motions, and other pleadings forwarded to him by C & B. National Gasket has now moved to disqualify both C & B and W & X from acting as World Wide's lawyers because Xeres (while he had been in a solo practice before forming W & X) had represented National Gasket in various product liability matters arising out of the same facts that led to the present suit. Xeres learned confidential information that, if disclosed, would be useful to World Wide's defense of the present suit. C & B has never represented National Gasket.

Presentation – January 13

Memorandum due – January 27

Team Organa (Cameron, Camille, Prachi, Chelsea)

Marilyn Anderson came to you for legal help. "They have taken away my children," she told you bitterly. "I have a right to them, don't I? I am a good mother, but the welfare department has put my babies in a foster home."

You were moved by Mrs. Anderson's sincerity and agreed to take the case. In the course of your subsequent investigation, however, you discovered that Mrs. Anderson had not told you all the facts. The children, Mary, age 7, and Billy, age 3, were removed from the home based on a finding of both neglect and abuse. Social workers at Mary's school became suspicious when the little girl appeared bruised and malnourished after several days' absence. The social workers' questioning of Mary revealed that Mrs. Anderson sometimes hit the children and sent them to bed hungry. Mrs. Anderson also often left the home for hours at a time leaving no adult to care for them.

But that was only the beginning of the story. Mrs. Anderson herself told you that her husband, John, has frequent violent episodes during which Mrs. Anderson sometimes leaves the house and the children because she literally fears for her life. John has a job, but he is paid in cash and the family cannot rely on how much will be left in the pay envelope after he gets home. Mrs. Anderson had been employed as a hospital aide before Mary was born, but she has enjoyed staying home with her children.

A particular irritant in the Andersons' relationship has been the situation of Mrs. Anderson's mother. She is alert and lives in her own house, but she is lonely. Marilyn wants to invite her to come to live with the family, but whenever she suggests it, John flies into a violent rage.

You wonder whether or not Marilyn Anderson should win the upcoming custody hearing. Although you sympathize with her situation, you hesitate to use all the skill and resources at your command to overwhelm the overworked counsel for the Department of Children and Family Services. If you do restore custody to Mrs. Anderson, you worry about the children's future.¹

Presentation – January 29

Memorandum due – February 12

Team Padawan (Adam, Nicholas, Kasey, Austin M.)

THE CASE CONCERNING A FEE

Elizabeth Jackson is a well-known and very busy litigator. The Atlas Brothers Co. (ABC) has retained her to defend a lawsuit filed against them by a former employee. The complaint was filed 28 days ago and a state statute provides that all allegations will be deemed admitted if an answer is not filed within 30 days. Jackson has had the case for the past 18 days but has done nothing toward the preparation of an answer. When called about the status of the case, she tells ABC that unless \$75,000 is paid immediately, she will not file the answer on time. The President of ABC has had experience in dealing with lawyers in the past. He believes that \$75,000 is likely to be a high fee even if the case has to go to trial, and it is a very high fee indeed if the matter can be settled. However because he believes himself effectively coerced into either paying the fee or losing the case by default, he has sent Jackson the check for \$75,000.

In yet another matter, Jackson represents a local business person in a dispute over title to real estate. She anticipates a hard time collecting her fee. She demanded payment in advance but the client would not agree to that. Now she proposes to take a security interest in the real estate that is the subject of the suit, or perhaps an interest-bearing promissory note in advance payment.

Finally, in a recent suit to recover a valuable ring that had been wrongfully withheld, a jury awarded Jackson's client the ring and \$100,000 punitive damages. The fee contract between Jackson and her client provided that Jackson would get 40% of all punitive damages. "That was because we thought the punitive damages would be low," the client complained after the verdict was announced. "On a big recovery such as this, 40% is unfair," the client said. "I'll pay you 25% and not a penny more." The defendant in the case satisfied the judgment by giving Jackson the ring and a check for \$100,000 payable to Jackson. Jackson promptly deposited the full amount of the check in her client trust account and put the ring on her finger. She told Baker, "Until we get this fee dispute worked out, I'm not giving you a nickel."

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Presentation – January 20

Memorandum due – February 3

Team Qui-Gon (Gary, Alex, Ashli, Jackie)

Attorney Joan Doe went to high school with James Johnson, a local engineer. Johnson asked Doe to help him set up a small business. He had very little money, and the capital he had raised from a few local investors was not enough to pay much of a legal fee. Johnson asked if he could pay the fee over an extended period of time, with interest. Instead, Doe suggested that Johnson pay her by giving her 10 percent of the stock in the new corporation as payment for all work necessary to establish it and carry it through the first year. Doe thought the business looked like a good, relatively cheap investment opportunity, and

after Johnson agreed to the arrangement, Doe drafted the articles of incorporation, by-laws and a shareholders' agreement.

Johnson's company is now doing very well. Doe has learned from him that the company will be building a new plant in an industrial park near town. The plans for the industrial park are a secret to all but a few people, and Doe realizes that property in proximity to the park is likely to increase in value. She knows of such a nearby parcel that is for sale, and, after concluding that Johnson probably does not plan to buy it, she has now done so.

After his company had made its first million dollars, Johnson was thrilled. "Joan", he said, "you have been my lawyer these three years and I could not have succeeded without you. Please draw up the papers to transfer the title to my 1994 Mercedes Benz to yourself." The car is worth \$75,000. Doe is stunned and does not know how to reply to Johnson's generous request.

Presentation – January 13

Memorandum due – January 27

Team Rodian (Daniel, Sarah, Cassondra, Kathryn)

You have long been an outside counsel to Sleepware, Inc., a clothing manufacturer. The company makes a line of children's pajamas that is a big seller. Recent tests have shown, however, that the pajama fabric can catch fire if a match is held against it for a few seconds.

The Vice President of Sleepware wants to keep selling the pajamas. Regulations of the Consumer Product Safety Commission prohibit sale of products known to cause burns to children but the Vice President believes that the CPSC is unlikely to recognize the potential injuries the pajamas will cause.

Further, the Vice President points out that although children wearing pajamas sometimes play with matches, experts he has consulted say that not more than one in 50,000 children would hold the matches on their pajamas long enough for it to catch fire. The experts admit that if the pajamas burn, the child's injuries could be expected to be severe, but a management consulting firm has estimated that civil damages would not exceed \$250,000 per victim. Sleepware sells 200,000 of these pajamas each year, the Vice President tells you proudly, and it makes a profit of \$2,000,000 on this product. Thus, even under a worst-case scenario, he has calculated that it will be \$1 million more profitable to sell the pajamas than not to sell them.

You have not been asked for advice about whether to market this product; you only learned about the flammability while working on an unrelated matter. Indeed, the Vice President is annoyed that you have raised the issue with him. "The President will retire soon," he tells you, "and I am his natural successor. My enemies in the company would love to embarrass me with this."

Presentation – January 20

Memorandum due – February 3