JULY 2018

Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

Source: State Bar of California | 26 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

JULY 2018
ESSAY QUESTIONS 1, 2 AND 3

California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

In January, Stan, a farmer, agreed in a valid written contract to sell to Best Sauce-Maker Company (Best), 5,000 bushels of tomatoes on July 1, at $100 per bushel, payable upon delivery. On May 15, Stan sent Best the following e-mail:

> "Heavy rains in March-May slowed tomato ripening. Delivery will be two weeks late."

1 Best replied:

> "Okay."

On May 22, an employee of Delta Bank (Delta), where Best and Stan banked, told Best that rains had damaged Stan's tomato crops and that Stan would be unable to fulfill all his
2 contracts. Best called Stan and asked about the banker's comment. Stan said:

> "Won't know until June 10 whether I'll have enough tomatoes for all my contracts."

Best replied:

> "We need a firm commitment by May 27, or we'll buy the tomatoes elsewhere."

Stan did not contact Best by May 27. On June 3, Best contracted to buy the 5,000 bushels it needed from Agro-Farm for $110 per bushel.

On June 6, Stan told Best:

> "Worry was for nothing. I'll be able to deliver all 5,000 bushels."

Best replied:

> "Too late. We made other arrangements. You owe us $50,000."

Concerned about quickly finding another buyer, Stan sold the 5,000 bushels to a vegetable
3 wholesaler for $95 per bushel.

Stan sued Best for breach of contract. Best countersued Stan for breach of contract.

Has Stan and/or Best breached the contract? If so, what damages might be recovered, if any, by each of them? Discuss.

READING POINTERS

1 Resolve the delivery extension first

The accepted two-week change may be a good-faith modification or waiver. Do not assume July 1 remained an unconditional deadline.

2 An assurance demand has formal requirements

Section 2-609 calls for a written demand. Also ask whether five days was commercially reasonable; thirty days is an outside limit, not an automatic entitlement.

3 Calculate after assigning breach

A qualifying resale supports a $25,000 seller differential. The buyer's $50,000 cover claim depends on a justified cancellation and reasonable cover.

QUESTION 2

Deb was charged in a California state court with battery of a spouse or live-in companion. Vic, Deb's live-in boyfriend, was beaten when he stepped out of his car in their driveway. Vic called 911 about two minutes after the beating and reported that Deb, his girlfriend, had beaten him.

At trial, the prosecution called Vic as a witness. He reluctantly took the stand. He refused to identify Deb in open court as the perpetrator. He admitted making the 911 call in which he reported that Deb had beaten him. The parties stipulated that the 911 recording was a business record of the police department, but that Vic's statements on it were specifically not covered by the stipulation. The prosecution properly authenticated the 911 tape, moved the tape into evidence, and played it for the jury.

The prosecution also called Sam, a man who had been Deb's live-in boyfriend eight years earlier. All evidence pertaining to Sam's testimony had been properly disclosed to the defense before trial. Sam testified that Deb had threatened to choke him to death if he left her, and that she had beaten him several times during the time they lived together.

Deb took the stand in her own defense. She testified that she was working at her desktop computer in her office at the time of the assault, 20 miles away. She offered a print-out of a list of file names, which contained the dates and times they were created, indicating they were created on her computer at the time of the beating. She testified that her computer clock was set to the correct time and keeping time accurately on the day of the beating.

Assuming all appropriate objections were timely made, should the court have admitted:

1. The 911 tape? Discuss.
2. Sam's testimony? Discuss.
3. The computer print-out? Discuss.

Answer according to California law.

READING POINTERS

1 Do not collapse the hearsay layers

The stipulation covers the police recording as a business record. Vic's accusation needs its own nonhearsay basis or exception.

2 Use the domestic-violence statute

Section 1109 can permit otherwise prohibited disposition evidence. Eight years does not trigger the over-ten-year rule, but remoteness still matters under section 352.

3 Authentication is not authorship

An accurate clock supports the timestamps. Automatic data may be nonhearsay, but computer activity does not conclusively identify the person who created the files.

QUESTION 3

Betty and Sheila, who have been friends for a long time, were charged with armed robbery, allegedly committed in a convenience store. They decided to hire Betty's uncle, Lou, as their lawyer. Lou is an estate planning attorney and has never represented defendants in criminal cases before.

Both Betty and Sheila met with Lou together. In that meeting, both of them emphatically denied that they robbed anyone. Lou agreed to represent them in their criminal cases and gave them a retainer agreement, which states:

> **Scope of representation.** Lawyer agrees to represent Clients through any settlement or trial.
>
> **No conflicts of interest.** From time to time, Lawyer may represent someone whose interests may not align with that of Clients. Lawyer will make every effort to inform Clients of any potentially conflicting representations.
>
> **Fees and expenses.** Lawyer will advance the costs of prosecuting or defending a claim or action or otherwise protecting or promoting Clients' interests, but Clients are ultimately responsible for repaying Lawyer for all costs that Lawyer advances. If Clients are unsuccessful at trial, Clients will owe only costs advanced by Lawyer and zero fees. If Clients are successful either before or at trial, Lawyer will be paid $10,000 plus any costs incurred.

Betty and Sheila each signed the retainer agreement.

Two days later, Lou represented both defendants at the joint arraignment. He angered the court during the arraignment because of his unfamiliarity with criminal procedure, and the court relieved Lou and appointed new counsel for Betty and Sheila. Betty and Sheila agreed to new counsel.

Although Lou had not incurred any costs by that point, Lou asked Betty and Sheila to pay him a total of $2,000, divided up however they wanted, to reimburse him for his time spent on the case.

What, if any, ethical violations has Lou committed? Discuss.

Answer according to California and ABA authorities.

READING POINTERS

1 Experience can be acquired, but must be acquired

Prior specialization alone is not disqualifying. Evaluate preparation, association with competent counsel, and the actual failure at arraignment.

2 A promise of notice is not informed consent

Explain this joint criminal representation's foreseeable conflicts and the required consent. Their signatures on vague boilerplate do not supply that explanation.

3 Identify the contingency

A fee conditioned on criminal-defense success is contingent even if the amount is a fixed $10,000. Separate that prohibition from permissible cost advances.

JULY 2018
ESSAY QUESTIONS 4 AND 5

California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, which is designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

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READING POINTERS

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QUESTION 4

Wilma, a California resident, was employed as an accountant for many years. She retired in 2010 and received a pension. Wilma received part of the pension as a lump sum and the rest in monthly installments deposited into an account in her name at Main Street Bank. She used the lump sum as a down payment on a townhouse. The title to the townhouse and the mortgage are in Wilma's name.

In 2011, Wilma met Harry, also a California resident, who worked in a local store. Wilma and Harry married in 2012. Harry opened an account at Valley Bank in his name and deposited his salary from the store into the account. Wilma did freelance accounting work and deposited the pay from that work into her Main Street Bank account.

During their marriage, Wilma and Harry used funds from Harry's account to pay the mortgage on the townhouse in which they both lived. They paid all their household expenses from Wilma's account. Wilma's pay from her accounting work did not cover all their expenses and her monthly pension installments paid the rest of their expenses.

In 2013, Wilma and Harry bought a motorboat using funds from Wilma's account. Although they would both use the boat, title was taken in Wilma's name.

In 2014, Harry was injured when a driver, Dana, negligently struck him with her car.

In 2016, Wilma and Harry permanently separated, and Harry moved out of the townhouse and stopped making mortgage payments.

In 2017, Harry settled his claim against Dana for $30,000.

In 2018, Harry instituted dissolution proceedings.

What are Wilma's and Harry's rights and liabilities, if any, with regard to:

1. The townhouse? Discuss.
2. The motorboat? Discuss.
3. The personal injury settlement funds? Discuss.

Answer according to California law.

READING POINTERS

1 Receipt time is not earning time

The pension was earned before this marriage. Its later installments retain their separate source despite receipt during marriage.

2 Separate principal from carrying costs

Community earnings reducing acquisition principal can create a proportional community interest. Interest, taxes, and insurance do not create the same equity share.

3 Trace the mixed account

The expense facts support exhaustion tracing: community income is used first for family expenses, potentially leaving separate pension funds for the boat.

4 Classification and allocation differ

The injury arose before separation, supporting community classification. Section 2603 ordinarily assigns identifiable personal-injury damages to the injured spouse at dissolution.

QUESTION 5

1 Five years ago, State X bought Railroad (RR), which was in bankruptcy and about to be liquidated. RR has always been the largest rail carrier in State X, presently carrying 70% of its rail freight. RR's transport rates are generally lower than other rail carriers. In signing the Act authorizing the purchase of RR, the governor stated that it would ensure continued freight rail service for State X industry.

2 The Act authorizing the purchase of RR provides that manufacturers with factories in State X shall have first choice of space on RR.

3 Peter, a citizen of State Y, which borders State X, grows melons in State Y for sale to grocers there and in State X. Before its purchase by State X, Peter exclusively used RR for shipping melons to his many State X customers. Peter has lost nearly all of his State X customers over the last 5 years because he cannot guarantee timely delivery of ripe melons because shipping space on RR is so uncertain.

Corporation manufactures refrigerators in State Y and sells them there and in other states, including State X. Corporation has lost retail customers in State X because it can no longer guarantee dates of delivery when using RR.

Peter and Corporation have repeatedly been forced to give up reserved space on RR because it is being used by State X manufacturers. They have now filed suit in Federal Court in State X.

1. What claims can Peter make under the United States Constitution and how should the court rule? Discuss.

2. What claims can Corporation make under the United States Constitution and how should the court rule? Discuss.

READING POINTERS

1 Identify the State's role

Direct allocation of a state-owned carrier's services supports market participation. Compare that role with regulation of private carriers or conditions on another market.

2 Read the actual classification

Article IV protects nonresident citizens, not every disfavored business category. Consider whether the rule discriminates by citizenship or instead by activity and facility location.

3 Natural persons and corporations differ

Peter may assert Article IV common-calling protection. Corporation may assert commerce and equal-protection claims but is not a citizen under that clause.

July 2018

California Bar Examination

Performance Test

INSTRUCTIONS AND FILE

READING POINTERS

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IN THE MATTER OF ABIGAIL WATKINS

Instructions .....

FILE

Memorandum to Applicant from Tia Lucci.....

Plea Agreement, U.S. v. Abigail Watkins .....

Attachment A: Factual Basis for the Plea of Abigail Watkins .....

Transcript from Hearing Department of the State Bar Court .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

IN THE MATTER OF ABIGAIL WATKINS

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

READING POINTERS

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LAW OFFICES OF TIA LUCCI

MEMORANDUM

TO: Applicant

FROM: Tia Lucci

SUBJECT: In the Matter of Abigail Watkins

DATE: July 24, 2018

This case involves a Columbia State Bar disciplinary action against our client, Abigail Watkins. On June 8, 2018, Watkins pled guilty to a single felony count of insider trading that occurred more than two years ago. The State Bar then initiated disciplinary proceedings against Watkins, seeking disbarment. Watkins hired us to prevent that.

We have just completed testimony in a hearing on the threshold issue of whether the facts and circumstances surrounding the insider trading by Watkins involved moral turpitude. The judge has requested simultaneous briefs on this issue. Please draft an argument for me to use in a brief asserting that:

1) The conduct underlying the plea does not justify a finding of moral turpitude.

2) Watkins' testimony at the hearing does not justify a finding of moral turpitude.

1 At this point, we seek to avoid a finding of moral turpitude. Do not argue about appropriate discipline.

Do not write a separate statement of facts. Instead, incorporate the facts into your persuasive argument, making sure to address both favorable and unfavorable facts.

READING POINTERS

1 Stay within the assigned threshold issue

Argue moral turpitude from the conduct and testimony. Do not recommend a lesser sanction or add a separate statement of facts.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, v. ABIGAIL WATKINS, Defendant.	Criminal Case No. 2018-999-111 VIOLATION: 15 U.S.C. 78j (Insider Trading)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America and the defendant, Abigail Watkins, agree as follows:

1. The defendant is entering into this agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind (other than contained herein), and without threats, force, intimidation, or coercion of any kind.
2. The indictment relates to a single sale of stock by the defendant. The defendant pleads guilty.
3. The defendant knowingly, voluntarily and truthfully admits the facts contained in the attached Factual Basis for Plea.

FOR THE DEFENDANT
Dated: ___June 8, 2018___

____*Abigail Watkins*_____	____*Tia Lucci*_____
Abigail Watkins	Tia Lucci
Defendant	Counsel for Defendant

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

FOR THE UNITED STATES
Dated: ___June 8, 2018___

____*Mary Butler*_____
Mary Butler
Criminal Division
U.S. Department of Justice

_____*Stephanie Evans*_____
Stephanie Evans
Securities Criminal Enforcement
U.S. Department of Justice

READING POINTERS

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ATTACHMENT A

FACTUAL BASIS FOR THE PLEA OF ABIGAIL WATKINS

This agreement is submitted to provide a factual basis for Defendant's plea of guilty.

1. As a patent-trademark partner with Wakefield and Lester (Wakefield), Defendant represented Fort Software, Inc. (Fort) in patent and other matters since 2011.

2. On August 13, 2015, Samantha Darmond, Fort's general counsel, left a voice mail message on Defendant's phone to call her about "an urgent patent matter." On the morning of August 16, Defendant returned the call, and she and Darmond spoke. Darmond told Defendant that Silicon Microsystems (Silicon), a large publicly traded company, was planning to acquire Fort and that Darmond was coordinating Silicon's requests in its due diligence efforts as to Fort's patents. Darmond wanted Defendant to share patent files in the Wakefield office with Silicon's counsel so that Silicon could complete its due diligence review of Fort.

3. About midday on August 16, Defendant placed a brokerage "market order" to buy 1,000 shares of Fort. She paid $13.50 per share. This is the basis for the indictment.

4. The merger of Fort into Silicon was publicly announced before the market's opening on August 23. When the merger was consummated, shares of Fort stock were exchanged at a certain ratio for shares in Silicon. In October 2015, Defendant sold her Silicon shares for a $14,000 profit.

5. In May 2016, Defendant received a call from an agent at the Securities and Exchange Commission (SEC), who was looking into the trading of shares of Fort in the period before the merger. Defendant readily admitted to purchasing Fort in her own name on August 16. Defendant told the SEC that at the time of the August 16 purchase she was not aware of the planned merger.

Dated:

___June 8, 2018___ _____*Abigail Watkins*_____

Abigail Watkins, Defendant

READING POINTERS

1 Confront the adverse chronology

The factual basis places the merger discussion before the purchase. A persuasive argument must acknowledge that admission rather than rewrite it.

HEARING DEPARTMENT OF THE STATE BAR COURT
HEARING IN THE MATTER OF ABIGAIL WATKINS

July 20, 2018

Case No. 18-SF-1023

State Bar Court Judge Margaret Kenler

BY THE COURT: Mr. Simonds, you may proceed.

ASSISTANT CHIEF TRIAL COUNSEL MATT SIMONDS: Your honor, this morning the State Bar relies on the Factual Basis for the Plea Agreement. We're standing on the admissions that the Respondent made in her plea agreement and in that Factual Basis. Specifically, we rely on her statements that she made a purchase of stock in Fort Software with knowledge of an impending purchase of Fort by Silicon Microsystems, knowledge that she gained through conversations with lawyers representing Silicon Microsystems. I understand that the Respondent will also testify. We rest.

BY THE COURT: Ms. Lucci, you may proceed.

BY TIA LUCCI: Thank you, your honor. We call the Respondent, Abigail Watkins.

ABIGAIL WATKINS

EXAMINATION BY MS. LUCCI: Ms. Watkins, could you please briefly describe your professional education and preparation.

WATKINS: I have a J.D. and a degree in chemical engineering from Worcester Polytechnic Institute. I practiced intellectual property law for many years before joining Wakefield and Lester in 2006. I chair its intellectual property group.

LUCCI: You have been a member of the bar in Columbia since 1991, and before that in Virginia and the District of Columbia. Have you ever been disciplined or even cited or received notice of any charges involving any discipline?

WATKINS: Never, until now.

LUCCI: You represent Fort Software?

WATKINS: Yes, in 2011 I personally advised and represented Fort during its start-up phase and when it went public a few years later. I have followed Fort since then and intended to make a purchase of its stock. Everything I read online about Fort, the stock

READING POINTERS

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recommendations from rating agencies, were very positive on Fort. At that point the patents were public information. But I never did so.

LUCCI: Did you reconsider that decision?

WATKINS: Yes. In June 2015, Fort was trading at $10 a share, and by August it was at $13. Two major brokerage companies had upgraded Fort stock from a “buy” to a “strong buy.” The technology message boards were talking up Fort as a likely merger target for its software. I know that I was planning to make a purchase. I wasn’t going to lose out again.

LUCCI: In July 2015, you underwent surgery for a tear to your rotator cuff.

WATKINS: Yes, July 14th.

LUCCI: Your doctor gave and you filled prescriptions both for Percocet and Ambien?

WATKINS: Yes, Percocet for pain and the Ambien to help me sleep. Percocet is something with oxycodone and the doctor said it’s a potent pain reliever, for severe pain, but that I could take one or two tablets every 4 hours. I took it a lot, although I now know that it had some side effects. I was told not to take it before driving, and no alcohol.

LUCCI: How much and how long did you take Percocet?

WATKINS: I don’t know. The prescription was for 50 tablets. I took it on and off until it ran out.

LUCCI: Were you still taking Percocet at the time of the Fort-Silicon merger?

WATKINS: I don’t know. My memory from the surgery in July until September is very poor. I was very distracted by the pain and the medications, and trying to maintain a normal full-time work schedule.

LUCCI: You returned to work five days after surgery?

WATKINS: Yes, although I had considerable pain and limited mobility.

LUCCI: Turning to the Fort merger, when did you hear from Fort?

WATKINS: In 2015, I was not actively representing Fort. My best recollection is that on August 16, 2015 I received a call from Fort’s general counsel, Samantha Darmond, with whom I had not previously worked, or from an attorney at Jordan & Haines. I really can’t remember which. Anyway, I was asked to send our patent files over to J & H.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

LUCCI: In the conversation, do you remember anything being said about a pending merger, or due diligence, or the need for confidentiality?

WATKINS: No. I thought that Fort was going to be represented by J & H. It's a top intellectual property firm, and I considered it a positive development for Fort. I had the files assembled, but did nothing more. I didn't think it was urgent. I think it was the next day that I received another call from the attorney at J & H about the files.

LUCCI: On August 16, did you place an order to purchase 1,000 shares of Fort?

WATKINS: Yes.

LUCCI: Was it because you knew about the merger?

WATKINS: It is my best recollection of that purchase, that on that day I was acting on my general opinion and my previous interest in Fort, observations from the message boards and buy recommendations. And as I said, I thought J & H's involvement was also good news. Looking back now, I know that I made a mistake.

LUCCI: Nothing further.

CROSS-EXAMINATION BY ASSISTANT CHIEF TRIAL COUNSEL SIMONDS:

SIMONDS: Do you claim that the Percocet or Ambien made you commit insider stock trading?

WATKINS: No, of course not.

SIMONDS: Did you have symptoms of delirium, or inability to reason, or impaired ability to understand your moral or ethical duties?

WATKINS: No, of course not. But I didn't appreciate the effect that had on me, as I can now.

SIMONDS: Neither drug left you mentally impaired or diminished your mental capacity?

WATKINS: As to actual effects of those drugs, you are asking the wrong person. It is not for me to say.

SIMONDS: Since you only had 50 Percocets, if you had taken just three a day, less than your doctor said you could, it would have run out in 17 days, or a week or more before the call about the merger. Correct?

WATKINS: I don't know. I took it infrequently, in reaction to pain. Then I would take it for a day or two and then stop.

READING POINTERS

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SIMONDS: You saw your doctor several times between the surgery and mid-August. Did you complain about the effects of Percocet, tell him that you were mentally impaired?

WATKINS: No. The doctor said that continued pain in that period was normal.

SIMONDS: You would agree that it would be hard for any alleged Percocet intoxication to have caused you to commit an insider stock purchase?

WATKINS: That's not what I am saying. The Percocet and the pain, however, may have distracted my thinking, left me insufficiently attentive to what Ms. Darmond was telling me, why I could have failed to register what was so important, and especially why I don't have a very clear memory of what she told me in conversations or voice messages. My partner and associates were telling me that I was unfocused during that time.

SIMONDS TO COURT: Objection and move to strike. Hearsay and unresponsive.

1 **COURT:** The statements of others as to her mental state are stricken.

SIMONDS: As to your testimony that your stock purchase on August 16th was not based on anything about a pending merger told to you by Ms. Darmond, but on message boards and the like -- Those boards and buy recommendations were because of expectations of a Fort merger. Correct?

WATKINS: Yes.

SIMONDS: It is true, isn't it, that you were told on August 16th to gather the Fort patent files and you in fact did that?

WATKINS: Yes, my billing record on that date is 0.7 hour to review the Fort files and prepare a transmittal letter to J & H.

SIMONDS: Ms. Watkins, you agreed in the plea agreement that Ms. Darmond told you of the merger and that it was confidential information, before you made the purchase of Fort stock on August 16th.

WATKINS: That is what I agreed to.

SIMONDS: But now in your direct testimony today you claim that what you agreed to in a guilty plea is not true?

WATKINS: No, only that I don't remember it that clearly, that I don't remember that she told me she was talking about an imminent merger. I grasped the task, to assemble our

READING POINTERS

1 Use only the remaining record

The judge struck colleagues' statements about her condition. Do not rely on them as medical or observational corroboration.

patent files to send to other counsel, but little more. I had someone put together the documents she wanted, but I did not consider the matter sufficiently urgent to do more, and instead waited to hear from someone from J & H.

SIMONDS: I don't understand. Do you deny what you agreed was true in the plea agreement?

WATKINS: I am trying to say that the statement in the plea agreement is contrary to my memory of the event. But I agreed to it because my attorneys explained that it was a good deal. I received probation instead of jail time. I knew that the version in the plea agreement was Ms. Darmond's recollection and what she'd say if she testified. I simply have no recollection of it. And so I can't deny that the August 16th conversation with Ms. Darmond took place, nor can I agree that it happened and led me to the stock order.

SIMONDS: But long before today, didn't you refute her version?

WATKINS: What do you mean?

SIMONDS: Eight months after the merger, the SEC called you. Correct?

WATKINS: Yes, totally out of the blue.

SIMONDS: Right. You had no warning and were taken by surprise by the call.

WATKINS: I was shaken, and as I was trying to collect my thoughts to answer the questions, I saw my life passing before my eyes.

SIMONDS: You had enough control to repeat your story that you didn't know about the merger when you made the August 16 purchase?

WATKINS: Yes, Mr. Simonds. I told that to the SEC and I am telling it today because it is my best recollection.

SIMONDS: Nothing further, your honor.

BY THE COURT: As we agreed, then, simultaneous briefs due in one week. We are adjourned.

READING POINTERS

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July 2018

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

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IN THE MATTER OF ABIGAIL WATKINS

LIBRARY

Chadwick v. State Bar
Columbia Supreme Court (1989) .....

In the Matter of Harold Salas, a Member of the State Bar
Review Department of the State Bar Court (2001) .....

READING POINTERS

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CHADWICK v. STATE BAR

Columbia Supreme Court (1989)

We review the recommendation of the Review Department of the State Bar Court that petitioner, William Chadwick, be suspended from the practice of law following his misdemeanor conviction for violating federal statutes prohibiting insider trading and for related misconduct. The Review Department recommended that Chadwick be suspended from the practice of law for a period of five years; that execution of the suspension be stayed, subject to two years actual suspension. On appeal, we review the facts underlying Chadwick's conviction to determine whether they constitute moral turpitude.

Chadwick was admitted to the practice of law in Columbia in December 1973. Formerly, he was a partner in a large firm. Chadwick is currently a sole practitioner, primarily rendering legal advice about alternative investment structures. He has no prior record of discipline.

Chadwick's misconduct began in December 1981 when he acquired material, nonpublic information regarding a tender offer involving the Brunswick Corporation from a Martin Cooper, who was a bank officer and banker for the Whittaker Corporation. The Whittaker Corporation was the company attempting to take over the Brunswick Corporation. Chadwick purchased stock options of the Brunswick Corporation for himself. Later, the takeover of Brunswick by the Whittaker Corporation was publicly announced.

Chadwick was later contacted by the SEC. After consulting with counsel, Chadwick informed the SEC that he had relied upon material, nonpublic information concerning the Brunswick tender offer.

On July 1982, Chadwick was charged in U.S. District Court with one misdemeanor count of having violated 15 United States Code section 78(j). Chadwick pled guilty to the count as charged and was fined $10,000 and ordered

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to disgorge profits. The plea agreement establishes the facts relevant to the question of moral turpitude and facts that may be used to impeach Chadwick.

Thereafter, the State Bar issued an order to show cause charging Chadwick with willfully committing acts involving moral turpitude within the meaning of Business and Professions Code section 6101. These charges were based on Chadwick's illegal purchase of stock options, the acts that underlay his misdemeanor conviction.

As we have noted on numerous occasions, the concept of moral turpitude escapes precise definition. For purposes of the Rules of Professional Responsibility, moral turpitude has been described as an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. To summarize, it has been described as any crime or misconduct without excuse. The meaning and test is the same whether the dishonest or immoral act is a felony, misdemeanor, or no crime at all.

Chadwick argues that his willingness to comply with the SEC's investigation excuses his earlier conduct. However, the concept of excuse relates to Chadwick's conduct at the time of the violations to which he pled guilty. Here, Chadwick's guilty plea rests on facts that indicate no such excuse at the time he purchased the stock.

Chadwick also argues that, by entering into a plea agreement, he did not concede that the factual basis for the criminal plea would justify ethical discipline based on those facts. However, even if true, this proposition does not prevent this court from reviewing the factual basis of the plea to determine whether the conduct it describes justifies a finding of moral turpitude.

In this case, we agree with the Review Department's conclusion that the facts and circumstances of the particular offense and Chadwick's related conduct establish that Chadwick's acts involved moral turpitude. We adopt the Review Department's recommended discipline.

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1 **Excuse is not later mitigation**

Chadwick focuses on circumstances when the violation occurred. Distinguish that inquiry from later cooperation or a plea for reduced discipline.

In the Matter of HAROLD SALAS, a Member of the State Bar

Review Department of the State Bar Court (2001)

In 1999, Harold Salas entered a plea to conspiracy to obstruct justice. After his conviction, the State Bar Court held a hearing to recommend appropriate discipline pursuant to Section 6102(a) of the Business and Professions Code. After the hearing, the State Bar Court recommended disbarment rather than discipline because it concluded that Salas had lied at the hearing.

In 1995, Respondent entered into a business relationship with Anna Bash, the owner/operator of Chekov Legal Services in the Little Russia neighborhood. Respondent paid Bash $5,000 per month to market his practice to the Russian community in the City of Angels and to provide him with a secretary and a translator. Respondent would assist Bash in providing legal services, many on a pro bono basis, and Bash would refer personal injury, criminal, and other fee cases to Respondent. Respondent admitted he agreed to split fees with Bash, a non-attorney, and that this was illegal.

The District Attorney's Office filed a criminal complaint against Respondent and Bash as co-defendants in a "capping" conspiracy, alleging that Respondent paid Bash for referring clients to him. There were several charges of referral and fee-splitting, including one that alleged that Respondent issued a check for $10,000 to Bash from the proceeds of a settlement of a personal injury case. The District Attorney claimed that the $10,000 payment was an illegal payment in exchange for Bash's referring the case to Respondent.

Respondent and Bash were each charged with three felony counts: (1) conspiracy to commit a crime; (2) capping; and (3) conspiracy to commit an act injurious to the public. Respondent pled no contest to count three as a misdemeanor; and the District Attorney dismissed counts one and two.

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In the hearing below, Respondent testified that he owed Bash $10,000 for two months of services, and that he properly withdrew that amount from the settlement because it was a part of his contingency fee in the case. Respondent denied that the payment to Bash was for referral of the personal injury case to him.

After her own plea agreement, Bash testified against Respondent. Her testimony directly contradicted Respondent's. She did, however, confirm that she operated an office, which included substantial secretarial and translation services, and that Respondent was paying her $5,000 a month and that $10,000 was due when she was paid. She was adamant that the $10,000 was for the referral.

The State Bar Court did not accept Respondent's testimony about the payment, and questioned why he would advance it before the court. The State Bar Court concluded that his lack of candor in the proceedings itself warranted a finding of moral turpitude.

Based on our review of the record, we find that the State Bar Court's finding of moral turpitude was not supported by clear and convincing evidence that Respondent had testified falsely and hence was guilty of moral turpitude. The State Bar bears the burden to prove moral turpitude by clear and convincing evidence. We conclude that the State Bar did not carry its burden here.

Normally, we would defer to a finding of fact from the State Bar Court. But in this case, Respondent contends that the hearing officer did not apply the burden of proof correctly. Respondent argues that there is no reasonable and logical explanation for why he would insist on his version of this one payment, other than the fact that he believes it to be true. It would have been easier, he says, to admit responsibility for this referral as well. Respondent contends that directly contradicting the plea agreement would raise severe doubts as to his candor. However, he asserts that his repeated statement of the innocent purpose of this single payment does not contradict the plea agreement, which is silent on this point.

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Any determination of moral turpitude must be found by clear and convincing evidence. This includes a determination that a witness's testimony lacks candor (i.e., the witness is lying). An honest if mistaken belief in his innocence does not signal a lack of candor. A lack of candor should not be founded merely on Respondent's different memory of events.

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Applying the standard of proof by clear and convincing evidence means that reasonable doubts must be resolved in favor of the accused attorney. If equally reasonable inferences may be drawn from a proven fact, the inference to innocence must be chosen. If, as is the case here, it is equally likely that Respondent is telling the truth about controverted facts, the State Bar has not met its burden of establishing clear and convincing evidence of culpability.

Reversed and remanded.

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1 A rejected memory is not automatically a lie

Apply Salas's clear-and-convincing standard separately to alleged lack of candor, while acknowledging that Watkins's plea is more explicit than the plea in Salas.