



CLASS 9

Professional Responsibility and Legal Ethics

The Work Product Doctrine

- **Basic Rule:**

- 1) Material prepared by a legal professional or firm....
- 2) in anticipation of litigation...
- 3) is not discoverable by the other party in court or in pre-trial discovery

- **Reason:**

- A legal professional needs to be able to keep good notes without having to worry that those notes will later help the other side upon being discoverable (i.e., it would reveal information she worked hard to get at and/or reveal trial strategy).

- **Caveats:**

- Does not apply to the evidence itself (i.e., the documents that were the source of the work product of the identity of the witnesses)
- It is discoverable if the other side demonstrates a substantial need and is unable to obtain the information or its equivalent without undue hardship



The Work Product Doctrine: Nature of the Rule

- A rule of Discovery; NOT an evidentiary rule or an ethical rule
- Thus:
 - It protects the right to not reveal information sought of an attorney or employee of a law firm
 - It applies in court to some extent; but mostly, it's relevant to pre-trial discovery
 - It must be asserted by the attorney or legal professional of whom the discovery is being sought; if it is revealed, even by accident, it's too late



Spousal Privileges

- 2 distinct privileges with separate policy reasons
- **Spousal Immunity**
- Reason: To avoid causing disharmony between married people
- Rule: One spouse cannot be forced to testify against his or her spouse
 - Applies even to actions that happened before the marriage
 - Applies to any form of testimony
- **Caveats:**
 - Applies only between spouses who are currently married
 - The testifying spouse can waive the rule and testify against the other spouse



Spousal Privileges (cont.)

- **Marital Communications Privilege**
- Reason: To encourage open communication between spouses
- Rules: One spouse CANNOT testify as to communications made by the other spouse during the course of the marriage
 - Cannot be waived by the testifying spouse
 - Applies even if they are divorced; as long as the communication was made during the marriage
- **Caveats:**
 - Applies only to communications; not any other facts; such as eyewitness testimony
 - Applies only to communications made during the course of the marriage



QUIZ TIME!

