



Wilcoxon, Remley, and Gladding; Chapter 10 (v5.3.9)
For discussion on October 21, 2021

**The Marriage and Family Therapist:
Roles and Responsibilities within the Legal System**

1. Understand the Woody and Mitchell comment on why/how the "philosophy of the courtroom process frequently contradicts the therapy process." The distinction between "what should be" (MFTs) vs. "what is" (attorneys) is essential to internalize (p. 201).
2. To function as an MFT, according to Wilcoxon, Remley, and Gladding, it is not necessary to be an attorney, but you need to have a basic comprehension of the legal process and procedures, information necessary to pursue basic legal research, and access to an attorney. Sounds pretty good, huh? (p. 201)
3. Know Ruback's three roles for MFTs within the legal system; "1) a source of information leading to intervention by the state, b) a resource for therapy, and c) an expert witness" (p. 201).
4. Be able to speak about the various "types" of laws, e.g. Common Law, Constitutional Law, Statutory Law, Administrative/Regulatory Law, and Case Law (pp. 201 - 203).
5. Don't you think that explanation of **stare decisis** is interesting? (p. 202).
6. One would be wise to have a general understanding of Criminal v. Civil Law; Criminal Law pertains to "acts offensive to society in general" (e.g., The State of California v. Orenthal James Simpson), whereas Civil Law pertains to "acts offensive to individuals" (e.g., Fred Goldman v. Orenthal James Simpson) (pp. 203-204).
7. There are some exceptions to privilege (legal duty to keep therapy information private). For some reason, the authors don't do the exceptions justice; I'll tell you about these.
8. Note the statement by the authors: Where legal privilege exists, a "court cannot order that information from that relationship be revealed during the litigation of a lawsuit" (p. 205). **This is not an accurate statement relative to California law; ONLY A COURT ORDER can compel your testimony where privilege has been invoked.** Careful with this one!

9. Please note the authors state, "Statutes that grant privilege to relationships provide the legal protection to recipients of professional services, not the professionals themselves." Unless you have specific written permission to reveal information in the courtroom (or elsewhere), you need to assert the privilege on their behalf (p. 205). **Privilege is for your patient, not for you.**
10. The best advice in the book is on page 205: "It is essential that marriage and family therapists obtain legal advice before complying with subpoenas they receive."
11. Notice beginning page 206, this text takes you on another big trip through *Tarasoffville* and this landmark court case. You'll need to know about *Tarasoff v. Board of Regents of the University of California (1976)*, its reinterpretation over the years, its modifications over time, etc. Closely read the inset.
12. Beck and Baxter suggest that we assess two things in determining whether an individual is at risk for violence: the internal factors (thoughts, perceptions, feelings) and external factors (environment, etc.) (p. 207). Duh?
13. Beck and Baxter further cite caution that a client has potential for danger if he/she a) is angry, b) has a motive [real or delusional], c) drinks/drugs, d) is now or has a history of delusional states. Others (e.g., Resnick) adds that potential for danger may be predicted most accurately if there is a past history of violence, young, male, lower SES, low IQ, mental illness, prior suicide attempts, history of past criminal acts, and access to weapons, drinks/drugs (p. 207).
14. Be advised that *Tarasoff* accurately holds that **we have a "duty to protect" vs. a "duty to warn."** In operation, this protection has included "warning," but there are options under exploration to modify the warning aspect to permit other protective possibilities. **NOWHERE IN LAW DO WE HAVE ANY "DUTY TO WARN."**
15. **"Reasonableness."** The *Tarasoff* case established a **"reasonableness test"** for determining if a client's conduct may result in a harm to a third person. To assess the threat of harm, it is presumed that a reasonable degree of skill, knowledge, and care has been applied to a given case that would be expected in other situations (p. 207).
16. There are similarities between *Tarasoff* and *McIntosh v. Milano*. Have a reasonable understanding of the conditions that should have alerted the therapist that the boy would be a danger to Kimberly (p. 207).
17. The *Thompson v. County of Alameda (1980)* has an interesting twist on *Tarasoff*. What is the problem with this case and the identification of the intended victim? (p. 208)
18. What about *Peck v. Counseling Service of Addison County, Inc. (1985)*? Who was held liable for not informing an identifiable "group" of victims? Also, what about the California case of *Hedlund v. Superior Court (1983)*? (p. 208)

19. Understand the Serovich and Mosack interpretation of "special relationship" and legal obligation to protect for MFTs as outlined on page 209. I think this is a revisit to the concept of "fiduciary relationship."
20. **Hey, is child abuse a federal crime?** Bet you are surprised by the answer to that question! (p. 210)
21. Know the reasoning (as it pertains to federal funds) for granting immunity to mandated reporters who act in good faith (p. 211).
22. Understand the varying roles of MFTs within the juvenile system. It is broader than you think; Diagnostician (p. 212), Resource Expert (p. 214), and Treatment Provider (p. 216).
23. **Divorce Mediation:** This is a fairly new and "financially rewarding" career path for MFTs. We need to have a handle on how this works (p. 217).
24. **The MFT as expert witness.** There is just too much stuff in this section to even begin to mention. There are some ideas for how MFTs could participate in courtroom situations. If you are in the business long enough, you WILL find yourself in courtroom at some time (p. 220+).
25. The section on direct- and cross-examination is of particular interest and importance (pp. 222-224). This is where the nerves get frayed and MFTs get scared.
26. For the next exam, I am again going to ask for you to recognize the definition of "**fiduciary relationship**," which is found under Contract Law on page 225. You can count on it as you count on the sun coming up in the morning.
27. How do Corey, Corey, and Callanan define "malpractice"? What are the four key elements that must be present to prove malpractice according to Prosser, Wade, and Schwartz; and Schultz? (p. 226).
28. Define "tort" (pp 226-228). Unintentional and Intentional.
29. Although we'll discuss this thoroughly, you **MUST KNOW** the difference between an "**occurrence-type**" liability insurance policy and a "**claims made-type**" liability insurance policy. You will be given the opportunity to buy either, but you must only purchase one. **Only one, always.** The seller of the "bad" policy will fail to mention the type it is, whereas the seller of the "good" policy will brag about the type he/she is selling. Why? Would you be surprised to know that the "bad" policy is always cheaper, and this has been known to influence a number of people to purchase the "bad" one. **If you get NOTHING from this class, I want you to know the difference between the "occurrence-type" liability insurance policy and the "claims made-type" policy** (pp. 230-231).