

PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH
FINAL EXAMINATION

December 11, 2014
TIME LIMIT: 3 HOURS

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR, SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple-choice questions to be answered on the Scantron.

- Write your examination number on the “name” line of the Scantron. *Write it NOW.*
- Mark "A" in the “Test Form” box on the right side of the Scantron. *Mark it NOW.*
- Also, write your examination number in the boxes where it says "I.D. Number" on the right side of the Scantron. Use **only** the first 4 columns and *do not skip columns*. Then carefully mark your exam number in the vertically striped columns. You should mark only one number in each of the first four columns. *This is part of the test.*

Answer each multiple-choice question selecting the *best* answer. Mark your choice on the Scantron with the special pencil provided. *Select only one answer per question. If you change an answer, be sure to fully erase your original answer* or the question may be marked *wrong*. You may lose points if you do not mark **darkly** enough or if you write at the top, sides, etc. of the answer sheet.

When you complete the examination, turn in the answers together with this question booklet.

Model Rules: Assume that the applicable ethical rules are the Model Rules of Professional Conduct as currently promulgated by the American Bar Association. The word “proper” means permitted by the Model Rules or applicable law. “Ethical” means according to the Model Rules.

LIMITED PERMITTED MATERIAL: The **only** material you may bring into the examination is your copy of your assigned *Standards, Rules and Statutes* book (Dzienkowski, or Gillers & Simon), **provided it is not marked except as allowed below.**

Allowable markings: Your copy of the *Standards, Rules and Statutes* book may be highlighted, underlined, tabbed and annotated with **brief** notations, but **“no paragraphs,”** no bits of outlines and no sentences or sentence fragments exceeding a few words or so on the margins, backs, etc. of the printed material. *All materials brought into the examination will, in fairness to all, be subject to inspection, and students who are deemed to have violated this rule will have the material in question taken away, and they will be unable to refer to it during the examination.* A determination by me that you have exceeded the letter or spirit of this “limited marking” rule will be final, so *if in doubt, tear it out.*

1 In a certain Midwestern state, the legislature enacted a law that requires all “persons engaging in debt collection for hire” to apply for a special license and pay an annual \$3000 license fee. Alan Egbert is a lawyer with a debt-collection practice. He wants to challenge the validity of the new law. The most promising basis for such a challenge is that:

- a. The new law improperly intrudes on the impeditive power of the courts.
- b. The new law improperly intrudes on the inherent power of the courts.
- c. Changes in the qualifications to practice law can only be made by the American Bar Association.
- d. Lawyers are officers of the court and, as such, are not bound by laws passed by the legislative branch affecting the practice of law.

2 Factors that are said to make the practice of law a profession include:

- a. Lawyers need to have specialized knowledge.
- b. Extended training is required to become a lawyer.
- c. Both of the above.
- d. People who use legal services usually cannot easily evaluate the quality of services performed.
- e. All of the above.

3 Over the years, Henning has represented Taylor on a number of legal matters. One day he happened to sit next to Taylor on the train.

As the two chatted, Taylor told Henning about some issues he’s been having with a neighbor. Later that day, it occurred to Henning that Taylor might have a legal right that could be lost if not acted on promptly. Taylor did not ask Henning for advice, but Henning wonders if he should call to warn Taylor.

- a. If Taylor did not specifically ask for legal advice concerning the neighbor, Henning would have no obligation to provide such advice.
- b. As a lawyer, Henning should not pass up an opportunity to serve a client and collect a fee.
- c. If there is doubt about whether there’s still a lawyer-client relationship, Henning would be the one responsible for clarifying it.
- d. As the client, Taylor would be generally responsible for making clear whether he was relying on Henning for advice or not.

4 Carol Lambert is suing for personal injury. Her lawyer is Ken Pridis. The defendant’s lawyer called Pridis and said his client would offer \$20,000 in full settlement. Pridis thought the offer was absurdly low and didn’t even bother to mention it to Lambert. Later, a jury rendered a verdict for the defendant and Lambert got nothing. Has Pridis exposed himself to liability for violating a duty to Lambert?

- a. Yes, and not only that, Pridis appears to have violated the ethical rules as well.
- b. No, because he did not violate any of the ethical rules in not mentioning the offer to Lambert.

- c. Maybe, but only if Lambert had specifically instructed Pridis to communicate all settlement offers to her, no matter how low.
- d. None of the above.

Facts for Geoff-Ginny questions. Geoff Bernard went to Ginny Hounslow, a wills and trusts specialist, to get some estate planning advice. When Ginny reviewed Geoff's finances, she realized some of his proposed money transfers might be criminal under the Federal anti-structuring laws. These kinds of legal issues were, however, not only outside the scope of representation but way outside of Ginny's area of practice and expertise.

5 What should Ginny do?

- a. Given her lack of expertise in the area, she should say nothing to Geoff about the possibility of anti-structuring violations.
- b. Ginny should at least advise Geoff to seek other counsel on the anti-structuring laws if it's reasonably foreseeable that he's unaware there's an issue.
- c. As a lawyer, Ginny has an ethical duty to represent Geoff on all legal issues, including the anti-structuring laws, even if he doesn't specifically ask her to.
- d. Ginny has a duty to represent Geoff with respect to the anti-structuring laws if Geoff insists that she do so.

6 Given that Ginny has never had any experience in the area of anti-structuring law:

- a. It would be unethical for her to undertake to provide advice and counsel in this legal area.

- b. The Model Rules would require her to associate with a lawyer who has the requisite expertise before she provides advice and counsel in this legal area.
- c. She would still be ethically obliged, as a licensed attorney, to provide advice and counsel in this legal area if her client insists on it.
- d. She would still be ethically permitted to provide advice and counsel in this legal area if competence in it could be achieved by reasonable preparation.

7 Suppose that Ginny not only has no experience in the area of anti-structuring law but does not have time to study up on it:

- a. She should be able to exclude it from the scope of the estate-planning representation provided she gets Geoff's informed consent to do so.
- b. She should be able to exclude it from the scope of the estate-planning representation whether or not Geoff assents.
- c. Since Geoff retained her only for estate planning advice, she need not discuss the anti-structuring issues with him at all.
- d. She should withdraw from representing of Geoff before any real damage is done.

8 Phillip Towne, being tried for robbery, has a constitutional right to present witnesses in his own defense. He told his lawyer that a friend named Sue Dennett can provide him with an alibi. However, his lawyer did not notify the prosecution that he was planning to call an alibi witness—in violation of the state's procedural rules. As a

result, the judge refused to let Sue testify and Phillip was convicted. It was reversible error to exclude Sue's testimony:

- a. If Phillip was no way involved in his lawyer's decision to not comply with the notice rule for alibi witnesses.
- b. Even if Phillip gave his lawyer advance approval to ignore the notice rule for alibi witnesses.
- c. Because exclusion of the alibi testimony denied Phillip a right guaranteed by the Constitution, and constitutional rights are considered inalienable.
- d. All of the above.
- e. None of the above.

9 It has been said that "a litigant chooses counsel at his peril." What this statement refers to is the fact that:

- a. People who need lawyers are generally in some kind of trouble ("peril").
- b. A principal generally has legal responsibility for the acts done by the agent on the principal's behalf.
- c. Lawyer fees can be perilously high if they are not negotiated in advance.
- d. So many lawyers engage in shoddy practice that clients have to be very cautious.

10 Skeeter was sued on a loan that he'd already repaid. He had solid proof of payment but, due to inexcusable neglect, his lawyer never filed an answer. Eventually, the court entered a default judgment against Skeeter. Now Skeeter's new lawyer has made a motion to

reopen the judgment, proffering persuasive proof that the loan was repaid.

Based on the cases we've read, is it likely that the court will set aside the default judgment and allow the defense to proceed in order to prevent a manifest injustice?

- a. Surely yes, because, in the end, the job of the courts is to assure that justice is done.
- b. Probably not, because negligent lawyers give the profession a bad name, and Skeeter needs to be penalized to deter others from hiring bad lawyers.
- c. Surely yes, as long as Skeeter was reasonably diligent in making sure that his lawyer was properly handling the case
- d. Probably not because inexcusable neglect by a lawyer is not considered an extraordinary circumstance requiring a default judgment to be set aside.

11 By failing to file an answer in time to avoid a default judgment against Skeeter, the lawyer in the preceding question:

- a. May have committed malpractice but not a disciplinary violation.
- b. Has committed a disciplinary violation but not malpractice.
- c. Has committed both a disciplinary violation and malpractice.
- d. Probably isn't guilty of either malpractice or a disciplinary violation.

12 Colleen was being tried for child abuse. Out in the corridor during a recess, somebody heard her lawyer casually remark: “She’s had it rough but she’s a strong person. She’s even kicked a bad drug habit.” The next day, on the stand, Colleen denied that she ever had a drug habit. Now the prosecutor wants to present her lawyer’s out-of-court statement to the jury in the hope it will reflect badly on Colleen.

- a. The lawyer’s statement can be introduced against Colleen.
- b. If the lawyer’s statement is introduced against Colleen, it can be rebutted since the lawyer did not make the statement as part of the court proceedings.
- c. Both of the above.
- d. The lawyer’s statement cannot be introduced against Colleen because it is not an admission by Colleen personally.
- e. All of the above.

13 Otis represents Murray in a commercial dispute. Today he went to a pre-trial conference where settlement numbers were discussed. Murray had specifically instructed Otis not to settle for less than \$500,000. However, several days earlier Murray had stated to the other side: “Otis has full discretion to do whatever it takes to get this case promptly settled.” If Otis settled for \$450,000 at the conference, Murray could be bound to accept that amount in full settlement of his claim:

- a. Based on apparent authority.
- b. Based on actual authority.

- c. Based on express authority.
- d. More than one of the above.
- e. None of the above.

14 Same facts as the preceding question. If Otis settled for \$450,000 at the conference and the judge rules that Murray is bound:

- a. Otis should not be liable to Murray for agreeing to accept less than Murray wanted because Otis had apparent authority to do so.
- b. Otis should not be liable to Murray for agreeing to accept less than Murray wanted because, as an attorney, Otis had inherent authority to decide the “means” for protecting his client’s interests.
- c. Both of the above.
- d. Otis *could* be liable to his client for agreeing to accept less than \$500,000 because he had no actual authority to do so.

15 On trial for bank robbery, Winston insists on testifying. His lawyer doesn’t want him to, He thinks Winston will be a terrible witness and may even commit perjury on cross-examination. The lawyer wants to make a “tactical” decision to keep Winston from testifying.

- a. Tactics are up to the lawyer, so the lawyer can properly prevent from Winston testifying.
- b. If Winston chooses to testify and cannot be persuaded otherwise, it would be a disciplinary violation for his lawyer to defy Winston’s choice.

- c. If Winston testifies and then lies during cross-examination, his lawyer would be bound by confidentiality not to expose the lie.
- d. If Winston testifies and is then convicted, his lawyer would be at substantial risk of discipline for allowing such a thing to happen.

16 Brad Dorian does eviction work for a landlord. His client wants to remove a tenant who's several months behind in her rent. The tenant has two small children, and Dorian feels terrible about pursuing the eviction because it will cause the tenant and her family to become homeless. If Dorian cannot change his client's mind and, for financial reasons, Dorian does not want to terminate the lawyer-client relationship, Dorian should:

- a. Simply do nothing to pursue the eviction process and just let it slide.
- b. File the eviction papers but refrain from trying to win in hopes the judge will rule in the tenant's favor.
- c. File the eviction papers but delay the process so the tenant will have as much time as possible before being forced to move out.
- d. Use reasonable diligence to achieve the client's objective by using the full extent of the law, substantive and procedural, against the tenant.

17 Suppose in the preceding question that the tenant has certain "warranty of habitability" defenses that could probably suffice to prevent or, at least, delay a judgment of eviction against her. Dorian knows this but he also knows that the tenant is unlikely to be represented by a lawyer who will present those defenses. For Dorian to go ahead with the court proceeding and press for eviction:

- a. Would be dilatory in violation of the ethical rules.
- b. Would constitute the assertion of a frivolous claim in violation of the ethical rules.
- c. Would be considered by most lawyers to be perfectly proper in the diligent representation of his client.
- d. Would be considered by most lawyers to be permissible as long as Dorian alerts the court to the existence of likely meritorious defenses.

18 Dorian's landlord client has another tenant that he'd like to evict (so he can relet the apartment at a higher rent), but he has no legal basis for doing so. He asks Dorian "what would happen" if he hires "some guys he knows" to interfere with the tenant's heat and electricity, accost the tenant in the corridors and make harassing noises until the tenant gets fed up and moves out on his own. Dorian realizes that what the landlord proposes is a crime, but the penalty is fairly small.

- a. Dorian is ethically permitted to consult with the landlord concerning possible legal consequences of his proposed course of action.
- b. It would be flatly unethical for Dorian to discuss the possible penalties with the landlord.
- c. Dorian should stress to the landlord that harassment of tenants is a crime and it is imperative that no one be able to connect him with persons that he hires to do it.
- d. As long as Dorian only gives legal advice and does not take an active part in committing any crimes himself, he would not be subject to discipline.

19 Suppose Dorian’s landlord/client wants to do a condo conversion project and needs to clear 15 apartments. Dorian starts eviction proceedings on grounds he knows are bogus but he’s almost certain that some of the tenants will either default or leave out of exasperation. Dorian carefully refrains from doing anything personally other than filing legal papers that allege various grounds for eviction:

- a. Dorian would be subject to discipline, even if all he does is file ordinary court papers, if he knows he’s helping a client commit crime or fraud.
- b. Dorian may not properly represent a client that he reasonably suspects may be engaging in criminal activity.
- c. Both of above.
- d. As a lawyer, Dorian should not be subject to discipline as long he does nothing more than try to protect his client’s interests, cause or endeavor.

Facts for Vinson questions. Vinson represents the buyer of a small pharmacy, being sold by its founder for \$2,250,000. The buyer is paying one-half in cash and the rest in promissory notes. The buyer gave the seller accounting statements showing his good financial condition, certified as of November 30. Between then and the closing (today), the buyer suffered a severe financial setback, making him nearly insolvent. The seller does not know about these recent problems. However, Vinson knows, and his client insists on closing the deal and delivering the seller a closing letter that certifies there’s been “no material adverse change” in the buyer’s finances.

20 If the seller is kept in the dark about the change in the buyer’s financial condition, can Vinson continue representing the buyer in completing the purchase?

- a. Yes. There is no ethical issue here since it is Vinson’s job to represent his client, not to judge him.
- b. Yes, as long as he only does ordinary lawyer tasks in completing the transaction and refrains from making any false statements of his own.
- c. No, because continuing to represent the buyer in the completing the transaction would constitute knowing assistance of a client’s fraud.
- d. No, because completion of the transaction under these circumstances would be unconscionable.

21 By the time Vinson learned about his client’s financial problems, he’d already prepared most of the documents to be used at the closing and had supplied copies to his client. Now Vinson decides he must withdraw. If the local rules *do not include Rule 4.1(b)*, the most appropriate kind of withdrawal for Vinson would probably be:

- a. A noisy withdrawal that notifies seller’s lawyer that he’s withdrawing but doesn’t say anything more.
- b. A noisy withdrawal disaffirming the documents that he’s already previously drafted or delivered for the closing.
- c. A noisy withdrawal giving a full explanation of his reasons, including a disclosure of his client’s planned fraud and actual financial condition.
- d. A simple withdrawal, as quiet and low-key as possible, in order to cause the least possible damage to his client’s interests.

22 If Vinson feels a sharp moral urge to tell the other side all about his client's plan to commit fraud:

- a. He should stifle the urge because Rule 1.6 definitely prohibits such "tattling" by lawyers.
- b. He would be permitted but not required to do it under Rule 1.6 because his client proposes a course of conduct that would be a crime.
- c. He would be permitted but not required to do it under Rule 1.6 to the extent he reasonably believes it necessary to prevent substantial injury to the seller's financial interests.
- d. He would be *required* to do it under Rule 1.6 to the extent he reasonably believes it necessary to prevent substantial injury to the seller's financial interests.

23 Suppose that the facts are such that Rule 1.6 would at least *permit* Vinson to reveal his client's planned fraud to the seller. In that case:

- a. Most lawyers would probably agree that he should choose to reveal it even if he's not required to.
- b. Most lawyers would probably agree that Vinson's overriding duty is to "do justice," which would require him to reveal it all.
- c. Both of the above.
- d. He would be required to reveal the fraud under the wording of Rule 4.1 (including 4.1(a) *and* (b)).

24 Culver views himself as a "civil rights" lawyer. Some of his clients are widely despised and reviled, including a man charged

with aiding a designated terrorist organization. Still, even when Culver thinks his clients are guilty he tries to get them the best outcome he can—including a total acquittal, if possible. Lately, newspapers and TV news anchors have started referring to Culver as a "terrorist lawyer."

- a. Culver should not be held morally accountable for his clients because, after all, everyone is entitled to a lawyer.
- b. Under the Model Rules, lawyers *are* deemed to be morally accountable for their clients because they often try to get the clients better outcomes than they deserve.
- c. The Model Rules treat representation as endorsing the client's views and activities so lawyers will avoid dicey representations that can embarrass the profession.
- d. The Modal Rules take no position on whether representation constitutes an endorsement of the client's views or activities.

25 Maria Gerber is representing Corilan Corp. in the appeal of a complex commercial lawsuit. The president of Corilan has sent her a list of 22 topics that he wants to see covered in the brief. In Gerber's judgment, the brief should deal with only 7 or 8 of these items, and it would surely be weaker if all 22 were included.

- a. Gerber should consult with her client about this difference in views but she has a fiduciary duty to carry out her client's instructions.
- b. As the lawyer, Gerber makes the decisions as to the means of representation, and she should disregard her client's imprudent instructions.

c. If Gerber disregards her client's instructions, she would be denying her client its constitutionally guaranteed right to effective assistance of counsel.

d. Gerber should consult with Corilan about the brief but in the end, as attorney, it's her fiduciary duty to do whatever she thinks is in the client's best interest.

26 Vic Cavalier represents man appealing an arson conviction. His client has sent him a list of 22 topics that he wants to see covered in the brief. In Cavalier's judgment, the brief should deal with only 7 or 8 of these items, and it would surely be weaker if all 22 were included.

a. As the lawyer, Cavalier makes the decisions as to the means of representation, and he should disregard his client's imprudent instructions.

b. If Cavalier disregards his client's instructions about the brief, he'd be denying his client's constitutional right to effective assistance of counsel.

c. If Cavalier fails to follow his client's instructions and then loses, it is likely that he will be held liable for damages.

d. The constitutional guarantee of effective assistance of counsel does not necessarily require Cavalier to obey his client's instructions as to strategy and tactics.

27 As interpreted by the Supreme Court, the constitutional guarantee of effective assistance of counsel exists mainly to:

a. Preserve and protect the dignity and autonomy of persons accused of crimes by assuring them lawyers who will faithfully represent their views in court.

b. Help make sure that justice is done in criminal cases by assuring that the representation of defendants is as competent and effective as reasonably possible.

c. Both of the above.

d. None of the above.

28 Fred Webster got a call from his opponent who represents the plaintiff in a long-simmering civil case. The opponent requested additional time to file a certain court paper. The postponement was fine with Webster but he realized that only the court could authorize it, a point seemingly overlooked by his opponent. Even though Webster figures he'll eventually win the case anyway, it would help his client a lot to get it over with now. Webster's best course of action would be to:

a. Agree to the postponement and tell his opponent that he needs to get authorization from the court.

b. Agree to the postponement but *not* tell his opponent that he needs to get authorization from the court.

c. Refuse to agree to the postponement and tell his opponent: "If you want to delay this case, you'd better talk to the judge."

d. Consult with his client before deciding how to respond to the request (if it's reasonably possible to do so).

29 A client told Thad Baker that he plans to commit what amounts to a minor assault on a person who's been spreading nasty rumors about his past. Baker doesn't believe that the client plans to cause substantial bodily harm. Under the Model Rules, Baker:

- a. Would have a duty of confidentiality not to disclose his client's plan
- b. Would have a duty to report his client's criminal intentions to the authorities.
- c. Would not be obligated to keep his client's plan confidential if the client told Baker about it in the presence of an "unnecessary" third party.
- d. Would be ethically permitted to disclose his client's plan but have no ethical *duty* to do so.

30 Otto Osgoode has been called to testify in a civil case. Under oath, Osgoode is asked questions about certain events that occurred in connection with his representation of Thresh, a client who is not a party in the case. In response, Osgoode invokes the attorney-client privilege, which is:

- a. An ethical rule that requires Osgoode to keep client information confidential.
- b. An ethical rule that generally allows Osgoode to refuse to answer questions about communications with his clients.
- c. A rule of evidence that generally allows Osgoode to refuse to answer questions that seek information concerning the representation of his client.

d. A rule of evidence that generally allows Osgoode to refuse to disclose, among other things, the legal advice that he has privately given to his clients.

e. All of the above.

31 In the preceding question, the attorney-client privilege:

- a. Should not apply since Thresh is not a party to the case.
- b. Should not apply if the questions ask about communications concerning matters that are generally known.
- c. Should not apply if the questions ask about disclosures made by Thresh to Osgoode in which Thresh admitted to having committed a serious crime.
- d. None of the above.

32 Rebb Smith was arrested for bank robbery. Because the robber wore a mask, identification is a major issue. While Smith was in jail awaiting trial, he let Wharton use his car. Wharton found a handwritten note in the space between the front seats of the car. It was almost identical in wording to the typed "demand" note used by the robber. Wharton voluntarily gave the incriminating note to Smith's lawyer.

- a. It is not clear under the cases whether Smith's lawyer has an ethical duty to voluntarily turn the handwritten note over to the prosecutor.
- b. The handwritten note in the possession of Smith's lawyer is probably protected by the attorney-client privilege.

- c. Smith's lawyer would have *no* duty of confidentiality with respect to the note because an unnecessary third party (Wharton) knows about it.
- d. Smith's lawyer would have *no* duty of confidentiality with respect to the note because he did not receive it as a direct result of a communication with his client.

33 Suppose in the preceding question that Smith's lawyer himself found the draft "demand" note in the car, after Smith told him about it. Suppose also that the car was stolen later the same day by an unknown person. The prosecutor has found out about the note and wants the court to compel Smith's lawyer to reveal where he found it. Is this information protected by privilege?

- a. No, if Smith's lawyer removed the note from the car and took it with him back to his office for safekeeping.
- b. Probably yes, if Smith's lawyer left the note right where he found it, in the car.
- c. Both of the above.
- d. Yes in any event, because the note is information relating to the representation and therefore protected by the attorney-client privilege.

Facts for Alderman Corp. questions. Alderman Corp. runs a commercial paint shop. It is being investigated for illegal disposal of hazardous materials, a serious environmental crime. As lawyer for the company, Erin Kramer talked with several Alderman employees involved in the disposal. She told them that she's gathering information in connection with the state's investigation. She also told them that anything they tell her about the case is protected by the attorney-client privilege.

34 In a jurisdiction that applies the *Upjohn* rule:

- a. Kramer's statement about the attorney-client privilege would be strictly speaking true but could be highly misleading to the employees.
- b. Kramer's statement about the attorney-client privilege would be untrue unless the employees are members of the control group.
- c. As attorney for the company, Kramer would owe the employees a duty of confidentiality with respect to anything they say to her.
- d. The employees need not worry what they say to Kramer since she cannot reveal what they say to her without their permission.

35 Whether or not Kramer is in a jurisdiction that applies the *Upjohn* rule:

- a. She is presumptively representing not just the company but its employees, as well.
- b. She probably violated the ethical rules if she did not clarify to the employees that she was representing only the company and not them.
- c. She should have no conflict of interest problems representing both the company and its employees since both are charged with essentially the same acts.
- d. More than one of the above is true.

36 Suppose several Alderman employees admit to committing certain environmental crimes while talking to Kramer:

- a. Kramer would *not* be ethically permitted to reveal the employees' admissions to the state in exchange for leniency for the company.
- b. The company could choose to invoke the attorney-client privilege to protect the employees' admissions from disclosure, or it could choose to reveal the admissions.
- c. The admissions could not be used against the employees if they were tricked into making them.
- d. Kramer would normally be deemed to have a lawyer-client relationship with the employees as well as with the company.

37 As applied in cases like the Alderman case, the *Upjohn* rule:

- a. Promotes full and frank communication between a company's employees and its lawyers by extending the protection of the attorney-client privilege to the employees personally.
- b. Means that company lawyers are deemed to represent the company's employees and not just the members of the control group.
- c. Allows company employees to safely reveal personally incriminating information to company lawyers since the attorney-client privilege applies.
- d. None of the above.

38 Lisa Grey represents the Village of Dunstable. A local land developer, Tomlinson, is suing the village over a zoning denial. By happenstance, Grey runs into Tomlinson at a party. When he spots her across the room, he walks up and starts talking to her about the case. Tomlinson's lawyer is not at the party.

- a. Grey can ethically talk with Tomlinson about the case, especially if he's an experienced businessperson who can take care of himself.
- b. Grey must be very careful as she is not supposed to talk with Tomlinson at all in the absence of his lawyer.
- c. Grey may be ethically permitted to talk with Tomlinson about the case depending on the location (*e.g.*, she's free to talk with him about it at a party).
- d. Grey is ethically permitted to talk with Tomlinson at the party, but not about the case.

39 Fairfield is a federal prosecutor involved in an investigation of Robins, a suspected drug smuggler. Fairfield knows that Robins has a lawyer but, so far, Robins has not been indicted and he's not in custody. In order to get evidence against Robins, Fairfield offers leniency to a small-time drug dealer named Kaye if Kaye will visit Robins and talk to him privately while wearing a secret recording device. Kaye does so. Robins is then prosecuted based on damaging admissions secretly recorded by Kaye.

- a. Most would agree that Fairfield's use of deceit to obtain evidence against Robins is improper if not illegal.
- b. As a federal prosecutor, Fairfield is not subject to state disciplinary rules for actions that he takes in his official capacity.

- c. The evidence obtained by Kaye would probably not be admissible against Robins.
- d. Fairfield is required to comply with the no-contact rule but that rule probably does not prevent the use against Robins of the evidence obtained by Kaye.

40 In cases like the one in the preceding question, the reason most courts have said the no-contact rule is not violated is that:

- a. The prosecuting attorney does not communicate with the target directly but only through an intermediary.
- b. The use of informants by law-enforcement authorities is a legitimate investigative technique authorized by law.
- c. For practical reasons, the rule does not apply to government attorneys.
- d. The rule only applies in civil cases.
- e. None of the above. Most would say the no-contact rule *is* violated.

41 Rick represents Mott in an action against Hocket Corp. Today Rick got a visit from a guy named Dan Wurzel who said he had some documents that would be “dynamite” against Hocket. Wurzel said that he got the documents while working as a Hocket employee. Rick is very interested in hearing more. Without permission from Hocket’s lawyer:

- a. Rick is not ethically permitted to discuss the case with Wurzel if Wurzel is still a Hocket employee.
- b. Rick is not ethically permitted to discuss the case with Wurzel if Wurzel is a *former* Hocket employee.

- c. Both of the above.

d. Even if Wurzel still works for Hocket, Rick can ethically discuss the case with Wurzel as long as Hocket’s lawyer does not also represent Wurzel.

42 In the preceding question, Rick’s ethical responsibility with respect to the documents offered by Wurzel is to:

- a. Carefully examine them to see how they can be used to best serve his client’s interests.
- b. Avoid violating the legal rights that Hocket or others may have in the documents.
- c. Get the documents away from Wurzel and make sure they are safely returned to Hocket, unread.
- d. Warn Hocket’s lawyers that a guy named Dan Wurzel is leaking sensitive corporate information.

43 Davison represents the defendant in a personal injury suit arising out of an auto accident. When plaintiff’s counsel asked Davison what the policy limit was on defendant’s insurance, he answered: “I think it’s \$150,000.” He knew full well, however, that the policy limit was actually \$250,000. Later the plaintiff agreed to settle for \$150,000 in reliance on Davison’s answer.

- a. Davison has told a lie for which he might be held liable.
- b. Davison has not told a lie because he has merely stated what he “thought” was true, not a fact.

c. Davison cannot in any event be held liable for this statement because a lawyer in litigation has no right to rely on statements made by the adversary.

d. Davison cannot be held liable for this statement because the plaintiff's lawyer had access to accurate information via discovery and it's his own fault if he didn't demand it.

44 The reasoning behind the answer to the preceding question is that:

a. A lawyer has a general obligation to provide all relevant truthful information to the adversary.

b. A lawyer's representations of fact are accorded a particular expectation of honesty and trustworthiness.

c. A lawyer is expected to say whatever will best serve his or her *own* client's interests, and it is foolish to assume that a good lawyer would do otherwise.

d. Lawyers have a duty to do a thorough job for their own clients and they have no right to avoid this duty by asking the other side to give up relevant information.

45 While negotiating a contract to sell a yacht, Wabash made the following statements to the buyer's lawyer. Which, if any, would be considered a false statement of fact?

a. "My client will not accept less than \$500,000." In fact, the client had told Wabash that he would go as low as \$425,000.

b. "This yacht has a range of 1500 miles." In fact, the yacht had a range of about 900 miles and Wabash knew it.

c. "This yacht has never been in a collision with another boat." In fact, as Wabash knew, the yacht had collided with a floating log and required extensive repairs.

d. All of the above statements are lies.

e. None of the above statements are lies.

46 Eaton represents the defendant in a personal injury case. He has just received the expert-witness report prepared by a doctor he hired to examine the plaintiff. The report shows that the plaintiff has a thrombosis (clot) that could break loose at any moment and cause sudden death. The clot could have been caused by the accident and therefore could increase the plaintiff's damages. Eaton does not want to alert the other side to its existence.

a. In general, unless the plaintiff demands relevant information in discovery, Eaton would have no obligation to volunteer it.

b. A lawyer has no general duty to supply "damaging" information to the other side, but a life-threatening condition must be revealed.

c. Eaton's duty of candor to the court and to the other lawyer would probably require him to reveal this information.

d. If Eaton decides it is strategically beneficial to reveal the information to the other side, he may do so even over the objection of his client.

47 Jacobs represents plaintiff in a replevin action. He'd like to soften the defendant up a little for settlement and so he casually mentions, in passing, that the defendant's conduct "looks a lot like larceny," adding that he'd "sure hate to have get his old law school

buddy,” the local DA, involved in the case. In fact, Jacobs and the DA really were friends in law school.

- a. Prior to the Model Rules, this sort of tactic would have been considered highly questionable, or worse, but today’s Model Rules do not *per se* prohibit it.
- b. Under today’s Model Rules, this sort of tactic is forbidden, a sharp deviation from the past rules, which regarded such threats as normal and acceptable.
- c. This sort of tactic always has been and still is prohibited on the ground that it is an unseemly way to gain an advantage in civil litigation.
- d. The ethical rules have never really taken a position one way or the other on this sort of tactic.

48 Dexter Hobbs made an egregious error in a title search he did for a client. Fortunately the client decided not to buy the property after all. Later, however, the client shared the title search report with others, including Quaid. In reliance on it, Quaid made a down payment on the property and sustained a substantial loss. Quaid now claims the loss was “due to Dexter’s negligence.” Assume that Quaid had never been a client of Dexter and Dexter could not reasonably foresee Quaid’s reliance:

- a. The rule of privity traditionally gave lawyers nearly absolute protection against liability to non-clients like Quaid, and it still does.
- b. The rule of privity would have traditionally given Dexter nearly absolute protection against liability to a non-client like Quaid, but under these facts Dexter might well be held liable today.

c. Modern courts have substantially curtailed the bar to liability that the privity rule once provided, but it is still unlikely that Dexter would be held liable to Quaid under these facts.

d. The rule of privity would have traditionally given Quaid a solid basis for a cause of action against Dexter, and it still would.

49 Representing a client at trial, Jana Lufkin sat at counsel’s table listening while her opponent cross-examined one of the witnesses Jana had called. She heard the witness say: “I was there with him all day March 26, and he didn’t go out”—which would have been (if true) material to the case. As it happens, however, Lufkin knew for a fact that the statement was *not* true and that the witness was either lying or confused about the dates.

- a. Lufkin had no duty to take reasonable remedial measures unless Lufkin knew that the witness knew that the statement was untrue.
- b. Lufkin had a duty to take reasonable remedial measures whether or not the witness knew the statement was untrue.
- c. Lufkin could not have had a duty to take reasonable remedial measures because she was not the one questioning the witness at the time.
- d. Lufkin’s duty to reveal the falsehood depends entirely on what best serves her client’s interest.

50 Suppose that the witness who made the false statement in the preceding question was a person who'd been called, not by Lufkin, but by her opponent. If the opponent was questioning the witness at the time the false statement was made, Lufkin would have had:

- a. No duty to take reasonable remedial measures unless Lufkin knew the witness knew that the statement was untrue.
- b. A duty to take reasonable remedial measures if Lufkin reasonably believed the witness knew the statement was untrue even if she didn't *know* that the witness knew.
- c. A duty to take reasonable remedial measures whether or not the witness knew the statement was untrue.
- d. Lufkin's duty to reveal the falsehood depends entirely on what best serves her client's interest.

51 Representing a client at trial, Lufkin ran across an item of evidence that is truthful but misleading, tending to portray her opponent's client in a very bad light. Lufkin thinks that the evidence would be very helpful in obtaining a favorable outcome for her own client. It is generally agreed that a lawyer in Lufkin's situation:

- a. Should not use such evidence since a trial is a truth-seeking process in which misleading evidence, even if literally true, has no place.
- b. Would be properly representing her client by introducing admissible truthful evidence that she thinks would advance or protect her client's interests.
- c. Should consult with her client before presenting such evidence and present it only if her client insists.

d. Withdraw from representation if her client insists that she introduce the misleading but literally true evidence.

52 During Ray Largo's trial for fraud, he was asked several questions under oath. Which of the following answers, if given with intent to mislead about a material fact, would be perjury? [The truth is indicated in brackets.]

- a. Q. Have you ever been to Ibiza Restaurant? A. My sister told me not to go there because the food was terrible. [She'd really said that, but he went there anyway.]
- b. Q. What color were the apples? A. White [The apples were normal apples.]
- c. Q. Did you arrive at work by 9:00 that day? A. I was supposed to be there at 9:00, but there was a lot of traffic. [There actually had been a lot of traffic, but Largo still managed to arrive at 9:00].
- d. All of the above.
- e. None of the above.

53 When it comes to the standards of honesty and candor required of lawyers in court:

- a. Deliberately misleading statements are considered to be as bad as false statements—both being strictly forbidden.
- b. False statements are strictly forbidden, but lawyers are not necessarily always expected to state (or present) the whole truth.

c. Lawyers can safely assume that they can make misleading statements to the court without worrying about negative repercussions to themselves.

d. Lawyers are allowed to make false statements in order to preserve confidentiality as long as they avoid doing so under oath.

54 At trial, W was asked: “Did you and Joseph talk to each other during June 2012?” W knew very well that it would be incriminating if Joseph had conveyed certain information to W during that time. In fact, W had gotten the information in a voicemail from Joseph on June 11, 2012. After a thoughtful pause, W answered the question at trial with a simple “no.” When W was later tried for perjury, he argued that his answer was true because “talk to each other” means two-way communication, not one-way voicemails. Under the Supreme Court caselaw, W’s answer at trial:

a. Should *not* be considered perjury if W’s understanding of the question was an objectively reasonable interpretation.

b. *Should* be considered perjury if W was being deliberately evasive and uncooperative with the adversary.

c. *Should* be considered perjury as long as the questioner actually meant either one-way or two-communication.

d. *Should* be considered perjury as long as W reasonably should have known that the questioner meant either one-way or two-communication.

55 Lydia McDowell represents the defendant in a murder case. Under the *Brady* rule, the prosecution provided her with names of witnesses who say that the victim had threatened to kill the defendant on several occasions. McDowell plans to use this testimony, plus the fact that the victim was armed when he died, to argue for an

inference that her client acted in self-defense. Based on this evidence, she can properly try to persuade the jury that her client killed in self-defense:

a. Even if she doesn’t personally believe that her client acted out of fear of death or serious injury (needed for self-defense to apply).

b. Even if she personally believes that her client did *not* act in self-defense but was, instead, the aggressor and had set out to kill the victim.

c. Even if her client told her that he didn’t act in self-defense but was, instead, the aggressor and had set out to kill the victim.

d. All of the above.

e. None of the above.

56 Most would agree that, in a criminal trial, a lawyer can properly argue for the jury to draw an inference that is not true:

a. Even if the evidence does not support the inference because it’s up to the other side to argue that the inference is unsupported.

b. Even if the lawyer is the prosecutor.

c. Only if the lawyer has a belief, backed by a firm factual basis, that the inference *is* true.

d. None of the above.

57 Harry Cobb does zoning and land-use law work for Claibourne Development Co., a large real estate firm that, among other things,

owns buildings that contain thousands of apartments. Harry's cousin happens to live in an apartment owned by Claibourne. Last week, the cousin got an eviction notice. Harry believes his cousin has a complete defense and, because of the work he does for Claibourne, he may be in a good position to work things out. Can Harry represent his cousin in court in the eviction proceeding?

- a. No.
- b. There should be no problem as long as his cousin gives informed consent to the apparent conflict of interest.
- c. There should be no problem as long as both his cousin and Claibourne give informed consent to the apparent conflict of interest.
- d. There should be no problem as long as the eviction proceeding is substantially different from any kind of legal work that Harry does for Claibourne.

58 The principal owner of Claibourne has offered Harry an equity participation in one of the company's pending deals. This could be a very lucrative investment for Harry, but a colleague mentioned at lunch that there might be a "conflict of interest" issue that he should look into. Harry asks you for advice. You should respond:

- a. There's no "conflict of interest" issue as long as Harry doesn't do any legal work for Claibourne in connection with the deal that Harry's investing in.
- b. There would be no "conflict of interest" issue if Claibourne sets all the terms and conditions of the deal, without input from Harry.

- c. Both of the above.
- d. None of the above.

59 Minott does criminal defense work. He has a policy of not representing clients who want to cooperate with the state by informing on others in exchange for leniency. Ed Trobe has asked Minott to represent a low-level drug offender named Elster. Trobe says he will pay a generous fee, all in advance. Minott suspects that Elster may have been a drug courier for Trobe and that Trobe is being generous because he doesn't want Elster to give evidence against him.

- a. There's no reason on these facts why Minott should not agree to represent Elster with Trobe paying the fee.
- b. If Minott agrees to represent Elster at Trobe's expense, he risks being later disqualified (or worse) for conflict of interest.
- c. As long as Elster gives informed consent to having the fee be paid by Trobe, this representation would raise no conflict of interest issues.
- d. Because the rules against conflict of interest exist primarily to protect the rights of the other side, the prosecution may well object to this fee arrangement.

60 An innocent homeowner was shot to death in a botched drug raid. Prosecutor James Lorman is under public pressure to seek an indictment against the officers responsible. Lorman knows he would almost certainly be able to get a grand jury indictment in the case. However, he also knows that he can't do his day-to-day job without police help and cooperation. What's more, the police unions have

consistently supported him for election, both with endorsements (“a good crime fighter”) and money. Under the wording of Model Rule 1.7:

- a. There is a plausible argument that Lorman has an irresolvable conflict of interest.
- b. There is a plausible argument that Lorman should be subject to discipline if he refuses to recuse himself in a favor of a special prosecutor.
- c. Both of the above.
- d. Lorman obviously does not have a conflict of interest within Model Rule 1.7
- e. Lorman would normally be exempt, as a public prosecutor, from conflict of interest restrictions.

<End of examination.>