PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 9, 2019
FINAL EXAMINATION 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 locally 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 ethical rules or applicable law. "Ethical" means according to the ethical rules. **Do not assume that "informed consent" has been given unless the question says so.**

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 Wally Woodruff was at his high school reunion. An old buddy, having heard Wally became a lawyer, came up and asked him about a sticky commercial dispute he was having. Wally listened carefully and had a pretty good idea as to what his buddy should do, but he was not completely certain:

a. Wally was ethically required to tell his buddy politely but firmly that he was "off-duty" at the moment and refuse to discuss the matter.

b. Wally could offer to give his best guess as to what his buddy should do but he should first make sure his buddy agrees not to sue for malpractice.

c. Wally could offer to give his best guess as to what his buddy should do but he should make very clear that it's just an "off-the-cuff" reaction and should not be relied on.

d. The only proper thing for Wally to do would be to tell his buddy to call him at the office the next day.

2 Dan Corbett represented a plaintiff suing for $500,000 in a personal injury case. Corbett was appalled when the jury ruled for the defendant. Two weeks earlier, the defendant's lawyer had called Corbett and offered to settle for $38,000. Without mentioning the offer to his client, Corbett had rejected it as "preposterously low." Now the client gets nothing.

a. Corbett must tell his client about the offer and advise the client to get another lawyer to look into whether Corbett could be sued for malpractice.

b. Corbett has done nothing wrong in this situation if the offer really was preposterously low and he rejected it in good faith.

c. Corbett should take care that his client does not find out about the offer, since he rejected it in good faith and it's pointless to give the client cause for futile regret.

d. As the attorney, it was up to Corbett whether to accept the offer or not.

3 Edgar Worff was assigned by his firm to represent a man accused of drug possession. Worff initially planned to ask his new client if he "did it," but now he is having second thoughts. He's concerned the client's answer might compromise his ability to mount an effective defense.

a. Worff is right to be concerned and, in general, criminal defense lawyers should never put their clients on the spot by asking them if they "did it."

b. Worff should not ask his client if he did it because the client is likely to lie, and Worff may then have to defend a false not-guilty plea.

c. According to an ABA ethics opinion, Worff should thoroughly investigate the facts the matter and that includes asking the client what happened.

d. Worff should not ask his client if he did it so he can't later be forced to hurt his client's cause by revealing client perjury.

4 Gadly Upham, a criminal-defense client of Worff's, all but admitted to Worff that he is guilty as charged. Worff realizes, however, that the state's main witness is compromised, having made inconsistent statements during depositions in a related civil matter. Worff thinks he can use the prior statements to demolish the witness's credibility on cross-examination so the jury will reject the witness's truthful testimony and acquit. Worff is torn, however,

because he thinks Gadly is guilty and it would be a grave injustice to let him escape punishment.

a. As an attorney and officer of the court, Worff essentially has discretion whether to try to get his client acquitted or not.

b. Worff has an ethical obligation to try to undercut the credibility of the state's witness on cross-examination if he thinks that's the best way to further his client's cause.

c. Worff can properly decline to challenge the truthful testimony of the state's witness if he finds it personally repugnant to do so.

d. Worff should advise his client that it is in the client's best interest to plead guilty so he will not have to challenge the truthful testimony of the state's witness.

5 David Benchley represents a small charitable client. Recently, to raise money, the client proposed to run an online game of chance. Benchley did some legal research and learned that the proposed "game" violates federal anti-gambling laws. He told his client but its director scoffed and said he didn't believe it because "everybody does it." Benchley strongly supports the client's charitable goals and wants to continue representing it even if it goes ahead and runs the questionable fundraising.

a. Once Benchley told the client its plans were illegal, he fulfilled his duty and can continue to represent the client without fear of personal repercussions.

b. Benchley risks a criminal conviction himself if he continues to represent and assist his client in carrying out illegal activities.

c. Benchley should notify the authorities of his client's illegal intentions.

d. Because lawyers are required to represent their clients faithfully, Benchley would have a defense that criminal acts by him were done in the course of that representation.

6 Lara Phelps has a client who is selling his house. At the closing, the client is required to deliver an engineer's report certifying that the house is in good physical condition. When she received copies of the report, Lara noticed that a page of the Appendix was missing. Calling the engineer, she was told that the missing page revealed a possibly serious construction defect. The closing is tomorrow. Lara thinks her client plans to deliver a copy of the report with the crucial page missing:

a. Lara would be permitted under the modern rule to reveal client confidences to the extent reasonably necessary to prevent her client from committing fraud.

b. Lara may not reveal information relating to the representation in order to prevent fraud, but she should carefully avoid doing anything to assist in it.

c. Attorneys have long had an ethical obligation to speak up and prevent client fraud.

d. Lara may not reveal confidential client information but she is allowed to initiate a "sticky withdrawal."

7 Anna Kramer represents a client in the sale of a house. The client told her to negotiate the best deal possible but in no event to take back a second mortgage from the buyer. Kramer found, however, that she was able to get her client a substantially better price by making a deal with a buyer who required a small second mortgage. Later on, the buyer defaulted due to unexpected financial reverses

and Kramer's client incurred a loss. The client wants to know if she has a basis for holding Kramer liable:

a. Yes, because Kramer did not provide her client with the effective assistance of counsel that is constitutionally required in this situation.

b. No, as long as Kramer provided her client with her own best professional judgment in negotiating the deal.

c. Yes, because she did not follow her client's instructions.

d. No, because it is generally up to the lawyer to decide what is best to further the client's objectives

8 Anna Kramer has a client who is about to go on trial for robbery. The client wants to get on the stand and testify in his own defense. Kramer is convinced that would be a horrible idea. The client is an obvious exaggerator (to put it kindly) and has a criminal record that could be used to impeach him and generally make him look bad.

a. The client has the final say on whether to testify on his own behalf and, while Kramer can advise against it, she cannot ethically prevent it.

b. The decision of what witnesses to call is for the lawyer to make, not the client, and Kramer is ethically authorized to make the final decision on whether the client testifies

c. There is no hard and fast rule for cases such as these, but the lawyer should generally err on the side of her own professional judgment.

d. Kramer owes her client "effective assistance of counsel" and should firmly assert herself and decide for her client.

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9 Marta Grimm realizes that the opposing lawyer is overlooking a critical deadline which, if missed, would cause his case against her client to be dismissed. This would be a great relief to Grimm's client because the other side has a strong and meritorious claim. Still, Grimm feels it would be a bit "low" not to tip off the other lawyer, who's always been treated her decently and with respect.

a. Under the general rules of civility and fair play among lawyers, Grimm should promptly warn the other lawyer he's about to make a blunder.

b. Before doing anything that might adversely affect her client's interests, Grimm should at least consult with her client—and then use her own judgment.

c. Before doing anything that might adversely affect her client's interests, Grimm should consult with her client and follow her client's instructions.

d. Before doing anything that might adversely affect her client's interests, Grimm is ethically required to get the opinions of at least two other impartial attorneys.

10 The practice of law is considered a "profession" because:

a. Lawyers earn high fees that provide them with considerably higher incomes than most.

b. Lawyers regulate themselves and provide all needed discipline for members of the bar without regulatory oversight of any branch of government.

c. The practice of law requires specialized education and involves a particularly high level of trust.

d. The practice of law rarely involves serious manual labor.

11 Elise Fernandez lost a substantial sum of money after her lawyer neglected her matter for a period of months. The most suitable way for her to seek recompense for this loss would be to bring a:

a. Disciplinary proceeding.

b. Malpractice action.

c. Conflict of interest challenge.

d. More than one of the above is correct.

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12 While researching a conflicts-of-interest question, Beth Copley found several ethics opinions of the American Bar Association that were directly on point. Such opinions:

a. Are generally regarded as important persuasive authority on ethics questions, though they are not legally binding as such.

b. Only apply to the cases in which they were handed down and should not be cited or applied in later cases.

c. Would be legally binding on the courts in later ethics matters.

d. Are little more than the views of a private organization and, as such, tend to be taken with a grain of salt.

13 A client has accused Mark Manfredo of bungling a settlement negotiation, causing a substantial financial loss. Among other things, Manfredo neglected to communicate a settlement offer to the client. The primary purpose of discipline for such conduct would ordinarily be:

a. The obtain restitution for the client of money lost due to the lawyer's mistake.

b. To assess damages for malpractice.

c. To punish the lawyer for violating the Model Rules.

d. To protect the public and the integrity of the legal system.

14 The legislature is considering a new law to license "tenant defenders" to represent low-income tenants in landlord-tenant litigation. To become a tenant defender, an applicant would need to complete a six-month course and pass a test on landlord-tenant law. The tenant defenders' work would include advising low-income tenants about their legal rights and defending them in local courts.

a. The legislature has a general power over licensing the various professions, so there should be no serious doubt that this proposed law would be valid.

b. There is a real possibility that the proposed law would be held invalid as an invasion of the inherent power of the courts.

c. The proposed law could not be considered a violation of the courts' inherent power as long as the tenant defenders are not full-fledged lawyers,

d. The law would be void because only courts have the power to make rules affecting the legal profession and practice of law.

15 Sara Marfack is committed to vigorously pursuing her clients' lawful objectives. Which of the following would be *not* be considered a "lawful" objective that a lawyer may pursue?

a. The client made a binding contract that he now wants to get out of.

b. The client caused a serious injury in a bar fight and he wants to avoid or minimize damages for assault and battery.

c. The client committed a serious crime and wants Marfack to use cross-examination, objections to evidence and other "lawyer" techniques to avoid jail.

d. All of the above could be considered lawful objectives that Marfack could properly pursue.

e. None of the above could be considered lawful client objectives.

16 Jay Sharpless, a criminal defense lawyer, usually "just knows" that most of his clients are guilty. However, he never asks them if they did it because he doesn't want to take a chance of "tying his own hands" with respect to what he can later say and do in court. Sharpless's practice of never asking his clients if they did it:

a. Is specifically endorsed by the Model Rules.

b. Is expressly forbidden by the Model Rules.

c. Appears to violate the Model Rules requirement of competence and also the spirit (and perhaps the letter) of the rule requiring candor to the tribunal.

d. Is basically Sharpless's choice to make and his choice would have no obvious ethical implications one way or the other.

17 Late Monday night, after the game on TV, Edgar Elmwood started to review a draft construction contract that came in by email earlier that day. Very tired and a little woozy, Elmwood didn't notice that the other lawyer had left out a common "security" clause that was potentially very important to Elmwood's client. The parties signed the contract without the clause. Later, when the other party defaulted, Elmwood's client lost over $100,000 that would have been protected if the clause had been present. An error like this:

a. Means that Elmwood is likely to face disciplinary proceedings and sanctions.

b. Means Elmwood may be liable for malpractice, but he is not likely to face disciplinary proceedings.

c. Creates a fairly strong presumption that Elmwood is unfit for the practice of law and he would probably be disbarred or suspended.

d. Is the kind of blunder that the Model Rules would require the opposing lawyer call to Elmwood's attention.

18 Leslie Prescott represents Daniel Kleber, the defendant in a breach of copyright case. During a pre-trial conference (and under great pressure from the judge), Prescott agreed to a settlement that required her client to pay $50,000 to the plaintiff. Even if Prescott did not have actual authority to settle the case, the settlement should still be binding (under the normal rules of agency):

a. Because Prescott, as an attorney, automatically had *implied* authority to settle.

b. Because Prescott would be deemed to have apparent authority to settle by attending the pre-trial conference on her client's behalf.

c. As long as the judge had pushed for the settlement in the interest of the efficient administration of justice.

d. None of the above.

19 Slinky was being tried for a crime he says he did not commit. He told his lawyer he wanted to testify on his own behalf. The lawyer feared that Slinky would be devastated on cross-examination and advised him not to take the stand. Slinky insisted to the very end, but his lawyer refused to call him to testify. Slinky did not testify and was convicted.

a. The lawyer has violated the Model Rules for refusing to abide by Slinky's choice to testify.

b. There is a good possibility that Slinky will be able to recover damages for malpractice from his lawyer.

c. The decision whether the client should testify in a criminal case is a tactical one that is left to the lawyer.

d. Slinky impermissibly attempted to interfere with his lawyer's independent professional judgment as to how to best present the case.

20 Stowe has been indicted for drug trafficking and the key evidence against him was obtained in violation of the Fourth Amendment. Stowe's lawyer could have moved to exclude the evidence but he did not make the necessary motion within the time prescribed by local procedural rules. Stowe now has a new lawyer. She argues that Stowe's previous lawyer could not waive Stowe's constitutional rights. She demands that the court therefore exclude the evidence obtained in violation of Stowe's rights.

a. The new lawyer is wrong. Constitutional rights protecting the accused can be waived, either by the accused or by his lawyer.

b. The constitutional rights of an accused can be waived by his lawyer but not by the lawyer's misconduct.

c. The constitutional rights of an accused can be waived by his lawyer but only if the waiver was freely authorized by the client.

d. The Supreme Court has held that only the actual rightholder can waive a constitutional right.

21 Fran Metcalf is an antique dealer who has been sued in federal court by a dissatisfied customer. She promptly turned the legal papers over to her lawyer who told her he'd take care of everything. Five months later, Metcalf learned that the lawyer failed to file an answer in the case and a default judgment had been entered against her. She now has a new lawyer who filed a motion to set aside the default judgment and reopen the case. The court will probably decide that Metcalf is entitled to have the case reopened:

a. If the original lawyer's failure to file an answer was due to the inexcusable neglect.

b. As long as Metcalf used reasonable diligence to supervise her original lawyer.

c. If Metcalf's original lawyer lied to her and misled her as to progress of the case.

d. None of the above. A lawyer's inexcusable neglect is not considered an exceptional or extraordinary circumstance that justifies reopening a judgment

22 Linscott represented LaGrange in a family law matter. During the course of the representation, LaGrange told Linscott that he has a "secret" child from an affair before he got married. Linscott has a duty of confidentiality *not* to disclose this information:

a. Under the law of agency.

b. Under the Model Rules.

c. Both of the above.

d. Only if LaGrange was the one who communicated the information to Linscott.

e. All of the above.

23 Wilcox has been retained by an insurance company to represent Berry, one of its insureds. Berry signed a retainer agreement. It describes the scope of representation to be "defense of an action brought by Orin Sternlicht for injuries sustained" in a certain automobile accident. Berry, who was also injured in the crash, tells Wilcox he thinks the accident was due to a manufacturing defect in his car. Wilcox realizes that Berry may have an action against the carmaker.

a. Wilcox has no duty to tell Berry about the possible action against the carmaker since that matter is not within the scope of representation.

b. Wilcox risks liability for malpractice if he fails to inform Berry that he may have an action against the carmaker

c. Wilcox could, with informed consent of his client, limit the scope of his representation to exclude the action against the carmaker.

d. Both b. and c. above.

24 Jeff Fabricant represents construction contractors. One of his clients is Torres. Another is Dillock. While representing Torres in negotiating a deal with Bigbrick, Fabricant happened to learn that Bigbrick was secretly trying to lure away one of Dillock's major customers. Fabricant wants to warn Dillock but he's concerned because the warning would disclose information relevant to the Torres-Bigbrick deal and might negatively affect Torres.

a. Fabricant is clearly obligated to communicate this information to his client, Dillock, and he should do so right away.

b. There's no problem if Fabricant discloses the information to Dillock as long as Fabricant did not promise to keep it a secret.

c. Fabricant cannot ethically disclose the information to Dillock without getting informed consent from Torres.

d. There is nothing in the Model Rules that would limit Fabricant's discretion to disclose the information to Dillock.

25 Arlen Dalbert works as a public defender. He's been assigned to represent a man he thoroughly detests. He realizes that, for constitutional reasons, the key evidence against the man can be suppressed—leaving the prosecution with no case. Dalbert does not want to see his client released because he suspects he will commit more crimes, but the client says he wants out ASAP. Assuming Dalbert cannot withdraw, he should:

a. Use his independent professional judgment and refuse to make a motion to suppress if that's what he decides is best for society.

b. Take whatever lawful and ethical measures are required to further his client's interests.

c. Balance his responsibility to his client with his responsibility to see that justice is done.

d. Notify his client that he's limiting the scope of his representation to *exclude* constitutional law issues.

26 Nelson is buying a hardware store and Winston represents him. The price is to be a combination of cash and promissory notes. The day before the closing, Winston learned that Nelson had misrepresented his financial position. He probably won't ever be able to pay the promissory notes. However, Nelson begs Winston not to tell the seller about his financial problems, saying he just needs a little time to "make things straight." Suppose Winston concludes that, by continuing to represent Nelson (and saying nothing), he will be helping Nelson to commit a fraud that would cause serious financial harm to the sellers:

a. Under Rule 4.1 read together with Rule 1.6, Winston is probably required to disclose sufficient material facts about the fraud to prevent it.

b. Under Rule 1.6, Winston is permitted but not required to disclose sufficient material facts about the fraud to prevent it.

c. Both of the above.

d. None of the above. Winston is bound by confidentiality to keep this information to himself.

27 Cheryl Morbacher been appointed to handle Todd's appeal of an armed robbery conviction. Morbacher is being paid by the state. During her first consultation with Todd, he gave her a list of 9 items that he wanted her to cover in the brief. Morbacher does not plan to cover more than 3 of the items

a. If Morbacher refuses to include items that Todd wants covered in the brief, Todd will have a strong basis for an ineffective assistance of counsel claim.

b. Morbacher should discuss with Todd the means she proposes to use in the representation, including the topics to be covered in the brief.

c. The Model Rules say that the lawyer, not the client, has the final say on decisions that require an attorney's professional expertise.

d. Because Morbacher is being paid by the state, her fiduciary agency responsibility as attorney is not only to Todd but also to the state.

28 Gordon Ledrew represents a client charged with stealing expensive car parts from his employer, a major local car dealer. The client told Ledrew he'd hidden a box containing some of the stolen parts in a shed in his ex-wife's backyard. Ledrew went to check and, sure enough, there was a box containing stolen car parts. Ledrew left the box and its contents where he found them.

a. Ledrew's knowledge of the location of the stolen car parts is protected by the attorney-client privilege.

b. Ledrew has a duty to inform the authorities or, at least, the car dealer of the location of the stolen car parts.

c. Ledrew can be properly compelled by a court to provide testimony revealing the location of the stolen car parts.

d. Ledrew cannot properly be compelled to testify about his communication with his client, but he can be compelled to reveal where he saw the car parts.

29 Suppose in the preceding question Ledrew decided to take the box containing the stolen car parts to his office for safekeeping until the trial was over.

a. As an attorney, he was permitted to take them because they would be covered by the attorney-client privilege.

b. Most would agree that taking the parts for safekeeping would be justified as part of zealously representing the client.

c. Both of the above.

d. Ledrew would be subject to discipline and even criminal prosecution.

30 Mildred Lorris was injured when she slipped and fell in a Food Fair Supermarket. Several employees, all low paid floor staff, witnessed the fall. The attorneys for Food Fair confidentially took written statements from these employees. Now Lorris's lawyer has demanded copies of the statements in discovery. Food Fair objects. Under the *Upjohn* rule, the statements should be deemed privileged because the Supreme Court:

a. Established a new national rule of evidence for the attorney-client privilege that is binding in state and federal courts across the country.

b. Reaffirmed and endorsed the control-group test as the best compromise between confidentiality and full disclosure of corporation secrets.

c. Held that attorneys representing a corporation also represent the employees and, therefore, the attorney-client privilege applies to their communications.

d. Held that some communications between a corporation's attorneys and its lower-level employees may be covered by the attorney-client privilege.

31 Suppose in the preceding question Food Fair wants to turn the employees' written statements over to Lorris's lawyer but *the employees* object and want to assert the attorney-client privilege. Should the court rule that the statements are protected from discovery for the benefit of the employees?

a. Yes, because the attorney-client privilege protects both the employees and the corporation under *Upjohn.*

b. No, because the Food Fair lawyers were probably not acting as lawyers for the employees at the time they took the statements.

c. Yes, because forcing disclosure would violate the rule of confidentiality.

d. No, because Food Fair's lawyers were not even allowed to talk to the employees unless they had their own lawyers present.

32 If the written statements in the preceding question were protected from discovery by the attorney-client privilege:

a. Lorris might still have access to the facts reported in them because the attorney-client privilege protects only communications, not facts.

b. Lorris may find it hard to learn the facts reported in the statements because the no-contact rule places restrictions on interviews with an adversary's employees.

c. Lorris may find it hard to learn the facts reported in the statements because Food Fair's lawyers could properly request the employees not to voluntarily talk about the case with plaintiff's lawyers.

d. All of the above.

33 The Supreme Court said the *Upjohn* rule promotes "full and frank" discussions and disclosure between a corporation's lawyers and its employees who have relevant information or who need legal advice. This rationale for the rule probably is:

a. Sound, but Rule 1.6 would usually prevent compelled disclosure of the employees' confidential information anyway.

b. Dubious or, at least, greatly overstated because of the lawyer's duties under Rule 1.13(f) and Rule 4.3.

c. Sound because the *Upjohn* rule effectively assures that the things employees tell the company lawyer will never be used against the employees.

d. Both a. and c. above.

34 Benton got a call from a client who said he found some packets of cocaine in his teenage daughter's jacket. The client wants to know what to do. Benton should tell his client:

a. That he risks prosecution for destruction of evidence if he destroys the cocaine.

b. That he risks prosecution for possession of cocaine if he continues to possess it.

c. That his daughter may well be prosecuted for possession of cocaine if he turns it over to the police and tells them where he got it.

d. All of the above.

e. None of the above.

35 Suppose in the preceding question the client tells Benton he wants to just flush the cocaine down the drain:

a. Benton should advise him to do this.

b. A lawyer may not advise a client to unlawfully destroy evidence.

c. There is nothing wrong with destroying evidence that unlawful to possess.

d. Both b. and c. above.

36 Suppose in the preceding question the client turns the cocaine over to the police but refuses to say where he got it, only that it is "not his" and he "found it." He tells Benton confidentially that he'd rather risk prosecution and jail for himself than provide evidence against his daughter.

a. Benton has an obligation to his client and the administration of justice to tell the police where his client got the cocaine.

b. Benton has no duty as a lawyer to disclose relevant facts to the adversary or to advise the client to do so.

c. Benton should do everything legally and ethically possible to pursue the client's objectives including help both the client and his daughter avoid criminal conviction.

d. Both b. and c. above.

37 Folsom represents Webster in the sale of his house. The buyer's lawyer has made a number of demands that Folsom thinks are unreasonable. This morning, Webster (seller) ran into the buyer at a coffee shop. It was an amicable meeting and they agreed they both really wanted the deal but the problem was "the lawyers" who were "getting in the way." Webster suggests to his lawyer (Folsom) that Folsom should talk to the buyer directly.

a. The conversation between the two clients, Webster and the buyer, was improper and Folsom must advise Webster not to tell him anything that the buyer said.

b. Folsom is not ethically permitted to initiate contact with the buyer but he should advise his client, Webster, to tell the buyer to give Folsom a call.

c. Even if the buyer calls Folsom on his own initiative, Folsom is not ethically permitted to talk with the buyer about the deal unless the buyer's lawyer consents.

d. The conversations between Webster and the buyer are not in themselves improper, but Folsom may take no role in such conversations (*e.g.*, advising Webster with respect to them).

38 Carl Eastview represents Marian Avery. She's suing the Pinewood Cleaning Co. after its driver backed into her car in a parking lot. Out of a clear blue, Pinewood's driver called Carl and said he had some relevant information that Pinewood's lawyer was withholding.

a. Carl may properly talk with the driver about the case and accept the information he's offering, provided it's all kept oral and nothing is put in writing.

b. Carl may properly talk with the driver and accept the information even if some of it is in writing, provided the papers in question are not the property of Pinewood.

c. If the driver has not retained a lawyer of his own, Carl is free to talk to him since the employer's lawyer is not normally also the lawyer for the employee.

d. Carl should not be communicating directly with the driver about the litigation unless Pinewood's lawyer consents.

39 Hardy and Princeton are suspected of having a scheme to create secret offshore bank accounts but the prosecutor needs more evidence. The prosecutor persuades Princeton to speak to Hardy about offshore accounts in an effort to get Hardy to say how he avoids detection. The prosecutor specifically tells Princeton to be sure that Hardy's lawyer is not present "to interfere." Princeton is rigged up with a device to record the conversation surreptitiously. Princeton gets a recording that gives the government valuable admissions by Hardy.

a. This conduct by prosecutor probably does not violate the no-contact rule because the use of informants and deceit is considered a legitimate investigative technique.

b. This conduct by prosecutor probably does not violate the no-contact rule because the rule does not apply to government lawyers.

c. Both of the above.

d. This conduct by the prosecutor probably does not violate the no-contact rule because, under the McDade Amendment, prosecutors are exempt from state ethical rules.

e. All of the above.

40 Vlad Reymont is plaintiffs' lawyer in an action against Doyle Consumer Products Co. Today Reymont got an email sent by Doyle's lawyer. From the very first line Reymont can see that the email is not intended for him but for Doyle's CEO. As soon as Reymont realizes that the email is not meant for him, he should:

a. Promptly notify Doyle's lawyer that he's received the email.

b. Quickly read through the email and then notify Doyle's lawyer.

c. Keep silent and not volunteer anything, though he must be truthful if he's ever asked about the email.

d. Make a plan to use the email to help his client because most courts would say that Doyle automatically waived the attorney-client privilege by carelessly misaddressing it.

41 If Reymont in the preceding question fails to deal with the misdirected email properly:

a. He is subject to discipline.

b. He may find himself disqualified from continuing to act as plaintiffs' lawyer.

c. Both of the above.

d. He would be liable to pay civil damages to Doyle pursuant to the Model Rules.

e. All of the above.

42 Bobby had a collision with Gelbman. Linda, who was riding in Bobby's car at the time, was injured and retained Steve Purvis to sue Gelbman for personal injury. When Linda and Bobby consulted Purvis, Bobby asked Purvis if he could recover for the damage to his car. Purvis said he'd add Bobby's claim to the complaint. Now Gelbman's lawyer has sent Purvis a lab report showing that Bobby used cocaine shortly before the accident, a fact that could greatly reduce Gelbman's liability to Linda. If that happened, Linda would have to sue Bobby to get a full recovery.

a. Purvis should immediately drop Bobby as a client so there will be no ethical problem in representing Linda against Bobby.

b. There is serious doubt whether Purvis can ethically represent Linda against Bobby without Bobby's informed consent.

c. There is no reason why Bobby's consent would be needed in order for Purvis to represent Linda against him.

d. As long as Bobby didn't agree to pay Purvis for legal services, Bobby could not be considered a former client of Purvis.

43 Two employees of Peabody Soap Co. believe they were discriminated against when the company filled a recently-opened managerial position. They have retained Nikki Belknap to represent

them. The two employees are both Sharmandian immigrants and the job was given to a Caucasian who, they contend, was less qualified than either of them. Which of the following events would create a conflict of interest for Belknap?

a. Peabody offers an attractive settlement and promotion to one of these clients and nothing to the other.

b. Peabody offers a settlement to both clients on the condition that they both accept, and one wants to take the offer but the other does not.

c. Belknap had a conflict just by agreeing to represent both because, ultimately, the two clients' interests are adverse to each other (they can't both be the most qualified for the job).

d. All of the above.

44 Belknap and her two clients in the preceding question had several conversations together in preparing to bring the case. In general, the attorney-client privilege would not protect communications between Belknap and either of these two clients:

a. If the other one was present at the time of the communication.

b. If a repairman working on Belknap's phone system was present at the time of the communication.

c. Both of the above.

d. None of the above. The attorney-client privilege does not apply to multiple representations.

45 Seth Wellstone has approached Dave Inman about forming a law partnership. Both Inman and Wellstone have large practices and many clients in the community. Inman is worried that, if the two join together as one firm, it may result in conflicts of interest, which could mean loss of clients or other trouble.

a. Inman has no reason for concern since conflicts of interest can always be waived as long as both lawyers consent.

b. Inman has no reason for concern since conflicts of interest can always be waived as long as all affected clients give informed consent.

c. Inman has some reason for concern since, depending on the circumstances, a court may disqualify a lawyer for a conflict even if the client wants to keep the lawyer.

d. Inman has no reason for concern: The fact that one member of a law firm would have a conflict of interest doesn't mean the conflict is also imputed to the other.

46 Don Widmer, a partner in the Chicago office of Armour & Goff has just been asked to take a major role in a large and potentially lucrative patent lawsuit against Eastern Cardboard Corp. However, Armour's Annapolis office does Eastern's local corporate filings for the company's sales office there. The corporate filing work and the patent suit have absolutely nothing to do with one another.

a. Widmer probably can be disqualified from acting as counsel adverse to Eastern in the lawsuit as long the Annapolis office continues to do Eastern's corporate filings.

b. Even if the Annapolis office continues doing the corporate filings, Widmer can ethically act as counsel against Eastern as long as conflict will not materially limit him in the representation.

c. Even if the Annapolis office continues doing the corporate filings, Widmer can ethically act as counsel against Eastern if Eastern does not object.

d. Both b. and c. above.

47 Kelli Danforth, a low-life with no assets, was arrested in a raid on a meth lab. A high-powered drugs lawyer named Briggs showed up to represent her. It's a mystery who's paying his fee. However, Briggs announced that he has a new "policy" against plea bargaining, and "that means there's going to be no negotiation for a reduced sentence in exchange for Kelli's testimony." The prosecutor would like to get Briggs thrown off the case.

a. The prosecutor can probably get Briggs disqualified because if somebody other than the client is paying his fee.

b. The prosecutor can probably get Briggs disqualified for refusing to consider a resolution of the case that the prosecutor thinks is best for Danforth.

c. Briggs would have a conflict of interest if he allowed the person paying his fee to influence his judgment in representing Danforth.

d. There are no special conflict-of-interest issues to be concerned about just because somebody other than the client else is paying the fee.

48 Denise and Phil met when she was defending Percy Bullknight, a man that Phil was prosecuting. After the trial ended, Denise and Phil got together several times for dinner and, on a number of occasions, ended up together in a room at the Empire Hotel. However, both are highly professional attorneys and so far neither has let the affair affect their work. About two weeks after their most recent dinner/soiree, Denise's office assigned her to defend Jay Boyleston, a man that Phil has been assigned to prosecute. Since Denise and Phil are both married to other people, they want to keep their little liaison discrete. The question is whether Boyleston should be told about the relationship between his lawyer and the prosecutor.

a. No, Denise and Phil are entitled to their privacy just like everybody else.

b. Boyleston is probably entitled to be told because there is a significant risk that the representation of Boyleston will be materially limited by his lawyer's personal interests.

c. Boyleston would be entitled to be told because these facts show a non-waivable conflict of interest.

d. There's no reason to tell Boyleston as long as Denise and Phil are not related by blood or marriage

49 Marcus Quinn represents a seller who is being sued for fraud in the sale of a business. He was also the lawyer for the seller in making the sale. While Quinn would prefer not to have to defend the case himself, he feels he has to in order to retain "control." Otherwise, there's a chance he might be personally implicated in his client's fraud and subject to civil or criminal liability. Which of the following is the strongest reason why Quinn might have a conflict of interest?

a. He represented the defendant in the transaction that is now alleged to have been fraudulent.

b. There is a substantial risk that his representation will be materially limited by his concern to protect himself from liability.

c. He would prefer not to have to defend the case himself.

d. There is nothing to suggest Quinn might have a possible conflict of interest on these facts.

50 During the period 2014-17, Jim Lehman represented Dr. Cutter in several medical malpractice cases. The cases all involved unsuccessful knee surgeries that Cutter had performed. About a year ago, Dr. Cutter changed malpractice insurers and Lehman no longer represents him. Today, Lehman's law partner, Joe Sabin, was visited by a man who wants to retain Sabin to bring a malpractice action against Dr. Cutter for a knee surgery done last month. Sabin does not want to invest a lot of time on the case if he is likely to be disqualified.

a. Sabin has no reason to be concerned about conflict of interest problems as long as he, not Lehman, does all the legal work in representing the new client.

b. Sabin has no reason to be concerned about conflict of interest problems because Lehman no longer represents Dr. Cutter.

c. If Sabin does have a conflict of interest due to Lehman's prior representation, it would probably be irresolvable.

d. If Sabin does have a conflict of interest due to Lehman's prior representation, it would be resolved if Dr. Cutter gives informed consent in writing.

51 During cross-examination, Edward Daedalus was asked: "Did you rent property in Santa Fe at any time during 2018"? The fact was (as Daedalus well knew) that Daedalus rented a house in Santa Fe from June 1, 2017 until March 31, 2018. After that, his wife had rented the house in her name. Which of the following responses, if any, would definitely be perjury?

a. "No."

b. "My wife rented a house there beginning in April of that year."

c. Both of the above.

d. "During the whole year of 2018? Why, no."

e. All of the above responses (*i.e.*, a, b and d) are perjury.

52 Barry Glover represented a corporate client, Stadt Mfg., in a business transaction with Prell. In the transaction, Stadt's CEO signed and delivered a certificate, drafted by Glover, falsely stating that there were no undisclosed liabilities against Stadt. In fact, as Glover knew, there was a large undisclosed liability of over $2 million. Glover has now been sued by Prell for misrepresentation.

a. Even if Glover improperly assisted Stadt in committing fraud, there is authority that a lawyer is not liable in damages for *the client's* false statements.

b. Because Glover assisted Stadt in committing fraud, a violation of the ethical rules, he is liable to pay damages to the person who was defrauded.

c. Glover cannot be liable to Prell because Prell is not Glover's client.

d. As an attorney, Glover is, for policy reasons, exempt from liability for fraud.

53 Yingling represents the defendant in a personal injury suit arising out of an auto accident. The plaintiff's counsel, instead of seeking the information via discovery, simply asked Yingling what the policy limit was on defendant's insurance. Yingling answered: "It's $150,000." Yingling knew full well, however, that the policy limit was actually $250,000. Later the plaintiff agreed to settle for $150,000 in reliance on Yingling's answer.

a. Yingling has told a lie and there is authority for holding him liable to the plaintiff whose counsel relied on it.

b. Yingling cannot be held liable because the plaintiff's lawyer was trying to avoid the discovery process.

c. Yingling cannot be held liable because lawyers in litigation have no right to rely on factual assertions made by opposing lawyers.

d. Yingling cannot be held liable because it's the plaintiff's lawyer's own fault that he didn't demand the information via discovery.

54 While negotiating a contract to sell a small aircraft, Elwood 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 $1,500,000." In fact, the client had told Elwood that he would go as low as $1,200,000.

b. "This aircraft has a range of 1500 miles." In fact, it had a range of about 900 miles and Elwood knew it.

c. Both of the above statements would be considered false.

d. None of the above statements would be considered false.

55 Phillips represents the defendant in a personal injury case. He has just received a report from a doctor he hired to examine the plaintiff. It shows that the plaintiff has a condition that could erupt at any moment and cause sudden death. The condition could have been caused by the accident and, if so, would increase the plaintiff's damages. Therefore, Phillips does not want to alert the other side about the condition.

a. In general, unless the plaintiff demands relevant information in discovery, Phillips 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. Phillips's duty of candor to the court and to the other lawyer requires him to reveal this information promptly.

d. If Phillips decides he is morally required to reveal the information to the plaintiff, he may do so even over the objection of his client.

56 Raymond Hodge made a bad mistake in doing a title search for his client. Fortunately the client decided not to buy the property after all. Later, however, the client shared the title search report with others, including Jonas. In reliance on it, Jonas made a down payment on the property and sustained a substantial loss. Jonas now claims the loss was "due to Hodge's negligence." Assume that Jonas had never been a client of Hodge and that Hodge could not reasonably foresee Jonas's reliance:

a. Under modern law, lawyers cannot be held liable for negligence to persons who are not their clients.

b. The abolition of the old rule of privity means that Hodge would almost certainly be held liable to Jonas on these facts.

c. Modern courts have substantially curtailed the protection provided by the privity rule, but it is still unlikely that Hodge would be held liable to Jonas under these facts.

d. Traditionally, the rule of privity would have given Jonas a solid basis for a cause of action against Hodge, and it still does.

57 Representing a client at trial, Erin Simson sat at counsel's table listening while her opponent cross-examined a witness that Simson 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, Simson knew for a fact that the statement was *not* true and that the witness was either lying or confused about the dates.

a. Simson had *no* duty to take reasonable remedial measures unless Simson knew that the witness knew that the statement was untrue.

b. Simson had a duty to take reasonable remedial measures whether or not the witness knew the statement was untrue.

c. Simson could not have had a duty to take reasonable remedial measures because she was not the one questioning the witness at the time.

d. Simson's duty to reveal the falsehood depends entirely on what best serves her client's interest.

58 While Simson was representing a client at trial, her investigator dug up an item of evidence that is truthful but misleading, tending to portray the other side in a very bad light. Simson 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 Simson's situation:

a. Should not use such evidence since a trial is a truth-seeking process in which misleading evidence, even if 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 the client insists.

d. Withdraw from representation if her client insists that she introduce the misleading item of evidence.

59 During Ray Largo's trial for fraud, he was asked several questions under oath. Which of the following answers would probably be considered perjury? [The truth is in brackets.]

a. Q. Have you ever been to Ibiza Restaurant? A. My sister told me not to go there because the food is terrible. [She'd really said that, but he went there anyway.]

b. Q. Did you arrive at your office by 9:00 that day? A. I was supposed to be there by 9:00, but there was a lot of traffic that slowed me down. [Largo actually was slowed down by a lot of traffic, but he still arrived by 9:00].

c. Both of the above.

d. None of the above.

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

a. A lawyer should never lie to the court or jury or create a false impression.

b. False statements are strictly forbidden, but lawyers are not necessarily always expected to state (or present) the whole truth.

c. Lawyers who make misleading statements to the court can safely assume there will be no negative repercussions for doing so.

d. Lawyers are allowed to make false statements if necessary to preserve confidentiality as long as they do not do it under oath.

<End of examination>