

PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH
FINAL EXAMINATION

December 14, 2024
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.

OPEN-BOOK EXAM: You may use any written materials or electronic devices you want, but you are not permitted to communicate in any way with any other person or AI system.

GENERAL INSTRUCTIONS:

This examination consists of 50 multiple-choice questions to be answered using EXAM4.

By now you should have downloaded EXAM4 (<https://law.pace.edu/academics/registrarbursar/exam-information>) and taken a Practice Exam on it. Please carefully review and follow the instructions supplied by the Registrar's office for taking the exam on EXAM4. Questions concerning the mechanics of taking the exam should be referred to the Registrar's office.

Answer each question selecting the *best* answer. Indicate your choice by clicking the letter on the Multiple-Choice screen in EXAM4. Confirm your answer and the question number on the left side of the screen. **If you want to delete or change an answer, follow the EXAM4 instructions using the “unlock” button. You should have already practiced deleting or changing answers on the Practice Exam to familiarize yourself with the process.** The answers you submit at the end of this exam cannot be later be changed.

You will receive 2 bonus points for correctly using EXAM4.

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 ethics rules or applicable law. “Ethical” means according to the ethics rules. **Do not assume that “informed consent” has been given unless the question says so.**

Note: Unless otherwise indicated, “Both of the above” (and similar locutions) mean that *each one* of the above answers is, by itself, a correct statement.

1 Lawyer represents a homebuilder. The client has been sued by buyers who allege various defects in homes they have bought. Looking over the claims, Lawyer realizes some of them may have merit. The client, of course, hopes to minimize any damages that might be awarded in judgments or in settlements. Lawyer's job is to:

- a. Provide fair and competent representation to the client and do everything reasonably possible to assure just outcomes to all concerned.
- b. Notify the lawyers for the home buyers as to which claims appear to have merit and seek to negotiate a fair settlement of them
- c. Do whatever is reasonably necessary, within the law and ethics, to further the client's objectives of minimum liability exposure
- d. Offer to mediate the claims on which there is no serious dispute.

2 Lawyer has a client who is being prosecuted for robbery. In the time since the client was interrogated by the police, the client has made some changes in his story. Certain changes would, if believed, imply it was practically impossible for the client to have been at the scene of the crime at the time the robbery occurred.

- a. Lawyer should assume that the self-serving changes in the client's story are false and would be perjury if repeated in court.

b. Lawyer should not present the changed story as testimony in court if Lawyer knows the changes are false.

c. Both of the above.

d. Lawyer's duty of loyalty requires that Lawyer give the client the benefit of the doubt on changes in his story, no matter how far-fetched.

e. To preserve his own reputation, Lawyer should consult with the judge and prosecutor in deciding how to proceed in this delicate situation.

3 Defendant challenges his conviction on the ground that he was denied effective assistance of counsel. He can establish this claim:

a. By showing that his defense lawyer violated the Model Rules in several respects.

b. By showing it was reasonably probable that the outcome would have been different if his defense lawyer had not committed serious errors.

c. Both of the above.

d. Only by showing that he is actually innocent.

4 Which of the following statements best describes the regulation of the legal profession?

a. The practice of law is a self-regulating profession.

- b. The power to regulate the legal profession is largely held by the judiciary pursuant to statutes adopted by the legislature.
- c. The judicial branch has inherent power to regulate the legal profession.
- d. The practice of law is essentially unregulated so that the independence of lawyers will be preserved.

5 Doug Cantwell graduated from law school but never passed the bar. He is, however, a “licensed arbitration advisor” under a statute enacted by the state legislature. The statute purports to regulate the practice of law by stipulating who (in addition to lawyers) may represent clients in arbitration proceedings. Can a court properly strike the statute down?

- a. Yes, but only if it finds that the statute directly conflicts with one or more regulations of the legal profession previously made by the judicial branch.
- b. No. Statutes supersede and take precedence over any inconsistent regulations of the legal profession previously adopted by the judicial branch.
- c. Yes, because once the court decides to strike the statute down, there is nobody who can overrule the court, and so the court's ruling stands.
- d. Yes, if it finds that the statute encroaches unduly on the courts' prerogative to regulate the legal profession, even if it doesn't directly contradict any existing rule.

6 The ABA Model Rules of Professional Conduct:

- a. Are binding on lawyers because they have been adopted and issued by the American Bar Association.
- b. Have the status of law in those states where they have been adopted as legally binding by highest court of that state.
- c. Have the status of law in New York.
- d. All of the above.

7 Facing serious personal financial pressures, Lawyer used \$20,000 from his client trust account (which held clients' money only) to pay the property taxes on his home. He kept careful records of the transactions, and repaid the money into the trust account a few days later. No client lost money as a result of the brief borrowing. Indeed, the only reason anyone even knew about it was because of a routine compliance audit of Lawyer's financial records.

- a. Lawyer has committed a serious violation of his ethical duties and can expect disciplinary action with potentially severe consequences.
- b. Inasmuch as no one was hurt, and Lawyer was careful to protect his clients' interests, it is unlikely that Lawyer would face discipline for this conduct.

c. Lawyer can expect disciplinary action, but the consequences will not likely be severe since no one was hurt.

d. How Lawyer deals with client funds is his business as long as no one loses out and, so, there was no ethical violation in this case.

8 Lawyer represents a client that buys up old, unpaid consumer credit accounts and tries to collect on them. Often some of the documentation for the creation of these debts is missing, and Lawyer sometimes even sues on debts barred by the statute of limitations. The debtors on such accounts often make at least part payments simply because they don't know that they don't legally have to. Lawyer does not, of course, explain any of this to the people he's trying to collect from.

a. Lawyer's representation of this client may be unsavory or repugnant, but it's not unethical to sue persons who are not represented by counsel.

b. Lawyer is only allowed to pursue the lawful objectives of the client, and it's not lawful to try to collect debts barred by the statute of limitations.

c. It's not technically ethical for Lawyer to commence a lawsuit unless he has in hand the evidence necessary in order to prevail.

d. Lawyer's conduct amounts to larceny under the forms of law.

9 Lawyer has been hired by an insurance company to represent an insured who struck a cyclist with her car. The cyclist was badly injured and has big medical bills. The insured admits that her attention had lapsed and is very remorseful. Nonetheless, Lawyer believes that, by skillful cross examination and objections to evidence, there's a good chance of getting a favorable verdict. Most lawyers would probably say that, in this situation:

a. Lawyer should confess judgment to the plaintiff for a fair amount, since the plaintiff's cause appears to be a just one.

b. It would not be a lawful objective for the client to avoid paying damages that are legally due, and Lawyer should not assist in the client's attempt to do so.

c. Lawyer should discreetly disclose his client's remorse and admissions to the other side in an effort to seek an amicable settlement of the case.

d. Lawyer should do everything reasonably possible within the bounds of law and ethics to achieve a favorable verdict or settlement for his client.

10 Lawyer represents a movie producer under indictment for sexual assault. When the producer denied the charges, one of the complaining witnesses responded by suing the producer for defamation. Lawyer is experienced in criminal defense and civil tort litigation, but she has no experience in defamation law. The producer wants Lawyer to handle the defamation case.

- a. Lawyer must decline to provide representation on the defamation case because Lawyer no experience in that area.
- b. Lawyer must represent the client in the defamation case because it is closely factually related to the criminal charges.
- c. Lawyer may properly accept the defamation case if she can get sufficiently up to speed on defamation law with reasonable preparation.
- d. If Lawyer takes on the defamation case, she must associate or consult with someone who has established competence in defamation law.

11 Despite her client's denials in the preceding question, Lawyer has some doubts about his innocence in the criminal case. She wonders if she should ask her client to tell her, confidentially, whether he did it or not.

- a. Most criminal defense lawyers would probably agree that Lawyer should ask her client if he "did it."
- b. According to an ABA opinion, there is reason to conclude that Lawyer is ethically required to ask her client whether he committed the acts he's charged with.
- c. Criminal defense lawyers generally feel they need to know whether their client really did it or not because, otherwise, they're "flying blind."
- d. All of the above.

12 Distracted by other matters, Lawyer missed a filing deadline in a lawsuit. As a result, the client's case was dismissed. The client had a strong case and probably lost out on over \$500,000 as a result of the dismissal. Other than this one big mistake, there's no pattern of behavior or other reason to question Lawyer's fitness to practice law.

- a. In circumstances like these, it's likely that Lawyer will be brought up on discipline and disbarred.
- b. Lawyer is likely to be brought up on discipline for this blunder but is not likely to be disbarred.
- c. Most would probably agree that opposing counsel has an ethical obligation to report Lawyer's failure to the disciplinary authorities.
- d. Situations like this are generally left to redress by malpractice proceedings rather than being pursued by the disciplinary authorities.

13 Lawyer has three cases coming up for trial at about the same time. She also represents clients in several business transactions that are getting very active. Lawyer has started developing a pattern of getting behind in returning phone calls, answering emails and otherwise keeping up with client communications. Several of her clients are becoming frustrated and are thinking about reporting her to the disciplinary authorities. So far, however, no one has lost any money or suffered any noticeable legal setback due to Lawyer's delays.

- a. Lawyer's conduct and neglect are ethically questionable under MR 1.3.
- b. As long as no one is hurt monetarily, there is no ethical problem in this situation.
- c. All successful lawyers are busy, and most agree that it's up to the client to make sure the lawyer pays due attention to the client's matters.
- d. A client chooses his lawyer at his peril and mere lawyer neglect is not a cause for ethical concern.

14 Lawyer is a recently admitted associate at a medium-sized law firm. A substantial part of her work at the firm is under the direct supervision of Partner, who (with the other partners) has managerial control of the firm. In preparing one of Partner's cases for trial, Lawyer violated the no-contact rule in order to obtain certain valuable information. The disciplinary authorities are considering the possibility of discipline not only for Lawyer, but also for Partner.

- a. Because of Partner's managerial role in the firm, Partner would also be subject to discipline for the no-contact rule violations committed by Lawyer.
- b. Because Lawyer was working under Partner's direct supervision, Partner would also be subject to discipline for the no-contact rule violations committed by Lawyer.
- c. Both of the above.

- d. Partner should not be subject to discipline if Partner made reasonable efforts to ensure that Lawyer conformed to the rules.
- e. There is no reason to conclude that Partner could be subject to discipline on these facts.

15 Lawyer is recently admitted and unsure how far he should go in guiding his clients in the management of their affairs. He asks you if there's anything on this question in the Model Rules. Which of the following would you consider the best response?

- a. In general, as the legal professional, Lawyer should decide the objectives of the representation as well as the means by which the objectives are pursued.
- b. Lawyer should let the client decide the objectives of the representation and should consult with the client concerning the means for pursuing them.
- c. Generally, the client decides the objectives of the representation and also has most of the responsibility for determining the means to be used in pursuing them.
- d. Because this is mainly a question of agency law, the Model Rules say nothing on the topic.

16 Lawyer represents a client accused of robbing a gas station. The client claims that he is innocent and wants to testify at his upcoming trial. Lawyer is concerned that the client would not be a good witness and that his testimony would only make things worse.

- a. As the one who's supposed to decide the means of representation, Lawyer can and should refuse to allow this client to testify at the trial.
- b. Lawyer could very well end up being liable to the client for malpractice if he allows the client to testify at trial.
- c. Both of the above.
- d. As an ethical matter, the decision of whether the client testifies at trial in a criminal prosecution is for the client to make.

17 Lawyer represents the defendant in a personal injury case. The client has told Lawyer to negotiate the best settlement deal she can but not to settle for anything above \$250,000. The plaintiff has offered to settle for \$300,000, and Lawyer thinks the jury may well come in with a verdict far more than that. Plaintiff's attorney called Lawyer and told him the \$300,000 offer would be "off the table after 5 p.m. today." Based on his extensive expertise in these matters, Lawyer agreed to the \$300,000 settlement offer on his client's behalf.

- a. Under the usual rules of agency, the \$300,000 settlement agreement would be binding on Lawyer's client.
- b. Under the ethical rules, Lawyer acted properly in accepting the \$300,000 settlement agreement on behalf of his client.

- c. Most courts would say that Lawyer had apparent authority to agree to the \$300,000 because the client authorized Lawyer to negotiate a settlement.
- d. None of the above.

18 In the run up to a personal injury trial, the plaintiff's lawyer was heard to say that his client was water skiing in Florida just a week before. The extent of the plaintiff's injuries is a hotly contested issue in the case, and the lawyer's statement could be highly prejudicial against the plaintiff if presented at trial. Ordinarily, evidence of the statement could be excluded as hearsay, but the defendant claims there's an exception.

- a. The lawyer's statement is admissible as a vicarious admission, but it can be rebutted with evidence that the plaintiff did not water ski or do anything of the kind.
- b. The lawyer's statement is admissible as a vicarious admission, and it cannot be rebutted.
- c. The lawyer's statement cannot be admitted at trial because it was a violation of the lawyer's duty of confidentiality.
- d. The lawyer's statement cannot be admitted if it was not made as a necessary part of the litigation.

19 Lawyer is trying to reach a deal on a long-festering business claim against her corporate client. During a telephone conversation with the other side, it became apparent that the opposing counsel misunderstood the statute of limitations. He told Lawyer he planned to commence legal action about a

month after the statute will have run. Lawyer thinks that, by continuing to negotiate normally, she can lull the opposing counsel into filing too late.

- a. Lawyer is ethically expected to give the opposing counsel a heads up if she sees he's about to make a blunder.
- b. For Lawyer to negotiate normally in this situation is exactly the kind of trickery that gives the profession a bad name, and it would be unethical.
- c. Most would agree that Lawyer should continue to negotiate normally and not give the other side a heads up on the statute of limitations.
- d. In carrying out her responsibilities, Lawyer should remember that her first loyalty is to assure that justice is served.

20 Client has been sued for breach of contract in federal court. He turned the summons-and-complaint over to Lawyer, who said he'd "take care of everything." Client repeatedly asked Lawyer how the case was coming along, and Lawyer always replied with reassurance that everything was going fine. Client recently learned that, due to Lawyer's inexcusable neglect, no response had been filed to a motion for summary judgment in the case. Client now has a large default judgment rendered against him. Client's new lawyer is investigating the options.

- a. It is unlikely that Client can have the judgment reopened, meaning that Client won't have an opportunity to defend the case on the merits.

- b. The court is likely to reopen the judgment and let Client defend on the merits because Lawyer's inexcusable neglect was an "extraordinary circumstance."
- c. The court will probably reopen the judgment and let Client defend on the merits because Client was diligent in asking Lawyer about the progress of the case.
- d. Both b. and c. above.

21 The owner of a local ice cream business retained Lawyer to provide legal services on matters that arise from time to time. Today, he mentioned to Lawyer that he does not have a will. Lawyer has no experience in estate planning work and told the client that he'd help find somebody with proper experience to do it. The client seemed a little miffed. Can Lawyer legitimately limit the representation to the needs of the ice cream business and not get involved in the client's estate planning matters?

- a. Yes, Lawyer may ethically limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- b. No, a lawyer should not take on a new client unless the lawyer is ready and able to handle all reasonably foreseeable needs that the client may have.
- c. Yes, it is up to Lawyer to decide what services he will provide, and the ethical rules place no conditions or limitations on a lawyer's ability to just say no.

- d. No, there's probably no ethical way that Lawyer could or should legitimately limit the representation to the needs of the ice cream business.

22 Client came to Lawyer and said: “I have a worker’s compensation claim and I’d like you to handle it.” Lawyer said fine, and they signed a retainer agreement for the claim. Later, reviewing the accident report, Lawyer realized that Client also had a valuable tort claim against a third party. Should Lawyer mention this tort claim to Client?

- a. No, lawyers should not jump in gratuitously and try to expand the representation beyond the matters that the client has asked them to handle.
- b. No, Lawyer has no reason to mention the tort claim to Client because Client has only retained Lawyer to represent him on the workers compensation claim.
- c. Yes, Lawyer should inform Client about any reasonably apparent other claims Client may have if it’s reasonably foreseeable that Client otherwise won’t be aware of them.
- d. No, in the interest of good client relations, Lawyer should not mention the tort claim to Client unless Lawyer is willing to represent Client on that claim.

23 Lawyer represents Client in the purchase of a downtown warehouse for his business. In the course of representing another client (a building contractor), Lawyer learned from a city building inspector that the warehouse has severe structural

problems—a fact that also related to the representation of the building contractor. Lawyer wonders if he should pass this information on to Client.

- a. The most ethical thing for Lawyer to do is to promptly inform Client, without further ado, that the warehouse has structural problems.
- b. Because of Lawyer’s duty to communicate with Client, he is ethically permitted to pass the information on to Client even if the contractor says no.
- c. Before passing the information to Client, Lawyer would be ethically required to get the contractor’s informed consent.
- d. Lawyer has no ethical duty to pass the information on to Client because Lawyer acquired the information while representing a different client (the contractor).

24 Client is about to be interviewed by federal enforcement agents concerning an alleged bribery situation. False statements made in such interviews are a crime and could lead to five years in prison. On the other hand, the bribery charges might result in 10 or more years imprisonment. Client asks Lawyer what the penalties would be for false statements. Lawyer believes Client may be looking for information that will help him decide whether to try to lie himself out of the bribery situation.

- a. Telling Client the penalties for false statements would be unethical if Lawyer has reason to believe it might help Client decide to lie.

b. Lawyer should not talk with Client about the penalties for legal violations but, instead, counsel Client to stay within the bounds of the law.

c. There's nothing unethical about advising a client how he might engage in wrongdoing with impunity. That is often the lawyer's main job.

d. It is not improper for Lawyer to give an honest opinion about the actual consequences that can result from Client's proposed conduct.

25 Lawyer provides routine business-related representation for an auto body shop, a legitimate business that repairs wrecked cars. Lawyer recently learned from one of the workers in the shop that his client does occasional "special" jobs fitting out cars with secret compartments in door panels and the like. For these criminal services, the client is paid handsomely by certain drug traffickers he's known since high school. The lease for the client's shop is up for renewal, and the client has asked Lawyer to review the proposed new lease. If Lawyer provides only routine legal services to the client (such as advice on the lease):

a. Lawyer could not be properly considered to be unethically "assisting" the client's crimes.

b. Lawyer could not properly be considered a criminal accomplice in the client's crimes.

c. Both of the above.

d. None of the above. Lawyer cannot ethically provide legal services that he knows assist the client in carrying on criminal activities.

26 Lawyer agreed to write a brief *pro bono* for a client who was recently convicted at trial. Going over the trial record, Lawyer found at least 16 likely errors that could serve as bases for appeal. The client told Lawyer he wanted the brief to discuss all 16 bases for appeal. However, over the client's objection Lawyer wrote and submitted a brief that discussed only four of them. The appellate court decided the appeal against the client.

a. The client can probably recover malpractice damages from Lawyer since Lawyer disobeyed the client's explicit instructions.

b. The client can probably recover malpractice damages from Lawyer if a court finds that at least one of the omitted bases for appeal had great merit.

c. The adverse appellate court decision will likely be set aside on the ground that Lawyer's failure denied the client effective assistance of counsel.

d. None of the above.

27 Same facts as the preceding question. Lawyer's refusal to follow the client's explicit instructions:

a. Technically violated Lawyer's agency responsibilities to the client, but the client probably doesn't have any effective redress.

- b. Would be considered a blatant violation of the Model Rules.
- c. Both of the above.
- d. Would generally be treated as serious malpractice for which substantial damages would be awarded.

28 Lawyer represents a corporate client that sells products internationally. There have been reports that some of the client's overseas employees have been paying bribes to foreign officials to smooth the way with local red tape. Lawyer advises the client that the bribery is a U.S. Federal offense and the client, as employer, could be held criminally responsible.

- a. If the client has no way to stop the bribery without unreasonable losses of sales, Lawyer should consider advising the client on ways to keep future bribery from coming to light.
- b. Lawyer presumptively represents the employees as well as the corporation, so Lawyer's consultations with the employees would be protected by the attorney-client privilege.
- c. If the client is charged with violating the US laws on bribery, Lawyer may ethically defend the client in court and try to get a complete acquittal.
- d. All of the above.

29 Lawyer represents the seller of a business. Lawyer is supposed to give a legal opinion letter at the closing of the deal. In addition, she's drafted a number of closing documents that are to be signed and delivered by the client. Belatedly, Lawyer realizes that her client has lied to the buyer about the financial status of the business. It is worth substantially less than the buyer has been led to believe. Lawyer cannot persuade her client to tell the buyer the truth:

- a. Lawyer must withdraw from the representation and provide no further assistance in the sale, but it's up to her whether to tell the other side that she's doing so.
- b. Though Lawyer must withdraw from representation, she should respect her duty of confidentiality and not even hint to the other side what her client is up to.
- c. Even though Lawyer may withdraw from the representation, she could still provide her opinion letter as long as the letter itself is truthful.
- d. Lawyer must withdraw from the representation and should tell the other side that she's disaffirming any documents that she previously drafted for the sale.

30 Same facts as the preceding question. Assume also that Lawyer reasonably believes that, even if she withdraws, the seller will still try to utilize some of her past services to defraud and cause substantial financial injury to the buyer.

- a. She would be required by Model Rule 1.6 to reveal information about her former client's prospective fraud to the extent reasonably necessary to prevent the fraud.

b. She may be permitted but not required to reveal information about her former client's prospective fraud under Model Rule 1.6.

c. She may be required to reveal information about her former client's prospective fraud under Model Rule 4.1 read together with Model Rule 1.6.

d. Both b. and c. above.

31 Lawyer got a call from opposing counsel asking for an extension of time to file a response to a summary judgment motion. Lawyer realized (and the other side apparently did not) that a court order was required to grant the extension. It would greatly benefit Lawyer's client if the other side defaulted by failing to file before the deadline.

a. Most practitioners would probably agree that Lawyer's duty of civility requires her to alert the other side on the need for a court order.

b. Lawyer shouldn't warn the other side about the need for a court order without first getting her client's consent.

c. It might affect Lawyer's professional reputation to not warn the other side, and she should not let the client intermeddle in this delicate decision.

d. Lawyer could be subject to discipline if she does give the other side a heads up about the need for a court order.

32 Lawyer represents a builder being sued for breach of contract. No fraud or crime is involved. Lawyer was told by a supplier that his client sometimes used cheap materials when the usual quality materials were unavailable. Lawyer believes it would be very unhelpful for his client's case if this statement were to come to the attention of the plaintiff's attorney.

a. Helpful or not, Lawyer should pass this obviously relevant information on to the plaintiff's attorney.

b. Lawyer should pass this information on to the to the plaintiff's attorney, but only if he's specifically asked.

c. Lawyer should not volunteer this information to the plaintiff's attorney because it's protected by the rule of confidentiality.

d. This information is protected by the attorney-client privilege.

e. Both c, and d. above.

33 Lawyer handles transactions matters (but not litigation) for an investor who owns a large apartment building. The client is being sued by tenants who allege "harassment" to get them out. This litigation is being handled separately by another attorney not associated with Lawyer. The tenants are seeking evidence to support their claim of harassment. They have demanded that Lawyer sit for a deposition concerning private legal consultations between Lawyer and the investor. Assuming no crime or fraud is involved or alleged:

- a. The deposition would probably be barred by the rule of confidentiality, which prevents Lawyer from disclosing information relating to the representation.
- b. Information about consultations that the tenant's attorney hopes to get in the deposition would probably be protected by the attorney-client privilege.
- c. Both of the above.
- d. There's no reason why Lawyer shouldn't be required to testify fully about his consultations with the client because he doesn't represent the client in the harassment case.

34 Lawyer represents a client who's accused of smuggling an ivory-studded bracelet into the country. In private consultation with Lawyer, the client admits the charge and adds that the bracelet is currently secreted in a small box in a shed on her mother-in-law's property. Lawyer goes to the shed, finds the box and sees the bracelet inside.

- a. If Lawyer leaves the bracelet where it is, he cannot be forced to testify as to the location where he saw it.
- b. If Lawyer takes the bracelet back to his office for safekeeping, he cannot be forced to testify as to the location where he originally found it.
- c. Both of the above.

- d. None of the above. The location of physical evidence is not a "communication" and therefore would not be protected by the attorney-client privilege.

35 A trusts-and-estates client called Lawyer and asked if it would be okay to use his old cell phone as a trade in on a new one. Lawyer said it was not a problem but advised the client to destroy the SIM card from the old phone because it might contain privileged information about lawyer-client communications. A few months later, a criminal investigation was initiated against the client. The prosecutor is very annoyed that the SIM card was destroyed. Should Lawyer be concerned that she and her client might be indicted for destruction of evidence?

- a. Yes, destruction-of-evidence statutes are very broad prohibitions on the destruction of anything that might later turn out to be relevant in an official proceeding.
- b. Probably not as long as destruction of the SIM card was not for the corrupt purpose of making it unavailable as evidence in an official proceeding.
- c. Probably yes, because SIM cards are very small and take up little space, so there is rarely, if ever, a legitimate need to destroy them.
- d. Probably no, because lawyers cannot be prosecuted for merely giving legal advice and clients cannot be prosecuted for following the advice in good faith.

36 Client brought a knife to Lawyer's office and said he'd used it in an accidental stabbing. Lawyer took possession of the

knife for DNA testing. The prosecutor does not agree that the stabbing was accidental, but she is unsure who did it. Client is one of several suspects. If Lawyer turns the knife over to the police, it would surely point the finger at Client.

- a. Lawyer doesn't need to turn the knife over to the police because his possession of it is protected by the attorney-client privilege.
- b. Most cases seem to agree that Lawyer should turn the knife over to the police, but he cannot be properly compelled to disclose that he got it from Client.
- c. Lawyer should not turn the knife over to the police because defense lawyers cannot be forced to provide the state with evidence that incriminates their clients.
- d. Lawyer must turn the knife over to the police and tell them who he got it from.

37 Lawyer represents a delivery company. One of the client's drivers, a three-year employee, was involved in an accident. Lawyer went to speak confidentially with the driver to get information about the accident. Lawyer makes clear to the driver that Lawyer only represents the company and not the driver. Under the *UpJohn* rule,

- a. Lawyer should reassure the driver that whatever he tells Lawyer is protected by the attorney-client privilege and can't be disclosed without the driver's consent.
- b. Statements that the driver makes to Lawyer will not be protected by the attorney-client privilege.

c. Statements that the driver makes to Lawyer *will* be protected by the attorney-client privilege, but the driver probably cannot prevent their disclosure.

d. Statements that the driver makes to Lawyer will be protected by the attorney-client privilege and the driver *can* prevent their disclosure.

38 Same facts as in the preceding question. The attorney representing a person injured in the accident has demanded Lawyer's notes of his confidential conversations with the driver. Lawyer has refused.

- a. Lawyer may properly request the driver to refrain from voluntarily speaking with opposing counsel, even if Lawyer does not represent the driver in the case.
- b. It would be unethical for Lawyer to ask the driver to refrain from speaking with opposing counsel if Lawyer doesn't represent the driver in the case.
- c. If Lawyer doesn't represent the driver, there's no reason opposing counsel might need Lawyer's consent to contact the driver about the case.
- d. Opposing counsel could probably get a court order, over the company's objection, requiring Lawyer to share his notes from his conversations with the driver.

39 A client in a civil case has just informed Lawyer that he's been chatting on the phone with opposing counsel. The client says he's reached a settlement. Lawyer is astonished and, what

is more, believes the settlement is a very bad deal. Nobody had sought or obtained Lawyer's consent for direct negotiations between the client and opposing counsel.

- a. The settlement would not be binding because the client did not have authority to negotiate directly with the opposition.
- b. Lawyer did not "own" his client and has no legitimate complaint if the opposing lawyer dealt directly with the client.
- c. There was nothing improper about the direct negotiations as long as the client initiated the contact.
- d. The opposing lawyer acted unethically in dealing directly with Lawyer's client without Lawyer's consent.

40 Lawyer has a client who thinks he was ripped off by a car dealer. The car he'd contracted to buy was supposed to have 278 hp., but the one he received had a smaller engine. Lawyer called up the dealership's general manager and got him to admit that the dealership was liable to the client for a substantial amount of money. The dealership's regular retained counsel is very angry and says that Lawyer is subject to discipline for what he did.

- a. The dealership's regular retained counsel has a point, and Lawyer probably acted unethically in communicating directly with the general manager.

b. There'd be no problem with Lawyer talking directly to the general manager if the general manager didn't tell Lawyer that the dealership had a lawyer of its own.

c. Lawyer was ethically permitted to talk directly with the general manager because he's only an employee and not a client of the dealership's lawyer.

d. Given the circumstances and information available, Lawyer was probably safe in assuming that the dealership was not represented by counsel of its own.

41 A litigation client called Lawyer and told her that he'd been approached by the person he was suing. Both parties agreed that they wanted to sit down "just the two of them" and talk about the case without the lawyers present.

- a. Lawyer's client may communicate with the other party, and there are essentially no limits on Lawyer's advising her client concerning such communications.
- b. Lawyer's client may communicate with the other party, but Lawyer should not consult with or advise her client concerning such communications.
- c. Lawyer may ethically advise her client concerning meetings with the other party but should take care not to violate the no-contact rule through acts of the client.
- d. Lawyer should not let her client speak with the other party directly without the consent of the other party's lawyer.

42 Client is under federal investigation for participation in an illegal online betting scheme. He has not yet been arrested or indicted. Lawyer just learned that the prosecution has obtained incriminating evidence against Client. The evidence was obtained by sending in one of Client's business associates to talk to Client under a ruse and wearing a wire. All of this occurred after the prosecutors had been notified that Lawyer was representing Client in the matter.

- a. Lawyer has no basis for complaint about the contact with Client because Federal prosecutors are not bound by state ethics rules.
- b. The information obtained through the informant could not be introduced against Client because it was obtained by deceit and trickery.
- c. The information obtained through the informant could not be introduced against Client because it was obtained in violation of the no-contact rule.
- d. Even if the prosecutors violated the no-contact rule in obtaining the evidence, it would not follow that the evidence is inadmissible against Client at trial.

43 Lawyer's firm represents a real estate investor that owns a number of large apartment complexes. The representation mostly deals with financial and governmental regulation. Lawyer has nothing to do with the representation. A close friend of Lawyer has a daughter who lives in one of the client's buildings. She received a notice that eviction proceedings had been commenced against her. As a favor, Lawyer helped her

write up response papers to submit to the court. There is no conflict-of-interest issue here as long as:

- a. Lawyer provides his legal services to the daughter solely as a favor.
- b. Lawyer never handles routine landlord-tenant matters for the investor.
- c. Lawyer was adequately screened.
- d. None of the above. Lawyer appears to have a non-waivable conflict of interest.

44 Lawyer went to court with a tenant whom she represents in eviction proceeding. As they were waiting for their case to be called, the landlord's attorney approached Lawyer and said he'd agree to dismiss the proceeding if the tenant paid \$1635 of the back rent immediately. The deal was a good one, but the tenant said she couldn't get the money until her next paycheck in 2 days. Lawyer decided to simply write her own personal check for the \$1635, which the client promised to repay. Assuming the \$1635 is not an expense of litigation, is there any problem with this course of action?

- a. Yes, it would be a flat-out violation of the ethical rules for Lawyer to provide this financial assistance to her client.
- b. Yes, though the course of action is not technically improper, it is very risky from a financial point of view.

- c. No, lawyers frequently provide financial assistance to their litigation clients, and there's no ethical issue.
- d. No problem as long as the \$1635 is a bona fide loan and not a gift.

45 An insurance company arranged for Lawyer to represent one of its insureds who's being sued for negligence. The insurance company is paying Lawyer's fees.

- a. Under the traditional view, Lawyer owes her primary loyalty to the insurance company, because the insurance company is one that's paying the fees.
- b. Lawyer would have an ethical duty to keep the insurance company fully informed concerning the status of the litigation, and Rule 1.6 does not apply.
- c. Lawyer should follow the instructions of the insurance company concerning the means used in representing the insured.
- d. All of the above.
- e. Some would say that Lawyer represents both the insured and the insurance company in this situation, though that is not the traditional view.

46 Lawyer works in the trust and estates department at a law firm. The firm also does a major amount of corporate work for a supermarket chain. Being a wills and trusts specialist, Lawyer has nothing to do with the supermarket client. One of Lawyer's friends broke a tooth when he bit into a carrot bought at a

supermarket that Lawyer's firm represents. The carrot contained a nail. The friend wants to sue the supermarket chain. Can Lawyer ethically represent the friend in bringing the lawsuit?

- a. Yes, as long as Lawyer contributes no legal work to the firm's representation of the supermarket chain in the friend's case.
- b. Yes, if Lawyer is adequately screened.
- c. Yes, because the rules allow different departments of law firms to be treated as different firms for purposes of imputing conflicts of interest.
- d. No.

47 Opposing counsel in a personal injury case casually asked Lawyer whether her client, the plaintiff, had been involved in any other automobile accidents in the past two years. Lawyer knew her client had been in an accident about 22 months before, but nonetheless answered: "I don't think so." After the case was settled, opposing counsel found out that he'd been misled. A civil suit was brought against Lawyer for deceit and misrepresentation. Most would say Lawyer should not be held liable on these facts because:

- a. Opposing counsel does not have a right to rely on statements that the adversary attorney makes in the context of negotiations.

- b. Opposing counsel had other ways to get accurate information and was just trying to take the “lazy way out” to request the information from the adversary
- c. Lawyers are held to a less stringent standard of honesty and truthfulness for statements made on their client’s behalf in negotiations.
- d. None of the above. Most would say that Lawyer could be held liable for deceit and misrepresentation on these facts.

48 During protracted negotiations of a slip and fall case, one of Lawyer’s key witnesses (*not* a party) passed away after being deposed by the opposition. The witness’s testimony was compelling, and it probably would have favorably affected the damages that a jury would have awarded to Lawyer’s client. Lawyer did not inform the other side of the witness’s death, and a very handsome settlement was agreed to as a result. The other side now claims it was “bamboozled,” and has asked the court to vacate the settlement.

- a. Most would agree that the settlement should be vacated because it was agreed to based on false pretenses.
- b. Lawyer has violated the norms of fair play, and the settlement should be vacated in the interests of justice.
- c. Lawyer had no general duty to volunteer relevant information to the other side and, therefore, no duty to inform the other side of the witness’s death.

- d. The settlement should be vacated because the lawyer hid information concerning the death of a witness in the case.

49 One of Lawyer’s former clients, R, has an 18-year old daughter, D, who was involved in a car crash. R has asked Lawyer represent D in the matter—for a fee to be paid by R. In the first interview, D tells Lawyer she was using cocaine the night of the crash and says she absolutely doesn’t want her dad to know about it. Lawyer feels torn, however, because he feels a moral obligation to tell R. After all, R is paying his fee.

- a. Lawyer should not feel torn. He has an ethical duty to communicate material information concerning the representation to R, who’s paying his fee.
- b. Even if R is not the client, Lawyer is ethically permitted, in his discretion, to disclose information about the representation to R.
- c. In cases such as this, Lawyer’s ethical responsibility and duty of confidentiality is to both D and R, though primarily to R, the person who’s paying the fee.
- d. Since D is the client in this matter, Lawyer owes an ethical duty to D to keep her information confidential, even from R.

50 Lawyer has a client who’s suing for injuries sustained in an accident. The client complains of a knee condition that was almost certainly caused by the accident, but it might have pre-existed it. Counsel for the opposing side directly asked Lawyer if there’d been any pre-existing issues with the knee. Lawyer

knew for a fact that his client had a pre-existing knee issue (which was information relating to the representation). Of the *following* responses, which would be Lawyer's best response to his opponent's question in order to avoid liability for fraud?

- a. Shrug and then say "I don't know."
- b. "Hmm. I don't want to just answer that off the cuff."
- c. "Not that I know of."
- d. "Absolutely not."

<end of examination>