PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY
PROFESSOR HUMBACH December 12, 2018
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 any "informed consent" 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 Greg Gilmartin was reading the ABA's "Lawyer's Creed" and noticed it says he should endeavor to achieve his "client's lawful objectives." Which of the following objectives would lawyers generally *not* consider "lawful"?

a. A client wants Gilmartin to help her avoid having to perform a contract without being held liable for damages.

b. A client wants Gilmartin to help him avoid a large liability judgment after he drove negligently and caused permanent disability to a pedestrian.

c. A client who is running an illegal gambling business wants Gilmartin to help him avoid being prosecuted and sent to jail.

d. All of the above would be considered "lawful" objectives of the client.

e. None of the above would be considered "lawful" objectives of the client.

2 A judge assigned Bevin Rambello to serve as legal guardian for a wealthy but incapacitated widower. The potential fees are very substantial. However, Bevin notes, the legislature has just passed a statute requiring lawyers to complete a 12-hour CLE program before serving as legal guardians. He wonders if this statutory requirement, imposed by the legislature, is valid.

a. Probably yes, because the legislature has the power to regulate the practice of law just like it can regulate any other profession.

b. Probably no, because the legal profession is regulated by the ABA and is not subject to legislative interference.

c. Probably yes, because the judicial power to regulate the practice of law is, like all judicial power, fully subject to statutes adopted by the legislature.

d. Probably no, because of the "negative" inherent power of the courts.

3 The main purpose of lawyer discipline is:

a. To assure that victims of professional misconduct receive compensation for their losses.

b. To protect the public and the administration of justice.

c. To punish lawyers who cannot keep themselves in compliance with the rules.

d. To provide malpractice damages for clients who receive substandard legal services.

4 Hank McCramer is a sole practitioner. While out walking his dog, he ran into the lawyer representing a man who was being sued by one of Hank's clients. The other lawyer said "Oh, I have something for you" and handed Hank $500 cash

"from my client to your client—a part payment of what he owes." Hank put the money in his left pocket, separate from his own money, which was in his right pocket. On his way home, he stopped at a liquor store and didn't have enough money at the check-out. To avoid embarrassment he borrowed a few dollars from his left pocket, paid the cashier and then he replaced it when he got home. Under the rules:

a. There is no ethical violation here because no one knew what Hank had done.

b. There is no ethical violation here because no one was harmed or even at risk of being harmed.

c. There was no ethical violation because Hank acted to avoid embarrassing himself and, by extension, the legal profession.

d. Hank has violated the ethical rules with respect to safeguarding clients' money and property.

5 Bill Thornton represents an accused street pusher named Gabbot. In confidential communications in connection with this representation, Gabbot incidentally told Thornton certain information concerning Furth, another of Thornton's clients—information that was *not* related to Thornton's representation of Gabbot. Later, Gabbot was released from jail and has disappeared. The prosecutor would like to know what Gabbot told Thornton about Furth.

a. Under his duty of confidentiality to Gabbot, Thornton should not divulge this information voluntarily.

b. Under his duty of confidentiality to Furth, Thornton should not divulge this information voluntarily.

c. Both of the above.

d. None of the above.

6 Suppose in the preceding question the prosecutor goes to court and attempts to compel Thornton to divulge the information about Furth. Gabbot does not mind if Thornton divulges the information and, in hopes of leniency from the prosecution, says he is willing to waive the attorney-client privilege. The attorney-client privilege:

a. Would prevent compelled disclosure if Gabbot doesn't waive the privilege, but it wouldn't prevent compelled disclosure if he does waive.

b. Does not apply to the information and thus would not prevent compelled disclosure by Thornton whether or not Gabbot is willing to waive the privilege.

c. Belongs to Furth and, therefore, it *would* prevent compelled disclosure by Thornton whether or not Gabbot waives the privilege.

d. Belongs to both Furth and Gabbot and, therefore, it *would* prevent compelled disclosure by Thornton unless both of them waive the privilege.

7 Mike Potter is a recently admitted lawyer. He has just started working as a public defender. He went to his boss for advice. When interviewing new clients down at the jail, he

asked, should he ask them if they actually did the things they've been charged with? The ethically correct advice would be:

a. "No, never. You don't want to limit what you're permitted to argue because you know the truth."

b. "Yes, but only if you're pretty sure your client is not guilty."

c. "Yes in order to meet your professional obligations of thoroughness and candor to the court."

d. "No, why bother? They all lie anyway."

8 Mike in the preceding question was just assigned a new case. His client is a teen accused of breaking into cars. As a new lawyer, Mike has never handled this kind of case before and he wonders if it is ethical for him to take it on.

a. Yes, but only if he finds another lawyer, with experience in that area, to associate with him on the case.

b. Yes, as long as the needed competence can be achieved by reasonable preparation.

c. Absolutely, yes. Everybody has to start somewhere, and Mike should play it as best he can.

d. No. For the sake of the clients, lawyers should only take on cases that they have the experience to handle.

9 Mattie Evans was admitted to the bar a couple of years ago. She has been extremely successful at getting clients. Last summer she was asked to run for the state legislature. The demands of her campaign take up unexpectedly large amounts of time. She's been forced to let some of her client's matters slide and she's been chronically late in returning calls, drafting papers, reviewing documents, and dealing with her clients' other needs. Fortunately, there's been no actual malpractice, yet. Mattie's neglect of her client' matters:

a. Is an ethical problem and, if she doesn't get things in hand, she risks being brought up on disciplinary charges.

b. Would not normally be considered an *ethical* problem and her only real concern would be the potential for malpractice liability.

c. Would not be considered an ethical problem because, as the courts say, "a litigant chooses counsel at his peril."

d. Would be ethically excusable since she has a reasonable explanation for the pressures on her time.

10 Marissa Stenich represents the plaintiff in a medical malpractice case. He told her he'll settle "as long as it's more than $450,000." At a pre-trial conference (that the clients did not attend), the judge put great pressure on the two lawyers to settle. The defendant's insurance company offered "$425,000, maybe $430,000, but no more." The judge said he thought it was a fair offer and that Stenich should take it. She finally agreed to $430,000, hoping to persuade her client. However,

the client refused to go along and rejected the settlement. Under the usual rules of agency:

a. Stenich's client would be bound to the settlement amount because lawyers have inherent authority to bind their clients to settlements made before a judge.

b. If Stenich's words or conduct indicated to the other side that she was authorized to settle for $430,000, then she had apparent authority do so.

c. Even if Stenich had no actual authority to settle for $430,000 the settlement could still be binding if her client told the other side she had "full power to settle."

d. The ethical rules give final authority on settlements to the client, so there's no way Stenich could bind her client to a settlement if the client did not actually agree.

11 In the previous question, suppose Stenich's client has made a motion to set aside the settlement based on Stenich's lack of authority. The judge agrees that Stenich lacked authority to settle for $430,000 but also decides that, in fairness, the risk of lack of authority should be on the client whose lawyer acted without authority. To achieve this, the judge should:

a. Set aside the settlement.

b. Hold that Stenich's client is bound to the $430,000 settlement.

c. Order that the parties proceed to trial as though the settlement never happened.

d. Hold that the settlement is valid but that the amount should be $450,000 instead of the original $430,000.

12 Denman, represented by Holm, is suing Cristo for breach of contract. While speaking with Cristo's lawyer about a witness list, Holm mentioned off the cuff that his client wouldn't have been able to perform his side of the contract anyway. That statement happened not to be true but now Cristo's lawyer wants to introduce it into evidence against Denman on the issue of damages.

a. The statement would be inadmissible because it is hearsay.

b. The statement is admissible and binding on Denman (irrebuttable) because it was made by Denman's lawyer.

c. The statement is admissible against Denman, but Denman can rebut it with other evidence.

d. There is no reason to question the admissibility of the statement as long as it is relevant to the issues in the case.

13 Based on a fuzzy security-camera video, Norris was charged with an armed robbery he did not commit. He has an alibi witness, but his lawyer did not disclose the witness's identity to the prosecution prior to the trial, as local rules require. His reason for not doing so was he did not want to give the prosecutor a chance to confuse the witness and possibly break his story during pre-trial interviews. At trial, the judge

refused to let the undisclosed witness testify and Norris was convicted. Norris demands a new trial citing the constitutional right that criminal defendants have to call witnesses in their own defense.

a. Norris is entitled to a new trial because it was error for the court to deprive Norris of a constitutional right.

b. Norris is entitled to a new trial because his lawyer's mere tactical decision cannot be binding on Norris if it deprives him of a constitutional right.

c. Norris is entitled to a new trial because constitutional rights are inalienable and defendants cannot be denied the right to assert them.

d. All of the above.

e. These facts indicate no reason why Norris would be constitutionally entitled to a new trial.

14 McNulty is being sued for $150,000. The plaintiff claims he was bitten by McNulty's dog. McNulty did not, however, have a dog, and he never has. McNulty retained Wesley Rippon to represent him. Several times he asked Rippon how the case was going. Rippon always assured him that everything was going fine. Later, McNulty got a notice of a default judgment against him. Rippon, it turns out, had done nothing on the case.

a. A court would probably not consider that these circumstances present a proper case for setting aside the default judgment.

b. McNulty can probably have the default judgment set aside because his lawyer lied to him, lulling him into default.

c. McNulty can probably have the default judgment set aside if Rippon did not have adequate malpractice insurance to cover the loss.

d. The court will probably set the default judgment aside because McNulty did not have a dog.

15 During a party, attorney Nat Wilson had a little too much to drink and told a funny story about one of his clients. In the story he revealed certain confidential information. The client suffered financial injury and embarrassment as a result.

a. Wilson is subject to discipline under the rule of confidentiality, but is not liable for money damages.

b. Wilson violated his agency duties by telling the story, so his client is bound by what he said.

c. Wilson violated his agency duties by telling the story and also the ethical the rule of confidentiality, but the two are essentially redundant.

d. Wilson should be liable to his client for damages for violating his agency duty of confidentiality.

16 Calvin Thorne does trusts and wills work, and nothing else. A client came in to get a will done and told Thorne about how he had a recent bicycle accident involving a rental bike. Thorne

doesn't remember a lot about torts law, but he thinks the client may have an action against the bike rental company. However, as a wills and trusts lawyer, he does not feel competent to do torts work and does not want to get involved.

a. Thorne has no responsibility to mention the possible tort action against the bike rental company if the client retained him only to draw up a will.

b. Thorne should notify his client of reasonably apparent legal claims if it's reasonably foreseeable that the client will be otherwise unaware of them.

c. Thorne should not mention the possible tort action against the bike rental company unless he wants to take on the case—which he doesn't.

d. Thorne is ethically bound to mention the possible tort action against the bike rental company and, if his client insists, to handle the case.

17 Sheila Immelt's client, Marwell Corp., manufactures clay for ceramics. It sells a great deal of clay to Duncan Dish Co. At any given time, Duncan owes Marwell as much as $150,000 for clay that has been delivered but not yet paid for. Today one of Sheila's other clients, who is suing Duncan in a separate matter, told her confidentially that Duncan has cash-flow problems and may become insolvent within weeks.

a. There is no reason why Sheila cannot immediately warn Marwell of the potential insolvency and the risks it takes by delivering clay to Duncan on credit.

b. Sheila cannot ethically warn Marwell of the insolvency risk without getting informed consent from her other client.

c. Sheila is in a box because she probably cannot get her other client's *informed* consent to warn Duncan but, without it, she cannot ethically warn Marwell.

d. Both b. and c. above.

18 Gordon Stuts has represented Hamilton on many matters over the years. A separate retainer agreement was made for each matter. It has, however, been nearly a year since Hamilton last needed any legal work done. Last week Stuts and Hamilton ran into each other while playing golf. Hamilton mentioned a tricky business dispute he was facing, though he didn't specifically ask Stuts for legal advice—and Stuts didn't offer any. Later, Stuts reflected on the situation and realized the dispute might require prompt legal attention in order to head off a big loss:

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a. There is no reason why Stuts may need to get back to Hamilton about the situation because Hamilton didn't actually ask for advice.

b. Stuts would probably be considered to still be representing Hamilton if he never sent Hamilton a letter terminating the representation.

c. Given the history, it is not unreasonable to think that Hamilton may be relying on Stuts to warn him of possible legal jeopardy, and Stuts should call to clarify.

d. Lawyers never have continuing responsibility to past clients unless they are formally retained again for a fee.

19 Arnie Egon, has been charged with armed robbery. Gene Wilcox has been assigned by his firm to take the lead in representing him. Arnie confessed shortly after his arrest, but the confession can probably be suppressed (because Arnie had not received the proper *Miranda* warnings). Without the confession, the state's case is weak and the charges will have to be dropped. In confidential consultations with Wilcox, Arnie bragged that the robbery was a "thrill" and Wilcox thinks that, if released, Arnie might try to commit some more. As Arnie's lawyer,

a. Wilcox has an ethical duty to move to have the confession suppressed.

b. Wilcox has sole discretion to decide whether to move to suppress the confession and he may refrain from doing so in the interest of justice.

c. Wilcox has sole discretion to decide whether to move to suppress the confession and he may refrain from doing so in the interest of public safety.

d. Both b. and c. above.

20 The reason for the answer to the preceding question under the Model Rules is that:

a. A lawyer should never do anything that the lawyer knows or has reason to believe will prevent the court from acquitting the innocent and convicting the guilty.

b. A lawyer should take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.

c. A lawyer represents the client but always retains the moral autonomy to do what he or she thinks is right, even if it may be detrimental to the client's cause.

d. A lawyer's job is to get the client off and not to be fussy about how he does it.

21 The requirement that a lawyer represent the client "zealously" is:

a. The traditional standard of diligence found in past ethical codes and it still describes the standard that many lawyers would say is applicable to themselves.

b. The standard of diligence laid out in the Model Rules.

c. Both of the above.

d. Generally considered to be outmoded, and has been replaced by a requirement that lawyers represent their clients in a "just and civil" manner.

Facts for Anne Martin-paint shop questions. Anne Martin has a client that runs a small paint shop. The client, a corporation, has learned that some of its employees have been dumping toxic chemicals in the field behind the shop. Local environmental laws require the contaminated soil to be removed, which would be very expensive

22 The client asked Martin what the penalties would be if it did not take steps to remove the contaminated soil on its own initiative, without an enforcement order. If the penalties are low enough, Martin assumes, the client will probably decide to wait do any remediation until the enforcement agency discovers the violation. If that happens, it is possible that the contamination will spread underground to neighboring properties.

a. Martin is ethically forbidden to discuss the penalties with the client under these circumstances.

b. Martin is ethically permitted to discuss penalties with the client but she may not help the client try to violate the law with impunity.

c. Martin is ethically required to discuss the penalties with the client and do anything else that is necessary to further the client's endeavor.

d. Martin is ethically required to report the client to the authorities if the client does not clean up the contamination.

23 Martin interviewed some of the paint shop employees who were allegedly involved in the illegal dumping of toxic chemicals. Both the paint shop and the culpable employees could be subject to serious criminal penalties. As attorney for the paint-shop corporation, retained to represent its interests:

a. Martin would ordinarily be presumed to be representing the employees' interests as well.

b. Martin would not ordinarily also act as attorney for the employees.

c. Martin would probably face serious conflicts-of-interest issues if she tried to serve as attorney for both the employer and the employees.

d. Both b. and c. above.

24 When Martin interviewed the employees in the previous question, she said to them: "The corporation has appointed me to handle this situation and to minimize our legal risks." She stressed to the employees the importance of full and frank disclosure to her of all relevant information so she would not be blindsided in trying to "protect us." If Martin were representing only the corporation:

a. There are no obvious ethical issues in the way Martin described her role to the employees.

b. It was ethically correct for Martin to be vague about her status because otherwise the employees might be hesitant to give her the information she needed.

c. Both of the above.

d. Martin appears to have committed an ethical violation in describing her role to the employees.

25 Suppose in the preceding question Martin also told the employees: "The attorney-client privilege applies to our conversations, and that means anything you tell me is confidential and a court cannot force me to disclose it." This statement by Martin to the employees would be strictly speaking true:

a. If the state follows the "subject matter" test on attorney-client privilege for corporate clients.

b. If the state follows the "control group" test on attorney-client privilege for corporate clients.

c. Both of the above.

d. None of the above.

26 Suppose Martin made it clear to the employees she talked to that she represented only the paint-shop corporation in the toxic chemical situation. Using the "subject matter" test, the statements that the employees made to her in connection with the case:

a. Would not be protected by the attorney-client privilege.

b. Could be protected by the attorney-client privilege but that would not mean the employees would able to prevent Martin from disclosing what they told her.

c. Could be protected by the attorney-client privilege and, if they were, the employees could prevent Martin from disclosing their communications to her.

d. Would not be subject to compelled disclosure under Model Rule 1.6.

27 One of Beth Sewell's best clients is a car dealer. She recently learned, however, that her client buys flood-damaged cars, cleans them up and sells them without disclosing that they'd been "totaled" in floods. This practice is considered fraudulent and a criminal offense under state law. Sewell told her client to stop, but she knows they haven't. Still, she continues to represent the client in various matters—including a recent renewal of the lease for their main sales showroom.

a. Lawyers are not morally responsible for what their clients do and, therefore, Sewell cannot be disciplined or prosecuted if her clients don't follow her advice.

b. As an attorney, Sewell may be subject to discipline for continuing to represent this client knowing what she knows, but she need not fear criminal prosecution.

c. Lawyers often represent criminals and, as an attorney, Sewell faces no risk of discipline or prosecution just because her clients commit crimes.

d. Sewell is potentially subject not only to discipline but also to prosecution for assisting a client to violate a criminal prohibition.

28 Nora Rhodes has a client who owns a small liquor store that he is in the process of selling. The sale is due to be completed next Friday. Today, the client told Rhodes that a discrepancy had just been found in the inventory, apparently due to thefts by a former employee. As a result, the buyer will get $65,000 less stock on hand than the contract says. Rhodes's client does not want her to mention this to the buyer because it would surely affect the sale price, He has asked Rhodes just to finish up with the closing of the sale, get him his money and say as little as possible.

a. Rhodes has a duty to mention the discrepancy to the buyer under Model Rule 1.6.

b. Rhodes would be permitted under Model Rule 1.6 to make disclosures she reasonably believes necessary to prevent fraud by her client.

c. The discrepancy would be information relating to the representation, and Rhodes has an unconditional duty to *not* disclose it under Model Rule 1.6.

d. The discrepancy would not be information relating to the representation and, therefore, it is up to Rhodes to decide whether to disclose it to the buyer.

29 In the preceding question:

a. Although Rhodes may have no duty to tell the buyer about the discrepancy under Model Rule 1.6, she may have a duty to do so under Model Rule 4.1.

b. Rhodes would have a duty to tell the buyer about the discrepancy under the wording of Model Rule 1.6 as well as a separate duty under 4.1.

c. There is no basis for saying that Rhodes has a duty to tell the buyer about the discrepancy under either Model Rule 1.6 or 4.1.

d. The discrepancy would be information relating to the representation, and Rhodes has a unconditional duty to *not* disclose it to the buyer under Model Rule 1.6.

30 In the preceding question, if Rhodes decides the only way she can ethically deal with the situation is to withdraw under Model Rule 1.16:

a. She should let the buyer know that she is withdrawing but she need not spell out why she is.

b. She should disavow any previously prepared documents on which her client might rely to complete the fraudulent sale.

c. Both of the above.

d. None of the above. She should withdraw as quietly as possible because she is, after all, leaving her client in the lurch.

31 Trey Astor has been retained by a client who is appealing a conviction for possession of cocaine. The fee is substantial. The client sent Astor a list of 10 items that he wanted covered in the brief. Astor decided to cover only six of the items.

a. Under the Constitution, the client has been denied effective representation of counsel.

b. Astor can be considered to have fully carried out his ethical and agency duties to the client even though he didn't follow his client's exact instructions.

c. In criminal cases, a lawyer's most central duty is to the administration of justice and to assure the legally correct outcome.

d. None of the above.

Facts for Seth Portman questions. While Seth Portman was representing a plaintiff in a personal injury case, some of the clients' friends told Portman's investigator that the client was still engaging in physical activities (touch football) suggesting he was probably exaggerating his injury.

32 The information discovered by the investigator should be:

a. Protected by the attorney-client privilege.

b. Protected by the rule of confidentiality under Model Rule 1.6.

c. Both of the above.

d. None of the above.

33 The reason the information discovered by Seth Portman's investigator is *not* protected by the attorney-client privilege is that:

a. It did not constitute the contents of a confidential attorney-client communication.

b. It was discovered by Portman's investigator and not by Portman himself.

c. Both of the above.

d. None of the above. The information *would be* protected by the attorney-client privilege.

34 The reason the information discovered by Seth Portman's investigator is *not* protected by the rule of confidentiality is that:

a. It did not constitute the contents of a confidential attorney-client communication.

b. It was discovered by Portman's investigator and not by Portman himself.

c. Both of the above.

d. None of the above. The information *would be* protected by the rule of confidentiality.

35 In representing a defendant charged with robbery, Chris Grafton obtained a copy of a store surveillance video that shows his client was probably the person who committed the crime. The store has since erased the original video, so Grafton has the only copy. The information that Grafton has from the video (as opposed to the physical copy of the video itself):

a. Should generally not be disclosed voluntarily by Grafton but it is not protected from court-compelled disclosure by the attorney-client privilege.

b. Should generally not be disclosed voluntarily by Grafton and it *is* protected from court-compelled disclosure by the attorney-client privilege.

c. *Should* be disclosed voluntarily by Grafton to the prosecutor but it is protected from court-compelled disclosure by the attorney-client privilege.

d. *Should* be disclosed voluntarily by Grafton to the prosecutor and it is *not* protected from court-compelled disclosure by the attorney-client privilege.

36 Grafton's robbery client told Grafton confidentially that he committed the crime and told him also that the stolen money was hidden in an abandoned barn several miles from town. Grafton went to the barn and found the money along with an unlicensed pistol that was used in the robbery.

a. Grafton may properly be compelled to testify as to where he first saw the money and pistol if he leaves them where he found them.

b. Grafton may properly be compelled to testify as to where he first saw the money and pistol whether or not he leaves them where he found them.

c. Grafton may *not* properly be compelled to testify as to where he first saw the money and pistol if he leaves them where he found them.

d. Grafton may *not* properly be compelled to testify as to where he saw the money and pistol whether or not he leaves them where he found them.

37 In the preceding question if Grafton takes the money and the pistol back to his office for safekeeping:

a. He risks no negative consequences other than possibly being compelled to say where he got them.

b. He should keep them until the end of the trial in order to maintain confidentiality, but then he must turn them over to the authorities.

c. He should turn them over to the authorities without delay or else risk serious consequences for keeping them.

d. He would be doing exactly what he should do as a lawyer, reducing the chance that his client can be convicted of the robbery.

38 Darlene Cobb is suing her former employer for wrongful termination. Jason Walters represents the former employer. Darlene is represented by Art Salem, a well-known "hardball" lawyer. Jason's client wants to make Darlene a very generous offer to make the case go away, but Jason fears that Art will induce her to reject it.

a. Jason's best move under the circumstances is to call Darlene on the phone and make the offer to her directly.

b. If Darlene calls Jason, he can make the offer to her directly, but Jason cannot properly call Darlene first.

c. Jason could incur serious ethical consequences if he negotiates a settlement with Darlene directly without her counsel's presence or permission.

d. As attorney for the adversary, Jason is not permitted to talk to Darlene at all without her counsel's presence or permission.

e. Both c. and d. above.

39 In the preceding question, suppose Darlene called her former employer (Jason's client), and said she'd drop the case if she could have her old job back. The client tells Jason he's willing to discuss the matter with Darlene, but wants some advice about how to proceed:

a. Jason is not ethically forbidden to advise his client concerning communications with Darlene.

b. Jason should inform his client that neither of them can engage in or have anything to do with communications with Darlene.

c. Jason should tell his client not to communicate with Darlene unless her lawyer is present or gives the "okay" in advance.

d. Jason should offer to call Darlene directly on his client's behalf to discuss her proposal.

40 Jason has another client who has a dispute with a towing company. The towing company took the client's car from a private lot where the client had parked it without permission. The towing company wants to charge the client a very high storage rate. Jason thinks he can "tough talk" the price down to a reasonable level. Jason does not know for a fact whether the towing company has a lawyer.

a. As long as Jason doesn't actually know if the towing company has a lawyer, there can be no ethical problem if he calls them directly.

b. Jason should not contact the towing company directly if he "knows or should know" that they have a lawyer.

c. Jason is not necessarily ethically required to assume that the towing company has a lawyer, but he must not close his eyes to the obvious.

d. Assuming the towing company is a corporation, there is no problem with Jason getting in direct touch with its employees.

41 A prosecutor is targeting a local hauling contractor for making illegal payments to suppress evidence. A former business associate of the contractor has agreed to act as an informant. The informant visited the contractor and, in conversations, managed to secretly record some damaging admissions. The prosecutor wants to use the admissions at trial:

a. Even if the use of the informant violated the no-contact rule, it is not likely that a court would exclude the damaging admissions.

b. The no-contact rule does not apply to prosecutors who are investigating crimes, so there should be no problem getting the admissions into evidence,

c. A court would exclude the damaging admissions if the prosecutor sent the informant to obtain them by use of false pretences.

d. The no-contact rule operates as a rule of evidence and statements obtained in violation of the rule are almost per se excludable.

42 Linton Boggs has a client who is suing a car dealer. He claims he was defrauded by the dealer's service department. Today Boggs received a voicemail from a disgruntled former employee of the dealer. The caller said he possessed certain documents that would help prove the case against the dealer:

a. Boggs should not return the call because he is not allowed to talk with employees of the adversary without the presence or permission of the adversary's counsel.

b. Boggs may not accept the documents that the caller has to offer if doing so would violate the rights of others.

c. Boggs is ethically permitted to return the call and hear what the caller has to say.

d. Both b. and c. above.

43 Carol Webber made the following statements while negotiating with the lawyer who represented the opposing party in a breach of contract case. Which, if any, would be considered a false statement?

a. "My client will not accept less that $300,000." In fact, the client told Webber that he would take whatever he could get.

b. "My client has no documents from the sale." In fact, the client had told the lawyer that he still has a partial file on the matter.

c. "My client is done negotiating if you reject this offer." In fact, the client told the lawyer to continue negotiating and making offers for at least another week.

d. All of the above statements would be considered false.

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

44 Suppose that, in order to induce a settlement, Webber told the opposing lawyer that her client had no assets apart from his home and a certain bank account. In fact, as Webber was aware, the client also had a brokerage account worth over $1,000,000. If Webber is sued for misrepresentation:

a. She should win because the other lawyer, as a trained professional, had no right to rely on her to supply factual information concerning the case.

b. She should win because, as an attorney, she has a duty to say what she must in order to zealously protect her client's interests.

c. She would likely lose because lawyers have an especially high duty to respect the truth and have no special license to make false statements in negotiations.

d. She would likely lose because lawyers have a general duty to disclose relevant information to the adversary.

45 Suppose that, in pre-lawsuit negotiations in a property case, Webber erroneously told the lawyer for the prospective plaintiff that the statute of limitations was 3 years (a statement of law). Webber honestly believed the statute was 3 years, but the statute had changed since she'd last looked. In reliance on her negligent misstatement, the plaintiff delayed commencing the lawsuit until it was too late.

a. Webber could be held liable for negligent misrepresentation, even if her false statement was not intentional.

b. Webber probably would not be held liable because lawyers cannot be held liable to non-clients for *negligent* false statements of law or fact.

c. Webber should not be held liable because the other lawyer, as a trained professional, had no right to rely on her for information about the law or facts in the case.

d. Webber probably would not be held liable because her false statement to the adversary was a statement of law, not fact.

46 Franklin Ford has been retained by an insurance company to represent an insured in a personal injury case. During a medical exam by the insurance company's expert, the plaintiff was discovered to have a severe and previously undiagnosed condition. If not treated promptly, the condition could be life-threatening. Since the condition was maybe caused by the accident, however, Ford does not want to disclose it to the other side because it could increase the possible damages.

a. Under the general rule, Ford would not be required to voluntarily disclose the findings of his own expert to the plaintiff.

b. This is a case where common morality trumps legal tactical advantage, and Ford must disclose the condition to the plaintiff.

c. If Ford decides to disclose the condition to the plaintiff, he should wait until afterwards to tell the insurance company that he's going to do it.

d. Generally, a lawyer must disclose confidential information where he reasonably believes it is necessary to prevent death or substantial bodily harm.

47 While representing a client who was purchasing a business, Ford prepared a document (a financial certification) required by the contract. Ford knew that the statements in the document were material and false, but he had his client sign the document and deliver it to the sellers anyway. As Ford knew, the sellers would never have gone through with the sale if they had not been misled by the false certification. The sellers ended up losing money on the deal:

a. Ford has violated the ethical rules and clearly should be held liable to pay damages to the sellers for misrepresentation.

b. Ford has violated the ethical rules but might not be held liable for misrepresentation because he was merely a scrivener and the false statements were not his.

c. Ford has *not* violated the ethical rules.

d. Ford has violated his fiduciary duty as a lawyer.

48 Which of the following best describes the purpose of the trial:

a. The sole purpose of the trial is to find the truth.

b. Finding truth is paramount in trial proceedings and defense lawyers must never do anything that might cause the jury to be swayed by false inferences.

c. The purpose of the trial is to resolve disputes, and values other than truth are sometimes allowed to take precedence.

d. The purpose of the trial is to determine which party has the better lawyer.

49 Dan Norberg's client was being tried with several other defendants in a conspiracy case. As he was listening to the testimony of a witness being questioned by the prosecution, Dan heard the witness say something that flatly contradicted a statement his client had made to him previously. Since the testimony was helpful to his client, however, Dan wanted to let it pass without comment. Dan would have had an ethical duty to take remedial action if he knew that:

a. The statement was intentionally false.

b. The statement had been made on cross-examination by a witness that Dan had originally called.

c. The statement had been made by Dan's own client, during cross examination.

d. All of the above.

e. None of the above.

50 Sally McPhee is a recently admitted lawyer who accepted a no-fee criminal case at the request of a judge. When her client appeared in court for the arraignment, he frankly looked to her like a common street hood and guilty as can be. McPhee got him out on bail and, prior to trial, told to him to clean up, cut off his long hair, shave his beard and be sure to wear a business suit and his reading glasses to court. McPhee knows that appearance counts a lot in the jury's assessment of guilt. What McPhee has done would generally be considered:

a. Tantamount to destruction of evidence.

b. Acceptable practice in criminal cases.

c. A fraud on the court and legal system.

d. The equivalent of suborning perjury.

51 When a lawyer learns via a confidential communication with her client that the client has committed a serious criminal act:

a. The lawyer should report the crime or fraud to the proper authorities.

b. The lawyer has a duty to keep the information to herself except in the unlikely event that she believes disclosure would help her client's cause.

c. The lawyer generally has broad discretion whether to report the crime or fraud to the police.

d. The lawyer risks prosecution if she conceals past criminal acts rather than disclose them promptly to the proper authorities.

52 Mary Tobin has a client charged with burglary. He told her he was "at a movie" at the time the crime occurred. Just before trial, the client told Mary that he wants to testify. He informs her that he plans to say he was "at home" the whole evening. The client's whereabouts at the time of the crime is, of course, highly material. Mary thinks her client probably was the person who did the burglary, but the client denies it. If client insists on testifying he was "at home,"

a. It would deny her client effective representation of counsel if Mary does not help him tell his own story, even if she knows it is false.

b. Once the client changes his story, as he has done here, there is a near presumption that he is not telling the truth, and Mary should not let him testify.

c. Mary's first obligation is to the truth and, before doing anything else, she should report to the court that her client has said he will commit perjury.

d. Mary's first obligation is to consult with her client and do everything she can to dissuade him from committing perjury.

53 Morris Denby has a client who is being tried for vehicular homicide in a hit-and-run. A bystander caught the license number and description of the car, which matched the client's. Moreover, the client has told Denby confidentially that he was the driver in the hit and run. During the trial, Denby called several witnesses and asked them if they knew where his client kept his car keys. Each of them said he usually kept them on a small shelf in the back of his unlocked garage. Denby plans to argue to the jury that the evidence shows that "anybody" could have entered the garage and taken the car on the fateful trip.

a. Denby is ethically foreclosed from making this argument because his client has confessed the crime to him.

b. There is no ethical reason why Denby should not make this argument and, indeed, making the argument may be required as part of his duty to his client.

c. Denby could not properly make this argument in a civil case, but in criminal cases a defense lawyer has a lesser duty of candor with respect to false statements.

d. Both prosecutors and criminal defense lawyers are generally considered free to argue for inferences that the lawyer knows are false.

54 The bystander who saw the hit-and-run in the preceding question happened to be at the scene while on a date with a man who was not her husband. Also, she was convicted of passing bad checks 4 years ago and released on probation. Even though Denby knows she is telling the truth about his client's car, Denby wants to "spring" both of these matters on the witness at trial in order to undercut her credibility with the jury. He hopes his questions will discombobulate and unnerve the witness so she'll sound less convincing to the jury.

a. During cross-examination Denby is ethically allowed to ask the witness about both the conviction and who else was at the scene.

b. Denby could ethically bring up the conviction as impeachment, but it would be improper to bring up embarrassing personal matters.

c. Denby may not ethically bring up either the conviction or the witness's company at the scene.

d. Because he knows the witness is telling the truth about his client, Denby should not try to make the jury disbelieve her.

55 During a deposition, the lawyer for the plaintiff was notably nasty to the defendant's lawyer, on several occasions referring to her by sexist and ethnic slurs. She found these to be upsetting and offensive, and they distracted her from her efforts

to elicit information that could be helpful to her client. Such conduct by the plaintiff's lawyer was:

a. Reprehensible and sanctionable by the court because it is wrong to try get the opponent off-balance and thereby gain an advantage for one's client.

b. Reprehensible and sanctionable by the court because there are limits to what advocates may do, and sexist and ethnic slurs go beyond those limits.

c. Permissible because, out of loyalty to the client, a lawyer should do whatever possible (within the law) to keep the opponent from getting testimony helpful to it.

d. Permissible because the practice of law is not a parlor game, and any means are okay to keep opponents from eliciting information that may be helpful to them.

56 The Maxwell Law Firm has been trying to get the legal business of SuperPlus Airlines, a large corporation. Recently, a SuperPlus vice president indicated they wanted Maxwell to represent the company in a multi-million dollar deal. It turns out, however, that a junior lawyer in the Maxwell firm is currently doing a pro bono project representing a woman who is suing SuperPlus for an $800 ticket refund.

a. There is no problem with Maxwell being retained by SuperPlus and continuing with the pro bono case.

b. Maxwell can represent SuperPlus and still continue with the pro bono case as long as it makes sure that different lawyers work in the two representations.

c. The ethics rules appear to prohibit Maxwell from taking on the SuperPlus representation while its junior lawyer still continues with the pro bono case.

d. More than one but not all of the above.

57 Wade Prokoff has a client who has just started a food truck renting business that is really taking off. The client has set up a deal with 5 investors and asked Wade to do the paperwork. In lieu of the fee, the client suggests that Wade get a piece of the business, and Wade enthusiastically agrees—saying it would be a simple matter to add him as one of the "investors" in the new firm. No suggestion has been made that any other lawyers be involved in setting up the deal as that would just increase total amount of fees. In order to stay clear of violations of the ethical rules (given that Wade is acting as both lawyer and investor):

a. Wade should get his client's informed consent, and that should take care of any ethical questions.

b. Wade should get informed consent from not only his client but also from the each of other investors, and that should take care of any ethical questions.

c. Just getting informed consents is not going to suffice to assure compliance with the ethical rules in this arrangement.

d. Really, in a fully consensual situation like this, there are no serious ethical problems to be concerned about.

58 Thompson represents a plaintiff in a personal injury case, which is moving along to trial in a few months. Thompson is very optimistic that a full recovery in the range of $250,000 will be possible. Today his client called and said he's just been laid off from his job, and badly needs some cash. He tells Thompson he's ready to settle for $100,000. Thompson suggests an alternative, namely that he lend the client the $100,000 he needs, with repayment to be made out of the expected judgment.

a. This alternative looks like a win-win for the lawyer and the client and, if Thompson can do it, he by all means should.

b. There is nothing wrong with this proposal per se except that Thompson should not specifically provide that repayment would be only out of the judgment.

c. It would be unethical for Thompson to enter into this arrangement with his client.

d. Before entering into the arrangement, Thompson should get his client's informed consent *in writing*, which would take care of any ethical issues.

59 Premiere Insurance has retained Thompson to represent Burfort, its insured, in a personal injury case. Premiere is paying the fee, but Burfort is the client:

a. Thompson has an ethical obligation to keep Premiere informed as to all aspects of the case as it moves forward.

b. Thompson should faithfully carry out any instructions given him by Premiere on how to handle the case (provided they are reasonable).

c. Both of the above.

d. None of the above.

60 Thompson represents Willow and Ross in a joint venture. The three of them have many consultations together. As regards the attorney-client privilege:

a. The communications between the two clients and Thompson during these consultations are not protected by the privilege.

b. If Willow later sues Ross, Willow can assert the privilege to prevent Ross from testifying as to things Willow said in the consultations.

c. Courts are all agreed that both Ross and Willow have to agree in order for the privilege to be waived.

d. None of the above.

<End of examination.>