

## PACE UNIVERSITY SCHOOL OF LAW

PROFESSIONAL RESPONSIBILITY  
PROFESSOR HUMBACH  
FINAL EXAMINATION

December 20, 2022  
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 application.

### **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.

It is **strongly recommended** that you **save** a copy of your exam answers to your USB flash drive *before* exit from EXAM4. You will not be able to review your individual exam if you do not do this. 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 ethical rules or applicable law. “Ethical” means according to the ethical rules. **Do not assume that “informed consent” has been given unless the question says so.**

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 A court has appointed Lawyer to represent Defendant in a criminal case. Defendant wanted Lawyer to call X as a witness, but Lawyer decided that calling X would be too risky. In the end, he didn't do it. Defendant was convicted. Defendant now claims that, by not calling X, Lawyer denied him his constitutional right to effective assistance of counsel. This claim should prevail if Defendant shows that not calling X:

- a. Was a serious error.
- b. Was a serious error and that there's a reasonable probability Defendant would have been acquitted if Lawyer had called X.
- c. Violated Defendant's explicit instructions to Lawyer.
- d. Both b. and c. above.

2 Same facts as the preceding question. Which of the following other circumstances would (if found to be the true) typically support a holding that Lawyer denied Defendant his constitutional right to effective assistance of counsel?

- a. Lawyer did not act within a comparatively narrow range of acceptable professional conduct that the particular circumstances called for.
- b. Many lawyers would question Lawyer's strategy in trying the case.
- c. Lawyer failed to object when the prosecutor tried to introduce inadmissible evidence.

d. None of the above.

3 Suppose again that a court has appointed Lawyer to represent Defendant in a criminal case. During a series of interviews at the jail, Lawyer realizes that Defendant is gradually making subtle changes in his story. Eventually, this narrative "drift" reaches the point where Lawyer concludes that Defendant is planning to commit perjury at trial. Lawyer's first duty is to:

- a. Report to the court that Defendant is "going rogue" and planning to testify falsely at trial.
- b. Try to dissuade Defendant from giving perjurious testimony
- c. Withdraw from representation so that Lawyer does not become complicit in the client's false testimony.
- d. Remain loyal to the client and work with him to make sure his testimony, even if not strictly true, is effective as possible to achieve the client's objectives.

4 Who regulates the legal profession? Choose the best statement:

- a. The legal profession today is a self-regulating profession.
- b. The regulation of the legal profession is mainly the job of the legislature, as representative of the people.

c. The judicial branch has almost exclusive inherent power to regulate the standards of conduct for persons engaged in the practice of law.

d. The courts, under the supervision of the legislature, have primary responsibility for regulating the practice of law, but the legislature has the final say.

5 Lawyer has a client who confidentially admits to Lawyer that he committed the crime he's charged with. In addition, the prosecution has surveillance-camera video that appears to show the client in the act. Nonetheless, the client wants to plead not guilty. Assisting the client in pleading "not guilty" under these circumstances:

a. Would be essentially equivalent to assisting in a false statement or perjury, and the court would probably treat it as such.

b. Could get Lawyer into big trouble with the disciplinary authorities.

c. Both of the above.

d. Is considered an acceptable way of requiring the prosecutor to produce evidence showing that the client is guilty beyond a reasonable doubt.

6 Lawyer represents Defendant who's charged with stealing valuables from a locked shed on his employer's premises. Defendant was supposedly the only employee who had a key to the shed. Lawyer's investigator discovered, however, that two *former* employees had been given keys to the shed and the

whereabouts of those keys is unknown. Defendant now admits to Lawyer that he stole the valuables, but he wants to put the state to its proof. Can Lawyer ethically offer evidence concerning the existence of the other two keys in order to raise reasonable doubt concerning Defendant's guilt?

a. Yes, as long as the evidence that Lawyer offers concerning the other two keys is entirely truthful and reasonably supports the inference of reasonable doubt.

b. Yes, Lawyer can ethically offer any evidence that will help win the client's case.

c. Both of the above.

d. No, because offering the evidence would be considered the equivalent of making a false statement inasmuch as Lawyer knows Defendant is guilty.

e. No, because it's unethical for Lawyer to attempt to cause factfinders to draw an inference that Lawyer doesn't believe is true.

7 Suppose in the preceding question that the police found some blurry surveillance-camera video that appears to show Defendant skulking around the shed at night. The prosecutor decides to use the video at trial but then he learns the video was actually taken *after* Defendant was arrested (so the person in the blurry video must be somebody else). Is there any ethical issue with the prosecutor still going ahead and offering the video as evidence to support an inference that Defendant skulked around the shed at night?

- a. There isn't an issue as long as the video reasonably supports a relevant inference and the prosecutor makes no false statements about it.
- b. There isn't an issue because, most agree, prosecutors are supposed to offer any evidence that can help secure a conviction.
- c. Both of the above.
- d. Yes. The prosecutor's job is to do justice, not obtain convictions, and prosecutors should not advocate for inferences of facts they know aren't true.

8 Lawyer's client has invited Lawyer to make an investment in the client's business. The investment offer looks very attractive, but Lawyer isn't sure it's ethically permitted. He does some research and finds an ABA ethics opinion that indicates he'd be permitted to make the investment under certain conditions. Based on that opinion, he makes sure the conditions are met and then makes the investment. If the investment in the client's business is later questioned by the disciplinary authorities:

- a. The ABA opinion would generally be considered binding authority on the question of whether the investment was ethically proper.
- b. The ABA opinion would probably be considered be considered highly persuasive, but not binding authority.

- c. The fact that Lawyer acted on the basis of the ABA opinion would probably be considered evidence of Lawyer's good faith.
- d. Both b. and c. above.
- e. The ABA opinion would not carry any particular weight in deciding whether Lawyer ought to be disciplined for making the investment.

9 The reason that the Model Rules, or some version of them, are considered to have the force of law in so many U.S. jurisdictions is that:

- a. The highest courts of many jurisdictions have adopted the Rules, or some version of them, pursuant to the inherent power of the judiciary to regulate the legal profession.
- b. The legislatures of the jurisdictions have adopted the Rules, or some version of them, pursuant to the legislature's constitutional power to make laws.
- c. The Rules were issued by the American Bar Association, which is the authoritative body that implements the legal profession's self-regulation.
- d. None of the above. The Model Rules are merely advisory and do not generally have the force of law in U.S. jurisdictions.

10 Lawyer represents a landscaping business that persistently tries to cut corners on various environmental laws. Sometimes

the cost savings can be very substantial and, the client points out, the violations would be hard to detect. Besides, says the client, its activities, though technically subject to criminal fines, have only negligible impacts on the environment. Most would probably agree that what Lawyer should do in these circumstances is:

- a. Loyally assist the client's cause or endeavor, even if it involves minor violations of laws that carry criminal fines.
- b. Assist the client but try to remain as personally uninformed as possible about any aspects of the client's business that involve ongoing environmental violations.
- c. Seek ways to help the client continue its business profitably even if that means violating environmental laws with impunity.
- d. Withdraw from representation if Lawyer cannot persuade the client to carry on its business in compliance with the law.

11 Lawyer holds a substantial sum of client money in a trust account. None of it needs to be paid out for at least 4-5 months. Meanwhile, Lawyer just received a tuition bill from his daughter's school, due in 10 days. With a large contingent fee expected in a couple of weeks, Lawyer reasons that no one would be hurt (or likely even know) if he simply borrowed the needed tuition money from the trust account. He could pay it back when he receives the contingent fee. He asks your advice:

- a. Lawyer should just go ahead and discreetly borrow from the trust account because this kind of technical violation occurs all the time, and nobody really cares.
- b. It is theoretically improper for Lawyer to borrow from the trust account, but he does not risk serious discipline if the money is repaid and no one is hurt.
- c. If Lawyer keeps good records of his borrowing from the trust account, and no one is hurt, this would not be a matter of interest to the disciplinary authorities.
- d. Lawyer may risk permanent disbarment if he borrows the money from the trust account, even if he pays it back promptly and no one is hurt.

12 In the (unlikely?) event that disciplinary action is taken against Lawyer in the preceding question, the officially declared purpose of the discipline would be to:

- a. Protect the public and the administration of justice.
- b. Punish Lawyer for violating the ethical rules.
- c. Secure compensation for anyone who may have been hurt due to Lawyer's ethics noncompliance.
- d. All of the above.

13 A new client comes to Lawyer's office and wants Lawyer to represent him in a DWI case. Lawyer has considerable experience in civil litigation, but she's never done a DWI.

Would Lawyer be ethically permitted to represent this client in his DWI case?

- a. Yes, if the requisite competence can be achieved by reasonable preparation.
- b. Yes, if Lawyer's lack of competence in DWI cases can be adequately compensated for by associating with another attorney who is experienced in the field.
- c. Both of the above.
- d. No, Lawyer should not attempt to represent this client and, instead, refer him to someone who is adequately experienced in the relevant legal area.

14 Lawyer has been assigned to represent Defendant who is accused of committing a robbery. Lawyer figures Defendant probably did it, but she doesn't ask him outright because she's concerned that Defendant's answer might limit her options at trial.

- a. This is a smart move on Lawyer's part, and it does not raise ethical issues.
- b. Lawyer's concerns are misplaced because there's no way that Defendant's answers could limit her options at trial.
- c. An ABA opinion frowns on not asking criminal defendants whether they did it because it's contrary to the spirit of the Lawyer's duty of candor to the court.

d. There's an ABA opinion specifically confirming that the "don't ask" approach is ordinarily the better way for criminal defense attorneys to proceed.

15 Lawyer became very busy on a large commercial litigation. Because of the time demands from the case, he found himself neglecting other clients, not returning phone calls or answering emails, etc. Some of the neglected clients are starting to feel very bitter and are threatening to call the disciplinary authorities.

- a. This is a problem for Lawyer, but not an ethical problem as long as Lawyer does not commit actionable malpractice.
- b. This is mostly just a client relations problem, and the Rules provide no basis for the disciplinary authorities to get involved.
- c. Both of the above.
- d. Neglect of clients is considered a true ethical problem even if no actionable malpractice occurs.

16 One of Lawyer's opponents (in a smaller case) noticed that Lawyer had made an obvious blunder by letting a key filing deadline slip by. Lawyer had to make a special motion to the court to prevent his client from being held in default.

- a. On these facts, the opposing attorney has an ethical obligation to report Lawyer to the disciplinary authorities.

b. It would be improper for the opposing lawyer to report Lawyer because, in the end, Lawyer managed to retrieve the situation by making a motion.

c. The ethical duty to report another lawyer applies for violations that raise a substantial question as to honesty, trustworthiness or fitness as a lawyer.

d. There's no ethical obligation to report Lawyer because mere incompetence is *malpractice*, not an ethical violation.

17 Lawyer has been assigned to represent Defendant, who's accused of arson. Defendant wants to plead "not guilty" and testify on his own behalf. Based on her many years of experience and professional judgment, Lawyer sees both these as horrible ideas. Though the evidence against Defendant is pretty strong, the prosecution is offering a good plea deal. And if there's a trial, the jury would probably find Defendant to be totally incredible, even detestable.

a. The client's decisions on these matters should take precedence because it's up to the client to determine the *objectives* of the representation.

b. The client's decisions on these matters should take precedence because Lawyer is ethically required to abide by the client's decisions on them.

c. Lawyer's decisions and professional judgment on these matters should take precedence because it's Lawyer's job to determine the *means* of representation.

d. Lawyer should do whatever she believes, in her sound professional judgment, is best for the client—including overriding the client's imprudent choices.

18 Lawyer represents the plaintiff in a personal injury case. The client authorized Lawyer to negotiate a settlement but told him not to agree to anything under \$400,000. However, when the defendant's insurance company unexpectedly offered \$395,000 as the "absolute top limit," Lawyer grabbed it because he feared (based on past experience) that the offer might be quickly withdrawn. The client now wants to disavow the settlement and try her luck with the jury. Assuming the usual rules of agency apply, is the client bound to the settlement?

a. Yes, because Lawyer had actual authority to negotiate a settlement on her behalf.

b. Yes, because Lawyer had inherent authority to settle for \$395,000.

c. Yes, because Lawyer had apparent authority to settle for \$395,000.

d. No, because Lawyer exceeded the scope of his authority in agreeing to settle on these terms.

19 Lawyer has a client who's accused of possessing a gun as a felon. The primary evidence against the client was obtained during a traffic stop. It is evident from the police report that the officers violated the client's constitutional rights under the 4th amendment when obtaining this evidence. Due to an oversight,

Lawyer failed to make a timely motion to suppress this key evidence It's now being offered against the client.

- a. The court still must suppress the evidence because constitutional rights are inalienable and sacrosanct, and Lawyer cannot waive them on his client's behalf.
- b. Lawyer's "oversight" amounts to ineffective assistance of counsel, and the court will not permit the client to be legally prejudiced by it.
- c. Both of the above.
- d. The client can be properly convicted based on the unconstitutionally obtained evidence even though, by timely motion, it could have been suppressed.

20 Some months ago, a new client retained Lawyer to defend him in a lawsuit. Due to inexcusable neglect, Lawyer failed to prepare and serve an answer to the complaint. A default judgment was obtained against the client. According to the case we studied in class:

- a. Inexcusable neglect isn't an extraordinary circumstance that would justify opening up the default judgment.
- b. The court's job is to do justice and, so, the judge should intervene to prevent any injustice that might otherwise result from Lawyer's inexcusable neglect.

- c. The court would probably be willing to reopen the default judgment against the client if Lawyer does not have adequate malpractice insurance.
- d. Courts are reluctant to reopen default judgments, except in cases of inexcusable neglect by the lawyer.

21 A national insurance company has arranged for Lawyer to represent its insureds when they are sued for damages in automobile cases. Driver is being sued for personal-injury damages and Lawyer is representing her under this arrangement. The insurance company has agreed to pay Lawyer only for services in defending Driver in the automobile case and not for any other legal services. While reviewing the file, however, Lawyer notices that Driver may also have an action against the towing company that towed her car from the crash.

- a. As attorney for Driver, Lawyer has an ethical duty to advise Driver concerning the action against the towing company and to represent Driver in that action.
- b. If Lawyer is being paid only to represent Driver in the personal injury action, Lawyer doesn't need to say or do anything about the towing claim.
- c. Lawyer can ethically limit the scope of representation to the personal injury claim provided Driver gives informed consent to the limitation.
- d. By simply giving notice, Lawyer can ethically limit the scope of representation to the personal injury claim, and Driver has no say in the matter.



22 Lawyer prepared a will for her client several months ago. Now the client wants to change the will to totally cut off his daughter because he doesn't like the politics of her new boyfriend and likely future fiancé. Lawyer feels that her client's attitude is repugnant and does not think the client's daughter should be cut off over something like this. Lawyer should:

- a. Help the client do the right thing by including a small bequest to the daughter and hope that, in the lengthy will, the client will not notice.
- b. First consult with the client about the matter and, after consultation, either follow the client's instructions or withdraw from representation.
- c. Consult with the client but if Lawyer cannot change the client's mind, then proceed as described in a. above.
- d. Include a bequest to herself in the will and then turn the money over to the daughter after the client's death.

23 Lawyer's firm has assigned Lawyer to represent the recently arrested son of one of the firm's most important clients. In a confidential interview at the jail, the son tells Lawyer he needs to "get out" ASAP. Lawyer suspects that, if his new client (the son) is released, he will likely use his freedom to sell heroin, the crime for which he was arrested.

- a. Lawyer should report the son's suspected participation in future drug deals to the relevant authorities.

b. Lawyer should go through the motions of seeking release, but not press so hard that the son actually gets out and is thus enabled to sell illegal drugs.

c. Lawyer should do what he reasonably can, within the limits of law and ethics, to achieve the son's objective of prompt release pending trial.

d. Lawyer should determine what justice would require and proceed accordingly, even if that means declining to seek the son's release.

24 Lawyer represents a physician who runs a "pain clinic." The clinic prescribes opiates to large numbers of "patients" after brief consultations with them. Lawyer has recently come to suspect that his client may be "overprescribing" these pain medications in violation of federal law. Still, the client pays his bills and never asks Lawyer to do anything other than routine legal work of the kind that would be needed by just about any small business (lease renewals, employee relations, municipal permits, etc.). Which of the following advice would you give to Lawyer?

- a. Lawyer should terminate the representation if he becomes actually aware that the client runs an ongoing business of overprescribing in violation of federal law.
- b. Lawyer could be subject to discipline if he provides legal services knowing that the services facilitate the client's ongoing criminal activities.
- c. Both of the above.

d. Lawyer could not be considered to be assisting the client's criminal activities as long as Lawyer confines his representation to routine legal work.

25 Lawyer has been asked to provide a legal defense in the prosecution of a known drug dealer who's been indicted for importing and selling deadly narcotics in violation of federal law.

- a. The ethical rules affirm that representation of such a person may be properly regarded as an endorsement of the person's activities.
- b. No ethical lawyer would take on this representation.
- c. Both of the above.
- d. Lawyer may defend a guilty client charged with a crime, and even seek an acquittal, without necessarily committing a violation of Rule 1.2(d).

26 Lawyer represents a corporate client in a substantial business transaction. Lawyer has already prepared nearly all of the documents that her client will need in order to complete the deal. Lawyer now realizes that her client is lying about a key point and is planning to defraud the other party to the transaction.

a. Lawyer should advise her client not to commit fraud but the ethical rules prevent her from terminating the representation in the middle of the deal.

b. Lawyer should discreetly withdraw from representing the client but has no reason or obligation to tell anyone on the other side that she's doing so.

c. If necessary to avoid assisting the client in fraud, Lawyer should perform a noisy withdrawal.

d. Most corporate lawyers would probably agree that Lawyer should disclose to the other party all relevant facts concerning her client's fraudulent intentions.

27 Suppose in the preceding question, Lawyer consults with you. She asks whether she may (or even must) disclose confidential client information for the purpose of preventing her client from using her services in committing serious fraud. You should explain that:

a. Rule 1.6(b), read by itself and not in conjunction with other rules, *requires* Lawyer to disclose such information for that purpose.

b. Rule 1.6(b), read by itself and not in conjunction with other rules, may *permit* but does not require Lawyer to disclose such information for that purpose.

c. Rule 4.1(b), read in conjunction with Rule 1.6(b), appears to *require* Lawyer to disclose such information for that purpose.

d. Both b. and c. above.

28 Lawyer represents a client that is entering into a lease for factory space for its business. The client tells Lawyer to be sure

the lease does not contain a subordination clause except for existing mortgages. In the negotiations, however, the landlord insists on a broader subordination clause. Knowing how much the client wants the factory space, Lawyer goes along with the broader clause, despite the client's instructions. Later, when the landlord goes bankrupt, the client is evicted from the premises due to the terms of the broader clause. Can Lawyer properly be liable for damages that the client incurred as a result of being evicted?

- a. Yes, because Lawyer breached her duty to her client by failing to follow the client's instructions.
- b. No, as long as Lawyer disregarded the client's instructions because, in her professional judgment, it was in the client's best interest for her to do so.
- c. No, because the bankruptcy of the landlord was not something that Lawyer could have reasonably foreseen.
- d. Both b. and c. above.

29 During settlement negotiations over an old claim, Lawyer realizes that the other attorney misunderstands the calculation of the statute of limitations—mistakenly believing he has several more weeks to commence his lawsuit. In fact, the last possible date is this coming Friday. Nevertheless, the other attorney suggests that they take some time to consult with their clients and continue the negotiations next week.

- a. Lawyer may ethically say “Good idea! Let's talk again next week” thus allowing the statute of limitations to run out.

- b. Lawyer should warn the other attorney that he is miscalculating the statute of limitations and had better commence his action by Friday.
- c. Lawyer should warn the other attorney that he is miscalculating the statute of limitations but should not presume to suggest when to commence the suit.
- d. Lawyer should demand that the other attorney commence the lawsuit by Friday but, to maintain confidentiality, should not explain why.

30 After protracted pretrial proceedings, a personal injury case brought by one of Lawyer's clients is finally coming to trial. Lawyer gets a call from the opposing attorney who suggests a settlement of \$230,000. Lawyer believes a jury would award his client at least twice that much, which would not only benefit the client but also double Lawyer's contingent fee. However, the client is eager to get the matter over with and may be relatively willing to settle. Lawyer must decide how strongly he should urge his client to reject the offer:

- a. Lawyer should do his best to balance the client's concerns with Lawyer's own legitimate interest in receiving fair compensation for his efforts to date.
- b. Lawyer may properly make it a priority to secure fair compensation for his effort on the case.

- c. Lawyer should treat the client as a “junior partner” in the settlement and advise the client accordingly.
- d. Lawyer should consider only the interests of the client in advising his client concerning the settlement.

31 What is the difference between the attorney-client privilege and the ethical duty of confidentiality?

- a. The privilege covers a much broader range of information than the duty of confidentiality.
- b. The privilege prevents judges from ordering the disclosure of attorney-client communications while the duty of confidentiality does not.
- c. Both of the above.
- d. There is no real difference. They’re essentially just two different names for the same thing.

32 A new client comes to Lawyer’s office and says he just shot a man who was attacking him in an alleyway. He also says he concealed the gun under the bus-stop bench across the street in front of Lawyer’s office. After the new client leaves, Lawyer goes to the bench and retrieves the gun. She promptly turns it in, without explanation, at the local police precinct. Assuming it was not in itself illegal for Lawyer to have the gun:

- a. Lawyer probably cannot be compelled to testify that she found the gun under the bench because that info is the product of an attorney-client communication.

- b. Under these facts, Lawyer probably *can* be compelled to testify where she found the gun.
- c. Lawyer probably *can* be compelled to testify that her client had told her where she could find the gun.
- d. Both b. and c. above.

33 In anticipation of her client’s indictment for unlawful payments to state officials (bribes), Lawyer needed to review several boxes of files belonging to her client. Lawyer found several incriminating memos among the files. So far, however, no documents have been subpoenaed in the case, and Lawyer has no reason to think that the prosecutor is even aware that the incriminating memos exist. Most would probably agree that:

- a. At this point Lawyer still may properly destroy the incriminating documents in order to prevent them from being used as evidence against her client.
- b. Lawyer may still properly move the incriminating memos to her own office files and (unless subpoenaed) keep them confidential until the case is over.
- c. If Lawyer retains possession of the incriminating memos, she would come under an obligation to turn them over to the authorities.
- d. If Lawyer has received the documents from her client, the attorney-client privilege would protect them from compelled disclosure (subpoena).

34 The president and senior officers of Gantry Corp., acting on the corporation's behalf, retained Lawyer to represent the corporation in various matters. In the course of her work representing the corporation, Lawyer discovered that several of the senior officers, including the president, have been causing the corporation to pay kickbacks that could lead to large fines against it. Lawyer thinks she should take steps to protect the corporation's interests even at the expense of the interests of the president and senior officers. Should she?

- a. No. The corporation is a legal fiction, and Lawyer's real clients are the corporate officers who retained her. Her fiduciary duty of loyalty is to them.
- b. No. As counsel for the corporation, Lawyer has an attorney-client relationship with *both* the corporation as a whole and the corporate officers that retained her.
- c. Yes. As counsel for the corporation, Lawyer's attorney-client relationship is only with the shareholders that ultimately own the corporation.
- d. Yes. Lawyer's client is the corporation, and she should endeavor to further the corporation's interests over the particular interest of any of its constituents.

35 Lawyer has a client who's been being investigated for a series of robberies. The robber wore a distinctive mask. The client tells Lawyer in a confidential communication that he committed the robberies, and the mask is stashed in a car that's parked in a barn on his brother-in-law's farm. If the police were to find the mask at that location, it could incriminate the

client. Without the mask, however, there's no evidence that unequivocally ties the client to the robberies.

- a. Lawyer's duty of candor to the court requires her to tell the authorities where the mask is located.
- b. Lawyer's duty of candor would require her to tell the authorities where the mask is located if, but only if, she is specifically asked.
- c. Lawyer has no general duty to volunteer relevant facts (such as the location of the mask) to the prosecution.
- d. Lawyer should advise her client to discreetly destroy the mask before somebody finds it.

36 A department store delivery driver accidentally struck a pedestrian with one of the store's delivery trucks. Representing the department store (and with no intention to provide representation to the driver), Lawyer paid a visit to the driver on the job. Lawyer introduced himself to the driver saying he'd been retained by the department store and added: "We may be sued by the person you hit, and I'm going to be defending us if that happens." Lawyer thereupon obtained a signed written statement from the driver. The statement included several incriminating admissions. Lawyer later turned the driver's statement over to the local prosecutor.

- a. There is nothing ethically questionable about Lawyer's statement to the driver concerning his role since it was literally true.

b. Based on Lawyer's quoted statement, the driver has a plausible argument that Lawyer owed him a duty of confidentiality.

c. Lawyer cannot be held to a duty of confidentiality to the driver because Lawyer never intended to enter into an attorney-client relationship with him.

d. Because Lawyer represented the department store, Lawyer would naturally also be representing the store's employees in matters in which both were involved.

37 Suppose in the preceding question that Lawyer said to the driver: "I'm only representing the department store, and not you." But Lawyer also said: "Anything you say to me now will be confidential and protected by the attorney-client privilege." Assuming the *Upjohn* rule applies:

a. Lawyer's statements to the driver concerning confidentiality and the privilege were completely false.

b. Lawyer's statements to the driver concerning confidentiality and the privilege may be literally true but they were misleading and ethically deficient.

c. Lawyer's statements to the driver, even if misleading, would be ethically justified by Lawyer's need to get information required to protect his client.

d. Lawyer should not have even been talking to the driver until the driver had a chance to get a lawyer of his own.

38 Lawyer represents the defendant in a personal injury case. Lawyer has been trying to negotiate a settlement with the plaintiff's attorney for weeks. Lawyer's client knows the plaintiff personally, and he suggests that he can ask the plaintiff to give Lawyer a call. That way, says the client, Lawyer might be able to reach an agreement with the plaintiff directly.

a. Lawyer should tell her client not to make direct contact with the plaintiff as any such communication about the case would be ethically improper.

b. Lawyer is not ethically permitted to call the plaintiff directly but may discuss the case with him as long as the plaintiff is the one that initiates the contact.

c. If Lawyer's client is planning to discuss the case directly with the plaintiff, Lawyer may ethically advise her client concerning such communications.

d. Lawyer's client is permitted to discuss the case directly with the plaintiff, but Lawyer must be "hands off" and not get involved in any way.

39 Lawyer's client is accused of Medicare fraud. The key evidence consists of admissions made by the client while being secretly recorded by a former customer. The customer was acting as an informant for the federal prosecutor as part of a negotiated plea deal. Though the prosecutor knew that Lawyer was representing the client at the time, Lawyer was not made aware of the conversation until after it occurred. The admissions that the informant recorded:

- a. Probably cannot be used in evidence because they were obtained in violation of the no-contact rule.
- b. Probably cannot be used in evidence because they were obtained by deceit and false pretenses.
- c. Both of the above.
- d. Probably *can* be used in evidence because, according to the McDade Amendment, the no-contact rule does not apply to federal prosecutors.
- e. None of the above.

40 Lawyer received a mysterious packet of materials. They appeared to be documents that had been taken without permission from the files of a company that lawyer was suing. What is more, they appeared to be protected by the attorney-client privilege.

- a. Most courts would probably say that the company waived the attorney-client privilege by not using due care to keep the documents in its control.
- b. In dealing with the documents Lawyer must be careful not to violate the legal rights of the company being sued by her client.
- c. Lawyer risks being disqualified from the case if she goes ahead and reads the documents on her own initiative.
- d. Both b. and c. above.

- e. Lawyer should quickly peruse the documents before somebody demands them back.

41 Lawyer represents Defendant in a personal injury case. As settlement negotiations were wrapping up one afternoon, the plaintiff's attorney asked Lawyer if the plaintiff's recent medical exam, done by Defendant's medical consultant, had turned up anything new. Lawyer knew that Defendant's consultant had found additional injuries from the accident, but Lawyer responded "Umm, no; not really" (a flat-out lie). The next day, the plaintiff's attorney, relying on this response, agreed to the settlement. According to cases we read in class:

- a. Lawyer could be held liable to the plaintiff for the false statement of fact that Lawyer made to the plaintiff's attorney.
- b. As an attorney, Lawyer is expected to bluster and shade the truth in negotiations, and the plaintiff's attorney had no right to rely on what he said.
- c. Since the plaintiff's attorney had equal access to the information requested (via his own doctors), it was his own fault if he let Lawyer mislead him.
- d. Because Lawyer was the plaintiff's adversary, the plaintiff's attorney was not entitled to rely on what Lawyer said in the settlement negotiations.

42 Lawyer represented a client charged with a violent street assault. The prosecution's case depended on a key eyewitness who was expected to give strong testimony. Lawyer

recommended that his client accept the prosecution's plea offer—which the client did. After the plea deal was finalized, however, Lawyer found out by happenstance that the eyewitness had died before the plea deal was even offered. Without the eyewitness, the prosecution would have had to dismiss the charges. Is the plea deal subject to challenge?

- a. Yes, because the prosecutor withheld a crucial fact when negotiating the plea with Lawyer.
- b. Yes, because what the prosecutor withheld from Lawyer was not just any crucial fact but the death of a key witness.
- c. Yes, because attorneys have a general duty to disclose the death of a client.
- d. No, not on these facts.

43 Three years ago, Lawyer represented Client in the purchase of a home. It had an old “open” mortgage on it. Lawyer wrote a letter to Client that erroneously (and negligently) said the mortgage was unenforceable. Last year, Client sold the home to W. When W questioned the old mortgage, Client showed W the letter. W bought in reliance on it. Recently a claim was made against W on the mortgage. W had to pay \$15,000 in settlement. W sues Lawyer for damages. Under the modern cases:

- a. Lawyer is liable to W for the negligent error in the letter because Lawyer is in privity with W.

b. Lawyer *cannot* be held liable to W for the negligent error in the letter because Lawyer is not in privity with W.

c. Lawyer may be liable to W for the negligent error in the letter if the court decides Lawyer should have foreseen that someone like W would rely on it.

d. W cannot recover from Lawyer based on the letter because the letter was addressed to somebody else.

44 Lawyer represented Seller in the sale of a small business. Lawyer wrote up a certification to be signed by Seller in which Seller made certain material representations concerning the business. Lawyer knew that some of the representations were false. Nonetheless, Lawyer stood silently by as Seller signed the false certification and the buyer paid for the business in reliance on it. The buyer now sues Lawyer for fraudulent misrepresentation.

a. Because Lawyer wrote the certification, Lawyer can be held liable for the false representations in it.

b. Lawyer violated the ethical rules in the preparing the false certification knowing it would help the client in completing the sale.

c. Both of the above.

d. None of the above. Lawyers are not responsible if their clients make false representations as long as they do not make false representations of their own.



45 It has been said that the object of a trial is not necessarily truth but the resolution of disputes. An important reason for this (alleged) fact is that:

- a. Values other than truth sometimes take precedence, preventing relevant information from being considered by the jury.
- b. Lawyers do not take seriously their ethical duty to refrain from making false statements of material facts.
- c. Judges don't ask enough questions during trials and leave too much of the fact investigation to the lawyers.
- d. Lawyers pay too much concern trying to advance their own clients' interests rather than being neutral arbiters working dispassionately for justice.

46 Lawyer represents a client who, along with several co-defendants, is being prosecuted for a white-collar conspiracy. All co-defendants have their own separate attorneys. While one of the co-defendants was on the stand, he made a statement that is very helpful to Lawyer's client. Lawyer knows, however, that the statement is false. Still, Lawyer has no reason to think that the person who made the statement knew it was false when he made it.

- a. Lawyer has an ethical duty to reveal the false statement to the court without undue delay.
- b. Lawyer has an ethical duty to consult with the person who made false statement in an effort to get it withdrawn.

c. Lawyer has no ethical duty to take remedial measures with respect to the false statement.

d. Lawyer may properly bring up the false statement in his closing argument and urge the jury to consider it in reaching its verdict.

e. Both c. and d. above.

47 Lawyer has contracted with Mammoth Ins. Co. to provide legal services to Mammoth's insureds who are sued in XYZ County. The contract provides that Lawyer will represent the insureds as clients, with all fees to be paid by Mammoth. It also specifies that Lawyer will (i) diligently pursue the defense of the cases, (ii) keep Mammoth closely informed concerning the progress of the cases, and (iii) follow reasonable instructions from Mammoth in litigating the cases. Assuming the insureds/clients consent to having Mammoth pay the fees, which of the above would present significant conflicts-of-interest problems that would need to be dealt with?

a. (i) and (ii).

b. (ii) and (iii).

c. (i) and (iii).

d. (i), (ii) and (iii).

e. None of the above.

48 Over the past several years, Lawyer has represented Client in a number of small real estate developments. Client sometimes uses other attorneys for his deals, as well. Now Client has invited Lawyer to invest in a small shopping center deal. Client has set the terms of the deal, arranged for seven other investors and has retained another attorney to paper the deal (representing them all). Lawyer is not representing Client in this deal. However, certain aspects of the deal are unusually favorable to Lawyer and quite unfavorable to Client.

- a. Because Lawyer is not representing Client in this deal, Lawyer has no special responsibility to mention downsides of the deal to Client.
- b. Because Client established the terms of the deal, Lawyer has no responsibility to point out aspects of the deal that might be unduly unfavorable to Client.
- c. Both of the above.
- d. Lawyer owes Client essentially the same level of care and concern that Client would get if Lawyer actually *were* representing Client in the deal.

49 Lawyer represents Defendant who's on trial for drug trafficking. The prosecution just finished direct examination of a witness who implicated Defendant in a certain drug deal. So far as Lawyer knows, this testimony was truthful. There are, however, a couple of inconsistencies in the other parts of witness's story. Also, the prosecutor glossed over the reasons why the witness was present at the scene, facts that would put the witness in a very bad light. On cross-examination, Lawyer should:

- a. Avoid dwelling on matters that might tend to undercut the credibility of the witness's truthful testimony.
- b. Avoid pointing out inconsistencies in the witness's story that might make his truthful testimony seem less believable in the eyes of the jury.
- c. Both of the above.
- d. Try to discredit the witness, if possible, by highlighting the inconsistencies in his testimony and the reasons for the witness's presence at the scene.

50 In 2019, between January 15 and March 3, Defendant had three telephone conversations and several email exchanges with Mr. X. Recently, during a deposition, Defendant was asked: "Did you, in 2019, ever talk with Mr. X between January 15 and March 3?" Which of the following possible responses by Defendant would probably be deemed to be perjury?

- a. "No."
- b. "During that period, Mr. X and I exchanged a number of emails."
- c. Both of the above.
- d. "I already told you that I never saw or met with Mr. X after New Years' Day in 2019."
- e. All of the above.