Chapter 2 - The Basic Elements of Law Practice
Pearce, Capra, and Green's Professional Responsibility, A Contemporary Approach (Full year 2010-2011)

Question 1
What is the rationale offered for restrictions on non-lawyer practice?
- Protecting the legal profession from competition
- Protecting consumers from incompetent and unethical practitioners
- Preventing innovation in the delivery of legal services
- None of the above

Question 2
As a general rule, in most jurisdictions a non-lawyer may do the all of following except:
- Sell legal forms
- Type in the blanks in legal forms for a customer
- Publish books advising people on how to complete legal forms
- Advise customers in person on how to complete legal forms
- No exceptions - a non-lawyer may perform all of the above.

Question 3
Legal Software Inc. makes available to consumers a program that helps them fill out legal forms. The software asks the consumer to answer personal questions regarding the consumer's circumstances and preferences regarding the consumer's legal problem. The software and associated web site identify the relevant form the consumer needs and based on the others help the consumer complete the appropriate form, suggesting specific provisions tailored to the consumer's needs and preferences. Has Legal Software Inc. engaged in unauthorized practice of law?
- According to the traditional rule, no because software is the same as a book.
- According to the traditional rule, no because the service is not personalized.
- According to the traditional rule, yes because the service is personalized.
- According to the traditional rule, yes because the service is personalized, but the rule has changed to permit legal software.

Question 4
An attorney is a senior partner at a law firm in which there are 50 lawyers. The firm pays each of its lawyers a fixed annual salary. In addition, at year's end, each lawyer receives a bonus from the profits of the firm in the proportion that the annual salary of each bears to the total of the fixed annual salaries of all lawyers. The attorney plans to introduce a new management plan under which the firm's non-lawyer office administrator would have general charge of all business matters but would not participate in any decisions involving legal judgment. The administrator would be paid a fixed annual salary and would be included as a participant in the firm's bonus plan on the same basis as the lawyers in the firm. This would usually yield a bonus of approximately one-fourth to one-third of the administrator's total annual compensation. The amount paid to the administrator will not exceed the compensation commonly paid to law office administrators within the local legal community. Is it proper for the attorney to institute such a plan?
- Yes, because the amount paid to the administrator does not exceed the compensation commonly paid to the law office administrators within the local legal community.
- Yes, because an employee of the firm may be compensated based on the profits of the firm.
- No, because the administrator's bonus is computed on the same basis as those of the lawyers in the firm.
- No, because the administrator's compensation is derived from the legal needs of the firm's lawyers.

Question 5
An attorney is a member of the bar and a salaried employee of a bank's trust department. As part of his duties, he prepares a monthly newsletter concerning wills, trusts, estates, and taxes that the bank sends to all of its customers. The newsletter contains a recommendation to the customer to review his or her will in light of the information contained and, if the customer has any questions, to bring the will to the bank, where the attorney will review the customer's will and answer the customer's legal questions. The bank provides that attorney's services to its customers for no charge. Is the attorney subject to discipline for the foregoing?

- Yes, because by sending out the newsletter the attorney is giving legal advice to persons who are not his clients.
- Yes, because the attorney is assisting the bank in the unauthorized practice of law.
- No, because no charge is made for the attorney's advice.
- No, because the attorney is a member of the bar.

**Question 6**

A business attorney entered into a partnership with a certified public accountant. The partnership provided legal and other assistance to clients in connection with business and tax planning, tax filings, and other personal and corporate business matters. The accountant performed only work that she was authorized to perform as a certified public accountant. The attorney made reasonable efforts to ensure that the accountant did not interfere with the attorney's compliance with his professional obligations as a lawyer. Is the attorney subject to discipline?

- Yes, because some of the activities of the partnership consisted of the practice of law.
- Yes, because lawyers may not form partnerships with nonlawyers.
- No, because the accountant performed only work that she was authorized to perform as a certified public accountant.
- No, because the attorney made reasonable efforts to ensure that the accountant did not interfere with the attorney's compliance with his professional obligations as a lawyer.

**Question 7**

Joan Lawyer has a leading real estate practice in Small County. She is also part owner of Small County Title. She suggests to her clients who purchase real estate that they consider purchasing their title insurance from Small County Title. Joan discloses in writing that she owns the company and recommends that her clients consider the rates and policies of competing title insurance companies. She explains that the services provided by Small County Title are not legal services and that the legal ethics rules do not apply to the purchase of title insurance. Joan suggests that clients feel free to consult another lawyer as to whether they should purchase title insurance from a company their real estate lawyer owns. The rates and policies that Small County Title offers are comparable to those of its competitors. Which of the following is true:

- Joan is not subject to discipline if the clients give informed consent in writing.
- Joan is not subject to discipline because she informs clients of the opportunity to consult independent counsel.
- Joan is not subject to discipline because the rates and policies of Small County Title are comparable to those of its competitors.
- Joan is subject to discipline unless she complies with all three requirements listed above.

**Question 8**

Giant Manufacturer wants to buy widgets from Small Producer. Both Giant and Small are headquartered in California. Small's outside counsel, John Lawyer, admitted to practice in New York, travels to California from his New York office to negotiate the deal on Small's behalf. After extensive negotiations, Giant agrees to pay Small $10 million for the widgets. John bills Small for $500,000 for legal fees. Small believes the fee is far too high and refuses to pay. It retains a California lawyer and decides to argue that it does not have to pay anything to John Lawyer because he was engaged in unauthorized practice of law. Small's argument:

- will fail because John is admitted to practice in New York.
- will fail because this was not a litigation matter.
- will fail because the legal services market is national and not restricted to a particular state.
- will succeed because John is not admitted to practice in California.

**Question 9**
Joan Jones is an associate at Franklin & Ignatius. She is admitted to the New York Bar. The firm sends her to the State of Sirius to appear in court in a case where the firm has been admitted pro hac vice. Has she committed UPL?

- Yes because she has traveled to Sirius before being admitted.
- No so long as she plans to be admitted pro hac vice or the prior court order covers all firm lawyers.

**Question 10**
Did Joan Jones violate UPL when she entered Fordham to investigate and prepare the case before the firm and its lawyers were admitted pro hac vice?

- Yes
- No

**Question 11**
Would she have violated UPL if the firm had brought an arbitration on behalf of its client and not a court case?

- Yes
- No

**Question 12**
Does Joan violate UPL if she transfers full-time to F&I's Sirius office and works under the supervision of a Sirius admitted attorney?

- Yes
- No

**Question 13**
Does Joan commit UPL if she leaves F&I to become in-house counsel at Monolith, Inc., located in Sirius?

- Yes
- No

**Question 14**
Joan rejoins F&I as a partner in its New York office. As a corporate partner, she is in charge of representing ABC, Inc., based in New Jersey, in its takeover of DEF, Inc., based in New York. Her team includes Jim, a NY lawyer coordinating the NJ litigation, and Jane, a corporate associate admitted in NY and NJ. They discover ABC has made a fraudulent statement relevant to the litigation. NJ requires disclosure. NY does not. The F&I lawyers do not disclose. Which of the following is true?

- If the predominant effect is in NJ, all face discipline absent contrary reasonable belief.
- Only Jane faces discipline because she is a NJ lawyer.
- Only Jim faces discipline because he is litigating the matter in NJ.
- None face discipline because NY does not require disclosure.

**Question 15**
Your friend George finds you at a party. He explains that he is having a problem with his landlord and asks your advice. You tell him what you learned about his problem in property class and explain it to him. Which of the following is correct?

- You have committed Unauthorized Practice of Law.
- If you were a lawyer, you would have created a lawyer-client relationship.
- Both A and B are correct.
- Neither A nor B is correct.

**Question 16**
An attorney closed her law practice when she became a state senator. A bank, one of the senator's former private clients, asked her as its senator to try to persuade a state agency to grant the bank a license to open a new branch bank. While the bank's request was pending before the agency, the senator wrote a letter on her legislative letterhead to the agency's chair, asserting that the branch would satisfy a local business need and urging that the bank's application be granted. The senator neither sought nor received any compensation from the bank for her efforts. Eventually the agency granted the bank's application, in part because of the senator's efforts. Is the senator subject to discipline?
Yes, because the senator used her public position to attempt to influence the agency on behalf of the bank.  
Yes, because the agency granted the bank's application in part due to the senator's efforts.  
No, because the senator's letter to the agency's chair did not express an opinion about the law.  
No, because the senator acted on behalf of the bank as a constituent and not as a client.

**Question 17**
Lincoln & Fordham has represented Center Manufacturing in its transactional work. The SEC begins an investigation of Center Manufacturing. Lincoln & Fordham explains to Center that it cannot represent it in the SEC investigation. Center obtains other counsel. Nonetheless, from time to time, Center asks Lincoln & Fordham about issues that arise in the SEC matter and Lincoln & Fordham provides answers. Does Center have a lawyer-client relationship with Center for purposes of the SEC investigation?

- Yes because Lincoln & Fordham has answered Center's questions.  
- Yes because Lincoln & Fordham previously represented Center in its transactional work.  
- No because Lincoln & Fordham made clear it was not representing Center.  
- No because Center has other counsel in the matter.

**Question 18**
The firm of Lincoln & Fordham represents the Computer & Software Association, an organization of businesses who manufacture computers or create software, in challenging proposed regulations regarding data privacy. Lincoln & Fordham has collected information on business practices from each of the businesses in the Association. Lincoln & Fordham agrees to represent one of those businesses, GoFind, in an antitrust suit against another, MacroTough. Was MacroTough a client of Lincoln & Fordham by virtue of its representation of the Computer & Software Business Association?

- Yes. A lawyer who represents an organization also represents its constituents.  
- Yes. A lawyer who represents an organization is presumed to represent its constituents absent an express agreement to the contrary.  
- No. A lawyer who represents an organization does not thereby represent its constituents and never has a duty to them absent an express agreement to represent the constituent in addition to the organization.  
- No. A lawyer who represents an organization does not thereby represent its constituents and the facts are silent as to actions that would give rise to a lawyer-client relationship or create a duty.

**Question 19**
The court appoints a lawyer who believes that abortion is murder to represent a teenage girl seeking court permission to obtain an abortion without the consent of her parents. The lawyer explains that he believes that abortion is murder and asks the court to withdraw the appointment. The court refuses. Under the Rules, which of the following is true?

- The lawyer should not have sought to avoid the appointment.  
- The lawyer was ethically permitted to seek to avoid the appointment and can refuse the representation.  
- The lawyer was ethically permitted to seek to avoid the appointment but must continue the representation.  
- The lawyer must represent the client, but does not have to follow the client's instructions.

**Question 20**
Joan Lawyer practices matrimonial law. She only represents women because she seeks to "redress the social and legal wrongs done to women." John Client asks her to represent him. She refuses on the ground that he is a man. John Client sues her for unlawful discrimination. Under Nathanson v. MCAD, what is the result?

- Joan is liable for violating the laws against gender discrimination.  
- Joan is subject to discipline for violating her ethical obligation to ensure that all clients have a right to representation.  
- Joan is not liable because she has complied with all of her obligations under the ethics rules.  
- Joan is not liable because her freedoms of speech and association allow her to represent only women.

**Question 21**
Attorney Alpha, a sole practitioner, recently suffered a heart attack and was advised that she could not return to work for six months. Alpha delivered all of her clients' files to Attorney Beta, who is also a sole practitioner. Beta agreed to review each client's file promptly, take any action necessary to protect each client's interests, and treat the information in the files as
confidential. Alpha then wrote her clients, advising each client that the client's file had been delivered to Beta for review and for any action necessary to protect the client's interest, and that the client was free to select another lawyer. Alpha knows that Beta is a competent attorney. Beta did not accept the file of any person whose interests were, or could be, adverse to the interests of any of Beta's own clients. Was it proper for Alpha to deliver the files to Beta for review?

- Yes, because Alpha knows that Beta is competent to protect the clients' interests.
- Yes, because Beta agreed to treat the information in the files as confidential.
- Yes, because given her medical condition, Alpha's delivery of the files was necessary to protect the client's interests.
- No, because Alpha did not obtain the prior consent of each client whose file was delivered to Beta.

**Question 22**

Attorney is employed in the legal department of Electco, a public utility company, and represents that company in litigation. Electco has been sued by a consumer group that alleges Electco is guilty of various acts in violation of its charter. Through its general counsel, Electco has instructed Attorney not to negotiate a settlement but to go to trial under any circumstances since a precedent needs to be established. Attorney believes the case should be settled if possible. Must Attorney withdraw as counsel in the case?

- Yes, if Electco is controlling Attorney's judgment in settling the case.
- Yes, because a lawyer should endeavor to avoid litigation.
- No, if Electco's defense can be supported by a good faith argument.
- No, because as an employee, Attorney is bound by the instructions of the general counsel.

**Question 23**

An attorney represents a client in commercial litigation that is scheduled to go to trial in two months. Over the past several weeks, the client has disagreed with almost every tactical decision that the attorney has made. Frustrated, the attorney finally said to the client that if she didn't like the way he was handling the lawsuit, perhaps she should get another lawyer. The client was upset at the suggestion and accused the attorney of trying to get out of the case. Reasonably believing that he could no longer work effectively with the client, the attorney sought the client's permission to withdraw from the representation, and the client reluctantly agreed. After giving the client sufficient notice to obtain replacement counsel, the attorney requested the court's permission to withdraw from the litigation, but the court denied the request. May the attorney withdraw from the representation?

- Yes, because the client agreed, and the attorney gave the client sufficient notice to obtain replacement counsel.
- Yes, because the client had made it unreasonably difficult for the attorney to carry out the representation effectively.
- No, because the court denied the attorney's request to withdraw.
- No, because the attorney's withdrawal would cause material prejudice to the client, and the client's agreement was not voluntary.

**Question 24**

Attorney experience several instances when clients failed to pay their fees in a timely manner, but it was too late in the representation to withdraw without prejudicing the clients. To avoid a recurrence of this situation, Attorney had drafted a stipulation of consent to withdraw if fees are not paid according to the fee agreement. She proposes to have all clients sign the stipulation at the outset of the representation. Is it proper for Attorney to use the stipulation to withdraw from representation whenever a client fails to pay fees?

- Yes, because a lawyer may withdraw when the financial burden of continuing the representation would be substantially greater than the parties anticipated at the time of the agreement.
- Yes, because the clients consented to the withdrawal in the stipulation.
- No, because a client's failure to pay fees when due may be insufficient in itself to justify withdrawal.
- No, unless clients are provided an opportunity to seek independent legal advice before signing the stipulation.

**Question 25**

Rule 1.16 implements the dominant conception that the lawyer should serve as a "neutral partisan" for her client.
Question 26
Attorney represented Plaintiff in an action against several defendants. The retainer agreement provided that Plaintiff would pay all costs and expenses of litigation and would, on demand, reimburse Attorney for any costs or expenses advanced by Attorney. After serving process on two defendants, Attorney had difficulty locating and serving the remaining defendants. Plaintiff approved the hiring of an investigator to locate and serve the defendants, and Attorney advanced the costs for the investigator. When Attorney asked Plaintiff for reimbursement, Plaintiff refused to pay. Attorney then told Plaintiff that Attorney would do no more work on the case until Attorney was reimbursed for the amount advanced. Thereafter, one of the defendants filed a counterclaim that required a responsive pleading within thirty days. Because Attorney had not been paid, Attorney permitted the time to respond to the counterclaim to expire without filing a responsive pleading, and a default was entered on the counterclaim. Later, Plaintiff reimbursed Attorney for the costs Attorney had advanced, and Attorney was successful in having the default on the counterclaim set aside. The case was tried, and Plaintiff prevailed on Plaintiff's complaint, and the counterclaimant recovered nothing. Is Attorney subject to discipline for not initially filing a responsive pleading to the counterclaim?

- Yes, because Attorney neglected Plaintiff's cause.
- Yes, unless Attorney had asked leave of court to withdraw.
- No, because Plaintiff breached the agreement to reimburse Attorney.
- No, because Plaintiff did not sustain any prejudice as a result of Attorney's action.

Question 27
Witness was subpoenaed to appear and testify at a state legislative committee hearing. Witness retained Attorney to represent her at the hearing. During the hearing, Attorney, reasonably believing that it was in Witness's best interest not to answer, advised Witness not to answer certain questions on the grounds that Witness had a constitutional right not to answer. The committee chairperson directed Witness to answer and cautioned her that refusal to answer was a misdemeanor and that criminal prosecution would be instituted if she did not answer. Upon Attorney's advice, Witness persisted in her refusal to answer. Witness was subsequently convicted for her refusal to answer. Is Attorney subject to discipline for her refusal to answer. Is Attorney subject to discipline?

- Yes, because his advice to Witness was not legally sound.
- Yes, because Witness, in acting on Attorney's advice, committed a crime.
- No, if the offense Witness committed did not involve moral turpitude.
- No, if Attorney reasonably believed Witness had a legal right to refuse to answer the questions.

Question 28
A sole practitioner was appointed to represent a criminal defendant on appeal. A recently admitted lawyer who shared office space with the sole practitioner agreed to write the brief if the sole practitioner would pay him one-half of the statutory fee. The defendant agreed to the arrangement in writing, after a full consultation. The recently admitted lawyer entered an appearance as co-counsel for the defendant and, with the sole practitioner's knowledge, applied for and received several extensions of time to file the brief. Subsequently, the appellate court dismissed the appeal for failure to pursue the appeal. A third lawyer was later appointed to represent the defendant, whose conviction was affirmed after the appeal was reinstated. Is the sole practitioner subject to discipline?

- Yes, because he neglected the defendant's case.
- Yes, because he shared fees with the recently admitted lawyer.
- No, because the defendant agreed in writing to the co-counsel arrangement.
- No, because the affirmance by the appellate court indicated that the defendant's appeal was without merit.

Question 29
An attorney was recently admitted to practice and was hired as a new associate of a large law firm. The attorney was working late one night when he received a telephone call from his cousin. The cousin said that he was calling from the police station because he had just been arrested for possession of cocaine with intent to distribute. He was permitted to make only one phone call, and the attorney was the only one he knew. The attorney responded that he had no criminal law experience and that his firm did not handle criminal cases. Nevertheless, the cousin pleaded with the attorney to come to the police station and use what information he recalled from his criminal law and procedure courses to attempt to get his cousin released on bail. However, as a result of his inexperience, the attorney was unable to secure his cousin's release that night. The next morning, the attorney found an experienced criminal lawyer for his cousin, who obtained his release within one hour. Was the attorney's conduct proper?
Yes, because neither referral to another lawyer nor consultation with another lawyer was practical under the circumstances.

Yes, because the attorney was a close relative.

No, because the attorney had no special training or experience in criminal cases.

No, because the attorney did not have the requisite level of competence to accept representation in the case.

**Question 30**
An attorney hired a recent law school graduate as an associate. For the first six months, the associate was assigned to draft legal documents that the attorney carefully reviewed and revised before filing. However, shortly after the associate was admitted to the bar, the attorney told the associate that he would be going on vacation the following week and was assigning her the representation of the landlord in a housing case that was going to trial while he was away. The associate had never conducted or observed a trial before and, because she had not previously worked on any housing cases, she was unfamiliar with the relevant law and procedure. She did not believe that she would have enough time to learn everything that she needed to know, but she was reluctant to decline the assignment. Before the trial began, she met with the landlord and disclosed that this would be her first trial, but the landlord did not object. Although the associate prepared diligently, the landlord lost the trial. Is the attorney subject to discipline?

Yes, because the attorney did not ensure that the associate was competent to conduct the trial on her own.

Yes, because the landlord lost the trial.

No, because the attorney could reasonably assume that, having been admitted to the bar, the associate was capable of conducting the trial.

No, because the landlord did not object to the associate's representation.

**Question 31**
Attorney has a highly efficient staff of paraprofessional legal assistants, all of whom are graduates of recognized legal assistant educational programs. Recently, the statute of limitations ran against a claim of a client of Attorney's when a legal assistant negligently misplaced Client's file and suit was not filed within the time permitted by law. Which of the following correctly states Attorney's professional responsibility?

Attorney is subject to civil liability and is also subject to discipline on the theory of respondeat superior.

Attorney is subject to civil liability or is subject to discipline at Client's election.

Attorney is subject to civil liability but is NOT subject to discipline unless Attorney failed to supervise the legal assistant adequately.

Attorney is NOT subject to civil liability and is NOT subject to discipline if Attorney personally was not negligent.

**Question 32**
An attorney who is a sole practitioner limits his practice to personal injury cases. He regularly places advertisements in local newspapers, stating that his practice is limited to personal injury cases, including medical malpractice. After seeing one of the attorney's ads, a man approached the attorney for representation in a medical malpractice case. After a 30-minute interview, the attorney told the man that he was too busy to take his case because it appeared quite complicated. He further offered to refer the man to another lawyer who regularly practiced in the field. He reminded the man that he should see another lawyer promptly before the statute of limitations expired and he lost his right to sue. Although the attorney did not charge the man for the interview, the man was upset at wasting 30 minutes of his time. The man did not contact another lawyer until eight months later, when he learned that the statute of limitations on his claim had expired six months after his interview with the attorney. In fact, the man had a meritorious medical malpractice claim. Is the attorney subject to civil liability?

Yes, because the attorney falsely advertised his availability for medical malpractice cases.

Yes, because the attorney did not advise the man as to the date the statute of limitations would expire.

No, because the attorney did not violate any duty owed to the man.

No, because the attorney offered to refer the man to another medical malpractice lawyer.
Question 33
Jane Lawyer represents Ron Client in settling a dispute with his employer. After Jane explained the terms of the settlement to Ron, he knowingly and voluntarily agreed to it. The terms of the settlement were fair. Ron later learns that his friend Lester had received a significantly better settlement based on a similar dispute with their mutual employer. Ron retains counsel to sue Jane Lawyer for malpractice. Ron is:

- Not barred from suing Jane Lawyer.
- Barred from suing Jane Lawyer because he voluntarily agreed to the settlement.
- Barred from suing Jane Lawyer because the settlement was fair.
- Barred from suing Jane Lawyer unless Jane intentionally mislead Ron regarding the terms of the settlement.

Question 34
An attorney agreed to represent a client in a lawsuit. The attorney and the client executed the attorney's preprinted retainer form that provides, in part: "The client agrees to pay promptly the attorney's fee for services. In addition, the client and the attorney agree to release each other from any and all liability arising from the representation. The client agrees that the attorney need not return the client's file prior to receiving the client's executed release. Upon full payment, the attorney will return the file to the client." Although the attorney recommended that the client consult independent counsel before signing the retainer agreement, the client chose not to do so. The attorney reasonably believes that his fee is fair and that the quality of his work will be competent. Is the attorney's retainer agreement with the client proper?

- Yes, because the attorney furnished consideration by agreeing to return the client's file.
- Yes, because the attorney reasonably believes that his fee is fair and that the quality of his work will be competent.
- No, because the attorney is attempting to limit his liability for malpractice.
- No, because the attorney uses a preprinted form for all retainers.

Question 35
Attorney represented Buyer in a real estate transaction. Due to Attorney's negligence in drafting the purchase agreement, Buyer was required to pay for a survey that should have been paid by Seller, the other party to the transaction. Attorney fully disclosed this negligence to Buyer, and Buyer suggested that he would be satisfied if Attorney simply reimbursed Buyer for the entire cost of the survey. Although Buyer might have recovered additional damages if a malpractice action were filed, Attorney reasonably believed that the proposed settlement was fair to Buyer. Accordingly, in order to forestall a malpractice action, Attorney readily agreed to make the reimbursement. Attorney drafted a settlement agreement, and it was executed by both Attorney and Buyer. Was Attorney's conduct proper?

- Yes, if Attorney advised Buyer in writing that Buyer should seek independent representation before deciding to enter into the settlement agreement.
- Yes, because Attorney reasonably believed that the proposed settlement was fair to Buyer.
- No, because Attorney improperly settled a case involving liability for malpractice while the matter was still ongoing.
- No, unless Buyer was separately represented in negotiating and finalizing the settlement agreement.

Question 36
An attorney is widely regarded as an exceptionally competent practitioner in the field of criminal law. A client of the attorney became the subject of a grand jury investigation in a matter that could result in a felony indictment. The client lacked sufficient funds to pay for the attorney's services beyond the grand jury stage. He asked the attorney to provide limited representation for a flat fee. Under the arrangement he proposed, the attorney would advise the client concerning the grand jury investigation, but the representation would end when an indictment was returned or the grand jury decided not to indict. The attorney fully advised the client of the practical and legal aspects of the client's proposal. Is it proper for the attorney to accept this limited representation?

- Yes, because the client and not the attorney suggested this arrangement.
- Yes, because the attorney and the client may agree to limit the scope of the representation so long as the limitation is reasonable under the circumstances.
- No, because the attorney should not limit the scope of the representation based on the client's ability to pay.
- No, because the scope of the representation may not be limited in a criminal case.
Question 37
Rascal was convicted of murder. In preparing for the sentencing phase of the case, Rascal's lawyer Matlock investigated potential mitigation evidence. Matlock spoke with Rascal and five of his family members who described Rascal's childhood and mental condition as normal. Matlock also consulted with mental health experts who did not offer helpful mitigation evidence. Matlock was aware that the prosecution was planning to introduce evidence of Rascal's previous convictions for a violent rape, as well as a juvenile record. Matlock did not examine the files of the earlier cases. If he had done so, he would have discovered mitigation evidence of schizophrenia, organic brain damage, alcoholism, and serious childhood problems. Rascal is sentenced to death. He appeals claiming ineffective assistance of counsel. What result?

- Not ineffective assistance. Matlock's conduct was not perfect but it was reasonable because the interviews with Rascal and his family members did not indicate the existence of mitigation evidence.
- Not ineffective assistance. Matlock's conduct was unreasonable but it was not prejudicial.
- Ineffective assistance. Matlock failed to provide zealous representation.
- Ineffective assistance. Matlock's unreasonable conduct prejudiced Rascal.

Question 38
On appeal, the court appoints John Lawyer to represent Joan Client, an indigent criminal defendant. John Lawyer refuses to make arguments that Joan Client instructs him to make. John Lawyer considers the arguments non-frivolous, but believes that raising them would be bad strategy. Do the Rules require John Lawyer to make the arguments? Does the failure to follow Joan Client's instructions deprive her of her constitutional right to counsel?

- Neither the Rules nor the right to counsel require the lawyer to follow the client's instructions.
- Both the Rules and the right to counsel require the lawyer to follow the client's instructions.
- The Rules require John Lawyer to make the arguments but the right to counsel does not.
- The right to counsel requires John Lawyer to make the arguments but the Rules do not.

Question 39
During protracted pretrial proceedings, Client complained bitterly about time and expense involved and insisted that Attorney take steps to terminate pretrial proceedings. Attorney believes that the case cannot be adequately prepared for trial without further pretrial proceedings that will require an additional six months delay and further expense. The retainer states that the client has the final say on the costs of the matter. Should Attorney follow the client's instructions?

- Yes because lawyers must follow client instructions.
- Yes because lawyers and clients may agree to limit the scope of representation.
- No because lawyers may never limit the scope of representation.
- No because lawyers may not agree to limit the representation under these circumstances.

Question 40
A client retained an attorney to recover for a personal injury. In the retainer agreement signed by the client and the attorney, the client agreed to cooperate fully and pay the attorney a contingent fee computed as a percentage of the amount of recovery after expenses: 25 percent if settled before trial, 30 percent if settled before verdict, 35 percent after verdict, and 40 percent after appeal. [BEGIN Go Online]Click here to tinker with a personal injury calculator [END Go Online] [Begin Make the Connection] For more on contingency fees, See Chapter 3 [End Make the Connection] The attorney's representation of the client in the matter extended over a three-year period during which the attorney advanced a large amount for litigation expenses. After trial, the client obtained a jury verdict for an amount larger than either the attorney or the client had anticipated. However, the defendant made an offer of settlement for approximately the amount of money the attorney had originally projected as reasonable to expect. The client, who was hard pressed financially, directed the attorney to accept the offer and settle. The attorney refused, because she was confident that there was no reversible error in the trial and that the appeal was without merit. The attorney reasonably believed that the appeal was filed solely to gain negotiating advantage in settlement negotiations. Is the attorney subject to discipline?

- Yes, because the attorney's percentage under the fee contract increased after the appeal.
- Yes, because the client directed the attorney to accept the settlement offer.
No, because the decision whether to settle or defend an appeal is a tactical matter for the attorney to determine.

No, because evaluation of the merits of an appeal requires the exercise of independent professional judgment.

**Question 41**
Jane Client is seeking a divorce and wants primary custody of her children. Client instructs Susan Lawyer not to use evidence of spouse's adultery. Lawyer informs Client that the evidence of adultery will be very helpful in gaining primary custody and avoiding joint custody. Client continues to insist that Lawyer not introduce evidence of spouse's adultery. Must Susan Lawyer follow Client's instructions? If Susan Lawyer follows Client's instructions and the court denies Client primary custody and instead awards joint custody, can Client succeed in a legal malpractice action against Lawyer?

- The Rules and malpractice both clearly require Susan to ignore the instructions.
- The Rules are unclear but malpractice law makes Susan liable for following the instructions.
- The Rules and malpractice law both clearly require Susan to follow instructions.

**Question 42**
Jeff Client, who has been convicted of murder, asks Joan Lawyer to request a death sentence rather than life in prison. Must Joan Lawyer follow this instruction?

- Yes
- No

**Question 43**
A county law prohibits stores from selling alcoholic beverages before noon on Sundays. Failure to comply is a misdemeanor punishable by a fine of $150. An attorney was hired by a client who owns several liquor stores. The client asked the attorney whether any store owners had been prosecuted for violating the law and whether the fine could be imposed for every sale on a Sunday before noon or only for every Sunday on which alcohol was sold before noon. The client also asked what he could do to minimize the risk that he would be detected. The attorney accurately told the client that the fine could only be imposed for each Sunday on which he sold alcoholic beverages before noon, not for each transaction, and that no one had been prosecuted under the law as yet. She also told him that she thought it would be improper to advise him about how to avoid detection. The client thanked the attorney for the information and hung up. Several weeks later, the attorney learned that the client had begun to open his store for business on Sundays at 9 a.m. Is the attorney subject to discipline?

- Yes, because the attorney reasonably should have known that the information she gave the client would encourage him to violate the law.
- Yes, because the attorney did not discourage her client from breaking the law.
- No, because the attorney merely gave the client her honest opinion about the consequences that were likely to result if he violated the law.
- No, because the lawyer and the client could have discussed the best way to avoid detection under the criminal law.

**Question 44**
Attorney represented Landlord in a variety of matters over several years. Plaintiff, an elderly widow living on public assistance, filed suit against Landlord alleging that Landlord withheld without justification the security deposit on a rental unit that Plaintiff vacated three years ago. She brought the action for herself, without counsel, in small claims court. Attorney investigated the claim and learned that it was legally barred by the applicable statute of limitations, although Plaintiff's underlying claim was meritorious. Attorney told Landlord of the legal defense, but emphasized that Plaintiff's claim was just and that, in all fairness, the security deposit should be returned to Plaintiff. Attorney told Landlord: "I strongly recommend that you pay Plaintiff the full amount with interest. It is against your long-term business interests to be known in the community as a landlord who routinely withholds security deposits even though the tenant leaves the apartment in good condition. Paying the claim now will prevent future headaches for you." Was Attorney's conduct proper?

- Yes, if Landlord did not object to Attorney's advice and paid Plaintiff's claim.
- Yes, because Attorney may refer to both legal and nonlegal considerations in advising a client.
- No, unless Attorney's engagement letter informed Landlord that Attorney's advice on the matter would include both legal and nonlegal considerations.
- No, because in advising Landlord to pay the full claim, Attorney failed to represent zealously Landlord's legal interests.
Question 45
Attorney represents Client, the plaintiff in a civil action that was filed a year ago and is about to be set for trial. Client informed Attorney that he could be available at any time during the months of October, November, and December. In discussing possible trial dates with opposing counsel and the court clerk, Attorney was advised that a trial date on October 5 was available and that the next available trial date would be December 10. Without first consulting Client, Attorney requested the December 10 trial date because she was representing Deft, the defendant in a felony criminal trial that was set for October 20 and she wanted as much time as possible to prepare for that trial. Was it proper for Attorney to agree to the December trial date without obtaining Client's consent?

- Yes, unless Client will be prejudiced by the delay.
- Yes, because a criminal trial takes precedence over a civil trial.
- No, because Attorney should manage her calendar so that her cases can be tried promptly.
- No, unless Attorney was court-appointed counsel in the criminal case.

Question 46
Plaintiff and Defendant are next-door neighbors and bitter personal enemies. Plaintiff is suing Defendant over an alleged trespass. Each party believes, in good faith, in the correctness of his position. Plaintiff is represented by Attorney Alpha, and Defendant is represented by Attorney Beta. After Plaintiff had retained Alpha, he told Alpha "I do not want you to grant any delays or courtesies to Defendant or his lawyer. I want you to insist on every technicality;" Alpha has served Beta with a demand to answer written interrogatories. Beta, because of the illness of his secretary, has asked Alpha for a five-day extension of time within which to answer them. Is Alpha subject to discipline if she grants Beta's request for a five-day extension?

- Yes, because Alpha is acting contrary to her client's instructions.
- Yes, unless Alpha first informs Plaintiff of the request and obtains Plaintiff's consent to grant it.
- No, unless granting the extension would prejudice Plaintiff's rights
- No, because Beta was not at fault in causing the delay.

Question 47
Robin and Terry had been good friends at Roosevelt Law School. Robin is now defending a big tobacco company in lawsuits from survivors of people who died from second-hand smoke. Terry thinks this is reprehensible. Robin responds that rules specifically authorize her to represent a client she finds reprehensible. Is she correct?

- Yes
- No

Question 48
Rhonda Lawyer, a staff attorney with Fordham Legal Services, represents Thomas Tenant in a non-payment eviction case brought by Lawrence Landlord. Thomas refuses to pay rent because he believes Landlord is shooting invisible but dangerous gamma rays into his apartment. Thomas offers no scientific evidence for this contention and Rhonda Lawyer finds it unbelievable. Thomas insists that Rhonda Lawyer counter-claim for breach of the warranty of habitability on account of the gamma rays and states that he will refuse to pay his rent even if it means he will be evicted and become homeless. When Rhonda Lawyer suggests that Thomas Seek a guardian to help him, Thomas angrily refuses. Rhonda Lawyer reasonably believes the client has diminished capacity. Under the Rules, Rhonda Lawyer may do all the following except:

- Follow Tenant's instructions
- Seek appointment of a guardian
- Consult with client's daughter
- Ask court permission to withdraw from representing Tenant

Question 49
The rules require a lawyer to serve as a hired gun for the client.

- True
- False