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SKU: 9781454873365-TEST-BANK

Chapter 2

Unauthorized Practice of Law

1. Limitations restricting who can practice law in the U.S. were first adopted:
   a. During the S&L crisis
   b. During the Depression
   c. In the 1960s
   *d. In the colonial period

2. The first UPL statutes and rules:
   *a. Restricted the right to appear in court on behalf of another
   b. Limited nonlawyers from giving legal advice
   c. Required law school and a bar exam
   d. None of the above

3. The definition of the practice of law:
   a. Is uniformly adopted throughout the states based on the ABA's model definition
   *b. Has been developed over time through case law
   c. Only prohibits nonlawyers from representing clients in court
   d. Has been found to violate current anti-trust laws

4. Practicing law without a license:
   a. Violates federal law
   *b. Violates state law in most jurisdictions
   c. Violates county ordinances
   d. All of the above

5. There has been a resurgence in prosecutions of UPL since the 1980s because:
   a. State bar associations are concerned about paralegals taking work from lawyers
   b. More disbarred lawyers are practicing law without their licenses
   *c. More nonlawyers are providing legal services directly to the public
   d. None of the above

6. The need for legal services in the U.S.:
   a. Is being met by lawyers as the US has a high proportion of lawyers
   *b. Is not being met by the existing supply of lawyers
   c. Is being filled by practicing lawyers and volunteers working through bar associations
   d. Is decreasing because poor people don't really need lawyers

7. Nonlawyer legal service providers argue that they are not engaging in UPL because:
   *a. They are providing legal information, not legal advice
   b. They are just as well qualified as lawyers
   c. They are entitled to practice law
   d. They are as effective as lawyers in providing legal services

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8. Nonlawyers can be authorized to advise clients if:
   a. The client gives the person a power of attorney
   b. The client signs a disclaimer stating that he/she understands that the provider is not a lawyer
   c. The provider is a Legal Document Assistant in a state like California that regulates LDAs
   *d. None of the above

9. Which of the following areas of practice is NOT one that has an unmet need for legal services?
   a. Family Law
   *b. Real Estate development
   c. Immigration
   d. Bankruptcy

10. Courts have generally held that nonlawyers can do the following tasks without practicing law except one. Which one?
   a. Fill in forms at the customer's instructions
   b. Provide self-help materials to customers
   c. Tell the customer where the court house is
   *d. Help the customer decide what to put on a form

11. Which of the following constitutes the practice of law?
   a. Appearing at a hearing about a child's accommodations for disabilities
   b. Preparing a living trust
   c. Recommending a course of action in a non-litigated matter
   *d. All of the above

12. Lawyers can be prosecuted for engaging in UPL if they:
   a. Practice law in a state in which they are not licensed
   b. Practice law when they are under suspension
   c. Advise a client to break the law
   *d. A and B

13. Which of the following is NOT one of the conventional tests for determining if an action constitutes the practice of law?
   *a. The Out of Scope Test
   b. The Professional JudgmentTtest
   c. The Traditional Areas of Practice Test
   d. The Incidental Legal Services Test

14. How do UPL cases get to the courts?
   a. Actions for injunctive relief
   b. Criminal prosecutions
   c. Contempt proceedings

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*d. All of the above

15. Under most state ethics codes or statutes, a lawyer's duty to supervise nonlawyer employees includes what obligation?
    a. To run a background check when hiring
    b. To meet with the employee daily to review work
    *c. To refrain from aiding in UPL
    d. To conduct regular ethics training

16. Which of the following statements about court appearances and UPL is true?
    *a. The right of self-representation is an exception to the prohibition against nonlawyers representing others in court.
    b. About half of states prohibit nonlawyer representation of others in court.
    c. Paralegals are commonly allowed to make court appearances in nonadversarial matters.
    d. Certified paralegals can make court appearances under a lawyer's supervision.

17. Which of the following best describes the ethics rules about nonlawyers and depositions?
    a. Paralegals can take depositions under lawyer supervision
    b. Paralegals can take depositions under lawyer supervision so long as the lawyer is present
    c. Paralegals can take depositions under lawyer supervision if the lawyer is available by phone
    *d. Paralegals cannot take depositions as this act is considered to be the practice of la.

18. Which the following statements about paralegals and depositions is true?
    *a. Paralegals can attend depositions with the lawyer present to take notes, assist and observe
    b. Paralegals are prohibited from preparing clients for deposition.
    c. Paralegals do not usually work in litigation so rarely get involved in depositions
    d. A paralegal cannot be prosecuted for UPL for taking a deposition

19. As a general rule,
    a. Paralegals can sign pleadings on behalf of the lawyer.
    b. Paralegals can sign pleadings if they are certified
    *c. Paralegals should not sign pleadings for the lawyer
    d. Paralegals do not usually have much to do with pleadings

20. Which is the following does NOT constitute giving legal advice?
    a. Recommending a course of conduct to a client
    *b. Updating a client about the status of his/her case
    c. Outlining a client's rights
    d. Interpreting a case for a client

21. Legal document assistants and preparers are not engaged in the practice of law because:
    a. They are authorized by statute or court rule to give legal advice

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b. They are certified by the state
c. They are serving an underrepresented group of persons
*d. They do not give legal advice or represent people in court

22. Electronic programs, such as software and web-based portals that guide persons through a series of questions and facilitate the preparation of legal forms:
a. Are generally considered to be UPL
b. Are used by some courts to improve access to legal services
*c. Have been found to constitute UPL by some courts
d. Are not very effective and are being abandoned

23. Customers who get help from nonlawyer legal service providers are:
a. Fully protected by the attorney-client privilege
b. Have limited protection from the privilege
*c. Not protected by the attorney-client privilege
d. Are protected so long as the paralegal is certified

24. Which of the following tasks can a paralegal perform when working with a prospective client:
*a. Interview the person and take detailed notes about the facts and legal issues
b. Have the person sign an engagement letter agreeing to the representation
c. Tell the person what the likely course of action will be
d. Tell the person what he/she thinks will happen based on similar cases

25. A lawyer can delegate which of the following tasks to a paralegal?
a. Preparing a pleading
b. Appearing in court to request a continuance
c. Quoting basic fee information to a prospective client
*d. A and C

26. Which of the following tasks are paralegals prohibited from performing by some states out of concern that the paralegal may need to give legal advice?
a. Oversee the execution of a will
b. Supervise a real estate closing
c. Interviewing clients
*d. A and B

27. States that allow paralegals to supervise real estate closings generally require which of the following:
a. The lawyer must be available in case there are questions
b. The clients must consent
c. The paralegal cannot give advice during the closing
*d. All of the above

28. An administrative agency is best described as:
*a. A government body responsible for the control and supervision of a particular

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activity or area of public interest
b. A court of general jurisdiction
c. A lower level quasi-judicial body
d. None of the above

29. Administrative agencies:
a. Are only utilized in about half the states
b. Cover only federal law
*c. Usually have more relaxed rules than courts
d. Are all open to practice by paralegals

30. Paralegals should disclose their status as nonlawyers:
a. To avoid being asked for legal advice
b. To ensure that people don't think they are lawyers
c. To prevent clients from telling them privileged information
*d. A and B

31. Which is the following is NOT an appropriate title for a paralegal?
a. Legal Assistant
b. Senior Litigation Paralegal
*c. Litigation Associate
d. Paralegal Manager

32. Which of the following acts is most likely to be found unethical as UPL?
a. A paralegal carrying business cards with his/her title and firm name
b. A paralegal signing a cover letter enclosing legal documents
*c. A paralegal signing a letter that contains legal advice
d. A paralegal having her/his name on the firm letterhead

33. Paralegals who work as freelance/independent contractors:
a. Are not subject to the same ethical rules as paralegals who are employed by firms
b. Are only allowed to do so if they are certified by the state in which they practice
*c. Are required to adhere to the same UPL rules as employed paralegals
d. Are exempt from supervision by a lawyer by virtue of their status as contractor

34. Outsourcing legal work to other countries:
a. Is illegal
b. Is ethical as long as the lawyer supervises the work
*c. Is ethical as long as the lawyer meets all professional responsibilities
d. Is unethical under any circumstances

35. Lawyers can work with nonlawyer firms that are trying to stop foreclosures or renegotiate mortgages as long as:
a. They do not split fees with the nonlawyers
b. They do not allow the nonlawyer firm to engage in UPL
c. They provide independent professional judgment

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*d. All of the above.

Type: E
36. A paralegal works for a small law firm where the lawyers specialize in family law. A new client, Abby, comes in and paralegal Marie is asked to interview her. Abby is considering filing for divorce and tells Marie that her husband is abusive. Marie takes down all the information needed to file the case and then tells Abby, woman to woman, that she should not continue to allow her husband to treat her this way and that she should not return home. She gets additional information to file a restraining order against the husband and makes a call to a friend who runs a shelter for abused women. She arranges for Abby to go there. Before she leaves the office, Abby signs an engagement letter setting forth the terms of the representation, which Marie explains. Marie does not sign the agreement but gives it with her notes to lawyer Bob. Bob signs it and tells Marie to fill out the petition for the restraining order and the petition for divorce, and to sign and file them with the court. Have Marie and Bob violated any ethics rules? If so, please identify the misconduct and the rule and explain both how it was violated and what should have been done under the circumstances. If not, identify the conduct that may be considered misconduct and explain why it is not unethical.

Type: E
37. Based on what you have learned in this chapter, draft a statute that defines in detail the practice of law.

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