

Self-Assessment Test

February 2011

New York Professional Responsibility Report

Receive one-half hour of CLE credit in Ethics and Professionalism by reading the Feb. 2011 issue of NYPRR and answering the following questions. The answers are contained within the newsletter. Return this form, together with your payment of \$15 by check or money order. For both true-false questions and multiple-choice questions, mark the correct box with an "x". You must score 80 (16 out of 20 correct) to receive a certificate.

1. In *Gucci*, Magistrate Judge Cott found:
 - Gucci was responsible for allowing Moss to act as its attorney*
 - Moss had deliberately withheld his status as an "inactive" lawyer*
 - California does not report the current status of lawyers admitted to practice.*
2. Judge Scheindlin rejected the finding of Magistrate Judge Cott because *Gucci*:
 - was not required to inquire into Moss's status*
 - was entitled to a reasonable belief that it was communicating with Moss as its attorney*
 - was entitled to rely on Moss's competence in his work as a lawyer.*
3. The *United Shoe* case has endured as a:
 - testimonial to Judge Wyzanski*
 - model of judicial craftsmanship*
 - a primer on the attorney-client privilege.*
4. The public policy supporting the attorney-client privilege may be stated as:
 - the public should not have access to secrets which may embarrass an individual*
 - clients must be free to communicate pertinent facts to their lawyers without fear that they will be disclosed to others*
 - every client is entitled to chose his own lawyer.*
5. To invoke the attorney-client privilege, a client must show that his communication was made:
 - in the course of, or as support for, a matter in litigation*
 - to an attorney who is representing him, but not if strangers were present*
 - with intent to commit a crime or tort.*
6. The attorney-client privilege is applied to communications from a lawyer to:
 - his client, if the communication contains only business advice*
 - his client, if the communication concerns an ongoing litigation*
 - a third party.*
7. Under other court opinions since the *American Shoe* opinion, the attorney-client privilege extends to opinions of patent counsel even if:
 - they advise against submitting a patent application*
 - in their assessment of a patent's validity, they rely on information which is available publicly*
 - the opinions are shared only with non-lawyer employees of the company.*
8. According to Judge Wyzanski, the attorney-client privilege is available only to:
 - employees of a company who serve as nonlawyer solicitors of patents*
 - lawyers employed by the company who are not admitted to practice in the state of their employment*
 - lawyers admitted in the state of employment who do not serve in the patent department.*
9. In general, whenever the attorney-client privilege can be asserted by house counsel, it can also be asserted by:
 - any employee of the client*
 - independent counsel to the company*
 - the accountant for the company.*
10. The original purpose of laws against champerty in England was:
 - to prevent the aristocracy from imposing a tax or charge on the produce from a tenant's land*
 - to encourage the division of large tracts of land among the populace*
 - to prevent the rich from usurping the lawful claims of the poor by buying up and funding litigation in their stead.*
11. Champerty may be defined as:
 - the assignment of a mortgage for less than full value*
 - a short sale of real property*
 - the funding of an action by a stranger in return for a share of the recovery.*

12. Replying to a series of Questions by the Circuit Court, the Court of Appeals in *Trust v. Love Funding* held that champerty includes:

- the purchase and collection of a negotiable promissory note by endorsement and law suit*
- the funding of a law suit to collect damages by the assignee of a debt instrument in which it holds a pre-existing proprietary interest*
- purchase or funding of a right by a stranger whose purpose is to make money by litigating it.*

13. The principal key to the success of the litigation funding business is:

- the borrower pays nothing if he doesn't recover anything*
- similar financing is not available from a commercial bank*
- the borrower's lawyer can review the application.*

14. Some litigation funding companies offer loans to lawyers. These loans can include:

- loans to cover a lawyer's operating expenses, including payroll and advertising*
- no-recourse loans*
- loans without collateral.*

15. In determining the amount of a lawyer's loan, the lender will consider:

- the reputation of the lawyer*
- the amount requested relative to the size of the lawyer's practice and the number of his open cases*
- how long the lawyer has been in practice.*

16. One characteristic common to all litigation funding agreements is:

- the interest rate is limited to 8% per annum*
- the interest rate varies in accordance with the risk involved*

- the interest rate charged by the lender must be reported in the letter of engagement by the borrower's lawyer.*

17. If, after receiving litigation funding, the plaintiff fails to recover anything:

- the lender recovers nothing*
- the lender is entitled to a minimum return of 3% per annum on its loan*
- the lender may recover its reasonable costs and expenses.*

18. The Times reports that companies in the litigation funding business have volunteered to accept regulation:

- provided regulation does not include price caps*
- if the terms are negotiated in discussions with the organized Bar*
- if regulation is made uniform throughout the 50 states.*

19. Companies in the litigation funding business defend the business by citing:

- the great risks inherent in litigation*
- the need of some lawyers to secure financing for clients with meritorious claims*
- the reluctance of commercial banks to assess the value in encouraging litigation financing.*

20. The Ohio legislature has passed a statute which provides that the contract between a litigation-funding company and the borrower must contain:

- the annual percentage rate and a five-day right-to-cancel clause*
- the total cost to the borrower, projected to the anticipated date of recovery*
- the right to submit any dispute between the parties to arbitration.*

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