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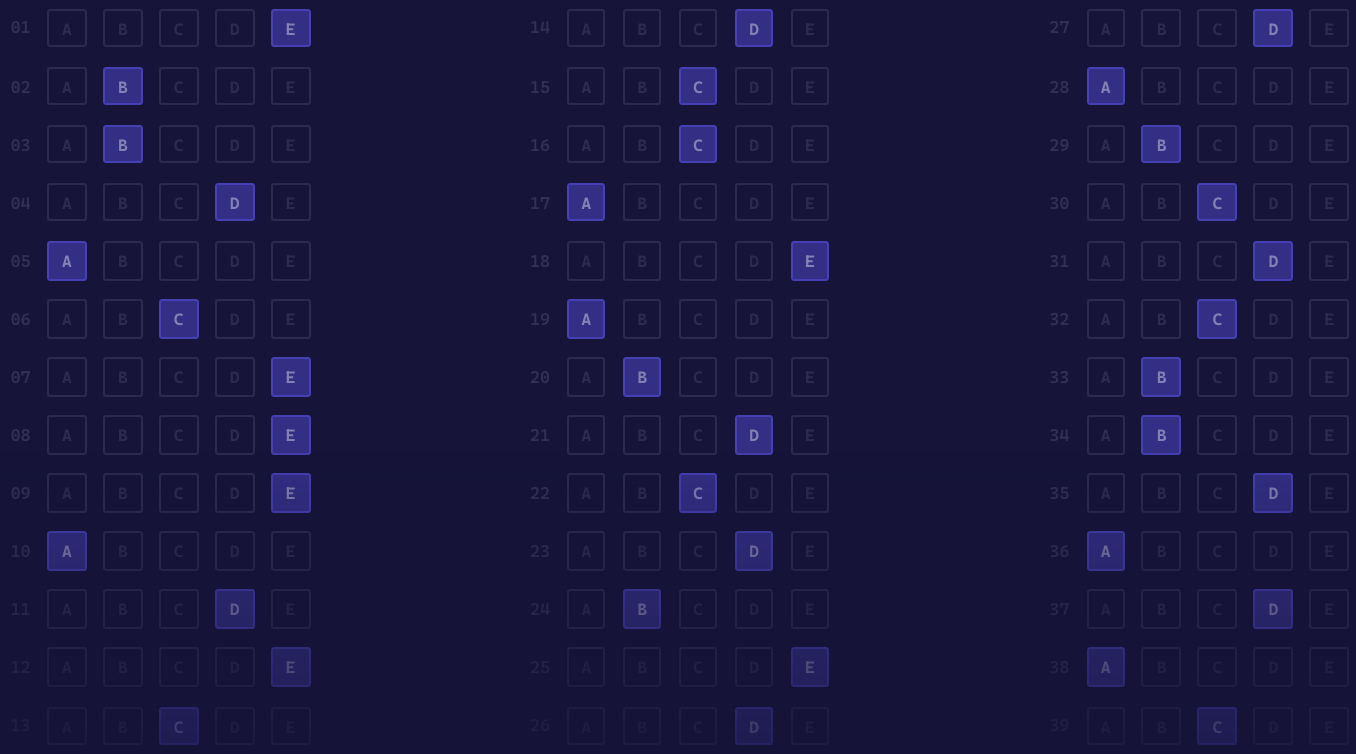

PRACTICE QUESTIONS

The State Bar of California (Legal Specialist Examination) - Test Center

LEG

Legal Malpractice Law

EDITION	QUESTIONS	FORMAT
Demo	9	Limited Edition PDF

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Before you begin

What this is

9 practice questions for The State Bar of California (Legal Specialist Examination) - Test Center `LEG`, each with its answer key and an explanation. Answer a question before you read its key — the explanation is worth more once you have committed.

If something looks wrong

Send us three things and we will check it:

- the exam code, `LEG`
- the question number
- the email address on your order

Write to **support@mometrix.net**. We reply within one business day.

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QUESTION 1 SINGLE CHOICE

A client sues her former attorney for legal malpractice. Which of the following elements must the client ordinarily prove to recover?

A **The attorney owed a duty to the client, breached that duty, the breach was the actual and proximate cause of the client's harm, and the client suffered damages.**

B The attorney was convicted of a related crime, intentionally deceived the client, and caused reputational injury.

C The attorney breached a fiduciary duty, the client was dissatisfied with the outcome, and the attorney charged an unreasonable fee.

D The attorney failed to win the underlying case and the client can point to a different lawyer who would have won.

ANSWER **A**

WHY The traditional elements of a California legal malpractice claim are: (1) duty, (2) breach (often framed as negligence or violation of the standard of care), (3) causation (both actual/proximate cause, commonly called the 'case-within-a-case' requirement for litigation malpractice), and (4) damages. Option B wrongly imports a criminal-conviction requirement; option C misstates the elements; option D omits the breach-and-causation analysis and is not the standard formulation.

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QUESTION 2 SINGLE CHOICE

In a California legal malpractice action arising from negligent handling of an underlying civil case, what must the plaintiff typically prove about the underlying case?

A **That the client lost the underlying case and would have won it absent the attorney's negligence.**

B That the attorney charged a contingent fee in the underlying matter.

C That the underlying judgment has been vacated on direct appeal.

D That the client did not contribute to the loss in any way.

ANSWER **A**

WHY Under the 'case-within-a-case' doctrine, the malpractice plaintiff must prove that, but for the attorney's negligence, the client would have obtained a more favorable result in the underlying matter. Option B is irrelevant; option C overstates what is required (the malpractice claim is generally not foreclosed merely because direct review was unsuccessful); option D is too absolute because comparative fault may be raised but is not an element the client must disprove as a threshold matter.

QUESTION 3 SINGLE CHOICE

Under California law, when does the statute of limitations generally begin to run on a legal malpractice claim?

A On the date the attorney-client relationship ends, regardless of harm.

B On the date of the attorney's negligent act or omission, even if no harm has yet occurred.

C **On the date the client actually or discovers the injury, with the claim accruing when the client suffers actual injury.**

D Only after a State Bar disciplinary proceeding is finally resolved against the attorney.

ANSWER **C**

WHY California courts have held that a legal malpractice cause of action accrues when the client actually suffers appreciable harm or, if later, when the client discovers, or should have discovered, the facts establishing the elements of the claim (the 'discovery' rule). Mere negligent conduct without resulting damage does not start the limitations period. Options A, B, and D misstate the accrual rule.

QUESTION 4 SINGLE CHOICE

An attorney concurrently represents two clients with materially adverse interests in the same matter without informed written consent. Which of the best describes the California rule?

A Concurrent representation of adverse interests is permitted if the attorney believes both clients will benefit from settlement.

B Concurrent representation of adverse interests in the same matter is a non-consentable conflict under California Rules of Professional Conduct.

C **Concurrent representation of adverse interests in the same matter is prohibited absent informed written consent, and failure to obtain consent can give rise to both a State Bar disciplinary proceeding and a civil action for breach of fiduciary duty.**

D Concurrent representation of adverse interests is permissible as long as the attorney does not receive an additional fee.

ANSWER C

WHY Under the California Rules of Professional Conduct (and traditional fiduciary-duty doctrine), an attorney may not represent adverse interests in the same matter without informed written consent. Unconsented concurrent representation of materially adverse interests can support both professional discipline and civil liability for breach of fiduciary duty. Option B misstates the rule (it is not categorically non-consentable for unrelated matters); options A and D ignore the informed-consent requirement.

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QUESTION 5 SINGLE CHOICE

A former client signs a general release that covers 'any and all claims arising out of the attorney's representation.' The client later sues the attorney for malpractice in that same representation. The attorney moves to enforce the release. Which statement best reflects California law?

A **A release of 'all claims' arising from the representation will ordinarily bar the malpractice action if the parties intended to release unknown malpractice claims and the client had independent advice or the release is otherwise enforceable.**

B Malpractice claims are categorically non-waivable and may never be released, even in a written settlement.

C A release is enforceable against a malpractice claim only if the client is paid at least the full amount of the original fee.

D A general release never bars a malpractice claim unless the client expressly used the word 'malpractice.'

ANSWER **A**

WHY California courts enforce releases of legal malpractice claims when the release is clear, the parties intended to include such claims, and ordinary contract defenses (e.g., fraud, misrepresentation) do not apply. Independent counsel or other safeguards strengthen, but are not always strictly required. Option B is wrong — malpractice claims are waivable; option C states a non-existent rule; option D overstates the magic-words requirement.

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QUESTION 6 SINGLE CHOICE

During discovery in a legal malpractice action, the plaintiff intentionally destroys the attorney case file relevant to the underlying representation. The defendant moves for terminating sanctions. Which rule best describes the trial court's discretion?

A Spoliation sanctions are unavailable against plaintiffs in malpractice actions because the attorney file is privileged.

B **A trial court has broad discretion to impose sanctions for destroying evidence, up to and including terminating sanctions, after considering the totality of the circumstances.**

C Terminating sanctions are mandatory whenever any document is destroyed in litigation.

D Only monetary sanctions may ever be imposed for spoliation in California.

ANSWER B

WHY California trial courts have broad discretion in choosing discovery sanctions, including the imposition of evidentiary presumptions, issue or evidentiary sanctions, and, in egregious cases, terminating or default sanctions. The court weighs factors such as the prejudice, the willfulness of the destruction, and lesser available sanctions. Options A, C, and D overstate or misstate the law.

QUESTION 7 SINGLE CHOICE

Under what circumstances may a California attorney be required to disgorge fees already earned?

A Never; earned fees must always be paid to the attorney regardless of misconduct.

B Only when the client voluntarily returns the fee after the representation ends.

C **Where the attorney has committed a serious breach of fiduciary duty or other misconduct, fees may be subject to disgorgement as an equitable remedy.**

D Only when the State Bar orders restitution as a condition of probation.

ANSWER C

WHY California courts may order fee forfeiture or disgorgement as an equitable remedy where the attorney has breached fiduciary duties or engaged in misconduct connected to the fee, even in the absence of a State Bar disciplinary order. Option A is wrong (disgorgement is available in proper cases); option B is wrong (voluntary return is not required); option D wrongly limits disgorgement to State Bar orders.

QUESTION 8 SINGLE CHOICE

Which of the following best describes the purpose and operation of the California Client Security Fund?

A It reimburses clients for all losses caused by any attorney, without limit, regardless of cause.

B **It is a fund administered by the State Bar that reimburses eligible clients for losses caused by dishonest conduct of California attorneys, subject to statutory limits and eligibility requirements.**

C It is a private insurance program operated by individual law firms for their own clients.

D It compensates clients only for losses caused by an attorney's negligence, not dishonesty.

ANSWER B

WHY The California State Bar's Client Security Fund reimburses clients for losses caused by the dishonest conduct of attorneys who held California licenses at the time of the conduct, subject to statutory maximums per claim and eligibility criteria. It does not cover mere negligence (eliminating option D), is not a private insurance program (eliminating option C), and is subject to limits (eliminating option A).

QUESTION 9 MULTIPLE CHOICE

Which of the following are recognized defenses or limitations that a defendant attorney may assert in a California legal malpractice action? (Choose two.)

A **The client's contributory negligence or comparative fault in the underlying matter.**

B **That the client failed to mitigate damages after discovering the alleged malpractice.**

C That the attorney held a California license for less than 30 days at the time of the conduct.

D That the attorney has never been the subject of a State Bar complaint.

ANSWER A · B

WHY California recognizes comparative fault and failure to mitigate as defenses or limitations in malpractice actions, although their application is nuanced. Option C is not a recognized defense (license timing does not negate duty or causation), and option D is irrelevant to civil malpractice liability (State Bar disciplinary history is not a defense).