

MARCH 2009 LEGAL ETHICS EXAM

EXAMINER'S COMMENTS

The very high failure rate and generally low marks scored by students was extremely disappointing.

Questions 1 and 2 dealt with the Solicitor's part of the course whilst questions 3 and 4 dealt with the responsibilities of Barristers/advocates.

Question 1 set out a series of facts relating to a Solicitor's handling of various criminal charges against his client and the subsequent charging of that Solicitor with criminal charges as a result of his conduct. Students were then asked, assuming that they were determining various complaints before the Tribunal, to interpose those facts and charges/convictions into the disciplinary regime set out under the Legal Profession Act 2004 as well as to make findings in respect of the conduct and suggest appropriate orders.

Generally, question 1 was very poorly answered. Many students appeared unable to isolate the issues for discussion and many proceeded to answer the question they wanted to answer and which was not always wholly relevant to the question asked.

Question 2 was divided into two parts which required a short summary of various areas covered during the course. Although generally well answered, some of the answers displayed a complete lack of knowledge of the material taught. Sometimes, although one section was well answered, the other was not and thus the overall mark was affected.

Question 3 related to a Barrister's duty to the client with particular emphasis on the limits placed on a Barrister to act in the client's best interest. To answer such a question, the student was required to analyse the responsibility of a Barrister to exercise his own forensic judgement yet act within instructions. Numerous Bar Rules and authorities concerning the manner in which a Barrister is to conduct himself in Court and exercise independent forensic judgement were to be explored. This question was generally very well answered. Nonetheless, many students were confused in that they included irrelevant issues such as the immunity doctrine and duty to the Court.

Question 4 involved a contextually simple yet legally complex factual scenario. The question required an analysis and explanation of: confidentiality, how to maintain duty to the Court in circumstances when an accused confesses guilt yet maintains a not-guilty plea, the negative defence and when a Barrister is able to return a brief. This question was also answered relatively well with most students applying the issues to the facts.

Disappointingly, it appeared to the examiners that students had not revised the course material sufficiently well to enable them to be confident in interpreting the questions. Many of the answers reflected a recitation of course material rather than its application to the questions.