

LEGAL PROFESSION ADMISSION BOARD

MARCH 2009

LEGAL ETHICS

TIME: Three Hours

This paper consists of **four** questions.

Candidates are required to attempt **all** questions.

All questions are of equal value. Where a question is divided into parts, the marks given for each part is clearly noted at the end of the part.

In answering the questions in this paper you are expected to make reference to or cite relevant authorities/legislation.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Material:

This is a closed book exam. No materials are permitted in the examination room.

A copy of the Law Extension Committee's Course Outline is attached to this paper.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

You are a member of the Administrative Decisions Tribunal which has heard an Application against a Solicitor (S).

At the hearing of the matter the Applicant, the Law Society of NSW, and the Solicitor (S) have agreed on the following facts:

- S was a sole practitioner whose expertise was substantially in the criminal field.
- S had a client, C, who had been charged with importing a trafficable quantity of narcotics. Section 123 of the XYZ Act imposed a minimum period of 5 years incarceration should C be found guilty.
- The Crown case was substantially based on the evidence of a police informant, X.
- C said to S that he was not guilty. He knew nothing of the drugs. X, he added, had had it in for him since they were at school – X would do anything to get back at C.
- S determined that he would go to X's house and confront him. He would go through the evidence with him and find any loopholes – and this he did.
- After seeing X, S went to visit C, who was on remand. He told C that X had stuck to his story – X denied any ulterior motive for his evidence, he didn't even remember C.
- C told S to go and see his brother, B, who would give him a parcel which he should take to X. C added, "After he sees what's in the parcel he'll change his mind, you'll see".
- S went to B, picked up the parcel and took it to X. He gave X the parcel and, before X could open it, S left.
- The next day the Police came to S's office. X had reported the delivery to the Police. The Police had opened the parcel which contained 500gm of narcotics and \$100,000 in cash. There was a note included - 'say nothing if you know what's good for you'. The parcel had S's fingerprints all over it (no other prints were found) and X had made a full statement about S's visits.
- S recounted what C had said to him, his attendance on B and his delivery of the parcel.
- C and B denied any knowledge of the parcel.

(Question 1 continues)

(Question 1 continued)

- S was charged with various criminal offences – attempting to suborn a witness, possessing a trafficable quantity of narcotics and having moneys which were the proceeds of crime.
- Despite his protestations S was tried and convicted of the various charges. He was placed on a 3 year good behaviour bond.
- C retained QC to act for him and was eventually acquitted of all charges.

S dutifully disclosed the charges and conviction to the Law Society who determined to immediately suspend his Practising Certificate. Thereafter the Law Society commenced the current proceedings alleging that S was guilty of professional misconduct in that he had (1) been convicted of a number of criminal offences; (2) had attempted to suborn a witness; (3) had been in possession of a trafficable quantity of narcotics; and (4) had in his possession moneys which were the proceeds of crime.

At the Tribunal proceedings, as he had at the trial, S admitted delivering the parcel but maintained that he had been asked by C to pick it up from B and deliver it to X. He denied any allegation of professional misconduct and maintained that he was innocent of the criminal charges of which he had been found guilty.

There was no evidence by C or B at the Tribunal. X simply gave evidence that S had delivered the parcel to him.

There were only two matters in dispute before the Tribunal:

- Did S do more than just deliver the parcel to X – that is, did he know what was in the parcel and did he deliver it for the purpose of attempting to undermine the Crown's case against his client; and
- Whatever the answer to the first matter in dispute, whether S was guilty of professional misconduct or, as was submitted by S, he was not guilty of any misconduct.

The final matter for consideration, depending on how the above questions were answered, would be the Orders that the Tribunal should make.

You have been charged with preparing a draft Judgment for consideration by the other Tribunal members. In your draft Judgment you will need to deal with the applicable case law as well as statute law.

(25 marks)

(Question 2 follows)

Question 2

You have been asked to write two short notes (no more than 500 words each) for publication in a well known law journal.

The editor has chosen the topics for you:

- (a) “Advice to a young lawyer – everything you need to know about show cause events, how to deal with them and how they affect your right to practice.”

Having regard to the provisions of Sections 66 - 72 of the Legal Profession Act, 2004 and any case law you consider appropriate, prepare the first draft of such a note.

(12 marks)

- (b) “The powers of the Law Society in respect of external intervention – who’s who.”

Having regard to the provisions of Chapter 5 of the Legal Profession Act, 2004 and any case law you consider appropriate, prepare the first draft of such a note.

(13 marks)

(25 marks)

Question 3

With regard to an advocate’s duty to the client, explain the manner in which an advocate is able to act independently by exercising his or her own forensic judgement whilst at the same time acting within the authority or instructions of the client.

In your answer, refer to the Bar Rules and authorities, using examples of case scenarios to illustrate your viewpoint.

(25 Marks)

(Question 4 follows)

Question 4

You have been briefed to appear in a jury trial for your client who is accused of a serious criminal offence. Your client has pleaded not guilty.

There are two separate factual scenarios:

- (a) Soon after the trial commences, your client communicates only to you that he is guilty of the charges made against him.

You advise your client to change his plea to guilty.

Your client refuses to change his plea.

- (b) Two weeks before the trial commences, your client communicates only to you that he is guilty of the charges made against him.

You advise your client to change his plea to guilty.

Your client refuses to change his plea.

By referring to the Bar Rules and authorities, describe how you should act so as to properly carry out your duty to your client whilst still maintaining your duty to the court in each of the two scenarios.

(25 Marks)

END OF PAPER