

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2008

LEGAL ETHICS

TIME: Three Hours.

This paper consists of **four** questions.

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

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

All questions are of equal value.

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.

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Question 1.

By reference to appropriate authorities and legislation, answer each of the following questions (5 marks each):

- (i) In disciplinary proceedings, what principles are applied by a Court/Tribunal when determining what orders should be made?
- (ii) What is professional misconduct?
- (iii) Why is it important for the Bar Association and Law Society to investigate “*show cause events*”?
- (iv) Why is it that in some cases particular conduct warrants removal of a practitioner’s name from the Roll whereas a lesser sanction may be imposed in other cases of similar conduct?
- (v) What is the purpose of ‘without prejudice’ communications and when can they be made reference to in Court proceedings?

(25 Marks)

Question 2.

You are a Lawyer for a Commonwealth Government Department.

The Minister is to attend a conference of State Ministers where the issue of the Commonwealth’s power to obtain material/information from corporations and individuals will be discussed.

The Minister has been told that the issue of legal professional privilege has been a matter of some controversy over the past few decades and he should be ready to deal with it at the conference.

The Minister is not a Lawyer and, frankly, doesn’t even know what legal professional privilege is. He says that he has been charged with making sure that Government instrumentalities have sufficient power to compel the production of material/information from corporations and individuals and that is what he is going to do.

You have been asked to prepare a briefing note for the Minister explaining, in quite simple terms, what legal professional privilege is; how it has evolved in Australia over the last 30 or so years and how the Government may wish to pursue its legislative program in order to ensure that powers of compulsion are available to Government instrumentalities.

By reference to appropriate authorities and legislation, write the briefing note. You have been asked to be brief and to the point.

(25 Marks)

(Question 3 follows)

Question 3.

In each of the situations below, give reasons as to whether or not the advocate should be struck off the Roll:

- (a) an advocate has been found guilty of manslaughter and sentenced to prison for driving under the influence of alcohol and killing another motorist. The circumstances behind the conviction are:
- the advocate was embroiled in a fight and suffered from concussion and shock shortly before the motoring incident, which may have been an alternative explanation to his “groggy” state when arrested;
 - the advocate was obliged to call a material witness as his own witness (rather than that witness being called as a Crown witness);
 - the advocate was found to have given evidence honestly at the committal hearing and trial.
- (b) an advocate has not filed his tax return for 12 years. He is convicted under various sections of the *Income Tax Act* and served 40 hours of community service. The circumstances behind the non-compliance of filing his tax returns are as follows:
- twelve years ago, the advocate’s wife became ill and he neglected his own health to look after her on a part-time basis for over five years;
 - he did not keep records of his income or expenses during this stressful time;
 - once he lodged all his outstanding tax returns, it was found that he owed less than \$10,000 to the Tax Department;
 - he gave honest testimony during his tax trial;
 - many of his colleagues and judges swore affidavits to the effect that he is a person of good fame and character.
- (c) whilst a law student, a person is convicted of breaking into a house and stealing property from that house. The student graduated from university and is admitted as a legal practitioner. In his application, he did not mention the conviction to the Admission Board. The circumstances behind the conviction are:
- the incident occurred during the Great Depression, when the student was working low paying jobs to feed and house his two invalid sisters;
 - he suffered a complete mental breakdown and was admitted to a psychiatric hospital. The incident occurred on the day he was released;
 - he has practiced successfully for ten years without complaint.
- (d) a barrister was charged with performing an indecent act in a public toilet. He pleaded not-guilty. A jury found the barrister guilty. He was issued with a fine and has a criminal record.

(25 marks)

(Question 4 follows)

Question 4.

By use of authorities and the Bar Rules, explain the various obligations of a barrister to properly fulfill in their duty to the client.

Your answer should not include whether or not a barrister is immune from suit.

(25 Marks)

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