

Examiner's Comments

Legal Ethics

The exam, as in past years, was divided into four questions – two dealing with general matters involving all practitioners and two specifically dealing with the conduct of advocates.

The **first question** dealt with the topic of privileged and confidential communications. It sought to highlight the practitioner's responsibility to the client.

Why are privileged and confidential communications important to the maintenance of this relationship [*Grant v Downs*]?

In what circumstances would the common law and legislature be permitted to impinge on this relationship – specifically, what had the Courts had to say [*Daniel's case*]?

What do the Rules say?

This question was, generally speaking, not very well answered.

Students tended to focus on side issues and not develop a coherent and logical response.

Question 2 dealt with show cause events and complaints.

The question was designed to test student's knowledge of the different principles which guided consideration of the two areas - the complaint handling requirements under chapter 4 of the LPA versus the more analytical requirements under the disclosure provisions.

Similarly, the question was meant to highlight the different issues which would need to be considered – fitness to hold a Practising Certificate and fitness to remain on the Roll. Also, the issues of personal versus professional conduct [*Re H, Ziems* etc.].

Unfortunately, students tended to entwine the two issues thus leading to answers which were not entirely responsive to the question – for example dealing with the personal conduct together with the professional conduct as a general issue of fitness.

Question 3 dealt with the issue of advocates immunity – what is it, why it exists, how it has developed [overseas and in Australia] and its future – and how it could be applied to the fact scenario in the question.

The question was very well answered with the majority of students dealing with the relevant case law and encapsulating it into a sound advice to the legal practitioner.

Question 4 raised the ethical dilemma of a client confessing his/her guilt to an advocate when, at the same time, pleading not guilty to a criminal charge. Two scenarios were raised and each of which raised different/additional Bar Rules.

The question sought an answer to the question - what should the advocate do and why?

Students were quite confident with the Rules and the case law and were, with few exceptions, able to navigate through the ethical minefield so as to determine what they should do in the two scenarios set out in the question.

The answers were, generally, of a high standard.

Overall the marks for the exam were very pleasing and the pass rate was exceptionally high.