

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

LEGAL ETHICS

Time: Three Hours This paper consists of **four** questions.

Candidates are required to attempt all **four** 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 and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may 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 Professional Conduct Committee of the Law Society of

A client has complained that a Solicitor has, without the client's permission, divulged very important information given by him to the Solicitor.

For the purpose of assisting the Committee in dealing with the complaint, you have been asked to prepare a brief background paper on the issue of confidential and privileged information.

Your paper should deal, at least, with the following issues:

The purpose of confidentiality and legal professional privilege.

In what circumstances, if any, can confidential/privileged information be disclosed by a Solicitor.

In what circumstances can a Solicitor be compelled to disclose confidential/privileged information.

With reference to relevant legislation and authorities, prepare the background paper.

(20 marks)

(Question 2 follows)

Question 2

Solicitor S was charged with various offences relating to the possession and use of a prohibited drug. A non-commercial quantity of the drug was found during a routine dog search at S's local railway station.

S admitted that the drug was his and that he had used it.

The charges were dealt with in the Local Court where the Magistrate, having regard to S's early plea, fined him and placed him on a 12 month good behaviour bond. S was also required to immediately undertake a course of counselling.

The Local Court proceedings were not reported in the press and S did not tell any of his friends or colleagues. He made a pact with himself that he would take the conviction as a warning and move on.

Some months after the conviction S received a letter from the Law Society of New South Wales. The Society advised S that it had been informed of the Local Court conviction. It drew his attention to the provisions of Section 67 of the Legal Profession Act, 2004 [requirements to report show cause events etc.] and the ramifications for not reporting the conviction.

S was informed that the Council of the Society had resolved, pursuant to Section 504 of the Legal Profession Act, 2004, to make the following complaint against him:

- Failure to comply with the provisions of Section 67(2) of the Legal Profession Act, 2004.

S immediately wrote to the Law Society and apologised for his failure to comply with the requirements of Section 67(2). He said that he had forgot about his obligation.

As for the conviction itself, S provided a copy of the Court documents including references tendered to the Magistrate and, in a very concise submission, told the Council that his drug use was out of character – he had recently broken up from a long term relationship and that he had suffered from periods of depression and mood swings. As a result of the conviction and the rehabilitation course which he had undertaken, he could assure the Council that he would not reoffend and that he was fit to continue in practice.

S provided a number of additional references from legal practitioners and other members of the community attesting to S's good standing. Without exception they all said that S had been *jolted* by the conviction and had mended his ways.

S relied on the same material in response to the complaint.

(Question 2 continues)

Question 2 (Continued)

You are a Councillor of the Law Society and have been requested to prepare a report in relation to S's show cause event and the complaints made against S. In that report you should deal with, at least, the following issues:

- What, if anything, should be done in respect of S's failure to comply with the reporting requirement in Section 67 of the Legal Profession Act, 2004?
- What, if anything, should be done in respect of S's conviction/show cause event?
- If you are of the opinion that disciplinary proceedings should be commenced, what orders should be sought, and why?

As your report will lead the discussion on the matter, you should refer to applicable legislation and case law.

(20 marks)

Question 3

Legal Eagle is a Barrister who was briefed by X Corporation Pty Ltd to draft a Statement of Claim. The pleading alleges that the defendant, who was an employee of the company, rendered time sheets over a period of one year that overstated the number of hours the defendant worked. The defendant was paid by the plaintiff in accordance with the time sheets. In the statement of claim, Legal Eagle pleaded two causes of action – fraud and misleading or deceptive conduct under s.18 of the Australian Consumer Law 2010. Legal Eagle was also briefed to act for the plaintiff at trial. In a written judgement, his Honour, Justice Fairly stated the following:

"In conclusion, it is clear that the plaintiff cannot succeed on either of the two causes of action upon which it based its claim. In regard to the alleged fraudulent conduct of the defendant, the plaintiff has not demonstrated sufficient evidence to convince me that the defendant knew that the time sheets he rendered were false. Without the presence of that mental element, fraud cannot be made out. In regard to the action based on s.18 of the Australian Consumer Law 2010, I agree with the submissions of the defendant's counsel that the defendant was not acting "in trade or commerce", as is required by the words of the provision. Therefore, s.18 cannot apply to the defendant, and consequently that action must also fail. I mention in passing, that although the plaintiff confined itself to the two causes of action mentioned above, it probably would have succeeded on the evidence before me if it had pleaded breach of contract or even negligence. But, as these causes of action were not included as part of this claim, I need say no more as to what might have been."

On reading the judgement, X Corporation Pty Ltd sued Legal Eagle for negligence for not including breach of contract or negligence in the statement of claim or raising those actions at trial. Legal Eagle believes he can rely on an advocate's immunity from suit.

You have been briefed by your colleague, Legal Eagle, to draft an advice as to whether Legal Eagle would be immune from suit for not including breach of contract or negligence in the statement of claim that he drafted. Set out your advice to Legal Eagle.

(20 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 laid 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 laid 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.

(20 marks)

END OF PAPER