

LEGAL ETHICS EXAM

EXAMINER'S COMMENTS

As with recent examinations in Legal Ethics, the exam was 'open book' and was comprised of four (4) questions. The examination accounted for 80% of a student's total mark with the remaining 20% coming from an earlier compulsory assignment.

There were four questions – two dealing, in general, with matters involving the practice of law as Solicitors and two as Barristers. Two questions were further divided into sub-questions/issues, although the substantive principles raised in most of the questions were applicable to both sides of the profession.

Question 1 was subdivided into two questions - one relating to legal professional privilege and one dealing with the maintenance of trust accounts. Both questions required students to express their opinion on a stated position.

Both questions were designed sufficiently wide enough to allow students ample opportunity to express their opinion and to justify same by reference to statute and common law.

Students were expected to be able to identify the substantive law relating to the topics, how same had been applied in various cases and then apply both to their stated position.

Question 2 was a factual scenario which raised a number of topics covered during the course [what is professional misconduct; dealing with trust funds; nature of Tribunal/Court orders etc] and which conduct students had to encapsulate into a draft judgment.

Question 3 highlighted a number of factual scenarios raised in a number of the cases covered in the course. Students were required to identify the relevant principles which had been raised and apply them to the facts in an attempt to answer a very simple question – should the practitioner be struck off or not [and why].

Question 4 asked students to discuss the principle of advocates' independence in light of his or her duties to the Court and clients. Specifically, by reference to the Rules and cases, students were asked to give examples of how those duties had been applied.

Although the failure rate was relatively low, the range of marks was disappointing. No student achieved a Distinction grade. More than half of those sitting the exam achieved a mark below 65%.

The overall grammatical quality of the answers was poor.

At times there appeared to be a reluctance to 'think through the question'. Rather, one had the distinct impression that students wanted to explain the topic rather than answer the question. This was reflected in students gaining very low marks in one question and then

achieving a much higher mark in another question where they may have felt more confident in their knowledge of the topic.

The following past comments repeated:

“It remains of concern that students continue to find it far more difficult to explain the law than to recite it. “Why” and “how” appear to be two words which students continually attempt to avoid in preference to “what is”. A subject dealing with legal ethics must deal equally with all three.”