

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

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

Harold had not long been admitted as a legal practitioner and was happily working with Tony in a quiet suburban practice. Tony did some conveyancing, probate, lease work etc a bit of everything. Harold thought that he too could, like Tony, have a good career in the suburbs – little stress and a good income.

With the passage of time, Harold became more and more content with his lot in life. His friends were complaining about stress, long work hours and poor remuneration but not Harold, Tony had taken Harold under his wing; he earned a good income, worked 9 to 5 without stress and the work was varied and challenging. Tony had a great little clientele who had taken to Harold.

One day Tony walked into Harold's office. He told Harold that he would like him to join him in partnership? Harold was delighted. What else could he ask for? "Yes, of course."

Things couldn't have been better, Tony decided that he would go on a three month holiday with his family and Harold was left to look after the firm.

During Tony's absence the Global Financial Crisis hit the headlines. Neither Harold nor Tony could have foreseen the crash of 2010. Suddenly things were not what they had been. Conveyancing and commercial work dried up overnight. It was all that Harold could do to bring in enough fees to keep the doors open. He spoke to Tony who was then in the middle of the Amazon jungle. "Never mind" said Tony, "I've been through this before, we'll get over it. By the way, I've decided to stay away a few more months. I reckon I can drum up some business in South America."

By the beginning of 2011 Tony was still away. He still hadn't decided when he would return.

One day an old client of the firm, Sheryl, came to see Harold. Sheryl hadn't been able to see Tony before he left and she wanted to enquire about the distribution of her late husband's Estate. Mike had passed away some months earlier leaving Sheryl everything – which included \$1,000,000 in cash in a couple of bank accounts.

Harold grabbed Sheryl's file from Tony's office. Probate had been granted and the funds had been received into the trust account but they were said to have been paid out. "No" said Sheryl, "I've received nothing".

Harold told Sheryl to go home, not to worry and he would speak to Tony and sort things out.

Harold was clearly worried. What should he do? He would speak to Tony first.

Harold telephoned Tony who was then sunning himself on a Caribbean beach. He explained what had happened with Sheryl. Tony didn't seem too fussed. "It must be an accounting mistake. Just tell Sheryl that there's some government regulation that says that she can't access the money for another 60 days. I'll sort things out when I get home in a couple of weeks."

(Question 1 continues)

(Question 1 continued)

Harold wasn't satisfied with Tony's explanation and he was sure that he wouldn't lie to Sheryl – after all, she needed the money.

Harold immediately engaged the firm's accountants to go over the books. There was nothing wrong with them, they said. They ascertained that a couple of months after Harold had become a partner, Tony had drawn a cheque for \$1,000,000 and sent the funds by telegraphic transfer to an account in Brazil – that's how he was paying for his holidays, thought Harold!

Harold managed to track down Tony at a resort in Panama. He told Tony what the accountants had said. Tony admitted to Harold that he had taken Sheryl's money. He was going to pay it back in good time. He hadn't counted on Sheryl's need for funds so soon. He would be back in three weeks – "Keep Sheryl happy. I'll fix things up when I get back in a few weeks. It'll all be OK. Don't worry."

Harold thought long and hard as to what he would do – report the matter to the Law Society? Call in the Police? He had so much to lose. Nevertheless, Harold decided that he would bite the bullet and call in the Society's Trust Account Inspectors.

The Inspectors went through Sheryl's file and trust account records. They confirmed what the accountants had found. Harold's heart sank. He was in tears.

The Inspectors managed to telephone Tony but Tony said that he had nothing to say to them and just hung up.

The Inspectors immediately reported the matter to the Council of the Law Society which determined to have an urgent meeting to consider what action it would take.

You are a member of the Council and have been asked to report on the matter – assume that the report of the Inspectors contains all the above information as well as the documentary evidence to support it.

What action, if any, would you recommend be taken by the Council in respect of Harold and/or Tony and/or the law practice, and why?

At a subsequent meeting, the Council is asked to consider whether any disciplinary action should be taken against Tony and/or Harold. What is your recommendation, and why?

If you are of the opinion that disciplinary action should be taken against Tony and/or Harold, what orders would you recommend be sought, and why?

In your answer refer to the relevant authorities and legislative provisions which support your position.

(20 marks)

(Question 2 follows)

Question 2

You are a young Solicitor at a large Sydney firm. The Managing partner wants you to help conduct some in-house seminars and has given you the following topics to choose from:

- Legal partnerships are all about sharing responsibilities, not just the profits and losses.
- Why is it important to investigate *show cause* events and when/why does the conduct of a practitioner evident in such an *event* warrant disciplinary action?
- A lien is the ability to unilaterally retain client funds and/or property for your own purposes, discuss.
- What is the difference between unsatisfactory professional conduct and professional misconduct?

With reference to the relevant provisions of the Legal Profession Act, 2004 and the case law, prepare a very short paper on only two of the above topics.

(20 marks)

Question 3

In some circumstances the conduct of a legal practitioner outside his or her practice is professional misconduct resulting in that practitioner being struck off the roll of practitioners, whereas in other circumstances the conduct of a legal practitioner outside his or her practice does not result in being struck off.

By referring to legislation, the Bar Rules and authorities, explain why, in some circumstances, a practitioner's conduct outside practice will and, in other circumstances, will not result in being struck off.

(20 marks)

(Question 4 follows)

Question 4

A complaint has been made to the Legal Services Commissioner by a Judge regarding the behavior in Court of a barrister, Mr Rowdy. The complaint has been forwarded to the New South Wales Bar Association. At issue is whether or not Mr Rowdy will be found guilty of professional misconduct relating to the following events:

- (i) on 16 February 2010, Mr Rowdy appeared for the defendant in a civil case at the District Court in Sydney;
- (ii) during his cross examination of the plaintiff the following exchange occurred between Mr Rowdy and the Judge:

JUDGE: "Mr Rowdy, I must intervene at this point. I find your cross examination objectionable. I believe that you are suggesting fraud or serious misconduct on the part of the plaintiff. Not only is it not part of any pleading, it has nothing to do with any of the issues in this case."

ROWDY: "It is for my friend to object to my questions, not Your Honour. I am entitled to ask anything I want in cross examination. Just let me get on with the case instead of your needless interjection."

JUDGE: "You will not speak to me in that manner. I can intervene when the need arises and that was the appropriate time. I find your comment offensive. You will apologise to the Court"

ROWDY: "I will not. I am covered by advocates' immunity, and I will continue because I believe it is in my client's interest. You are just biased against my client."

JUDGE: "If you believe so, make a formal application as I will when I charge you with Contempt of this Court."

Explain by reference to the Bar Rules, the Legal Profession Act and any relevant authorities whether or not:

(a) Mr Rowdy is protected from being disciplined due to the advocate's immunity doctrine;

(4 marks)

(b) Mr Rowdy should be found guilty of professional misconduct in respect of his exchange with the Judge;

(12 marks)

(c) there is a relationship, if any, between misconduct and contempt.

(4 marks)

END OF PAPER