

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 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

Referring to relevant legislation and case law, answer each of the following:

(a) Legal professional privilege is one of the basic tools available to a legal practitioner when advancing a client's litigation.

Do you agree or disagree with this statement? Why?

(10 marks)

(b) Trust accounts are merely a convenience for the practitioner's conduct of his practice – they are of little consequence to their clients.

Do you agree or disagree with this statement? Why?

(10 marks)

(Question 2 follows)

Question 2

The Administrative Decisions Tribunal has had before it an allegation that Solicitor Smarty has been guilty of misappropriation of trust funds.

The evidence at the hearing was, quite simply, that Smarty just helped himself to trust funds as and when he needed them for his gambling addiction.

By the time Smarty's conduct was discovered by the trust account inspectors, there was no deficiency in the trust account as Smarty had had a successful Saturday at the races.

A review of Smarty's files indicated that his legal work was exemplary.

Smarty refused to give evidence during the Tribunal proceedings albeit that he was offered the protection of a certificate under Section 128 of the Evidence Act. Indeed, he had earlier refused to co-operate with the Law Society's enquiries.

In closing submissions Smarty, who was acting for himself, simply said that he was the product of a stressful profession but had now seen the errors of his ways. No one had lost any funds and there had been no complaints made against him. He went so far as to produce a report from a psychiatrist suggesting that he suffered from depression and with proper treatment he would likely be fit to resume practice within three (3) years. There was no other evidence in Smarty's case.

Smarty submitted that the circumstances of his case were unique and that he should be given a second chance.

On the other hand the Council of the Law Society sought that Smarty's name be removed from the Roll and that he be ordered to pay its costs. Smarty's conduct, it said, went to the heart of a Solicitor's ethical obligation and his failures were such that he was and would likely remain unfit to be on the Roll.

You are a member of the Tribunal hearing this matter and have been asked to prepare a draft outline judgment for consideration by your fellow Tribunal members.

With appropriate references to legislation and case law, prepare the draft outline judgment giving appropriate attention to the issues which the Tribunal needs to address.

(20 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.

(20 marks)

(Question 4 follows)

Question 4

With regard to an advocate's duty to the client, discuss the manner in which an advocate is able to act independently by exercising his or her own forensic judgement whilst at the same time acting within the authority or instructions given by the client.

In your answer, refer to the Bar Rules and authorities, using examples of case scenarios to illustrate your viewpoint.

(20 Marks)

END OF PAPER