The exam was an open-book exam comprised of four questions of equal value - 80% of the total course mark. A compulsory assignment had earlier been completed by students (worth 20% of the total course mark).

In light of the practice of law generally and the fact that some topics were covered separately by the lecturers, all questions were, substantially, equally applicable to both branches of the profession. The examiners attempted to cover a range of topics from the course – show cause events, confidentiality, duty to the Court etc.

**Question 1** dealt with show cause events.

Students would have addressed issues such as – the legislative provisions relating to show cause events; what issues are considered when one of the regulatory bodies looks at the disclosure (Murphy as compared to Cummins) – honesty v dishonesty; the regulator’s concern whether the event shows an unfitness to practice (as compared to remaining on the Roll) etc.

**Question 2** asked students to address the topic of confidentiality.

Students would have covered the various Rules, ethical obligations (the why question) and referred specifically to Tuckiar’s case.

Notwithstanding the overriding obligation to the Court, Courts look to lay persons being legally represented - those persons being entitled to expect that they can safely share their secrets with their legal adviser who, at the same time, will marry such responsibility with that which is owed to the Court.

**Question 3** related to the main element of duty to the Court, namely, honesty and candour.

As a starting point, students would have referred to Bar Rule 24 - tempered to some extent by there being no positive duty to disclose matters that are adverse to a witness’s credibility - rather there being an obligation not to be a party to positive deception.

In light of the quote, students were expected to analyse the differences in the judgements in Tombling v Universal Bulb Co and Meek v Fleming.

**Question 4** examined the student’s knowledge of the advocate’s duties to the Court by setting out the salient points from different cases as examples of breaches of those duties. Those cases included - Clyne v NSW Bar Assn; NSW Bar Assn v Moore; Re B; Wentworth v NSW Bar Assn; Prothonotary Sup Ct NSW v Pangallo; Kennedy v the Council of Inc Law Institute NSW; Prothonotary Sup Ct NSW v Costello; Ex parte Bellanto: re Prior; Meek v Fleming; Smout v Smout

To breach such duties would be to (i) frustrate the Court process; (ii) allow an advocate to mislead the Court for the benefit of their client above the interests of justice and (iii) allow an advocate to go to extreme measures for their client.
Generally

As a general comment, most students scored well in the exam and were able to demonstrate a good grasp of the relevant principles.

The examiner repeats his prior caution - exam questions are not to be seen as necessarily representative of a proportion of the course, that is, a question worth 20% of the exam mark should not be seen as being representative of a similar percentage of the course work. Similarly, students should not expect that questions will simply require a student to deal with any one topic within the course – exam questions have as their primary objective an examination of a student’s understanding of the relevant principles raised in one or more (course) topic.