

Legal Profession Admission Board

September 2022

Legal Ethics

Examiners' comments

This statement is issued by the LPAB following law examinations, to give students broad feedback.

The failure rate of the Winter 2022 was higher than expected, which has been concerning not only for the students involved but for lecturers and examiners also, as we want our students to succeed in the subject and subsequently in the profession. The lecturers and examiners, the Board and the Law Extension Committee, have spent time in discussion with each other to investigate if there were any discernible causes or patterns that could explain the high failure rate. This exploration, coupled with analysis of figures, revealed:

- There was no statistical difference in the results of overseas practitioners and Diploma in Law students;
- Regional students appeared to do slightly better than metropolitan students, but again the difference was not marked; and
- Failure rates for subjects fluctuate from semester to semester. The failure rate of 40% in Winter 2022 falls within previous semester rates which vary from 3% to 41%.
- Almost one third of the students who failed Legal Ethics also failed every other subject they attempted.

The exam was comprised of four (4) compulsory questions.

The number of questions permitted the examiners to cover many of the topics in the course without retracing the substantive issues covered by the compulsory assignment (which was worth 20% of a candidate's overall subject mark).

The first question was on a specific topic and required candidates to not only be familiar with that topic but to also be able to explain it and its relationship to both the case law and legislation.

The second question covered a specific aspect of the course. Students were required to isolate and discuss a number of relevant issues with reference to authorities and any applicable statutory provisions.

Questions 3 dealt specifically with an aspect of the 'Rules', its application and how the authorities/legislation supported the student's response.

The final question, Question 4, required candidates to consider the application of relevant authorities/legislation to a set of facts and respond to the position in which those facts had

hypothetically placed them. It was this question which caused some students the most concern and which is worthy of more detailed comment.

Question 4 was deliberately original so as to avoid the use of *pre-prepared* answers. The question sought to recognise that in the reality of legal practice, ethical issues often do not arrive with heralded announcements - they simply arise. Recognition and response are thus crucial ethical skills.

Students had to think about any ethical issues arising within the fact scenario and what their response might be, given what they have been taught. They had to imagine they were the barrister in the case.

There was no definitive approach, however the question required in the answer that the barrister not simply ignore the information, because there could well be an impact upon justice to his/her client.

The question required a demonstrated understanding of the paramount duty of a barrister to the administration of justice, and also to the Court, client, opponent and public. These are topics taught throughout the second half of the semester, and involve key cases, legislation and Bar Rules.

Some students appeared to have misread the question.

What was being assessed was what the duties of a barrister are, when a potential ethical issue arises.

In this case, the possibility of apprehended bias arising on the part of a judge. It could have been any ethical issue. The fact scenario was simply an example. There will be many ethical incidents that may arise in practice. We teach the principles, so that **any** ethical issue might be met competently.

Examiners noted some possible contributing factors to the high failure rate:

- Decreased attendance at lectures and weekend schools;
- Exam preparation - negative impacts, especially in light of the above;
- 'On-line' exams and discernible issues such as 'cut and paste' (part) answers;
- Selective revision evident; and
- The subject's consistent requirement that anticipated answers to exam questions (yet to be asked) are not to be pre-written, rote-learnt and/or memorised, rather, principles need to be understood and applied.

The examiners have explained, and continue to maintain, that 'legal ethics' is not solely about the learning of various principles, it is also – importantly - about recognising and identifying ethical issues, assessing an appropriate response and applying ethical principles to ensure that a practitioner's relationship with the Courts, clients, fellow practitioners and the public is reflective of the role which practitioners play in society and the upholding of the justice system.

As always, there were students who did well in this question and with respect to number of other questions.

Some exam scripts evidenced poor grammatical expression which led to either low-quality answers or answers which were unacceptable at this level. However, it should be noted that all questions were marked on their *content*. Marks were not deducted for poor grammar. Students only lost marks when their grammar or expression was so poor that it affected their actual answer(s), for example, where their response could not be understood.

Students are encouraged to consider the following points:

- Did I manage the time well? It was clear that some students did not finish the exam or, at least, rushed their final answer.
- Did I address each point in each question? Some students failed to address the question or did so only in part. Some students answered the question they believed was being asked or that they wanted to be asked, not that which was, in fact, being asked.
- Did I identify and apply the right legal principles?
- Did I offer sufficient support to each argument and cite correct authorities?
- Did I reach a conclusion on each issue identified and at the end of each response?
- Did I acquire enough knowledge in the course, and considered it sufficiently prior to the exam, to be able to focus on critical thinking of regarding each issue while responding to exam questions? It was clear that a number of students were left deficient in this area – either during term and/or in revision.
- Did I focus on analysis, synthesis and evaluation rather than restatement of facts and information presented in the lectures and course materials? A number of students simply re-stated that which they had summarized, such as short case notes - whereas the question required them to apply those authorities and 'explain' their answer.

Students attempting this course should be on notice that restricting their revision (for whatever reason(s)) in the hope that some topics will/will not be in the exam is a dangerous exercise.

As has been reinforced to students, ALL topics in Legal Ethics are examinable! This is especially so given that the examiners are dealing with future practitioners. Thus, their state of knowledge and capacity to use such knowledge, must be tested. It not only provides high-quality practitioners to the legal world, it contributes to a helpful safeguard for practitioners themselves, against ethical shortcomings occurring in future.

The lecturers are highly committed to assisting students succeed in Legal Ethics. Extra revision opportunities will be offered in the upcoming semester.
