

LAW ADMISSIONS CONSULTATIVE COMMITTEE
ACADEMIC EXEMPTION GUIDELINES FOR
ETHICS & PROFESSIONAL RESPONSIBILITY

Admitting Authorities have previously followed different practices when deciding whether to grant exemptions from further study in Australia of the academic requirement of Ethics & Professional Responsibility to applicants for admission who have qualified in England or Wales.

The guiding principle for granting exemption from any of the 11 academic requirements is whether the applicant has successfully completed a course of study in an area of knowledge that is substantially equivalent to that which a locally-qualified applicant is required to complete. In England and Wales, however, students do not customarily undertake a subject relating to Ethics & Professional Responsibility as part of the qualifying law degree, which enables them to proceed to either the Legal Practice Course or the Bar Training Course. Most of them only receive instruction relating to Ethics & Professional Responsibility as part of their subsequent Legal Practice Course or Bar Training Course.

Admitting Authorities have now agreed that, rather than adopting a standard response to applicants from England and Wales, each application should be considered on a case-by-case basis. This raises the question of what matters should be considered when deciding whether or not to grant an exemption to an applicant who (rarely) has studied the area during an academic course or (most commonly) during the Legal Practice Course, and more fleetingly during a subsequent training contract or the requisite Professional Skills Course. The suggestions in item 6 are loosely based on practices that have previously been applied by the Academic Exemptions Subcommittee of the Legal Qualifications Committee of the NSW LPAB.

1. ACADEMIC SUBJECT

Very occasionally, an LLB or Postgraduate Diploma in Law offered in England or Wales will include a subject relating to Ethics & Professional Responsibility.

In assessing whether or not it is substantially equivalent, the relevant elements are the same as for all other prescribed academic requirements – the weight given to the subject in the course, the scope of the subject matter, the volume and nature of instruction, and the nature of the assessment required.

For example, the Legal Ethics subject offered by the BPP law school in 2016 –

- (a) is only a 13-point subject; and
- (b) is only assessed by 4 written essay questions in the undergraduate LLB and by course work and 1 essay in the postgraduate LLB; however
- (c) in each case it offers 13 hours of lectures, comprising 1 introductory class, 13 substantive topics, and 2 revision classes; plus
- (d) 10 hours of tutorials and 10 hours of workshops; and
- (e) prescribes a comprehensive list of reading materials.

Successfully completing such a course would meet the "substantially equivalent" test and justify granting credit for the Australian academic requirement of Ethics & Professional Responsibility.

2. LEGAL PRACTICE COURSE

In 2016, LACC sought advice about whether the Professional Conduct and Regulation module in the Legal Practice Course is substantially equivalent to the Australian academic requirement from Professor Julian Webb, who teaches Ethics & Professional Responsibility at Melbourne Law School and has previously taught the area in England. He was assisted by Professor Nigel Duncan who is Convener of the Teaching Legal Ethics UK Network. They concluded that the Professional Conduct and Regulation module of the Legal Practice Course is not substantially equivalent to the Australian academic requirement.

This advice has been confirmed by a member of the NSW Academic Exemptions Subcommittee who carefully examined the scope of studies specified for the module in the SRA Outcomes (Teaching and Learning Requirements); and, in relation to the BPP Legal Practice Course, the apparent coverage of the module, by reference to teaching hours, breadth and depth of subject matter, and the assessment.

3. PROFESSIONAL SKILLS COURSE

This course contains a "Client Care and Professional Standards" component. It must be undertaken while a person is performing the requisite training contract. On the other hand, the element is not of substantial duration and is not assessed in a similar way to the Australian academic requirement. It is not substantially equivalent, either on its own, or in combination with the Legal Practice Course Professional Conduct and Regulation module.

4. TRAINING CONTRACT

While some trainees would undoubtedly come up against ethical issues during their 2 year training contact, and are obliged to undertake the Professional Skills Course during the term of that contract, that experience, alone or in combination with both the Legal Practice Course module and the Professional Skills Course, would still not be substantially equivalent to the Australian academic requirement.

5. BAR TRAINING COURSE AND PUPILLAGE

An intending barrister must, before admission, complete –

- (a) the vocational requirement of the Bar Training Course; and
- (b) the professional requirement of pupillage.

For reasons analogous to those in items 2, 3 and 4 these requirements, alone or in combination, are not substantially equivalent to the Australian academic requirement.

6. EXPERIENCE

The Common Considerations Relevant to Experienced Practitioners set out in Schedule 5 of the *Uniform Principles for Assessing the Qualifications of Overseas Applicants*, have been found to be the primary grounds for exemption. The most relevant of these include the following factors -

- (b) the duration and currency of the applicant's experience obtained –
 - (i) in legal practice;
 - (ii) in service with a government authority; or
 - (iii) in another way considered appropriate by the Admitting Authority,

and especially whether the applicant has worked in that way for at least seven years (including any training contract); ...

- (f) the nature of an applicant's skills and experience... .

These factors should help to indicate whether an applicant has had sufficient experience to justify a conclusion that the applicant is reasonably likely to have had exposure to a wide range of ethical issues and thus justify an exemption.

In practice, it seems that –

- (a) an applicant with less than 7 years' post-admission experience (including any training contract or pupillage) is unlikely to have such experience;
- (b) applicants with 7 or more years of post-admission experience are found to have had sufficient experience in perhaps 90% of cases;
- (c) practising as a barrister is often found to provide sufficient experience;
- (d) practising as an in-house legal counsel is rarely found to provide sufficient experience;
- (e) practising as a solicitor may provide sufficient experience, but this will depend on the nature of the applicant's practice. Someone with a broad general practice might obtain more experience than someone with a specialist practice;
- (f) the length and the breadth of practice each affects the likelihood of exposure to ethical issues. A general practitioner with very broad experience might obtain sufficient experience within 7 years. While a specialist practitioner might not acquire similar experience in 7 years, after, say, 20 years' experience a different conclusion may be justified.