



## **Examiner's Comments**

### **17 LEGAL ETHICS**

#### **September 2025 Examinations**

**The exam comprised of four questions. Candidates were required to answer four questions. Questions 1 and 2 were worth 25 marks each. Questions 3 and 4 were worth 15 marks each.**

#### **Question 1**

Question 1 was seeking to test students' understanding of:

- (a) several different types of conflicts that can arise for legal practitioners
- (b) how these are addressed by the Australian Solicitors' Conduct Rules
- (c) how arguments and findings might be made in relation to whether breaches constitute unsatisfactory professional conduct and/or professional misconduct
- (d) what sorts of protective orders NCAT might make following those findings.

In order to perform well in this question, students also needed to display some degree of understanding as to the process by which a matter comes before NCAT.

#### **Question 2**

For Question 2, students were required to do some "issue spotting", that is, to identify a range of ethical obligations which had been breached, and link those to case law and the relevant professional rules or legislation, making a distinction between solicitors and barristers. It was not necessary to consider whether the conduct relevant to this question amounted to unsatisfactory professional conduct or professional misconduct, although some students addressed this question through that lens.

#### **Question 3**

Question 3 addressed the costs obligations for legal practitioners. Students were asked to explain those obligations with reference to examples in the scenario. This question primarily required an essay with some application of law to facts, but not a full problem question analysis.

#### **Question 4**

In their responses to Question 4, students needed to identify professional rules concerning civility and courtesy, form a view on whether they were appropriate and make an argument in support of that view. It was necessary to do this in combination with an analysis of whether a particular communication in the scenario breached those rules. As with Question 3, this question primarily required an essay with some application of law to facts, but not a full problem question analysis.

### **Characteristics of poor or average responses**

Very poor or average responses tended to pay little regard to the questions that were asked. Very poor responses often provided little or insupportable legal analysis and/or arguments (for example, demonstrating a number of the common mistakes outlined below); average responses showed more proficiency in this regard but were often insufficiently detailed.

These responses also tended to show a lower capacity to integrate arguments, principles and facts, which was particularly necessary for the essay questions (Questions 3 and 4).

In some very poor or average responses, there were errors in the use of language which made it more difficult to understand the student's response or argument.

### **Characteristics of very good or excellent responses**

Very good or excellent responses provided clear responses to the questions as asked, avoiding distraction by issues that may have arisen in the scenario but were not relevant to the questions themselves.

In Q1, very good or excellent responses addressed a number of conflict issues by reference to the Solicitors' Rules and relevant case law, set out arguments as to why conduct amounted to unsatisfactory professional conduct and/or professional misconduct by reference to the statutory tests and relevant case law, and explained likely protective orders by reference to NCAT's statutory powers and relevant case law.

In Q2, very good or excellent responses identified and explained a number of ethical obligations that were breached by either or both of the two identified legal practitioners, with reference to the relevant professional rules, case law and legislation.

In Q3, very good or excellent responses explained the obligations in Part 4.3, identified two relevant examples, and linked these together correctly. Because of the centrality of costs disclosure to the Part 4.3 regime and to the problem scenario, in order to receive a HD, it was generally necessary to address costs disclosure obligations to at least some extent.

In Q4, very good or excellent responses identified the relevant professional rules, took a position on the question of the appropriateness of those rules and made an argument in support of that position, and analysed the communication by reference to those rules. The best answers did this in an integrated fashion (for example, by using their analysis of the communication to support their argument on the appropriateness of the rules).

### **Common mistakes**

- In Question 1, most students overlooked the kinds of conflict addressed by r 12 of the ASCR – conflicts between clients and the practitioner. Rule 12.2 in particular (benefit beyond fair and reasonable remuneration) was raised directly by the problem scenario.
- Some students only addressed one issue of conflict. The wording of the question, and the value of the marks allocated to it, should have indicated to students that there were likely to be multiple issues to address.
- Some students raised issues in their responses to this question which were not issues of conflict at all. While they may have identified open issues, it was necessary to pay attention to specifically what the question was asking, that is, to focus on the conflict issues that arose.

- Many students failed to provide much analysis of the complex client-client conflicts that arose between Lin, Ursula and Tim. This was a difficult part of the question; students are reminded that conflicts of interest can often be quite complicated, and something more than a superficial assertion is likely to be required.
- In addressing questions of professional misconduct, many students preferred the common law test in *Allinson* over the statutory test in s 297 of the *Legal Profession Uniform Law (NSW)*, sometimes omitting the statutory test all together. The statutory test has primacy, and must always be considered first, especially in NSW given the NSWCA's decision in *Council of the NSW Bar Association v EFA* [2021] NSWCA 339. Some students demonstrated similar errors in relation to unsatisfactory professional conduct.
- In Question 2, many students overlooked the issues of whether Michael and Naima had properly advised Jing, and whether they had acted without instructions.
- In Question 3, students often failed to address costs disclosure issues (at all or in detail).
- Some students incorrectly stated the subject matter for Part 4.3 of the Uniform Law (eg by referring to the duties of advocates).
- In Question 4, students frequently failed to make a clear argument as to the appropriateness of the professional rules concerning civility and courtesy.
- Some students failed to identify professional rules concerning civility and courtesy, and either did not address the obligations in this respect or addressed them based on general principles of law.
- Across all questions:
  - In some responses, students did not correctly identify which set of professional rules was relevant to the practitioner in question (ie the Australian Solicitors' Conduct Rules for solicitors and the Barristers Rules for barristers).
  - Many students placed too much reliance on the general rules (eg rr 4 and 5 of the ASCR; r 4 of the BR) rather than identifying more specific rules (eg r 42 of the ASCR in relation to civility and courtesy).

### **Areas for improvement**

Students are reminded to read the questions and respond to what is being asked, especially if the question directs attention to a particular area.

As to legal knowledge, apart from addressing the common mistakes outlined above, students are reminded to focus on the requirements of legislation and professional rules in the first instance (with a preference for specific rules, where they apply), and use the case law to support their analysis of statutory materials. This is relevant to most areas of law – and to all areas which are governed primarily by statute.

Some of the mistakes identified above tended to suggest limited time spent on revision or on knowledge-building during the term as a whole.