

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Bar Professional Training Course Examination 2011-2012

Professional Ethics multiple choice and short answer test

[Date]

[Time]

1. This assessment comprises:
 - a. Section A: 20 Multiple Choice Questions (MCQs); and
 - b. Section B: Three Short Answer Questions (SAQs).
2. You will have two hours to complete Sections A and B of the assessment.
3. Use boxes 1-20 on the MCT answer sheet to record your answers to the MCQs. Please give your SAQ answers on the separate provided SAQ answer sheet.
4. Use a new section of the SAQ answer book for each of the three SAQs.
5. Candidates **must not** remove from the Examination Centre the Question Paper, the MCQ Answer Sheet or the SAQ Answer Sheet.
6. Candidates will be examined on the basis of reported and published case law as of 1st October for the following April/August examinations.

As regards primary and secondary legislation, procedural rules and codes of conduct, candidates will be examined on the law/rules/codes that have been published by the 1st October preceding the diet of examinations, provided a commencement date has been specified for the provision that is prior to the 1st of February in the following year.

Instructions continue on the next page

7. How you divide the time between the SAQs and MCQs is a matter for you. If you decide to divide your time equally between Section A and Section B, you will have 60 minutes for the SAQs in Section B. There are 20 MCQs in Section A, which is an average of three minutes each. As there are 3 SAQs, this means an average of 20 minutes each.
8. You are NOT allowed to use any materials other than writing materials and a calculator.
9. **MCQ marking system**

Each MCQ has four answers, only one of which is the appropriate answer to the question. You select your answer by putting a horizontal line on the mark sheet through the letter designating the answer (extending between the brackets around the letter on the mark sheet). Detailed instructions on marking your answer sheet are given on your answer sheet itself. Please follow these carefully.

No marks are deducted for wrong answers.

10. There is no restriction other than the time available for the test on how many points you are permitted to give for each sub-question. The number of marks indicated for each sub-question is the maximum that may be awarded, and marks are not transferrable between sub-questions. Credit may be lost if wrong parts of an answer indicate a wider lack of understanding.

The questions start on the next page

Section A

Multiple choice questions

Professional Ethics

QUESTION 1

Ms Taylor is a barrister. She was driving her new Porsche 911 when she was stopped by the police and breathalysed. She was over the drink-drive limit. She pleaded guilty to a charge of driving with excess alcohol. Ms Taylor has been sentenced by the Magistrates' Court being banned from driving for 12 months and fined £1,000.

Which ONE of the following statements is CORRECT?

- [A] Ms Taylor should do nothing as her conviction has nothing to do with her practice as a barrister.
- [B] Ms Taylor should do nothing as her conviction does not involve any allegation of dishonesty.
- [C] Ms Taylor has discretion as to whether or not to inform the Bar Standards Board of the fact of the conviction.
- [D] Ms Taylor must inform the Bar Standards Board of the fact of the conviction.

ANSWER

[A] Wrong. The conviction must be reported. Code paragraph (905(b) (iii)).

[B] Wrong. For the purposes of rule 905, all relevant convictions must be reported. It is not restricted to offences of dishonesty.

[C] Wrong. Reporting is not discretionary. Counsel must report the conviction of a relevant criminal offence (905(b) (iii)). The offence is relevant as it does not fall into the category of exclusions. The report is to be made to the Bar Standards Board. Counsel has no option but to report herself.

[D] Correct. Code rule 905 applies. Counsel must report the conviction of a relevant criminal offence (905(b)(iii)). The definition of a relevant criminal offence is to be found under the Definitions Section, Part XI, paragraph 1001, of the Code of Conduct and excludes motoring fixed penalty offences and similar offences. The offence is relevant as it does not fall into the category of exclusions. The report must be made to the Bar Standards Board.

Please continue to the next page

QUESTION 2

For the purpose of this question you should assume that the barrister commenced practice after 1st October 2001.

Which of the following statements numbered (i) to (iv) about Continuing Professional Development is/are CORRECT?

- i) A barrister must, if s/he holds a practising certificate throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period.
- ii) A barrister must during the first three calendar years in which that barrister holds a practising certificate complete a minimum of 45 hours of continuing professional development.
- iii) A barrister must during the first three calendar years in which that barrister holds a practising certificate complete a minimum of 36 hours of continuing professional development
- iv) A barrister must, if s/he holds a practising certificate throughout the whole of any calendar year, complete a minimum of 15 hours of continuing professional development during that period.

Select ONE of the following:

- [A] i) is the only correct statement.
- [B] i) and ii) are the only correct statements.
- [C] iii) and iv) are the only correct statements.
- [D] ii) is the only correct statement.

ANSWER

[A] Wrong.

[B] Correct. Continuing Professional Development Regs – page 177 Manual Annex C code of conduct CPD Blue book page 39

Annex C - The CPD Regulations

Application

1. These Regulations apply:

- (a) to all barristers who have commenced practice on or after 1 October 1997;
- (b) from 1 January 2003, to all barristers who were called to the Bar in or after 1990;
- (c) from 1 January 2004, to all barristers who were called to the Bar between 1980 and 1989; and
- (d) from 1 January 2005, to all barristers who were called to the Bar before 1980.

The Mandatory Continuing Professional Development Requirements

2. For the purpose of these Regulations

- (a) "calendar year" means a period of one year commencing on 1 January in the year in question;
- (b) the "mandatory requirements" are those set out in paragraphs 3 to 7 below.
- (c) a "pupillage year" is any calendar year in which a barrister is at any time a pupil.¹

3. Any barrister to whom these Regulations apply and who as at 1 October 2001 had commenced but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of continuing professional development during that period.

4. Any barrister to whom these Regulations apply who commences practice on or after 1 October 2001 must during the first three calendar years in which the barrister holds a practising certificate after any pupillage year complete a minimum of 45 hours of continuing professional development.¹

5. Any barrister to whom these Regulations apply:

(a) must, if he holds a practising certificate or certificates throughout the whole of any calendar year, complete a minimum of 12 hours of continuing professional development during that period; and

(b) must, if he holds a practising certificate or certificate for part only of a calendar year, complete one hour of continuing professional development during that calendar year for each month for which he holds a practising certificate.

6. Regulation 5 does not apply:

- (a) in the case of a barrister to whom regulation 3 applies, to any calendar year forming or containing part of the period of 3 years referred to in regulation 3; or
- (b) in the case of a barrister to whom regulation 4 applies, during any pupillage year or during¹ the first three calendar years in which the barrister holds a practising certificate.

7. Any barrister to whom these Regulations apply must submit details of the continuing professional development he has undertaken to the Bar Council in the form prescribed, and at the time specified, by the Bar Council.

8. The Bar Council may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by barristers (or any category of barristers) in order to satisfy the mandatory requirements.

9. The Bar Council may, by resolution and following consultation with the Inns, Circuits and other providers as appropriate, increase the minimum number of hours of continuing professional development which must be completed in order to satisfy any of the mandatory requirements. **Reason supplied by Provider, unchecked by examiners.*

[C] Wrong.

[D] Wrong.

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QUESTION 3

In which of the following circumstances numbered (i) to (iv) does a conflict of interest NOT automatically arise?

- i) You are instructed to represent two Defendants in a criminal trial where one Defendant has a representation order and the other is a private payer.
- ii) You are instructed to represent two Defendants in a criminal trial where one Defendant asserts self-defence and the other claims the defence of alibi and names his co-Defendant as his alibi witness.
- iii) You are instructed to represent two Defendants in a criminal trial where you strongly believe one to be innocent and the other guilty.
- iv) Your diary is marked "not available". You are subsequently instructed to defend a murder for a lucrative fee and the potential to make your name.

Select ONE of the following:

- [A] A conflict of interest does not automatically arise in any of them.
- [B] (iii) is the only circumstance in which a conflict does not automatically arise.
- [C] A conflict of interest could arise in all of the circumstances.
- [D] (i), (iii) and (iv) are the only circumstances in which a conflict does not automatically arise.

ANSWER

[A] Wrong.

[B] Wrong.

[C] Wrong.

[D] Correct. There is a conflict of interest if you are instructed by two Defendants whose instructions conflict. Rule 603e;

(i) gives no rise to a conflict on the facts as representing parties who have different methods of funding would not prima facie give rise to conflict.

(iii) Counsel's belief is irrelevant

(iv) This scenario has no bearing prima facie on conflict of interest

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QUESTION 4

You are representing a Defendant charged with affray in the Crown Court. He begins giving his evidence in the afternoon of the second day of trial. The case is adjourned for the day and the trial will resume the following day. As you are about to leave the Court a pupil from your Chambers who has been observing the trial tells you that the Defendant wishes to speak to you about changing his instructions in the case.

Which of the following statements numbered (i) to (iv) is/are CORRECT?

- (i) You must tell the Defendant that as he is in the middle of giving his evidence you cannot talk to him about the case.
- (ii) You can tell the pupil to go and take further instructions from the Defendant and then relay them to you for your consideration.
- (iii) You cannot speak with the Defendant unless you have the permission of the Trial Judge.
- (iv) You may speak to the Defendant with the permission of either the Trial Judge or your opponent.

Select ONE of the following:

- [A] (i) is the only correct statement.
- [B] (ii) and (iii) are the only correct statements.
- [C] (iii) is the only correct statement.
- [D] (iv) is the only correct statement.

ANSWER

[A] Wrong.

[B] Wrong.

[C] Wrong.

[D] Correct. See para 705(c) of the Code of Conduct:

(c) except with the consent of the representative for the opposing side or of the Court, communicate directly or indirectly about a case with any witness, whether or not the witness is his lay client, once that witness has begun to give evidence until the evidence of that witness has been concluded.

Please continue to the next page

QUESTION 5

Claire is instructed to draft a witness statement in relation to an application in civil proceedings for an emergency injunction to protect her lay client from further domestic violence. Her instructing solicitor has provided the client's proof of evidence which contains some matters that Claire does not consider relevant to the application and other matters which Claire considers to be poorly expressed.

In relation to the drafting of the witness statement, which ONE of the following statements is CORRECT?

- [A] Claire should follow the content of the client's proof of evidence and not alter anything.
- [B] Claire should exclude anything she considers irrelevant, but she should not otherwise depart from the wording in the proof of evidence.
- [C] Claire should exclude anything she considers irrelevant, and she may depart from the wording in the proof of evidence, provided the client has an opportunity to confirm the accuracy of the statement before signing the statement of truth.
- [D] Claire should ask her instructing solicitor to obtain the client's prior approval for Counsel to produce the statement in the terms that Counsel considers appropriate.

ANSWER

[A] Wrong. See Code of Conduct 704 below.

[B] Wrong. See Code of Conduct 704 below.

[C] Correct. Code of Conduct 704, whilst prohibiting the devising of facts etc which would assist the client, does (in its proviso) permit Counsel to draft a witness statement containing specific factual contentions or statements included by the barrister subject to "confirmation of their accuracy by the lay client". It follows that the barrister need not stick exactly to the wording of the proof of evidence, particularly where matters are poorly expressed there, provided the client has the chance to read through and confirm the draft before swearing it. Counsel has a duty to ensure that the content of the witness statement is not unnecessarily verbose or irrelevant, in accordance with the general duty to avoid wasting the Court's time: WS 5.11.

[D] Wrong. A client could not confirm accuracy ahead of the statement being produced.

Please continue to the next page

QUESTION 6

Jimmy and Keith were arrested by the police for suspected involvement in an alleged theft. Both were detained at Greenacre police station. You are a barrister and you have received the requisite Bar Standards Board training to enable you to attend on clients in police stations. You attend Greenacre police station (without a solicitor) and advise Jimmy on the conduct and handling of the two police interviews which then took place. In his interviews, Jimmy denies any involvement and alleges that Keith had acted alone. The police eventually charge Jimmy and Keith with the offence of theft.

The theft case is now proceeding in the Magistrates' Court. A mode of trial hearing is due to take place next week. You have been instructed to appear as Defence Counsel for Jimmy at the hearing.

Which ONE of the following is the CORRECT answer to the question of whether or not you can accept the instructions and attend the mode of trial hearing, to represent Jimmy?

- [A] Yes, as long as you reasonably believe that nothing was said, done, heard or seen by you at the police station which might require you to give evidence in the proceedings.
- [B] Yes, because judicial proceedings are completely different from what happens in a police station.
- [C] No, because your involvement at the police station means that you must not act on Jimmy's behalf in any Court proceedings based on the offence for which Jimmy was being detained.
- [D] No, but if you are instructed to attend the mode of trial hearing as Counsel for Keith, you must accept the instructions.

ANSWER

[A] Correct. It reflects the BSB Guide to Self-Employed Practice, paragraph 28, and Code of Conduct, paragraph 401b(iv) (which formerly prohibited Counsel acting alone in representing a lay client at the police station). There are potential consequences of attending on a lay client in such circumstances; they may prohibit you from taking on Court work in the same proceedings later. The caveat is accurately set out in [A].

[B] Wrong. This proposition effectively removes any caveat or restriction on subsequent work in the same case.

[C] Wrong. There is no absolute prohibition as posited by [C], cp. paragraph 26 of the BSB Guide to Self employed Practice.

[D] Wrong. Clearly, having been instructed by D1 in a matter involving multiple suspects and then Defendants, where D1 has asserted that D2 is the sole perpetrator, there is a clear conflict issue here.

Code 401b, BSB Guide to Self-Employed Practice, paragraphs 26-32.

Please continue to the next page

QUESTION 7

You are instructed to advise the Defendant in writing in a breach of contract case arising out of the sale of the Defendant's business premises. The facts of the case suggest that your instructing solicitors were negligent while conducting the sale of the Defendant's premises.

Which ONE of the following statements is CORRECT?

- [A] You should not raise this matter as it would be detrimental to your lay client's interests.
- [B] You should inform your lay client of this matter in your written advice, having notified your instructing solicitor that you will be doing so.
- [C] You need only inform your instructing solicitors of this matter in writing.
- [D] You should report your instructing solicitors to the Solicitors' Regulatory Authority.

ANSWER

[A] Wrong. It clearly is in your lay client's best interests to inform him that his solicitors have been negligent, and merely telling his solicitors would not discharge your duty to your client.

[B] Correct. This matter gives rise to a conflict of interest between your lay and professional clients (Code 703).

[C] Wrong. It clearly is in your lay client's best interests to inform him that his solicitors have been negligent, and merely telling his solicitors would not discharge your duty to your client.

[D] Wrong. Because reporting the solicitor to the SRA is a matter for the client and there is nothing in the Code stipulating this as a required course of action.

Please continue to the next page

QUESTION 8

Thomas is instructed to represent the Prosecution in a complex fraud. He is instructed, amongst other things, to settle the indictment and in due course to represent the Prosecution at trial.

Which ONE of the following statements is CORRECT?

- [A] In drafting an indictment Thomas is obliged to include every offence disclosed by the evidence.
- [B] In drafting an indictment Thomas is obliged to include every Defendant in respect of whom an offence is disclosed.
- [C] Before including a count on the indictment Thomas is under an obligation to consider the strength of the evidence in relation to that count.
- [D] In respect of any Defendant indicted Thomas should only accept a plea of guilty to a lesser offence than that charged if the Judge agrees with that course.

ANSWER

[A] Wrong. There is no requirement to indict all offences disclosed – Counsel has a duty not to overload an indictment and to present the case as simply and concisely as possible [WS 10.4 (a)].

[B] Wrong. Counsel does not have to include all Defendants in an indictment - he should not overload an indictment with too many Defendants [WS 10.4 (a)].

[C] Correct. Counsel must consider the strength of the evidence. S/he has to consider the likelihood of success (whether there is sufficient evidence to provide a realistic prospect of conviction) and the public interest: Code for Crown Prosecutors.

[D] Wrong. In deciding whether to accept a plea Counsel is not obliged to seek the approval of the Judge (Farquharson Guidelines).

Please continue to the next page

QUESTION 9

Miranda is representing Ritchie in the Crown Court where he has pleaded guilty to an offence of ABH. He has just been sentenced to six months' imprisonment. Miranda is of the firm view that there are no grounds of appeal against sentence.

Which ONE of the following statements is CORRECT?

- [A] Miranda should go and see Ritchie in the cells, advise him orally of her view that there are no grounds of appeal and certify her view in writing.
- [B] There is no requirement for Miranda to go and see Ritchie after he has been sentenced, but she must provide a full written advice as to why there are no grounds of appeal.
- [C] If Ritchie instructs Miranda to settle grounds of appeal she must do so, regardless of whether she personally considers them properly arguable.
- [D] If Miranda's instructing solicitor instructs Miranda to settle grounds of appeal she must do so, regardless of whether she personally considers them properly arguable.

ANSWER

[A] Correct. It reflects the position as stated in WS16.2.

[B] Wrong. Because WS 16.2 requires Counsel to go and see the client.

[C] Wrong. Counsel must never settle grounds of appeal she does not consider arguable: WS16.3.

[D] Wrong. Counsel must never settle grounds of appeal she does not consider arguable: WS16.3.

Please continue to the next page

QUESTION 10

You are instructed to represent Noel at his Crown Court trial for an offence of burglary.

In relation to your responsibilities as Defence Counsel, which ONE of the following statements is CORRECT?

- [A] It is your responsibility to promote and protect fearlessly and by all proper and lawful means Noel's best interests.
- [B] In advising Noel on his plea you should be careful to avoid giving strong advice either to plead guilty or not guilty.
- [C] If there is a material irregularity during the course of the trial, you should say nothing to the Judge but should take the point on appeal if Noel is convicted.
- [D] You must follow your client's clear instructions as to the questions to be asked of the Prosecution witnesses, even if you think some of them are irrelevant.

ANSWER

[A] Correct. This statement reflects the wording of Code of Conduct 303(a) and is therefore correct.

[B] Wrong. WS11.3 states that Counsel may express his advice on plea in strong terms if necessary.

[C] Wrong. The action contemplated is prohibited by Code of Conduct 708(d).

[D] Wrong. Counsel is personally responsible for the conduct and presentation of the case and has a duty to exercise personal judgment upon the substance and purpose of statements made and questions asked: Code of Conduct 708(a).

Please continue to the next page

QUESTION 11

You are prosecuting Elizabeth Jones, who has pleaded guilty to the production of cannabis. The case is listed for sentence in the Crown Court. Ms Jones is unrepresented. Your brief informs you that the police accept that Ms Jones was only growing the cannabis for her personal use and that she only used it to alleviate the pain of multiple sclerosis. Personally you hold the view that it was wrong to prosecute her.

As to the approach to adopt in opening this case to the Judge which ONE of the following statements is CORRECT?

- [A] You should make no reference to the mitigation or your personal views on the case.
- [B] You should mention the mitigation but make no mention of your personal views.
- [C] You should make no mention of the mitigation but mention your personal views.
- [D] You should mention both the mitigation and your personal views.

ANSWER

[A] Wrong. It states you should make no reference to the mitigation.

[B] Correct. Counsel prosecuting an unrepresented Defendant should draw the Court's attention to any mitigation they may be aware of (Written Standards 10.8(a)). Counsel should not, unless asked, express a personal view of the merits of the case (Written standards 5.10 (b)).

[C] Wrong. It states Counsel should make no mention of the mitigation but mention their personal views.

[D] Wrong. It states that Counsel should mention their personal view.

Please continue to the next page

QUESTION 12

You act for the Defendant in a criminal trial. Although listed for six days, your clerks had informed you that it should last only four. Due to delays the case only got underway late on Monday afternoon and it is not going to conclude this week. By Friday afternoon you still have not made your closing speech, when the Judge announces that he is rising a little early and the trial will have to continue on Monday. Your annual family holiday abroad was booked months ago and you are due to fly out first thing on Monday morning.

Which ONE of the following courses of action is CORRECT?

- [A] Return your case to another Counsel to complete the trial allowing you to go on holiday.
- [B] Leave your client unrepresented whilst you go on holiday.
- [C] Ask the Judge to adjourn the case until your return from holiday.
- [D] Cancel your holiday and continue with the trial.

ANSWER

[A] Wrong. A barrister must not return a brief he has accepted to attend a social engagement (Code of Conduct 610 (c)).

[B] Wrong. By virtue of 610 (c) and "Defence Counsel shall ensure that the Defendant is never left unrepresented at any stage of the trial" (written standards 15.2.1).

[C] Wrong. A barrister "must take all reasonable and practical steps to avoid unnecessary expense and waste of the Court's time" (written standards para 5.11).

[D] Correct. A barrister must promote and protect his client's interests and so without regard to his own interests in accordance with Code of Conduct 303(a) and 610 (c).

Please continue to the next page

QUESTION 13

You represent a celebrity in a privacy case which has attracted great interest in the media. On the second day of a five day hearing, as you leave Court, you are approached by several members of the press who ask you to comment about the case and what you think of it.

Which ONE of the following statements is CORRECT?

- [A] You should use all your advocacy skills to advance your client's case in the media.
- [B] You should confine your comments to the legal issues in the case.
- [C] You should promise to comment on the case to the press at the end of the hearing.
- [D] You should make no comment at all to the press.

ANSWER

[A] Wrong. You should not use all your advocacy skills to advance your client's case in the media. You have no authority to do so. The Code is clear in paragraph 709.1 Counsel should not comment to media while a case is still pending. *Reason supplied by Provider, unchecked by examiners.

[B] Wrong. You should not make any comments even as to the legal issues as it is a continuing case. The Code does not distinguish legal issues other than comment in an academic context after the conclusion of the case. *Reason supplied by Provider, unchecked by examiners.

[C] Wrong. You should not promise to comment on the case to the press at the end of the hearing without permission of the client he is enjoined from saying anything. *Reason supplied by Provider, unchecked by examiners.

[D] Correct. See Code rule 709, the barrister cannot comment on the case either before during or afterwards except in the limited circumstances of an educational or academic context. Also see Code Rule 702 about the need to keep matters confidential. Here no authority has been granted by the client so the barrister must remain silent.

Please continue to the next page

QUESTION 14

In relation to Counsel's duty of confidentiality as a barrister, which ONE of the following statements is CORRECT?

- [A] If Counsel is sacked by his/her lay client s/he is no longer bound by the duty of confidentiality.
- [B] If Counsel is representing a Defendant in a criminal trial and the Judge demands to see the client's written instructions Counsel is no longer bound by the duty of confidentiality and must comply with the request.
- [C] If Counsel's lay client tells him/her that he is proposing to kill a witness and Counsel is satisfied that the threat is genuine, Counsel is entitled to breach the duty of confidentiality and inform the police.
- [D] In a criminal case Counsel must inform the Prosecution of any information given by the client which might reasonably be considered capable of undermining the Defence case.

ANSWER

[A] Wrong. Because CC 702 makes it clear that the duty of confidentiality continues after the Counsel-client relationship has ended.

[B] Wrong. Because there is nothing in the Code which requires you to accede to a Judge's request that you breach confidentiality in the circumstances described.

[C] Correct. According to 702 you must preserve the confidentiality of the client's affairs "as permitted by law".

[D] Wrong. There is in general no duty on the Defence in a criminal case to disclose adverse material to the Prosecution.

Please continue to the next page

QUESTION 15

You are a personal injury barrister who accepts work on a conditional fee basis. You are asked whether you will accept instructions on behalf of a client who was injured in an accident in the workplace. Having considered the papers you believe he has a good prospect of success and in normal circumstances you would accept the brief. However your instructing solicitor has informed you that your client is a person with paranoid schizophrenia. Although this does not affect your view of the outcome of the case you have been informed that it is likely you will have to spend a lot more time with him in conference than you would if he did not have this condition.

Which ONE of the following statements is CORRECT?

- [A] You are entitled to refuse a conditional fee brief if you believe that accepting it will cause you to do a disproportionate amount of work when compared to other clients.
- [B] You are entitled to refuse a conditional fee brief without justification and therefore you may refuse this brief if you wish.
- [C] Refusing the brief purely on the grounds of the client's condition would be discrimination and therefore you should accept the brief.
- [D] There are no reasonable adjustments that you can make in order to accommodate the client and therefore you may refuse the brief.

ANSWER

[A] Wrong. It states the brief can be rejected without making a reasonable adjustment.

[B] Wrong. You are not entitled to refuse a conditional fee brief in circumstances that amount to discrimination.

[C] Correct. Barristers are under a duty under s20 of the Equality Act to make reasonable adjustments. A barrister who fails to make reasonable adjustments is deemed to be discriminating by virtue of s21 of the Equality Act. Discrimination is prohibited by virtue of 305.1 of the Code of Conduct. If the work would have been accepted but for the extra time needed then this is discrimination because of a disability as the client is being treated less favourably than someone without a disability.

[D] Wrong. Spending a greater amount of time on the brief would be a reasonable adjustment.

Please continue to the next page

QUESTION 16

You are instructed for the Claimant in a contract claim. You notice that your instructing solicitors have failed to issue proceedings within the limitation period, although they were instructed before the expiry of the limitation period. The client has lost a valid claim. The client's loss is in the region of £25,000. The solicitors are an important source of work for you.

Which ONE of the following statements is CORRECT?

- [A] You should advise the client to make an application to disapply the limitation bar.
- [B] You should return the papers without saying anything as the information concerning the solicitors' conduct is confidential.
- [C] You should advise the client that he has a valid claim against his current solicitors and he should seek new legal representation.
- [D] You should draft proceedings against your instructing solicitors because they are to blame for the client's losses.

ANSWER

[A] Wrong. There is no provision to extend the limitation period for contract claims. There is a fixed 6 yr period.

[B] Wrong. The interests of the lay client come first in any situation of conflict. Code Rule 703.

[C] Correct. Code Rule 703 applies. This is a conflict of interest situation.

[D] Wrong. The client needs independent advice. It would be wrong and undesirable for you to act against a firm who instruct you.

Please continue to the next page

QUESTION 17

Mr Roberts is defending in a lengthy Crown Court trial involving numerous Defendants. At the end of the Prosecution speech, Mr Roberts takes the view that for at least the next month of the trial there is no serious possibility that events will occur that relate to his lay client. Mr Roberts wishes to absent himself from the trial so that he can undertake other work.

Which ONE of the following statements about Mr Roberts's duties at this point is WRONG?

- [A] Mr Roberts must arrange for other defending Counsel to guard the interests of his client if he absents himself from the trial.
- [B] Mr Roberts must gain permission to absent himself from Court from both his instructing lawyer (or his representative) and the Defendant.
- [C] If Mr Roberts absents himself from the trial, he must not accept any other commitment which would render it impracticable for him to make himself available at reasonable notice if the interests of his client so require.
- [D] Mr Roberts must gain permission to absent himself from the Judge

ANSWER

[A] Wrong.

[B] Wrong.

[C] Wrong.

[D] Correct. WS 15.2.4 Counsel should inform the Judge of the arrangement but is not required to seek the Judge's permission. 15.2.4 These rules are subject to modification in respect of lengthy trials involving numerous Defendants. In such trials, where after the conclusion of the opening speech by the Prosecution, defending Counsel is satisfied that during a specific part of the trial there is no serious possibility that events will occur which will relate to his client, he may with the consent of the professional client (or his representative) and of the lay client absent himself for that part of the trial. He should also inform the Judge. In this event it is his duty:

- (a) to arrange for other defending Counsel to guard the interests of his client;
- (b) to keep himself informed throughout of the progress of the trial and in particular of any development which could affect his client; and

(c) not to accept any other commitment which would render it impracticable for him to make himself available at reasonable notice if the interests of his client so require.

Please continue to the next page

QUESTION 18

Which ONE of the following statements, relating to the duties of prosecuting Counsel in a criminal case, is WRONG?

- [A] Prosecuting Counsel should not attempt by advocacy to influence the Court with regard to sentence.
- [B] Prosecuting Counsel should endeavour to secure a conviction by all means at his command.
- [C] Prosecuting Counsel is responsible for the conduct and presentation of his case.
- [D] Prosecuting Counsel should not confer with factual investigators where their evidence is disputed.

ANSWER

[A] Wrong. The statement correctly reflects the Code as set out in the Written Standards at 10.8(a).

[B] Correct. The statement states the Code wrongly. Prosecuting Counsel must not endeavour to secure a conviction by all means at his command (Written Standards 10.1).

[C] Wrong. The statement correctly reflects the code as set out in the Written Standards 10.2(i).

[D] Wrong. The statement correctly reflects the code as set out in the Written Standards 6.3.2.

Please continue to the next page

QUESTION 19

The Defendant is charged with grooming a child for sexual activity by communicating with her over the internet. The alleged victim is 15 years of age. The Defendant, who is a man of good character, wants you to cross-examine the child on the basis that she is a prostitute, a drug addict and a liar. She has previous convictions for possession of drugs but no convictions for offences of prostitution or dishonesty. He says you should be aggressive to her in your cross-examination. The Defendant says that if you do so she is very likely to admit that she has lied.

Which ONE of the following statements is WRONG?

- [A] You should act in accordance with his client's instructions as to how to conduct the cross-examination of the witness.
- [B] You can with leave of the Judge ask questions related to the witness' previous convictions for possession of drugs.
- [C] You can put it to the witness in the case that she is a prostitute although you don't personally believe this.
- [D] You cannot ask any questions which are designed merely to vilify or insult the witness.

ANSWER

[A] Correct. A barrister is personally responsible for the conduct and presentation of his case and must exercise personal judgment upon the substance and purpose of statements made and questions asked (Code paragraph 708 (a)). Counsel must act with courtesy towards all they deal with in all professional activities. Code 701 (a).

You should not cross examine aggressively simply because this is what your client wants. Also, according to Code 708 (g) Counsel cannot conduct cross examination in a manner intended or calculated only to vilify, insult or annoy a witness.

Counsel should not compromise his professional standards in order to please his lay client Code paragraph 307(c).

[B] Wrong. A Judge can admit evidence as to a non-Defendant's bad character under s100 CJA 2003. **Reason supplied by Provider, unchecked by examiners.*

[C] Wrong. There is no evidential basis for the assertions the client wants to be put to the witness that she is a prostitute. Counsel cannot conduct cross examination in a manner intended or calculated only to vilify. **Reason supplied by Provider, unchecked by examiners.*

[D] Wrong. According to Code 708 (g) p 163 Manual Counsel cannot conduct cross examination in a manner intended or calculated only to vilify, insult or annoy a witness. **Reason supplied by Provider, unchecked by examiners.*

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QUESTION 20

You act for the Defendant. The Defendant has pleaded guilty to an offence of wounding. He tells you in conference that the antecedents produced by the Prosecution are not up to date as he was convicted of a Public Order Act offence for which he was sentenced to a community sentence two weeks ago.

Which of the following statements numbered (i) to (iii) describing the advice that you should give to the Defendant is/are CORRECT?

- (i) You should explain to the Defendant that the previous conviction may be discovered and he could be brought back and resentenced for this offence if it is not disclosed.
- (ii) You should advise the client that he is likely to gain credit with the Court if he now permits you to disclose this recent conviction to the Court.
- (iii) Ultimately the decision as to what course of action he takes is his and you will act in accordance with his instructions.

Select ONE of the following:

- [A] All the statements above are correct.
- [B] (i) is the only correct statement.
- [C] (ii) and (iii) are the only correct statements.
- [D] (iii) is the only correct statement.

ANSWER

[A] Correct. *(i-iii) are all correct.*

See the Duty to Disclose Previous Convictions Guidance.

In circumstances where Counsel is aware of previous convictions, regardless of the nature of the case or potential sentence, Counsel should give the Defendant clear advice as to all the options.

He should:

- *Inform the Defendant that the information as to the previous conviction will remain confidential unless the client specifically waives privilege.*
- *Inform the Defendant that whilst the information remains confidential, he will be restricted in what he can say in mitigation.*

- *Advise the Defendant that nothing can be said as to the Defendant's record which expressly or impliedly adopts the position as outlined by the Prosecution and in particular, that nothing can be said as to*
 - (a) the absence of conviction of the type or gravity of the undisclosed conviction;*
 - (b) a period of time as being free from convictions if the undisclosed conviction occurred during that period;*
 - (c) the absence of a particular sentence or disposal in the Defendant's antecedents if such sentence or disposal was in fact imposed in respect of the undisclosed conviction.*
- *Specifically advise the Defendant as to the nature of the sentencing exercise if the Court became aware of the undisclosed conviction, whether by virtue of the Defendant's voluntary disclosure or by some other means.*
- *Advise the Defendant as to the possibility of the Prosecution subsequently discovering the undisclosed conviction;*
- *Advise of the real possibility that failure of Counsel to refer to the Defendant's antecedents would not go unnoticed by experienced Prosecution Counsel or Judge.*

This could lead to an adjournment, or to the matter being relisted for alteration of the sentence.

The Defendant should be told that the choice as to what course to adopt is his, but that if he decides to reveal the qualifying conviction, he would be entitled to expect significant credit from the Court in fixing the sentence.

[B] Wrong. B is wrong in identifying only some as correct.

[C] Wrong. C is wrong in identifying only some as correct

[D] Wrong. D is wrong in identifying only some as correct

The SAQs begin on the next page

Section B

Short answer questions

Professional Ethics

QUESTION 1

A claim has been started, concerning the ownership of shares in a business. The Claimants are brother and sister, Mr Leo Gardiner and Miss Teresa Gardiner. The Defendants are other family members. You represent the Claimants at an interim directions hearing. Just before the hearing, the Defendants make an offer of settlement which is much lower than the sum that you advise the Claimants they are likely to obtain at trial. The Claimants tell you that they will not accept the offer. However, during the interim hearing, the Judge directs that all parties should disclose their personal financial affairs over the previous three years to help the Court to decide the ownership of the business.

After the hearing, you tell the Claimants that they should expect their personal financial affairs to be disclosed in open Court and advise them that disclosure is necessary in order to succeed in their claim. Miss Gardiner immediately says that she has changed her mind and she would like to accept the offer which was made before the hearing, explaining "I don't want my private affairs dragged through the Court". Mr Gardiner says that she is being ridiculous, this is a direction that they all have to comply with and he is not prepared to accept the offer.

Please answer the following questions, giving full reasons for your answer in each case.

(a) Can you continue to act for both clients in these circumstances and what are the ethical issues that arise in coming to a decision on this point?

(3 marks)

(b) In what circumstances could you agree to a settlement this morning?

(1 mark)

Half an hour later, Defence Counsel, Mr Forthright, asks to speak to you privately. You agree. He advises you to persuade the Claimants to accept the Defendants' offer or, he says, "things could get pretty unpleasant" for the Claimants. You tell him that you need more time to take instructions. He then accuses you of "deliberately prolonging the litigation in order to increase your brief fee."

(c) Is Mr Forthright in breach of the Code of Conduct or any other guidance provided by the Bar Standards Board and, if so, describe how?

(1 mark)

(d) What action could you take in response to his recommendation and how should you behave in this situation? Consider any practical solutions to Mr Forthright's behaviour.

(2 marks)

(e) How, if at all, would your answers to (c) and (d) above be different if Mr Forthright had spoken to you in a raised voice in the Court lobby in front of members of the public who were likely to have heard him?

(3 marks)

(10 marks in total)

ANSWERS

(a) Maximum 3 marks. One mark awarded for any of the following.

Where there is, or appears to be, a conflict or risk of conflict between the interests of any one or more clients, (1 mark)

The barrister should withdraw. (1 mark)

Unless all relevant persons (Mr and Miss Gardiner) consent to the barrister accepting the instructions. (1 mark)

You must not cease to act or return your instructions without having first explained to the client your reason for doing so. (1 mark)

You can continue to act for both clients if one of them changes their instructions so that they are in agreement, either to settle today or to fight the case. (1 mark)

Code of Conduct 606.4, 608 (b) (i), 610 (a).

(b) You can agree to a settlement this morning if both clients wish to do this. 603(e)(1 mark)

(c) One mark awarded for any of the following. Mr Forthright's approach is a breach of the Code of Conduct, "A barrister must in all his professional dealings be courteous". (1 mark)

And of the Written Standards "A barrister must at all times be courteous to the Court and to all those with whom he has professional dealings." (1 mark)

Code of Conduct 701(a) and Written Standards 5.5.

(d) Maximum 2 marks.

You could explain to Mr Forthright that his suggestion is unethical and sounds like a threat. (1 mark)

You could state that your clients will make the decision as to whether to accept the other side's offer. (1 mark)

You should stay calm (1 mark) and polite. (1 mark)

You should avoid allowing the atmosphere to escalate. (1 mark)

You could report Mr Forthright's attitude to the Bar Standards Board. (1 mark)

Or his Chambers. (1 mark)

However, his aggressive approach was made in private and would be difficult to prove beyond reasonable doubt. In this situation it would probably be best to respond calmly, refuse to be intimidated and allow the atmosphere to cool. (1 mark for similar answer)

(e) Maximum 3 marks

In this case Mr Forthright's conduct would be:

- discreditable to a barrister (1 mark)
- likely to diminish public confidence in the legal profession (1 mark)
- or the administration of justice (1 mark)
- or otherwise bring the legal profession into disrepute (1 mark).

You could therefore make a complaint concerning Mr Forthright's behaviour to the Bar Standards Board. (1 mark)

Code of Conduct 701(a) and 301 (a) (i), (ii) and (iii).

Complaints Rules 2011, Annex J.

SAQ 2 is on the next page

QUESTION 2

Sanjay, a barrister, is instructed to represent Geoffrey on a charge of burglary. Unfortunately for Geoffrey the victim seems to have identified him, as he worked in his home as a builder recently.

Prior to the plea before venue and mode of trial hearing Sanjay holds a conference with Geoffrey. At that conference Geoffrey states that, although he did not commit the offence, he is feeling very pressured by the litigation and would like to simply plead guilty to get the matter over with.

Answer BOTH of the following questions.

(a) What advice should Sanjay give Geoffrey at the conference?

(5 marks)

(b) On the assumption that Sanjay gives full and correct advice to Geoffrey what further practical steps should be taken if Geoffrey, after receiving all of the necessary advice, remains adamant in entering a guilty plea?

(5 marks)

(10 marks in total)

ANSWER

(a) See paras 11.5.1, 11.5.2 & 11.5.3 of the Written Standards for the Conduct of Professional Work. Sanjay should advise:

- (i) That, if Geoffrey is not guilty, he should plead not guilty but that the decision is one for him as Defendant (1 mark).
- (ii) What the consequences of such a plea will be (1 mark). This should include the effect of a criminal record (1 mark).
- (iii) That what can be submitted on Geoffrey's behalf in mitigation can only be on the basis that he is guilty (1 mark) and will otherwise be strictly limited so that, for instance, Counsel will not be able to assert that the Defendant has shown remorse through his guilty plea (1 mark).
- (iv) Sanjay has already been given reasons why Geoffrey wishes to plead guilty but one mark (1 mark) may be granted if candidates suggest Sanjay should explore these reasons further (see WS 11.5.1).

(b) See para 11.5.3 of the Written Standards of Professional Work.

- (i) Sanjay may continue to represent him if he is satisfied that it is proper to do so (1 mark).
- (ii) Before a plea of guilty is entered Sanjay or Alan should record in writing the reasons for the plea (1 mark).
- (iii) Geoffrey should be invited to endorse a declaration that he has given unequivocal instructions of his own free will that he intends to plead guilty even though he maintains that he did not commit the offence(s) (1 mark) and that he understands the advice given by Counsel (1 mark) and in particular the restrictions placed on Counsel in mitigating and the consequences to himself (1 mark).
- (iv) Geoffrey should also be advised that he is under no obligation to sign (1 mark).
- (v) If no such declaration is signed, Sanjay should make a contemporaneous note of his advice (1 mark).

SAQ 3 is on the next page

QUESTION 3

You are representing the Claimant in a civil claim for breach of contract. You are instructed by your instructing solicitors to draft the Particulars of Claim. Your instructions contain some, but not all, of the evidence in the case. You have seen evidence relating to the non-payment of an invoice which your instructing solicitors say was raised properly following the delivery by your client of a consignment of bottles ordered by the Defendant. You are told that the remainder of the evidence will follow but are asked to draft the Particulars of Claim as a matter of urgency in order to comply with the Court's time limits.

(a) What considerations must you have regard to before drafting a Particulars of Claim?

(5 marks)

b) Your instructing solicitors ask you to draft an allegation of fraud against the Defendant, alleging they fraudulently obtained the bottles with no intention to pay for them. They say that the evidence will be available soon. What duties do you have to consider before drafting the allegation of fraud?

(2 marks)

c) Your papers contain a document which you believe belongs to the Defence of which you should not have sight at this stage. You have not read the document. What is your duty with regards to this document?

(3 marks)

(10 marks in total)

ANSWER

a)

- You must exercise your own personal Judgement upon the substance of any document you draft [WS 5.8].
- You may not devise facts which will assist the lay client's case [CofC para 704; WS 5.8].
- You must not draft any statement of case or pleading containing a statement of fact or contention which is not supported by the lay client or by your brief or instructions [CofC para 704(a); WS 5.8(a)].
- You must not draft any statement of case or pleading containing any contention which you do not consider to be properly arguable [CofC para 704(b); WS 5.8(b)].
- You are not prevented from drafting a document containing specific factual statements of contentions subject to confirmation of their accuracy by the lay client or witness [CofC para 704].

b)

- You must not draft any allegation of fraud unless you have clear instructions to do so.
- You must have before you reasonably credible material, which, as it stands, establishes a prima facie case of fraud [CoC 704(c)].
- Markers should check the Guidance on Pleading Fraud, BSB Guidance on the BSB website. Candidates are not required to make reference to this specific document or to cite the case of *Medcalf v Mardell*. However, they can be awarded a mark for an explanation which reflects the Guidance. Note that PSC took the view that there was no “litmus” test for determining whether it was proper to allege fraud. Lord Bingham stated “Counsel is bound to exercise an objective judgment whether it is in all the circumstances proper to lend his name to the allegation.” On the facts available here you should not draft an allegation of fraud.

c)

- A barrister should not obtain a document belonging to another party other than by means of the normal and proper channels [WS 7.1].
- If you come into possession of a document belonging to another party by some means other than the normal and proper channels, you should make enquiries of your professional client in order to ascertain the circumstances in which the document was obtained by the professional client [WS 7.2(a)].
- Unless satisfied that the document has been obtained in the ordinary course of events, you should immediately return the document unread to the person entitled to possession of it [WS 7.2(b)].
Note that the question states “you have not read the document”. Thus WS 7.3 does not apply.

This is the end of the question paper