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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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.

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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.

Please continue to the next page

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.

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)

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 been taken if Geoffrey, after receiving all of the necessary advice, remains adamant in entering a guilty plea?

(5 marks)

(10 marks in total)

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)

This is the end of the question paper