BAR STANDARDS BOARD

REGULATING BARRISTERS

Bar Professional Training Course Examination 2011-2012

Professional Ethics multiple choice and short answer test

Week Commencing 23 January 2012

10am – 12pm

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 MCQ 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

Mr Drake shares a room in Chambers with a fellow tenant Ms Maitland. She has been the subject of harassment by a fellow tenant in Chambers who continually telephones her on her mobile phone and at home and sends her lewd messages, texts and e-mails. Ms Maitland has not reported the matter to anyone else. Mr Drake is concerned about the effect this behaviour is having on his colleague and wonders what the guidance on reporting professional misconduct suggests his first step should be.

Which ONE of the following statements is CORRECT?

[A] The Guidance suggests that he should report the harassment to the Head of Chambers immediately.

[B] The Guidance suggests that he should report the harassment to the Bar Standards Board immediately.

[C] The Guidance suggests that he should consult with Ms Maitland to see if she wants to complain formally or informally.

[D] The Guidance suggests that he should approach the tenant directly and tell him to stop his harassment of Ms Maitland.

Please continue to the next page

QUESTION 2

You are instructed in a case in which a clear conflict of interest has arisen between your lay client and your professional client. You are considering the right course of action to take.

Which ONE of the following statements is CORRECT?

[A] The conflict must be resolved in favour of the professional client.

[B] The conflict must be resolved by reaching a compromise between the interests of the lay client and the professional client.

[C] You must immediately withdraw and have nothing further to do with the case.

[D] The conflict must be resolved in favour of the lay client.

Please continue to the next page

QUESTION 3

You are representing the Claimant in a personal injury matter. On the basis of your research you have advised your client that the case is worth approximately £6500 and he has indicated he is prepared to settle for figure in this region. On the morning of trial you are approached by Counsel for the Defendant. He advises you that his client is prepared to make an offer to settle for the sum of £13,000. It is clear from your discussions that your opponent has misunderstood the medical report;

Which ONE of the following is the CORRECT course of action?

[A] Settle the case immediately for the sum offered.

[B] Point out to your opponent their error and invite them to reconsider their offer.

[C] Do not inform your opponent of their error but indicate that you will accept a lower figure.

[D] Proceed to trial as the case cannot be properly resolved.

Please continue to the next page

QUESTION 4

Ms Edwards has a growing reputation gained from acting for the Prosecution in rape cases. She is thorough and robust. She feels strongly about the issue of rape and that the law is inadequate in the protection it provides to rape victims. Defence solicitors acting for Mr Palmer (a man with a string of previous convictions for sexual offences involving young girls) sends a brief to Ms Edwards to defend him on a charge of rape. She is available on the dates the trial is fixed for.

Which ONE of the following statements is CORRECT?

[A] Ms Edwards should explain that she only acts for the Prosecution and decline to act for the Defendant.

[B] Ms Edwards should accept the instructions but set a fee above her normal rate as the work is distasteful to her.

[C] Ms Edwards may claim to be too busy although there is no other case booked in her diary for the fixed trial dates and decline to act in the case.

[D] Ms Edwards must accept these instructions to act for the Defendant in spite of her personal views about the injustice of the system to rape victims.

Please continue to the next page

QUESTION 5

You are instructed late one evening to attend a hearing the following day, which relates to a financial divorce settlement. You practise in Family Law, but you specialise in child care issues more than financial settlements, and you have only a little practical experience of the latter. You would need to read the papers to be sure if the case is within your competence. You call the solicitors to express your concerns about the late notice for a case which is not your specialisation. You are told that in fact, the other side have been in touch and they think that their primary witness is likely to be absent and so it is almost certain that they will be applying for an adjournment. Therefore it is highly likely that the hearing will not proceed in full. The solicitors also assure you that the case is "straightforward".

Which ONE of the following statements is CORRECT?

[A] You are only obliged to return a case when you know or ought to know that you are not competent to act.

[B] You are obliged to accept the instructions where your solicitors take the view that you are sufficiently competent. You must then take the case and perform to the best of your ability.

[C] You are obliged to decline the instructions on the basis that you might find that you are not competent to deal with the case and costs might be wasted.

[D] You are obliged to tell your lay client that you do not consider yourself competent to represent them but are only doing so because you have been assured that the matter is likely to be adjourned.

Please continue to the next page

QUESTION 6

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

A barrister when conducting proceedings in Court:

i) Is sometimes personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked.

ii) Can always, whether invited to do so by the Court or not, or when appearing before a tribunal where it is his duty to do so, assert a personal opinion of the facts or the law.

iii) Is not required to ensure that the Court is informed of all decisions and legislative provisions of which he is aware if the effect is unfavourable towards the contention for which he argues.

iv) May bring any procedural irregularity to the attention of the Court during the hearing or may reserve such matter to be raised on appeal.

Select ONE of the following:

[A] All the statements above are correct.

[B] (i) (iii) are the only correct statements.

[C] (ii) (iv) are the only correct statements.

[D] None of the above statements are correct

Please continue to the next page

QUESTION 7

You are representing the Defendant in a personal injury case. The case involves a workplace accident. At trial, one of the Defence witnesses says in cross-examination that she did not see the accident clearly as she was distracted by a colleague at the time. You want to clarify this in advance of re-examining her as she has always said that she had a good view of the accident and was paying close attention to what was going on. Before you begin re-examination, the Court breaks for lunch.

Which ONE of the following statements MOST ACCURATELY describes the circumstances in which you can clarify this evidence with the witness, in time for you to commence your re-examination?

[A] There are no circumstances in which you can communicate with a witness once they have begun to give their evidence.

[B] This is a Defence witness, so as the representative of the Defendant you can clarify the evidence with the witness during the lunchtime adjournment.

[C] You can only clarify the evidence with the witness with the consent of the representative for the opposing side or of the Court.

[D] You should ask your instructing solicitor to clarify the evidence with the witness and pass the information on to you.

Please continue to the next page

QUESTION 8

Which ONE of the following statements MOST ACCURATELY describes the circumstances in which, as a pupil during the non-practising six months of pupillage, you can accept a noting brief?

[A] You may not accept a noting brief during the non-practising six months of pupillage.

[B] You may accept a noting brief if you have permission from your Head of Chambers or pupil supervisor.

[C] You only need the permission of the lay client to accept a noting brief.

[D] There are no restrictions on your ability to accept a noting brief during the non-practising six months of pupillage.

Please continue to the next page

QUESTION 9

You are a new tenant in Uptown Chambers. At Chambers' Christmas party, you talk to a solicitor, Joe. You and Joe have both been recently involved in the same criminal trial in which all four Defendants were acquitted. Joe was acting as solicitor for a man called Steve and you were instructed by another firm of solicitors to represent Steve's brother, Bill. Joe is very friendly and the discussion comes round to the trial. "I knew Steve was guilty" says Joe, "he as good as told us, but the Prosecution was useless. They simply hadn't got their evidence together. What about Bill? He was involved as well wasn't he?" You are not sure what to do.

Which ONE of the following propositions is the CORRECT?

[A] You can say what you want to Joe about Bill because the case is over.

[B] You can talk to Joe about Bill's case, but you cannot disclose anything to Joe which Bill has specifically told you is confidential.

[C] You should only discuss matters with Joe insofar as they are in the public domain.

[D] You can talk to Joe but you must confine any comments to the written instructions in the case.

Please continue to the next page

QUESTION 10

You are acting for John Smith, who has been charged with burglary. In preparation for the trial, you advise John that he should give evidence in his own defence, as he is raising the defence of alibi. John is nervous and does not want to give evidence in the case. He says he does not care if it makes his case weaker, he will not get into the witness box for a “grilling” by the Prosecutor.

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

(i) The final decision whether or not to give evidence must be taken by the client himself.

(ii) If John continues to refuse to give evidence, contrary to your advice, you cannot represent him and must withdraw from the case.

(iii) If John does not give evidence in the case he must change his plea to guilty.

(iv) If John does not give evidence in the case adverse inferences may be drawn against him by the jury.

Select ONE of the following:

[A] (iv) is the only correct proposition.

[B] (i) and (ii) are the only correct propositions.

[C] (i) and (iii) are the only correct propositions.

[D] (i) and (iv) are the only correct propositions.

Please continue to the next page

QUESTION 11

You are a self-employed criminal barrister who is instructed to draft a defence statement by a firm of solicitors who regularly brief chambers. You are not instructed to represent the Defendant at trial. As there is no provision in the current legal aid funding code allowing Counsel to be paid a separate fee for drafting defence statements, the solicitors have asked you to do this work 'pro bono'.

Which ONE of the following statements about your duties is CORRECT?

[A] You may not draft the defence statement unless you are paid for doing so by your instructing solicitors.

[B] The cab rank rule does not oblige you to accept instructions to draft a defence statement in these circumstances.

[C] You may not draft the defence statement until you have first seen the Defendant in conference.

[D] You may only draft the defence statement if you have prior consent to do so from the lay client and Trial Counsel.

Please continue to the next page

QUESTION 12

Which ONE of the following may a barrister NOT include when advertising services?

[A] Photographs of the barrister.

[B] Rates and methods of charging fees.

[C] Statements about the barrister's success rates.

[D] Information about a case a barrister has appeared in, where the information is publicly available, without the consent of the client.

Please continue to the next page

QUESTION 13

Mrs Jones has been instructed by the Defendant in a publicly funded case financed by the Legal Services Commission (LSC). The Claimant is seeking an order for the sale of a house in which the Claimant and Defendant used to cohabit. When preparing the case conference, Mrs Jones notices that some of the financial documents ordered to be disclosed relating to the case show that the Defendant has other money of her own that was not declared originally and the value is such that she not does not qualify for public funding. Mrs Jones believes that the claim will fail entirely. It is likely that all of the Defendant's costs in defending the claim will be recovered from the privately-paying Claimant. Mrs Jones also thinks it is probable that the LSC will thus suffer no loss.

Which of the statements numbered (i) to (iv) about Mrs Jones' options is/are CORRECT**?**

(i) Mrs Jones should take the case to trial because the LSC's interests will be protected by an order for costs against the Claimant.

(ii) Mrs Jones should advise the client to disclose the facts about her other assets to the LSC immediately.

(iii) Mrs Jones must withdraw from the case if the advice to disclose is not acted on by the client.

(iv) Mrs Jones should inform the LSC directly or via her solicitors about the client's other assets.

Select ONE of the following:

[A] (i) and (ii) are the only correct statements.

[B] (ii) and (iii) are the only correct statements.

[C] (ii) (iii) and (iv) are the only correct statements.

[D] (iii) and (iv) are the only correct statements.

Please continue to the next page

QUESTION 14

You are representing Lucas Paints Ltd, the Defendant in a breach of contract case. The case concerns failure to supply goods in accordance with a contract for sale to the Claimant, Jones Bros. The Defendant is insisting that they supplied the goods directly to Jones Bros, on time, in accordance with the contract. Jones Bros are arguing that the goods were never supplied, the goods being instead delivered to a rival company, which was a more lucrative contract. On the night before trial you come across a memo written by the Defendant which states “Big contract with KT Builders Ltd is short by 200 litres; take stock from Jones Bros order forthwith”.

Which ONE of the following statements is CORRECT?

[A] You should advise your professional client that the document needs to be disclosed to the other side immediately. If disclosure is not made, you must withdraw from the case.

[B] If it is clear that there has been a knowing failure to disclose a relevant document, you are professionally embarrassed and must withdraw from the case immediately.

[C] You have a duty to disclose the memo, as otherwise the Court might be misled.

[D] You do not need to disclose the document as it does not advance your case.

Please continue to the next page

QUESTION 15

You are in conference with a client, who is accused of burglary. The client has consistently maintained that he did not commit the offence. However, in conference the client is so distraught with the stress of proceedings that he tells you that he has “had enough” and that he wishes to plead guilty to the offence despite the fact he is innocent of it. You attempt to dissuade him from entering such a plea, but are unsuccessful in doing so.

If the client insists on entering a guilty plea, despite maintaining his innocence, which ONE of the following statements is CORRECT?

[A] You must withdraw immediately from the case as to continue to represent him would mean you would be knowingly misleading the Court.

[B] You can continue to represent him, but you must inform the Court that the client is pleading guilty against your advice.

[C] You can continue to represent him, but there are restrictions on what mitigation you can advance at any sentencing hearing.

[D] You can continue to represent him and you are free to advance whatever mitigation you deem to be advantageous at the sentencing hearing.

Please continue to the next page

QUESTION 16

You are drafting particulars of claim for a Claimant in a personal injury case. You are describing the way in which the accident occurred. Your instructions do not make the mechanics of the accident clear but it appears to you that the allegation is that the Defendant was speeding and overtook a tractor on a blind bend in the road. The Claimant's proof of evidence supplied by your instructing solicitors supports this version of events, but there is no reference to speed. In addition, you believe the Claimant must have taken evasive action by swerving to avoid the collision, otherwise the damage and injury would have been much worse.

As regards drafting the particulars of claim, which ONE of the following statements is CORRECT?

[A] You can draft the particulars of claim containing the facts you believe to be true, subject to confirmation of their accuracy by the lay client.

[B] You cannot draft any fact or contention until you have received clear direct instructions from the lay client.

[C] You can draft the particulars of claim as you see fit, as they can be amended after they have been served on the Defendant, if the Defendant takes issue with them.

[D] You cannot draft any statement of case if there is ambiguity over the facts in the case.

Please continue to the next page

QUESTION 17

You are outside Court and about to start a 5-day criminal case when you are approached by a reporter from the BBC news team, who wishes to ask you one or two brief questions about the case.

Which ONE of the following is a CORRECT response?

[A] Briefly indicate your own preliminary views about the case and the merits of it.

[B] Decline politely.

[C] Give a full interview about the case setting out the views for both sides.

[D] Answer only questions concerning the facts of the case, but not the merits.

Please continue to the next page

QUESTION 18

Ms Lucas is instructed to appear for the Claimant at a fast track trial. She is informed in her brief that in light of the value of the dispute no representative from the instructing solicitors will be attending Court. The case has been prepared hurriedly. Although the Claimant's witness statement is fine, the witness statements of the two supporting witnesses of fact need further amplification and clarification on important issues. Time is short. Ms Lucas considers she needs to get further information from these witnesses neither of whom are her client.

Which ONE of the following statements is CORRECT?

[A] Ms Lucas is not permitted to speak to either of the two witnesses of fact before they give evidence in the case.

[B] Ms Lucas can speak to the witnesses and should see the two witnesses together to save time and to check that they are being consistent.

[C] Ms Lucas can speak to the witnesses but should see the two witnesses separately to avoid the danger of tainting the evidence.

[D] Ms Lucas requires permission of the Trial Judge to see the two witnesses.

Please continue to the next page

QUESTION 19

You are instructed to act for the privately-paying Claimant in a personal injury claim, which you assess as having a 60% chance of success. Previous attempts to settle the case have been unsuccessful, but you are instructed at Court on the day of trial to conduct a "last-ditch" negotiation with Counsel for the Defendant. You manage to secure an offer which, although significantly less than might be recovered if successful at trial, is nonetheless a figure which you consider to be realistically the best offer given the strength of your client's case.

However, the Claimant refuses point blank to accept the offer, despite your efforts and those of your instructing solicitors. In fact, he instructs you to negotiate again to achieve a higher figure.

Which of the statements numbered (i) to (iii) about what you should do in relation to your instructions is CORRECT?

(i) You should withdraw immediately from the case as, by not following her advice that this is the best offer he can hope for, your client has effectively impugned your professionalism.

(ii) Whereas normally you should withdraw from the case because your professionalism has been impugned, here you should not, as to do so would severely prejudice your client's interests due to the proximity of the start of the trial.

(iii) You should continue to represent your client as there is no reason not to, but you are not permitted to negotiate a higher settlement figure as to do so would compromise your professional integrity, given your conclusion that the first settlement figure is the most realistic sum pre-trial.

Select ONE of the following:

[A] (i) is the only correct statement.

[B] (ii) is the only correct statement.

[C] (iii) is the only correct statement.

[D] None of the statements are correct.

Please continue to the next page

QUESTION 20

You have drafted a statement of claim for your client, Mr Smith, who is suing a second hand car dealer for selling him a car which had been repaired after suffering serious damage in an accident. Mr Smith had been told by the dealer that it had previously been owned by “one careful driver”. You have drafted a statement of claim which pleads breach of contract based on the implied terms of the Sale of Goods Act and negligent misrepresentation.

Your instructing solicitors have written back asking you to amend the statement of claim to allege fraudulent misrepresentation instead of negligent misrepresentation. Mr Smith is adamant in his instructions because he has since found out that the dealer is a well known rogue in the car trade and he considers that if fraud is proved the police might then take action against him. You do not consider that there is sufficient evidence of fraudulent behaviour.

Which ONE of the following statements is CORRECT?

[A] You are bound to comply with Mr Smith’s instructions and so you should amend the statement of claim.

[B] You should refuse to amend the statement of claim, explain the position to your solicitors, but should continue to represent the client in any event.

[C] You should refuse to amend the statement of claim, explain the position to your solicitors and, unless your client relents, you should return your instructions.

[D] You should leave the claim for negligent misrepresentation but add a claim based on fraudulent misrepresentation as an alternative.

The SAQs begin on the next page

Section B

Short answer questions

Professional Ethics

QUESTION 1

You are instructed to appear on behalf of a client named John Smith at his sentencing hearing in the Crown Court. Mr Smith previously pleaded guilty to an offence of theft and his case was then adjourned for the preparation of a pre-sentence report.

You introduce yourself to Prosecution Counsel and she hands you a copy of a record of antecedents in the name of "John Smith", which indicates that your client has no previous convictions.

Whilst discussing the case with your client in conference, he instructs you that the Prosecution seem (through no fault of his) to have obtained the wrong set of antecedents. In fact, he tells you, he has two previous convictions for burglary, the most recent of which was in 2007. For that offence he received a sentence of two years imprisonment.

(a) What advice do you give Mr Smith in respect of the wrong antecedents?

(8 marks)

(b) What additional or different advice would you give if your client tells you that the reason for the Prosecution's error is that he gave false personal details to the police on arrest in that his name is not John Smith but actually Peter Stone?

(2 marks)

(10 marks in total)

SAQ 2 is on the next page

QUESTION 2

Charles Watkins, a junior barrister, practising in civil law in your chambers, secured a notable victory for his lay client, Paul Ratcliffe, in a breach of contract case against Media Moguls Ltd. Two weeks after the judgment was handed down, and following receipt of payment in full for his professional services, Charles received the following correspondence from his lay client.

"Dear Charles,

Thank you for all your efforts on my behalf. I have purchased a dozen crates of champagne (very superior vintage!! A hundred pounds a bottle!!) by way of saying thanks. I need you to be on top form when we come up against Media Moguls again, as we surely will. There is no way, right or wrong, that I will let them get the better of me. I want you behind me, case or no case. Let me know where you want the bubbly delivered.

Cheers,

Paul. "

(a) Charles is unsure of what to do and seeks your advice as to whether or not he should accept this gift. Please give full reasons for your advice**.**

(3 marks)

(b) Again giving full reasons, what advice would you offer Charles if he had not received the above letter, but, following payment for his services, he had received in chambers a bottle of champagne (value £25), which had arrived with the following note?

"Dear Charles,

Many thanks for all your help

Paul." **(2 marks)**

Some six weeks later Charles is contacted by the instructing solicitor for Media Moguls (MM) who informs him that it is going to be necessary to litigate against Paul Ratcliffe again on a matter closely related to the previous case and which will cover similar ground. However, the chief executive of MM was so impressed by Charles' performance that MM now wishes Charles to accept instructions on its behalf. The chief executive also believes that Charles' inside knowledge will be of great assistance.

(c) Advise Charles as to whether or not he should accept instructions from MM under the above circumstances. Explain the reasoning for your advice.

(**5 marks)**

(10 marks in total

SAQ 3 is on the next page

QUESTION 3

Dermot Given is a self-employed barrister and practising Roman Catholic. He is a fervent supporter, but not a member, of the Society for the Protection of Unborn Children (SPUC); an anti-abortion group. Williams & Co. Solicitors have instructed Mr Given to defend Thomas Luther at a criminal trial, upon which the trial date is set, in which Mr Luther has been indicted on the offence of assault occasioning grievous bodily harm. The basic facts are that Mr Luther, a member of Pro Choice - a group which is not anti-abortion - attended a public demonstration by SPUC and allegedly threw acid over several of the SPUC demonstrators.

Answer the following questions with FULL explanations as to your answer:

(a) Must Mr Given accept the instructions regardless of any personal views on the issue of abortion or can he refuse to accept the instructions on the basis that Mr Luther's beliefs and opinions are unacceptable to him?

(5 marks)

(b) If Mr Given had attended the demonstration and was a witness to the alleged incident would that have any bearing on whether he should accept or decline the instructions?

(2 marks)

(c) If Mr Given has a part-heard and other existing commitments which mean he has limited time to devote to other new cases, can he decline the Luther case?

(2 marks)

(d) If Mr Given was a commercial law specialist and had never conducted a criminal trial before, would he be able to return the instructions?

(1 mark)

(10 marks in total)

This is the end of the question paper