

Notes and Scaffold for LAWS1029 / LAWS5021 Lawyers, Justice and Ethics

Instruction 1: The final exam for *Lawyers, Justice and Ethics* consists of two parts: problem questions and essay questions. The problem questions focus on legislation and case law relevant to the legal profession and legal ethics, such as conflicts of interest. The essay questions assess understanding of broader theoretical issues that are not governed by strict legal rules, such as the lawyer's duty to promote access to justice.

For ease of reference, these notes are **organised in accordance with this two-part** structure.

Instruction 2: For the cases **listed without accompanying details**, this is either because the content is not publicly available or the details are not considered significant. Those cases are only listed as the authority of certain principles. If you would like to learn more about these cases, please refer to the textbook, which may provide a more detailed description.

Instruction 3: There may be other rules introduced in class or outlined in the course materials, but the four listed below are the primary focus.

| Abbrev. | |
|-----------------|---|
| LPUL | Legal Profession Uniform Law |
| Admission Rules | Legal Professional Uniform Admission Rules |
| Application Act | Legal Profession Uniform Law Application Act |
| SR | Legal Profession Uniform Law Australian Solicitors' Conduct Rules |

Table of Contents

| | |
|--|-----------|
| Part I Problem Questions | 3 |
| Admission | 3 |
| Compliance and Discipline..... | 11 |
| Duties to the Court and the Administration of Justice..... | 20 |
| Responsibility to Clients and Retainer | 26 |
| Cost and Trust Account | 30 |
| Duty to Advise + Competence + Advocate Immunity | 36 |
| Duty of Loyalty 1 - Confidentiality | 41 |
| Duty of Loyalty 2 – Conflicts of Interest | 44 |
| Duty to Profession and Others..... | 49 |
| Part II Essay Questions | 53 |
| Introduction + Legal Education..... | 53 |
| Access to Justice | 57 |
| Digital Lawyering and Future Profession | 69 |
| Issues in Legal Practice + Wellbeing + Professional Identity | 73 |
| Aboriginal..... | 80 |

Part I Problem Questions

| Admission | | |
|-------------------------------------|--|---|
| General | <p>LPUL 16 (1)</p> <p>The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer: if—</p> <p>(a) the designated local regulatory authority has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force;</p> | <p>LPUL 19 Compliance Certificate</p> <p>(1) Apply to the designated local regulatory authority for a CC</p> <p>...</p> <p>(4) the designated local regulatory authority may revoke a CC if the certificate was issued on the basis of information provided by the person that was false, misleading or incomplete.</p> |
| CC1 - Academic Qualification | <p>LPUL 17 (1)</p> <p>prerequisites for the issue of a compliance certificate:</p> <p>(a) <u>academic qualifications</u> specified under the Admission Rules for the purposes of this section;and</p> | <p>Academic Qualification</p> <p>LPUAR S5 (1): academic qualifications prerequisites – a <u>tertiary academic course</u> in Australia, whether or not leading to a degree in law:</p> <p>(a) the equivalent of at least 3 years’ full-time study of law;</p> <p>(b) accredited by the Board;</p> <p>(c) determined by the Board to acquire the knowledge in Schedule</p> <p>(2) if attained 5 years + before applying for CC, the Board may require the applicant to:</p> <p>(a) undertake any further academic subjects,</p> <p>(b) pass any further examinations,</p> <p>(c) apply for a CC within any period</p> <p><u>Areas of knowledge</u> required in LPUAR Schedule:</p> |

| | | |
|-----------------------------|---|--|
| | | Criminal law and procedure; Torts; contracts; Property; Equity; Company law; Administrative law; Constitutional law; Civil dispute resolution; Evidence; Ethics and professional responsibility |
| CC2 - PLT | <p>LPUL 17(1) (b) completed the practical legal training requirements specified in the Admission Rules; and</p> | <p>PLT LPUAR s6(2) The requirement may be satisfied by successfully completing either: (a) a practical legal training course conducted by a practical legal training provider accredited by the Board, or (b) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of subrule (1). (4) if PLT completed 5 years+ before applying for CC, the Board may require the applicant to: (a) undertake any further PLT, (b) apply for a CC within any period.</p> |
| CC3 - Fit and proper | <p>LPUL 17 (1) (c) is a fit and proper person to be admitted to the Australian legal profession.</p> <p>LPUL 17 (2) (a) the authority may have regard to any matter relevant to the person's <u>eligibility or suitability</u> for</p> | <p>Fit and Proper LPUAR s10(1) the Board must have regard: (a) any <u>statutory declaration as to the person's character</u>, referred to in rule 16, (b) any <u>disclosure statement</u> made by the person under rule 17, (c) any <u>police report</u> provided under rule 18, (d) any student conduct report provided under rule 19,</p> |

| | | |
|--|--|--|
| | <p>admission, however the matter comes to its attention; and</p> <p>(b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section.</p> | <p>19:</p> <p>(e) any <u>certificate of good standing</u> provided under rule 20,</p> <p>(f) whether the person is currently <u>of good fame and character</u>,</p> <p>(g) whether the person is or has been a <u>bankrupt</u> or subject to an arrangement under Part 10 of the Bankruptcy Act or has been an officer of a corporation that has been wound up in insolvency or under external administration,</p> <p>(h) whether the person <u>has been found guilty of an offence</u> including a spent offence in Australia or in a foreign country, and if so:</p> <p>(i) the nature of the offence, and</p> <p>(ii) how long ago the offence was committed, and</p> <p>(iii) the person's age when the offence was committed,</p> <p>(i) whether the person has been the <u>subject of any disciplinary action</u>, howsoever expressed, in any profession or occupation in Australia or in a foreign country,</p> <p>(j) whether the person has been the subject of disciplinary action, howsoever expressed, in any profession or occupation that involved a finding adverse to the person,</p> <p>(k) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner,</p> <p style="padding-left: 40px;">Inherent requirements: very open, can refer to disability law and employment law</p> <p>(l) whether the person has a <u>sufficient knowledge of written and spoken English</u> to engage in legal practice in this jurisdiction.</p> |
| | | |

| | | |
|------------------------------|---|--|
| CC4 - Disclosure Duty | <p>LPUAR s17(1)</p> <p>An application for a compliance certificate must include a statutory declaration by the applicant disclosing any matter to which a <u>reasonable applicant</u> would consider that the Board might regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession.</p> | <p>Failure to disclose:</p> <p>Lack of fitness to be admitted,</p> <ul style="list-style-type: none"> • Even disclosed the fact of zero mark without mentioning the collusion allegation behind it – Re OG • Even committed in unusual circumstances and time of hardship – Re Davis • Even if the past action against them did not result in a conviction – Re Hampton <p>Lack of candour in explaining the matter:</p> <p>Can bar the admission – even the applicant disclosed a conviction, if dishonest in the explanation, still prevented him from getting admitted – Re King</p> |
| Mitigating Factors | <p>Age of applicant at time of misconduct</p> <ul style="list-style-type: none"> • The false steps of youth and early manhood are not always final proof of defective character and unfitness – Re Lenehan <p>Evidence of rehabilitation</p> <ul style="list-style-type: none"> • His previous wrongdoings in youth have been rehabilitated by subsequent citizenship and military service. – Ex parte Lenehan <p>External stress</p> <ul style="list-style-type: none"> • His lying to police stemmed from a sudden response to a wholly unforeseen calamity placing extraordinary pressures on him – Re Del Castillo <p>Extremely unusual event</p> <ul style="list-style-type: none"> • The circumstance was so remote from those which a legal practitioner is likely to encounter in practice – Re Del Castillo <p>Regret and remorse</p> <ul style="list-style-type: none"> • the applicant regretted his behaviour and had not re-offended – KMB v LPAB QLD | |

| | |
|--|--|
| | Professional advice <ul style="list-style-type: none"> • failure to disclose was due to following advice from his lawyer father – Re Richardson • failure to disclose was due to following advice from the lecturers in his PLT program – Re Del Castillo |
| Early assessment of suitability | <p>A student can ask the Admission Board about their suitability prior to finishing their studies and seek a declaration from the Board under LPUL s 21 that a specific matter or matters you <u>wish to disclose will not adversely affect the Board's assessment of whether you are a fit and proper person to be admitted.</u></p> <p>Declaration of early assessment of suitability for a compliance certificate</p> <p>(1) A person may apply to the designated local regulatory authority for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by it as to whether the person is a fit and proper person to be admitted.</p> <p>(2) The designated local regulatory authority may make the declaration applied for in relation to any or all of the matters disclosed and specified in the declaration or may refuse to do so.</p> <p>(3) A declaration made under this section is binding on the designated local regulatory authority unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.</p> |
| Supervision | <p>Practising certificate holder can only engage in supervised legal practice, until has completed: - LPUL s49</p> <ul style="list-style-type: none"> • 2 years supervision (after PLT); • 18 months supervision if workplace training |
| | |
| | <p>Case 1 – previous improper conduct (willful disobedience of court rules)</p> <p>Re B [1981] 2 NSWLR 372</p> <p>Facts:</p> <ul style="list-style-type: none"> • Bacon made an application for admission as a barrister • Bacon disclosed 10 convictions, including for contempt in court • Bacon lied about a bail application, and where the money (bail bond money) came from <p>Decisions: - not fit and proper</p> |

| | |
|--|--|
| | <ul style="list-style-type: none"> • The dishonesty in bail application is incompatible with admission. B was not a fit and proper person because she knowingly was involved in getting a person out of jail in an illegal way. – this is a defiance of the law and of the courts • Did not change her attitude for her previous convictions • The court needs the barrister which it can rely to perform its duty, order its procedures and give its decisions in the confidence that the barristers will not mislead it, and will conduct themselves in accordance with the law. |
| | <p>Case 2 – Academic misconduct + failure to disclose an academic misconduct Re OG [2007] VSC 520 OG and friend GL investigated for academic misconduct (inappropriate collusion/copying in a non-law subject). Both were awarded marks of zero for the assignment in question. Both disclosed this zero mark to the Board, but only GL disclosed the collusion allegation – OG did not fully disclose. → Held that OG's admission was revoked on the basis of deliberate or reckless misrepresentation</p> |
| | <p>Case 3 – previous criminal offences + remorse KMB v Legal Practitioners Admissions Board (QLD) [2017] Issue: whether the previous criminal offences of the applicant stemming from a decade earlier as a sex worker affect the fitness? QLD Supreme Court: the prior offences did not represent such an 'ongoing flaw in the Appellant's character' - (i) they occurred a decade earlier, (ii) the applicant regretted his behaviour, and had not re-offended or worked as a sex worker since, (iii) he had completed two university degrees and had obtained employment as a law clerk.</p> |
| | <p>Case 4 – failure to disclose a criminal offence Re Davis (1947) 75 CLR 409 Davis was refused admission for failing to disclose a conviction for breaking, entering and stealing recorded 8 years ago, which was occurred in unusual circumstances and in a time of great personal hardship Decision: refused – lack of candour in disclosing the offence</p> |
| | <p>Case 5 – failure to disclose a disciplinary finding Re Hampton [2002] QCA 129</p> |