

Disclaimer: these sample notes start from page 3 of the actual notes!! It skips most parts within topics as well to show the distinct features (tabs etc.) of the notes. Normally every topic has a definitions, relevant rules and cases sections that I got rid of to able to fit everything into this sample.

2) Admission to Legal Profession

Relevant Rules

- Part 2.2 of LPUL 2014 (ss15-25) admission to the profession
- s17 & 19 of LPUL → requires compliance certificate from LPAB
- Legal Profession Admission Rules 2015 – r5, 6 → eligibility
- Legal Profession Uniform Admission Rules 2015 (NSW) Schedule 1 → r13
- Legal Profession Admission Rules 2015: r17, 18, 19, 23 → suitability
- ◆ r10 & 17 ASCR → what must be disclosed

Cases

Frugtniet v Board of Examiners: Justice Pagone noted that commitment to honesty, candour and frankness is necessary irrespective of self-interest or embarrassment - Fit and proper person = “personal qualities of character which are necessary to discharge the important and grave responsibilities of being a barrister or solicitor”	Prothonotary of the S.C. of NSW v P - The NSW Court of Appeal noted that “good fame and character” comprises the two: fame = reputation in the relevant community, character = person’s actual nature
Academic misconduct Micah Kickett [2018] NTSC 26 - Applicant failed to disclose plagiarism bc formal findings hadn’t been made against him - COURT: should’ve disclosed irrespective of whether there was any formal finding or not. Academic dishonesty	Criminal history Application of the Legal Practitioners Act 1970 in Hinds [2003] ACTSC 11 - Admitted with a criminal history, offences do not automatically mean disqualification, but bear the onus of establishing that he or she is presently of good reputation and character
Academic misconduct Joy Onyeledo [2015] - Two incidences of plagiarism – not disclosed — Court noted: appropriate referencing is essential to demonstrate “qualifications and understandings of topics”	Practising without a practising certificate Council of the New South Wales Bar Association v Chen [2024] NSWSC - Admitted to the bar (2016) but failed to renew it (2022) but continued practising
Non-disclosure Re Legal Profession Act 2004 and OG [2997] - OG failed to disclose collusion in an assessment, the co-student disclosed it → OG removed from the roll	Excessive disclosure Re Del Castillo (1998) 136 ACTR1 - “Information which may raise eyebrows”... Encourages disclosure of minor charges
Non-disclosure JY [2016] - History of offenses from younger yrs incl. Larceny, unlawful vehicle use, military offenses – only disclosed criminal offenses - Court refused admission bc found the applicant could not “properly be found at this time a fit and proper person for admission”	Mental health XY v the Board of Examiners [2005] VSC 250 - History of mental health issues and alcohol abuse, charged with offences during periods of mental health crises, drinking ceased later BUT failed to disclose two incidents - Court allowed appeal, finding XY fit for admission subject to an undertaking to continue w/Alcoholics Anonymous
Practising without a practising certificate Legal Practice Board v Ridah [2004] WASC 263 - r 12, 13 violated → Ridah held himself out as a lawyer taking on criminal, civil and family law cases	Political activity Re B [1981] 2 NSWLR 372 - Wendy Bacon was refused admission due to her political activities & criticisms of institutions incl. Courts.

3) Regulation of the profession

Definitions

- Legal ethics is more than just rule compliance, while *professional responsibility* = minimum expectations set by law
 - Established 3 key bodies: Legal Services Council (LSC), Legal Services Commissioner, the Admissions Committee
 - Designated local regulatory authorities: Law Society of NSW, Bar Association of NSW, LPAB
 - Not a regulatory body: Law Council of Australia
- **LSC**: monitor the LPUL's consistent application, its efficiency, effectiveness, that it promotes the maintenance of professional standards, accounts the interests and protection of clients
- **LPAB**: determines eligibility and suitability of applicants in NSW
- **Law Council of Aus**: peak national representative body, works for the improvement of law and admin. of justice, federal org representing 90k lawyers through their bar associations and law societies
- **Office of NSW Legal Services Commissioner**: indep. stat. body dealing w complaints (investigation, resolving consumer matters, disciplinary action or commence disciplinary proceedings in the **NSW Civil and Administrative Tribunal -NCAT**) abt lawyers under the application act. Consists of the **Legal Services Commissioner**, which receives complaints.
- ★ **2 categories of complaints**: 1. consumer matters (costs, service issues) / 2. disciplinary matters (professional standards)
- ★ **2 levels of misconduct**: 1. Unsatisfactory professional conduct / 2. Professional misconduct

5) Confidentiality & Privilege

Differences:

Aspect	Confidentiality	Privilege
Scope	Broader – covers all client information	Narrower – applies only to legal advice/litigation
Strength	Can be overridden (e.g., by court order)	Stronger – absolute unless waived/statutorily removed
Sources	Contract, equity, professional conduct rules	Common law, statutes (e.g., Evidence Act)
Purpose	Protect client info in general	Protect legal advice and encourage frank disclosure
Ownership	Lawyer's duty	Client's right – can only be waived by client

Definitions

- Both go beyond the retainer, even after death → immortal duty
- Mindful of inadvertent disclosure – technology (hacking of cloud, AI, phone calls, social media or accidental emails)
- **Confidentiality**: encourages full and frank disclosure, all info received during the course of the retainer
- Consequences of breach: embarrassment to the client, loss of future clients, undermining the admin of justice, bringing the profession into disrepute, clients can take action against the lawyer (injunction to stop the lawyer from acting for anyone else or using the confidential information, breach of contract, sue for damages, disciplinary complaints through the OLSC, removal from the roll of practitioners)
- **Privilege**: protected from all forms of compulsory disclosure, whereas confidential non-privileged info must yield to such compulsions. Once legal professional privilege is identified, it's absolute and unqualified unless it has been expressly ousted by statute.
- **Utilitarian philosophy** (all relevant info should be before the court for a fair and just result), **libertarian philosophy** (individual rights should be protected against undue interference from the law – human right)
- **Burden of proof** is on the party claiming privilege
- **Advice privilege**: confidential info that is exchanged for the dominant purpose of legal advice, **s118 of Evidence Act**
- **Litigation privilege**: confidential info created for the dominant purpose of litigation that exists or reasonably contemplated, **s 119 of Evidence Act**
- **Negotiation privilege**: where litigation is contemplated, where the correspondence is made for the purpose of achieving settlement **s131(1)(a) & (b) of Evidence Act** → Evidence can't be adduced when a communication happens for the purpose of negotiation
- **Dominant purpose test**: 3 elements required:
 - 1. Communications must be in the context of the relationship of the client and the client's legal adviser
 - 2. Communications must be made for the **dominant purpose** of legal advice (advice privilege) or for the purpose of actual or contemplated litigation (litigation privilege)