

LAWS2013 LEGAL PROFESSION – PROBLEM QUESTION

SCAFFOLDS

Table of Contents

| | |
|---|----|
| Topic 1: Approaches to legal ethics and professional responsibility | 7 |
| 1. Week 1 Approaches to Legal Ethics and Professional Responsibility | 7 |
| a. Barrister’s Rules – Legal Profession Uniform Conduct (Barristers) Rules 2015 | 7 |
| b. Solicitor’s rules – Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015 | 8 |
| c. The Law Society of NSW, Statement of Ethics | 8 |
| d. Anti Discrimination and Harassment | 8 |
| e. Cases | 9 |
| Topic 2: Legal Needs, Access to Justice and Delivery of Legal Services and Law Practice Management | 11 |
| 1. Generally | 11 |
| a. Legal Profession Uniform Law 2014 (NSW) | 11 |
| b. Dishonest and disreputable conduct | 11 |
| 2. Trust Money | 11 |
| a. Definition | 11 |
| b. Handling of trust money | 11 |
| c. [CONCLUSION] Professional sanctions for improper handling of trust money | 12 |
| 3. Costs and Billing | 12 |
| a. Costs must be “fair and reasonable” | 12 |
| b. Avoidance of increased legal costs | 12 |
| c. Disclosure obligations of law practice regarding clients → go through both this and costs agreement | 13 |
| d. Costs agreement – dealt with in Div 4 of Part 4.2 of the LPUL | 14 |
| Topic 3: Legal Education | 16 |
| 1. Admission to Practice | 16 |
| a. General Requirements of Admission to Practice | 16 |
| b. STEP 1 – State the two-fold requirements of admission (pre-requisites for compliance certificates) | 16 |
| c. STEP 2 – Academic Qualifications Prerequisite | 16 |
| d. STEP 3 – Factors Assessing a Fit and Proper Person | 17 |
| e. STEP 3.1 – Duty of Disclosure – Is there failure to disclose matters as part of admission application | 22 |
| f. STEP 4 – Mitigating Factors Duty of Disclosure | 23 |
| g. Early Assessment of Suitability | 24 |

| | |
|--|----|
| Topic 4a: Duties to the Court and the Administration of Justice | 25 |
| 1. Paramount Duty to the Court | 25 |
| a. r 3 Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 – Paramount duty to the court and the administration of justice | 25 |
| b. r 23 Legal Profession Uniform Conduct (Barristers) Rules 2015 – Duty to Court | 25 |
| 2. Duty of Independence | 25 |
| a. Generally | 25 |
| b. Duty of Independence –forensic judgment | 25 |
| c. Duty of Independence –against client instructions? | 25 |
| 3. Duty of Honesty and Candour | 25 |
| a. Overview | 25 |
| b. Duty to Assist by Identifying Relevant Law | 26 |
| c. Duty Not to Deceive or Mislead the Court and to Correct Misleading Statements | 26 |
| d. If the Opponent Makes a Mistake | 26 |
| e. Client Perjury Rules | 26 |
| 4. Maintaining Integrity of Evidence – Dealing (Conferring) with Witnesses | 27 |
| a. Coaching, False/Misleading Evidence | 27 |
| b. Opposition Access to Witness | 27 |
| c. Integrity of Evidence – Two witnesses together (SR 25; BR 71) | 28 |
| d. Communication with Witnesses Under Cross-Examination (SR 26; BR 73) | 28 |
| 5. Duty to Avoid an Abuse of Court's Process | 28 |
| a. Court Processes not abused for oppression or injustice | 28 |
| b. Responsible Use of Court Process and Privilege (SR 21; BR 60) | 29 |
| c. White Industries (Qld) v Flower & Hart | 30 |
| 6. Efficient Administration of Justice | 30 |
| a. Solicitor Rules | 30 |
| b. Barrister Rules | 30 |
| c. Civil Procedure Act 2005 (NSW) – case management ss 56-60 | 30 |
| d. Must not pursue 'hopeless' cases – civil jurisdiction | 31 |
| Topic 4b: Duties of Representation and Lawyer-Client Relationship | 32 |
| 1. STEP 1: Duty to Accept Brief (Cab Rank Principle) | 32 |
| a. Step 1.1: Accepting of Brief | 32 |
| b. Step 2.2: When MUST a brief be declined/returned? | 32 |
| c. Step 2.3: When a brief MAY be refused or returned | 33 |
| d. Step 2.4: When a brief MUST NOT BE returned | 33 |
| e. Step 2.5: Obligations for returning a brief | 34 |

| | |
|---|-----------|
| f. Step 2.3: Barristers should not act in ways that restrict/limit the effect of the cab-rank principle | 34 |
| 2. STEP 2: Creation of Lawyer-Client relationship | 34 |
| a. Step 2.1 Creation of a retainer:..... | 34 |
| b. Step 2.2: Parties to the retainer | 35 |
| c. Step 2.3: Duties to the client..... | 36 |
| d. Step 2.4: Consequences and remedies for breach of duties to the client..... | 36 |
| 3. STEP 3: Terminating the Retainer | 36 |
| a. Step 3.1 Principles:..... | 36 |
| b. [Conclusion] Step 3.2 Impact of termination | 37 |
| c. Step 3.2 Ownership of clients' documents | 37 |
| Topic 5a: Communicating and Interviewing | 38 |
| 1. Background..... | 38 |
| a. Communication and the Conduct Rules | 38 |
| b. What do these duties require in terms of communication with clients? | 38 |
| c. Example of miscarriage of justice through communication difficulties for Indigenous peoples: <i>The Queen v Kina</i> | 38 |
| d. Example of miscommunication regarding fees | 38 |
| e. Example of failure to communicate (OLSC (2011-2022 AR, p. 37)) | 39 |
| 2. Duty to act in client's best interest..... | 40 |
| a. SR 4.1.1 | 40 |
| b. BR 35 | 40 |
| 3. The duty to advise..... | 40 |
| a. Solicitors: SR 7 Communication of Advice..... | 40 |
| b. Barristers | 40 |
| 4. The duty to follow instructions | 40 |
| a. SR 8.1 | 40 |
| 5. The duty to disclose costs – also on p.g. 11-14..... | 41 |
| a. LPUL s 174(1) and (2)..... | 41 |
| b. S 174(3)..... | 41 |
| Topic 5b: Duty of Confidentiality | 42 |
| 1. Is there confidential information? | 42 |
| a. Not defined in the Uniform Rules, but:..... | 42 |
| 2. State the general rules on the duty of confidentiality | 42 |
| a. General rule | 42 |
| b. Solicitor Conduct Rules | 42 |

| | | |
|----|---|----|
| c. | Barristers Conduct Rules | 42 |
| d. | Death of a client | 42 |
| 3. | Does any exception to the general rule of confidentiality apply? | 43 |
| a. | Generally | 43 |
| b. | Solicitor Conduct Rules | 43 |
| c. | Barristers Conduct Rules | 43 |
| d. | ELEMENT 1: Client authorisation (SR 9.2.1 / BR 114 and 115) | 44 |
| e. | ELEMENT 2: Permitted/compelled by law (SR 9.2.2 / BR 114 / s 316 Crimes Act) | 45 |
| f. | ELEMENT 3: Avoid serious offence / imminent harm (SR 9.2.4 and 9.2.5 / BR 82) | 45 |
| | Topic 7a: Client Legal Privilege (CLP)/Legal Professional Privilege (LPP) | 47 |
| 1. | Nature of CLP/LPP | 47 |
| a. | Terminology | 47 |
| b. | Effect | 47 |
| c. | Who owns privilege? | 47 |
| 2. | Identifying Privileged Communication | 47 |
| a. | Test for whether communication is privileged | 47 |
| b. | ELEMENT 1: Confidential communications | 48 |
| c. | ELEMENT 2: ...That arise from the lawyer-client relationship | 48 |
| d. | ELEMENT 3: ...made for the ‘dominant purpose’ of... | 48 |
| 3. | Statutory Privilege – CLP under <i>Evidence Act</i> | 49 |
| a. | CLP and Onus of Proof | 49 |
| b. | Identify privileged communication – and also apply common law test | 49 |
| c. | Limitations and Exceptions to CLP | 50 |
| | Topic 7b/8a: Conflicts of Interest | 54 |
| 1. | Duty-Interest Conflict (Lawyer-Client Conflict) | 54 |
| a. | Situations that can create the risk of lawyer-client conflicts | 54 |
| b. | Duty with reference to SRs and BRs | 54 |
| c. | Duty-interest conflict may be permissible if there is informed consent on the part of the client | 58 |
| 2. | Client-Client Conflicts | 58 |
| a. | Overview | 58 |
| b. | SCENARIO 1: Concurrent Client Conflicts (SR 11; BR 118-119) | 58 |
| c. | SCENARIO 2: Successive Client-Client Relationships (Conflicts concerning FORMER clients) (SR 10; BR 101) | 63 |
| | Topic 8a/8b: Duties in Specific Areas of Practice – Criminal Context | 67 |
| 1. | General Principles | 67 |

| | | |
|----|--|----|
| a. | ODPP NSW, Prosecution Guidelines (2021) – Ch 2.2 General principles | 67 |
| b. | ODPP NSW, Prosecution Guidelines (2021) – Ch 2.3 General conduct in trials and summary hearings – a prosecutor: | 67 |
| 2. | Prosecutor’s Duties in Conduct Rules | 67 |
| a. | Prosecutor’s duties – Fairness and impartiality | 67 |
| b. | Prosecutor’s duties – Full and firm presentation of the case, but not more | 67 |
| c. | Prosecutor’s duties – Disclosure | 67 |
| d. | Prosecutor’s duties – Calling witness | 68 |
| e. | Prosecutor’s Duties – Evidence | 69 |
| 3. | Criminal Defence Lawyers | 70 |
| a. | Criminal Pleas | 70 |
| b. | Delinquent of Guilty Clients | 70 |
| 4. | Robodebt Example | 72 |
| a. | Robodebt Scheme | 72 |
| b. | Advice provided by government lawyers for Robodebt Scheme | 72 |
| c. | Royal Commission Report – In-house Lawyers | 72 |
| d. | Statement of Expectations of Australian Government Lawyers | 73 |
| | Topic 10: Competence, Liability and Immunity | 74 |
| 1. | STEP 1: What are the general duties that exist for a lawyer? | 74 |
| a. | Duty of competence: | 74 |
| b. | What do we mean by competence? | 74 |
| 2. | STEP 2: When do issues arise? | 75 |
| a. | Technical legal expertise | 75 |
| 3. | STEP 3: Liability for Breach of Duties | 75 |
| a. | Option 1: Contract | 75 |
| b. | Option 2: Tortious negligence | 75 |
| c. | Option 3: Equity | 80 |
| d. | Option 4: Australian Consumer Law | 80 |
| | Topic 11: Complaints and Discipline | 81 |
| 1. | STEP 1: Who can make a complaint against a lawyer in NSW? | 81 |
| a. | Step 1 Who: Any person or body can make a complaint (s 266 LPUL) | 81 |
| b. | Step 2 How to make a complaint: | 81 |
| c. | Step 3 Time limits: | 81 |
| d. | Step 4: Has PROCEDURAL FAIRNESS been owed? | 81 |
| 2. | STEP 2: Consumer Complaints (s 269 LPUL) | 81 |
| a. | Step 1 Is it a consumer matter? | 81 |

| | | |
|----|---|----|
| b. | Step 2 Informal Resolution: | 82 |
| c. | Step 3 What if there is no informal resolution? | 82 |
| 3. | STEP 3: Disciplinary complaints | 82 |
| a. | Step 1 What is the standard for determining disciplinary matters? | 82 |
| b. | Step 2: What is a disciplinary complaint? | 83 |
| c. | Step 3: What is the type of misconduct? | 83 |
| 4. | STEP 4: Mitigating factors | 86 |
| a. | 1) Frequency of misconduct and prior misconduct findings | 86 |
| b. | 2) Lawyer attitude | 86 |
| c. | 3) Lawyer’s level of appreciation for wrongdoing | 86 |
| d. | 4) Lawyer’s level of experience | 87 |
| e. | 5) Illness and external stressors | 87 |
| f. | 6) Testimonials + Opinions of 3rd parties | 87 |
| g. | 7) Loss suffered by others due to misconduct | 87 |
| h. | 8) Loss suffered by lawyer due to misconduct | 87 |
| 5. | STEP 5: If satisfied that it is a disciplinary matter | 87 |
| a. | Step 1: Preliminary assessment of complaint | 87 |
| b. | Step 2: Submissions Made | 88 |
| c. | Step 3: Investigation of Complaints | 88 |
| d. | Step 4: Determination | 88 |
| e. | Step 5: Closing a case | 90 |
| 6. | STEP 6: Can the lawyer appeal? | 90 |
| a. | Internal review: | 90 |
| b. | Right to appeal: | 90 |
| 7. | AUTOMATIC SHOW CAUSE EVENT | 90 |
| a. | STEP 1: Does it fall under ‘automatic show cause’ event? | 90 |
| b. | STEP 2: What does the local authority do after receiving information? | 91 |
| c. | STEP 3: Powers of the authority S 89(4) | 91 |
| 8. | DESIGNATED SHOW CAUSE EVENT | 91 |
| a. | STEP 1: Does it fall under designated ‘show cause’ event? (s 90 Uniform Law) | 91 |
| b. | STEP 2: What does the certificate holder need to do? (s 91 Uniform Law) | 91 |
| c. | STEP 3: After holder gives statement, what can the local authority do? (s 92 Uniform Law) 92 | |
| d. | STEP 4: Powers of the authority (s 92(5)) | 92 |

Topic 1: Approaches to legal ethics and professional responsibility

1. Week 1 Approaches to Legal Ethics and Professional Responsibility

a. Barrister's Rules – Legal Profession Uniform Conduct (Barristers) Rules 2015

i. Rule 3: Objects

1. The object of these Rules is to ensure that barristers:
 - a. (a) act in accordance with the general principles of professional conduct,
 - b. (b) act independently,
 - c. (c) recognise and discharge their obligations in relation to the administration of justice, and
 - d. (d) provide services of the highest standard unaffected by personal interest.

ii. Rule 4: Principles

1. These Rules are made in the belief that:
 - a. (a) barristers owe their paramount duty to the administration of justice

iii. Rule 8: General

1. A barrister must not engage in conduct which is:
 - a. (a) dishonest or otherwise discreditable to a barrister;
 - b. (b) prejudicial to the administration of justice; or
 - c. (c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

iv. Rule 17: Cab-Rank principle

1. A barrister MUST accept a brief from a solicitor to appear before a court in a field in which the barrister practises or professes to practise if:
 - a. (a) the brief is within the barrister's capacity, skill and experience;
 - b. (b) the barrister would be available to work as a barrister when the brief would require the barrister to appear or to prepare, and the barrister is not already committed to other professional or personal engagements which may, as a real possibility, prevent the barrister from being able to advance a client's interests to the best of the barrister's skill and diligence;
 - c. (c) the fee offered on the brief is acceptable to the barrister; and
 - d. (d) the barrister is not obliged or permitted to refuse the brief under rule 101, 103, 104 or 105.

v. Rule 42: Independence

1. A barrister must not act as the mere mouthpiece of the client or of the instructing solicitor and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of the client's and the instructing solicitor's wishes where practicable.

b. Solicitor's rules – Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015

- i. **SR 3:** Fundamental duties of Solicitors 3 Paramount duty to the court and the administration of justice
 1. 3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

c. The Law Society of NSW, Statement of Ethics

- i. Our paramount duty is to the administration of justice.
- ii. We act competently and diligently in the service of our clients.
- iii. We advance our clients' interests above our own.
- iv. We act confidentially and in the protection of all client information.
- v. We act together for the mutual benefit of our profession.
- vi. We avoid any conflicts of interest and duties.
- vii. We observe strictly our duty to the court of which we are officers to ensure the proper and efficient administration of justice.
- viii. We seek to maintain the highest standards of integrity, honesty and fairness in all our dealings.
- ix. We charge fairly for our work.

d. Anti Discrimination and Harassment

i. Definitions (Sex Discrimination Act 1984 (Cth))

1. What is sexual harassment: A person sexually harasses another if they:
 - a. Make an unwelcome sexual advance or request for sexual favours. **(s28A(1)(a))**
 - b. (b) Engage in other unwelcome sexual conduct toward them. **(s28A(1)(b))**
 - c. If a reasonable person would expect the conduct to offend, humiliate, or intimidate. **(s28A(1))**
2. Factors to Consider: When assessing harassment, factors like age, gender identity, disability, and relationships between the harassed person and the person. **(s28A(1A))**
3. Definition of Sexual Conduct: Includes verbal, written, or physical statements of a sexual nature, whether directed at someone or made in their presence. **(s28A)**

ii. Overarching Rules

1. **Solicitor:** A solicitor must not in the course of, or in connection with, legal practice OR their profession, engage in conduct which constitutes **(SR 42.1)**
 - a. discrimination, **(42.1.1)**
 - b. sexual harassment **(42.1.2)**
 - c. any other form of harassment, or **(42.1.3)**
 - d. workplace bullying **(42.1.4)**
2. **Barrister (BR 123) :**
 - a. (1) A barrister must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes:
 - i. (a) discrimination,
 - ii. (b) sexual harassment, or

- iii. (c) bullying.
- b. (2) For the purposes of subrule (1), conduct in connection with a barrister's profession includes, but is not limited to:
 - i. (a) conduct at social functions connected with the bar or the legal profession, and
 - ii. (b) interactions with a person with whom the barrister has, or has had, a professional relationship.

e. Cases

i. **Hughes Trading as Beesley and Hughes Lawyers v Hill**

1. **Facts:**

- a. 2015: A 56-year-old woman became a solicitor and hired as a paralegal by a divorced male solicitor, who promised to train her but sought a romantic relationship.
- b. He acted as her lawyer in mediation with her ex-husband, later misusing confidential information.
- c. Sexual Harassment (July 2015 - June 2016):
 - i. Sent excessive romantic emails, made unwanted advances.
 - ii. Created inappropriate situations (e.g., waiting in her room while she showered, sitting in underwear, demanding hugs).
 - iii. Ignored her rejections, pressured her not to report him in exchange for legal training.
- d. Impact: Psychological distress, therapy, resignation (June 2016).
- e. Legal Action: Filed complaint with AHRC, then took case to Federal Court after mediation failed.

2. **Trial:**

- a. Medical evidence confirmed trauma
- b. He defended himself as acting 'honourably'

3. **Held (Court decision):**

- a. Found guilty – ordered to pay \$120,000 (general + aggravated damages).
 - i. Held to a higher standard as a legal professional.
 - ii. Not struck off but denied a practising certificate (can reapply).
 - iii. Appealed on three grounds:
 - 1. Insufficient evidence of sexual harassment.
 - 2. \$120,000 was excessive.
 - 3. Aggravated damages were unjustified.
 - iv. Full Federal Court dismissed appeal – upheld the trial decision.

4. **Key principles:**

- a. Sexual harassment proven.
- b. \$120,000 justified due to:
 - i. Severe psychological harm and distress.
 - ii. Power imbalance – employer exploited status as a solicitor.
 - iii. Court's strong disapproval of harassment and his poor defence.
- c. Aggravated damages upheld – due to:
 - i. Threats, misuse of confidential information, false accusations, blaming her for his behaviour

d. Key Quotes:

- i. “The respondent was hired as his paralegal, new to the legal profession, unable to move away from the area due to her two children she had to look after and was suffering from an anxiety disorder. A decent person would not have exploited the power imbalance.”
- ii. “But the status is not held for themselves but for the community which they serve. The use of this status for tawdry personal ends is an abuse of it.”
- iii. “s 28(A)... comfortably enclose the shabby state of affairs in which a man gains access to his female employee’s bedroom dressed only in his underwear.”

ii. ***Council of NSW Bar Association v EFA → conduct done OUTSIDE legal practice***

1. **Facts:**

- a. Barrister held to have made gestures towards and briefly simulated oral sex with another male barrister and then lightly pushed a female clerk’s head forward whilst saying to her ‘suck my dick’
- b. EFA (barrister) sent a written apology to H (female clerk) dated 3 August 2017. In this letter, EFA indicated that he did not recall the incident, except that he recalled ‘horsing around’ with A

2. **Held:** Held to be unsatisfactory professional conduct at appeal – court dismissed trial appeal

- a. Professional Misconduct? – No
 - i. The conduct had no real connection to professional practice.
 - ii. No separate category of misconduct under Legal Profession Uniform Law.
- b. Unfit to Practice? – No
 - i. Behaviour was “poorly judged, vulgar, and inappropriate”, but labelled as “horseplay,” not a sexual advance.
 - ii. Unfitness not solely based on conduct—this was an isolated incident and did not warrant disqualification.
- c. No Fine Imposed
 - i. Conduct deserved condemnation but was a one-time breach.
 - ii. The respondent already faced significant personal, emotional, and financial consequences.
 - iii. Disciplinary orders should protect, not punish—fine unnecessary.

Topic 2: Legal Needs, Access to Justice and Delivery of Legal Services and Law Practice Management

1. Generally

a. Legal Profession Uniform Law 2014 (NSW)

- i. Ss 172-173 (fair and reasonable costs)
- ii. S 174 (disclosure obligation)
- iii. Ss 179-183 (costs agreements)
- iv. Ss 187-190 costs bills
- v. S 207 (disciplinary action)

b. Dishonest and disreputable conduct

- i. **SR 5.1:** A solicitor must not engage in conduct, in the course of practice or otherwise, which
 1. 5.1.1 demonstrates that the solicitor is not a fit and proper person to practise law, or
 2. 5.1.2 is likely to a material degree to:
 - a. Be judicial to, or **diminish the public confidence** in, the administration of justice, or
 - b. **Bring the profession into disrepute**

2. Trust Money

a. Definition

- i. **LPUL s 129(1):** trust money is **money entrusted to a law practice in the course of or in connection with the provision of legal services** by the law practice, and includes—
 1. (a) money received by the law practice **on account of legal costs in advance of providing the services;** and
 2. (b) **controlled money** (written direction to deposit them into a specific account of which the practice has exclusive control) received by the law practice; and
 3. (c) **transit money** (instruction to deliver to 3rd party) received by the law practice; and
 4. (d) money received by the law practice, that is the subject of a power exercisable by the law practice or an associate of the law practice, to deal with the money **for or on behalf of another person.**
- ii. **Money received by a law practice for legal services** that have been provided and in respect of which a bill has been given to the client is **NOT trust money (LPUL s 129(2))**
- iii. Obligation on principals to ensure trust money received and disbursed by practice is dealt with accordance with the Act

b. Handling of trust money

- i. Trust money must **not be mixed with other money (LPUL s 146)**
- ii. A law practice must keep in **permanent form trust records** in relation to trust money received by the law practice **(s 147)**
- iii. A practice or practitioner **must not, without reasonable excuse, cause a deficiency in a trust account** or fail to pay/deliver trust money **(s 148)**

- iv. Except as otherwise provided under the LPUL, trust money **must be deposited into the general trust account of the firm** and disbursed only in accordance with a direction given by the person on whose behalf it is received **(s 138)**
- v. **Reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person** to be entrusted with the responsibilities belonging to a solicitor **(Law Society of NSW v Jones, Street CJ)**
- vi. **Council of the Law Society of NSW v Pizzinga** – solicitor claimed he did not intend to intermingle trust funds but aimed to ensure cleared funds were available for a time-sensitive transaction
 - 1. **S 260 LPA** prohibits intermixing of trust money with any other money – **Council held breach**
- c. **[CONCLUSION] Professional sanctions for improper handling of trust money**
 - i. A failure to comply with trust accounting obligations may constitute **professional misconduct** or **unsatisfactory professional conduct**

3. Costs and Billing

- a. **Costs must be “fair and reasonable”**
 - i. **LPUL s 172:** Legal costs must be **“fair and reasonable”** in the circumstances, taking into account the matters set out in s 172(2) and (3)
 - ii. **LPUL s 172(2):** In considering whether legal costs satisfy subsection (1), **regard must be had to** whether the legal costs reasonably reflect—
 - 1. (a) the **level of skill, experience, specialisation and seniority of the lawyers** concerned; and
 - 2. (b) the **level of complexity, novelty or difficulty of the issues** involved, and the extent to which the matter involved a matter of public interest; and
 - 3. (c) the **labour and responsibility** involved; and
 - 4. (d) the **circumstances** in acting on the matter, including (for example) any or all of the following—
 - a. (i) the **urgency** of the matter;
 - b. (ii) the **time spent** on the matter;
 - c. (iii) the **time when business was transacted** in the matter;
 - d. (iv) the **place where business was transacted** in the matter;
 - e. (v) the **number and importance of any documents** involved; and
 - 5. (e) the **quality of the work** done; and
 - 6. (f) the **retainer and the instructions** (express or implied) given in the matter.
 - iii. **LPUL s 172(3):** In considering whether legal costs are fair and reasonable, regard must also be had to **whether the legal costs conform to any applicable requirements** of this Part, the Uniform Rules and any fixed costs legislative provisions.
 - iv. A **valid costs agreement** is prima facie evidence that the legal costs disclosed in the agreement are fair and reasonable **(s 172(4))**
- b. **Avoidance of increased legal costs**
 - i. **LPUL s 173:** [Avoidance of increased legal costs] A law practice **must not** act in a way that **unnecessarily results in increased legal costs** payable by a client, and in particular **must act reasonably to avoid unnecessary delay resulting in increased legal costs.**

ii. [CONCLUSION] **Consequence of contravention**

1. [UPC/PM] A contravention of the LPUL **can amount to unsatisfactory professional conduct (UPC) or professional misconduct (PM)**, as can charging more than a fair and reasonable amount for legal costs **(LPUL s 298)**
2. **LPUL s 207** [unreasonable legal costs –disciplinary action]:
 - a. (1) A contravention of a requirement that a law practice must not charge more than fair and reasonable legal costs **is capable of constituting unsatisfactory professional conduct or professional misconduct** on the part of—
 - i. (a) the **responsible principal or principals for a bill** given by the law practice (see section 188); and
 - ii. (b) **each legal practitioner associate or foreign lawyer associate who was involved in giving the bill** or authorising it to be given.
 - b. (2) Subsection (1) applies to a responsible principal—
 - i. (a) **whether or not** he or she had **actual knowledge** of the bill or its contents; and
 - ii. (b) whether or not he or she had actual knowledge that the legal costs were unfair or unreasonable.
 - c. (3) However, subsection (1) does not apply to a responsible principal if he or she establishes that it was **not reasonable** for him or her to **suspect or believe that the legal costs in the bill were unfair or unreasonable in the circumstances** (otherwise than by the mere assertion of someone else involved in the law practice).

c. **Disclosure obligations of law practice regarding clients → go through both this and costs agreement**

- i. **LPUL s 174** Disclosure obligations of law practice regarding clients
 1. (1) **Main disclosure requirement** A law practice—
 - a. (a) must, **when or as soon as practicable after instructions are initially given in a matter**, provide the client with **information disclosing the basis on which legal costs will be calculated in the matter and an estimate of the total legal costs**; and
 - b. (b) must, **when or as soon as practicable after there is any significant change** to anything previously disclosed under this subsection, provide the client with information **disclosing the change**, including information about any significant change to the legal costs that will be payable by the client—
 - c. together with the information referred to in subsection (2).
 2. (2) **Additional information to be provided** Information provided under—
 - a. (a) subsection (1)(a) must include information about the client’s rights—
 - i. (i) to **negotiate a costs agreement** with the law practice; and
 - ii. (ii) [method of billing] to **negotiate the billing method** (for example, by reference to timing or task); and

- iii. (iii) to **receive a bill from the law practice and to request an itemised bill** after receiving a bill that is not itemised or is only partially itemised; and
 - iv. (iv) to seek the **assistance of the designated local regulatory authority in the event of a dispute about legal costs**; OR
 - b. (b) subsection (1)(b) **must include a sufficient and reasonable amount of information** about the **impact of the change on the legal costs that will be payable** to allow the client to make informed decisions about the future conduct of the matter.
 - 3. (3) **Client's consent and understanding** If a disclosure is made under subsection (1), the law practice must **take all reasonable steps** to satisfy itself that **the client has understood and given consent** to the proposed course of action for the conduct of the matter and the proposed costs.
 - 4. (6) **Disclosure to be written** A disclosure under this section **must be made in writing**, but the requirement for writing does not affect the law practice's obligations under subsection (3).
- ii. [CONCLUSION] **Consequence of non-compliance with disclosure obligations**
 - 1. The costs agreement concerned (if any) is **void if a law practice contravenes the disclosure obligations (s 178)**
- d. **Costs agreement – dealt with in Div 4 of Part 4.2 of the LPUL**
- i. Generally
 - 1. A client of a law practice **has the right to require and to have a negotiated costs agreement** with the law practice **(LPUL s 179)**
 - 2. A costs agreement must be written or evidenced **in writing (LPUL s 180)**
 - 3. [CONCLUSION] A costs agreement that contravenes the LPUL **will be void (LPUL s 185(1))**
 - ii. Conditional costs agreement
 - 1. Three types
 - a. **Speculative**, under which a lawyer takes their fee only in the event of the client's success in litigation
 - b. **Uplift**, under which a lawyer will be entitled, in addition to their regular fee, an agreed amount or percentage of their fees in the event of the client's success in litigation: **LPUL s182** [*Conditional costs agreements involving uplift fees*]
 - i. (1) A conditional costs agreement **may provide for the payment of an uplift fee.**
 - ii. (2) If a conditional costs agreement relates to a litigious matter—
 - 1. (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a **reasonable belief that a successful outcome of the matter is reasonably likely**; and
 - 2. (b) the **uplift fee must not exceed 25% of the legal costs** (excluding disbursements) otherwise payable.

3. *i.e. s 182 of the LPUL limits the amount that can be required as an uplift fee to 25% of the costs otherwise payable on the successful outcome of the matter.*
- c. **Percentage**, under which a lawyer receives as fees an amount calculated as a percentage of the amount secured
 - i. **LPUL s 183** prohibits percentage fee arrangements [*Contingency fees are prohibited*] A law practice **must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered** in any proceedings to which the agreement relates.
2. **LPUL s 181(1)-(4)** allows for conditional costs agreement (EXCEPT in criminal or family law matter) under which the **payment of some or all of the legal costs is conditional on the successful outcome of the matter** to which those costs relate **(1)**. For such conditional costs agreements to be valid they must:
 - a. **(2)(a)** Be **in writing** and in plain language;
 - b. **(2)(b)** Set out the **circumstances** that constitute the successful outcome of the matter to which it relates
 - c. **(3)(a)** Be **signed** by the client; and
 - d. **(3)(b)** Include a statement that the client has been **informed of the client's rights** to seek independent legal advice before entering into the agreement.
 - e. **(4)** Contain a **cooling-off period of not less than 5 clear business days** during which the client, by written notice, may terminate the agreement, but this requirement does not apply where the agreement is made between law practices only.
3. **LPUL s 181(5)** If a client **terminates a conditional costs agreement within the cooling-off period**, the law practice
 - a. (a) **may recover only** those legal costs in respect of **legal services performed for the client before that termination** that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
 - b. (b) in particular, **may not recover any uplift fee** [*conditional on success of case*]

Topic 3: Legal Education

1. Admission to Practice

a. **General Requirements of Admission to Practice**

- i. **s 16(1) LPUL** - The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if:
 1. (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; and
 2. (b) person is not already admitted to the Australian legal profession; and
 3. (c) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.
- ii. **s 16(2) LPUL** – There are no residence requirements. No connection with NSW is necessary
- iii. **s 16(3) LPUL** – Objection may be made by anyone to a person’s proposed admission as a legal practitioner

b. **STEP 1 – State the Two-Fold Requirements of Admission** (pre-requisites for compliance certificates)

- i. The requirements for admission (i.e. the prerequisites for the issue of a compliance certificate) are two-fold **(s 17(1) LPUL)**
 1. Competence – academic + PLT **(rr 5 & 6 LPUAR)**
 - a. (a) a person has attained the academic qualification specified under the Admission Rules; AND
 - b. (b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules; AND
 2. Character: suitability matters **(r 10 LPUAR)**
 - a. (c) is a fit and proper person to be admitted to the Australian legal profession

c. **STEP 2 – Academic Qualifications Prerequisite**

- i. **r 5 LPUAR Specified academic qualifications prerequisite**
 1. (1) For the purposes of **s 17 (1)(a) of the LPUL**, the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which:
 - a. (a) includes the equivalent of at least 3 years’ full-time study of law,
 - b. (b) is accredited by the Board, and
 - c. (c) the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.
 2. (2) If an applicant has attained the specified academic qualifications prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant’s academic qualifications and any other relevant experience, may require the applicant to:
 - a. (a) undertake any further academic subjects,

- b. (b) pass any further examinations, and
 - c. (c) apply for a compliance certificate within any period, determined by the Board.
- ii. **r 6 LPUAR Specified practical legal training prerequisite**
 - 1. (1) For the purposes of **s 17(1)(b) of the LPUL**, the specified practical legal training prerequisite is acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas:
 - a. (a) set out in Schedule 2, or
 - b. (b) otherwise determined by the Admissions Committee after consulting each of the Boards
 - 2. (2) The requirement may be satisfied by successfully completing either:
 - a. (a) a practical legal training course conducted by a practical legal training provider accredited by the Board, or
 - b. (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).
 - c. (4) If an applicant has completed the specified practical legal training prerequisite referred to in subrule (1) more than 5 years before applying for a compliance certificate, the Board, after assessing the applicant's practical legal training qualifications and any other relevant experience, may require the applicant to:
 - i. (a) undertake any further practical legal training, and
 - ii. (b) apply for a compliance certificate within any period, determined by the Board
- iii. **Schedule 1 LPUAR** – Academic areas of knowledge
 - 1. Criminal law and procedure
 - 2. Torts
 - 3. Contracts
 - 4. Property
 - 5. Equity
 - 6. Company law
 - 7. Administrative law
 - 8. Constitutional law
 - 9. Civil dispute resolution
 - 10. Evidence
 - 11. Ethics and professional responsibility

d. STEP 3 – Factors Assessing a Fit and Proper Person

i. Relevant Principles in determining an applicant's fitness for admission

1. The onus is on an applicant to establish fitness

- a. Statutory test is in present tense: whether an applicant “is currently of good fame and character” and “is a fit and proper person”
- b. The honesty and candour demonstrated in disclosure by the applicant is highly relevant when determining fitness – high standards are applied in assessing honesty and candour **(Frugniet; Cummins)**

- i. Full and frank disclosure is essential – although in most circumstances disclosure of past indiscretions will not result in being denied admission (**Law Admission Consultative Committee, Disclosure Guidelines**)
- ii. **s 17(2)(b) LPUL: in determining whether someone is a fit and proper person, the Board MUST have regard to the matters specified in r 10 LPUAR:**
 1. (a) any statutory declaration as to the person’s character, referred to in rule 16,
 2. (b) any disclosure statement made by the person under rule 17,
 3. (c) any police report provided under rule 18,
 4. (d) any student conduct report provided under rule 19,
 5. (e) any certificate of good standing provided under rule 20,
 6. (f) whether the person is currently of good fame and character
 7. (g) whether the person is or has been a bankrupt 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,
 8. (h) whether the person has been found guilty of an offence including a spent offence in Australia or in a foreign country, and if so –
 - a. (i) nature of the offence, and –
 - b. (ii) how long ago the offence was committed, and –
 - c. (iii) the person’s age when the offence was committed
 9. (i) whether the person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country
 10. (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,
 11. (k) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner,
 12. (l) whether the person has a sufficient knowledge of written and spoken English to engage in legal practice in this jurisdiction
- iii. **s 17(2)(a) LPUL** – In addition, the Board **MAY have regard to any matter relevant to the person’s eligibility or suitability for admission, however the matter comes to its attention**
 1. **Previous criminal charges/behaviours**
 - a. **Del Castillo** - even if subsequently withdrawn or applicant acquitted. May be necessary where character comes into question. Will depend on circumstances
 - i. Del Castillo and his friend, Wilder, got into an argument at a motel, and a knife was produced – both were injured.
 1. Del Castillo left the motel and drove to a police station – he lied about where he put the knife to the police and his solicitors – but later revealed the truth to solicitors part-trial
 2. Wilder was taken to hospital, and died the next morning. Del Castillo was charged with murdering

Wilder – but he was acquitted at trial. He went on to study law post trial.

3. In his admission to practice in NSW
 4. He failed to disclose his previous prosecution and trial for murder (of his friend), and acquittal at trial for murder
 5. Conduct in question
 - a. Failure to disclose charges – murder
 - b. Lied/misled police and his counsel re knife
 - c. Circumstances re leaving the scene – concealed knife and left deceased unattended/no help
 - ii. **Significance** – for an applicant who has been acquitted ‘in general, the prudent and desirable course... would be to disclose at least the fact of the charge and the acquittal and to offer to supply any further details required.’ ([24] Heydon JA)
 - iii. His conduct in lying to police and his lawyer ‘stemmed from a sudden response to a wholly unforeseen calamity placing extraordinary pressures on him nearly ten years ago. **It does not suggest that he is presently unfit to be a legal practitioner**’ ([99] Heydon JA)
- b. **XY v Board of Examiners**: Her past criminal offences do not prevent her admission
- i. Many offences were committed (including violent ones), but that did not leave a permanent impediment to her admission – especially since none of the offences show dishonesty [not even the calls threatening suicide under a false name]
 1. Her poor mental health when committing offences also meant she had less moral culpability
 2. Intervention orders and AVOs
2. **Infringement offences/traffic offences** e.g. where frequency or fines may give rise to concern about applicant’s respect for the law
3. **Academic misconduct** – **OG, Richardson**: may be prudent to disclose even if a formal finding was not made or a record of the incident not retained as this can constitute professional misconduct by breaching a duty to candour
- a. **Re OG**:
 - i. OG and friend GL investigated for academic misconduct (inappropriate collusion/copying in a non-law subject)
 - ii. Both were awarded marks of zero for the assignment in question
 - iii. Both disclosed this zero mark to the Board, but only GL disclosed the collusion allegation – OG did not fully disclose.
 - iv. **Held that OG’s admission was revoked on the basis of deliberate or reckless misrepresentation**

- b. **Richardson**:
 - i. Applicant initially found guilty of academic misconduct during law degree.
 - 1. His parents were both lawyers; advice was given to him not to disclose, nor did they disclose themselves
 - 2. Applicant did not disclose.
 - ii. **Held that Applicant not struck off roll**
 - 1. Crawford J found that at most he made error of judgment in relying on advice of lawyer parents.
 - 2. Parents not struck off either
 - iii. “The most severe criticism that arguably may be made against Scott Richardson is that he made an error of judgment, a mistake, based largely on the advice of two experienced practitioners who were also his parents. Even if it is valid, it is no justification for removing his name from the roll.”
4. **Previous improper conduct in curial process – wilful disobedience of court rules**
- a. **Re B**: Bacon’s conduct in question:
 - i. Bacon made an application for admission as a barrister
 - 1. Bacon disclosed 10 convictions, including for contempt in court
 - 2. Bacon lied about a bail application, and where the money (bail bond money) came from
 - ii. The dishonesty in bail application is incompatible with admission
 - 1. B was not a fit and proper person because she knowingly was involved in getting a person out of jail in an illegal way.
 - 2. This showed disrespect for the law.
 - iii. “It is of the utmost importance that this Court have available a Bar on which it can rely to perform its duty, so the Court can order its procedures and give its decisions in the confidence that the barristers appearing before it, will not mislead it, will conduct themselves in accordance with the law and discharge their duty even when not subject to scrutiny.”
5. **Previous improper conduct in the course of a profession or employment –**
- a. **Re Lenehan**: discreditable conduct re handling of Aunt’s finances; misappropriation of funds from previous law firm; claim of larceny (denied) when aged 25-28 years as a clerk
 - i. **Held** – combination of his complete candor, the passage of time, and evidence of subsequent good character demonstrated that he was a fit and proper person for admission
 - b. **Wentworth v NSW Bar Association (1992) 176 CLR 239**
 - i. Applicant had a long history of litigation against a number of members of the legal profession and, during the course of that litigation and in public, had made allegations to the effect that

members of the bar and judiciary had conspired to oppose her application without any proper basis

- ii. This behaviour and findings by the court that MS Wentworth had lied in certain documents and misled the court in proceedings she had been involved in and refused to acknowledge this, led to refusal of her admission

6. **Infirmity/Mental Health – *Skerritt, XY***

- a. Depression generally would not detract from a person’s capacity to perform duties expected as a practitioner (*Skerritt*)
 - i. Board should not have placed emphasis on Skerritt’s long standing depressive illness and attempted suicide some 12 years prior to the application for admission
 - ii. But if depression were so severe and of such long standing that it was thought that it might lead an applicant to neglect the affairs of his or her clients, that depression could be an issue relevant to fitness to be admitted (*Skerritt*)
- b. ***XY v Board of Examiners: Conduct in Q*** – Long standing mental health and alcohol issues linked to history of CSA/sexual assault; Some violence related convictions
 - i. All psychiatric evidence [from psychologists] unanimously state that **XY no longer suffers mental illness**, no longer alcohol dependant and is able to manage stress faced as a lawyer found her mental health to be of a state that does not prevent her being ‘fit’ to practice

7. **Lack of insight and remorse (*Skerritt*)**

- a. Lack of remorse/insight can be very significant, even where the breach was long ago
- b. ***Skerritt***: In 1995, Skerritt was made subject of an interim restraining order against Ms Sagers (an ATO employee) due to repetitive and unwanted contact - In 2000, Skerritt contacted the ATO to repeatedly accuse Ms Sagers of illegal misconduct
 - i. Skerritt’s conduct towards Ms Sagers, his lack of recognition of wrongdoing and his decision to issue a writ against MS Sagers when she contacted the Board, “displaying a lack of understanding of the need to respect the dignity and privacy of another person, where they conflicted with the appellant’s own desires, and a disposition to oppress and to harass in the pursuit of his own interests”
 - ii. Indicates Skerrit “lacks that respect for the courts and the processes of the law which one would expect in a legal practitioner, who is obliged to uphold those institutions and processes”

8. **Non-disclosure of prior impropriety on admission application**

- a. ***Skerritt***: there was a “**duty of candour**” on Skerritt to disclose **matters in relation to material which was potentially** of relevance to fitness to practice, which Skerritt had deliberately attempted to avoid

i. **Relevant factor to his fitness for admission**

9. General misconduct
10. Making a false statutory declaration
11. Social security offences
12. Tax offences
13. Corporate insolvency or penalties and offences relating to a corporate entity where applicant was a director or responsible officer

e. **STEP 3.1 – Duty of Disclosure – Is there failure to disclose matters as part of admission application**

- i. **Principle** – The applicant for admission has a **personal duty to disclose any matter which may bear on the applicant’s fitness for admission**
- ii. **TEST** – what a reasonable applicant would consider the Board might regard as not being favourable to the applicant when considering whether or not they are a fit and proper person to be admitted
 1. It is prudent to err on the side of disclosing, rather than not, any information which may turn out to be relevant in the eyes of an Admitting Authority or Court in addressing this question
- iii. **Full account** must be provided of any relevant matter re applicant’s honesty, candour, respect for the law or ability to meet professional standards
 1. The obligation to disclose required frank and honest disclosure to the Board and the Court – of anything which might reflect adversely on the applicant’s fitness to be admitted to practise (**Re OG**)
 2. Candour did not permit of deliberate or reckless misrepresentation pretending to be disclosure (**Re OG**)
 3. “Revealing more than might strictly be necessary counts in favour of an applicant - especially where the disclosure still carries embarrassment or discomfort. Revealing less than may be necessary distorts the proper assessment of the applicant and may itself show an inappropriate desire to distort by selecting and screening relevant facts” (**Frugnet v Board of Examiners**)
- iv. The lack of candour may be a relevant factor in reaching the conclusion of unfitness to practice
 1. **Skerritt** – there was a “duty of candour” on Skerritt to disclose matters in relation to material which was potentially of relevance to fitness to practice, which Skerritt had deliberately attempted to avoid – relevant factor to his fitness for admission
 2. **Re OG** – OG deliberately or recklessly misrepresented to the Board the circumstances of his 0 mark – he failed to show a realisation of his obligation of candour to the court in which he desired to serve as an agent of justice
- v. Admission to practise is conditioned upon an applicant having a “complete realization...of his obligation of candour to the court in which he desire[s] to serve as an agent of justice.”
- vi. **But failure of disclosure may be excused** – **XY v Board of Examiners**
 1. Particular focus on legal service incident and meditation retreat incident - both should have been disclosed but:

2. **Legal services incident** – termination of a volunteering role at a legal service was relevant to the question of fitness, particularly since the termination was because of threatening statements she had made – but the court did NOT treat the non-disclosure as a bar to the fitness **as it is more of an error of judgement than a deliberate attempt to mislead**
 - a. She gave consideration, wrote a draft affidavit of the incident and asked for advice on whether to disclose or not - but ultimately, she listened to a Reverend [a respected legal practitioner and religious person] who told her to not disclose
 - b. The admission packs from her university which limited the duty to disclosure to "criminal charges or charges of a similar nature" such as "matters before a university disciplinary tribunal" misled her into error
3. **Meditation retreat incident**
 - a. At a meditation retreat she caused some damage to property and threatened to stab herself with a knife – she was sexually abused at the retreat and other members called her ‘impure’ for her bad behaviour in her past life
 - b. Judge accepted that she had not deliberately misled the Board by her non-disclosure accepted that it was a painful event that she tried to put out of her mind, although she had not forgotten about them – and that she was not prepared to accept it herself, so not prepared to reveal it to the Board [at this time, she was also still suffering mental illness]

f. STEP 4 – Mitigating Factors Duty of Disclosure

- i. Age of applicant at time of misconduct, lapse of time since misconduct (**Re Lenehan**)
 1. The false steps of youth and early manhood are not always final proof of defective character and unfitness. The presumption which, according to circumstances, they may appear to raise may surely be overcome by a subsequent blameless career.” (**Latham CJ, Dixon and Williams JJ**)
 2. The case discloses the strongest contrast between two periods, one of early manhood under bad influence without proper guidance and dealing with difficult circumstances; the other of a fully adult life of seemingly correct and exemplary conduct and every outward manifestation of good character
 - a. Lenehan was young when he made the mistakes (especially since he was employed in disreputable practices)
- ii. Evidence of redemption/rehabilitation (**Re Lenehan**)
 1. Lenehan’s later experiences with other solicitors and a bank saw his character improve through experience – engaged in respectable work and achievement in civil life; commended by successive employers; showed his ability to handle trust money ethically in his new roles; extensive war service which included managing funds
 - a. “strong presumption that he has redeemed his early errors”
- iii. External stressors (**Re Del Castillo**)
 1. His actions of leaving Wilder at the motel after the altercation might demonstrate the opponent’s error of judgment. However, that does not evidence a present lack of fitness and propriety.

- a. In oral evidence, he expressed genuine emotion, distress and contrition in relation to the events of his friend's death
 - b. Conduct took place in "extraordinarily unusual circumstances: "The events of the evening marked a great and extremely unusual crisis in the opponent's personal life. Those circumstances were so remote from those which a legal practitioner is likely to encounter in practice as not to be a safe guide to how the opponent would behave in practice.
 - c. The opponent's mental state and his judgment had become warped by the intense emotions which events had stimulated in him.
2. His statements about the location of the knife, and what he did with it after the fight, **did not demonstrate that he was not a fit and proper person of good fame and character.**
 - a. It had not been proved that he deliberately hid the knife. Even if he did, that conduct must be assessed in the context of his acute distress and panic
 - b. He lied to police about throwing the knife into a lake. However, this must be viewed in light of the surrounding circumstances, which do not evince an intention to obstruct the police or to bolster his own legal position. He voluntarily went to the police station and told the police about the stabbing.
 3. His conduct fell below appropriate standards, but it did not reveal that he lacked standards
 - a. His conduct stemmed from a sudden response to a wholly unforeseen calamity placing extraordinary pressures on him nearly ten years ago.
 - b. **It does not suggest that he is presently unfit to be a legal practitioner**
- iv. Undertakings **(XY v Board of Examiners)** – caveat to being awarded licence
 1. She also was prepared to give an undertaking to the court that as long as she holds a practising certificate, she would maintain her involvement in alcohol support groups → the Court considered this was a safeguard – she could be removed from roll if she did not comply with this undertaking
 - v. **Note Counter Argument: public interest concerns given the gravity of misconduct**

g. Early Assessment of Suitability

- i. Under the LPUL it is possible for a student to 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 wish to disclose will not adversely affect the Board's assessment of whether you are a fit and proper person to be admitted
 1. (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