



SCHOOL OF LAW

COURSE NAME: Legal Ethics

COURSE NO: LA334

TIME ALLOWED: Three (3) hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Four including this page

NUMBER OF QUESTIONS ON PAPER: Six (6)

NUMBER OF QUESTIONS TO BE ANSWERED: Five (5)

MARK ALLOCATED FOR EACH QUESTION: 10

TOTAL MARKS: 50

MATERIALS PERMITTED IN EXAMINATION ROOM:

None

SPECIAL INSTRUCTIONS

1. ANSWER FIVE QUESTIONS ONLY
 2. Read the questions and the instructions carefully.
 3. All answers should be clearly written and should refer to relevant cases, rules and/or statutory provisions.
 4. Some questions have a number of parts in which case all parts are to be attempted.
 5. **In order to pass this course you must obtain a minimum of 20 marks out of 50 for the exam**
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Question 1 (10 marks)

LAIRD V MOSSENSON AND ANOR

Supreme Court of the Pacifica

Ball CJ

The plaintiff in this matter is the daughter of a woman who died recently. She approached the defendants, a firm of solicitors, about making a claim under the Inheritance (Family Dependents' Provisions) Act. The defendants did not encourage the plaintiff's claim and recommended that she abandon it. The plaintiff insisted that the claim be pursued and the defendants represented her before the lower court where judgment was entered against the plaintiff.

The plaintiff then took action to sue the defendants in negligence for failing to pursue her claim with normal diligence. It is clear that the defendants failed to carry out the plaintiff's instructions to professionally represent her in respect of the claim. The defendant's professional advice was wrong and they negligently failed to obtain the necessary detail from the plaintiff which would have supported her claim. In addition their conduct of the case in court fell well short of what would be expected of a reasonably competent law firm. To this the defendants say that they are protected by the professional immunity from suit for in-court negligence. It seems to me that while there is conflicting authority on the point a person who suffers as a result of the negligence of a lawyer should be in no worse position than the patient who suffers at the hand of the negligent surgeon.

I turn now to the law.

Complete the decision of Ball CJ

Question 2 (10 marks)

In RE VAN BEELEN

Pacifica Court of Appeal

Boundary CJ

Frits Van Beelen was tried and convicted of the murder of Deborah Leach. Some time after the accused had been convicted his lawyer found that during the committal the prosecution had suppressed important evidence. The lawyer found that the prosecution had in its possession the confession of another person, together with statements of four witnesses who had seen this person in the vicinity of the murder. Van Beelen's counsel appealed to the Pacifica Supreme Court against the conviction on the basis that this evidence alone showed that there was a miscarriage of justice in that the evidence led to a reasonable doubt as to his guilt.

The appeal was rejected for two reasons. The reason which is of significance in this current appeal is the fact that the prosecutor, in the exercise of his discretion, did not disclose the confession on the grounds that in the view of the prosecutor it was not credible. The basis for the prosecutor coming to this view was that, among other factors, the person making the confession had at one time been institutionalised for mental

problems, and because he said that he had raped Deborah *before* he killed her when in fact the medical evidence was that Deborah had been raped *after* she had been killed. This appeal therefore turns on the nature of the duty that a prosecutor has to the court and to the defence so far as the calling of witnesses is concerned and the disclosure of evidence. This duty is governed not only by rules of professional ethics but also by the common law; both of which I will now consider.

Complete the decision of Boundary CJ

Question 3 (10 marks) Answer both Parts of this question

Part (a)

Outline the relevant ethical obligations that apply in circumstances where a client in a criminal matter has confessed guilt to his or her lawyer. (5 marks)

Part (b)

What are the justifications for the above ethical obligations bearing in mind that a court is likely to be unable to arrive at the truth when a confession of guilt is hidden from the judge. (5 marks)

Question 4 (10 marks) Answer both Parts of this question

Part (a)

It has been argued that governments should be responsible for ensuring that an accused in a serious criminal case is represented by a lawyer. For this reason it has been suggested that lawyers should not engage in pro bono work because that provides governments with an excuse for not providing sufficient legal aid.

What is pro bono work? Should lawyers be required to engage in a certain amount of pro bono work each year? Is the right to a lawyer in a serious criminal matter something for which governments or the legal profession (or both) should take responsibility? (5 marks)

Part (b)

"Persons who are involved in civil as opposed to criminal matters should not be entitled to legal aid."

Discuss (5 marks)

Question 5 (10 marks)

The American Bar Association Rules (ABA) Model Rule 1.11 concerns government lawyers. It prevents lawyers from exploiting their public office by using confidential government information for the benefit of their private clients unless the law expressly permits the lawyers to act and disqualifies these lawyers and their firms from acting against the government if the lawyers were associated with the matter involved.

None of the jurisdictions in the South Pacific have such a rule however some South Pacific jurisdictions are considering allowing public officers to engage in private work.

What legal principles and authorities preclude a lawyer in the South Pacific who is employed by the government from acting against the government in a subsequent action initiated by a new private client? What are the consequences of a court finding that a lawyer has a conflict of interest by acting against the government? Discuss the desirability or otherwise of introducing a rule similar to the ABA rule.

Question 6 (10 marks) Answer both Parts of this question

Part (a) Outline the arguments 'for' and 'against' imposing strict restrictions on advertising so far as lawyers are concerned. (5 marks)

Part (b) What is meant by the term 'percentage contingency fee' and why is such a practice generally regarded as unethical. (5 marks)

END OF PAPER