

# Professional Conduct

Wednesday 15<sup>th</sup> May 2024

2.30pm to 4.00pm

**Two questions only to be attempted. Where a question is in more than one section, you are expected to answer ALL sections of the question. You are expected to cite authority for your answers.**

## Question 1

John is a Partner specialising in medical negligence. John recently moved from his old firm (OldCo) to a new law firm (NewCo). The billing requirements at NewCo are far more than what John had anticipated. John struggles to meet his targets and is worried that if he does not get more clients or bill more he will be fired. To secure more business, John starts calling his former clients from OldCo telling them that he can take on their work and do the same work but for far cheaper than the fees at OldCo. He tells one of his former clients that no one at OldCo knows anything about medical negligence and that he could provide a better service if the client moved to NewCo.

To increase profitability John tells his clients that he will work on a 'no win, no fee' basis and cover all the outlays in a case. In exchange John says he will take the judicial expenses and (if applicable) a 50% share of any damages awarded.

To raise his profile John places advertisements in the local papers. The adverts carry the slogan "Don't you deserve the best lawyer?". In other advertisements John guarantees to beat any price from any other lawyer or he will refund the difference. John also gets custom pens and pads of paper produced which state "Best Litigator in Scotland" on them. To set himself apart from the competition John starts an online blog in which he critiques the performances of other solicitor's advocacy skills in ongoing cases and ranks their performance on a scale of 1 – 10.

Having successfully encouraged several clients to move to NewCo, John has realised that he cannot cope with the influx of work. The cases are more complex than John originally thought. To cope, John passes cases to colleagues who have little to no experience in medical negligence matters. John also does not have the time to supervise them. John begins settling smaller cases for less than they are worth, which gives him the opportunity to work on more complex matters. In one case John discharges a Proof as he has not had time to prepare. He explains to the client that he will personally cover any costs the client faces because of the discharge.

Unfortunately, the pressure starts to take its toll on John's personal life. He starts to drink heavily during the week. On one occasion John gets so drunk at a client lunch that he falls over, causing much embarrassment to the Firm. Later that month John is arrested for getting into a fight whilst on a night out. The managing partners pull John in for a meeting. John explains that he has been under extreme stress, that he has been going through marital difficulties, and is now seeking professional help.

**Discuss the professional and ethical issues arising from the above.**

## Question 2

Frank is a private client solicitor who has acted for a widow, Sarah, for several years. Sarah and Frank have grown very close over the years, and she decides that she wants to include Frank in her will. Sarah has a son, Barry, but they have not spoken in several years and Sarah does not want Barry to get anything. She tells Frank that she wants to give her estate to charity but, in recognition for all his help, to include a provision in Frank's favour. She tells Frank that he can either take a cash bequest of up to £25,000 or to select some items from her personal collection. Sarah also wants Frank to act as the sole executor. Frank (an avid art collector) spots some rather valuable artwork (worth around £100,000) which he would like. Sarah is not interested in the art and does not know anything about it. The art had belonged to Sarah's late husband, and so she is happy to bequeath this to Frank. Frank also tells Sarah that she can prevent Barry inheriting his Legal Rights using certain companies and trusts. Sarah agrees noting that she wants to make sure Barry doesn't get anything.

As time goes on, Sarah and Barry appear to reconcile. Unfortunately, at the same time, Sarah's health has taken a turn for the worse. There are times when Sarah appears lucid and capable of giving instructions, however in the last month she has had to move into a care home and has been diagnosed with dementia. To protect herself, Sarah grants a power of attorney in favour of Frank so that he can administer her affairs.

It is at this time that Barry appears to have fully reconciled with Sarah. Frank visits Sarah who tells Frank that she would now like to include an inheritance for Barry. Sarah asks Frank to update the will to give half her estate to Barry. Frank is suspicious that Barry has been taking advantage of Sarah to get an inheritance. Frank agrees to update the will and will sign it on Sarah's behalf. Frank prepares the will and gets his colleague to witness it.

Over the next couple of months Sarah's condition deteriorates further. She is rarely lucid and can barely follow a conversation without forgetting to whom she is speaking. At a subsequent meeting Sarah says she has not seen Barry in ages and has changed her mind about Barry's inheritance. She begs Frank to do whatever is necessary to make sure Barry gets nothing, including his legal rights. Frank begins transferring all the assets into trusts so that Barry can't claim his Legal Rights. In addition, Frank prepares an updated will which includes new provisions in favour of charities and also the bequest to him. When he meets Sarah later, she does not recognise Frank and does not seem to follow what he is telling her. Frank knows what Sarah's previous wishes were, and so proceeds to get the will executed. A week later Sarah dies. Barry calls in at Frank's office and asks about his inheritance.

**Discuss the professional and ethical issues arising from the above.**

### Question 3

- a) Jennifer is a criminal solicitor working on a series of cases. She has been instructed by Ben, who has been charged with several fraud offences.

Work on the case proceeds, however Jennifer becomes concerned by the disclosure the Crown has sent her. The documents clearly show that her client has been involved in very suspicious transactions. Ben's explanations for the transactions are not convincing but he promises that he will send her the evidence which refutes the Crown's position. Several months pass and, despite repeated requests, Ben has still not produced any documents to substantiate his defence. Jennifer is now convinced that Ben is withholding key information from her, and that the allegations against Ben are well founded.

When Jennifer presses Ben further, Ben admits that 'there may be some truth to the allegations' but that he needs more time to sort out some administrative matters before he can tender a guilty plea. In the meantime, Ben asks Jennifer to maintain his plea of not guilty. Eventually Ben sacks Jennifer and says he has managed to get alternative representation at a cheaper rate.

A month later the police arrive at Jennifer's office and demand that she hands over the client file, explaining that Ben and his company have now been charged with money laundering. The file is needed to determine her own culpability in taking money from Ben.

**Advise Jennifer of the professional and ethical issues of the above.**

- b) Philip is a defence solicitor acting for Ryan, another solicitor, who is being sued by his former client for professional negligence. The case hinges on the advice which Ryan gave his former client in a consultation. Ryan explains that he gave the client all the necessary advice, but he does not have a typed file note of the meeting. Ryan eventually produces a typed file note dated the day of the consultation. The note confirms that all the necessary advice was given to the former client. When Philip asks where the note came from, Ryan explains that it was based on some scribbles from the meeting which he just found and typed up the previous night. The scribbles are incomplete, but Ryan filled in the detail based on his recollection. He assures Philip that it is an accurate reflection of the meeting and asks that Philip lodge the file note with the court.

**Advise Philip of the professional and ethical issues of the above.**

**END OF PAPER**