

Professional Conduct

Wednesday 14 May 2025

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

Jen is a general practitioner working in a law firm in the town of Aberburgh. She has been acting for a client, John, in respect of an ongoing dissolution of John's business which he ran as a partnership with Angela. John and Angela have fallen out and the business now requires to be sold. Jen has been advising John in respect of the sale of the business. One of Jen's colleagues, Kevin, is acting for Angela.

Jen and Kevin discussed their involvement with Angela and John and got agreement that Jen's firm could act for both parties provided information barriers were put in place.

During negotiations Kevin sends Jen a proposal to divide the business between their respective clients. In his haste Kevin forgets to delete an email chain at the bottom of the offer which contains details of Kevin and Angela's negotiation tactics. The information is very useful to Jen's client. Jen emails Kevin back to alert him to the problem but says she will not disclose the details to her client. Given Jen's assurances Kevin does not tell his client and re-sends the original proposal to Jen with the email chain removed.

Eventually heads of terms of a settlement are agreed and Jen is asked to draft the settlement agreement to reflect the heads of terms. Jen does so and uses a previous settlement agreement as a style. The style contains a clause requiring Angela to relinquish voting rights in the business (which was not contained in the Heads of Terms). This was something which John had wanted but which was not contained in the Heads of Terms. Jen sends the agreement to Kevin who agrees to it and signs on behalf of his client.

A few days later Kevin gets a call from Angela saying that the agreement does not represent the heads of terms which were agreed. Angela is furious. She feels that this was a deliberate tactic by John to try and get one over on her. In the call Angela says that she will make sure that John 'get what's coming to him'. Kevin is concerned about what Angela has said but puts it down to an outburst of anger given the unfortunate news.

Angela explains that she wants to get the document amended to reflect the heads of terms failing which she will sue Kevin. Kevin calls Jen to explain the situation. Although the clause was something her client wanted, she knows that this was a mistake by her and therefore agrees that she will tell her client that there has been a mistake and arrange for a fresh settlement agreement to be issued.

A few days later Kevin gets a call from the police. They explain that they are investigating an allegation of assault by Angela against John. They have reason to

believe that this occurred after Angela's call with Kevin. The detective asks Kevin for details of what was discussed in the call and for a copy of any file note.

Discuss the professional ethics and conduct issues arising from this scenario.

Question 2

Fred is a commercial litigator specialising in construction disputes. Over the last few years Fred's profile has been on the rise, and he has had a series of good results for clients. As Fred's success increases his confidence grows. He begins taking on work ranging from debt recovery to immigration disputes. Fred instructs Counsel on more difficult cases and uses them to guide him and his clients through matters he is less familiar with. This tactic continues to deliver good results for Fred, albeit it comes at increased costs.

After a particularly good result Fred goes out for a few drinks at a local pub. Whilst there he bumps into another solicitor, Lucy who he knew from law school. After a few drinks Fred starts bragging about some of his recent results and the settlement deals he got for clients. Fred also makes several misogynistic remarks about the solicitors who appeared on the other side of him calling them hopeless and giving details about the "terrible deals" they got for their clients. Fred also makes personal criticisms of the judges who gave his clients less favourable results, questioning their competence and skills.

After several hours more of drinking Fred returns home at 4am. Unfortunately Fred has forgotten that he has a court hearing at 9am. When he gets up at 8:30am he is very hungover. Luckily the hearing is online and so Fred does not require to drive to court. Fred logs into the hearing and gets through it without any incident.

One of Fred's clients eventually loses patience and mandates their file to another firm of solicitors. The client complains that their fees are too high. After several weeks Fred writes back offering 10% off the fees but that is his final offer and if it is not acceptable he will refuse to release the file until the fees are paid. The client tells Fred that they need their file to continue with their litigation and there is a hearing the next month. Fred says he will write to the court to have the hearing continued so that his client has enough time to consider his offer and pay the outstanding fees.

Discuss the professional ethics and conduct issues arising from this scenario.

Question 3

Carol is a private client solicitor working in a large city law firm. Several years ago she had prepared a will for a client, Andrew, and kept a copy of the will in her firm's safe. One day Carol receives a call from Susan and Bill, Andrew's siblings. They explain that Andrew has passed away and they require a copy of Andrew's will (which appoints Susan, Bill and Carol as executors of Andrew's estate).

Carol locates the will and notices that the will does not contain the details of a witness. Carol consults her file notes which confirm that she met with Andrew when he signed his will and that Carol witnessed the signing of the will. Based on this file note Carol fills in her details as witness, signs and dates it according to the file note, and sends it to Susan and Bill indicating that her firm would be happy to act for the executry (which Susan and Bill are both happy with).

As the executory progresses, it becomes clear that Susan and Bill do not get along. There are frequent arguments, and they never seem able to agree on simple procedural matters. Carol is constantly caught in the middle of these arguments and often has to exercise her vote to settle contentious issues. Frequently the executors will write to or call Carol with their respective grievances and ask Carol for advice on the relative merits of their concerns and how to resolve matters.

A frequent issue relates to the fees which Carol's firm has been charging to the estate. Carol has had her fees assessed by a law accountant but Susan remains unhappy with these fees and wants them taxed. Bill on the other hand is happy with the fees. Carol tells Susan and Bill that she is satisfied that the fees are reasonable (particularly as they have been assessed by a law accountant) and that she is going to cast her vote as executer to approve the fees.

In the meantime Andrew's son, Kenneth, has been in touch regarding his legal rights claim. He has heard from Susan that Carol's fees are 'out of control' and are reducing his inheritance. Kenneth wants to make a complaint about these fees to the SLCC. Carol emails Kenneth and tells him that as he is not her client she cannot discuss fees and that he cannot complain about these to the SLCC as the executors have approved the fees already. To try and resolve matters Carol says she will make an offer to pay Kenneth £1,000 for inconvenience but only if Kenneth signs a discharge which absolves Carol from any and all loss arising out of the executory.

Discuss the professional ethics and conduct issues arising from this scenario.

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