



NEW SOUTH WALES  
BAR ASSOCIATION®

# NSW Bar Examination

## June 2025

Candidate Number

**J25** - \_\_\_\_\_

Do **NOT** write your name on this book or any part of the exam

## Civil Examination Questions

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**Question 1 [ES Q1]****Ethics****10 marks**

A senior junior is called by her clerk on Monday afternoon with an exciting brief which the junior would like to accept. It is an urgent two-day appeal on Thursday and Friday in the Court of Appeal, led by one of her favourite silks. She is already briefed to appear next Friday in a complicated and important interlocutory application in the Federal Court in an ongoing matter in which she is briefed. Her reader has been devilling for her in relation to that case and is keen to do the appearance, though the reader is only a few weeks out of the bar practice course.

**What should the senior junior do?**

**Question 2 [ES Q2]****P&P****10 marks**

You acted for Willy Wonka, the defendant to proceedings in the District Court. Willy Wonka was sued by Charlie Bucket for supplying defective chocolate bars in breach of contract. The contract provided that Willy Wonka was to take reasonable steps to ensure that the chocolate bars contained at least 50% cocoa solids. The case ran for four days. Most of the time was taken up with competing lay and expert evidence about what steps Willy Wonka took, whether those steps were reasonable and what the percentage of cocoa solids was in the chocolate bars supplied.

Contrary to Willy Wonka's case, the judge found that the chocolate bars which he supplied were highly variable, many did not contain at least 50% cocoa solids and he had not taken reasonable steps to ensure that they did. However, the judge ultimately dismissed the case against Willy Wonka on a narrow legal point which was argued only for about 30 minutes in total: the judge construed the contract as requiring only that the 50% cocoa solid minimum was met on average across a given batch of chocolate bars and Charlie Bucket had failed to prove that this was not so.

Willy Wonka had made a cross-claim against the company who supplied him with raw ingredients, Grandpa Joe Pty Ltd. Willy Wonka had contended that the variability in his chocolate bars was due to variability in Grandpa Joe's raw ingredients. The judge rejected this claim, finding that the variability was entirely due to Willy Wonka's production process. On the first day of trial, Grandpa Joe made an offer of compromise to Willy Wonka for the claim against Grandpa Joe to be dismissed with no order as to costs. Willy Wonka did not accept that offer.

Your instructing solicitor has asked you what costs orders may be made.

**What do you advise?**

You appeared in proceedings before a judge of the Supreme Court for approval of a class action settlement. Under the relevant statute, the Court has a discretion whether or not to approve. The judge refused to do so.

Apart from one exception, the judge did not hear any oral evidence on the application. The one exception is that the representative of the litigation funder gave evidence that the funder would not continue to fund the action if the matter did not settle. The representative was cross-examined. Apart from the representative of the litigation funder, all evidence was by affidavit and no witness was cross-examined.

The judge found that the evidence of the litigation funder was not credible, as it was inconsistent with internal emails at the litigation funder about which he was cross-examined. The judge also found, based on the affidavit evidence, that a large percentage of group members was opposed to it. The judge also gave other reasons for refusing to approve the settlement.

You have received instructions to appeal to the Court of Appeal. Your instructing solicitor has pointed out to you that: (a) some of the internal emails at the litigation funder seem to be consistent with his evidence; and (b) the affidavit evidence shows that, in fact, only a small percentage of group members was opposed to the settlement. He has asked whether these matters provide a basis to appeal.

**What advice do you give?**

*{Space intentionally left blank}*

## Question 4 [ES Q4]

## Evidence

10 marks

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Your client is a company that specialises in domestic swimming pool maintenance. It received a written complaint from solicitors preparing a class action on behalf of former customers of the company. The complaint alleges that the chemicals the company has long used are toxic.

The company has an in-house lawyer. She is also responsible for public relations. The managing director of the company asks the company's in-house lawyer to conduct an investigation to advise the company about its potential liability to its former customers and also the potential public relations consequences of the class action. She prepares a report for the company.

The company engages a separate public relations firm to help it manage any adverse publicity. It supplies a copy of the report to the public relations firm.

The managing director is interviewed by a newspaper about the claim. Among other things, he says: "Our in-house lawyer has investigated the issue. We are confident the claim is without merit."

A class action has now been instituted against the company in the Supreme Court. The plaintiff has served a notice to produce the report. The company has asked for your advice about whether they can claim that the report is privileged from production.

**What do you advise?**

*{Space intentionally left blank}*

## Question 5 [ES Q5]

P&P

10 marks

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You are appearing for the defendant in proceedings in the Supreme Court. The defendant is the executor of the estate of the late Augustus Gloop. The plaintiff is Mr Gloop's former wife, Veruca Salt. She claims that Mr Gloop failed to make adequate provision for her in his will and that the Court should order further provision for her.

At an early interlocutory hearing, Ms Salt read an affidavit giving some details of her current financial position.

Subsequently, the Court made orders requiring that, by a certain date, Ms Salt:

1. give discovery of documents as to her current financial position;
2. serve an affidavit setting out her current financial position; and
3. serve any other affidavits on which she wishes to rely at trial.

By the date ordered, Ms Salt gave discovery of documents, served an affidavit from her accountant setting out her current financial position and served an affidavit from herself setting out the history of her relationship with Mr Gloop.

Your instructing solicitor has been approached by Ms Salt's business partner, Violet Beauregarde. Ms Salt and Ms Beauregarde are in a dispute about the business. Ms Beauregarde has asked for copies of all (a) pleadings, (b) documents discovered and (c) affidavits served by Ms Salt. Your instructing solicitor asks if she can provide them.

**What do you advise?**

*{Space intentionally left blank}*

**Question 6 [ES Q6]****Evidence****10 marks**

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You are acting for the plaintiff, Ms Spiker, in the District Court in proceedings for breach of contract. Ms Spiker relies on an oral contract with the defendant, Ms Sponge, for the sale of a large consignment of peaches. Ms Spiker contends that a term of the contract was that the peaches were to have a diameter of greater than 8cm. Ms Spiker's evidence is that Ms Sponge orally agreed to this. Ms Sponge denies doing so.

The conversation between the parties was witnessed by Ms Sponge's nephew, James Henry Trotter. He posted on X (the social media platform previously known as Twitter) soon afterwards:

*Can't believe it! Aunt Sponge just promised to deliver extra-large peaches to a client. No idea how she's going to pull this one off.*

Your instructing solicitor has made inquiries about Mr Trotter's whereabouts. Your instructions are that he is not available to give evidence, because he is on a twelve-month wellness retreat at a monastery in remote Nepal at which access to technology is forbidden. You have been asked to advise whether the X post is admissible.

**What do you advise?**

*{Space intentionally left blank}*

**Question 7 [ES Q7]****Ethics****10 marks**

While waiting in court for your matter to be called on in the Duty List, you hear the end of an application for the amendment of pleadings. You witness the following exchange between counsel and the judge:

JUDGE: *I am not sure I understand the last argument.*

COUNSEL: *I can only explain it to you. I can't understand it for you*

JUDGE: *Well, wait a minute ---*

COUNSEL: *No \*you\* wait a minute. I've spent the last hour trying to explain this to you and it's quite apparent from your inability to understand it that you have no business sitting where you are sitting.*

JUDGE: *And, just to be clear, you say that this amendment arises from facts your client only just discovered?*

COUNSEL: *Absolutely. They came as a complete shock.*

JUDGE: *Very well, I will reserve my decision.*

As counsel is packing up, you overhear him say to his instructing solicitor: "Make sure to remind the client to keep silent about how long she has known about these facts."

Discuss whether counsel's conduct is acceptable.

*{Space intentionally left blank}*

## Question 8 [ES Q8]

## Ethics

10 marks

You have been briefed for the applicant in a shareholder class action in the Federal Court. The respondents are directors of the company in which the applicant and group members owned shares. You have only been briefed shortly before trial.

The pleadings prepared by your instructing solicitor and previous counsel. Among other things, they allege that the directors of the company caused the company to make announcements which they knew to be false. You think you can win the case without establishing this allegation. But it would be better for your clients if you do because, unlike other claims in the case, this claim is not subject to any proportionate liability defence.

Having reviewed the evidence in the case, you do not think you will be able to establish this allegation unless there are some unexpected admissions made in cross-examination.

You raise your concerns with your instructing solicitor. She says:

*I am sure something good will come out in cross-examination. Plus, the litigation funder is really keen to get these directors for dishonesty. I'm sure you and I will get a lot more work out of this funder if we can!*

**What do you do?**

## Question 9 [ES Q9]

## Evidence

10 marks

You are briefed for the defendant, Constable Mike Teavee, in proceedings in the District Court for an unlawful arrest. Constable Teavee arrested the plaintiff, Ms Josephine, on suspicion of trafficking drugs. She has given evidence that, before arresting her, Constable Teavee did not state the offence for which he was arresting her.

Constable Teavee took notes in his police notebook shortly after the arrest. Among other things, the notes record the following:

*When arresting Ms Josephine, I said to her: "I am arresting you on suspicion of trafficking drugs."*

*After I said this, Ms Josephine said: "Drugs again, is it? Yeah right!"*

Ms Josephine initialled the notebook next to the statement attributed to her.

**How, if at all, can you permissibly question Ms Josephine about the notes in the police notebook in cross-examination?**



**Question 10 [ES Q10]****Ethics****10 marks**

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You overhear two colleagues talking at a bar near chambers. One says to the other:

*I managed to get out of a really horrible case today. We were listed for trial starting next week and the hearing would have been a disaster for my reputation. I had advised the client repeatedly that we were going to lose and that she should take a walk away offer from the other side. She just wasn't taking that advice. I did everything I could to scare her into settlement: telling her how much the costs of the other side were going to be, telling her how much my fees were going to be, warning her that the judge was going to find she was a liar. Finally, I told her that if she was determined to continue, she was going to have to argue the case herself. That got her over the line.*

**Discuss whether this conduct is acceptable.**

**Question 11 [ES Q11]****Evidence****10 marks**

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You are acting for a bridge design and construction company. It is the defendant to proceedings in the Supreme Court in which it is alleged that design work that it did on a particular bridge project was negligent.

The company has filed an affidavit from the employee who did the design work in question. His affidavit explains that he has a university degree in engineering and 15 years' experience as a designer. It goes on to explain how he went about the particular bridge design and why he chose the design that he did.

The plaintiff has objected to the affidavit on the grounds that: (a) it should have been in the form of a report, not an affidavit; (b) there is no acknowledgment that the witness has read the code of conduct and agrees to be bound by it; and (c) the witness is not independent of the defendant.

**How do you respond?**

Your client, Matilda Pty Ltd, is an Australian company which manufactures a popular soft drink according to a secret formula. Matilda's managing director, Miss Trunchbull, suddenly resigned last week. Today, it was announced by Matilda's chief competitor, Wormwood Inc, a company based in America, that Miss Trunchbull will be moving from her home in Sydney to America to take up a position as Wormwood's managing director.

Matilda's IT staff have detected that, before she resigned, Miss Trunchbull used her work computer to: download Matilda's secret formula onto a USB stick; arrange for the sale of all her Australian assets and the transfer of all of the proceeds into a single Australian bank account; and open an American bank account.

Matilda suspects that that Miss Trunchbull has been paid a large amount of money by Wormwood to supply it with Matilda's secret formula. Matilda is proposing to institute proceedings against Miss Trunchbull in the Federal Court for breach of her director's duty under s 183 of the Corporations Act 2001 (Cth) not to improperly use information obtained by her through her position as a director to gain an advantage for herself or cause detriment to Matilda.

Matilda is concerned that, once proceedings are started against her, Miss Trunchbull will destroy the USB stick and transfer all her assets to her new American bank account.

**What steps do you advise that Matilda could take?**

**End of Exam Paper.**