



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

Criminal Examination Questions

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Question 1 [ES Q1]

P&P

10 marks

You are having your first conference with a new client, Joss. Joss is charged with a strictly indictable offence of robbery armed with an offensive weapon. The brief has been served and the charge certificate was filed last week.

Your instructing solicitor has told you they do not usually practice in crime and they have not yet given any advice about the criminal process to Joss.

Explain to Joss and your solicitor the criminal procedure that applies to this category of offence in the Local Court.

Note: It is not necessary to consider bail in your answer.

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Question 2 [ES Q2]

Evidence

10 marks

You act for Rox, the accused, in their District Court trial for Attempting to Possess a Commercial Quantity of a Border-Controlled Drug. Rox was arrested attempting to collect a parcel of prohibited drugs that had been delivered to a business address at a business hub in an office building.

Rox was advised of their rights, including their right to silence. Rox then participated in an electronically recorded police interview. At the start of the interview, Rox was asked whether they wished 'to exercise their rights'. Rox's response was, '*not really*.'

As the interview continued, Rox answered some questions. Rox said they did not know what was inside the package. Rox said they were offered \$700 cash by a man at the pub to collect the parcel and deliver it to an address. Rox also said some things to police which were provable lies about his movements in the days prior to attempting to collect the package.

After about twenty minutes, Rox said they did not feel well and did not wish to continue the interview. Investigating police responded, 'we're all tired, but we're nearly done here,' and continued to ask questions, which Rox continued to answer.

During the lengthy interview, Rox said 28 further times that they did not wish to continue the interview. Each time, police continue to question Rox. After the final time, investigating police concluded the interview.

Rox's responses to police in the interview are the strongest evidence against Rox. Without it, the case is a fairly weak circumstantial case.

Outline two bases for challenge to the admissibility of all or part of Rox's interview.

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Question 3 [ES Q3]**Ethics****10 marks**

You receive a call from a solicitor who regularly briefs you. You find the solicitor difficult to work with and although you are available, you would prefer not to work with them.

The solicitor tells you they have retained a client charged with attempted murder and wish to brief you. The solicitor tells you the client has '*plenty of money*' and that they have told the client your fee is twice what it usually is.

- (a) **Explain whether you are required to accept the brief** (4 marks)
- (b) **If so, can you accept it for the fee offered by the solicitor?**
What are the potential consequences of accepting it at this rate? (6 marks)

Question 4 [ES Q4]**P&P****10 marks**

You are appearing for the prosecution in a sexual offence trial involving a child complainant before Albury District Court. The matter has recently been committed for trial.

- (a) **What orders will be made at the first call-over?** (4 marks)
- (b) **What information should you be prepared to provide at the Circuit Court call-over?** (6 marks)

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Question 5 [ES Q5]

Evidence

10 marks

You appear for Frankie, who is accused of Fraud. The brief of evidence against Frankie includes their criminal history, including prior convictions for fraud in 1970 and 1979. The brief also includes the sentence judgment from the 1979 offence.

A statement from an investigating officer discloses that the prosecution is not able to provide any other evidence about Frankie's prior offences, as the rest of the court files and police material has been lost.

The prosecutor serves a tendency notice that indicates they propose to rely on the evidence of the convictions and sentence judgment in the present case against Frankie. Frankie asks whether the prosecutor will be able to use this evidence.

Advise Frankie.

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Question 6 [ES Q6]

Ethics

10 marks

You have a matter in the District Court of NSW. While you wait for your matter to be called, you observe another barrister appearing for an accused person at a call-over, interacting with the presiding judge. The barrister you are observing tells the presiding judge, “Your Honour, my client’s charge has recently been committed for trial from the Local Court and we seek a trial date.”

The District Court judge tells the other barrister, *“I have read the Crown Case Statement, and based on that, the evidence against your client appears to be very strong. It seems that they are likely to be convicted. Your client is facing a very lengthy gaol sentence.”*

The judge then asks the barrister a number of questions, including:

- i. *Do you agree the accused is likely to be found guilty?*
- ii. *Have you explained to your client that they are likely to be found guilty?*
- iii. *If you’ve given them proper advice then why has your client pleaded not guilty?*
- iv. *What questions will you ask the witnesses at trial?*

The barrister responds to these questions by saying, *“I have properly advised my client and he maintains his plea of not guilty.”*

The judge says that answer is not satisfactory and they will not list the matter for trial until their questions are properly answered.

Identify 4 Bar Rules that are relevant in guiding the barrister’s response to the judge’s questions, and state why they are relevant.

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Question 7 [ES Q7]

Evidence

10 marks

You are appearing in a hearing in the Local Court for an accused, Stef, who has pleaded not guilty to a charge of common assault on their partner, Jo (the complainant).

Police were called by a neighbour who reported screaming at Stef and Jo's home. When police arrived, Jo told police that Stef pushed Jo out of the house and locked the door.

Stef tells you Jo was drunk and threatening Stef with a broken beer bottle. Stef pushed Jo out of the house and locked the door for Stef's own protection.

The hearing starts and the prosecutor calls Jo to give evidence. Jo says, "*I do not want to answer any questions because I do not want to get in trouble with the police*". Jo's response to each question asked by the prosecutor is to say "*I can't remember what happened on the day, I was very intoxicated*".

You begin cross-examining Jo. Jo agrees with all of the propositions that you put to them. The Magistrate interjects and says they require you to only ask open questions because of the complainant is 'obviously sympathetic to the accused.'

- (a) **Should the court or the prosecution have done anything in response to the complainant saying they did not want to get in trouble with police? (6 marks)**
- (b) **Could the prosecutor have taken any step in response to the complainant giving evidence which did not assist their case against the accused? (4 marks)**

Question 8 [ES Q8]

P&P

10 marks

You are appearing for the prosecution in a trial for an alleged prescribed sexual offence against a child complainant who is 15 years old. The evidence of the child was pre-recorded some months ago. Today is the start of the balance of the trial before a jury.

Today, counsel for the defendant cross-examines the mother of the complainant. The mother gives the following evidence:

1. After the evidence of the child was recorded, the child said to her mother, 'I'm going to get money for saying I was sexually assaulted;' and
2. After the evidence of the child was recorded, the child falsely told police that she had been assaulted by her mother.

What procedural options do the Crown have for responding to this evidence?

Question 9 [ES Q9]

Ethics

10 marks

You are appearing for the prosecution in a criminal trial in the District Court. The accused is charged with kidnapping and assaulting the complainant.

You are copied into a request sent by email from the accused's solicitor to your instructing solicitor. The request is for disclosure of the criminal history of the alleged victim in the matter.

You are then copied into an email from your instructor replying to the accused's solicitor saying that they are not in possession of the criminal history of the alleged victim, and investigating police have advised that the document is only available under subpoena.

No subpoena is filed and no further correspondence is exchanged about the issue of the complainant's record.

On the Friday before trial, your instructing solicitor has a conversation with the police officer in charge of the case. The officer says, *'that was a lucky escape – I heard our complainant's name in connection with a big fraud matter a while ago'.*

- (a) Identify two Bar Rules and how they are relevant to the duty of the prosecutor in this situation (4 marks)
- (b) What are the potential consequences for the matter and for counsel if no further action is taken in respect of the witness' criminal history? (6 marks)

Question 10 [ES Q10]

Evidence

10 marks

You are appearing for an accused charged with a prescribed sexual offence against a child complainant. The complainant is 16 years old.

The brief of evidence includes evidence that the complainant first reported being assaulted by the accused when the complainant was confronted by their father for having sex with another person, which the complainant's father did not approve of. The complainant's father said to the complainant, *'why did you do it? Have you done this before?'* and the complainant replied, *'yes but it was not my choice before.'*

Is the complainant's sexual intercourse with another person admissible in the trial against your client?

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

You act for Lucy, who faces a charge of assaulting a frontline health worker. Her matter is list in 3 weeks at Nowra Local Court.

At the time of the alleged assault, Lucy was detained in a mental health unit as an involuntary patient. It is alleged that Lucy punched a nurse in the face while they attempted to administer medication to her by injection.

Your instructing solicitor has obtained an expert psychiatric report indicating that Lucy has severe depression and Post-Traumatic Stress Disorder and was experiencing symptoms of both impairments at the time she committed the assault. The expert report includes a suggested treatment plan for Lucy.

Lucy has never been to court before and has no criminal record. She asks you if there is a way to avoid a criminal conviction. She said she is willing to follow the treatment plan in the report.

What do you advise Lucy?

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Question 12 [ES Q12]

Ethics

10 marks

You have recently commenced your reading year and meet up with a fellow reader you met at your bar practice course.

Your fellow reader says they have not had an easy time at the bar so far. They say that there is only one senior counsel on their floor who has asked them to do some work with them. The reader has been engaged to junior this senior counsel a number of times, but each time, the senior counsel says they can only meet the reader for conferences late in the evening when everyone else on the floor has gone home.

The senior counsel always apologises for this and insists on buying the reader dinner to make up for the late hour. Over dinner, senior counsel drinks several glasses of wine and gives your fellow reader career advice. They also have lengthy conversations about the senior counsel's private life, particularly difficulties in their marriage.

Your fellow reader is soon to travel interstate with the senior counsel for a case. Their instructing solicitors are local, so will not be staying in the accommodation booked for the reader and senior counsel.

Last night, the senior counsel told the reader they were looking forward to having 'lots of fun' on the trip and told the reader they wished they had married someone like the reader, instead of marrying their spouse.

Your fellow reader tells you they do not feel comfortable about this trip, but they do not know how they should handle it. They also do not feel there is anyone on their floor they can discuss the issue with.

What do you advise?

Note: there is no need to consider any consequences for the senior counsel in your answer.

End of Exam Paper.