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NEW SOUTH WALES BAR EXAMS

BAR EXAM GUIDE

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NEW SOUTH WALES BAR EXAMS

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WHY CANDIDATES FAIL THE NEW SOUTH WALES BAR EXAMS

Roughly half to two-thirds of candidates fail the New South Wales Bar Exams on their first attempt — not because they do not know the law, but because they do not answer like counsel.

Most failures are not caused by lack of intelligence or effort. They are caused by:

- poor structure;
- weak statutory analysis;
- inadequate authority recall;
- poor forensic reasoning; and
- failure to apply facts persuasively.

The NSW Bar Exams are designed to test practical forensic judgment, not merely academic legal knowledge.

The exams require:

- rapid issue identification;
- precise statutory interpretation;
- authority-based reasoning;
- practical advocacy-style analysis; and
- disciplined IRAC structure under strict time pressure.

Most candidates require approximately three to six months of disciplined preparation.

1. Lack of IRAC Discipline (The #1 Reason Candidates Fail)

Failing candidates:

- jump straight to conclusions;
- recite legal rules without applying them;

- fail to structure answers logically; and
- ignore alternative arguments.

Example of a weak answer:

“This is hearsay and inadmissible.”

This answer fails because it:

- identifies no issue properly;
- states no statutory rule;
- applies no facts;
- discusses no exceptions; and
- reaches a bare conclusion.

Markers reward:

- structured reasoning;
- statutory analysis;
- authority;
- factual application; and
- persuasive forensic logic.

2. Misunderstanding NSW-Specific Law

Many candidates incorrectly:

- confuse Uniform Evidence Act provisions;
- mix common law and statutory principles incorrectly; or
- cite incorrect procedural legislation.

The NSW Bar Exams are highly jurisdiction-specific.

Candidates must know:

- *Evidence Act 1995* (NSW);
- *Uniform Civil Procedure Rules 2005* (NSW);
- *Civil Procedure Act 2005* (NSW);
- Legal Profession Uniform Conduct (Barristers) Rules 2015;
- *Legal Profession Uniform Law* (NSW).

Common areas of confusion include:

- hearsay versus admissions;
- tendency versus coincidence evidence;

- refreshing memory versus prior inconsistent statements;
 - summary judgment versus strike out applications;
 - privilege versus waiver; and
 - duties owed to the client versus duties owed to the court.
-

3. Poor Time Allocation

Common mistakes include:

- spending too long on one question;
- writing lengthy introductions;
- failing to answer all questions;
- over-researching during the exam; and
- failing to move on from difficult issues.

The NSW Bar Exams are conducted under strict time pressure.

Since the exams are now open book, many candidates mistakenly believe they can look up every issue during the exam. That approach usually fails because there is insufficient time.

Candidates should:

- use pre-prepared tabs and summaries;
- set a halfway timer;
- move quickly through weaker issues; and
- prioritise completing the entire paper.

A complete competent answer scores better than an incomplete perfect answer.

4. Lack of Authority

Weak answers:

- cite no sections;
- cite no rules;
- rely upon vague propositions;
- omit leading cases.

Strong answers:

- identify precise statutory provisions;
- cite leading High Court authorities;

- use correct NSW procedural rules; and
- integrate authority directly into analysis.

Examples:

- *Evidence Act 1995* (NSW) s 59;
- *Evidence Act 1995* (NSW) s 97;
- *Uniform Civil Procedure Rules 2005* (NSW) r 13.4;
- *Civil Procedure Act 2005* (NSW) s 56;
- *IMM v The Queen*;
- *Hughes v The Queen*;
- *Dasreef Pty Ltd v Hawchar*;
- *Mann v Carnell*.

5. No Application to Facts

Many candidates:

- state legal rules correctly;
- but fail to apply those rules to the facts.

Markers reward:

- fact-driven reasoning;
- forensic analysis;
- factual comparisons;
- evaluation of competing arguments.

Good answers repeatedly explain:

“Because this fact exists, the legal rule operates in this way.”

Application is where most marks are awarded.

6. Ethics — Answering Like a Student Instead of Counsel

Failing candidates:

- provide moral opinions;
- discuss fairness generally;

- ignore conduct rules.

Strong candidates:

- identify the precise professional obligation;
- cite the Barristers' Conduct Rules;
- explain competing duties;
- identify proper forensic conduct.

Candidates should identify:

- paramount duty to the court;
- duty not to mislead;
- confidentiality;
- independence;
- conflicts;
- obligations concerning witnesses and evidence.

Relevant rules include:

- rr 4–6;
- rr 23–27;
- rr 79–81;
- Legal Profession Uniform Conduct (Barristers) Rules 2015.

7. Practice and Procedure — Weak Rule Recall

Common failures:

- confusing strike out and summary judgment;
- citing incorrect rules;
- failing to distinguish pleadings from evidence;
- misunderstanding case management powers.

Candidates should know:

- UCPR 2005 (NSW) r 13.1 — summary judgment;
- UCPR 2005 (NSW) r 14.28 — strike out;
- discovery obligations;
- pleadings;
- interlocutory applications;
- costs;
- service rules;

- amendment principles.
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STRATEGIES TO PASS

1. Use Strict IRAC Structure

Issue

Identify the precise legal issue.

Rule

State:

- legislation;
- rules;
- leading authority.

Application

Apply facts carefully and comparatively.

Conclusion

Provide a clear forensic conclusion.

2. Memorise Core Provisions

Aspects of Evidence

Candidates should memorise:

- ss 55–58 relevance;
- s 59 hearsay;
- ss 63–66A hearsay exceptions;
- ss 76–79 opinion evidence;
- ss 81–90 admissions;
- ss 97–101 tendency/coincidence;

- ss 135–138 discretionary exclusions;
- ss 118–126 privilege.

Practice and Procedure

Candidates should memorise:

- UCPR 2005 (NSW) r 14.28 strike out;
- r 13.1 summary judgment;
- pleading requirements;
- discovery obligations;
- amendment rules;
- service rules.

Ethics

Candidates should know:

- duties to the court;
- confidentiality;
- conflicts;
- independence;
- misleading conduct rules.

3. Always Argue Both Sides

Strong answers:

- identify competing arguments;
- analyse strengths and weaknesses;
- explain why one argument is likely to prevail.

The NSW Bar Exam rewards balanced forensic reasoning.

4. Use “Because” Reasoning

Weak:

“This is inadmissible.”

Strong:

“This is inadmissible because the statement was made out of court and is tendered to prove the truth of its contents under s 59 of the *Evidence Act 1995* (NSW).”

5. Write Like Counsel

Candidates should:

- write formally;
 - avoid emotional language;
 - avoid waffle;
 - write concise analytical sentences;
 - use headings clearly.
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6. Practice Under Time Pressure

Candidates should:

- simulate real exam conditions (<https://www.legaleagleeducation.com.au/category/new-south-wales-bar-exam-prep>);
 - practise handwritten or timed typing;
 - train rapid issue spotting;
 - practise short-form IRAC responses.
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7. Use Trigger Phrases

When you see:

- “someone said” → hearsay;
 - “admitted” → admissions;
 - “similar conduct” → tendency evidence;
 - “expert says” → opinion evidence;
 - “no evidence” → summary judgment;
 - “failed to disclose” → discovery/non-compliance issue.
-

EXAM EXAMPLES

1. ASPECTS OF EVIDENCE

Question

A witness gives evidence:

“John told me the accused stabbed the victim.”

The prosecution seeks to rely upon the statement.

Poor Answer

“This is hearsay and inadmissible.”

High-Quality IRAC Answer

Issue

Whether the statement is inadmissible hearsay.

Rule

Under s 59 of the *Evidence Act 1995* (NSW), hearsay evidence is evidence of a previous representation tendered to prove the existence of an asserted fact.

Hearsay is generally inadmissible unless an exception applies.

Application

The statement:

“John told me the accused stabbed the victim”

is:

- an out-of-court representation;
- tendered to prove the accused stabbed the victim.

It is therefore prima facie hearsay.

No apparent exception applies:

- it is not an admission;
- no first-hand hearsay exception appears available;
- there is no indication the maker is unavailable under s 65.

Conclusion

The statement is inadmissible hearsay and should be excluded.

2. PRACTICE AND PROCEDURE

Question

The defendant applies for summary judgment arguing the plaintiff has no reasonable prospects of success.

Poor Answer

“The case is weak so summary judgment should be granted.”

High-Quality IRAC Answer

Issue

Whether summary judgment should be granted.

Rule

Under UCPR 2005 (NSW) r 13.1, the court may give summary judgment where:

- there is no real issue to be tried; and
- the opposing party has no real prospects of success.

The power must be exercised cautiously.

Application

Here:

- factual disputes remain unresolved;
- credibility issues arise;
- some evidence supports the plaintiff’s claim.

A trial is therefore necessary.

Conclusion

Summary judgment should not be granted.

3. ETHICS

Question

A barrister becomes aware that a client intends to mislead the court.

Poor Answer

“The barrister should tell the court because honesty is important.”

High-Quality IRAC Answer

Issue

What are counsel’s obligations where a client intends to mislead the court?

Rule

Under the Legal Profession Uniform Conduct (Barristers) Rules:

- a barrister owes a paramount duty to the administration of justice and the court;
- must not knowingly mislead the court;
- must not facilitate misleading evidence or submissions.

Relevant rules include rr 23–25.

Application

If counsel becomes aware the client intends to mislead the court:

- counsel must advise the client not to do so;
- counsel cannot knowingly present false evidence;
- if the client insists, counsel may need to withdraw.

Counsel must also preserve confidentiality unless disclosure is authorised or required.

Conclusion

The barrister must refuse to participate in misleading conduct and may need to withdraw from representation.

FINAL INSIGHT — WHAT SEPARATES PASS FROM FAIL

Failing candidates:

- know legal principles generally;
- write descriptively;
- miss statutory detail;
- fail to analyse facts deeply.

Passing candidates:

- identify precise issues rapidly;
 - structure answers carefully;
 - apply statutes accurately;
 - cite authority confidently;
 - analyse facts persuasively;
 - write like practising counsel.
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