

Duties Owed to Clients

Duty to be Competent

- ❖ Relationship between lawyer and client is fiduciary
 - Cannot profit from the relationship without informed consent of the beneficiary
- ❖ Standard of care required is the standard of a qualified, competent and careful lawyer: **Hawkins v Clayton (1988)**

Acting Honestly and Fairly in Clients Best Interest

- ❖ Lawyer must not further a client's case by unfair or dishonest means
- ❖ Must not mislead the court
- ❖ Must act with honest and courtesy when dealing with other members of the legal profession and other parties to the dispute: **LPULASCR r 4.1**

Acting with Due Skill & Diligence, Reasonable Promptness and Courtesy

- ❖ Maintain professional competence by continually updating their skills
 - Must abide by the 'Continuing Professional Development Rules' in their state
- ❖ Where a lawyer is not competent in a particular area of law they should refrain from giving advice
- ❖ Competence + diligence: **LPULASCR r 4.1.3**
- ❖ Courtesy: **LPULASCR r 4.1.2**

Lawful, proper and competent instructions

- ❖ A lawyer must never act without the clear instructions of the client
- ❖ Role is to advise the client of the options and for the client to instruct the lawyer how to proceed
- ❖ Must follow instructions of the client promptly, efficiently and in accordance with the law
- ❖ Lawyer must follow a clients lawful, proper and competent instructions: **LPULASCR r 8.1**

Timely work + ongoing updates

- ❖ Should complete work as soon as reasonably possible
- ❖ Should give ongoing updates on new developments
- ❖ Must inform clients of all significant developments: **LPULASCR r 7.1**

Costs

- ❖ Must provide client with cost disclosure and regular updates and reviews where the initial estimate may differ

Communication of Advice

- ❖ Lawyer is required to assist their client in understanding the law and how it may impact on their particular issues in the case: **LPULASCR r 7.1**
- ❖ Must provide client with all alternative to litigation that are reasonably available and advise on best course of action: **LPULASCR 7.2**

Duty to the client: Duty to be Competent Template

What duty is owed?

- ❖ Relationship between lawyer and client is fiduciary
 - Cannot profit from the relationship without informed consent of the beneficiary
- ❖ Standard of care required is the standard of a qualified, competent and careful lawyer: **Hawkins v Clayton (1988)**

Did X breach duty?

Option 1: Honesty and courtesy

X did [insert]. This act may constitute a breach of X's duty to act with honesty and courtesy when dealing with other members of the legal profession and other parties to a dispute: **r 4.1 LPULASCR 2015**

Option 2: Acting where not competent

X did [insert]. From the facts it is clear that X is not competent in [area]. This may constitute a breach of X's duty to deliver legal services with diligence and competence: **r 4.1.3 LPULASCR 2015**. The duty to be competent is also an implied term under the contract of retainer.

Option 3: Acting without instruction

X did [insert]. X did this without instructions of [client]. A lawyer must never act without the clear instructions of their client. Role is to advise the client of the options and for the client to instruct the lawyer how to proceed. X's actions may amount to a breach of a lawyer's duty to follow a client's lawful, proper and competent instructions: **r 8.1 LPULASCR 2015**.

Option 4: Took too long to do work/give updates

X took [time] to give [client] updates (or to do the work). Lawyers should complete work as soon as reasonably possible and give ongoing updates on new developments. X's actions may amount to a breach of X's duty to inform clients of all significant developments in a clear and timely manner: **r 7.1 LPULASCR 2015**.

Option 5: Didn't help client understand the law

From the facts it is clear that X did not help [client] to understand the law. Lawyers are required to assist their client to understand the law and how it may impact on their particular issues in the case: **r 7.1 LPYLASCR**. X's actions may amount to a breach of this duty.

Option 6: Didn't provide client with alternatives to litigation

X did not provide [client] with all the alternatives to litigation. X is under a duty to provide clients with all alternatives to litigation that are reasonably available and advise on the best course of action: **r 7.2 LPULASCR 2015**. X's inaction may amount to a breach of this duty.

