

Topic Two – Lawyers Responsibilities

Answering a Duties Question:

1. Spot all potential breaches sequentially
2. State the rules that may have been breached
3. Apply the rule to the conduct
4. If time discuss different ethical approaches/any applicable case law
5. Conclude on likelihood of breach
6. Possible consequences (ie UPC/PM)

1. Duty to the Law & Administration of Justice

[x] may have breached their duty to obey the law. The duty to obey the law follows from the roll of lawyers as participants in the administration of justice. Paramount duty that prevails under **r 3.1 ASCR**.

- A lawyer 'owes an allegiance to a higher cause...truth and justice': **Rondel per Lord Denning**
- Duty to obey the law = fidelity to the law

a. Avoid unlawful conduct as a lawyer: **Sampson**

- When acting for a client (**Sampson**)
- OR in personal life → *see disciplinary section*

b. Not to assist or condone a client breaking the law (R3); **Segler; Brickhill**

- Must terminate the retainer if C persists (**Segler**)
- Cannot counsel C to destroy evidence (**Brickhill**)
- Cannot counsel C that they are unlikely to be caught (**Segler**)
- Must not turn a blind eye to apparent illegality → question client

c. Advice where there is doubtful legality

- Permissible to provide legal advice in good faith to test scope of the law
 - eg tax planning vs tax avoidance
- BUT must inform the C in writing about the risk of illegality, allowing them to make an informed choice
- Failure = exposure of lawyer to liability for negligent advice

d. Not to engage in conduct which demonstrates L is not a fit and proper person, or which is likely to: **R5.1/BR8**

1. **Diminish public confidence in the administration of justice**; or
 - Must avoid any compromise to their integrity and professional independence: **R4.1.4**
 2. **Bring the profession into disrepute**.
 - Must comply with these rules and the law **R4.1.5**.
 - Must be honest and courteous in all legal dealings **R4.1.2**:
- **BR123**: B must not engage in conduct that constitutes (a) discrimination; (b) sexual harassment; (c) workplace bullying.
 - **OBJECT of ASCR**: 'To assist lawyers to act ethically and in accordance with the principles of professional conduct established by CL and these Rules'

Duty to the Court

[x] may have breached their duty to the court. Lawyers owe a paramount duty to the court and the administration of justice under **R3.1/BR23** which 'prevails to the extent of inconsistency with any other duty' including the duty to C (**Giannarelli per Mason CJ; Rondel per Lord Reid**)

- Derivative of lawyer's duty to efficient administration of justice (**Rondel**)
- Advocates Immunity:
 - Ensuring the duty to the court trumps the duty to the clients
 - Advocates (B&S) immune from suit regarding advice given in a matter relating to work done in or out of court which affects conduct of case in court: (**Gianarelli**)
 - Does NOT extend to negligent advice given in settlement negotiations (even if terms of settlement are included in a consent order filed with court) as not sufficient connection to a judicial determination (**Attwells Nettle J dissent**)

a. Duty of Honesty and Candour

- Not deceive or knowingly or recklessly mislead court **R19.1/BR24; McCabe; Kyle; Meek**
 - An intention to deceive or dishonesty is a necessary element to misleading the court: **Kyle**
- Inform court of any misapprehension as to the effect of an order: **R19.11/BR27-30**
- Disclose any relevant law precedent, even if against case (**R19.6/BRS 29**)
 - Even if L only becomes aware after judgement but before decision: **R19.8/BR31**
- Correct any innocent misstatements: (**R19.2/BR25; Kyle**)
 - Not take unfair advantage of obvious errors of another if would benefit C with no supportable foundation: **R30.1**
 - Duty to disclose contrary facts in ex parte applications: **ASCR 19.4**
 - Civil:
 - Duty to alert opponent and inform court of opponent express mistakes about evidence or law (**R 19.12**)
 - NOT misleading to fail to correct an erroneous statement made to the court by an opponent or another (**r 19.3**)
- Suspected information which is confidential must be: (**R 31.1**)
 - Returned, destroyed or delete material (as appropriate) immediately on realising disclosure was inadvertent; (**R.31.1.1**)
 - Notify other solicitor or the other person of the disclosure and the steps taken to prevent inappropriate misuse of the material. (**R.31.1.2**)
- Not use another's confidential info obtained accidentally: (**R31**)
- Keep knowledge up to date (**Copeland**)