

### **Three types of conflicts:**

- Lawyer- client conflict
  - o Conflict of interest
- Concurrent conflicts
  - o Same issue at hand for two or more clients
    - This means that the clients are in conflict
- Successive conflict
  - o When you represent a client and in the future you represent their opponent
  - o Conflict between old and new clients

### **Lawyer- Client Conflicts**

#### Introduction

There are two kinds of lawyer–client conflicts:

- Direct financial interests (where the direct interests of a client and their lawyer overlap); and
- Indirect financial interests (where other financial interests, values, loyalties, or interests overlap).

More legally and ethically significant than the fact of a conflict itself is how the lawyer handles it.

#### Dealing with Lawyer–Client Conflicts

- A lawyer faced with either form of lawyer–client conflict of interest has two options:
  1. Avoidance

Take measures to avoid or remove the conflict itself; and/or

2. Disclosure

For less serious conflicts, it may be sufficient to fully disclose the conflict to the client and obtain the client’s consent to continue. As part of full disclosure, this generally requires that the client be advised to obtain independent legal advice

#### Australian Solicitor Conduct Rules

12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.

## Law Society of New South Wales v Harvey [1976] 2 NSWLR 15:

### Facts

- Harvey is a solicitor who is also a director and shareholder of three property investment companies
- His clients often, at his suggestion, lent money to these companies for investment purposes; he did not disclose the full extent of his interest (just that he was a director)
- The investment was used in projects which would result in substantial financial gains for Harvey, if successful
- The clients were often inexperienced in investment matters, and did not have the risks explained to them
- The defendant did not advise his clients to obtain independent legal advice
- Eventually, the companies' financial states deteriorate, but Harvey continues to encourage the client loans in order to prop them up
- Many clients lose money on what eventuate to be failed investments
- The Law Society brings an action for professional misconduct against Harvey

### Issue

- Is the professional misconduct serious enough to warrant Harvey being struck off from the roll of practicing solicitors?

### Reasoning (Street CJ)

- Where there is any conflict between the client's and solicitor's interests, the duty of the solicitor is 'to act in perfect good faith' and to make 'full disclosure' of his interest
  - This includes disclosure of all material circumstances, and everything known to him which might influence the client
  - To disclose less is to positively mislead
- A deliberate proposal of the solicitor is a conflict of interest which is avoidable, and ought to be avoided
  - Even advising a client to retain independent legal advice does not overcome the objection to a solicitor proposing, inviting or encouraging a client to deal with him or his company in a proposed transaction
  - In the absence of very special circumstances, a solicitor who promotes himself as the dealer with his client misuses his position
  - A solicitor ought neither promote, suggest nor encourage a client to deal with him
  - Instead, he should take all reasonable steps necessary to avoid dealing with the client either directly or indirectly
- Where conflict is deliberate and dishonest, striking off is appropriate
  - Harvey's professional misconduct was serious and sustained, involving many clients and large amounts of money
  - Motivated by greed and self interest, and in deliberate and flagrant disregard of his duty to his clients
  - Demonstrates that Harvey is unfit to be a solicitor

### Decision

- 'We come to the inescapable conclusion that, on a grand scale, extending over some years, the defendant, deliberately and for his own benefit, caused the affairs of his clients to be intermingled with his affairs and that, while supposedly acting for them he grossly preferred his own interests to those of his clients'
- Harvey should be struck off the roll of practicing solicitors

