

Ethics Revision

1. Hypothetical Question –

➤ Australian Solicitors' Conduct Rules

NATURE AND PURPOSE OF THE RULES

1.1 – The ASCR apply to all solicitors in Australia, regardless of the type of work they are providing.

- Pro-bono, community-based legal assistance, private practice etc.

2.1 – The purpose of these rules is to assist solicitors to act ethically.

FUNDAMENTAL DUTIES OF SOLICITORS

3 – Paramount duty is to the court and administration of justice

4.1.1 – Must act in the best interest of a client

- Should advise of legal aid where appropriate

4.1.2 – Be honest and courteous

4.1.3 – Deliver legal services competently, diligently and as promptly as possible

- Don't draw out litigation for money

4.1.4 – Avoid any compromise to their integrity and professional independence

4.1.5 – Comply with these Rules

5 – Cannot dishonest or deceitful

6 – Must honour any undertaking made during the course of legal practice

- Honour any promises made

RELATIONS WITH CLIENTS

7.1 – Provide clear and timely advice and to make informed choices

7.2 – Advise a client on alternatives to fully contested adjudication

8.1 – Must follow a client's lawful instructions

9.1 – Must not disclose information which is confidential to a client; UNLESS

9.2.1 – the client authorises disclosure

- Can be impliedly authorised. Should always seek written consent.

9.2.2 – The law permits or compels disclosure

9.2.4 – disclosure as to avoid probable commission serious criminal offence

- Chance of committing a serious crime

9.2.5 – disclosure as to prevent imminent serious physical harm to the client or another person

10.1 – Avoid conflicts between duties owed to current and former clients

10.2 – A solicitor in possession of confidential information material to a matter of another client cannot act for the new client UNLESS disclosed and obtained written consent (10.2.1)

- Duty remains after retainer ends. When taking new clients do a conflict of interest check.

11.1 – Avoid conflicts between duties owed between two current clients

11.2 – A solicitor or law firm must not act in same or related matters where the client's interests are adverse UNLESS is aware and have consent (11.2.1-2)

11.5 – Should during the course of legal proceedings actual conflict arise, can only act for one of the clients.

