

Disputes and Ethics Hypothetical Exam

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1. INTRODUCTORY PARAGRAPH: SOURCES OF LAWYERS' ETHICAL OBLIGATIONS AND COURT CIVIL PROCEDURE

EXAM: Lawyers' ethical obligations stem from their fiduciary obligations to their clients in equity, (Dal Pont [4.20]) as well as statutory obligations predominantly provided by the *Solicitors' Conduct Rules 2015*. This legislature guides lawyers to negotiate the balance between their public and private roles in executing their duties to their clients. Further solicitors' are ethically obliged by the content of their retainers, enforced in contract and tort law (Dal Pont [4.20]). Most relevantly to the present case is [insert categories from above] due to [insert why, with reference to the task itself AND the facts]. These will be considered in turn.

Sources of Civil Procedure given effect by the courts

Civil procedure stems primarily from the specific legislation that regulates it, including the Civil Procedure Act 2010 (Vic), Supreme Court Act 1986 (Vic) and the Supreme Court (General Civil Procedure) Rules 2005. In combination with the court's inherent jurisdiction, the overarching purpose of s7 prioritises the court facilitating the "just, efficient, timely and cost-effective resolution of the real issues in dispute" in every exercise of their jurisdiction.

2. Part 5: Access to Justice – the Civil Procedure Reforms and Case Management

- Introduction of judicial 'case management' at the heart of the Civil Procedure Reforms
- Court granted extensive case management powers

2.1. *Civil Procedure Act 2010 (Vic) Pt2.1: Overarching Purpose of the Courts exercising their jurisdiction (sourced by statutory/ inherent/ implied)*

- GOOD TO USE IN ALL HYPOS TO SHOW UNDERSTANDING OF THE GUIDING PURPOSE OF CIVIL PROCEDURE (S7) + HOW A COURT WILL ENACT IT (S8)

A. S7: Overarching purpose of the *Civil Procedure Act 2010*

- (1) The overarching purpose of this Act and the rules of court in relation to civil proceedings is to facilitate the **just, efficient, timely and cost-effective** resolution of the real issues in dispute
- (2) ... it may be achieved by-
 - a) The determination of the proceeding by the court;
 - b) Agreement between the parties
 - c) Any appropriate dispute resolution process-
 - i) Agreed by the parties; or
 - ii) Ordered by the court

B. S8: Court to give effect to overarching purpose

- (1) A court **must seek to give effect to the overarching purpose in the exercise of any of its powers, or in the interpretation of those powers**, whether those powers-
 - a) In the case of the **Supreme Court**, are part of the Court's inherent jurisdiction, implied jurisdiction or statutory jurisdiction; or
 - b) In the case of a court other than the Supreme Court are part of the court's implied jurisdiction or statutory jurisdiction; or
 - c) Arise from or are derived from the common law or any procedural rules or practices of the court