

## TOPIC 1 - THE SOLICITOR: CLIENT RELATIONSHIP (W1)

Tab label: T1. Use this section when the problem naturally belongs here. Cross-reference other sections if the facts overlap.

### When to open this section

- The facts concern the beginning, scope, termination, or control of a solicitor-client relationship.
- There is an issue about retainer, authority, client documents, a lien, or handling of trust/property.
- A partner or principal says another partner was responsible for the trust problem.

### Fast exam order

- Identify who the client is and what the retainer actually covers.
- Ask what authority was given - express, implied, or limited.
- If the retainer has ended, ask whether the solicitor can keep documents or money by reason of a lien.
- If trust money or firm money is involved, ask who had responsibility and whether a principal/partner had to act.

### Core legislation / rules

<b>Conduct Rules 2015</b>	Start with the solicitor's basic duties of honesty, competence, loyalty, courtesy, and proper protection of the client's interests.
<b>LPUL (NSW)</b>	Use for the statutory setting: practising certificate, law practice structure, trust regulation, discipline, and the Court's control of the profession.
<b>Uniform/General Rules</b>	Use for document delivery, liens, and operational practice points even if the exam question is mainly about ethics.

### Core cases and propositions

<b>Law Society of NSW v Harvey</b>	Street CJ is the anchor. Use it for the demanding fiduciary nature of the solicitor-client relationship and for the Court's insistence on high standards where clients' affairs and money are entrusted to solicitors.
<b>Stewart v Strevens</b>	A solicitor may have a general lien over money in the solicitor's possession for unpaid costs; the client cannot demand the money free of the lien without paying the bill or giving proper security.
<b>Bechara t/as Bechara &amp; Co v Atie</b>	A possessory lien survives termination. A new solicitor's undertaking will not automatically amount to 'satisfactory security'; the court protects a genuine lien where possible.
<b>Re Mayes and the Legal Practitioners Act</b>	There is a heavy burden on each partner to ensure trust funds are properly handled. A partner cannot simply leave trust account management to another after cause for apprehension exists.
<b>Bridges v Law Society of NSW</b>	Knowledge of trust misuse plus inaction is fatal. It is no answer to say you trusted your partners and they let you down.
<b>Re Elfis and Somers</b>	Supplementary authority from the old notes: unilateral termination of retainer can be a breach; if the solicitor is not entitled to fees, the solicitor is not entitled to assert a lien.
<b>Caldwell v Sumpters</b>	Lien depends on possession and proper preservation of the security. Handing over documents without proper arrangement can destroy the lien.
<b>Tyneside Property Management v Hammersmith</b>	Court may order delivery of files on terms, including a money sum in trust as satisfactory security for costs.

### Common exam traps

- Do not jump straight to 'give the file back'. Ask first whether there is an effective lien and whether satisfactory security has been offered.
- Do not treat trust-account ignorance as a defence. In this area, failure to supervise can itself be the ethical problem.
- When a question mixes lien, retainer and trust money, separate them: authority to act, right to terminate, right to retain papers, and trust obligations are different issues.

### Exam-safe sentence

*Open with: 'The first issue is the character and scope of the solicitor-client relationship, because that determines authority, the solicitor's obligations to the client, and whether any lien or trust issue can properly arise.'*

## TOPIC 2 - PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT (W2)

Tab label: T2. Use this section when the problem naturally belongs here. Cross-reference other sections if the facts overlap.

### When to open this section

- The question asks whether conduct is UPC or PM.
- The facts involve dishonesty, recklessness, discourtesy, show-cause events, or serious private conduct.
- You are asked whether the conduct shows the lawyer is not fit and proper.

### Fast exam order

- State the statutory definitions first: s 296 (UPC), s 297 (PM), and remember s 298 is illustrative, not exhaustive.
- Then characterise the conduct: mistake, negligence, recklessness, dishonesty, repeated failure, or conduct showing unfitness.
- Finally ask whether the conduct occurred in practice or outside practice, and whether the outside conduct nonetheless reveals unfitness.

### Core legislation / rules

<b>LPUL s 296</b>	UPC includes conduct in connection with practice that falls short of the standard of competence and diligence the public is entitled to expect of a reasonably competent lawyer.
<b>LPUL s 297(1)(a)</b>	PM includes UPC involving a substantial or consistent failure to reach reasonable standards.
<b>LPUL s 297(1)(b)</b>	PM also includes conduct, whether in practice or not, that would justify a finding the lawyer is not a fit and proper person to engage in legal practice.
<b>LPUL s 298</b>	Illustrative examples only. Use it to support, not to confine, your analysis.
<b>General Rules rr 25-26</b>	Show-cause event and disclosure obligations. A disclosure failure can itself become the professional wrong.
<b>LPUL s 264</b>	Do not forget the Supreme Court's inherent and statutory disciplinary control remains alive.

### Core cases and propositions

<b>Allinson v General Council</b>	Classic peer test: infamous conduct in a professional respect means conduct reasonably regarded by professional peers of good repute and competence as disgraceful or dishonourable.
<b>Kennedy v The Council</b>	Misconduct need not be an offence. Grave impropriety affecting professional character, or failure to understand honesty and fair dealing, can be enough.
<b>Qidwai v Brown</b>	Warning case. Not every controversial or unsuccessful professional act is misconduct. There must be proper proof that standards have been crossed.
<b>Re Hodgekiss</b>	Wilfulness and recklessness matter. Reckless disregard can elevate conduct from poor practice to professional misconduct.
<b>Carr v Council of the Law Society</b>	Do not overstate allegations. Even serious labels such as 'misappropriation' require careful legal analysis. A charge fails if the underlying legal premise is wrong.
<b>Re Davis</b>	False character material and lack of candour show character defects going directly to fitness.
<b>Prothonotary v Del Castillo</b>	Professional misconduct does not automatically mean removal. The next question is present fitness and what orders are needed to protect the public and the administration of justice.
<b>Prothonotary of the Supreme Court of NSW v P</b>	Serious criminal conduct does not mechanically compel striking off; present fitness and risk to the public are the focus.
<b>Ziems v The Prothonotary</b>	Personal misconduct may justify discipline, but the connection between the conduct and professional fitness must be analysed carefully.
<b>A Solicitor v The Council of the Law Society</b>	Private misconduct will not always be professional misconduct, but failure of candour about later convictions can itself be professional misconduct and reveal unfitness.
<b>Murphy v Bar Association of NSW</b>	Use for the idea that there are no closed categories of misconduct and the evaluative character of the inquiry.
<b>NSW Bar Association v Cummins</b>	Four interrelated interests guide regulation: clients, fellow practitioners, the judiciary, and the public. This is a high-value statement for any ethics problem answer.
<b>Council of the NSW Bar Association v EFA</b>	Modern reminder that very poor conduct may still be classified as UPC rather than PM, depending on gravity, context, and present fitness.
<b>Prothonotary v Montenegro</b>	Modern Court of Appeal authority reinforcing that serious