

## MLP235 MASTER SUMMARY NOTES

### Topic 1 — Admission to Practice

#### Overview

Before admission, an applicant must satisfy the Supreme Court that they are a **fit and proper person**. The focus is on honesty, integrity, candour and present fitness to practise.

#### Key Issues

- Criminal convictions
- Academic misconduct
- Bankruptcy
- Tax evasion
- Traffic offences
- Non-disclosure

#### Key Principles

- Disclosure is essential.
- Non-disclosure may be more serious than the underlying conduct.
- The jurisdiction is protective, not punitive.

#### Cases

- *Re Davis* (1947) 75 CLR 409 — honesty essential.
- *Ziems v Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 — criminal conduct may affect fitness.
- *NSW Bar Association v Cummins* (2001) 52 NSWLR 279 — dishonesty incompatible with practice.

### Topic 2 — Retainer & Client Identification

#### Overview

A retainer establishes the solicitor-client relationship and defines the scope of duties owed.

### **Key Issues**

- Was a retainer formed?
- Who is the client?
- What is the scope of authority?
- Has the retainer ended?

### **Key Principles**

- A retainer may arise expressly or impliedly.
- Duties depend on identifying the correct client.
- Corporate clients create particular difficulties.

### **Cases**

- *Pegrum v Fatharly* — implied retainers.
- *Owners Strata Plan v Andreones* — scope of retainer.

## **Topic 3 — Competence & Negligence**

### **Overview**

Lawyers must provide legal services competently, diligently and promptly.

### **Key Issues**

- Missed deadlines
- Poor advice
- Inadequate supervision
- Acting outside expertise

### **Key Principles**

- Competence is required under ASCR r 4.
- Incompetence may result in negligence liability and disciplinary consequences.

- Advocate's immunity applies to some litigation conduct.

### **Cases**

- *Rogers v Whitaker* (1992) 175 CLR 479 — standard of care.
- *Giannarelli v Wraith* (1988) 165 CLR 543 — advocate immunity.
- *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 — immunity confirmed.
- *Legal Services Commissioner v YB* — incompetence may amount to UPC.

## **Topic 4 — Conflicts of Interest**

### **Overview**

Lawyers owe a fiduciary duty of loyalty and must avoid conflicts.

### **Types of Conflict**

#### **Personal Interest**

Lawyer's personal interests conflict with client interests.

#### **Concurrent Conflict**

Two current clients have competing interests.

#### **Successive Conflict**

Current matter conflicts with duties owed to a former client.

### **Key Principles**

- Loyalty is fundamental.
- Confidentiality survives the retainer.
- Informed consent may sometimes cure conflicts.

### **Cases**

- *Maguire v Makaronis* (1997) 188 CLR 449.
- *Farrington v Rowe McBride & Partners* [1985] 1 NZLR 83.
- *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222.
- *Spincode Pty Ltd v Look Software Pty Ltd* [2001] VSCA 248.

## **Topic 5 — Confidentiality & Legal Professional Privilege**

### **Confidentiality**

#### **Rule**

ASCR r 9 prohibits disclosure of confidential information.

#### **Purpose**

- Encourages candour.
- Promotes trust.
- Facilitates legal advice.

#### **Exceptions**

- Client consent
- Legal obligation
- Serious harm
- Ethics advice

### **Legal Professional Privilege**

#### **Definition**

Protects confidential communications made for:

1. Legal advice
2. Existing or anticipated litigation

#### **Dominant Purpose Test**

Why was the communication created?

#### **Cases**

- *Esso Australia Resources Ltd v FCT* (1999) 201 CLR 49.
- *Grant v Downs* (1976) 135 CLR 674.
- *Mann v Carnell* (1999) 201 CLR 1.
- *AB v CD; EF v CD* (2018) 267 CLR 456.

## **Topic 6 — Costs & Trust Money**

### **Costs**

#### **Key Principles**

- Costs must be fair and reasonable.
- Disclosure obligations apply.
- Contingency fees are generally prohibited.

#### **Cases**

- *Legal Services Commissioner v Bechara* [2008] NSWADT 215.
- *Legal Services Commissioner v Burgess*.

### **Trust Money**

#### **Key Principles**

- Trust money must be kept separate.
- Unauthorised withdrawals are serious.
- Misappropriation often leads to striking off.

#### **Cases**

- *Law Society of SA v Templeton*.
- *Legal Practitioners Conduct Board v Jones*.

## **Topic 7 — Duties to the Court**

### **Overview**

The lawyer's paramount duty is owed to the court and administration of justice.

#### **Core Duties**

- Honesty
- Candour

- Disclosure
- Fairness
- Respect for court processes

### **Key Principles**

- Duty to court overrides duty to client.
- Lawyers must not mislead.
- Silence may amount to misconduct.

### **Cases**

- *Giannarelli v Wraith* (1988) 165 CLR 543.
- *Legal Services Commissioner v Mullins* [2006] QLPT 12.
- *Legal Practitioners Complaints Committee v Fleming*.

## **Topic 8 — Prosecutors, Witnesses & Evidence**

### **Prosecutors**

#### **Role**

Seek justice, not convictions.

#### **Duties**

- Fair disclosure
- Present evidence honestly
- Avoid unfair tactics

#### **Cases**

- *Whitehorn v The Queen* (1983) 152 CLR 657.
- *Mallard v The Queen* (2005) 224 CLR 125.
- *R v Kennedy*.

### **Witnesses**

## **Lawyers May**

- Explain procedure
- Prepare witnesses

## **Lawyers Must Not**

- Coach witnesses
- Invent evidence
- Encourage false testimony

## **Topic 9 — Duties to the Profession & Others**

### **Overview**

Lawyers owe duties to opponents, third parties and the profession.

### **Key Rules**

#### **Rule 30**

No unfair advantage.

#### **Rule 31**

Misdirected documents.

#### **Rule 33**

No contact with represented persons.

#### **Rule 34**

Dealings with third parties.

### **Cases**

- *Law Society of NSW v Foreman* (1994) 34 NSWLR 408.
- *Bennett v Chief Executive Officer of Customs* (2004) 140 FCR 101.

## **Topic 10 — Civility, Bullying & Social Media**

### **Overview**

Professionalism extends beyond technical compliance with rules.

### **Expected Conduct**

- Courtesy
- Respect
- Honesty
- Collegiality

### **Unacceptable Conduct**

- Bullying
- Harassment
- Discrimination
- Offensive social media activity

### **Cases**

- *NSW Bar Association v A Solicitor.*
- *Legal Services Commissioner v Parslow.*
- *Legal Services Commissioner v YPOL.*

## **Topic 11 — Discipline**

### **Purpose**

Protect the public and maintain confidence in the profession.

### **Unsatisfactory Professional Conduct (UPC)**

#### **Legal Profession Uniform Law s 296**

Conduct falling short of the standard expected of a competent lawyer.

### **Examples**

- Minor competence issues
- Costs disclosure failures

- Administrative breaches

## **Professional Misconduct (PM)**

### **Legal Profession Uniform Law s 297**

Serious conduct demonstrating unfitness to practise.

#### **Examples**

- Dishonesty
- Misappropriation
- Misleading the court
- Serious conflicts

#### **Cases**

- *NSW Bar Association v Cummins* (2001) 52 NSWLR 279.
- *Law Society of NSW v Foreman* (1994) 34 NSWLR 408.
- *Legal Services Commissioner v Mullins* [2006] QLPT 12.

## **Topic 12 — AI & Legal Ethics**

### **Key Risks**

- Fake authorities
- Hallucinated cases
- Confidentiality breaches
- Inadequate supervision

### **Key Principles**

- Lawyers remain responsible for AI output.
- Competence requires verification.
- Confidential information should not be entered into public AI tools.

## **Cases & Authorities**

- *Handa v Mallick* [2024] FedCFamC2F 957.
- Legal Profession Uniform Law s 35.
- ASCR rr 4, 9, 10–11.

## **FINAL EXAM FRAMEWORK**

### **CLIENT**

Retainer → Competence → Conflicts → Confidentiality → Costs → Trust Money

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### **COURT**

Candour → Disclosure → Fairness → Prosecutorial Duties

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### **OTHERS**

Courtesy → No Unfair Advantage → No Contact Rule

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### **DISCIPLINE**

UPC → PM → Sanctions