Legal Ethics Cases and Legislation Table

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Topic 1 - The Solicitor: Client Relationship

Case/legislation	Key facts	Decision and legal principle
Legislation		
Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Conduct Rules)	• Uniform professional conduct rules made under the Legal Profession Uniform Law; apply to solicitors practising in NSW (and other Uniform Law jurisdictions). • The Rules codify enforceable ethical obligations of solicitors. • Breach of the Rules may constitute unsatisfactory professional conduct or professional misconduct. • A solicitor's paramount duty is to the court and the administration of justice, prevailing over duties to clients (rr 3, 4)	
Legal Profession Uniform Law (NSW) No 16a of 2014 ('Uniform Law (NSW)')	• Principal statute regulating legal practice in NSW, including admission, professional conduct, trust money, discipline and sanctions. • Establishes the statutory framework for regulation of legal practitioners. • Breach of obligations under the Uniform Law may constitute unsatisfactory professional conduct or professional misconduct. • Disciplinary powers are exercised to protect the public, maintain professional standards, and preserve confidence in the administration of justice, not to punish.	
Solicitors Manual, LexisNexis (loose-leaf service and online) (formerly known as Riley's Solicitors Manual) ('Solicitors Manual')	• Authoritative practitioner text providing commentary on solicitors' duties, professional conduct, discipline, trust accounting and regulatory obligations under NSW law. • While not law, the Solicitors Manual is a highly persuasive secondary authority. • It explains and synthesises the Uniform Law, Conduct Rules, case law and regulatory practice, and is routinely relied upon by practitioners, regulators and tribunals to identify accepted professional standards.	
Cases		
Law Society of New South Wales v Harvey [1976] 2 NSWLR 154 (especially per Street CJ) **solicitors cannot profit at the client's expense**	The solicitor intermixed client funds with his own and acted for personal benefit on a 'grand scale extending over some years,… deliberately and for his own benefit'.	**Held:** Breach of fiduciary duty – **solicitors cannot profit at the client's expense**. Struck off. "The solicitor shall not be permitted to make a gain for himself at the expense of his client." – Lord Westbury (Tyrrell v Bank of London (1862))
Stewart v Strevens (1976) 2 NSWLR 321 **cannot use client funds without express or implied authority – and must be for related work**	Solicitor improperly withdrew client trust funds to repay a loan.	**Held:** Breach of trust – **cannot use client funds without express or implied authority**. Must be only used for work related to client **related work.** Distinguished between general lien (possession-based) and particular lien (equitable right to costs from recovery).
Bechara t/as Bechara & Co v Atie & Anor [2005] NSWCA 268	A dispute arose between a former solicitor (Bechara) and a client regarding the payment of legal costs and the retention of	A solicitor may retain client property under a possessory lien until costs are paid. Court will protect lien in respect of unpaid fees. An undertaking from a new solicitor does not automatically override the

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Case/legislation	Key facts	Decision and legal principle
	the file. The client wished to move their file to a new solicitor, but the original solicitor asserted a lien over the documents due to outstanding fees. A new solicitor provided an undertaking, which the court reviewed to see if it constituted "reasonable security" for the payment of the former solicitor's costs.	lien. The case is noted for its impact on solicitors' professional obligations regarding the handling of files when a client changes legal representation, aligning with ethical standards requiring solicitors not to behave in a way that disadvantages the client, particularly regarding the prompt transfer of files. [1]
Re Mayes and the Legal Practitioners Act [1974] 1 NSWLR 19 **Partners cannot delegate or ignore responsibility for compliance.**	Two solicitors in partnership running two offices, one each. Maye left other partner to manage trusts entirely, who was stealing funds.	**Held:** Partner was held equally responsible: must bear some responsibility for completely abrogating his own responsibility and leaving everything to his partner. 'Recklessly careless over a long period and didnt ensure the trust requirements were met. But did report when became aware. Finding/order of professional negligence - satisfied public interest but allows him to re-establish himself financially and professionally.
Bridges v Law Society of New South Wales [1983] 2 NSWLR 361 **failure to act or report was professional misconduct**	Partner knowingly allowed trust funds to support speculative investments and concealed misconduct.	Held: Struck off - failure to act or report was professional misconduct. "A solicitor c**annot prefer partnership interests to the interests of clients**." Solicitor's "failure to inform the clients, his lack of any real attempt to find out, when he had the ready means to do so, and hence his allowing the impropriety to continue, provides the basis for the finding of professional misconduct" Solicitor made a deliberate decision "not to check for himself and find out what was being done and in particular whether past partnership wrongdoing was being aggravated." If the partnership was able to trade out he would benefit and, if not, he would be able to claim ignorance"

Topic 2 - Professional Misconduct and Unsatisfactory Professional Conduct

Case/legislation	Key facts	Decision and legal principle
Legislation		
Legal Profession Uniform General Rules 2015 (General Rules) - Rule 25	**25 Notice by holder of certificate of automatic show cause event** For the purposes of section 88 of the Uniform Law, the maximum period is 42 days. **Note.** The maximum period of 42 days is made up of the period of 28 days (specified in section 88(3)) after the automatic show cause event occurred, together with a further period of 14 days by which the designated local regulatory authority may extend the period of 28 days.	
Rule 26	**26 Notice by holder of certificate of designated show cause event** For the purposes of section 91 of the Uniform Law, the maximum period is 42 days. **Note.** The maximum period of 42 days is made up of the period of 28 days (specified in section 91(2) of the Uniform Law) after the designated show cause event occurred, together with a further period of 14 days by which the designated local regulatory authority may extend the period of 28 days.	
(Uniform Law) - s51	**51 Statutory condition—to notify certain events** (1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must notify the designated local regulatory authority in writing within 7 days that— (a) the holder has been charged with or convicted of a serious offence, a tax offence or an offence specified in the Uniform Rules for the purposes of this section; or (b) a bankruptcy-related event has occurred in relation to the holder; or (c) the holder has become the subject of disciplinary proceedings as a lawyer in a foreign country. (2) The Uniform Rules may specify circumstances in which a notice need not be given under subsection (1). (3) Subsection (1) does not apply to an offence to which section 86 applies. **Note** Section 86 deals with automatic show cause events. Section 88 provides notification procedures for automatic show cause events for holders of Australian practising certificates.	
S86	**86 Nature of automatic show cause events** An ***automatic show cause event*** is any of the following in relation to a person who is an applicant for or the holder of a certificate— (a) a bankruptcy-related event; (b) his or her conviction for a serious offence or a tax offence, whether or not— (i) the offence was committed while he or she was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer; or (ii) other persons are prohibited from disclosing the identity of the offender; (c) an event of a kind specified in the Uniform Rules for the purposes of this section	

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