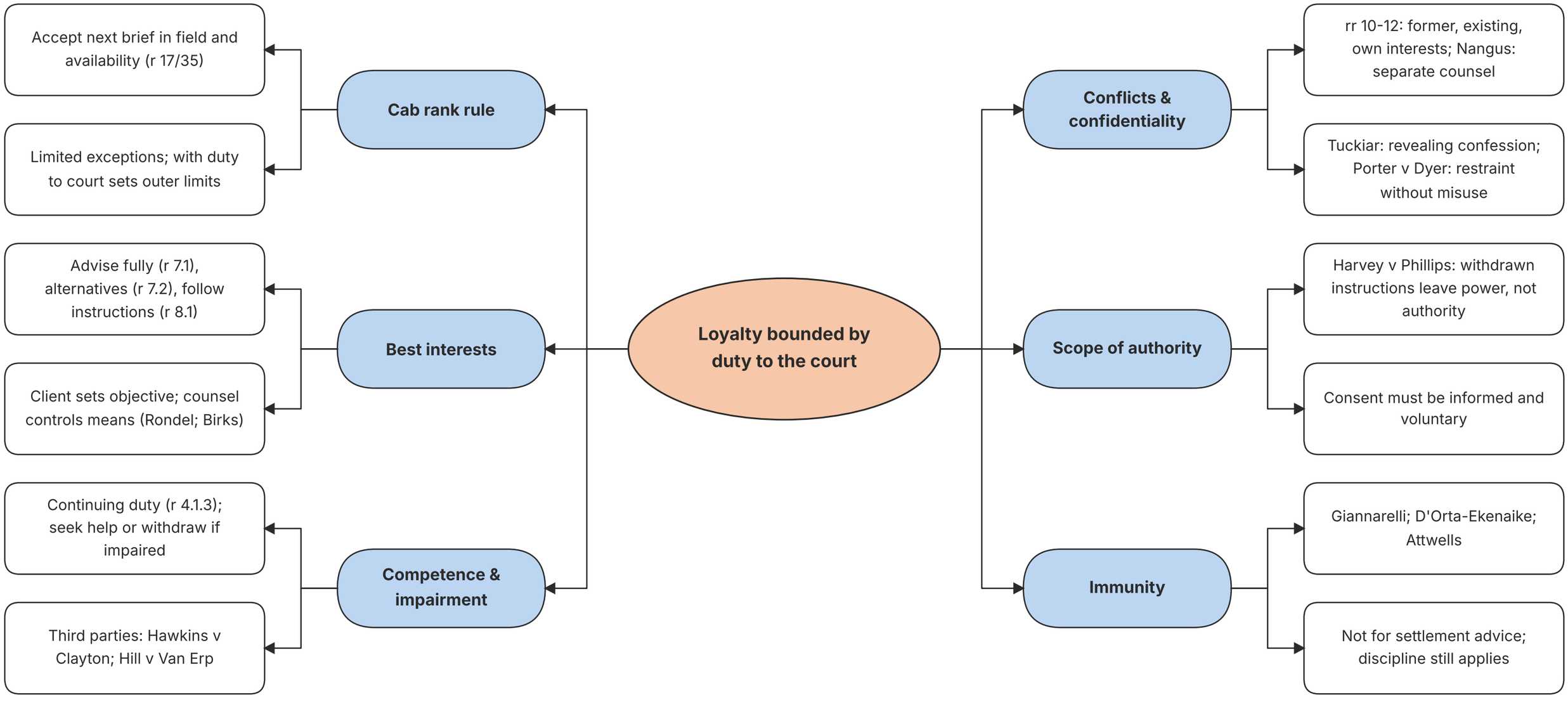
9. An Advocate's Duty to the Client

Real duty to the client, bounded by the court.



IRAC issue answer scaffolds

1. The Solicitor-Client Relationship

Introduction

The solicitor-client relationship is fiduciary, requiring undivided loyalty and honest dealing throughout the retainer.

[Problem questions in this area test whether that fiduciary duty has been honoured in the specific context of the retainer itself, the assertion of a lien, or the handling of trust money. Triggered by facts showing a solicitor dealing with a client's money, property, or the retainer itself — e.g. borrowing from a client, terminating a matter early, retaining a file, or a trust account irregularity. Spot which of fiduciary duty, retainer, lien, or trust account is really in issue before you start.]

Issue 1: Breach of fiduciary duty

Issue: Whether [solicitor]'s conduct in [describe conduct] breaches the fiduciary duty owed to [client].

Rule: The relationship is fiduciary, requiring undivided loyalty and honest dealing; a solicitor must not prefer their own interest to the client's, nor gain at the client's expense (*Law Society of NSW v Harvey*; *Tyrrell v Bank of London*; *Law Society of NSW v Moulton*).

analyse current-client, former-client and personal-interest conflicts; secret profit; informed consent; independent advice; vulnerable clients and powers of attorney. Apply *Law Society of NSW v Moulton*, *Law Society of NSW v Harvey*, *Tyrrell v Bank of London*, Prince Jefri Bolkiah v KPMG and Spincode.

Application: Compare [solicitor]'s conduct to Harvey (comingling client funds, self-interested investment on terms no independent solicitor would accept): does [fact] show similar self-dealing, and was there full disclosure and informed consent?

Conclusion: On the facts, [solicitor] has/has not breached the fiduciary duty because [insert].

Issue 2: Retainer and termination

Issue: Whether [solicitor]'s termination of, or failure to complete, the retainer affects the entitlement to fees and/or a lien.

Rule: Division 3 of the Uniform Law requires proper documentation of scope; a solicitor cannot unilaterally terminate an uncompleted retainer without risking the fee entitlement and lien (*Re Elfis and Somers*; *ex parte Tydhof*); fees remain recoverable despite negligence unless the result is wholly fruitless and wholly the solicitor's fault, turning on whether the contract is entire or divisible (*Isaacs v Cachia*); Rules 14–15 govern file hand-over.

Application: Was the retainer entire or divisible? Was termination unilateral, and if so, was the work rendered wholly fruitless by the solicitor's own negligence?

Conclusion: The solicitor is/is not entitled to recover fees and/or assert a lien because [insert].

Issue 3: Liens and trust account

Issue: Whether [solicitor] has validly exercised a lien over [property/documents/money], or has breached trust account obligations.

Rule: A general lien covers documents/chattels/money until costs are paid; a particular lien attaches to a judgment or money collected. Trust money may only be applied against the particular (costs) lien, not unrelated debts (*Stewart v Stevens*); a possessory lien survives termination by the client (*Bechara v Atie*) and

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may be preserved even on hand-over to a new solicitor, held 'to order' (*Caldwell v Sumpters*). Principals bear strict, personal responsibility for trust account irregularities regardless of delegation (*Re Mayes*; ss 34, 35, 132, 144, 154 UL); verbal assurances do not discharge the duty to actively supervise (*Bridges v Law Society of NSW*).

Application: Identify which type of lien is claimed and whether the money/documents were properly held; if a trust account issue is raised, ask whether the practitioner took active steps to verify, or merely relied on assurances.

Conclusion: The lien is/is not validly exercised, and/or the trust account obligations have/have not been met, because [insert]

Issue 4: Test confidentiality and privilege

Issue: Whether information may be disclosed or whether a document is protected.

Rule / framework: Confidentiality under ASCR r 9 is a broad, continuing professional duty. Legal professional privilege is narrower, belongs to the client and generally depends on the dominant purpose of obtaining or giving legal advice or preparing for litigation: *Esso Australia Resources v Federal Commissioner of Taxation*. Consider waiver, joint clients, legal compulsion and the crime/fraud exception under ss 118 and 125 Evidence Act 1995 (NSW).

Application: Ask whether the information was obtained during the retainer, whether disclosure was authorised or legally compelled, whether privilege was waived and whether the information creates a real risk of misuse in acting against a former client. Apply *Prince Jefri Bolkiah v KPMG* where relevant.

Conclusion: Confidentiality normally survives termination. Privilege belongs to the client and cannot be waived merely because disclosure would assist the solicitor.

Issue 5: Analyse trust money and remedies

Issue: Whether money was trust money and whether it was properly received, held and paid out.

Rule / framework: Under LPUL ss 129, 135–146 client money must be deposited, recorded, segregated and dealt with only on proper authority. Money cannot be used for the solicitor's personal debt or another client. Under s 154, suspected irregularities must be reported as soon as practicable, with protection under s 466. *Bechara v Atie*; repayment does not erase misuse.

Application: Classify the money, identify the authority for each transfer, check whether a bill was rendered and whether the statutory requirements were met. Repayment may mitigate sanction but does not undo the breach.

Conclusion: The result may include repayment, discharge of a lien, compensation, costs consequences and UPC or PM.

Conclusion

Overall, the solicitor's behaviour [was/was not] a breach of the solicitor's fiduciary, contractual and professional duties. The solicitor [did/did not] act in the client's best interests, protect confidentiality and avoid conflicts. The conduct therefore amounts to [no breach/UPC/professional misconduct], and [insert remedy or order] is appropriate.

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