

Ethics: Recent case update and developments



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Sources of ethical duties and obligations

- ▶ *Uniform Law Australian Solicitors' Conduct Rules 2015*
- ▶ *Legal Profession Uniform Law 2015*
- ▶ Civil Procedure Act
- ▶ Common law and equity

Solicitors' Conduct Rules

- ▶ *Uniform Law Australian Solicitors' Conduct Rules 2015*
 - ▶ 3 - paramount duty
 - ▶ 4 - fundamental duties
 - ▶ 6 - undertakings
 - ▶ 8 - instructions
 - ▶ 9 - confidentiality
 - ▶ 10-12 - conflicts
 - ▶ 14 & 15 - client documents and liens
 - ▶ 17 - independence
 - ▶ 20 - delinquent clients
 - ▶ 22 - communication with opponents
 - ▶ 26 - communication with witnesses under cross-examination
 - ▶ 30 - other person's error
 - ▶ 31 - inadvertent disclosures
 - ▶ 32 - unfounded allegations
 - ▶ 34 - deal with other persons

Conflicts

- ▶ r.10 - conflicts concerning former clients
- ▶ r.11 - conflicts concerning current clients
- ▶ r.12 - conflicts with own interests
- ▶ Common law context
 - ▶ *Spincode* and *Carindale* tests
- ▶ Case study: *Victorian Legal Services Commissioner v Anderson (Legal Practice)* [2021] VCAT 71

Undertakings

- ▶ r.6 - undertakings
- ▶ Harman obligation
- ▶ Case study: *Victorian Legal Services Commissioner v Harriss (Legal Practice)*
[2020] VCAT 689

Cross-examination

- ▶ r.26 - communication whilst under cross-examination
- ▶ Case study: *Victorian Legal Services Commissioner v Chen (Legal Practice)*
[2020] VCAT 238

Capacity

- ▶ Presumption of capacity at common law
- ▶ Conduct rule 8 - *a client's lawful, proper and competent instructions*
- ▶ 'Red flags'
- ▶ *Goddard Elliott v Fritsch* [2012] VSC 87
- ▶ *Victorian Legal Services Commissioner v Geron (Legal Practice)* [2019] VCAT 1276
- ▶ How to assess capacity?

Independence

- ▶ r.17
- ▶ Mouthpiece
 - ▶ *Rondel v Worsley* [1967] 1 Q.B. 443
- ▶ Case study: *Pearl Lingerie Australia Pty Ltd v TGY Pty Ltd* [2012] VSC 451 and *Alliance Developments Pty Ltd v Arbab and Anor* [2019] VSC 832, *Alliance Developments Pty Ltd v Arbab & Ors (No 2)* [2020] VSC 37