

# Ethics

Current issues in commercial law

William Lye OAM QC and Simon Fuller

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## Introduction

- Ethics in the context of the legal profession – William Lye OAM QC
- Specific examples – Simon Fuller, Barrister at Law
- Q & A

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## What is 'Ethics'

- Deals with concepts or principles as to conduct is '**right and wrong**'; '**good and evil**'
- Touches on one's '**human character**' – not about reputation
- Refers to one's '**moral duty**'
- Professions tend to have a **set of guidelines** as to how one ought to behave

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## Our take 'Ethics'

'Ethics is the **moral compass**  
that guide you not only to **do things right** but  
to **do the right thing**'

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## Our ethical values in legal practice

It is not just **what you will** do for your client but **what you won't do**

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## Duty to the Court

### **Officer** of the Court

Barrister

- to act with independence in the interests of the administration of justice
- to conduct a case efficiently and expeditiously
- to act with complete honesty with the Court

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## Duty to the client

Act in an **honest, fair, competent**, and **diligent manner**

### Barrister

- duty to advance and protect the client's interest by every legitimate means

### Solicitor

- duty of confidentiality
- duty to avoid conflict of interest

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## Sources of ethical duties and obligations

- *Uniform Law Australian Solicitors' Conduct Rules 2015*
- Civil Procedure Act
- Common law

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## 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

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## 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

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## Undertakings

- r.6 – undertakings
- Harman obligation

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## Cross-examination

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

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## Client's documents – solicitor's lien

- rr.14 and 15
- Lien not absolute
  - Leading authority (*Gamlen Chemical (UK) Ltd v Rochem Ltd* [1980] 1 All ER 1049)
  - Applied in Australia (*Kyriackou & Ors v Martin* [2014] VSC 122 and *Rafferty and Others v Time 2000 West Pty Ltd and Others (No 3)* [2009] FCA 727)

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## Independence

- r.17
- Mouthpiece
  - *Rondel v Worsley* [1967] 1 Q.B. 443

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