

Duties to third parties - Chapters 2, 3,10, 11,13

Chua - mortgage default. Solicitor filed for an injunction to prevent sale.

- A lawyer's first and foremost duty is to the court. Spurious claims may be viewed as a breach of this duty.
- The lawyer had misled the Court by trying to get an injunction in a situation where he knew there had already been settlement
- As a consequence, solicitor was jointly and severally liable for costs, and the solicitor was referred to the Law Society

Gazley - NZCA accidentally left a page out of a bundle. Solicitor on behalf of client issued a writ against the judges claiming wilful/malicious/negligent failure.

- An officer of the court has an overriding duty to the court to maintain the standards of the profession. The same duty applies when drawing pleadings, conducting subsequent statements, and during the case.
- **Lawyers have a professional responsibility not to make allegations without sufficient evidence or reasonable belief**, so as to uphold the administration of justice and processes of court.

Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.

- Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate.
- **Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes**
- **If V had refused to give evidence, the outcome may have been different.** There is no suggestion of a miscarriage of justice because V gave evidence, and **it's not in the public interest that V be deterred from giving evidence.**

Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.

- Clients may extricate themselves - **requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation"**
- Duty to raise all arguments, however distasteful, that will help the client's case. **Overriding duty to the court that will often conflict w client's wishes.**
- **Lawyers must not mislead the court or cast aspersions on other parties for which there is no sufficient basis for that information.**

Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.

- A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc)

- Obligation to put all relevant law before the court. This does not extend to facts - this is why duty of discovery is important. **Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts.**
- **Must advocate for client to best ability without making yourself a judge of correctness, only of honesty** - must ensure the court is not being misled by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct
- **Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.**

Duties in tort, contract and equity - Chapters 3,4,5,6,7,8,9,15

Day v Mead

Mead had been Day's solicitor for 25y. Advised Day to invest in his company on two separate occasions. Mead advised this despite having knowledge of financial and managerial difficulties. Company went into receivership and Day suffered loss.

- Two failures: to advise Day to take independent legal advice, and failure to advise of speculative and hazardous nature of the investment.
- It was argued that second lot of advice M wasn't acting as legal representation - no account of professional services rendered. Not a fair reflection
- In absence of a complete disclosure of conflicts of interest, Mead should not have acted.
- In equity, the relationship is fiduciary. Duty to act with absolute fairness and openness.
- At law, the retainer will impose a contractual obligation to be skilful and careful - liable for damages if breached.
- Contributory negligence - no reason why assessment of damages shouldn't take account of P's responsibility (mature man of business).

Farrington

Defendant firm acted for P in a personal injury claim. P asked firm for investment advice and was advised to invest via the firm's nominee company. Firm did not disclose that the company was one of their major clients, and did not advise P to seek independent advice.

- Solicitor can act for both sides only if there is informed consent. Not just knowledge that they're acting, but:
 - Advice from an independent solicitor on whether it is appropriate to continue if solicitor is acting on both sides
- Fiduciary relationship exists wherever there is a relationship of confidence such that equity imposes duties on the person on whom confidence is imposed
- Fiduciary obligations: act in absolute fairness and openness; utmost good faith. Must not make a profit = wider rule that cannot place himself in position where duty and interests conflict. Must not, without informed consent, stand to make any profit/receive any benefit (other than fees)
- Loyalty must be undivided. Cannot usually discharge duties if acting for opposing interests.
 - If conflict in responsibilities, must disclose material facts to both sides and obtain informed consent. In some cases, clients might act in own interests or interests may be unrelated
 - In other cases, it would be professionally improper to act
- Once determined that information should have been disclosed, there is no requirement of causation of loss or reliance.

Frost

Tuiaras owned a modest home. Nephew needed money, so sold house to a company for a purchase price of \$8,000 more than they would buy it back at 6 weeks later. Solicitors were acting for both parties. They advised T not to enter the transaction and strongly advised seeking independent advice.

- Argued solicitor cannot prevent free will of clients - what more could solicitors have done?
- Solicitor may contract w client on the basis that the wisdom of the transaction is not within terms of retainer. But there is a difference between advising on the wisdom of a transaction (not required) and the actual and potential legal effects of a transaction (required).

McKaskell

Dispute w neighbours about the legal status of a driveway and fence. Relationship degraded significantly and turned physical at some point. Neighbour's solicitor made a disparaging comment about the M behaviour being better suited to somebody living in a state housing area. M's solicitor was concerned about the comment, sought advice from colleagues at a social event and a partner. Solicitor sent the letter back and gave opportunity to rewrite it M found out about it, litigation began to turn on contents of letter not being disclosed.

- Duty to reveal all material information concerning client's affairs. Clearly thought it was material here and should have been disclosed - even though behaviour was in good faith.
- Fiduciary relationship demands complete disclosure. Reveal all circumstances which might affect client's affairs.
- It was not a breach of confidence to seek advice from colleagues while not disclosing any material identifying facts about the clients.
- The firm could still be responsible: simply delegating a task does not dilute the obligations of the firm.

Clark Boyce

Mother mortgages house for son. Solicitor acting for both the mother and son.

- There is no general rule that a solicitor should never act for both sides. They may act if informed consent - consent given in knowledge that there was a conflict, and as a result the solicitor may be disabled from disclosing full knowledge or giving advice.
- Essential to determine precisely what services are required. Mother only needed conveyancing and explain the legal ramifications (ie, wisdom vs legal effects)
- She was fully aware of risks and rejected independent advice.
- No contractual duty to advise on wisdom of transaction, so no fiduciary duty to give that advice.

Sims

Intermingling of solicitors' representation.

- Client must be fully informed conflicts; delegation does not dilute obligations of the firm
- Fiduciary duties are equitable. Presumption that transactions involving solicitor will not be upheld unless the solicitor can establish it was the free exercise of solicitor's will and no influence by solicitor. Client must be put in the position to make an informed decision knowing all implications - solicitor will be hard put to give disinterested advice.
- Regulations and rules are not a measure of fulfilling fiduciary obligations, but are reflective of heavy responsibilities which legislation and peer-recognition lace on practitioners

Witten-Hannah

Sexual relationship between the solicitor and client.

- In discharging fiduciary duties, could not have a personal interest in the transaction unless C was fully informed of all facts and implications and then consented - sometimes requires independent advice
- A competent solicitor would have advised of risks

Duties to previous clients

Black -

Mr Gazley wanted to act as solicitor for the estate. The case was brought against the estate by family members. He had previously acted for several members of the family and consequently knew a lot about them.

- Justice should be done, and be seen to be done. Counsel cannot act in a case where he has a conflict, or appears to have a conflict.
- Test; what would reasonable members of the public consider? They would not consider justice to be done if solicitor acted. Mr G should have disqualified himself from acting in accordance w duty to the court.
- Court has inherent power to administer its procedures.

Bolkiah -

KPMG was providing auditing and litigation services to BIA. The Brunei govt investigated BIA and employed KPMG in this investigation. KPMG took the view they could act - had stopped acting for BIA two months prior, and instigated a Chinese wall/info barrier. BIA had not been informed that KPMG was acting and consent had not been sought.

- CA found that because of the precautions, there was no real or appreciable risk of disclosure of confidential info
- HoL overruled: continuing professional duty to preserve confidential info imparted during that relationship. The duty is to keep info confidential - not just to take practical steps to do so.
- Where a former client establishes that a firm has confidential info and disclosure hasn't been consented to, and the firm is proposing to act for another client w adverse interests where info might be relevant, Court will intervene UNLESS D proves effective (effective = established part of organisational structure, not ad hoc) measures have been taken to ensure no disclosure will occur and there is NO RISK of info being disclosed.

Note: both litigation privilege and legal professional privilege - not solicitor's to waive; client's to waive.

Hana -

Hana was established by Ms Kato. Ms K and Mr Stephens were in a de facto relationship. Mr S left his job cutting flowers to help Ms K set up Hana, which also involved cutting flowers. He was sued for breaching restraint of trade. Hana paid for costs of litigation. Now, the relationship has ended and there is litigation involving break up/business. The solicitor that acted for Mr S before is now acting for Ms K/Hana.

- Barrister argued he did not remember anything about Mr S, would not recognise him on the street, and would not look at the previous files. BUT issue isn't about what solicitor actually knew, it's about what the client might reasonably expect him to know.
- Justice should be seen to be done - will be a risk if a bystander would think it possible a conflict existed.
- B had acted on detailed matters of work; knew his character; contribution to Hana; work info. Memory can come back; he could look at files. Cannot expect client to be reassured by this.
- Delay in bringing the case - a reason was given. Court = there is a conflict here and justice must be seen to be done. Delay is only a factor to be considered in Court's discretion/power in administration of justice.

Table of Rules

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- Chapter 3 - Competence and client service
- Chapter 4 - Availability of lawyers and public retainers
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- Chapter 8 - confidential information
- Chapter 9 - fees
- Chapter 10 - professional dealings
- Chapter 11 - proper professional practice
- Chapter 13 - lawyers as officers of the court

Rule	Content	Cases
Rule 2.1	The overriding duty of a lawyer is as an officer of the Court	<p>Chua - mortgage default. Solicitor filed for an injunction to prevent sale.</p> <ul style="list-style-type: none"> • A lawyer's first and foremost duty is to the court. Spurious claims may be viewed as a breach of this duty. • The lawyer had mislead the Court by trying to get an injunction in a situation where he knew there had already been settlement • As a consequence, solicitor was jointly and severally liable for costs, and the solicitor was referred to the Law Society <p>Gazley - NZCA accidentally left a page out of a bundle. Solicitor on behalf of client issued a writ against the judges claiming wilful/malicious/negligent failure.</p> <ul style="list-style-type: none"> • An officer of the court has an overriding duty to the court to maintain the standards of the profession. The same duty applies when drawing pleadings, conducting subsequent statements, and during the case. • Lawyers have a professional responsibility not to make allegations without sufficient evidence or reasonable belief, so as to uphold the administration of justice and processes of court. <p>Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.</p> <ul style="list-style-type: none"> • Clients may extricate themselves - requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation" • Duty to raise all arguments, however distasteful, that will help the client's case. Overriding duty to the court that will often conflict w client's wishes. • Lawyers must not mislead the court or cast aversions on other parties for which there is no sufficient basis for that information. <p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p> <ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc) • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a

		<p>judge of correctness, only of honesty - must ensure the court is not being misled by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct</p> <ul style="list-style-type: none"> • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
<p>Rule 2.2</p>	<p>Must not obstruct the administration of justice</p>	<p>Gazley - NZCA accidentally left a page out of a bundle. Solicitor on behalf of client issued a writ against the judges claiming wilful/malicious/negligent failure.</p> <ul style="list-style-type: none"> • An officer of the court has an overriding duty to the court to maintain the standards of the profession. The same duty applies when drawing pleadings, conducting subsequent statements, and during the case. • Lawyers have a professional responsibility not to make allegations without sufficient evidence or reasonable belief, so as to uphold the administration of justice and processes of court. <p>Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> • Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. • Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes • If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence.
<p>Rule 2.3</p>	<p>Lawyers must use legal processes only for proper purposes. Must not use for causes of unnecessary embarrassment, distress or inconvenience to another person's reputation, interests or occupation</p>	<p>Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> • Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. • Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes • If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence. <p>Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.</p> <ul style="list-style-type: none"> • Clients may extricate themselves - requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation"

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Rule 2.7	Lawyer must not threaten, expressly or by implication, to make any accusations or disclose something about any person	<p>Taffs- a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> • Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. • Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes • If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence.
Chapter 5	Lawyers must be free and independent from compromising loyalties when providing services to his/her clients	<p>Black - Mr Gazley wanted to act as solicitor for the estate. The case was brought against the estate by family members. He had previously acted for several members of the family and consequently knew a lot about them.</p> <ul style="list-style-type: none"> • Justice should be done, and be seen to be done. Counsel cannot act in a case where he has a conflict, or appears to have a conflict. • Test; what would reasonable members of the public consider? They would not consider justice to be done if solicitor acted. Mr G should have disqualified himself from acting in accordance w duty to the court. • Court has inherent power to administer its procedures.
Rule 6.1	Must not act if there is a more than negligible risk that the lawyer may be unable to discharge obligations owed	<p>Farrington - Defendant firm acted for P in a personal injury claim. P asked firm for investment advice and was advised to invest via the firm's nominee company. Firm did not disclose that the company was one of their major clients, and did not advise P to seek independent advice.</p> <ul style="list-style-type: none"> • Solicitor can act for both sides only if there is informed consent. Not just knowledge that they're acting, but: <ul style="list-style-type: none"> ○ Advice from an independent solicitor on whether it is appropriate to continue if solicitor is acting on both sides • Fiduciary relationship exists wherever there is a relationship of confidence such that equity imposes duties on the person on whom confidence is imposed • Fiduciary obligations: act in absolute fairness and openness; utmost good faith. Must not make a profit = wider rule that cannot place himself in position where duty and interests conflict. Must not, without informed consent, stand to make any profit/receive any benefit (other than fees) • Loyalty must be undivided. Cannot usually discharge duties if acting for opposing interests. <ul style="list-style-type: none"> ○ If conflict in responsibilities, must disclose material facts to both sides and obtain informed consent. In some cases, clients might act in own interests or interests may be unrelated ○ In other cases, it would be professionally improper to act

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<p>Rule 6.1.1</p>	<p>May act for more than one party if prior informed consent</p>	<p>Farrington - Defendant firm acted for P in a personal injury claim. P asked firm for investment advice and was advised to invest via the firm's nominee company. Firm did not disclose that the company was one of their major clients, and did not advise P to seek independent advice.</p> <ul style="list-style-type: none"> Solicitor can act for both sides only if there is informed consent. Not just knowledge that they're acting, but: <ul style="list-style-type: none"> Advice from an independent solicitor on whether it is appropriate to continue if solicitor is acting on both sides Fiduciary relationship exists wherever there is a relationship of confidence such that equity imposes duties on the person on whom confidence is imposed Fiduciary obligations: act in absolute fairness and openness; utmost good faith. Must not make a profit = wider rule that cannot place himself in position where duty and interests conflict. Must not, without informed consent, stand to make any profit/receive any benefit (other than fees) Loyalty must be undivided. Cannot usually discharge duties if acting for opposing interests. <ul style="list-style-type: none"> If conflict in responsibilities, must disclose material facts to both sides and obtain informed consent. In some cases, clients might act in own interests or interests may be unrelated In other cases, it would be professionally improper to act Once determined that information should have been disclosed, there is no requirement of causation of loss or reliance.

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6.1.2	If it becomes apparent the lawyer can no longer discharge a duty, must inform all clients and terminate retainers	<p>Farrington - Defendant firm acted for P in a personal injury claim. P asked firm for investment advice and was advised to invest via the firm's nominee company. Firm did not disclose that the company was one of their major clients, and did not advise P to seek independent advice.</p> <ul style="list-style-type: none"> • Solicitor can act for both sides only if there is informed consent. Not just knowledge that they're acting, but: <ul style="list-style-type: none"> ○ Advice from an independent solicitor on whether it is appropriate to continue if solicitor is acting on both sides • Fiduciary relationship exists wherever there is a relationship of confidence such that equity imposes duties on the person on whom confidence is imposed • Fiduciary obligations: act in absolute fairness and openness; utmost good faith. Must not make a profit = wider rule that cannot place himself in position where duty and interests conflict. Must not, without informed consent, stand to make any profit/receive any benefit (other than fees) • Loyalty must be undivided. Cannot usually discharge duties if acting for opposing interests. <ul style="list-style-type: none"> ○ If conflict in responsibilities, must disclose material facts to both sides and obtain informed consent. In some cases, clients might act in own interests or interests may be unrelated ○ In other cases, it would be professionally improper to act • Once determined that information should have been disclosed, there is no requirement of causation of loss or reliance.
6.1.3	May continue to act for one client, provided that other clients, after independent advice, give informed consent, and no duties have been or will be breached	<p>Farrington - Defendant firm acted for P in a personal injury claim. P asked firm for investment advice and was advised to invest via the firm's nominee company. Firm did not disclose that the company was one of their major clients, and did not advise P to seek independent advice.</p> <ul style="list-style-type: none"> • Solicitor can act for both sides only if there is informed consent. Not just knowledge that they're acting, but: <ul style="list-style-type: none"> ○ Advice from an independent solicitor on whether it is appropriate to continue if solicitor is acting on both sides • Fiduciary relationship exists wherever there is a relationship of confidence such that equity imposes duties on the person on whom confidence is imposed • Fiduciary obligations: act in absolute fairness and openness; utmost good faith. Must not make a profit = wider rule that cannot place himself in position where duty and interests conflict. Must not, without

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<p>Rule 6.2</p>	<p>People at the same firm can't act for more than one party</p>	
<p>Rule 6.3</p>	<p>A chinese wall...</p>	
<p>Chapter 7</p>	<p>Must promptly disclose all info which the lawyer has that is relevant to the matter engaged in by client (footnote cites McKaskell)</p>	<p>McKaskell</p> <p>Dispute w neighbours about the legal status of a driveway and fence. Relationship degraded significantly and turned physical at some point. Neighbour's solicitor made a disparaging comment about the M behaviour being better suited to somebody living in a state housing area. M's solicitor was concerned about the comment, sought advice from colleagues at a social event and a partner. Solicitor sent the letter back and gave opportunity to rewrite it M found out about it, litigation began to turn on contents of letter not being disclosed.</p> <ul style="list-style-type: none"> ● Duty to reveal all material information concerning client's affairs. Clearly thought it was material here and should have been disclosed - even though behaviour was in good faith. ● Fiduciary relationship demands complete disclosure. Reveal all circumstances which might affect client's affairs. ● It was not a breach of confidence to seek advice from colleagues while not disclosing any material identifying facts about the clients. ● The firm could still be responsible: simply delegating a task does not dilute the obligations of the firm. <p>Clark Boyce</p> <p>Mother mortgages house for son. Solicitor acting for both the mother and son.</p> <ul style="list-style-type: none"> ● There is no general rule that a solicitor should never act for both sides. They may act if informed consent - consent given in knowledge

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Rule 7.1	Reasonable steps so client understands retainer	
Rule 7.3	Disclosure not required if consent; risk health and safety; breach law; relates to proposed retainer which has been declined	
Rule 7.4	Cannot receive info on the basis that it will not be disclosed to clients unless the client has informed consent	
Rule 8.1	Duty of confidence extends from time of disclosure indefinitely, even after there ceases to be a solicitor-client relationship	<p>Black - Mr Gazley wanted to act as solicitor for the estate. The case was brought against the estate by family members. He had previously acted for several members of the family and consequently knew a lot about them.</p> <ul style="list-style-type: none"> ● Justice should be done, and be seen to be done. Counsel cannot act in a case where he has a conflict, or appears to have a conflict. ● Test; what would reasonable members of the public consider? They would not consider justice to be done if solicitor acted. Mr G should have disqualified himself from acting in accordance w duty to the court. ● Court has inherent power to administer its procedures. <p>Bolkiah - KPMG was providing auditing and litigation services to BIA. The Brunei govt investigated BIA and employed KPMG in this investigation. KPMG took the view they could act - had stopped acting for BIA two months prior, and instigated a Chinese wall/info barrier. BIA had not been informed that KPMG was acting and consent had not been sought.</p> <ul style="list-style-type: none"> ● CA found that because of the precautions, there was no real or appreciable risk of disclosure of confidential info ● HoL overruled: continuing professional duty to preserve confidential info imparted during that relationship. The duty is to keep info confidential - not just to take practical steps to do so. ● Where a former client establishes that a firm has confidential info and disclosure hasn't been consented to, and the firm is proposing to act for another client w adverse interests where info might be relevant, Court will intervene UNLESS D proves effective (effective = established part of organisational structure, not ad hoc) measures have been taken to ensure no disclosure will occur and there is NO RISK of info being disclosed.

		<p>Note: both litigation privilege and legal professional privilege - not solicitor's to waive; client's to waive.</p> <p>Hana - Hana was established by Ms Kato. Ms K and Mr Stephens were in a de facto relationship. Mr S left his job cutting flowers to help Ms K set up Hana, which also involved cutting flowers. He was sued for breaching restraint of trade. Hana paid for costs of litigation. Now, the relationship has ended and there is litigation involving break up/business. The solicitor that acted for Mr S before is now acting for Ms K/Hana.</p> <ul style="list-style-type: none"> • Barrister argued he did not remember anything about Mr S, would not recognise him on the street, and would not look at the previous files. BUT issue isn't about what solicitor actually knew, it's about what the client might reasonably expect him to know. • Justice should be seen to be done - will be a risk if a bystander would think it possible a conflict existed. • B had acted on detailed matters of work; knew his character; contribution to Hana; work info. Memory can come back; he could look at files. Cannot expect client to be reassured by this. • Delay in bringing the case - a reason was given. Court = there is a conflict here and justice must be seen to be done. Delay is only a factor to be considered in Court's discretion/power in administration of justice.
<p>Rule 8.7.1</p>	<p>lawyer must not act for client against former client or the lawyer or any other member of lawyer's practice where:</p> <p>a) Practice or lawyer in practice holds confidential info</p> <p>b) disclosure of info would be likely to adversely affect former client</p> <p>c) more than negligible risk of disclosure</p> <p>d) fiduciary obligation owed to former client would be undermined</p>	<p>Black - Mr Gazley wanted to act as solicitor for the estate. The case was brought against the estate by family members. He had previously acted for several members of the family and consequently knew a lot about them.</p> <ul style="list-style-type: none"> • Justice should be done, and be seen to be done. Counsel cannot act in a case where he has a conflict, or appears to have a conflict. • Test; what would reasonable members of the public consider? They would not consider justice to be done if solicitor acted. Mr G should have disqualified himself from acting in accordance w duty to the court. • Court has inherent power to administer its procedures. <p>Hana - Hana was established by Ms Kato. Ms K and Mr Stephens were in a de facto relationship. Mr S left his job cutting flowers to help Ms K set up Hana, which also involved cutting flowers. He was sued for breaching restraint of trade. Hana paid for costs of litigation. Now, the relationship has ended and there is litigation involving break up/business. The solicitor that acted for Mr S before is now acting for Ms K/Hana.</p> <ul style="list-style-type: none"> • Barrister argued he did not remember anything about Mr S, would not recognise him on the street, and would not look at the previous files. BUT issue isn't about what solicitor actually knew, it's about what the client might reasonably expect him to know. • Justice should be seen to be done - will be a risk if a bystander would think it possible a conflict existed. • B had acted on detailed matters of work; knew his character; contribution to Hana; work info. Memory can come back; he could look at files. Cannot expect client to be reassured by this.

		<ul style="list-style-type: none"> Delay in bringing the case - a reason was given. Court = there is a conflict here and justice must be seen to be done. Delay is only a factor to be considered in Court's discretion/power in administration of justice.
Rule 8.7.2	Confidentiality not breached if firm has effective information barriers	<p>Bolkiah -</p> <p>KPMG was providing auditing and litigation services to BIA. The Brunei govt investigated BIA and employed KPMG in this investigation. KPMG took the view they could act - had stopped acting for BIA two months prior, and instigated a Chinese wall/info barrier. BIA had not been informed that KPMG was acting and consent had not been sought.</p> <ul style="list-style-type: none"> CA found that because of the precautions, there was no real or appreciable risk of disclosure of confidential info HoL overruled: continuing professional duty to preserve confidential info imparted during that relationship. The duty is to keep info confidential - not just to take practical steps to do so. Where a former client establishes that a firm has confidential info and disclosure hasn't been consented to, and the firm is proposing to act for another client w adverse interests where info might be relevant, Court will intervene UNLESS D proves effective (effective = established part of organisational structure, not ad hoc) measures have been taken to ensure no disclosure will occur and there is NO RISK of info being disclosed. <p>Note: both litigation privilege and legal professional privilege - not solicitor's to waive; client's to waive.</p>
Rule 8.7.3	Effective information barriers = only a negligible risk of confidential info being disclosed	<p>Bolkiah -</p> <p>KPMG was providing auditing and litigation services to BIA. The Brunei govt investigated BIA and employed KPMG in this investigation. KPMG took the view they could act - had stopped acting for BIA two months prior, and instigated a Chinese wall/info barrier. BIA had not been informed that KPMG was acting and consent had not been sought.</p> <ul style="list-style-type: none"> CA found that because of the precautions, there was no real or appreciable risk of disclosure of confidential info HoL overruled: continuing professional duty to preserve confidential info imparted during that relationship. The duty is to keep info confidential - not just to take practical steps to do so. Where a former client establishes that a firm has confidential info and disclosure hasn't been consented to, and the firm is proposing to act for another client w adverse interests where info might be relevant, Court will intervene UNLESS D proves effective (effective = established part of organisational structure, not ad hoc) measures have been taken to ensure no disclosure will occur and there is NO RISK of info being disclosed. <p>Note: both litigation privilege and legal professional privilege - not solicitor's to waive; client's to waive.</p>
Rule 10.1		
Chapter 11 -	Proper professional practice: must be administered in a manner to assure duties... are adhered to	

	and reputation of legal profession is preserved	
Rule 11.1	avoid miselading and deceptive conduct	
Rule 11.2	avoid directly contacting prospective client in a way that is intrusive, offensive or inappropriate - or if they know that they don't want to be contacted	
Rule 11.3	lawyer in practice must ensure that conduct of the practice/employees is at all times competently supervised and managed by someone who is qualified to practice	
Chapter 13	Subject to the duty to the court, a lawyer has the duty to act in the best interests of their client	<p>Chua - mortgage default. Solicitor filed for an injunction to prevent sale.</p> <ul style="list-style-type: none"> • A lawyer's first and foremost duty is to the court. Spurious claims may be viewed as a breach of this duty. • Acting in the best interests of the client does not extend so far as to allow the lawyer to raise a spurious claim, or to allow the court to be misled. • The lawyer had misled the Court by trying to get an injunction in a situation where he knew there had already been settlement • As a consequence, solicitor was jointly and severally liable for costs, and the solicitor was referred to the Law Society <p>Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.</p> <ul style="list-style-type: none"> • Clients may extricate themselves - requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation" • Duty to raise all arguments, however distasteful, that will help the client's case. Overriding duty to the court that will often conflict w client's wishes. • Lawyers must not mislead the court or cast aversions on other parties for which there is no sufficient basis for that information. <p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p> <ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery

		<p>continues until case ends (may alter case; mislead other party etc)</p> <ul style="list-style-type: none"> • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a judge of correctness, only of honesty - must ensure the court is not being mislead by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
<p>Rule 13.1</p>	<p>Honesty to the court: lawyers must not mislead or deceive the court</p>	<p>Chua - mortgage default. Solicitor filed for an injunction to prevent sale.</p> <ul style="list-style-type: none"> • A lawyer's first and foremost duty is to the court. Spurious claims may be viewed as a breach of this duty. • The lawyer had mislead the Court by trying to get an injunction in a situation where he knew there had already been settlement • As a consequence, solicitor was jointly and severally liable for costs, and the solicitor was referred to the Law Society <p>Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.</p> <ul style="list-style-type: none"> • Clients may extricate themselves - requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation" • Duty to raise all arguments, however distasteful, that will help the client's case. Overriding duty to the court that will often conflict w client's wishes. • Lawyers must not mislead the court or cast aversions on other parties for which there is no sufficient basis for that information. <p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p> <ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc) • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a judge of correctness, only of honesty - must ensure the court is not being mislead by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
<p>Rule 13.2</p>	<p>Lawyers must not act in a way that undermines the processes of the court</p>	<p>Chua - mortgage default. Solicitor filed for an injunction to prevent sale.</p> <ul style="list-style-type: none"> • A lawyer's first and foremost duty is to the court. Spurious claims may be viewed as a breach of this duty. • The lawyer had mislead the Court by trying to get an injunction in a situation where he knew there had already been settlement. This wastes the time and resources of the Court and undermines the integrity of the

		<p>process.</p> <ul style="list-style-type: none"> As a consequence, solicitor was jointly and severally liable for costs, and the solicitor was referred to the Law Society <p>Gazley - NZCA accidentally left a page out of a bundle. Solicitor on behalf of client issued a writ against the judges claiming wilful/malicious/negligent failure.</p> <ul style="list-style-type: none"> An officer of the court has an overriding duty to the court to maintain the standards of the profession. The same duty applies when drawing pleadings, conducting subsequent statements, and during the case. Lawyers have a professional responsibility not to make allegations without sufficient evidence or reasonable belief, so as to uphold the administration of justice and processes of court. <p>Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence. <p>Hana -</p> <p>Hana was established by Ms Kato. Ms K and Mr Stephens were in a de facto relationship. Mr S left his job cutting flowers to help Ms K set up Hana, which also involved cutting flowers. He was sued for breaching restraint of trade. Hana paid for costs of litigation. Now, the relationship has ended and there is litigation involving break up/business. The solicitor that acted for Mr S before is now acting for Ms K/Hana.</p> <ul style="list-style-type: none"> Barrister argued he did not remember anything about Mr S, would not recognise him on the street, and would not look at the previous files. BUT issue isn't about what solicitor actually knew, it's about what the client might reasonably expect him to know. Justice should be seen to be done - will be a risk if a bystander would think it possible a conflict existed. B had acted on detailed matters of work; knew his character; contribution to Hana; work info. Memory can come back; he could look at files. Cannot expect client to be reassured by this. Delay in bringing the case - a reason was given. Court = there is a conflict here and justice must be seen to be done. Delay is only a factor to be considered in Court's discretion/power in administration of justice.
<p>Rule 13.3</p>	<p>Subject to overriding duty to the court, lawyers must obtain and follow client's</p>	<p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p>

	instructions AFTER the client is informed by the lawyer of the nature of decisions to be made and their consequences	<ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc) • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a judge of correctness, only of honesty - must ensure the court is not being misled by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
Rule 13.5.1	Lawyers must not act in proceedings if they have to give contentious evidence	<p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p> <ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc) • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a judge of correctness, only of honesty - must ensure the court is not being misled by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
Rule 13.8	Must not attack a person's reputation without good cause in court documents or in documents filed in proceeding	<p>Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> • Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. • Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes • If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence. <p>Y v M - parents had separated. Previously had an informal custody arrangement. M wanted to change this due to behavioural issues after spending time with F. Partner in firm asked if it could be due to sexual abuse. Urgent application in Family Court on this basis.</p> <ul style="list-style-type: none"> • Clients may extricate themselves - requisite degree of caution or mild scepticism. The partner had certainly not undertaken the "fullest investigation"

		<ul style="list-style-type: none"> • Duty to raise all arguments, however distasteful, that will help the client's case. Overriding duty to the court that will often conflict w client's wishes. • Lawyers must not mislead the court or cast aspersions on other parties for which there is no sufficient basis for that information.
Rule 13.9	Discovery and privilege	<p>Vernon - P seeking damages for nervous shock after witnessing his daughters die in failed car rescue. After trial concluded but before judgment, an anonymous person sent info from a Family Court decision saying P's condition had materially improved and counsel had been aware of this.</p> <ul style="list-style-type: none"> • A party who, after filing an affidavit of docs, finds a document that should have been disclosed is bound to inform his opponent. Duty of discovery continues until case ends (may alter case; mislead other party etc) • Obligation to put all relevant law before the court. This does not extends to facts - this is why duty of discovery is important. Duty of counsel to make any honest endeavour to succeed (put forward or withhold whatever evidence they want), but cannot mislead on the facts. • Must advocate for client to best ability without making yourself a judge of correctness, only of honesty - must ensure the court is not being misled by a failure to correct an incorrect appreciation which the court may otherwise have as a result of counsel's conduct • Where there is a danger the court will be misled, duty of counsel to advise client that disclosure should be made. If client refuses, counsel cannot act for them further.
Rule 13.10.8	Must not suggest that false or misleading evidence should be given, or that evidence should be suppressed	<p>Taffs - a boy was kidnapped and robbed after school one day, and then forced to go round to other shops to steal money. D alleges the story is false and they met in the toilets; paid money in exchange for sexual favours. D's lawyer called the mother and told her he had impeccable witnesses that demonstrated her son was lying and said he would "mince him up" and "crucify him" in court tomorrow and have him "publicly humiliated as a liar and a homosexual". Suggested that she talk to the Crown and decline to give evidence, or say he had difficulty in identifying D. BUT the lawyer genuinely believed D's story.</p> <ul style="list-style-type: none"> • Dangerous to allow a lawyer (perhaps uncritically espousing his client's case and not making proper inquiries of instructions) to threaten to use legal proceedings to publicly humiliate. • Even if he genuinely believed client, this would take the role of 'judging' away from the judge and undermine court processes • If V had refused to give evidence, the outcome may have been different. There is no suggestion of a miscarriage of justice because V gave evidence, and it's not in the public interest that V be deterred from giving evidence.

Duty to expedite proceedings - won't order costs if due to negligence etc, but if intentional they will.
Compliance w timetable is compliance w a court order

Examples of practice scenarios

Failure to disclose information discovered at some point after discovery has concluded

- Rule 2 - uphold rule of law and facilitate administration of justice
- Rule 2.1 - overriding duty of lawyer is as an officer of the court
- Rule 13 - overriding duty is to the court. Subject to this, act in the best interests of his/her client without regard to personal interests of the lawyer
- Rule 13.1 - absolute duty of honesty to the court, must not mislead or deceive
- Rule 13.2 - must not act in a way that undermines court processes or dignity of judiciary
- Rule 13.3 - subject to overriding duty to court, must obtain and follow instructions on significant decisions in respect of conduct of litigation. Should be taken after informed of nature of decisions and consequences
- Rule 13.9 - must, to best of ability, ensure discovery obligations are complied with. Must not continue to act if, to lawyer's knowledge, breach of discovery obligations by client
- Rule 13.9.1 - must advise of continuing nature of discover obligations up to and including the time of final judgment
- Rule 13.9.2 - must not claim privilege unless there are proper grounds for doing so

Misleading the court

- Rule 2 - uphold rule of law and facilitate administration of justice
- Rule 2.1 - overriding duty of lawyer is as an officer of the court
- Rule 5.1 - professional judgment of a lawyer must at all times be exercised within the bounds of the law and the professional obligations of lawyer solely for client benefit
- Rule 11 - practice administered in a manner that ensures that the duties to court and existing, prospective and former clients are adhered to, and reputation of legal profession is preserved
- Rule 11.1 - no misleading or deceptive conduct
- Rule 13 - overriding duty is to the court. Subject to this, act in the best interests of his/her client without regard to personal interests of the lawyer
- Rule 13.10 - must not adduce false evidence
- Rule 13.11 - put all relevant law before the court

Processes of the court/administration of justice

- Rule 2 - uphold rule of law and facilitate administration of justice
- Rule 2.1 - overriding duty of lawyer is as an officer of the court
- Rule 2.3 - use legal processes only for proper purposes
- Rule 2.7 - threats
- Rule 5.1 - professional judgment of a lawyer must at all times be exercised within the bounds of the law and the professional obligations of lawyer solely for client benefit
- Rule 13 - overriding duty is to the court. Subject to this, act in the best interests of his/her client without regard to personal interests of the lawyer
- Rule 13.1 - absolute duty of honesty to the court, must not mislead or deceive
- Rule 13.2 - must not act in a way that undermines court processes or dignity of judiciary
- Rule 13.5 - must not act if lawyer may be required to give evidence of a contentious nature
- Rule 13.6 - if becomes clear evidence of contentious nature, must immediately inform court and cease acting
- Rule 13.8 - must not attack a person's reputation without good cause

- Rule 13.8.1 - must not be party to filing any document in court alleging reprehensible conduct unless taken appropriate steps to ensure reasonable grounds for making allegation exist

Acting against a former client

- Rule 5 - lawyer must be independent and free from compromising influences or loyalties
- Rule 5.1 - relationship of confidence and trust that must never be abused
- Rule 8.1 - duty of confidence arises when a person makes a disclosure to a lawyer and continues indefinitely after they cease to be a client
 - 8.1.1 - after death, right to confidentiality passes to client's personal representatives
- Rule 8.4: disclosure permitted if:
 - Authorised; about anticipated commission of crime; necessary to seek guidance from another lawyer in course of proper professional conduct
- Rule 8.7 - must not use information that is confidential to a client for the benefit of any other person or the lawyer
- Rule 8.7.1 - must not act for a client against a former client of the lawyer or another member of practice where they hold confidential info, disclosure would affect former client adversely; more than negligible risk of disclosure; fiduciary obligation would be undermined
- Rule 8.7.2 - not breached if effective info barrier
- Rule 8.7.3 - effective when negligible risk that confidential info will be disclosed

Lawyer's interests

- Rule 5 - lawyer must be independent and free from compromising influences or loyalties
- Rule 5.1 - relationship of confidence and trust that must never be abused
- Rule 5.4 - must not act if conflict or risk of conflict between interests of lawyer and interests of client
- Rule 5.4.1 - where interest that touches on a matter... existence must be disclosed regardless of whether a conflict exists
- Rule 5.4.2 - not act for client in T where lawyer has an interest unless interests correspond in all respects
- Rule 5.4.3 - must not enter financial, business or property transaction or relationship w client if possibility trust and confidence being compromised
- Rule 5.4.4 - if such a transaction entered, advise client of right to receive independent advice and explain if conflict arises, must cease to act.
- Rule 5.5 - conflicting business interests
- Rule 5.6 - ensure existence of a close personal relationship with a third party doesn't compromise discharge of duties owed to client
- Rule 5.7- must not enter an intimate personal relationship w client where to do so could be inconsistent w trust and confidence

Acting for both parties

- Rule 5 - lawyer must be independent and free from compromising influences or loyalties
- Rule 5.1 - relationship of confidence and trust that must never be abused
- Rule 5.4 - must not act if conflict or risk of conflict between interests of lawyer and interests of client
- Rule 6.1 - must not act for more than 1 client where more than negligible risk may be unable to discharge obligations

- Rule 6.1.1 - may act where prior informed consent is obtained
- Rule 6.1.2 - if apparent no longer discharge obligations, must immediately inform both clients and terminate retainers
- Rule 6.1.3 - or continue to act for one client if other clients, after receiving independent advice, give informed consent
- Rule 6.3 - info barrier doesn't affect application or rule 6.1 or 6.2
- Rule 13.6 - lawyer or lawyers who are members of the same practice must not act in dispute for 2 or more parties whose interests are not the same or where they are unable to ensure the discharge of any duty owed
- Rule 13.6.1 - if become apparent they will not be able to ensure discharge of all duties, must stop acting for all parties immediately
- Rule 13.6.2 - can continue acting if, after receiving independent advice, gives informed consent at time dispute arises

Failing to disclose information to a current client

- Rule 2 - uphold rule of law and facilitate administration of justice
- Rule 2.1 - overriding duty of lawyer is as an officer of the court
- Rule 5.1 - professional judgment of a lawyer must at all times be exercised within the bounds of the law and the professional obligations of lawyer solely for client benefit
- Rule 7 - must promptly disclose all info the lawyer has or acquires that is relevant to the matter
- Rule 7.2 - promptly answer requests for information
- Rule 7.3 - not required to disclose if: client given informed consent to non-disclosure; would place health and safety of client or any other person at risk; would breach law; relates to proposed retainer the lawyer has declined
- Rule 13 - overriding duty is to the court. Subject to this, act in the best interests of his/her client without regard to personal interests of the lawyer
- Rule 13.3 - subject to overriding duty to court, must obtain and follow instructions on significant decisions in respect of conduct of litigation. Should be taken after informed of nature of decisions and consequences

Supervision and management

- Rule 11.3 - a lawyer in practice must ensure conduct of practice and conduct of employees is at all times competently supervised and managed by a lawyer who is qualified to practice