

LAA 3064
MOOT/MOCK AND PLACEMENT



DUTIES TO CLIENTS



CONTENTS

- Introduction
- Duty to Accept Brief
- Duty to Represent Unless Embarrassed
- Duty to Uphold Interest of Client
- Duty to Disclose all circumstances to Client
- Duty of Skill and Care Towards Client
- Conflict of Interest.
- Other duties
- Conclusion

Introduction

- Lord Brougham said: An A&S by the sacred duty which he owes to his client knows in the discharge of that office but one person in the world- that client and none other. He must not regard the alarm, the suffering, the torment, the destruction which he may bring on any other.

Cont...

- Duties- It refers to duties of lawyer in his professional capacity which carries liabilities. Peguam syarie has many duties towards his clients. Governed by the LPA, LPPER or Etika Peguam Syarie.
- Clients- Any person, individual or body corporate who engages professional service with the lawyer. Al-wakalah bil or khusumah Retainer (solicitor-client relationship).

Duty To Accept Brief

- The Cab Rank Rule-Rule 2 of LPPER 1978. An A&S shall give advice on or accept brief in the courts in which he professes to practice.
- The lawyer is bound to act for anyone who wishes to retain service.
- Originated from the English Bar in the case of *Rondel v Worsley*-Lord Pearce said:....It would be tragic if our legal system came to provide no reputable defenders, representatives or advisers for the latter. And that would be inevitable result of allowing barristers to pick and choose their clients.

Cont....

- Reason i). To ensure that anyone who requires a lawyer will get one because lawyers are not given the choice of client. (SM must come within the the practice of the practical lawyer.) ii). Lawyers act for the sake of the duty as a lawyer and not because he has a choice to act or not to act.
- This rule only applies if the work “in the courts”. “Contentious matter”.

Exception to the Cab Rank rule

- Rule 3-Not accept if embarrassed-
- Rule 4-In the event of conflict of interest.
- Rule 5- Difficult to maintain, professional independence.
- Rule 6-Unable to appear
- Rule 27-Where the outcome will affect in a pecuniary sense.
- Rule 28-It appears that you become material witness in the matter.
- Rule 54-knowingly agree to appear or to act to appear for a party represented by another lawyer.

Duty To Represent Unless Embarrassed.

- R 2-An A&S shall give advice on or accept brief in the courts in which he professes to practice. But special circumstances may justify his refusal at his discretion to accept a particular brief. R3 justifies the refusal.
- What instances would be considered as embarrassment? 1) Where A&S finds he is in possession of confidential information as a result of having previously advised another person in regard to the same matter.
- 2) Where there is some personal relationship between him and a party or a witness in the proceedings.

Cont...

- Rhina Bhar v Malaysian Bar-
- The Bar Council had objected for RR Sethu to represent the Plaintiff on the ground of R3.
Anuar J-
- General rule- member of public authority should not be professionally engaged in any proceedings for which the authority is a party or is directly interested.
- Exception-If exceptional circumstances justify any departure from the general rule, it is the duty of the solicitor to ensure that interests of the authority are already protected.

Cont...

- Surah Al-An'am:152
- “whenever you speak be just even if it affects your own relatives and fulfill your covenant with Allah”.
- Lawyers are discouraged to represent their own relatives in court. But when they represent someone related they should speak and represent justly even it affects their own family.

Duty to Uphold Interest of Client

- At all times, lawyers are duty bound to uphold the interest of the client.
- R16-shall fearlessly uphold the interest of his client without regard to any unpleasant consequences either to himself or to any other person.
- Lawyers are subject to disciplinary action. Section 94 (3)-gross disregard of his client's interest.

Cont...

- Al-wakalah bil khusumah is a Contract of amanah. Lawyers are bound to act for his client to the utmost.
- Prophet SAW said *“I’m only a human being and you bring your disputes to mePartisanship-moral position of lawyer is irrelevant.*
- The scope of duty: 1) carry out instruction in the matter to which the retainer relates with diligence and proper means. 2) consult with client on related matter 3) keep his client informed and comply with reasonable request from him.

Duty to Disclose all circumstances to Client

- Rule 25-To disclose to the client all circumstances of his relation to the parties and any interest in connection with the controversy which may influence the client in the selection of counsel.
- Rule 23- Not to conceal facts.To supply court all information as to the probable length of a case and the possibility of a settlement.

Cont....

- What things to disclose?
- Rights-civil rights, human rights.
- Liabilities-guilty, innocent, negligence.
- Options- to sue or not to sue, to plead guilty or not and etc.
- Legal remedies- compensation, fine, injunction.
- Steps to be taken in obtaining the remedy- cost, probable length, documents and etc.

Cont...

- Surah An-Nisa':135 *“O you who believe stand out firmly for justice as witness to Allah even as against yourselves or your parent or you kin and whatever it be against rich or poor”* .
- Prophet said' if you see any evil deed, prevent it by your hand if not by your tongue and if not by your heart.....
- Therefore, lawyers are obligated to disclose all relevant information to their clients in order to ensure that their interests are protected.

Duty of Skill and Care Towards Client

- **Peguanam Syarie Rules 1991 Selangor**
- The qualifications for admission as syarie lawyer will be a person who holds a bachelor degree in syariah, has completed a professional training recognized by the Majlis in the in the field of Islamic judiciary, Knowledgeable in Islamic Law.
- Those requirements mirror the important ness of the duty to preserve skill and care towards client by the lawyers. Rule 4 Etika Peguanam Syarie- Duty to improve knowledge in law and syariah.

Cont...

- Prophet SAW said:
- *“I’m only a human being and you bring your disputes*
- Prophet recognized the expertise of some individual in representing something but it should not be misused.
- Surah An Nisaa:58. *“ Allah commands you to render back your trusts to those to whom they are due and when you judge between mankind that you judge with justice, verily how excellent is the teaching which Allah gives to you for Allah is He who hears and sees all things”.*

Cont....

- The lawyer must be honest and competent in order to ensure that judges are able to deal with the cases that come before them justly and competently.
- A lawyer should refuse to accept any case that is beyond his expertise because this will help the client's money and time and will inspire client confidence in the honesty of the profession.

Conflict of Interest.

- Conflict of 2 or more interests-
- Interest of the lawyers directly or indirectly, interest of the client and interest of justice.
- No A&S to accept brief if professional conduct likely to be impugned, difficult to maintain professional independence, not to appear in a case where he is a witness.
- If there is conflict of interest, it would affect the lawyers in presenting his case and victimize the client's interest.

Not to abuse the Confidence Reposed to Him by Client

- lawyers should not disclose any communication made to him, state the contents of any document in which he has become acquainted with
- unless the client has given consent to do so, in furtherance of any illegal purpose and indications that any crime or fraud has been committed.

Not to withhold client's papers to the Detriment of Clients

- It is the duty of lawyers not to withhold client's papers to the detriment of clients.
- Exception- Right to lien. In order to compel the client to pay legal fees so as to obtain the necessary documents from his solicitors.

Render Proper Account to Client

- Lawyers are required to keep separate accounts namely client's account and office accounts.
- He must never use the money from client's account for his own purpose.
- S 94 (4)- may be found guilty of any offence involving dishonesty, misuse or misappropriation of any money of the client, he might be liable to suspension, struck off and any other order deems fit by the disciplinary board or majlis.

Confidentiality

- **Lawyers must promote and protect their client's interests. This requires free and open communication between them, and a relationship assuring confidentiality. Lawyers maintain confidentiality through a special legal rule, called solicitor-client privilege. By this rule, lawyers cannot disclose any communication they receive from their clients, unless the client gives permission for the lawyer to do so.**

Rules of Professional Conduct

- **Law societies in every province have established codes of conduct that lawyers must obey. Lawyers who do not follow these rules can be disciplined by their law society for professional misconduct, with punishments including fines, reprimands, suspension and disbarment.**

Retainer Agreements

- **Lawyers should discuss their retainer agreements during initial meetings with clients. The retainer represents a contract between the lawyer and the client, preferably in writing, in which the lawyer agrees to provide legal services to the client for a fee.**

Conclusion

- Full responsibilities

- To represent the client with full responsibilities whether as a defendant's or plaintiff's solicitors.
- Pre-trial- To advice for "sulh" or reconciliation.
- During the trial-To assist the court in providing true facts and etc.Punctuality, honest and competent.
- Post trial or after the judgment- To make sure that the Order made by the Court be obeyed by the disputed parties. To file an appeal if dissatisfied with the decision.

Conclusion

- LPA, LPPER and Etika Peguam Syarie laid down general duties of lawyers.
- Muslim lawyers have duties to create a proper image of the profession in the eyes of the public. They should perform their duties to the utmost towards client and at the same time duty to justice is also preserved.
- In preserving the duties it is also important for them to have a good knowledge of the law, skill and care. They should continue to improve and enhance their knowledge and competentness in performing their duties.

Required Reading

- Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia*, 1991 MLJ
- Ahmad Ibrahim, *Al Ahkam (PENGHAKIMAN dan KEPEGUAMAN)*, Dewan Bahasa dan Pustaka, 1997, Kuala Lumpur.
- Relevant statutory legislations such as LPA, LPPER, PSR and Etika Peguam Syarie.
- Relevant cases such as *Rhina Bhar v Malaysian Bar* (1994) 1 MJ 24-

Thank you

**“ Life has an end but
not justice”**