

Assessment 3: Letter of Advice to Client (30%)

MLL113 LEGAL COMMUNICATION AND ETHICAL DECISION MAKING

DUE: FRIDAY 8 OCTOBER 2021 BY 8 PM (AEST/AEDT)

WORD LIMIT: Up to 2,000 WORDS (+10%)



OVERVIEW

This assessment task requires you to write a Letter of Advice to Wendy Bird (the client). This assessment is designed to help you develop your legal problem-solving and research skills, as well as your written communication skills.

You must conduct legal research beyond the prescribed unit materials to provide the advice requested. Legal research requires an investigation into primary and secondary sources of law to produce a credible argument. It is important to ensure that contentions are supported with relevant primary and/or secondary sources of law. **Importantly, the focus of your research must be on the content covered in this unit** – while there *could* be issues arising in other areas of law (e.g., tort law, civil procedure law), your task is to advise Wendy Bird in relation to any potential breaches of **the ethical obligations** that apply to her (as a currently practising Australian Legal Practitioner working as a solicitor in Victoria), which may arise from her conduct.

Your advice must be set out in the form of a Letter of Advice directed to Wendy herself. (See below for a suggested letter of advice structure.)

Please ensure you have carefully read this entire document before you submit Assessment 3.

ASSESSMENT 3: LETTER OF ADVICE – CONTEXT

You are a lawyer working at Virtuous & Co, a law firm which specialises in assisting other lawyers in relation to matters of an ethical nature.

Your task is to **prepare a Letter of Advice to a client, Wendy Bird, advising her in relation to any potential breaches of the ethical obligations that apply to her (as a current practising Australian Legal Practitioner working as a solicitor in Victoria) which may arise from her conduct.** Wendy's conduct is set out in detail below:

Wendy Bird is an Australian Legal Practitioner in Victoria. Wendy practices family law and personal injury litigation. Wendy is currently acting for a client, Wyatt Lang, in a family law matter. Wendy has to prepare and file (lodge) an affidavit on behalf of her client in the Federal Circuit and Family Court of Australia ('FCFOA') by 6 September 2021. Wendy has drafted the affidavit but still needs further information, from her client, Wyatt, to be able to complete it. Some of the paragraphs in her draft affidavit are blank. Wendy has Wyatt come in to the office for an appointment on 3 September 2021 to finalise the affidavit. The 7-page draft affidavit has been printed out and is still in draft form. Wyatt provides Wendy the further information to include in the affidavit. Wendy hand writes some notes on the blank parts of the affidavit. Wendy then asks him to affirm and sign the draft affidavit and tells him she will finalise the affidavit and file it at the FCFOA by the due date. As requested, Wyatt signs the bottom of each page of the draft affidavit and signs the jurat on page 7. Wendy does not witness his signatures or complete the jurat clause on page 7 (as she is required to do). On 6 September 2021 Wendy updates the draft affidavit word document with the new information and prints it out. The new affidavit is now 9 pages long. Rather than get Wyatt to come back in to the office and sign the new affidavit, she cuts out his signatures from the bottom of the pages of the draft affidavit and sticks his signatures with glue on the bottom of the new affidavit. On page 9 of the affidavit, the jurat, Wendy copies and signs Wyatt's signature. Wendy then witnesses the 8 pages with his stuck-on signature on the bottom of the pages and completes (signs as witness and dates) the jurat on page 9. Wendy photocopies the new affidavit and then files the affidavit (lodges it) with the FCFOA, as required, the same day, 6 September 2021. The FCFOA accept the filed affidavit and provide Wendy a sealed copy of the affidavit.

In another matter, that was finalised early in 2020, Wendy was acting for a different client, Ruth Longmuir, in a litigation matter. Wendy sent an invoice to Ruth on 25 March 2020 for \$9,500 for work she completed in the matter. Ruth emailed Wendy on 5 May 2020 asking for her file. Wendy responded stating that Ruth could have the file once the invoice was paid. Ruth paid the invoice on 15 June 2020. Ruth sent three more emails in July, October and December 2020

asking for her file. Ruth has also tried to telephone Wendy, but Wendy did not return her calls as she was too busy with her current client matters and Ruth's matter had been finalised. Wendy sent Ruth an email on 5 January 2021 advising her the file was not stored on site and was being retrieved from an external storage service and that she would send Ruth the file when she received same. In March 2021 Ruth telephoned and left a message with Wendy's receptionist asking for her file. Wendy sent Ruth's file to her by express post on 16 May 2021 together with a tax invoice for Ruth to pay for 'file retrieval and file storage fees' of \$150.00. Wendy had not at any stage (prior to the matter commencing or during the matter) informed Ruth about file storage or retrieval fees.

Wendy is also currently acting for a client named Darlene Shell who has commenced a personal injury claim against her employer for a back injury she suffered in her workplace. In order to fund this litigation, Darlene, who is short on funds, has entered into an agreement with Fund Law. Fund Law is a charitable organisation that provides litigation funding on a 'no win no fee' basis for plaintiffs with strong cases. Wendy, as Darlene's solicitor, was also required to (and did) sign an agreement with Fund Law ('Funding Agreement'). The Funding Agreement contains an undertaking by Wendy to provide Fund Law with progress reports in relation to the litigation at least every three months. Although Wendy promptly provided the first progress report as required on 15 August 2019, she did not provide a second progress report until 18 February 2020. The third progress report was provided by Wendy to Fund Law on 17 November 2020 and a fourth progress report provided on 26 May 2021. The Funding Agreement also required Wendy to advise Fund Law of any significant changes to Darlene's financial circumstances as soon as reasonably possible. During the course of the personal injury proceeding, Darlene received a lump sum payment from WorkCover amounting to approximately \$180,000. Wendy did not inform Fund Law about this WorkCover payment until six months after Darlene had received it.

Importantly, Wendy is only interested in **whether or not she may be liable for any breaches of the ethical obligations which apply to her as a current practising Australian Legal Practitioner working as a solicitor in Victoria**. You must not advise Wendy about the potential consequences flowing from these possible breaches (e.g. being struck off the roll, having her practising certificate suspended, etc) – to be clear: at this point Wendy is only seeking advice in relation to what breaches of her ethical obligations may have occurred as a result of the conduct outlined above.

Please note: Wendy has not breached the duty of confidentiality owed to her clients by seeking advice from Virtuous & Co.

LETTER OF ADVICE – SUGGESTED STRUCTURE

In the discipline of law there is no prescribed structure that a letter of advice must take. The structure will differ depending on the particular law firm's preferences and templates. Below is a suggested structure (this is the same structure set out in the Letter of Advice guide document provided at Step 4.6 of the online weekly content). You can also refer to the Letter of Advice example we discussed in seminars. You must also ensure that your letter of advice complies with the formatting requirements specified in this document.

Letter of Advice - Suggested Structure

*[Name and
address of your
firm, followed by
contact numbers.]*

T: -----

F: -----

[Date of the letter]

*[The client's name and
address should be included
here.]*

File No: *[Include a fictitious file/matter number]*

Dear *[CLIENT]*,

Legal Advice regarding [OVERALL LEGAL ISSUE] *[Note: this is an example only – use your judgement as to what you will include in this subject line. What accurately reflects what the letter is about?]*

Thank you for coming to a meeting at our office on *[DATE]* to discuss *[OVERALL LEGAL ISSUE]*. *[Note: this is an example only. Here you should refer to the last contact you had with the client and then briefly confirm the details of the matter.]*

In terms of *[OVERALL LEGAL ISSUE]*, our advice can be summarised as follows...

*[Note: this should be a **short** one paragraph summary of the key points of your advice/conclusions on the issues, which you then expand on below. Full, grammatically correct sentences must be used. Dot points should not be used here.]*

We have set out our advice in detail below. *[Note: you should not simply adopt this wording. Remember, this is an example only. Make sure you use your own words.]*

Advice Point 1 *[Note: make sure that you do not use the heading 'Advice Point 1'. The headings you use should be a reflection of the issue/what you are about to discuss under that heading. Think carefully about the headings that you use. Remember your audience: what headings may help a client understand and navigate your advice?]*

[Further information about the legal analysis you undertook to determine this advice. In other words, work through the [IRAC problem-solving method](#) for this issue!]

Advice Point 2

[Further information about the legal analysis you undertook to determine this advice. In other words, work through the [IRAC problem-solving method](#) for this issue!]

Advice Point 3

[Further information about the legal analysis you undertook to determine this advice. In other words, work through the [IRAC problem-solving method](#) for this issue!]

If you have any questions, please contact [PERSON] on [CONTACT NUMBER].

Yours faithfully

SIGNATURE

Your name

Job title

INSTRUCTIONS AND IMPORTANT INFORMATION

DUE DATE AND EXTENSION REQUESTS

1. This assessment is due by **8 pm (AEST) on Friday 8 October 2021**.
2. Extension requests must be emailed to the Unit Chair, Michele Tucker michele.tucker@deakin.edu.au prior to the assessment due date and time. Extension requests are granted where there are unforeseen or exceptional circumstances which prevent you from completing the assessment. They are not available as a result of foreseeable work or study commitments. Please see the Assessment Extension Request Procedure on the MLL113 Cloud Site.

<https://d2l.deakin.edu.au/d2l/le/content/1041206/viewContent/5627911/View>

Please note that extensions will NOT be considered by the Unit Chair unless this procedure is followed. You must then complete the Deakin University 2021 Assessment Extension Application Form (Deakin Form)

<https://www.deakin.edu.au/students/faculties/buslaw/student-support/assignment-extensions>

Please ensure you complete all sections, then email the form to your unit chair from your Deakin University student email account before the assessment due date and time. The subject line of your email should include your student id, the unit code and specify that it relates to an extension request; for example, 12345678 MLL113 Assessment 3 Extension Request.

LATE SUBMISSIONS

3. A marking penalty will be applied where the assessment task is submitted after the due date without an approved extension as follows:
 - a. 5% will be deducted from available marks for each day up to five days.
 - b. Where work is submitted more than five days after the due date, the assessment task will not be marked, and the student will receive 0% for this assessment task.'Day' means calendar day.

SUBMISSION AND PLAGIARISM DECLARATION

4. All assessments are to be submitted online via CloudDeakin in the Drop box, a link to which can be found on the assessment page of CloudDeakin (Assessments – Assignments – *'T2 2021 MLL113 Assessment 3 (Individual) Letter of Advice to Client'*). No hard copy submission is required. Should you have technical difficulties submitting via CloudDeakin please contact the IT service desk for assistance (details at

<http://www.deakin.edu.au/about-deakin/administrative-divisions/esolutions/it-help>). If

your difficulties are not resolved in time to enable you to submit by the due date and time, please email your assessment directly to me at **before the due date and time**.

5. When uploading your assignment, name your document using the following syntax: **<your surname_your first name_your Deakin student ID number_[unitcode].doc (or '.docx')**. For example, 'Jones_Barry_123456789_ABC123.doc'. Submitting a hard copy of this assignment is not required.
6. Please ensure that your submission is in .doc, .docx or .pdf format only. Submissions in any other format will not be marked.
7. **It is your responsibility to make sure that you have uploaded the correct file to the Drop box.** As part of your submission, please check that the file you are uploading/have uploaded is in fact Assessment 3 for MLL113.
8. It is possible to submit more than one document to the Drop box. Consequently, if you submit early and then decide you wish to replace your assessment with a modified version, you may do so. The last assessment submitted prior to the due date will be the one that is assessed.
9. Please note that the Drop box folder includes a **plagiarism declaration**. By submitting your assessment, you are indicating acceptance of this declaration. The University regards plagiarism as an extremely serious academic offence. Information about the University's rules in this regard can be found on the assessment page in CloudDeakin (*Resources – Assessment Resources – 'What is plagiarism and collusion?'*).

CONTRIBUTION TO FINAL MARK

10. Assessment Task 3 is worth 30% in total and is compulsory. In accordance with Deakin University Policy, the following marking penalties will apply if you submit an assessment task after the due date without an approved extension: 5% will be deducted from available marks for each day up to five days, and work that is submitted more than five days after the due date will not be marked (you will receive 0% for the task). 'Day' means calendar day.

Your final grade for the unit comprises the sum of the mark from this assessment and your marks from the previous Assessment Task 1 and Assessment Task 2.

WORD LIMIT

11. The word limit for Assessment Task 3 is 2,000 words with a +10% tolerance. This means that your assessment must be at or under 2,200 words. Note: headings and sub-

headings **do** form part of the word count, as do the Letter of Advice 'preliminaries' (i.e. firm name, client address, etc). Footnotes are **not** included in the word count. However, if large amounts of text are included in footnotes (that is, more than simply referencing information) then this *will* be counted towards the word limit. There is no penalty per se for being below the word limit as it is always a matter of quality over quantity.

12. The word limit will be strictly enforced and words in excess of the word limit will not be marked. There are important reasons for imposing and enforcing word limits; they are something lawyers have to grapple with in practice. More importantly, there is an important skill associated with conveying your arguments with brevity. It is often harder to be brief than verbose when formulating an argument, but working to achieve the former will normally produce a better result; as with most things, quality is more important than quantity!

FORMAT, STYLE AND REFERENCING

13. Assessment Task 3 must be presented in the format of a Letter of Advice. A suggested structure has been provided in this document.
14. All pages of the assessment must be numbered. Make sure you also include your student ID number on each page of your assignment. This can be included, for example, in a page footer.
15. Please use a size 11 or 12 font with a line spacing of 1.5.
16. Ensure you place a word count either at the beginning or at the end of your assignment.
17. Once again, please submit Assessment Task 3 in .doc, .docx or .pdf format only. Submissions in any other format will not be marked.
18. Assessment Task 3 must be **footnoted** correctly in accordance with the *Australian Guide to Legal Citation* (4th edition) ('AGLC-4').
19. There is no need to provide a bibliography.

RETURN OF ASSESSMENT

20. You should receive your mark and feedback in relation to Assessment Task 3 on CloudDeakin on **Friday 5 November 2021**, which is the date that Trimester 2 results are released by the University (for all units). In the event of any delay, you will be advised on CloudDeakin.

ASSESSMENT DISCUSSION

21. Any queries regarding this assessment should be posted in the 'Assessment Task 3 – Letter of Advice to Client' discussion forum on CloudDeakin.

MARKING RUBRIC

22. The marking rubric used to assess your work can be viewed on CloudDeakin (*Content – Assessment Resources – Assessment Task 3 – Letter of Advice to Client (30%)*). The descriptors it adopts are designed to assist you to understand why you achieved a particular mark for each aspect of the assessment.