

## Flipping Legal Ethics

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### **Example of classroom activity – interviewing exercise**

The students see this memo: “Steve and Kyla Madison have booked a new client appointment with you at 1 pm in conference room Archway 4. I have checked the firm’s database, and we haven’t acted for either in the past. Steve said it had to do with a mortgage but didn’t give any further details.” The actors are given an extensive scenario involving an inherited house in the wife’s name as the couple’s sole significant asset, and the husband’s dubious idea to quit his job and start a business with the mortgage proceeds. There are young children and the wife does not work outside the home.

The students need to question the actors (and identifying what information is necessary is a challenge for them), provide them with some basic legal advice, and decide whether they can act for both Steve and Kyla. Students experience the challenges of potential joint representation when the interests of the parties are not identical (Kyla is pretty happy with things as they are, but willing to go along with Steve). The possibility of undue influence or abuse (which are not present) need to be explored appropriately. The students need to come up with the words for effective cautions to the clients on the risks of proceeding and the desirability of independent representation.

To successfully complete this exercise, students need to know and apply the legal tests for conflicts of interest in joint representation and informed consent, and be able to use information from other law papers on mortgages, relationship property and undue influence.

### **Example of discussion scenario for class**

Students are told: “A solicitor (S) represents a husband (H) in a division of relationship property proceeding. The settlement includes a provision that two items that had been displayed in the couple’s home and are currently in H’s possession – a crystal vase in the shape of a penguin and a colourful woven wall hanging – will go to his former wife (W). These items have little if any monetary value, but they are of considerable sentimental value to W because her beloved brother gave them to the couple early in their marriage. W’s brother has since died.

The client recently discovered that W was having an affair for the last three years of their marriage. H appeared in S’s office, clearly extremely upset, and said: “I can’t believe W would treat me this way! I know how to get her back though. I am going to smash that vase and burn the wall hanging!” S tried to reason with H, telling him that doing so would be a crime and could get him into trouble, and that he shouldn’t do anything rash that he might regret later. H was adamant. He told S that the items are in a storage unit, but he will get them out over the weekend and destroy them.”

The students need to apply the rules on client confidentiality to this scenario. In New Zealand, the solicitor would have discretion over whether to disclose H’s planned destruction of W’s chattels to someone. The rules provide no guidance on how that discretion should be exercised, and that is explored in class.