

# LAW4309 Ethics: Legislation, Rules & Case Law

## ETHICAL DECISION MAKING PROCESS

	<i>Do general ethics apply to lawyers?</i>	<i>Objective</i>
<b>ADVERSARIAL ADVOCATE</b>	No. Role is defined by adversary framework.	Advocate client's interests as zealously as possible with barest obligation to legality.
<b>RESPONSIBLE LAWYER</b>	No. Role is defined by the spirit of the law.	Make law work as fairly and justly as possible.
<b>MORAL ACTIVIST</b>	Yes. Social theories of justice are important for lawyers.	Advance justice through public interest lawyering, law reform, client counselling – otherwise withdraw.
<b>ETHICS OF CARE</b>	Yes. Character, virtue and relational ethics are important for both lawyers and clients.	Both lawyer and client to preserve relationships and avoid harm.

## OBJECT OF LEGAL PROFESSIONAL UNIFORM LAW

- To promote the administration of justice and an efficient and effective Australian legal profession by ensuring lawyers are competent & maintain high ethical and professional standards in the provision of legal services: s 3(b) Sch 1 Part 1.1 *Uniform Law*.

### *Hierarchy of Duties*

1. Duty to obey the law
2. Duty to the Court
3. Duty to the client
4. Duty to others
5. Duty to other lawyers

## TOPICS

1	Duty to Obey the Law
2	Responsibilities to the Court
3	Specific Responsibilities in Civil Matters
4	Specific Responsibilities in Criminal Matters
5	Confidentiality
6	Conflicts of Interests
7	Trust accounting and costs
8	Admission to practice
9	Complaints, disciplinary proceedings and sanctions

# 1. DUTY TO OBEY THE LAW

ASCR r 3 S has a duty to the Ct & administration of justice; it is **paramount & prevails** to the extent of any inconsistency with any other duty

*Rondel v Worsley* (Lord Denning)  
S owes allegiance to higher cause

ASCR r 4.1.5 S must comply with these rules & the Law.

## Avoid unlawful conduct

ASCR r 5.1 S must not engage in conduct in the course of practice or otherwise,  
BR r 8 which demonstrates that S is not a **fit and proper person** to practice law, which is likely to a *material degree*:

(5.1.1) be **prejudicial** to and **diminish** public confidence and the administration of justice; or

(5.1.2) bring the profession into **disrepute**.

BR r 123 B must not in the course of practice, engage in conduct which constitutes (a) discrimination (b) sexual harassment or (c) workplace bullying.

*ACCC v Sampson*  
S acted for a video store. Pursued customers for their debts. S administered letters of demand to customers, stating [1] video store was entitled to have some of the legal costs to be paid by the customer; [2] if legal action taken to recover debt, customer to pay additional costs; and [3] judgment could be made without formal court order; S could enforce it themselves. Notice was formatted like a document to be filed in court. **This was MDC**.  
FCA found that representations were misleading.

*LSC v Sampson*  
LSC brought proceedings against S for the aforementioned conduct. Found she was in breach (of what is now r 34 ASCR). Found it was a civil issue without dishonesty (she actually sought advice and was told the letters were acceptable).

**CONSEQUENCE**: Received reprimand. Kept PC. Took another ethics course.

## Advising client to the break the law

*LPCC v Segler*  
S advised C he could carry out building projects while unregistered based on past experience where clients did not end up getting prosecuted.

**CONSEQUENCE**: Found guilty of UPC & PM. Paid costs. PC suspended for 3 months.

What should you do?

1. Counsel client against further breaches.
2. Avoid personal involvement.
3. **If you believe they will disregard your advice** – advise them again of your responsibilities; ensure you comply with your confidentiality duties
4. If client persists, terminate instructions.

## Financial reporting obligations

*Financial Transactions Reports Act*  
Lawyers must report transactions greater than \$10,000.