

# Topic 1: The Law in Practice

## Skills a Lawyer should have:

- problem solving
- conflict resolution and mediation
- Communication
- Legal research
- Legal writing and drafting
- People management
- IT IS A SERVICE INDUSTRY

## 6 key aspects of being a lawyer

- non-assumptive thinking (check everything)
- Facts over emotion
- Tolerance of ambiguity - no right answer
- Ability to make connections between facts, documents and laws
- Verbal mapping and ordering
- Automatic devils advocacy

## How to become a lawyer



## Problem Solving

### IRAC

- I - Identify the issues
- R - Identify applicable legal rules
- A - Apply the laws to the facts
- C - Reach a conclusion

If there are multiple issues you need to apply IRAC to every issue

## Fit and Proper Person

### Need for 'fit and proper' in the legal profession

de Jersey CJ in *Re: AJG*

Legal practitioners must exhibit a degree of integrity which engenders in the Court and in clients unquestioning confidence in the completely honest discharge of their professional commitments. Cheating in the academic course which leads to the qualification central to practice and at a time so close to the application for admission must preclude our presently being satisfied of this applicant's fitness."

### Context

- Legal Profession Uniform Law came into operation in NSW and Victoria on July 1<sup>st</sup>, 2015
- Replaced Legal Profession Act 2004 (Vic)
- Admission rules referred to in the Act are called Legal Profession Uniform Admission Rules 2015 (Vic)

### Suitability for admission


#### 17 Prerequisites for compliance certificates

- (1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she—
- (a) has attained the academic qualifications specified under the Admission Rules for the purposes of this section (the *specified academic qualifications prerequisite*); and
  - (b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules for the purposes of this section (the *specified practical legal training prerequisite*); and
  - (c) is a fit and proper person to be admitted to the Australian legal profession.
- 
- (2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession—
- (a) the designated local regulatory authority may have regard to any matter relevant to the person's eligibility or suitability for admission, however the matter comes to its attention; and
  - (b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section.
- 
- (f) whether the person is currently of good fame and character;
  - (g) whether the person is or has been a bankrupt or subject to an arrangement under Part 10 of the Bankruptcy Act or has been an officer of a corporation that has been wound up in insolvency or under external administration;
  - (h) whether the person has been found guilty of an offence including a spent offence in Australia or in a foreign country, and if so –
    - (i) the nature of the offence; and
    - (ii) how long ago the offence was committed; and
    - (iii) the person's age when the offence was committed;


- (i) whether the person has been the subject of any disciplinary action, howsoever expressed, in any profession or occupation in Australia or in a foreign country;
- (j) whether the person has been the subject of disciplinary action, howsoever expressed, in any profession or occupation that involved a finding adverse to the person;
- (k) whether the person is currently unable satisfactorily to carry out the inherent requirements of practice as an Australian legal practitioner;
- (l) whether the person has a sufficient knowledge of written and spoken English to engage in legal practice in this jurisdiction.

## Legal Profession Uniform Admission Rules 2015 (Vic)

### 10 Determining whether someone is a fit and proper person

- (1) For the purposes of section 17(2)(b) of the Uniform Law, the following matters are specified as matters to which the Board must have regard –
  - (a) any statutory declaration as to the person's character, referred to in rule 16;
  - (b) any disclosure statement made by the person under rule 17;
  - (c) any police report provided under rule 18;
  -  (d) any student conduct report provided under rule 19;
  - (e) any certificate of good standing provided under rule 20;

### 17 Disclosure statement

- (1) An application for a compliance certificate must include a statutory declaration by the applicant disclosing any matter to which a reasonable applicant would consider that the Board might regard as not being favourable to the applicant when considering whether the applicant is currently of good fame and character and a fit and proper person to be admitted to the Australian legal profession.
- (2) It is the duty of every applicant to make a full and complete disclosure of every matter referred to in subrule (1). 

## Examples of those not deemed fit and proper

- Re Liveri [2006] QCA 152
- Re Saunders [2011] NTSC 63
- Re OG (2007) VR 164

## Re Liveri [2006] QCA 152

### Procedural History:

- Legal Practitioners Admissions board
- Supreme Court, Court of appeal – withdrew
- Supreme Court, Court of Appeal
- Applicant had not demonstrated she is fit for admission.

### Relevant Law

- Legal Professions Act 2004 (still relevant at such time)
- Supreme Court (Legal Profession Admission) Rules 2004 (QLD)
- RE AJG [2004] QCA 88 – medium mutual citation

### Offence

- findings of academic misconduct on 16 December 2002 and 23 March 2003
- Applicant accepted the findings of academic misconduct
- Involved in plagiarism of an article
- Another finding of further dishonesty on the part of the applicant
- Four days after notification of the allegation Liveri requested to submit her 'original' assignment
- Proof of her claim that she had inadvertently submitted the wrong document
- Assignment was of very poor standard – emphasising she wrote it post allegations
- University reviewed other assignment work submitted by the applicant, leading to an additional two findings of academic misconduct

### Decision

- Deemed: “a blatant case of Academic Misconduct”
- For: plagiarism, lack of insight into the nature and gravity of these findings, insufficient explanation of one of the incidents, concerns of applicants conducts and concerns of her willingness to disclose
- At relevant times, she was a person of mature years – 25 and 27 years old – impacting her fitness
- In future the applicant is likely to be able to demonstrate fitness for admission – if undertaking counselling from senior practitioners

### Orders

- Application adjourned for at least 6 months
- Must re-advertise intention to apply for admission

### Significance of Decision

- Shows how important acknowledgement of wrongdoings is in the eyes of Admissions Board
- Failure to acknowledge is at least as significant as misconduct itself

### Re Saunders [2011] NTSC 63

#### *In the matter of: The Legal Profession Act 2006 (NT)*

- Citation: [2011] NTSC 63 (Medium mutual citation – tells the court and number of the judgement for that year)
- (2011) 29 NTLR 204 (published in a law report citation)

- [1012] ALMD 1069 (published in a law report citation)
- When published you always use the published version
- Authorised law report version should be referred to (NLR in this case)