

<b>WEEK 3: PROFESSIONAL IDENTITY, RESILIENCE</b>	<b>2-4</b>
<ul style="list-style-type: none"> <li>• Professional Identity - Solicitors and barristers <ul style="list-style-type: none"> <li>- Law as business</li> </ul> </li> <li>• Roles of Lawyers</li> <li>• Resilience</li> </ul>	
<b>WEEK 4: ETHICS, JUSTICE AND THE LAW</b>	<b>5-8</b>
<ul style="list-style-type: none"> <li>• Ethics, Morals and Emotions</li> <li>• Defining Justice – distributive, procedural and retributive justice</li> <li>• The law and ‘obedience’</li> <li>• Structural injustice</li> </ul>	
<b>WEEK 5: ACCESS TO JUSTICE – SOCIAL/CULTURAL ISSUES</b>	<b>9-13</b>
<ul style="list-style-type: none"> <li>• Access to Justice - Social/Cultural Issues <ul style="list-style-type: none"> <li>- Bill of rights</li> <li>- SRLs</li> </ul> </li> <li>• Judges</li> <li>• The case of the Speluncean Explorers</li> </ul>	
<b>WEEK 6: ADMISSION AND REGULATION</b>	<b>14-17</b>
<ul style="list-style-type: none"> <li>• Admission to practice</li> <li>• Regulation of Lawyers</li> </ul>	
<b>WEEK 7: DISCIPLINE, ACCESS TO JUSTICE – ECONOMIC ISSUES</b>	<b>18-22</b>
<ul style="list-style-type: none"> <li>• Disciplining of Lawyers <ul style="list-style-type: none"> <li>- Self disclosure</li> </ul> </li> <li>• Access to Justice – Economic Issues <ul style="list-style-type: none"> <li>- Different forms of financial arrangements</li> <li>- Alternatives for those who cannot afford legal services</li> </ul> </li> </ul>	
<b>WEEK 8: LAWYER CLIENT RELATIONSHIP: RETAINER AND DUTY OF REPRESENTATION</b>	<b>23-25</b>
<ul style="list-style-type: none"> <li>• Duty to the Client: Retainer and the Fiduciary Relationship <ul style="list-style-type: none"> <li>- Who is the client</li> <li>- Cost disclosure</li> <li>- Cab rank</li> </ul> </li> </ul>	
<b>WEEK 9: LAWYER CLIENT RELATIONSHIP: DUTY TO ADVISE, DUTY TO ACCOUNT</b>	<b>26-27</b>
<ul style="list-style-type: none"> <li>• Duty to Advise and Reasonable prospects of success</li> <li>• Duty to Account</li> </ul>	
<b>WEEK 10: LAWYER CLIENT RELATIONSHIP: DUTY COMPETENCE + CARE, DUTY LOYALTY</b>	<b>28-32</b>
<ul style="list-style-type: none"> <li>• The meaning of competence <ul style="list-style-type: none"> <li>- Professional indemnity insurance + advocates immunity</li> </ul> </li> <li>• Duty of confidentiality</li> <li>• Legal Professional Privilege</li> <li>• Conflicts of interest</li> </ul>	
<b>WEEK 11: DUTY TO COURT AND PROPER ADMINISTRATION OF JUSTICE</b>	<b>33-37</b>
<ul style="list-style-type: none"> <li>• The lawyer’s duty to the Court <ul style="list-style-type: none"> <li>- Honesty/candour</li> <li>- Pleas of guilt</li> </ul> </li> <li>• Integrity of evidence and Court process</li> <li>• The role of the Crown Prosecutor</li> </ul>	
<b>WEEK 12: LAWYER’S DUTY TO COLLEAGUES AND THIRD PARTIES</b>	<b>38-42</b>
<ul style="list-style-type: none"> <li>• Duties to Third parties and Colleagues <ul style="list-style-type: none"> <li>- Civility</li> </ul> </li> <li>• Independence</li> <li>• Alternative Dispute Resolution (ADR)</li> </ul>	

## PROFESSIONAL IDENTITY

## - SOLICITORS AND BARRISTERS

## Lawyers

CH 1 P 12

- Duty to uphold the law and fearlessly promote the interests of their client
- Have the opportunity to contribute to a just and democratic society by representing clients who might otherwise not have access to justice

## PROFESSIONAL IDENTITY

**Professions Australia:** 'a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level and who are prepared to apply this knowledge and exercise these skills in the interest of others'.

## James and Field p 33

- Characteristics of a person that they present in the professional environment.
- On the surface, it is embodied in the way the individual physically presents themselves, the manner in which they interact, and the attitude they present toward their work. Considers what motivates the individual to carry out their work, which directly influences the manifestation of the aforementioned characteristics.
- Includes self-concept as a member of the legal profession and your internalised beliefs, values, expectations, motives and behaviours that arise from how they perceive yourself. Values include integrity, respect, commitment, responsibility and ethics.
- Important to develop a positive professional identity as lawyers are championing the law, encouraging public confidence and respect, and improving the nature of the legal profession.
- Acquired through law school, legal education, interaction with peers/family

## UNIFORM LAW S 6 DEFINITIONS

- **'Australian lawyer':** a person admitted to the Australian legal profession
- **'Australian legal practitioner':** an Australian lawyer who holds a current Australian practising certificate → **Legal Profession Act 2004 governs**
- **'barrister':** Australian legal practitioner whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only
- **James and Field p 12**
  - Sole practitioners (independence)
  - Specialise in representing client in court
  - Payment of fees and referral of work by solicitors
  - Duties: argue in court, provide advice, confer with solicitors, draft court documents, research
  - Queen's Counsel or Senior Council (silks)
- **'solicitor':** Australian legal practitioner whose Australian practising certificate is NOT subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only
- **James and Field p 11**
  - Office based
  - Duties: interview clients, provide advice, draft documents, research, problem solving (negotiations)
  - Brief barrister for opinion

## STEREOTYPICAL IMAGES

### James and Field Ch 1 p 5-9

- Good at arguing and good at distorting the truth → Must be able to effectively negotiate in their client's best interest and be able to persuade an audience. This can be done through well-research, logical and well-reasoned points, not distorting the truth.
- Earn a lot of money and their work is glamorous and exciting → Lawyers in top firms earn a high salary. Most firms are small and suburban. Work is not always glamorous as it can get tedious and repetitive, and can be very complex in nature (e.g. reading documents, interviewing clients, researching, drafting letters).
- Read and write a lot → To learn the law, a lawyer must study for many years, reading and writing frequently and extensively. Lawyer's must be knowledgeable enough to be effectively negotiate and advocate for clients which comes from research and drafting documents.
- Heroes who help people → The legal profession is a helping profession. People come to lawyers for issues they can't solve themselves.

## LAW AS PROFESSION VS. LAW AS BUSINESS

- Profession: help citizens maximise legal rights
- Business: commercial opportunities with a view of making money for both the lawyer and client
  - Focus on marketing the firm and gaining brand recognition
  - Profit maximisation is the dominant value of firms

### Joanne Bagust, 'The Legal Profession and the Business of Law', 2013.

#### See p 2

- Recognised that those who practice law have special knowledge and skills about the law
- The highly competitive marketplace for legal services has reduced lawyers' ability to work as autonomous professionals as they now find themselves working as 'functionaries subservient to the dictates of their corporate clients' (p 27).
- Corporate lawyers are losing key elements of their professional identity as they try to maintain their client list and increase profit.
- Work used to be categorised as frank and fearless advice that transcended self-interest and commercial self-advantage has changed. Ethical rules still exist but values and focus have changed.
- Law being a business does not reduce the expertise of lawyers, nor does it denounce the existence of a code of ethics amongst lawyers.

**Uniform Law s 32:** Legal services under any business structure

**Uniform Law s 33:** Obligations not affected by nature of business structures

## ROLES OF LAWYERS

P 65

### - CORPORATE LAWYERS

- Ensure the legality of commercial transactions and advise corporations on their legal rights.
- Actions bear the weight of the influence on many potentially affected.
- Lawyer becomes torn between doing what is expected of them, representing their client, their best interests and doing what they feel is morally correct.
- Pressure to satisfy the clients wants rather than advocate a higher moral duty
- Pressure and competition means lawyers often accept clients regardless of the circumstances

### - IN-HOUSE LAWYERS

- Employed by a large organisation to provide legal advice and work within the organisation → dual role
- Communicate with law firms and barristers engaged by the organisation.
- Responsible for promoting public interest as well as disclosure on misconduct and prohibitions
- Ethical issue that interest of public and business may clash

#### See p 2

## Shafron v ASIC [2012]

- Peter Shafron → member of James Hardie board (company secretary) and worked as in-house lawyer
- Provided misleading information to the ASX
- Shafron argued that when serving as company secretary he did not have an obligation to have his 'lawyer hat' on and consider whether the information was misleading.
- High Court held that he had a duty to protect the company using his law-based knowledge.
- The two roles were found to be indivisible.
- **Michael Legg (Law Society Journal):** Decision imposes a 'gatekeeper' role on lawyers acting as general counsel and in positions within the organisation ie. must constantly act to the standards of a lawyer regardless of their acting role.
- They are 'responsible for promoting the public interest in corporate compliance with continuous disclosure obligations and prohibitions on misleading conduct'.
- To overcome → separate legal advice from commercial advice, separate file storage, sign off, maintain professional detachment, know what is privileged and confidential

### - FAMILY LAWYERS

- Need to ensure they are representing their client (the parent), as well as the child and ensure that their best interests are not sacrificed in the process.
- The role of emotion in makes it difficult to not become personally invested → privy to intimate details of personal life.
- Lawyer must still act in the best interest of client and remain objective when hearing certain facts e.g. domestic violence

### - GOVERNMENT LAWYERS

- Government departments and agencies employ lawyers – client is agency, department, minister, unit
- Provision of legal advice, management of legal transactions, drafting of legislation and development of legal policy.
- Engage in legal research, legal writing and liaising with lobby groups and stakeholders.
- Must be loyal to the employer and separate legal advice from policy or management advice

### - COMMUNITY LAWYERS

- Demand for lawyers to go into CLCs, but difficult to attract due to financial constraints
- Unable to meet the demands as they are underfunded and under resourced
- Forced to reject cases, are overworked, and may have difficulty establishing a true connection or relationship with their client due to a lack of time
- Less effort exerted due to some work being volunteer
- Many clients may struggle to place their faith in the legal profession, and as a result be uncooperative and unable to communicate effectively.
  - E.g. Australian Pro Bono Centre, Court Support Scheme, Immigration Advice and Rights Centre

### - OTHER LAWYERS/LEGAL PROFESSIONALS

- Other: civil, criminal, migration
- **NSW Law Reform Commission** – independent statutory body that provides legal policy advice to government on issues for reform that are referred to by the Attorney General.
- **Australian Law Reform Commission (ALCR)** – federal agency operating under the *Australian Law Reform Commission Act 1996* (Cth), and the *Public Governance, Performance and Accountability Act 2013*. The ALRC conducts inquiries at the request of the Attorney-General. ALRC makes recommendations to government to make informed decisions about law reform.
  - E.g. Elder Abuse – A National Legal Response (ALRC Report 131)

## RESILIENCE

**Jerome Doraisamy, The Wellness Doctrines, 2015, p 49** → **Legal idiosyncrasies:** The three most common legal idiosyncrasies are: pessimism, perfectionism, and competitiveness