

200020 – Professional, Responsibility & Legal Ethics

Part 1: Introduction to the Legal Profession

Chapter 1 – Professional Conduct

Overview

- Highest Duty to the Court!
- Professional conduct refers to the manner in which legal practitioners (LP's) deal with their professional and legal obligations
- LP's are required to comply with:
 - The law that governs lawyering
 - Professional or ethical obligations
- Positivist Approach: Applying only the law when making decisions (black letter)
 - Disadvantage: Change/ upgrade would not occur
- Moral Activist: If the law would result in an unethical result, the legal practitioner should attempt to have their client resolve their dispute in a way that does not involve unfairness or injustice
 - Disadvantage:
 1. LP is more prone to subjectivism in advice or choice of client
 2. Whether personal perspective is appropriate
- All LP are subject to common law & legislation that directs or prohibits certain actions
- Never mislead a court

Who is affected by Professional Conduct Obligations?

- LPs recognised lawyers
- See requirements page 5
- Generally, a person is eligible for admission only if;
 - (a) The person is aged 8 years or over and
 - (b) The person has attained:
 - (i) Approved academic qualifications, or
 - (ii) Corresponding academic qualifications, and
 - (c) The person has satisfactorily completed:
 - (i) Approved Practical legal training requirements, or
 - (ii) Corresponding practical legal training requirements
- Also need to pass a 'fit and proper test'
- Laws:
 - Cannot pretend to be a lawyer or call themselves one
 - Cannot represent oneself as being legally qualified if not
 - If unsuitable to be connected with law then cant work at firm
 - Lawyers cannot practice without certificate
- Being admitted – Gives you the right of appearance

What is a Profession?

- Defined as a group of people in broadly similar workplace occupations who consider themselves as having special skills which raise that occupational grouping in status and financial rewards
- Societal change has changed lists of professions so how do we determine what a profession is?

Indicia

- By determining what its elements or traits are (answering above question)
- Sociologists state they should have similar characteristics
 - Skill based on theoretical knowledge; studying at uni
 - Training/ educational mandatory PLT
 - Testing
 - Organisation; Law society
 - Ethical Code; law/legislation/ethics
 - Altruistic service; pro bono activities
- Problems:
 - Characteristics based off of traditional groups
 - Most occupations can fit into those characteristics & in turn call themselves a profession

Power and Position

- Considering the place the legal profession is in wider society
- Now there is significantly greater external regulation e.g. conveyancing
- Client has power

Profession or Business?

- Worried that lawyers only care for financial purposes
- Justice Kirby: Law becoming more business orientated
- He states to be proactive by learning the following lessons:
 - Avoid nostalgia
 - Avoid exaggeration
 - Change is inevitable
 - Change for the better
 - Legal idealism endures
 - Issues rupe for attention
 - Need for crucial vigilance
 - Gather data
 - Spiritual values
- Not a mouth piece, just because the client says something doesn't mean its true and you don't have to do/say it

Regulation for the Legal Profession Today

- Governed by a series of laws and ethical attitudes
- Parliaments enacts overarching legislation in the form of regulations and rules
- These legislative provisions are interpreted and applied by the courts as common law
- Rules are also made by professional bodies

Legislation

- Each jurisdiction promotes legislation that codifies former common law principles regarding professional conduct
 - NSW: **Legal Profession Uniform Law 2015**
 - Objectives:
 - "Ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services"
 - Empowering clients of law practices to make informed choices about the services they access and the costs involved"