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 can’t 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?
• 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”