LAWS2013 LEGAL PROFESSION – ESSAY SCAFFOLDS

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Topic 1a: Intro and Approaches to Legal Ethics and Professional Responsibility

Essay questions

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1. Annie Scaffold
    a. **ESSAY 1 – BALANCING COMPETING RESPONSIBILITIES**
        i. Introduction
            1. A legal professional's responsibilities are defined by a 'duty matrix' in which concurrent duties are owed to the client, the administration of justice, the public interest and the wellbeing of the lawyer themselves. Legal education, professional rules and workplace cultures often overlook that lawyering involves this 'responsibility to and for others', codifying standards of behaviour that undermine public perceptions of lawyers as ethical agents within the legal system.
            2. The Australian legal system heavily relies on lawyers to balance their duties to the administration of justice and to their clients in order to maintain the system's integrity and credibility. While there are professional conduct rules including the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 ("Solicitors' Rules") and the Legal Profession Uniform Conduct (Barristers) Rules 2015 ("Barristers Rules"), principles of law and legal practices and procedures to guide and support lawyers to facilitate the administration of justice, there remains systemic biases as some lawyers who act as traditional 'adversarial advocates' may skew legal outcomes to the interests of resourceful clients above the court.
        ii. **Overview**
            1. Holmes and Bartlett's four models of ethical lawyering each prioritise competing responsibilities:
                a. While the traditional model of **adversarial advocacy** emphasises a lawyer's duty to zealously promote the interests of the client, **responsible lawyering** casts the lawyer as an agent of the administration of justice, with a paramount responsibility to the integrity of the legal system.
                b. While **moral activism** emphasises a lawyer's obligation to obtain substantive justice in the public interest, the **ethics of care** involves 'relational lawyering' or upholding strong relationships with the community and prioritising responsibility to people above institutions, including a lawyer's responsibility to their own wellbeing.
                c. Four primary responsibilities can therefore be identified from this analysis: **responsibilities to the client, to the administration of justice, to the community and public interest, and to the lawyer themselves.**
        iii. **Arguments**
            1. **Paramount duty to the Administration of Justice**
                a. Paramount duty to the court includes 4 broad categories **(Ipp, 1998)**:
                    i. General duty of candid disclosure
                    ii. Not to abuse the courts process **(*White Industries*)**
                    iii. Not to corrupt the administration of justice
                    iv. To conduct cases efficiently and expeditiously

b. As officers of the court concerned with the administration of justice, lawyers have an overriding duty to the court (***Rondel v Worsley***). This duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty (SR 3; BR 4(a), 23)
c. Lawyers play a pivotal role as gatekeepers of truth, entrusted with the responsibility to maintain principles of responsible lawyering in balancing competing interests.
d. Yet, public perception of lawyer ethics are at a twenty-year low with only 26% of Australians rate lawyers as 'very high' or 'high' for ethics and honesty according to Roy Morgan's survey in 2022.
e. **See scaffolds Topic 4 for what this duty entails**.

2. **Duty to Client**
   a. First challenge faced by lawyers is balancing their duty to uphold the administration of justice with conflicting financial interests of their clients. Parker & Evans suggests that lawyers, driven by an adversarial imperative, may resort to tactics that abuse legal processes in their pursuit of client interests.
      i. Yet, lawyers are bound by duties to the administration of justice and the court, as emphasised in solicitor rules 17.1 and Barrister rule 42. Their duty to the court is an incident of the lawyer's duty to the proper administration of justice: lawyers 'must do what they can to ensure that the law is applied correctly to the case': as stated by Brennan J in ***Gianarelli***.
   b. **Adversarialism v Duty Not to Mislead**
      i. In advancing client interests, lawyers traditionally prioritise litigation, lawyers enact forms of ADR as part of litigation scheme - which leads to adversarialism in non-adversarial forums. I argue that this excessive adversarial approach may lead to artificial wins but personal losses. The zealous adversarial approach can result in instances of misleading the court, as seen in the George Pell Case.
         1. Pell's lawyers' hired-gun approach of cross-examining the victim, misled the court regarding the actual points of contention and was a breach of solicitor conduct rules 19.1.
      ii. The client's interest includes due consideration to the client's reputation, the victim's wellbeing and the overarching obligations to the court, whereby the lawyer must pay regard to whether the pursued strategy upholds public confidence in the administration of justice rule 5.1.1.
      iii. Especially prevalent for **prosecutors**
         1. Prosecutors have additional duties and are ministers of justice in the legal system. Prosecutors have an overarching duty to the court and administration of justice and must act independently, impartially and

avoid any potential conflicts of interest (NSW DPP Prosecution Guidelines 2.2).

2. Fairness - owes a duty of fairness to the community.
    a. 2 fold - those who are guilty be brought to justice and that those who are innocent not be wrongly convicted (ODPP NSW, Prosecution Guidelines)
3. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts (BR83, SR29.1)
4. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case (BR 84/ SR 29.2)

c. **Not all duties to the client and court are efficient**

i. Legal practitioners face the challenge of conducting cases efficiently and as promptly as possible (BR 57, 78, SR 4.3)
    1. The duty to the court requires that lawyers avoid unnecessary delays, promote the efficient resolution of disputes, and conserve judicial resources.
    2. Section 99 of the Civil Procedure Act, as noted in Lemoto at [92], mandates that the court consider the overriding purpose of sections 56 CPA to reach a just, quick and cheap solution, otherwise they may be liable for costs.
    3. The extent of this duty is further emphasised by the solicitor's duty to deliver legal services competently, diligently and as promptly as reasonably possible per Solicitor rules 4.1.3 and Barrister Rules 4(c)

ii. The importance of s 56 was highlighted in ***Aon Risk Services v ANU***. The High Court in Aon accentuated the importance of case management principles, highlighting that s 56 ensures efficient proceedings for a just resolution, bolster public trust in the judicial system, and mitigate undue delays.

iii. These interests are not always in direct competition, as efficient case management may advance a client's best interests as in Pell's Case.

iv. **However - may still have competing interests:**
    1. The competing duty to the client may consequently lead to solicitors enacting unnecessary delaying tactics which ultimately undermines the integrity of the court process.
    2. These tactics may include trolley load litigation as seen in ***Michael Wilson and Partner Limited v Robery Colin***

Nicholls or pursuing hopeless cases like in ***White Industries***, which is in breach of the Legal Profession Uniform Law Application Act 2014 s 62 and Sch 2.

d. **Duties to Client - profit**
    i. In the commercial and profit driven space in which lawyers operate, it is common for lawyers to feel obliged to affect the every will and instruction of their client. This may have something to do with the market for legal services being so competitive. Law firms now must compete more fiercely than ever before for both clients and staff.
    ii. As a result, firms increasingly have taken on the characteristics of more conventional business enterprises. Most employ a cadre of non-lawyer professionals in executive and managerial positions, and vigorously market their services
    iii. → *Move to commercial imperatives section below*

3. Lawyers Responsibility to Themselves:
    a. A lawyer's individual wellbeing is integral to the proper discharge of their responsibilities, with a legal culture that promotes long work hours and 'workaholism' resulting in high instances of mental health issues amongst legal professionals. This exposure to stressful deadlines and an inappropriate work-life balance can often begin at the university level, with a study finding that 'law school has a corrosive effect on the wellbeing, values and motivations of students.'
        i. Critics argue that legal education promotes individualism and autonomy as university curriculums can often overlook the importance of cultivating a student's professional identity and 'sense of self'.
        ii. As Cody emphasises, professionalism does not merely subsist in technical competence, but in developing an authentic self within existing organisational structures. This requires teaching of self-reflective practices in which law students attempt to make sense 'of the messiness of law' and their own place within it.
        iii. There is a need for lawyers to be fit and proper for practice **(*Skerrit*)** and lawyers must look after themselves in order to ensure they maintain fit and proper - not just at the time of admission
            1. Indeed since there is a high level of trust placed in legal practitioners, the need for honesty is self evident and essential **(*Frugtniet v Board of Examiners*)**. Arguably this is not just to clients but also to themselves
        iv. Further, there is a need to be aware of mental health and vicarious trauma that lawyers may experience
            1. As James outlines, vicarious or secondary trauma occurs from listening to, observing and then detailing of

traumatic events for the purposes of legal processes may harm lawyers

2. This is sourced from facets of a lawyer's work including
    - **a.** Engaging with clients and others who have been directly injured and traumatised
    - **b.** Listen to graphic descriptions of violence
    - **c.** Engage at length with traumatised people
    - **d.** Analyse details of abuse and injuries for legal purposes
    - **e.** In Australia in 2016, Trabsky and Baron examined the experiences of lawyers working in the coronial jurisdiction and found they were 'likely to suffer distress by virtue of being members of the legal profession' and thus were expected to 'steel themselves' against

v. Mental stress of work:
    1. High stress and anxiety due to living up to the robust profile lawyers often assert
    2. Perfectionism, risk averse and low levels of trust due to work conditions
    3. Compassion fatigue: build up of emotional and physical exhaustion that affects many professionals and caregivers
    4. Burnout: loss of idealism for the profession and direct and indirect health consequences
    5. young lawyers competing to prove their value
    6. Bullying amongst lawyers
    7. Stigma as a significant impediment to professionals who unduly individualise their experience, not wanting to reveal to colleagues, employers or clients that they are suffering from burnout or other secondary trauma effects (related to reputation)
    8. Aggravation of stress by imposing unreasonably high workloads

vi. Strategies to manage
    1. Awareness - training for staff about trauma and mental health concerns, and embed this in legal education
    2. Firm - Managers could discuss lawyers' trauma exposure in meetings as a standard agenda item, acknowledging and accepting the risk as genuine, distributing information on how lawyers may experience the effects of client related trauma, sharing strategies for protection and reassuring lawyers that systems are in place for responding to their issues and minimising the risk.

b. ESSAY 2 – HOW ARE LEGAL ETHICS SHAPED?

i. **Introduction**

1. Legal education, professional rules and workplace cultures often overlook that lawyering involves this 'responsibility to and for others', codifying standards of behaviour that undermine public perceptions of lawyers as ethical agents within the legal system.
2. Approaches to legal ethics
    a. Legalistic approach = treat legal ethics as a branch of law ie. Law of professional responsibility
    b. General morality = general moral theories as the foundation for legal ethics
    c. Applied ethics approach = approach in the textbook that aims 'to enable lawyers and law students to critique and evaluate professional conduct and lawyer's behaviours

ii. **Teaching responsibility - legal education and ethics**

1. Legal education cannot be reduced to the simple transmission of legal skills and doctrines – it is a microcosm of the legal profession itself, introducing students to its dominant cultural values and ethical practices.
    a. However, dominant pedagogical methods of legal education fail to teach students the full spectrum of responsibilities they will owe as legal practitioners, namely their ethical responsibilities to others and to themselves.
2. **Professional ethics:** The teaching of professional ethics in law schools serves as the foundational phase where students are introduced to the ethical responsibilities and standards expected of them as future practitioners
    a. Teaching instill professional ethics and responsibilities. Legal educators emphasise the importance of integrity, confidentiality, and the pursuit of justice, which are crucial for maintaining public trust in the legal system.
    b. Ethics education in law goes beyond learning rules; it involves critical thinking about real-world implications and the consequences of unethical behaviour
    c. There has been much commentary on the need to integrate legal ethics into the general curriculum, as an isolated subject cannot itself displace pre-existing ethical values. However, Menkel-Meadow criticises the very form of the legal classroom itself, arguing that it promotes an individualistic model of lawyering by fostering 'adversariness, argumentativeness and zealotry.'
        i. Whilst this is attributed as the 'traditional classroom', this paradigm of legal advocacy has been exacerbated by the corporatisation of tertiary education, paralleling the increased consumerism in the modern legal environment.
        ii. This has resulted in a legal curriculum that emphasises knowledge of content and practical legal skills, with Appleby et

al identifying that ‘a focus on doctrinairism, known knowledge and “right answers”’ has replaced the critical voice.

iii. This is reflected in two main pedagogical practices.
    1. First, the ‘case-by-case’ doctrinal method divorces the ‘black letter’ of the law from the social, economic and political contexts in which this law operates, overlooking the people and communities affected by the legal system.
    2. Second, exam-based assessment has increasingly replaced analytical research assignments. Critical thinking has therefore been waylaid by doctrine, merely teaching students about what the law is, and not allowing time for questioning how the law should be.

iv. This strict rules-based approach to the law has the potential to create lawyers whose ethical responsibilities are limited to adherence with professional rules, emphasising rationality above compassion and empathy. Such an approach ignores that ethics is, as Moffitt describes, a double helix with one strand professional rules and the other personal morality.

v. There is comparatively little emphasis given to practices of compassionate, relational lawyering, such as reciprocal dialogues between lawyers and clients, or active listening.

vi. Such approaches must be integrated into legal education in order to leave students with an ethical framework that encompasses their responsibility not only to the fearless defence of their client, but to society as a whole.

vii. Undergoing Practical Legal Training is a requirement under **s 17(b) *LPUL*, rr 6, 7 *LPUAR*** for admission
    1. Supervised legal training in a workplace for not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides for the trainee to satisfy the requirements of **subrule (1) (r 6(2)(b)), LPUAR)**
    2. Demonstrates the importance of mentorship in the profession and the need for students to observe and practise ethical standards in real-world settings. Need more practicality in legal education - focus on things like witness examination, client interviewing and practising of oral advocacy

d. Adaptation to Change: The legal landscape is constantly evolving with new laws, technologies, and societal shifts. Teaching helps legal professionals stay updated on these changes, ensuring they can adapt their practices and continue to serve their clients effectively.

e. Indeed, the introduction of AI demonstrates the need for the legal profession to stay abreast of new technologies which serve the

profession with the means to improve the efficiency and accuracy or practice → *move to T12*

3. Community service in the legal profession is not merely an ethical obligation but a societal necessity. Law schools and legal firms increasingly integrate pro bono work into their core activities, recognizing that access to legal services is a fundamental right.

iii. **Workplace Legal Culture on Ethics**

1. **Introduction**
    a. The impact of individual workplace cultures on a lawyer's perception of their ethical responsibilities cannot be ignored. Even if legal education and professional rules set standards of ethical behaviour that acknowledge lawyer's 'responsibility to and for others', the organisational and market context in which a lawyer acts can undermine their responsibility to the administration of justice, to the client and to the lawyer's own wellbeing.
2. First, the increased commercialism of the legal profession has resulted in a tendency to view the client-lawyer relationship as one of consumer and service provider, undermining the public interest function of the legal profession. The excuse that a lawyer is simply 'act(ing) on instructions' can result in rationalisations, or 'self-serving explanations' that legitimise unethical behaviour.
    a. Hall and Holmes emphasise how these rationalisations can be mutually reinforced in an organisational context, creating entrenched norms of unethical decision-making in blind service to client interests.
    b. This is especially so for **in-house counsel** who are heavily entrenched in the organisational logic of their corporate employers, compromising public perception of lawyer independence in controversies such as the role of in-house lawyers in AWB Ltd's scheme of kickbacks to the Iraqi regime in breach of UN sanctions.
        i. Conflict of interest because client is your employer - In-house lawyers are employed by a corporation, and their salaries, bonuses, and career progressions are often tied to the company's performance → *move to T8 in house lawyers*
        ii. This is also the case for Government lawyers where the client is often the government agency they work for an Individuals may be client (NSW law society guide to ethical issues for gov lawyers instructions may be given by minister or agency (1.3), and in turn lawyers must advise or provide policy advice (6.1, 6.2)
3. Second, profit maximising ideals in a corporate workplace can compromise a lawyer's responsibility to their client.
    a. Time billing: As Kirby J and Spiegelman CJ have commented, traditional time-based billing models reward inefficiency as there is no incentive to work quickly and avoid unnecessary tasks, 'reward(ing) the slow witted … [and] penalising the experienced, wise and

efficient.' Time billing can also promote overcharging by rounding up to the six-minute interval, resulting in deceptive billing practices.

b. May be changed through new law → *move to T12 technology*

4. Lastly, the responsibility that a lawyer owes to their own wellbeing can be compromised in a workplace culture that prioritises profit and 'workaholism'.
    a. Empirical studies have shown that wellbeing, integral to a lawyer's performance of their inherent functions, is not achieved by money or status, but by autonomy and competence.
    b. An ethics of care approach, emphasising the moral imperative of lawyer's well-being and relationships with family and community, cannot flourish in institutional structures that emphasise 'market morality' above a supportive and caring workplace.

High standards expected of lawyers

c. ESSAY 3 – HIGH STANDARD EXPECTED OF LAWYERS

i. **Duty to the court**

1. See above – Public perception and expectations - community confidence, maintaining integrity of legal system

ii. **Self regulation of the legal profession**

1. Introduction:
    a. Define self-regulation in the legal profession.
    b. Introduce the debate: balancing professional autonomy, ethical responsibilities, and public interest.
    c. Outline the essay's structure:
        i. Arguments for self-regulation.
        ii. Arguments against self-regulation.
        iii. Co-regulation as a compromise.
    d. *As the rise of consumerism continues to erode the traditional notions of self-regulation guided by the ideals of professionalism, the professional conduct rules become increasingly important to safeguard the integrity and credibility of the Australian legal system.35 The Solicitors' Rules and Barristers Rules establish a clear framework for lawyers to moderate their clients' interests, consistent with the 'responsible lawyering' approach which prioritises socially just legal outcomes that encompass broader community considerations beyond the client's individual. Interests (Holmes and Bartlett, Inside Lawyers' Ethics)*
2. Generally
    a. Lawyers have a significant role in moderating the legal system to ensure the administration of justice and preserve the legitimacy of legal institutions. While professional conduct rules, principles of law and legal practices and procedures provide guidelines for lawyers to moderate, in practice, lawyers ultimately have the discretion in whether they play a traditional advocacy role or uphold a 'responsible lawyering approach'. Therefore, lawyers must continually prioritise their duty to the administration of justice as well as the rule of law to work towards building an effective and credible legal system

        i. Self regulation: professional community and social trustee professionalism. Must maintain reputation of the profession
        ii. Per parker and Evans, under this approach, in most common law countries, professional associations promulgate and enforce standards of professional conduct, investigate and prosecute complaints, and establish the disciplinary tribunals to hear charges.
            1. They decide on qualifications for admission, issue practising certificates, police compliance with trust account rules, and administer fidelity funds and insurance schemes.
            2. They also protect lawyers' monopolies on legal work, set standard feed and prohibit most forms of competition between lawyers, including any form of advertising or price competition.
            3. Many aspects of this control held by the profession have been removed and assigned to independent authorities through regulatory intervention
3. Argument 1: Justifications for Self-Regulation
    a. Expertise and Independence:
        i. Only lawyers understand the complexities of legal ethics and practice.
        ii. "Only lawyers are knowledgeable enough about the law to set standards for their own practice."
    b. Preserving Independence from Government Interference:
        i. Lawyers must remain independent to defend individuals against state power.
        ii. "The state should not be involved in regulating lawyers because lawyers need to remain completely independent of government when representing their client against the state."
    c. Social Trustee Model:
        i. The profession maintains its ethical integrity through a shared sense of responsibility.
        ii. "Self-regulation is justified by the ideal of a profession as a coherent moral community that socialises its members into appropriate and ethical behaviour."
4. Argument 2: Criticisms of Self-Regulation
    a. Self-Interest and Monopoly:
        i. Self-regulation protects lawyers' financial and professional interests rather than the public.
        ii. "The legal profession is an autonomous collective organisation aimed… to secure its economic and social self-interest through the control of entry, competition and internal regulation."
    b. Failure to Ensure Ethical Conduct:
        i. History of regulatory failures suggests that self-policing is ineffective.

ii. "Although lawyers claim to be the only ones who know how to regulate themselves, the legal profession has effectively failed to regulate itself properly." (Harry Arthurs)

c. Competition and Consumer Protection Concerns:
    i. Overregulation stifles competition and increases legal costs.
    ii. Hilmer Report (1994): "The Australian legal profession is heavily overregulated… restrictions on competition impose substantial costs on consumers."

5. Argument 3: Co-Regulation as a Compromise
    a. Blending Professional Oversight with External Accountability:
        i. Introduction of Legal Services Commissioners and regulatory bodies.
        ii. "Today, Australian legislators have rejected 'stand-alone' self-regulation except in ACT."
    b. Uniform Law as a Step Towards National Regulation:
        i. Standardisation of ethical rules (e.g., Australian Solicitors' Conduct Rules 2015).
        ii. "A nationally agreed regulatory structure for the legal profession is gradually evolving."
    c. Balance Between Market Forces and Ethical Standards:
        i. Incorporation of competition principles while maintaining legal ethics (e.g., incorporated legal practices).
        ii. "The Model Laws approach was competition-oriented… but tempered by specific regulatory constraints that seek to address ethical concerns."
6. Conclusion:
    a. Summarise key points:
        i. Self-regulation maintains independence but risks self-interest.
        ii. Complete state control could compromise lawyer independence.
        iii. Co-regulation offers a pragmatic balance.
    b. Reflect on the future of legal regulation: Should the legal profession remain distinct from other industries, or should it fully embrace market forces?

iii. **Overview of professional conduct rules**

1. The Solicitors' Rules and Barristers Rules establish a clear framework for lawyers to moderate their clients' interests, consistent with the 'responsible lawyering' approach which prioritises socially just legal outcomes that encompass broader community considerations beyond the client's individual interests (Holmes and Bartlett, Inside Lawyers' Ethics)
2. In particular, SR rule 3 and 5 and BR rule 3, 4, 5 and 8 stipulate that lawyers have a paramount duty to the court and the administration of justice which prevails over the duty to serve the best interests of the client which reflects a departure from the traditional 'adversarial advocate' approach where lawyers would zealously advocate for the client's best interests.

3. Further, professional conduct rules provide greater discretion for lawyers to act in accordance with their own principles and values rather than merely as the client's 'mouthpiece'.
4. Notably, SR rule 17 emphasises the importance of lawyers to remain impartial in the administration of justice and apply their own forensic assessment and consideration to their clients' particular instructions.
5. SR rule 8.1 imposes qualitative limitations on client instructions such that lawyers should only accept instructions that are "lawful, proper and competent".
    a. This mitigates the potential for resourceful clients to exploit a lawyer's duty to serve the best interests of their clients for their own personal gain at the expense of the fair administration of justice. (Hyams, Campbell and Evans)
6. Professional conduct rules also attempt to remedy systemic issues of unequal access to justice through the 'cab-rank' rule as per BR rule 17 where a barrister must accept a brief from a solicitor to appear before a court if the barrister has sufficient capacity to perform the required work.
7. Relate to complaints and discipline - *T10, 11 UPC and PM, and liability under tort and contract*
    a. Another barrier to lawyers in moderating the administration to justice is the lack of systemic deterrents if lawyers fail to meet the minimum standards. There is a high threshold for a lawyer's conduct to constitute 'professional misconduct' and result in disciplinary action.
    b. This has been observed in such as disbarment or suspension as observed in *Franklin's* 38 years of tax fraud and Cummins' aggravated sexual assaults.
8. **Criticisms**:
    a. Self-regulation in the legal profession is based on the flawed premise that individual lawyers are ethical agents guided by personal principles of morality, with instances of misconduct merely symptomatic of a 'bad seed' within the profession.
    b. However, as Holmes and Bartlett note, personal ethics do not exist in a vacuum – our personal values and principles are always conditioned by the 'institutional ethical culture' that surrounds us.
    c. Rules therefore play an important role in promoting certain norms of ethical behaviour in the legal profession, prioritising lawyers' responsibility to the court and the due administration of justice.
    d. While the professional conduct rules provide standards that guide lawyers in moderating the administration of justice, they have limited practical effect given that lawyer's still retain significant **discretion** in their actions
    e. Therefore, lawyers that continue to practise as traditional 'adversarial advocates' may skew legal outcomes by 'rationalising' their clients' interests over the court and the administration of justice.
    f. <u>In house</u> - Notably, lawyers practising as in-house legal counsels are more susceptible to rationalisation due to greater dependence and

proximity to the corporate employer as well as the blending of duties to the client and employer and the blending of legal and non-legal work as observed in the *Australian Wheat Board* case.

g. Discretion - Lawyers having absolute discretion with their actions may lead to the zealous advocation of clients such as undertaking unethical 'creative compliance' with the professional rules (Hall and Homes)
    i. This relates to exploiting 'loopholes' in the law for the advancement of a client's interest at the expense of the administration of justice, thereby allowing clients to extract the maximum advantage from the legal system
    ii. Further, the 'cab-rank' rule in itself represents a limitation to moderating the administration of justice as barristers are able to waive the 'cab-rank' rule by refusing cases on the basis of 'no capacity' or 'no proper fee'. There is also no 'cab-rank' rule equivalent that applies to solicitors in the Solicitors' Rules

9. **Conclusion**:
    a. Therefore, while it is clear that professional conduct rules are imperative for establishing a framework for lawyers to follow in moderating the administration of justice, the onus remains on lawyers as they retain substantial discretion in the lawyering process

iv. **Duty of confidentiality**

1. The duty of confidentiality codified in the Solicitors Rules demonstrates that professional rules are not alone sufficient to maintain ethical standards of responsibility to and for others.
2. Rule 9 codifies the duty of confidentiality, which is also a term implied into every retainer at common law and enforceable at equity.
3. While justified on the basis of public policy that full and frank disclosure between lawyer and client should be encouraged, the duty is susceptible to exploitation by 'unscrupulous clients and unethical lawyers' where there would otherwise be a moral responsibility to the public and the administration of justice to reveal client wrongdoing.
4. While **exceptions** to the duty both recognise that ethical clients may authorise disclosure in the public interest, and permit disclosure to seek advice about ethical obligations, exceptions for disclosure in the public interest are very restricted in their operation and apply only where disclosure would prevent the probable commission of a serious criminal offence or imminent physical harm.
    a. For example, as noted by Holmes and Bartlett, disclosing that a corporation's product is carcinogenic would not be permitted as it does not involve sufficiently imminent harm.
5. The duty of confidentiality can therefore operate to valorise the zealous protection of client's interests above a moral responsibility to the public and the administration of justice.
6. By not only permitting, but in fact compelling non-disclosure where ordinary ethical principles would prioritise responsibility to the public, the duty can lead to rationalisation of immoral behaviour and contribute to public images of a 'co-conspiratorial lawyer'.

a. Parker et al therefore recommend that whistleblowing, or disclosure of 'illegal, immoral or illegitimate practices', should be permitted where a lawyer has information about clients or other legal professionals using the law to subvert the administration of justice, citing the example of Christopher Dale leaking information about Clayton Utz's role in the destruction of documents to frustrate legal proceedings against a tobacco company.
b. Such a reform to the duty of confidentiality would uphold both the legal profession's responsibility to the legal system as 'gatekeepers of justice' and its responsibility to the Australian community as a whole, encouraging a lawyer to not just 'sit idly by' where their moral conscience compels them to act.
c. Exceptions are made even narrower where if the information subject to client-legal privilege, a lawyer is not able to disclose it even if otherwise compelled by law (*ss118,119 Evidence Act, Esso*)

d. ESSAY 4 – COMMERCIAL IMPERATIVES VS DUTIES TO COURT

i. Introduction

1. The practice of lawyering cannot be reduced to a two-dimensional commercial relationship between lawyer and client – it involves acting simultaneously as agent for the individual client, for the integrity of the justice system and for the community as a whole. In other words, the legal profession is not just a business, but a profession that both privileges and burdens its practitioners with obligations to service the community and uphold the democratic institution of equality before the law. The ethical practice of law is achieved by acknowledging and balancing these competing responsibilities. This essay will examine how [legal education, professional rules and the additional factor of workplace culture shape this ethical lawyering], often undermining these plural responsibilities in pursuit of market-oriented standards of success and profit.
2. Lawyers are expected to navigate the challenging waters between commercial imperatives—those demands that ensure a firm is profitable and sustainable—and professional aspirations, which encompass the ethical obligations and responsibilities to justice and society.

ii. Overarching duty to the court

1. The duty to the court is what distinguishes lawyers from all other professions and the trades. Secondly, the profit goal must be balanced and put into perspective. After all, lawyers are a critical part of the rule of law that underpins our democracy. Corporations and businesses are not part of the structure of government, whereas lawyers are.
2. **The practice of law nowadays is very much a commercial operation.**
    a. Has been a 'move towards the incorporation of legal practices, the commercial alliance between legal practices and other commercial entities and, more recently, the public listing of law firms on the stock exchange' have all contributed to the 'commercialisation' of the profession.

    b. Economic considerations increasingly gaining ascendance over older notions of professionalism, legal practice is now viewed as a commercial activity and the law as an industry.
3. **Clients of law firms are increasingly being viewed as consumers and users of legal services also view themselves as consumers.**
    a. In the commercial and profit driven space in which lawyers operate, it is common for lawyers to feel obliged to effect the every will and instruction of their client. This may have something to do with the market for legal services being so competitive. Law firms now must compete more fiercely than ever before for both clients and staff. As a result, firms increasingly have taken on the characteristics of more conventional business enterprises. Most employ a cadre of non-lawyer professionals in executive and managerial positions, and vigorously market their services
4. **Profit maximising ideals in a corporate workplace can compromise a lawyer's responsibility to their client.**
        i. Time billing: As Kirby J and Spiegelman CJ have commented, traditional time-based billing models reward inefficiency as there is no incentive to work quickly and avoid unnecessary tasks, 'reward(ing) the slow witted … [and] penalising the experienced, wise and efficient.' Time billing can also promote overcharging by rounding up to the six-minute interval, resulting in deceptive billing practices.
        ii. **Link to costs** → *see scaffolds*
            1. Must charge fair and reasonable costs **(s172 LPUL)**
            2. Consequences for unreasonable costs **(s 207)**
        iii. May be changed through new law → *move to T12 technology*
5. **Central commercial pressures faced by legal practitioners:**
    a. **Profitability** – The primary commercial imperative for any law firm is to be profitable. This requires generating sufficient revenue to cover overheads and provide returns to partners and shareholders.
    b. **Client Acquisition and Retention** – Law firms must continually attract and retain clients, which often leads to competitive marketing strategies and client service initiatives.
    c. **Operational Efficiency** – Efficiency in managing resources—both human and material—is crucial for maintaining profitability. This often involves streamlining processes and possibly minimising costs, which can include reducing the time spent on each case.
    d. Structure of firm - big law model is that partners of the firm share profits
6. **Cab rank rule** - Further, the 'cab-rank' rule in itself represents a limitation to moderating the administration of justice as barristers are able to waive the 'cab-rank' rule by refusing cases on the basis of 'no capacity' or 'no proper fee'. There is also no 'cab-rank' rule equivalent that applies to solicitors in the Solicitors' Rules
    a. Demonstrates need to remain profitability even as a barrister

7. Need to also uphold ethics of legal profession
    a. Adherence to Ethical Standards: Lawyers are bound by strict ethical standards, which include duties of confidentiality, loyalty, and fairness to all clients.
    b. Justice and Integrity: The legal profession is fundamentally about furthering the cause of justice, requiring lawyers to act with integrity and not merely focus on the profitability of their actions.
    c. Public Service and Pro Bono Work: A commitment to public service, including pro bono work, is a professional aspiration that underscores the role of lawyers in ensuring access to justice for underserved communities
8. Need to manage trust accounts properly → see below
9. Criticise **legal education** - practical focus on marketability

e. ESSAY 5 – TRUST ACCOUNTS

i. Introduction

1. Legal Profession Act 2004 NSW s 243: trust money is defined as 'money entrusted to a law practice in the course of or in connection with the provision of legal services.'
2. "Entrusted" expands in meaning to include clear fiduciary duties
3. Before solicitors in NSW are permitted to receive and disburse trust money, they are required to practise as a principal of a law practice
4. S 250: obligation on principals of law practices, jointly and severally, to ensure that trust money received and disbursed by the practice is dealt with in accordance with the Act and the Legal Profession Regulation 2005

ii. Consequences for mishandling trust accounts

1. Failure to comply with trust accounting obligations may be professional misconduct because it involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence, as defined in s497(1)(a) or unsatisfactory professional conduct (s496). Since trust monies are sacred, any breach is taken seriously and [lawyer] is likely to be removed from the roll.
2. Intermingling of trust accounts also invalid
    a. ***Council of the Law Society of NSW v Pizzinga*** - the solicitor claimed that he had not intended to intermingle trust funds: ' He said in his affidavit that his purpose was to ensure that cleared funds were available for completing the purchase . . a transaction in which time was of the essence.' The Tribunal found, however, that having regard to the terms of 5498(1)(a) of the Act, breaches of s260 of the Act amounted to unsatisfactory professional conduct.

iii. ProBono work

1. The rule of law is an overarching fundamental principle of law that governs the way in which lawyers operate within the Australian legal system to promote fairness, justice and equality before the law rather than legal outcomes being skewed in favour of resourceful parties. The rule of law

encourages lawyers to take affirmative action and reduce the barriers of access to justice

a. Alternative forms of legal support are insufficient in remedying the disproportion of outcomes that favour resourceful parties than low income individuals and marginalised communities.
b. Firms may engage in pro bono work to provide access to justice to those who may not otherwise be able to afford legal representation.42 However, unlike in the US where the American Bar Association Model rule 6.1 stipulates that "every lawyer has a professional responsibility to provide legal services to those unable to pay" and recommends lawyers to perform at least fifty hours of pro bono public legal services each year, there is no parallel requirement or recommendation in Australia to mandate lawyers to work pro bono hours.
c. Nonetheless, there are systemic issues within the nature of pro bono work.
    i. Firstly, Lawyers are mostly motivated and incentivised toward monetary compensation and thus, while law firms may set policies for their lawyers to work pro bono hours, lawyers may be less motivated and incentivised to deliver quality legal services for unpaid pro bono clients.
    ii. Secondly, pro bono work is often performed by or with large assistance from paralegals rather than the experienced partners.
    iii. Other forms of legal assistance include legal aid commissions and community legal centres which seek to provide free legal information, advice and representation services to disadvantaged individuals and communities. However, these institutions are heavily under-resourced as they largely rely on law student volunteers with more than 112,700 people turned away from 62 different community legal centres in 2016-17.43
    iv. Another barrier to lawyers in moderating the administration to justice is the lack of systemic deterrents if lawyers fail to meet the minimum standards. There is a high threshold for a lawyer's conduct to constitute 'professional misconduct' and result in disciplinary action. This has been observed in such as disbarment or suspension as observed in *Franklin's* 38 years of tax fraud and Cummins' aggravated sexual assaults.

iv. **Conclusion**

1. Therefore, the Australian legal system seeks to moderate legal outcomes to support the disadvantaged yet falls short in effectively achieving this and thereby compromising the rule of law and undermining the administration of justice. Further, the lack of disincentives within the principles of law does not encourage lawyers to act beyond the minimum requirements of the law particularly when faced with resourceful clients, undermining the integrity and credibility of the Australian legal system.

2. Approaches to Ethical Lawyering

a. Different Approaches To Lawyer's Ethics

i. The Four Main Streams of Legal Ethics

1. Application of the four main strands below: To apply them, we must understand our own values and ethical beliefs, then apply moral reasoning to the individual circumstances in which legal practice dilemmas arise and also to consider the same in the context of the Australian Solicitors' Conduct Rules (ASCR)

ii. Adversarial Advocate (The traditional conception)

1. Social role of lawyers: Ethics governed by role as advocate in adversarial legal process and complex legal system.
2. Emphasizes partisanship: loyalty to client and non-accountability for moral consequences of legal actions.
3. Relationship to client and law:
    a. Duty to advocate for clients' interests as zealously as possible within the law, without regard for broader impacts or interests.
    b. Ensures client autonomy in navigating a complex legal system.
4. Underlying moral methods:
    a. Kantianism – fairness;
    b. Virtue ethics – courage;
    c. Consequentialism – the system produces right action
5. Partisanship
    a. Definition – the lawyer should do all for the client that the client would do for themselves, if the client had the knowledge of the lawyer
    b. Justification - ensure legitimate argument are put forward in their favour
6. Non-accountability
    a. Definition – The lawyer is not morally responsible for either the means or the ends of representation, provided both are lawful
    b. Justification – lawfulness is a good enough proxy for justice/morality; if a lawyer is morally responsible on behalf of client, they may not act so zealously to represent the client's interests
7. **Criticisms**
    a. Often termed 'amoral' because it sees general morality – that is, consequentialism, Kantianism and virtue ethics – as being irrelevant to the detail of lawyers' ethics
    b. They see the suppression of one own's individual moral opinions and consideration of general ethical concerns as a moral act in itself in order to fulfil their proper moral role as advocate for their client
    c. Example – **McCabe v British American Tobacco Australia Service Ltd [2002] VSC 73 (Eames J)**
        i. Clayton Utz advised BATAS on a document retention policy, leading to intentional destruction of key evidence in McCabe's negligence case.

ii. The trial judge ruled this misled the plaintiff and struck out BATAS's defense, but the decision was overturned on appeal.
iii. Media backlash criticized BATAS lawyers, but they defended their role as business-driven, not moral judgment.

d. Barristers' 'cab rank' rule ensures they must accept cases if available and paid, regardless of client reputation.

iii. **Responsible Lawyer (Officer of the court and trustee of the legal system)**

1. Social role of lawyers: Ethics governed by role of facilitating the public administration of justice in the public interest.
2. Relationship to client and law:
   a. Advocacy tempered by duty to ensure integrity and compliance with the spirit of the law.
   b. Ensures issues are decided based on substantive merits, not just procedural/formal grounds.
   c. May act as a gatekeeper of the law and advocate for the legal system against client interests when necessary.
3. Underlying moral methods:
   a. Virtue ethics – justice and collaboration
   b. Consequentialism – justice for the benefit of all
   c. Independence – Responsible lawyers will say no to those who are prepared to use their economic power to compromise the integrity of the justice system
   d. Not a 'dumb, literal obedience to every rule' but 'creative forms of compliance that, although aiming to minimise cost and disruption to the company, effectively still realise the regulations' basic purposes'.

iv. **Moral Activist (Agent for justice through law reform, public interest lawyering, and client counselling)**

1. Social role of lawyers:
   a. General ethics guided by social and political conceptions of justice.
   b. Promotes moral philosophy and substantive justice as core lawyer responsibilities.
   c. Argues that lawyers should use legal practice to change people institutions and the law to make them conform more to general ideas of social and political justice.
2. Relationship to client and law: Uses position to improve justice in two ways:
   a. Public interest lawyering and law reform activities to enhance access to justice and change legal institutions for substantive justice.
   b. Client counselling to persuade clients of moral obligations or withdraw if clients demand unethical actions.
3. Underlying moral methods:
   a. Consequentialism – whatever it takes
   b. Virtue ethics – justice
4. **Criticisms**
   a. Moral activism may involve a necessary disobedience to law, and possible punishment

b. Neglecting the wisdom of adversarial advocacy – that anyone should be entitled to representation without first having to persuade a lawyer that their case is worthwhile
c. Perverts the lawyer's role in a pluralist democracy
d. The client's interests are subordinated to the cause, and therefore to the lawyer's interests, setting up a clear conflict of interest
e. Where moral activism seeks to change government policy, lawyers are asking courts to take on the role of government, courts should serve a different role to policy decision-making bodies\

5. **How to mitigate criticisms:**
    a. In the US context, Noah Rosenblum suggests these criticisms can be addressed by courts:
        i. Assessing whether plaintiff's interests are being genuinely served by their lawyers, and
        ii. Considering whether plaintiffs need access to the courts because they are unlikely to receive an appropriate hearing through the ordinary political process
        iii. Recent public interest litigation would meet these tests (ie. the ones in the examples)
        iv. But likely Australian courts are not likely to adopt these tests
        v. Criticised as a demonstration of a lawyer's ego that undermines their commitment to justice ie. high profile cases

v. **Ethics of Care (Relational lawyering)**
1. Social role of lawyers: Prioritising relationships with colleagues, family and community rather than legal institutions or systems and social ideas of justice and ethics
2. Relationship to client and law:
    a. Prioritizes preserving relationships and avoiding harm over impersonal justice.
    b. Legal values, institutions, and roles derive from relationships rather than the other way around.
    c. Emphasizes moral worth and goodness in lawyer-client relationships.
3. Underlying moral methods:
    a. Virtue ethics – compassion;
    b. Kantianism – fairness
    c. More focused on the client's best interests than the moral activist or responsible lawyer types
    d. More interested in personal change, rather than social change – wants the client to become the best person they can be and intends to be active in that relationship
4. Three practical ways in which ethics of care concerns have influenced legal practice in recent times
    a. 1. Holistic understanding of law and clients
        i. Spend more time discussing the broader concerns of clients and the way that legal issues are likely to impact on other aspects of their lives and relationships

ii. Purpose: advice or counselling for the non-legal aspects of their legal problems, or incorporate relational and psychological wellbeing more explicitly into legal representation

b. 2. Dialogue and participation
   i. Participatory approach to lawyering, with a lawyer-client relationship built on mutual trust and shared knowledge
   ii. Legal advice offered in dialogue with the client – lawyer will not take actions in representing a client that the lawyer does not feel ethically comfortable with
   iii. Purpose: responsibility to make sure that clients understand the consequences, costs and uncertainties associated with the various alternative courses of action available to them so that the client can choose which option to pursue in an informed way

c. 3. Appropriate dispute resolution and relationship preservation
   i. Looking for non-adversarial ways to resolve disputes and preserve relationships
   ii. Lawyers will recommend dialogic, non-litigious ways to resolve disputes such as negotiation, mediation and other forms of alternative dispute resolution
   iii. Purpose: Less emphasis on positional bargaining and more on creative, 'win win' situations

3. Use of Artificial Intelligence

a. Supreme Court Practice Notes SC Gen 23, "The Use of Generative AI Intelligence"

i. What is Gen AI?
   1. AI that generates text, images, and sounds.
   2. Examples: ChatGPT, Google Bard, Westlaw Precision, Lexis Advance AI.
   3. Not included: Spellcheck, transcription, legal research tools, search engines.

ii. Risks & Limitations
   1. Hallucinations – AI may generate false legal references.
   2. Data quality issues – Outdated, biased, or incorrect information.
   3. Privacy risks – AI may store and use entered data.
   4. Legal concerns – Confidentiality, privilege, copyright issues.

iii. Prohibited Uses
   1. Sensitive legal information (e.g., subpoenaed materials, court-restricted data).
   2. Witness statements & affidavits – AI cannot draft or modify them.
   3. Expert reports – AI use requires court approval.

iv. Permitted Uses
   1. Admin tasks (chronologies, indexes, witness lists).
   2. Summarizing documents and transcripts.
   3. Drafting legal submissions (must verify all citations manually).

v. Accountability & Review
   1. Lawyers remain responsible for accuracy and ethical compliance.
   2. AI-generated submissions must be disclosed where required.

3. Periodic reviews due to evolving AI technology.

b. Ethical considerations

i. Step 1: Awareness of ethical issues
   1. What principles or values are at stake in this scenario?
   2. Who are the stakeholders? That is, whose interests are affected?
   3. What interests or values are at stake in this situation from the perspective of each of these stakeholders?
   4. Are there any conflicts between the interests or values of the different stakeholders?
   5. What are your own interests and values (as the lawyer) in this scenario?

ii. Step 2: Application of ethical standards or principles
   1. What professional conduct principles (the law of lawyering) might apply to this situation, including any relevant professional code of ethics?
   2. What general ethical principles might apply to this scenario (for example, justice and the public interest, conflicts of interest, respect for the spirit of the law, non-harm and respect for others)?
   3. What are the particular responsibilities of a lawyer in this scenario, because of their role as a lawyer and officer of the court?
   4. If there are conflicts between these various ethical standards and principles that could apply to the situation, how should they be resolved?

iii. Step 3: Moral imagination and practical implementation (Mary Gentile Giving Voice to Values (GVV) approach)
   1. What is at stake for the key parties/stakeholders (including ourselves)
   2. What arguments or rationalisations will be used to dissuade us from acting on our values; and
   3. What strategies we can use to counter these rationalisations, keeping in mind what has facilitated us acting on our values in the past

iv. **Example – Philanthropist QC and the tobacco company**
   1. A QC (Queen's Counsel) sat on the Board of the fundraising arm of a cancer hospital while also supporting tobacco manufacturers' interests.
   2. Cancer hospital's CEO defended the QC, stating:
      a. QC had a strong anti-tobacco stance.
      b. The High Court challenge was not about smoking, but about constitutional issues related to the Tobacco Plain Packaging Act 2011.
   3. Key clinical staff working in anti-smoking efforts were consulted:
      a. They respected the QC's right to advocate for clients.
      b. They believed QC's role did not undermine their collective anti-tobacco efforts.
   4. Public health professor (University of Melbourne) disagreed:
      a. Argued that advocating for the tobacco industry was indefensible.

c. There are two sources of ethical expectations that might affect the way that we do, or should behave

i. Professional conduct

1. Definition: Professional conduct is the law of lawyering – the published rules and regulations and the disciplinary decisions that apply to lawyers and the legal profession
2. Statute: This is found in legal profession statutes in each state:
    a. NSW
        i. Legal Profession Uniform Law (Uniform Law) and;
        ii. Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (ASCR)
3. Value: Underpinned by legalism
    a. A strict adherence to the law and its rules
    b. The professional conduct approach caters to the need for certainty, predictability and enforceability in a context where people often consider ethics to be subjective and relative

ii. General morality
1. Definition: Philosophical work devoted to understanding what it means for something to be good or right or a duty
2. Application: propose that general and abstract moral theories or methodologies should be applied, without elaboration or modification not the practice of law

Topic 1b: Diversity and the Role of Lawyers

1. Diversity
    a. **Generally**
        i. Diversity – Diversity refers to the differences between people and how they identify in relation to key areas including, but not limited to, gender, ethnicity, religion, sexuality, age and disability'
        ii. Inclusion – 'inclusion occurs when people feel valued and respected, with equitable access to opportunities and resources and where each individual has the opportunity to contribute meaningfully to their organisation. Inclusion is critical in realising the benefits of diversity'
        iii. Unconscious Bias – Underlying attitudes and stereotypes that people unconsciously attribute to another person or group of people that affect how they understand and engage with a person or group – often based on mistaken, inaccurate, or incomplete information
    b. **Statistics (URBIS)**
        i. As at October 2022, there were, 90,329 practising solicitors in Australia
            1. State – Most in NSW (42%), followed by Victoria (25%) and Qld (16%)
            2. Location – Majority practice in a city (56%) followed by the suburbs (31%) and country/rural (9%)
            3. Sector – Majority work in the private practice (67%), followed by corporate legal (16%) and government legal (12%)
        ii. Between 2011 and 2022, there has been a +57% increase in the number of solicitors
        iii. The profile of the profession is **far more diverse**, but certain communities continue to be under-presented compared to the Australian population
            1. Not all communities able to be protected
        iv. Aboriginal and/or Torres Strait Islander solicitors
            1. In 2022, 749 solicitors identified as Aboriginal and/or Torres Strait Islander or less than 1% of solicitors nationally
        v. Gender Diversity
            1. 86% growth in women and 32% growth in men since 2011
            2. 55% female solicitors
            3. Women have outnumbered men in the profession since 2018 but women are still underrepresented in certain sectors and positions
            4. This problem has intersectional dimensions – certain groups of disadvantages/marginalised women tend to be the most underrepresented
            5. Over one third (35%) of private practice partners/principals were female, a small increase from 33% in 2021 and a 9% increase since 2013
            6. The gender pay gap is evident across all practice sectors (despite same age and same years admitted)
            7. 25.7% barristers are female / 15% of senior counsel are female
            8. 39.4% of Cth judges are female / 43.7% NSW judges are female

2. Privileged backgrounds
    a. **Kate Allman, 'A profession for the wealthy? The enduring problem for diversity in law' (2020)**
        i. Generally
            1. Statistically speaking, most lawyers in Australia come with pockets lined by wealthy families and relatively privileged backgrounds
            2. In comparison, prospective lawyers from low socio-economic circumstances battle systemic biases and disadvantage
            3. Until this changes, the legal profession cannot hope to achieve true diversity
            4. As Angela Melville, a senior law lecturer and published researcher at Flinders University, wrote in her 2014 report Barriers to Entry into Law School: An Examination of Socio-economic and Indigenous Disadvantage,
                a. "Until the early 1970s, the Australian legal profession was almost exclusively the domain of white men from privileged backgrounds."
            5. In 2018, the Australian profession even reached an historic milestone in gender diversity, reporting more women than men solicitors across the country
            6. But, as Melville notes, the number of lawyers from low socio-economic backgrounds has remained persistently low
            7. According to research by the Grattan Institute, just 10 per cent of high school students enrolling in law degrees across Australia between 2005-2015 came from the lowest quartile of socio-economic status measures as defined by the Department of Education – almost 60 per cent of law students came from the top two quartiles
                a. "In NSW, high SES students outnumber low SES students in the 90-plus ATAR group by more than seven to one."
        ii. Embedding disadvantage
            1. Diversity has become the catchcry of law firms across the nation in recent years. The legal profession has held events, conducted surveys, published studies, and shouted warnings about unconscious bias and the business failures that can stem from a lack of diversity. But it seems little or no spotlight has been shone on socio-economic or class-based discrimination; an issue that has ripple effects impacting all other types of diversity in law
            2. As long as the pool of Australian law graduates remains shallow in terms of socio-economic diversity, the diversity of the legal profession can only reach as deep as that shallow pool
3. Sexual Harassment and Discrimination
    a. **Law Council of Australia, 'Public Leadership Statement on Sexual Harassment and Discrimination' (September 2024): Public Leadership Statement on Sexual Harassment and Discrimination - Law Council of Australia**
        i. Sexual harassment is an abuse of power that undermines the dignity, safety and autonomy of those who experience it. It breaches the public trust in us as a professional community

1. It is unethical, unprofessional and against the law. It causes psychological, emotional, physical and financial damage to individuals and organisations alike
2. It is reprehensible conduct that has no place in the Australian legal profession
3. Sexual harassment and discrimination are contrary to human rights including the right to equality and non-discrimination, health, the right to privacy, and concepts of human dignity which fundamentally underpin these rights

ii. We (Law Council of Australia) **support** the positive duty under the ***Sex Discrimination Act 1984*** **(Cth)** to take reasonable measures to eliminate sexual harassment as far as is possible, which introduces more focussed obligations for the legal profession to actively address sexual harassment

iii. Directors of Law Council commit to:

1. Pursue the elimination of sexual harassment and discrimination by facilitating positive cultural change across the Australian legal profession
2. Prevent sexually harassing or discriminatory behaviour, and ensure effective responses for those impacted by these behaviours, within, and connected to, our organisations
3. Support the provision of sexual harassment education and training across the Australian legal profession to raise awareness and understanding of legal and professional obligations and ethics, underlying causes and potential risk factors, and best practice prevention and response frameworks
4. Develop elimination strategies that address the traditional and structural features of the Australian legal profession and promote innovative approaches to overcoming them
5. Ensure that we foster a high-achieving, equitable, inclusive, diverse and safe profession that is well-equipped for the future, delivers quality services, and meets the contemporary needs and expectations of our clients and communities
6. Hold ourselves, our organisations, and our members to a high standard befitting the status, responsibilities, and community expectations of the legal profession:
7. Recognising that unacceptable behaviour perpetrated by even a small minority has the potential to undermine public trust in the administration of justice; and
8. To do so without prejudice, bias, or deference to professional position or hierarchy, and according to principles of natural justice
9. Promote respectful transparency (where possible and as appropriate, while also respecting privacy, confidentiality, procedural fairness and broader obligations) so that we can learn from incidents, continue to develop best practice approaches, and improve our accountability to our employees, workers and members, our associates and stakeholders, and the broader community
10. Periodically review our strategies in implementing the positive duty to measure progress, share review outcomes publicly to promote transparency, and adopt best practice approaches.

b. *Hughes Trading as Beesley and Hughes Lawyers v Hill* [2020]

i. **Facts:**

1. A 56-year old was hired as a paralegal by a divorced man seeking a romantic relationship, who promised to train her as a solicitor
2. He acted as her lawyer in mediation with her ex-husband, misusing confidential information in later proceedings
3. Sexual harassment occurred for the next year
    a. Sent excessive romantic emails and made unwanted advances
    b. Created inappropriate situations (e.g., waiting in her room while she showered, sitting in his underwear, demanding hugs)
    c. Ignored her clear rejections and pressured her not to report him in exchange for training
4. She suffered psychological distress, sought therapy, and resigned in June 2016
5. Medical evidence confirmed her trauma; he defended his actions as "honourable"

ii. **Held:**

1. At trial found that he was guilty
    a. Held to a higher standard because he is a legal professional
    b. Was able to remain in the profession as it was a civil case
2. Appealed on three grounds but full Federal Court dismissed the appeal

iii. **Principles:**

1. "The profound power imbalance should be observed. The appellant was the principal of the practice. The respondent was hired as his paralegal, new to the legal profession, unable to move away from the area due to her two children she had to look after and was suffering from an anxiety disorder. A decent person would not have exploited the power in imbalance. AS the events in this case show, and as the trial judge, correctly apprehended, the appellant is not a decent person." [10]
2. "Society affords to the members of the legal profession privileges. These consist in the exercise of powers not possessed by the community at large: the power to transact, to act in litigation and to argue cases. The possession of these privileges is apt to confer status on those that hold them. But the status is not held for themselves but for the community which they serve. The use of this status for tawdry personal ends is an abuse of it. In this case, the trial judge was right to measure in general damages the power differential that lay between the Appellant and the Respondent not only by the fact that he was her employer but by the fact of his status as a solicitor." [51]
3. "Wherever may lie the frontiers of the juristic conceptions in s 28(A) of the unwelcome sexual advance or unwelcome conduct of a sexual nature, they comfortably enclose the shabby state of affairs in which a man gains access to his female employee's bedroom dressed only in his underwear. The trial judge described some aspects of the Appellant's evidence as 'delusional'. I regret that the same may be said of this aspect of the appeal." [41]

c. *Council of the New South Wales Bar Association v EFA (a pseudonym)* [2021]

i. **Facts:**

1. At a Bar social function, one barrister pushed the female clerk's head towards his crotch and said "suck my dick"
2. EFA (barrister) sent a written apology to H (female clerk) dated 3 August 2017. In this letter, EFA indicated that he did not recall the incident, except that he recalled 'horsing around' with A
3. Actions
    a. The respondent leaned towards H and placed his left hand on the back of her head
    b. The respondent's body was turned towards H
    c. The respondent placed his right hand near his crotch
    d. The respondent guided H's head towards his crotch
    e. Also said "suck my dick"

ii. **Held:**

1. Trial court found respondent not guilty of professional misconduct, but instead guilty of unsatisfactory professional conduct (UPC)
2. At appeal – Court dismissed appeal
    a. However, they did not find that the respondent was not fit to practice
    b. No fine was given at appeal

iii. **Principles:**

1. The Tribunal stated the conduct had **no real or sensible connection to professional practice**
2. The respondent unfit to practice?
    a. The Tribunal ruled that this was unwelcome conduct of a sexual nature, described as "poorly judged, vulgar, and inappropriate," **but not classified as a sexual advance, instead labelled as "horseplay."**
    b. Justified on the basis that "unfitness" is not measured only by the objective circumstances of the conduct – here, the respondent had **engaged in an isolated instance of appalling conduct – and did not warrant a finding of unfitness**
3. No fine should be imposed
    a. His conduct deserved strong condemnation but was an isolated breach of professional standards
    b. He had already faced significant personal, emotional, and financial consequences from the trial
    c. Given these costs, a fine was unnecessary, as disciplinary orders aim to protect, not punish

4. Women in the Legal Profession

a. The Law Society of NSW Charter for the Advancement of Women

i. Purpose:

1. Guidelines offer examples to help law practices uphold Charter commitments for women in the profession.
2. They apply to all roles, including lawyers, staff, partners, directors, and principals.
3. Not all examples may be suitable for every law practice.

ii. Reasons why women leave the law:

1. "The attrition rate of women lawyers is high, and experiences of sexual harassment are a key reason why women leave the law. This is damaging and costly – for individuals, for firms, and for the current and future standing of the legal profession." - Law Council President, Pauline Wright, statement regarding sexual harassment in the legal profession, 27 June 2020

iii. Gender Diversity
   1. 86% growth in women and 32% growth in men since 2011
   2. 55% female solicitors
   3. Women have outnumbered men in the profession since 2018 but women are still underrepresented in certain sectors and positions
   4. This problem has intersectional dimensions – certain groups of disadvantages/marginalised women tend to be the most underrepresented
   5. Over one third (35%) of private practice partners/principals were female, a small increase from 33% in 2021 and a 9% increase since 2013
   6. The gender pay gap is evident across all practice sectors (despite same age and same years admitted)
   7. 25.7% barristers are female / 15% of senior counsel are female
   8. 39.4% of Cth judges are female / 43.7% NSW judges are female

iv. Guidelines:
   1. Demonstrating leadership by removing gender bias and discrimination in the legal workplace
   2. Driving change in the solicitor profession by developing a culture that supports the retention and promotion of women from all backgrounds, including women with disability
   3. Implementing recruitment and promotion strategies that include gender diversity as an important consideration, including ensuring gender pay equity
   4. Promoting mentoring and sponsorship of women in the solicitor profession
   5. Encouraging and facilitating flexible work practices to support a better balance of professional and other commitments
   6. Ensuring that sexual harassment, or any form of bullying in the workplace, is not tolerated
   7. Establishing procedurally fair, safe, accessible and transparent sexual discrimination and harassment complaints processes
   8. Establishing training to protect complainants from victimisation, encouraging bystanders and others to report and 'call out' offensive and intimidating behaviour

5. Challenges of the Legal Profession

a. Annie's Notes

i. Unconscious bias
   1. Underlying attitudes and stereotypes that people unconsciously attribute to another person or group of people that affect how they understand and engage with a person or group – often based on mistaken, inaccurate, or incomplete information

ii. Barristers:
   1. Time and investment

2. Maternity leave is difficult
3. Practise solely - cant take time off
4. Studying and preparing for the bar exam is often only achievable by people from a wealthy background.

iii. Commercial law - also highly demanding
1. Certain areas of law, such as corporate law, intellectual property, and energy law, have historically been male-dominated
2. Sectors that involve frequent travel or client entertainment, such as corporate law or litigation, can create additional challenges for work-life balance.

iv. BUT this is changing
1. Majority of solicitors are now women 57%
2. While the passage of time has brought some positive changes, it is not reasonable to rely solely on time to dismantle deeply ingrained structural and cultural barriers.
3. Need active efforts to address unconscious biases, mentorship and sponsorship programs, implement inclusive policies, implement fair and transparent evaluation and promotion processes, create supportive workplace environments

Topic 2a: Legal Needs, Access to Justice and Delivery of Legal Services

1. Generally
    - **a.** What are the legal needs of Australians?
        - i. Growth in the Australian legal services despite facing economic recovery, inflation and geopolitical uncertainty in the 2023 financial year
        - ii. Total gov expenditure on justice services (less revenue from own sources_ was almost $22bn in 2021-22 (Productivity Commission)
        - iii. Police services, corrective services and criminal courts took up the majority of justice-related spending
        - iv. Legal Needs of Australians (2019 World Justice Project Report)
            1. 62% of respondents (n = 1067) expericed a legal problem in the previous 2 years – most were of a civil nature
            2. Consumer issues (38%); housing (32%); money and debt (27%)
            3. Only 33% were able to access help
    - **b.** What is legal assistance?
        - i. Australia's justice system supports resolution of civil, family and criminal matters covering relationships, child protection, human rights, education employment, finances, injury, health, housing and dealings with government. Access to justice is important for parties to a dispute, and for the community as a whole
        - ii. A well-functioning justice system underpins protection of rights, foundations of social cohesion, economic activity and community wellbeing. Every member of the Australian community must have fair and equitable access to legal redress, regardless of their circumstances
        - iii. Disadvantaged Australians in particular face barriers in accessing the justice system, including financial barriers, communication barriers and lack of awareness of their rights
        - iv. Without access to properly resourced legal assistance, Australians suffering financial stress and without access to properly resourced legal assistance face a wide range of matters affecting economic wellbeing
        - v. Legal assistance services
            4. Legal information and resources available through online, telephone and in-person channels
            5. Services promoting community legal education and other preventative measures
            6. Provide initial legal advice and referrals both legal and non-legal
            7. Assistance services to aid individuals with specific legal needs, including preparation and lodgement of applications
            8. Assistance from duty lawyers for those requiring immediate legal support and courts and tribunals
        - vi. Legal capability: the personal characteristics or competencies necessary for an individual to resolve legal problems effectively. It generally comprises capabilities across several domains, including knowledge, skills and psychological readiness to act

c. What are the legal needs of Australians

i. The 2012 survey found that overwhelmingly, legal problems were of a civil law nature. This is supported by the Mundy Report except for some sectors of the Aboriginal and Torres Strait Islander peoples need for criminal law related assistance (Sep, 2024)

ii. Most problems were related to

9. Consumer issues (20.6%)
10. Housing (11.8%)
11. Government (10.7%)

iii. Provided by specialist legal bodies ie. Aboriginal legal bodies, LACs (Legal Aid Conditions)

d. Costs and consequences of unmet legal need

v. For disadvantaged groups, the costs and consequences of an inability to resolve legal problems compounds **inequality and feeds into chronic cycles of disadvantage**. The relationship between disadvantage and legal need appears to be '**bidirectional**' – not only are disadvantaged people more vulnerable to a wide range of legal problems;

2. Annie Scaffolds

e. Barriers to Accessing Justice

i. **Financial Constraints –** The cost of legal representation and court fees can be prohibitive, preventing economically disadvantaged individuals from seeking or obtaining legal help. This is compounded by underfunding of legal aid services and public defender systems

1. Legal services can be prohibitively expensive for many Australians. The Legal Profession Uniform Law 2014 (NSW) mandates that legal costs must be fair and reasonable (s 172-173), but even so, the overall costs associated with legal proceedings, including court fees, can be overwhelming.
2. The cost barrier is particularly significant in cases requiring prolonged legal representation or those involving complex legal issues. Lawyers must critically reflect on their ethical obligations to ensure that costs are fair and reasonable, thus fulfilling their professional responsibilities and enabling access to justice.
3. Sudden changes in laws, policies and systems can create spikes in legal need eg. Centrelink's online debt compliance scheme ('Robodebt)', placed high pressure on CLCs.
4. **Solutions** - Additional legal assistance funding investment across criminal, civil and family law matters

ii. **Cultural and Linguistic Barriers –** For non-native speakers, individuals from different cultural backgrounds, and indigenous populations, the legal system can be daunting due to language differences and a lack of culturally competent legal services

1. This is especially problematic in areas with high immigrant or indigenous populations who may require interpreters or legal professionals familiar with their cultural context.
2. System Complexity and Bureaucracy - complex legal jargon, intricate procedures, and lengthy processes that can deter people from pursuing legal

action. Non-English speaking communities and culturally diverse populations may face additional hurdles in accessing justice.

a. Language barriers can impede effective communication with legal professionals and understanding of legal documents.
b. Cultural differences may also affect the willingness or ability of individuals to engage with the legal system.
c. Legal practitioners must develop cultural competency and adopt inclusive practices to ensure that all individuals can access and navigate the legal system effectively.
d. Particularly for indigenous Aus - The 'hidden whiteness' of the legal system, as discussed by Ransley & Marchetti, underscores the pervasive nature of these biases, which contribute to the alienation and marginalisation of Indigenous communities. Lawyers have an ethical responsibility to uncover and challenge these biases, advocating for reforms that promote inclusivity and fairness.

3. **Limited education and understanding of Australian legal system** – eg. new immigrants and asylum seekers are vulnerable during initial settlement phase
4. **Lack of Awareness and Education** - unaware of legal rights or the options available to them to seek redress. This lack of awareness can prevent individuals from seeking legal help when needed. Additionally, the complexity of legal language and procedures can be intimidating, deterring people from pursuing their legal rights. Lawyers have a critical role in educating the public, enhancing legal literacy, and demystifying the legal system to empower individuals to seek justice.
5. **Solutions** - Legal assistance that is culturally competent, need to train staff, availability of translators

iii. **People with disabilities** – physical inaccessibility, inflexible court procedures, Inadequate disability training perpetuates misconceptions

1. Solutions – targeted prevention and early intervention initiatives for people with disability, disability-aware legal assistance services such as accommodation, and rehabilitation and diversionary programs

iv. **Discrimination and Bias**

1. Prejudice based on race, gender, sexual orientation, and disability can affect how individuals are treated within the justice system. This can lead to unequal treatment, a lack of fair representation, and outcomes that disproportionately affect minority groups.
2. Lack of availability to specialist advice for their often complex legal needs
3. ATSI people - Lack of qualified, professional language interpreters, limited trust
    a. Negative experiences with the justice system → distrust → rely on informal methods to address their issues → exacerbate difficulties longer term
    b. Systemic + procedural factors eg. written evidence and expert evidence preferred over oral → issues w domestic violence cases

c. Solutions - Ongoing, regular cultural competence training – informed and led by ATSI people and organisations, better resourcing of ATSI Legal Services

v. **Geographic Limitations**
   1. Critically underfunded in rural areas, limited access to specialist courts and services
   2. Solutions – **technology**

f. Role of Lawyers

i. **Awareness and Education –** Legal professionals must educate themselves on the historical and ongoing impacts of racial bias and systemic discrimination within the legal system. This includes understanding how their own actions or inactions may perpetuate these biases
   1. Must be vigilant in their own practices and in the courtroom to challenge biases that may affect the outcomes for clients who are from marginalised communities

ii. **Advocacy for Reform** – lobbying for changes in laws, court practices, and legal policies to make the legal system more inclusive and equitable

iii. **Promoting Fair Legal Practices** – Lawyers must adhere to the principles outlined in the Legal Profession Uniform Law, ensuring that legal costs are fair and reasonable (s 172-173). They must also avoid practices that unnecessarily increase legal costs (s 173). By upholding these professional obligations, lawyers can help mitigate financial barriers to justice and maintain ethical standards in their practice

iv. **Providing Pro Bono Services** – Lawyers have a professional responsibility to provide pro bono services to those who cannot afford legal representation. This voluntary work helps bridge the gap for disadvantaged individuals and promotes a more equitable legal system. Pro bono work reflects the ethical commitment of the legal profession to serve the community and uphold justice

v. **Addressing Systemic Biases** – As highlighted by Ransley & Marchetti, lawyers must actively work to uncover and address systemic biases, such as the 'hidden whiteness' of the legal system. This involves recognizing and challenging discriminatory practices and advocating for reforms that promote inclusivity and fairness. Lawyers must be vigilant in identifying and addressing ethical issues related to systemic biases in their practice

vi. **Enhancing Legal Literacy** – Lawyers can contribute to improving access to justice by educating the public about their legal rights and the legal system. This can be achieved through community outreach programs, legal aid services, and public legal education initiatives. By enhancing legal literacy, lawyers empower individuals to navigate the legal system and seek justice, fulfilling their professional and ethical responsibilities

3. Access to Justice

a. ***Independent Review of the National Legal Assistance Partnership, Warren Mundy***

i. **Key Findings**
   1. Legal Need and Access to Justice

a. Increasing unmet legal need in Australia due to economic disadvantage, policy changes, and external factors like natural disasters
b. New five-yearly national legal needs survey recommended

2. Funding Issues
    a. Current funding levels inadequate/fragmented making difficult for legal service providers to operate sustainably
    b. Governments rely on short-term funding and competitive tendering, which undermine survive stability
    c. Recommended $459 million in additional funding for 2025-26 to address civil and family law needs
3. Legal Workforce and Remuneration
    a. Significant pay disparities between different legal assistance providers
    b. "Same Job, Same Pay" policy proposed to equalise salaries for community legal workers and ATSILS
    c. Recommendation for a HECS-HELP forgiveness scheme to attract lawyers to regional areas
4. Self-Determination and Closing the Gap
    a. Aboriginal and Torres Strait Islander people experience the greatest unmet legal need
    b. Calls for greater self-determination in legal services through funding for ATSILS and Family Violence Prevention Legal Services (FVPLS)
    c. Recommendation to integrate all Aboriginal legal assistance funding under A2JP

ii. **Key Recommendations**

1. Legal Needs Survey – Regularly conduct national legal needs surveys to inform funding and policy decisions
2. Funding Reform – Move away from competitive tendering; introduce baseline funding models that provide stability
3. Workforce Pay and Conditions – Increase salaries for legal assistance workers and introduce portable entitlements for long service leave
4. Legal Assistance for Vulnerable Groups – Expand priority client groups to include women, LGBTIQA+ people, veterans, and people below the poverty line
5. Technology and Data – Replace outdated data collection systems and establish a Justice Technology Innovation Fund
6. Governance and Reporting – Improve transparency in funding allocations and reduce unnecessary data collection burdens

iii. **Future of NLAP**

1. The revie proposes replacing NLAP with A2JP, with a stronger focus on outcomes, sustainable funding, and accessibility
2. Suggests five-year term for A2JP to provide long-term certainty for legal assistance services

b. Groups Experiencing Disadvantage (The Justice Project: Final Report, *Law Council of Australia)*

i. **People with Disability**

1. **Disadvantages and Vulnerabilities of People with Disability**

a. People with disability face multiple disadvantages like social exclusion, discrimination, poverty, unemployment, homelessness, and vulnerability to abuse.
b. People with disability interact frequently with the criminal justice system as both victims and offenders.
c. Women with disability are more vulnerable to crime and abuse.
d. People with intellectual disabilities are 10 times more likely to experience violence and three times more likely to be victims of assault, sexual assault, and robbery.

2. **Prisoners with disability are more vulnerable to violence, abuse, and mistreatment**
    a. People with disability comprise 18% of the Australian population but nearly 50% of the adult prison population.
    b. Cognitive or psychosocial disabilities are particularly common in prison, with 98% of Aboriginal and Torres Strait Islander inmates having cognitive impairments.
    c. Children and young people with disability are over-represented in youth justice facilities, with 89% of youth detainees in Western Australia's only youth justice facility having at least one form of severe neurodevelopmental impairment
3. **Barriers to Accessing Justice**
    a. Barriers to accessing justice for people with disability include physical inaccessibility, inflexible court procedures, stigma, and a lack of understanding within the justice system.
    b. Without proper adjustments and support, people with disability face unjust outcomes, such as higher recidivism rates and prolonged incarceration
4. **Need for Early Intervention and Prevention**
    a. Many offenders with disability have long histories of undiagnosed or untreated impairments, highlighting the need for early intervention and prevention programs
5. **Recommendations for Improvement**
    a. Governments and the justice sector need culturally competent responses to address the intersectional needs of people with disability.
    b. Expanding disability-aware legal services and support systems, such as disability advocates, mental health services, and rehabilitation programs, is crucial

ii. **People Experiencing Economic Disadvantage**

1. **Barriers to Justice Due to Legal Costs**
    a. The cost of legal services is a significant barrier to justice for people experiencing economic disadvantage, including those with public housing, health, social security, and other needs.
    b. Legal fees and court costs can prevent individuals from obtaining legal advice and pursuing resolution of legal problems, potentially compromising their safety, rights, or entitlements.
2. **Challenges in Recognizing and Responding to Legal Problems**

a. People experiencing economic disadvantage may fail to recognize legal problems or may not know how to respond if they do.
b. Psychological and personal barriers may affect their capacity to resolve legal issues.
c. The complexity of relevant laws may overwhelm them.
d. Lack of time, especially for primary caregivers, can prevent people from addressing legal issues.

3. **Underfunding of Legal Assistance Services**
    a. Legal assistance services are critically underfunded, with this gap felt most acutely by women without financial means who often need assistance with family law, family violence, and related civil matters.
    b. Eroding criminal legal aid budgets contribute to chaos and congestion in lower courts, negatively impacting all court users (accused persons, victims, witnesses, and families).
4. **Laws and Policies That Exacerbate Legal Needs**
    a. Certain laws and policies increase the legal needs of economically disadvantaged individuals, such as fines that lead to further penalties, including imprisonment, for those who cannot pay.
    b. People may face penalties for behaviors linked to poverty or homelessness (e.g., public transport fines or public nuisance offenses).
    c. Sudden changes in laws, policies, and systems can spike legal needs (e.g., the 'Robodebt' scheme caused a significant strain on community legal centers).
    d. The complexity and increasing compliance requirements of social security systems often create legal needs, especially when recipients find the system inaccessible and confusing.
5. **Recommendations for Addressing Legal Needs**
    a. There is a need for increased investment in legal assistance funding across criminal, civil, and family law matters.
    b. A Justice Impact Test should be introduced to ensure that the downstream effects of changes in law and policy are considered early in the policy development process

iii. **LGBTQI+ People**

1. **Justice and Human Rights Issues for LGBTI+ Groups**
    a. Distinct justice and human rights issues arise for different LGBTI+ groups, requiring tailored law and policy responses.
    b. LGBTI+ people face legal needs regarding discrimination, assault, harassment, family law, family violence, end-of-life planning, medical treatment, and administrative law.
    c. LGBTI+ people are often unaware of their legal rights and recourses due to rapid changes in laws affecting them, creating a need for specific legal education and information.
2. **Mistrust and Discrimination in the Justice System**
    a. LGBTI+ people may have a deep mistrust of the government and the justice system due to past discrimination and marginalisation.

b. They are significantly less likely than other victims to report harassment or violence to the police.
c. Without inclusive guidelines, policies, and trained personnel, LGBTI+ people may encounter discrimination and prejudice when dealing with lawyers, courts, police, and social services.

3. **Need for Specialist Legal Services and Support**
    a. LGBTI+ people often have complex legal needs that require specialist advice, but such services are often unavailable.
    b. Expanding specialist legal services, including community legal education, information, and strategic advocacy, is essential for effective service provision.
4. **Under-researched and Overlooked Legal Needs**
    a. LGBTI+ people are often excluded from policy development, and their legal and justice needs are under-researched.
    b. Despite experiencing similar rates of violence as the general population, LGBTI+ people have been rarely included in family violence strategies.
    c. Governments must build an evidence base on LGBTI+ communities' needs and consider creating a dedicated LGBTI+ position at federal, state, and territory levels to address gaps in policy initiatives.
5. **Unique Legal Issues for Intersex People**
    a. Intersex people face unique human rights issues, particularly regarding medical interventions performed on children and infants born with intersex variations.
    b. Further exploration and development of policy on intersex issues, as recommended in a 2013 Senate report, is needed
6. **Recent Legal Reforms and Remaining Issues**
    a. Recent law reform has led to improvements in access to justice and human rights for LGBTI+ people in Australia, but problematic laws remain.
    b. Inconsistencies across jurisdictions and uncertainties in certain areas of law need to be addressed.
    c. Updates and standardisation of anti-discrimination provisions, more consistent recognition of parenting rights, and uniform government approaches to identity documents are necessary.
    d. A positive step would be removing the requirement for individuals to undergo surgery before changing their gender on their birth certificate

iv. **Recent arrivals to Australia**

1. Migration and Legal Needs of Recent Arrivals
    a. Over one-quarter of Australia's population is born overseas, and it is important for migrants to settle successfully to become productive members of society
    b. Recent arrivals vary in legal needs and capabilities. Skilled migrants have fewer legal challenges, while humanitarian arrivals experience more acute legal needs related to settlement.

c. Many migrants have limited familiarity with the Australian legal system, and may not recognize legal issues, such as exploitation, work or consumer disputes, fines, family violence, discrimination, or housing insecurity.

2. Access to Legal Help and Barriers
    a. Recent arrivals often seek help from informal sources (community leaders, peers) rather than formal legal mechanisms due to language barriers, cultural isolation, fear of authorities, or financial limitations.
    b. Legal assistance networks need to be robust, including in rural and remote areas, with services tailored to cultural and linguistic diversity.
    c. Free legal assistance should be available, especially for civil matters, and interpreters should be provided to help overcome language barriers.
3. Cultural Competence and Service Delivery
    a. Legal services must be culturally competent, with community liaison officers helping to bridge gaps between recent arrivals and the legal system.
    b. Interpreter services are critical for effective engagement with the justice system at all stages, including police interactions, support services, and court proceedings
    c. Cultural isolation remains a significant barrier, and outreach efforts must focus on building trust and engagement with migrant communities.
4. Challenges with Legal and Policy Frameworks
    a. Visa conditions, dependency on exploitative sponsors, under-policing of migrant communities, and insufficient consumer and tenancy protections create additional challenges for recent arrivals.
    b. These issues can lead to serious legal problems in everyday activities, such as opening accounts, signing contracts, or dealing with housing repairs.

v. **Children and young people**

1. **Legal Issues for Children and Young People**
    a. Children and young people often face legal problems but are reluctant to take action due to limited resources, poor legal knowledge, and a perception that the system will not assist them.
    b. Vulnerable groups, including those experiencing homelessness, family violence, or economic disadvantage, and Aboriginal and Torres Strait Islander children, are at heightened risk of legal issues due to trauma and disadvantage.
2. **Access to Legal Assistance**
    a. Young people generally seek legal advice in-person, though some may access online resources.
    b. Tailored, child-friendly legal assistance is essential, but there is a shortage of specialist services, particularly in rural, regional, and remote (RRR) communities. This shortage leads to higher rates of imprisonment and supervision orders for children in these areas.

3. **Age-Related Barriers in the Justice System**
    a. Children and young people often struggle with age-related communication barriers in court. The use of communication intermediaries is inconsistent, and more support for such schemes is needed.
    b. The minimum age of criminal responsibility (MACR) in Australia is currently 10 years, with some jurisdictions advocating for an increase to 12 years, in line with international standards.
4. **Child Protection and Juvenile Justice Systems**
    a. The growing number of children receiving child protection services highlights the need for better legal support. Key concerns include lack of independent scrutiny, failure to provide culturally competent care, and over-representation of Aboriginal and Torres Strait Islander children in both child protection and juvenile justice systems.
    b. The juvenile justice system also faces challenges, including abuse in detention, the punitive focus of detention, and the over-representation of vulnerable children. Reform is urgently needed.
5. **Exit Strategies and Support Services**
    a. Effective exit strategies for children leaving government institutions (e.g., out-of-home care, juvenile detention) are critical to reducing homelessness, disadvantage, and recidivism. These strategies should include accommodation, education, and timely legal advice. Support should extend beyond the age of 18 to ensure long-term stability

vi. **People who are homeless**

1. **Homelessness and Structural Causes**
    a. People experiencing homelessness face multifaceted disadvantages, such as lack of affordable housing, which leads to poor justice outcomes, including denied bail, family violence vulnerability, and increased recidivism.
    b. A lack of safe and stable accommodation exacerbates homelessness and increases the difficulty of escaping precarious situations.
2. **Housing Laws and Policies**
    a. Complex housing laws, such as punitive eviction policies or enforcement of debts against victims of family violence, hinder vulnerable persons from maintaining housing or re-entering public housing.
    b. Policies such as ‘three strikes’ for eviction and negative tenancy classifications need reform to prevent unnecessary evictions and prioritise homelessness prevention.
3. **Transitioning from Government Institutions**
    a. Inadequate exit strategies for individuals leaving institutions, such as prisons or mental health facilities, often lead to homelessness. Proper planning and provision of critical supports, including stable housing, are essential to prevent this.
    b. Investment in transition support services is key to decreasing re-offending rates and aiding reintegration into society.

4. **Criminalisation of Homelessness**
    a. Some laws and policies, such as those criminalising begging or public drinking, effectively criminalise homelessness, exposing vulnerable individuals to the criminal justice system and further marginalising them.
    b. These laws disproportionately impact specific groups, including Indigenous peoples, children, and people with disabilities, and should be reviewed by state and territory governments.
5. **Barriers in Legal Services**
    a. People experiencing homelessness often face multiple, complex legal issues that require responses from different legal services. However, many of these services are underfunded and limited to capital cities
    b. Integrated legal assistance services, which combine legal help with social support, are effective in addressing homelessness and should be supported through reliable, recurrent funding

4. **Technological Access to Justice Essay – "How can technology improve access to justice, and what challenges must be addressed to ensure fairness and inclusivity in digital legal systems?" (*Lisa Toohey, Monique Moore, Katelane Dart and Dan Toohey, 'Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice and Human- Centered Design' (2019) 19 Macquarie Law Journal 132*)**
    - **a.** Introduction
        - i. Access to justice is fundamental for a fair society and economic stability. As highlighted by the Chief Justice, "The existence of justice institutions is a public good, crucial for a well-ordered society and for a functioning economic system." Without accessible justice, individuals and communities cannot thrive, and economic growth may be hindered.
            1. **Access to justice:** it allows a framework for people to achieve justice and that takes into consideration of the particular vulnerabilities people have
        - ii. Traditional justice systems struggle with cost and complexity, preventing accessibility for many people. As it stands, "our current access to justice crisis serves as a call to reimagine and redesign public justice processes for civil disputes, centred on the needs of the public."
        - iii. Technology is seen as the "fourth wave" in access to justice, offering significant solutions but also presenting risks, particularly in ensuring fairness and inclusivity.
        - iv. Two major challenges must be addressed:
            1. Digital inclusion, which limits access for vulnerable populations, and;
            2. Algorithmic justice, which may reinforce existing biases in the legal system.
        - v. Solutions like Black Box Tinkering and Legal Design Thinking have been proposed to combat these challenges.
    - **b.** Civil Justice Need in Australia
        - i. Many people do not see their legal issues as "actionable," leading to unresolved legal problems. As noted, "People often describe these situations using terms that suggest that they may not see them as actionable, in the sense of being something one would try to do something about or change." This is a significant barrier to justice, as people may not even recognize when they are being wronged.
        - ii. Around 42% of Australians face civil justice problems yearly, often involving issues like housing, family disputes, or consumer rights. For many, legal problems remain unresolved due to the complexity of the legal system and the costs involved.
        - iii. Social disadvantage significantly increases legal issues:
            1. People with disabilities are 2.2 times more likely to face legal issues.
            2. Unemployment increases legal problems by 1.6 times.
            3. Single parents face twice the legal challenges.
        - iv. Cost remains a substantial barrier, and "The cost of legal representation is beyond the reach of many, probably most, ordinary Australians," said Chief Justice Wayne Martin. The legal system is becoming increasingly inaccessible to those without the means to afford it, leaving many unable to resolve their disputes or claim their rights.
    - **c.** Four Waves of Access to Justice
        - i. **Legal Aid (1960s-70s)** – While publicly funded, Legal Aid had limited coverage, excluding many people from access to justice.

ii. **Class Actions & Ombudsmen (1980s-90s)** – Addressed issues involving "diffuse interests," where widespread legal issues with low individual value made individual enforcement unlikely.
iii. **Alternative Dispute Resolution (2000s-2010s)** – Focused on more accessible alternatives to traditional court cases, such as tribunals, mediation, and case management.
iv. **Technology (2010s-Present)** – The emergence of online tools, automation, AI, and digital platforms has reshaped legal access, particularly for low-value, high-volume cases. "Technology offers what might be termed a 'fourth wave' in access to justice, with enormous potential for civil cases, which are often relatively high volume, low value disputes."
v. Despite these advances, "The hard reality is that the cost of legal representation is beyond the reach of many, probably most, ordinary Australians... access [to justice] is limited to substantial business enterprises, the very wealthy, and those who are provided with some form of assistance," reinforcing the need for systemic change.

d. Technological Change in Civil Justice
i. **E-Courts & Online Legal Information:**
1. E-filing, video conferencing, and remote hearings save costs and improve accessibility. These developments bring justice closer to those who previously couldn't afford to attend court.
2. An example of technology aiding legal access is Ask LOIS, a free legal aid website for domestic violence victims.
ii. **Unbundled Legal Services & Document Automation:**
1. Plexus Promotion Wizard helps generate legal documents for businesses, while platforms like LawHelp and A2J offer automated legal document assembly, making legal services more accessible.
iii. **AI & Chatbots**
1. Tools like DoNotPay allow users to easily engage in legal actions, such as suing companies, with the simple push of a button.
2. Google Duplex demonstrates AI's potential in legal services by assisting users with complex tasks like scheduling or making inquiries.
iv. **Big Data & Algorithmic Decision-Making:**
1. Predictive policing and automated legal decision-making raise concerns about bias, emphasizing the need for careful consideration of how these technologies are applied.
2. As one expert explains, "The builder allows any legal organisation or community legal centre to build their own chatbot based on their area of expertise and then once they've built they can launch it themselves without the need for a developer or any coding experience." This reflects the democratizing potential of legal technology but also raises concerns about unregulated use.

e. Challenges to Digital Justice
i. **Digital Inclusivity**
1. Vulnerable groups, such as the elderly, disabled, rural, and low-income individuals, often struggle with accessing online legal services. The Australian Digital Inclusion Index highlights that these groups are particularly excluded

2. A key concern with this shift is the creation of a “two-tiered” system, where wealthier individuals can access human lawyers while others are forced to rely on potentially flawed AI solutions.
3. “A key concern identified by Justice Project stakeholders was that policymakers frequently overlook the realities of target groups' digital exclusion,” reinforcing the need to prioritize inclusivity in the design of legal tech.

ii. **Algorithmic Bias**

1. AI systems have the potential to reinforce existing biases due to flawed data or biased programming.
2. Case studies such as Centrelink’s **“Robodebt” scandal**, where an automated debt collection system falsely accused welfare recipients, show how AI can create legal and emotional harm. “This lack of procedural fairness disempowered people, causing emotional trauma, stress, and shame,” according to a Senate Report.
3. Similarly, the COMPAS Sentencing Algorithm in the U.S. disproportionately targeted minorities, demonstrating the potential harm of unchecked algorithmic decision-making.
4. As the Helsinki Legal Tech Lab noted, “[AI systems] can lead to discrimination when they reflect structural biases of their training data,” underlining the need for regulation and oversight.

f. Solutions for Better Access to Justice

i. **Black Box Tinkering**

1. Black Box Tinkering involves reverse-engineering AI systems to test their decision-making for bias, aiming to uncover hidden forms of discrimination in systems such as predictive policing or welfare services.
2. One advantage of this method is that it allows advocates to demand algorithmic systems comply with public interests like due process, equal protection, and freedom of expression. “Black Box Tinkering allows us to demand that algorithmic systems comply with public interests such as due process, equal protection, and freedom of expression.”
3. “It is not possible to understand automation bias simply from the perspective of legal scholarship… insight into how algorithms reflect structural biases of their training data is essential,” highlighting the importance of interdisciplinary approaches to addressing algorithmic fairness.

ii. **Human-Centred Legal Design**

1. Legal Design Thinking advocates for the development of legal tools that are centered around users’ needs, not just legal professionals’ perspectives. By focusing on human-centered design, these tools can be made more accessible, intuitive, and useful for the general public.
2. As Margaret Hagan states, “Legal Design is the application of human-centered design to the world of law, to make legal systems and services more human-centered, usable, and satisfying.” This approach makes the legal system more approachable for people who may otherwise find it intimidating or inaccessible.

3. Moreover, “The challenge for the legal system is twofold: first, keeping up with new technologies, and second, ensuring technology is used to further the administration of justice,” said Justice Margaret Beazley. This reflects the balance that must be struck between innovation and justice.

g. Conclusion

i. While technology has great potential to enhance access to justice, it also brings risks that must be carefully managed. Legal professionals have a responsibility to ensure that these technologies are used ethically, with proper oversight.

ii. “Focusing on access cannot come at the cost of individual and systemic justice,” reminding us that technological solutions must always align with the principles of fairness and equity.

iii. As noted, “Redesigned civil justice processes should be more than an abstract topic for discussion; the tools to make it happen are available today,” indicating that the solutions are not just theoretical but actionable with the right commitment to reform.

Topic 2b: Law Practice Management: Costs and Mental Health

1. Annie Scaffold
    - **a.** Mental Health
        - i. Vicarious Trauma – Vicarious trauma is a condition experienced by individuals who are exposed to traumatic events indirectly, usually through their professional dutie
            1. 'Secondary trauma stress' as the range of symptoms associated with PTSD, including emotional numbing, avoidance, arousal and intrusive thoughts
        - ii. Sources of vicarious trauma
            1. Engaging with clients and others who have been directly injured and traumatised
            2. Listen to graphic descriptions of violence
            3. Engage at length with traumatised people
            4. Analyse details of abuse and injuries for legal purposes
        - iii. Strategies to Manage
            1. Integrating discussions of trauma exposure into regular meetings.
            2. Implementing policies that support trauma awareness and responsive practices.
            3. Providing training and resources to develop personal resilience and coping strategies
2. Values and Legal Professionalism
    - **a.** Four Kinds of Ethical Behaviour
        - i. Adversarial Advocacy
        - ii. Responsible Lawyering
        - iii. Moral Activism
        - iv. Ethics of Care
    - **b.** Significance of Personal Values in Legal Professionalism
        - i. There is no greater guarantee of individual fairness or justice than that provided by the rules – in effect **by the rule of law**
            1. There is profound and rapidly growing gaps in wealth and access to justice the world over
            2. There are many personal dilemmas – law students often told to 'think like a lawyer' and discouraged from linking their values and their feelings to what they are learning
            3. Rules should be only one part of the complex jigsaw of factors that lawyers consider in taking any ethical decision – other jigsaw pieces are far more numerous than just the practice rules and even the common law rules and legislation
        - ii. **Ethical Reasoning**
            1. **Daniel Goleman in *Emotional Intelligence*** – 'While strong feelings can create havoc in reasoning, lack of awareness of feeling can also be ruinous, especially in weighing the decisions on which our destiny largely depends: what career to pursue, whether to stay in a secure job or switch to one that is riskier but more interesting, whom to date or marry etc

2. Individual lawyer may not be fully aware of their values or interplay between ethical reasoning
3. Easier for lawyer who knows what they truly value to decide whether to
    a. Assist a company to restructure to avoid significant liabilities to individuals who have been wronged by the company
    b. Refuse to change legal advice to make it more politically salient
    c. Use an 'attack dog' approach in cross-examining a fragile witness; or
    d. Find legal loopholes to justify/rationalise a client's greenwashing PR campaign

c. Wellbeing, Values and Professionalism

i. Psychology's self-determination theory ('SDT') helps explain this relationship
ii. SDT holds that to live a satisfying life, we require certain basic psychological needs to be met: our needs for autonomy, competence and relatedness
iii. Our competence need is met if we feel capable and competent in our endeavours
    1. If we are experiencing 'relatedness', we feel a meaningful connection to the important people in our lives
    2. These three needs are more likely to be met if we live by certain 'pro-social' values: self-understanding, good relationships with others, helping others and building community
iv. Motivations are underpinned by our values also influence our wellbeing
    1. If our motivations reflect a focus on 'extrinsic' values such as wealth, status or the desire to impress others, we can undermine our wellbeing because we are not prioritising activities that meet our psychological needs
    2. But if we are intrinsically motivated to work as a lawyer because genuinely enjoy work – psychological needs are likely being met by our work, and we are thus more likely to experience satisfaction and wellbeing
v. ***Krieger and Sheldon*** also observed that, while their survey did not measure professionalism or ethics, 'it did measure psychological factors that are virtually certain to be important sources of ethical and professional behaviour for lawyers – authenticity (which is essentially identical to integrity), competence, relating well to others, heling and community values, and valuing self-understanding and growth. These factors also include the strongest predictors of well-being in our subjects
    1. Attention to values is thus critically important – pro-social values underpin both our wellbeing/happiness and our professionalism
        a. But attention to values is important not only for individuals. There is no greater guarantee of individual fairness or justice than that provided by the rules – in effect **by the rule of law**

3. Ethics – *Frances Moffitt, 'Ethics Must be Part of Your Trust Account's DNA' (2014) 4(123 Precedent 4)*

a. Ethics as a Double Helix

i. One strand comprises of 'rules'
ii. Another strand 'good character'

iii. The sequence of bases on one strand determining the sequence of bases on the other ie. when good character is missing or impaired, ethics can no longer exist, and then rules are broken

b. Falsehoods

i. Falsehoods involving trust money and solicitors' trust accounts can degrade the profession and bring it into disrepute, and the most damaging to public confidence
ii. It can diminish public confidence
iii. Determine that the solicitor is not a fit and proper person to practice law
iv. Reflected in rule 5 of the New South Wales Professional Conduct and Practice Rules 2013 (the Solicitors' Rules)
v. "Members of the public, many of them wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of moneys on their behalf." **(*Law Society of NSW v Jones*, Street CJ)**

c. Trust Money

i. Trust money – 'money entrusted to a law practice in the course of or in connection with the provision of legal services' **(*Legal Profession Act 2004* (NSW), s243, (The Act)**
    1. Entrusted – Oxford Dictionary provides that to entrust something to another means to 'put something into the person's care and protection'
    2. So the word entrust expands its meaning to include a clear fiduciary notion
ii. Fiduciary relationship – a legal or ethical relationship of trust between two or more parties. Typically, 'a fiduciary' has duties to judiciously account for money held for another person.
    1. Example – solicitor camouflaging his trust account misappropriations by falsifying his trust records **(*Council of the Law Society of NSW v Bradfield*)**

d. Obligations on Principles of Law Practices

i. Principal – a partner in a law firm, or a legal practitioner director of an incorporated legal practice
ii. Obligation on principals of law practices, jointly and severally, to ensure that trust money received and disbursed by the practice is dealt within accordance with the Act and the Legal Profession Regulation 2005 (s250 Legal Profession Act 2004 (NSW))
    1. May delegate admin takes
    2. But responsibility of ensuring that the deputised functions are carried out correctly remains with the principal à ensures "safeguarding" of the trust account **(*Re Somes*)**
iii. Before solicitors in NSW are permitted to receive and disburse trust money, they are required to practise as a principal of a law practice.

e. Professional Sanctions

i. What is professional misconduct? – "conduct by a lawyer in their professional capacity which would reasonably be regarded as disgraceful or dishonourable by [the lawyer's] professional brethren of good repute and competency" (**Allison v General Council of Medical Education and Registration [1984] 1 QB 750**)
ii. Statute – if a disciplinary tribunal finds that a solicitor has knowingly contravened a key trust accounting obligation– for example s254(1) or s255(1) – or was recklessly

careless in that regard, it is highly likely that such conduct would reasonably be regarded as disgraceful or dishonourable

1. However, statute is 'neither exhaustive nor intended to restrict the meaning and application of misconduct at common law' (**G Dal Pont, Lawyers' Professional Responsibility (4th ed, 2010), 523**)

iii. A failure to comply with trust accounting obligations maybe professional misconduct because it involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence, as defined in **s497(1)(a) of the Act** or;

iv. If not a substantial or consistent failure, unsatisfactory professional conduct as defined in **s496 of the Act**.

v. Conduct capable of being unsatisfactory professional conduct or professional misconduct is stipulated in **s498(1)**, including 'conduct that contravenes the Act, and regulations or the legal profession rules' (**s489(1)(a) the Act**)

vi. Example – **Council of the law society of NSW v Pizzinga**

1. The solicitor claimed he did not intend to intermingle trust funds but aimed to ensure cleared funds were available for a time-sensitive transaction.
2. The Tribunal ruled that breaches of Section 260 of the Act constituted unsatisfactory professional conduct under Section 498(1)(a).

vii. **Section 260** prohibits the intermixing of trust money with any other money (unless authorised by the Law Society Council)

1. Articulated in s260 is the principle that a law practice is required to specifically particularise and separately record the receipt and disbursement of trust money

f. Misappropriation Example – **(*Council of the Law Society of NSW v Simpson*)**

i. Facts:

1. Peter Kaiser Simpson faced a disciplinary application by the Council of the Law Society of NSW for professional misconduct.
2. Allegations included breaches of Sections 254 and 255 of the Act, misappropriation, delayed disbursement payments, and failure to supervise employees.
3. The Tribunal found the solicitor had entrusted financial management to underqualified and inexperienced employees, amounting to a serious failure of professional responsibility.

ii. Judgement:

1. The Tribunal upheld three admitted breaches: failing to comply with Sections 254 and 255 of the Act and failing to supervise employees, finding a consistent lack of competence and diligence under Section 497(1).
2. While the Law Society argued that his actions constituted misappropriation, the solicitor contended that dishonesty was a necessary element, citing legal precedents.
3. The Tribunal accepted that the solicitor was unaware of critical financial mismanagement by his staff and had an honest belief that deposited funds were handled appropriately.

iii. Held: As a result, the Tribunal ruled that his conduct did not amount to misappropriation

g. Ethical and Professional Obligations

i. Some solicitors attempt to avoid opening a trust account by depositing client funds into other accounts, violating ethical and professional obligations.

ii. ***Council of the Law Society of New South Wales v Fay Marie Nicholls***

1. The solicitor failed to operate a trust account and instead intermingled trust funds with office funds, breaching Sections 254 and 260 of the Act.
2. The Tribunal held that trust funds are subject to fiduciary obligations, and misusing them—even without client loss or dishonesty—constitutes a breach.
3. Unlike in Simpson, where the solicitor was unaware of mismanagement, Nicholls was a sole practitioner and had direct control over her firm's accounting practices.
4. The solicitor failed to appreciate her obligations, and the Tribunal rejected her defence that she could replenish the account later.
5. The Tribunal found that depositing trust money into the office account was a deliberate act, not inadvertence, and her actions led to trust money being converted for personal use.
    a. Despite no proven dishonest intent, her actions resulted in misappropriation, leading to a finding of professional misconduct

4. Vicarious Trauma – *Kylie Nomchong SC (2017) 'Vicarious Trauma in the Legal Profession' Bar News 35*

a. What is Vicarious Trauma

i. **Definition –**being traumatised by what we see and observe

1. How does it happen?
    a. Relates to the experience of a person empathically engaging with the trauma of another person or group of people.
    b. People most at risk are therapists, counsellors, emergency workers, police officers, medical professionals and lawyers due to proximity to people and clients undergoing stressful experiences

ii. Symptoms

1. Avoiding certain types of matters or clients
2. Engaging in risk-taking behaviour
3. Insomnia
4. Feeling helpless about work tasks
5. Withdrawing from colleagues, friends and family
6. Closely mirroring short term effects of PTSD
    a. Nightmares and intrusive imagery
    b. Fear for one's safety or the safety of others
    c. Irritability and emotional numbness

iii. Long term effects

1. Change to core beliefs, view of self, others and world
2. Can affect confidence

b. Exposure of Lawyers to Vicarious Trauma

i. The exposure of lawyers to vicarious trauma

1. How does it happen?
    a. Retelling of a traumatic event