

70103 ETHICS LAW AND JUSTICE

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INTRODUCTION

LAWYERS

WHO ARE LAWYERS AND WHAT DO THEY DO

- Lawyers are perceived as elitist, aloof, greedy and devious by a lot of their clients
 - o Barrister
 - o Solicitor
- Only 38% of respondents to a Morgan Poll believed lawyers to be ethical and honest
- Stephen Nathanson → points out that many people's views of lawyers are distorted based on subjective personal experience or literature, film or newspaper reportage
- It is the possession of a law degree which sets lawyers apart from say those who have studied legal studies
- Historically study of law required an apprenticeship
- 1850 – First Australian law school
- Dramatic increase in number of lawyers in Australia over the past 30 years

PROFESSIONAL IDENTITY RESILIENCE

PROFESSIONAL IDENTITY RESILIENCE

WHAT IS LEGAL WORK

- Work done by legal practitioners → barristers and solicitors (admitted to practice)
 - o Represent clients, for fees for service
- Legal practice is the integration of many key variables
 - o Some legal, some not
- Problem solving can involve:
 - o Resolve a dispute
 - o Investigate a claim
 - o Avoid a disadvantage
 - o Recover a loss or compensation
 - o Negotiate a settlement or an agreement
 - o Draft a new document
 - o Expand operations
 - o Assist a client to plan or manage personal financial affairs
- Legal work is usually described as 'litigious' (involving court process) or 'non-litigious'
- Key to problem solving is the integration of professional knowledge with the skills of legal and fact investigation (research) and analysis, clear communication, advising and strategic planning
- Legal practice is categorised in broad terms:

- Property (or conveyancing)
- Commercial
- Corporate
- Securities
- Tax
- Family law
- Personal injuries (compensation)
- Consumer protection
- Industrial law
- Criminal law

THE UNIFORM LAW

The main legislation dealing with admission, conduct, complaints and discipline should be tabbed and noted:

- The Uniform Law or Legal Profession Uniform Law (NSW) No 16a
- The Australian Solicitor Conduct Rules (ASCR) or Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015
- The Legal Profession Uniform Conduct (Barristers) Rules 2015
- Legal Profession Uniform Law (NSW) 2015 ss 6, 32, 33, 45

SOLICITORS V BARRISTERS

Solicitor	Barrister
Contacted first by client	Contacted first by solicitor
Provide legal advice, assistance and representation direct to client as instructed	Cab-rank rule (must take any work offered to them by a solicitor)
	Represent their client in court

THE INFLUENCE OF LAWYERS IN SOCIETY

Legal practitioners are influential in society because of their relationship with the legal system and the administration of justice, which arises from their privileged position as 'officers of the court'

- Duty to uphold the rule of law in the fence of a just and democratic society
 - And fearlessly promote the interests of their clients within that framework
- Need to ensure they are mindful of their responsibilities to the legal system, the courts, and their clients within an ethical and moral framework (to protect integrity)
- Legal practitioner performs both a professional and social role in the community
- Legal profession:
 - Judges
 - Magistrates
 - Tribunal members
 - All must act impartially and independently
 - Their approach to the judicial system may reflect their social background and approach to social issues (leading to variation)

FOCUS ON WELLBEING

- High stress levels amongst law students due to competitive nature
- USYD 2009 → Lawyers and law students report higher stress levels than the general population
- Studies have found that law students shifted from a strong mental health measurement to a much lesser one by the end of the first year → Depression in law cohorts increasing

THE NATURE OF A PROFESSION AND 'PROFESSIONALISM'

Definitions: *Shorter Oxford English Dictionary* → Ainslie Lamb, John Littrich and Karina Murray, *Lawyers in Australia* (The Federation Press, 3rd ed, 2015, p. 45-46)

Profession: 'a vocation, especially one requiring advanced knowledge or training in some branch of learning' and a 'body of people engaged in a profession'

- Adhere to ethical standards
- Possess special knowledge and skills → derived from research and education
- Code of ethics governs the activity of each profession
 - o Require behaviour and practice beyond the personal moral obligations of an individual
 - o Enforced by the profession

Professionalism: 'the body of qualities or features, as competence, skill, etc., characteristic of a profession or professional'

- Skill based on a body of theoretical knowledge
- The provision of training and education
- Testing the competence of members seeking entry into the profession
- Organisation
- The ethical code of conduct
- An ethos of altruistic service
- Corporate capitalism has arguably resulted in a decline of professionalism

Johnson → described professionalism as 'a peculiar type of occupational control rather than the inherent nature of particular occupations. A profession is not, then, an occupation but a means of controlling an occupation' (LLM, p. 47)

- Legal profession is seen as a monopoly, promoting a sense of exclusiveness and superiority, aloof, and self-interested above the interests of clients or society itself, and very concerned with the rewards of a livelihood protected by a monopoly in the marketplace (LLM, p. 47)
- 'Litigation ethics' → perceived as an oxymoron

Values of professionalism (lawyers):

- An ethic of excellence
- An ethic of integrity
- Respect for the legal system and rule of law
- Respect for other lawyers
- Commitment to accountability
- Responsibility for the adequate distribution of legal services

LAWYERS

SOLICITORS

James and Field, Seminar Materials, p. 11

- Both personal and business matters
 - o Typically office based (but can represent their client in court)
- Legal advice about transactions and disputes, draft legal documents and conduct legal negotiations on behalf of their clients
 - o Interview clients about their needs and problems
 - o Provide legal advice
 - o Carry out investigations
 - o Prepare cases for court and arrange witnesses
 - o Conduct legal research,
 - o Etc.
- Many choose to specialise in a particular legal area

BARRISTERS

James and Field, Seminar Materials, p. 12

- Provide legal advice and opinions
- Specialise in representing clients before courts or tribunals
- General rule: they do not deal directly with members of the public, instead they take 'briefs' from solicitors
 - o Argue cases before civil, criminal and industrial courts
 - o Argue cases before tribunals and arbitrators
 - o Confer with instructing solicitors
 - o Speak with clients and witnesses prior to court proceedings
 - o Draft court and legal documents
- Like solicitors, tend to specialise
- Typically sole traders → cab-rank rule

WORK SECTORS

James and Field, Seminar Materials, p. 13-20

PRIVATE SECTOR

- Private practice
 - o Small, medium, and large firms
 - Ethical issues: Increasing billable hours by adding unnecessary/irrelevant work to the bill
- In-house counsel
 - o Provides legal advice and representation within the organisation they are employed by
 - Ethical issues: Balance duty to client, court and community
- Family lawyer