

70103 ETHICS, LAW AND JUSTICE

COMPREHENSIVE EXAM NOTES

AGLC4 Format | Cases | Statutes | Answer Frameworks | Thesis Templates

TOPICS COVERED IN THESE NOTES

1. How to Write: IRAC, Thesis Statements, AGLC4 Referencing & Footnotes
2. Ethics Theories: Virtue Ethics, Consequentialism, Deontology
3. Access to Justice: Economic Issues, Legal Aid, Pro Bono, CLCs
4. Access to Justice: Social/Cultural Issues, Aboriginal, CALD, Disability
5. Admission, Regulation and Discipline of Lawyers
6. Lawyer-Client Relationship: Retainer, Duties, Conflict of Interest
7. Duty to the Court: Candour, Cab Rank Rule, Guilty Pleas
8. Professional Identity, Wellbeing, Diversity and Resilience
9. Past Paper Question Analysis: All Question Types Answered

⚠ EXAM SURVIVAL RULE

Every answer needs: THESIS STATEMENT → IRAC structure → cases/statutes cited in footnotes → conclusion.

For "advise" questions: identify the issue, state the rule (conduct rules + cases), apply to facts, conclude.

For "discuss/analyse/critically analyse": thesis first, then arguments for AND against, then your position.

For "justify/explain": state the proposition clearly, then build the argument with evidence and authorities.

PART 1: HOW TO WRITE IN THE EXAM

1.1 THE IRAC FRAMEWORK FOR ETHICS LAW

IRAC FOR ETHICS (Different from Criminal Law)

ISSUE: What is the ethical/legal question arising from the facts?

RULE: What conduct rule (LPUL / LSC Rules), ethical theory, or case applies?

APPLICATION: How does the rule apply to these specific facts? Argue both sides.

CONCLUSION: What is your answer? Be decisive — do not sit on the fence.

Unlike criminal law IRAC, Ethics IRAC requires you to engage with BOTH the black-letter law (conduct rules) AND the underlying ethical theories. Examiners expect you to connect the two.

1.2 THESIS STATEMENTS — CRITICAL FOR MARKS

A thesis statement is your ANSWER to the question stated upfront in one or two sentences. It tells the examiner your conclusion BEFORE you argue it. This is worth significant marks at UTS Law.

THESIS TEMPLATES BY QUESTION TYPE

--- "DISCUSS" QUESTIONS ---

Template: "This essay [argues/contends/examines] that [your position]. While [acknowledge counterargument], [your position] because [key reason 1] and [key reason 2]."

Example (Q1 past paper): "This essay contends that following prescribed rules of conduct alone is insufficient to be an ethical lawyer. While rules provide important baseline standards, ethics requires the internalised virtues and moral reasoning that virtue ethics, deontology and consequentialism each demand in ways that mere rule-compliance cannot capture."

--- "CRITICALLY ANALYSE" QUESTIONS ---

Template: "A critical analysis of [topic] reveals that [position]. The [dominant view] overstates/understates [aspect] because [reason], and a more nuanced account must [alternative approach]."

Example: "A critical analysis of the adversarial conception of lawyering reveals that it inadequately accounts for the lawyer's duties to the court and broader society. The standard conception overstates client loyalty at the expense of social justice, and a more defensible account must integrate elements of the responsible lawyer model."

--- "JUSTIFY/EXPLAIN" QUESTIONS ---

Template: "This essay explains/justifies [proposition] by reference to [theory 1], [theory 2], and [authority]. The proposition is defensible/indefensible because [core reason]."

--- "ADVISE" QUESTIONS (problem questions) ---

Template: "Based on the relevant conduct rules and authorities, [client name] should be advised that [core advice]. The key issues are [issue 1], [issue 2], and [issue 3], each of which is addressed in turn."

Example (Q4 past paper): "Based on the Legal Profession Uniform Law 2014 (NSW) and the relevant authorities, Mary should be advised that her acquittal at trial is highly relevant to her disclosure obligations but does not automatically preclude admission. The LPAB will assess her good fame and character holistically."

--- "TO WHAT EXTENT" QUESTIONS ---

Template: "To a [significant/limited/moderate] extent, [proposition]. This is because [reason 1], though [qualification/counterargument], and ultimately [restatement of position]."

Example (Q2 past paper): "Technology will make lawyers redundant only to a limited extent. While automation poses real threats to routine legal work, the complexity of legal reasoning, ethical judgment, and client relationships ensures a continuing and vital role for human lawyers."

1.3 AGLC4 FOOTNOTE REFERENCING

AGLC4 (Australian Guide to Legal Citation, 4th ed) requires footnotes at the bottom of each page. Every time you cite a case, statute, article or textbook, you need a footnote number in the text and a full reference at the bottom.

AGLC4 FOOTNOTE FORMAT — LEARN THESE BY HEART

CASES (first citation — full form):

Surname v Surname (Year) Volume Reporter Page (Court abbreviation).

Example: Legal Services Commissioner v Nguyen [2015] VCAT 1 (first cite)

Short form after first cite: Nguyen (n 1) [paragraph number].

CASES (unreported):

Surname v Surname [Year] Court Case No, Date.

Example: Council of Law Society of NSW v George [2022] NSWCATOD 50.

LEGISLATION (Acts):

Short Title Year (Jurisdiction) s section number.

Example: Legal Profession Uniform Law 2014 (NSW) s 42.

Short form: LPUL s 42.

JOURNAL ARTICLES:

Author, "Title" (Year) Volume Journal Abbreviation Starting Page, Pinpoint.

Example: Christine Parker, "A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics" (2004) 30 Monash University Law Review 49, 52.

Short form: Parker (n X) 52.

TEXTBOOKS:

Author, Title (Publisher, edition, Year) page.

Example: Dal Pont, Lawyers' Professional Responsibility (Thomson Reuters, 7th ed, 2021) 45.

Short form: Dal Pont (n X) 45.

REPORTS/GOVERNMENT DOCUMENTS:

Organisation, Title (Report type, Year) page/paragraph.

Example: Productivity Commission, Access to Justice Arrangements (Report No 72, 2014) 3.

IBID RULE: Use ibid when citing the same source as the immediately preceding footnote.

Example: fn 5: Dal Pont (n 3) 45. fn 6: Ibid 46. (same source, different page)

fn 7: Ibid. (same source, same page)

SUBSEQUENT CITATION: After first full cite, use: Author (n X) pinpoint.

Example: Parker (n 4) 55.

AGLC4 QUICK REFERENCE — CASES YOU WILL USE

Legal Profession Uniform Law 2014 (NSW) — cite as: LPUL s [number]

Legal Profession Uniform Law Application Act 2014 (NSW) — cite as: LPULAA

[REDACTED]

ADMISSION CASES:

Re B and the Bar Association of New South Wales (1981) 53 FLR 55

Re Evatt (1967) 67 SR (NSW) 298

[REDACTED]

CONFLICT OF INTEREST / LAWYER-CLIENT:

Prince Jefri Bolkiah v KPMG [1999] 2 AC 222

Maguire v Makaronis (1997) 188 CLR 449

[REDACTED]

DUTY TO COURT:

Meek v Fleming [1961] 2 QB 366

[REDACTED]

MISCONDUCT/DISCIPLINE:

Council of the Law Society of NSW v Foreman (1994) 34 NSWLR 408

[REDACTED]

ACCESS TO JUSTICE:

[REDACTED]

Gideon v Wainwright 372 US 335 (1963) (US — for comparative argument only)

ETHICS THEORY SOURCES (cite as secondary sources):

Christine Parker, "A Critical Morality for Lawyers" (2004) 30 Monash ULR 49

[REDACTED]

[REDACTED]

[REDACTED]

PART 2: ETHICS THEORIES — VIRTUE, CONSEQUENTIALISM, DEONTOLOGY

This topic is tested in almost every exam. You must be able to: (1) define each theory; (2) apply it to legal practice; (3) compare/contrast; and (4) evaluate which is most appropriate for lawyers.

2.1 THE THREE MAIN ETHICAL THEORIES

A. VIRTUE ETHICS

Origin: Aristotle, Nicomachean Ethics. Core question: "What kind of person should I be?"

VIRTUE ETHICS — KEY CONTENT

Core idea: Ethics is about character, not just following rules or calculating outcomes.

A virtuous person has internalised good values and naturally acts well — they do not need rules to tell them what is right.

Key virtues for lawyers: honesty, courage, prudence (practical wisdom/phronesis), justice, integrity, compassion.

Practical wisdom (phronesis): the ability to identify the right action in complex, specific situations — crucial for lawyers.

"Good fame and character" in admission law is a direct application of virtue ethics.

HOW IT APPLIES TO LAWYERS:

A virtuous lawyer does not ask "does the rule permit this?" but "is this the right thing to do?"

Promotes moral activism — lawyers as moral agents, not just legal technicians.

Supports the social justice conception of lawyering (Parker).

Weakness: Vague — whose virtues? Which virtues? Can be used to justify different conclusions.

KEY CASE: *Ziems v Prothonotary of Supreme Court of NSW* (1957) 97 CLR 279 — character of solicitor assessed holistically.

KEY SCHOLAR: Aristotle; modern application by Christine Parker.

B. CONSEQUENTIALISM (UTILITARIANISM)

Origin: Jeremy Bentham and John Stuart Mill. Core question: "What produces the best outcomes for the most people?"

CONSEQUENTIALISM — KEY CONTENT

Core idea: The rightness of an action is determined entirely by its consequences.

Utilitarian formula: maximise aggregate happiness/welfare across all those affected.

Act utilitarianism: assess each individual act by its consequences.

Rule utilitarianism: follow rules that, if generally followed, produce the best consequences.

HOW IT APPLIES TO LAWYERS:

Supports the idea that lawyers should consider broader social consequences of their actions.

Justifies pro bono work — increases total access to justice and social welfare.

Justifies legal aid — the social cost of unrepresented parties (inefficiency, injustice) outweighs the financial cost.

Can justify departing from strict client loyalty where the harm to third parties is severe.

Weakness: Can justify wrongdoing if the outcome is good enough ("ends justify means").

Can undermine individual rights — a minority may be harmed for the majority's benefit.

KEY SCHOLAR: Bentham, *An Introduction to the Principles of Morals and Legislation* (1789); Mill, *Utilitarianism* (1863).

APPLICATION: Productivity Commission, *Access to Justice Arrangements* (Report No 72, 2014) — consequentialist framing of legal aid reform.

C. DEONTOLOGY

Origin: Immanuel Kant. Core question: "What is my duty? What rules must I follow regardless of consequences?"

DEONTOLOGY — KEY CONTENT

Core idea: Some actions are intrinsically right or wrong, regardless of their consequences.

Categorical Imperative (Kant): Act only according to that maxim whereby you can at the same time will that it should become a universal law.

Persons must be treated as ends in themselves, never merely as means.

HOW IT APPLIES TO LAWYERS:

Supports strict duties: duty of confidentiality, duty of loyalty, duty not to lie.

The conduct rules (ASCR) are fundamentally deontological — they state WHAT lawyers must/must not do.

A deontological lawyer would not lie to the court even if doing so would benefit the client.

Supports the "standard conception" of lawyering — lawyers have role-specific duties that override personal moral views.

Explains why lawyers can defend guilty clients — their role-duty is to provide representation, not to judge.

Weakness: Rules can be rigid and produce unjust outcomes in individual cases.

Can cause "role morality" — using professional rules as a shield for personal moral abdication.

KEY SCHOLAR: Kant, Groundwork of the Metaphysics of Morals (1785).

APPLICATION: ASCR r 4 (paramount duty to court), r 7 (duty to client), r 9 (integrity) — all deontological in structure.