

LAWS2013 The Legal Profession

Reading Notes — All Prescribed Readings, Weeks 1–12

Updated for Semester 1, 2026 · Law stated as at October 2026

Colour key

Council of the NSW Bar Association v EFA

Case names — plum, italics

Uniform Law s 174 (costs disclosure)

Legislation and conduct rules — navy

the paramount duty is to the court

Key principles — teal

when in doubt, disclose

Critical points — deep red, soft rose tint

Structure follows the LAWS2013/LAWS5009 weekly schedule for Semester 1, 2026, with readings from the Learning Guide.
Textbook: V Holmes and F Bartlett, *Parker and Evans's Inside Lawyers' Ethics* (CUP, 4th ed, 2023). "Uniform Law" is the Legal Profession Uniform Law (NSW); "Solicitors' Rules" and "Barristers' Rules" are the Uniform Law conduct rules.

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Week 1(a): Approaches to Legal Ethics and Professional Responsibility

Overview

1. **Legal ethics is more than the conduct rules.** It has three layers: (1) the “law of lawyering” — statute (the Uniform Law), the conduct rules and the general law (fiduciary duties, contract, tort, the court’s inherent jurisdiction); (2) the profession’s shared ideals of professionalism; and (3) each lawyer’s personal ethical judgment, which is needed wherever the rules are silent, unclear or conflict.
2. **Exam use:** in a problem question, start with the binding rules (Uniform Law, Solicitors’ or Barristers’ Rules, case law). Then use the four approaches to legal ethics to evaluate the conduct and to argue what a lawyer should do where the rules leave room for judgment.

Textbook: Parker and Evans’s Inside Lawyers’ Ethics, chs 1–2

Chapter 1 — Why lawyers need ethics (pp 2–3, 10–25)

1. Lawyers make ethical choices constantly, often under commercial and time pressure, and often in situations the rules do not squarely address. The chapter argues that “just following the rules” is not enough: rules set minimum standards, while ethical practice requires judgment about what is right in context.
2. It identifies the main sources of lawyers’ obligations — duties to the court and the administration of justice, duties to clients, duties to colleagues and third parties, and duties to the public — and explains that these duties can conflict.
3. It introduces the idea of **role morality**: the question whether lawyers’ professional role justifies doing things (eg vigorously defending a client they believe guilty) that would be questionable outside that role.

Chapter 2 — Four approaches to legal ethics

1. **Adversarial advocate**: the lawyer’s job is zealous, partisan advocacy for the client within the bounds of the law. The adversarial system, not the individual lawyer, produces justice. Underpinned by the principles of **partisanship** (act solely for the client) and **neutrality / non-accountability** (the lawyer is not morally responsible for the client’s lawful ends). Critique: can justify harmful conduct and “hired gun” behaviour.
2. **Responsible lawyer**: the lawyer is an officer of the court and a guardian of the legal system. Duties to the court and the administration of justice limit partisanship, and lawyers should respect the spirit as well as the letter of the law. This approach is closest to the Australian conduct rules (eg the paramount duty to the court: Solicitors’ Rules r 3).
3. **Moral activist**: lawyers should use their own moral judgment to pursue justice. They may refuse, withdraw from or reshape a retainer, persuade clients towards just outcomes, and use law to reform society (eg public interest and human rights lawyering). Critique: risks paternalism and substituting the lawyer’s values for the client’s.
4. **Ethics of care**: drawing on feminist ethics, emphasises relationships, communication and the client’s wider interests (family, community, wellbeing) rather than abstract rights. Favours collaborative and non-adversarial resolution. Critique: can be hard to reconcile with clients’ instructions and adversarial settings.
5. **How to use them**: no single approach is “correct”. Strong answers identify which approach a lawyer’s conduct reflects, test it against the others, and explain which is most defensible on the facts.

Conduct Rules

1. **Solicitors’ Rules r 3** — **a solicitor’s duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty**. It sits with the other fundamental duties in r 4

Week 1(b): Diversity and the Role of Lawyers; Introducing the Regulatory Framework

Overview

1. The profession is more diverse by gender than ever (women have outnumbered men among solicitors in NSW for years), but **women remain under-represented in senior roles, and socio-economic, cultural and First Nations diversity lag**. Sexual harassment and bullying are documented, persistent problems.
2. **Harassment and discrimination are now conduct matters, not just workplace issues**: they are prohibited by the conduct rules and can found disciplinary findings. Since December 2022 employers have also had a **positive duty** to take reasonable and proportionate measures to eliminate sexual harassment (*Sex Discrimination Act 1984 (Cth) s 47C*, enforced by the Australian Human Rights Commission from December 2023).

Readings on Diversity

1. **Kate Allman, “A profession for the wealthy? The enduring problem for diversity in law” (LSJ, 2020)**: argues that the profession draws disproportionately from privileged backgrounds. Barriers include the cost of a law degree and of PLT, unpaid or low-paid internships, reliance on networks and private-school connections, and recruitment that rewards cultural “fit”. Suggested responses include paid clerkships, outreach and scholarships, contextual recruitment that considers disadvantage, and measuring socio-economic diversity.
2. **Law Council of Australia, Public Leadership Statement on Sexual Harassment and Discrimination (2024)**: leaders of the profession publicly commit to eliminating sexual harassment and discrimination, to supporting people who report it, to preventive measures (training, policies, culture), and to accountability, consistent with the positive duty under the Sex Discrimination Act.
3. **Law Society of NSW, Charter for the Advancement of Women in the Legal Profession**: law practices that sign commit to practical steps to advance women, such as leadership commitment, flexible work, transparent promotion and pay, equitable briefing and work allocation, and measuring and reporting progress.

Conduct Rules

1. *Solicitors’ Rules* r 42 — **a solicitor must not, in the course of practice, engage in conduct which constitutes discrimination, sexual harassment or workplace bullying**.
2. *Barristers’ Rules* r 123 — the equivalent rule for barristers: a barrister must not, in the course of practice, engage in conduct which constitutes discrimination, sexual harassment or workplace bullying.

Cases

1. *Hughes trading as Beesley and Hughes Lawyers v Hill* [2020] FCAFC 126; (2020) 382 ALR 231
 - (a) **Facts**: Mr Hughes, the principal of a small law practice, employed Ms Hill as a paralegal and supervised her. Over months he pursued her romantically and sexually despite her repeated refusals, including unwelcome messages and advances, while she depended on him for her job and training. She sued under the *Sex Discrimination Act 1984 (Cth)*.
 - (b) **Held**: The Full Federal Court upheld the finding that Mr Hughes sexually harassed Ms Hill and the award of substantial damages (about \$170,000). His conduct was unwelcome even though she continued working with him, and he exploited the power imbalance in the employment relationship.

Week 3(b): Legal Education and Admission to the Profession (2)

Textbook: Littrich and Murray, ch 7 (pp 163–167)

1. Focuses on **academic misconduct** (plagiarism, collusion, cheating) as a fitness issue. Courts treat dishonesty in academic work as relevant because it involves passing off others' work as one's own, which tests the honesty expected of lawyers. The decisive factors are usually the seriousness and deliberateness of the conduct, the applicant's insight and candour about it, and above all whether it was fully disclosed.

Booth, Stuhmcke and Wangmann, "There is Plagiarism... and then there is Plagiarism" (2020) 27(3) International Journal of the Legal Profession 29

1. Examines how universities and admission authorities treat plagiarism. The authors argue that **"plagiarism" covers very different conduct**, from poor referencing by inexperienced students to deliberate dishonest copying. University findings are not always reliable indicators of dishonesty, yet they may carry heavy consequences at admission.
2. They call for a more nuanced, proportionate approach that distinguishes educational failures from dishonesty, and for clearer communication to students about the admission consequences of academic misconduct findings and the duty to disclose.

Cases

1. *XY v Board of Examiners* [2005] VSC 250 ([31]–[83])
 - (a) **Facts:** XY was sexually abused as a child and later suffered borderline personality disorder, PTSD and alcohol dependence. Between 1992 and 1998 she committed offences including threats to kill a police officer, stalking an abusive former partner and property damage; on appeal most were dealt with without conviction. She stopped drinking in 1998 and completed her law degree. Her disclosure affidavit covered those matters but initially omitted four incidents. Two were serious: (1) in 2001 she told a police officer volunteering at a legal service "I hope they kill you", and her volunteer role was terminated — she consciously decided not to disclose this after advice from a minister who was also a solicitor; and (2) a 2000 incident at a meditation retreat involving property damage and a threat of self-harm. The Board refused admission.
 - (b) **Held** (appeal heard de novo): appeal allowed. XY was a fit and proper person, on her undertaking to maintain her participation in Alcoholics Anonymous while holding a practising certificate.
 - (c) **Past offences and mental health:** the offences did not involve dishonesty in the relevant sense, and her culpability was reduced by her mental illness. Unanimous psychiatric evidence showed her disorders had resolved. She showed genuine remorse and insight (contrast *Victorian Lawyers RPA Ltd v X* [2001] VSC 429, where lack of insight led to refusal).
 - (d) **Non-disclosure:** the legal service incident clearly should have been disclosed. But the omission was an error of judgment, not a deliberate attempt to mislead — she relied on advice and was misled by an admission information pack that wrongly suggested only criminal or tribunal matters needed disclosure (the Court criticised the pack). The meditation retreat omission reflected psychological avoidance while she was still unwell, not deliberate concealment.
 - (e) **Key statements:** **the duty of disclosure extends to everything that could bear on fitness, not merely convictions or charges.** Adopting *Frugtniet v Board of Examiners* [2002] VSC 140 at [10]–[11]: the applicant must not select or edit from their life only some relevant events, and **"revealing more than might strictly be necessary counts in favour of an applicant"**; revealing less may itself show a desire to distort. See also *In re Davis* (1947) 75 CLR 409 (non-disclosure of a conviction can itself exclude a finding of good character).

Week 10(a): Competence, Liability and Immunity (1) — Competence and Negligence

Overview

1. **Lawyers must deliver legal services competently, diligently and as promptly as reasonably possible** (Solicitors' Rules r 4.1.3). Incompetence has three overlapping consequences: civil liability (negligence, breach of retainer), costs orders, and discipline (unsatisfactory professional conduct where conduct falls short of the standard of a reasonably competent lawyer — Uniform Law s 296).

Textbook: Parker and Evans, ch 6 (pp 193–196)

1. Explains that competence includes knowing the law and procedure, preparing properly, communicating with the client, and recognising the limits of one's expertise — referring work on or getting help where needed. It links competence to the client's informed decision-making (eg proper advice about settlement offers) and notes that most complaints and negligence claims arise from failures of communication and diligence rather than ignorance of the law.

Legislation

1. *Civil Liability Act 2002* (NSW) s 50 — **standard of care for professionals** (the Learning Guide refers to "s 50", which is s 50): **a professional is not negligent if they acted in a manner that, at the time, was widely accepted in Australia by peer professional opinion as competent professional practice**, unless the court considers that opinion irrational. Peer opinion need not be universally accepted, and differing peer opinions can each be competent practice. Note that s 5P excludes from s 50 the duty to warn of risk.
2. **Elements of a negligence claim against a lawyer**: a duty of care (in contract under the retainer, and in tort — including, in limited cases, to third parties such as intended beneficiaries under a will: *Hill v Van Erp* (1997) 188 CLR 159); breach (the standard of the reasonably competent practitioner, informed by s 50); and causation and loss (what would the client have done if properly advised?).

Conduct Rules

1. *Solicitors' Rules* r 4.1.4 — avoid any compromise to integrity and professional independence. rr 7–8 — clear and timely advice, and following instructions (Week 5(a)). *Barristers' Rules* rr 35–38 — the duty to the client, including informing the client about settlement and alternatives.

Cases

1. *Roberts v Cashman* [2000] NSWSC 770
 - (a) **Facts**: Mrs Roberts injured her back in 1987 when a banana chair bought from BBC Hardware collapsed. After years of treatment she had epidural injections of Depo Medrol, after which her condition worsened. She retained Cashman & Partners, a firm specialising in class actions and product liability, to claim for the Depo Medrol injections. All dealings were by telephone, letter and a questionnaire: she was never interviewed. The questionnaire mentioned her "fall from a chair", her three years of problems afterwards, her surgery and the closure of the family business. The firm did not inspect her hospital records or obtain her neurosurgeon's report. Her claim against BBC Hardware became statute barred in November 1993 without her ever being told she had one.
 - (b) **Held**: **The solicitor breached the retainer and the duty of care**. Judgment for the plaintiff of \$318,267.
 - (c) **Breach**: it was conceded the retainer required the firm to consider the circumstances of the original injury. Assessing the Depo Medrol claim inherently required a detailed history and medical evaluation of the original injury, including hospital records and reports, and difficulties in obtaining them were no

Week 11(b): Complaints and Discipline (2) — Removal from the Roll

Overview

1. **Removal from the roll is reserved for cases where the lawyer is not a fit and proper person**, usually where the court is satisfied the unfitness is likely to be permanent or indefinite. Fitness is assessed at the time of the hearing. Dishonesty, serious criminality, persistent disregard of legal obligations and lack of insight are the classic grounds. Private conduct unconnected with practice can show unfitness.

Legal Profession Uniform Law

1. **Pts 5.2–5.5** — complaints (Pt 5.2), consumer matters (Pt 5.3), disciplinary matters (Pt 5.4) and disciplinary proceedings in the designated tribunal (NCAT) (Pt 5.5), including the orders available.
2. **ss 86–92** — **show cause events** and related notification duties: a practising certificate holder or applicant must notify the regulator of events such as bankruptcy or conviction for a serious offence or tax offence, and show cause why they remain fit to hold a certificate. Failure can lead to refusal, suspension or cancellation.

Cases

1. *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279
 - (a) **Facts:** A barrister failed to lodge income tax returns for about 38 years and was bankrupted on a tax debt.
 - (b) **Held:** Removed from the roll. **Persistent and deliberate disregard of legal and civic obligations — even outside legal practice — showed he was not a fit and proper person.** Spigelman CJ identified **four interrelated interests protected by the disciplinary jurisdiction:** the protection of the public, of the administration of justice, of fellow practitioners and of the reputation of the profession. Public confidence would be undermined if a person who had flouted the law for decades remained an officer of the court.
2. *Prothonotary of the Supreme Court of NSW v P* [2003] NSWCA 320
 - (a) **Facts:** A solicitor was convicted of importing cocaine, an offence connected with drug addiction and committed outside practice.
 - (b) **Held:** Application for removal dismissed. A conviction for a serious offence is not of itself enough for removal (*Ziems v Prothonotary* (1957) 97 CLR 279). Removal should be ordered only where the probability is that the practitioner is permanently unfit, and **the question is present fitness** (*Del Castillo*). The solicitor had been drug-free for about five years, was rehabilitated and posed no risk to the public.
3. *Council of the New South Wales Bar Association v Franklin (No 2)* [2014] NSWCA 428
 - (a) **Facts:** A barrister was convicted of aggravated sexual assault (and earlier pleaded guilty to assault occasioning actual bodily harm), offences unrelated to his work. His practising certificate was cancelled, and after his release on parole the Bar Council sought his removal.
 - (b) **Held** (Meagher JA, Beazley P and Leeming JA agreeing): **removed from the roll.** Although unrelated to practice, the conduct revealed defects of character incompatible with the standards required of a lawyer, and **his persistent denial of guilt demonstrated a present unfitness to practise** (lack of insight).
4. *Council of the New South Wales Bar Association v Rollinson* [2022] NSWSC 407
 - (a) **Facts and held:** The Bar Council brought contempt proceedings against a barrister who had failed to comply with court orders; the Court found him guilty of contempt. Further criminal contempt findings