

LAWS11072 — MASTER EXAM NOTES

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TOPIC 1 — PROFESSIONAL RESPONSIBILITY, ETHICS & SOURCES OF CONDUCT RULES (Week 1-2)

TOPIC OVERVIEW	Lawyers hold a statutory monopoly and special privileges because law is a profession whose ideal is service, not profit (<i>Re Foster</i>). In return they owe duties to the court, clients, colleagues and the public. Those duties come from statute, regulation, professional rules and case law, but codes do not cover every situation - practitioners must also exercise ethical judgment when duties compete.
KEY LEGAL PRINCIPLES	- Four sources in Queensland: LPA 2007 (Qld); LPR 2017 (Qld); ASCR (solicitors); Bar Rules (barristers) - plus case law and QLS Guidance Statements. - Duty to the court and administration of justice is paramount (ASCR r 3). - Fundamental duties: best interests, honesty and courtesy, competence/diligence/promptness, integrity and independence, compliance (ASCR r 4). - Ethics (sanctionable rules) differ from etiquette (minor custom), courtesy and personal morality. - Theories: trait approach (Millerson) vs power-and-resources theory (Johnson); role differentiation (Wasserstrom). - Good fame and character must be retained throughout a career (<i>Re Foster</i>). - Three sources of obligation (statute, rules, general law) and rules serve three roles: guidance, discipline and public confidence (DP Ch 1). - Ethical status rests on 'honesty and unselfishness' and is maintained mainly through discipline, not inherent virtue (Dal Pont, 'Show Just Cause'). - Ethical approaches: adversarial advocate, responsible lawyer, moral activist, ethic of care (Parker & Evans) - critiqued for paternalism (Lauchs).
LEGISLATION & CONDUCT RULES	ASCR r 3 - paramount duty to court prevails over inconsistent duties. ASCR r 4 - fundamental ethical duties (4.1.1-4.1.5). ASCR r 5 - no conduct showing unfitness or bringing profession into disrepute, in practice or otherwise. Bar Rules - barristers' code incl. cab-rank r 21 and duty to client r 37. LPA s 420(1)(a) - breach of the rules is capable of UPC/PM.
KEY CASES	<i>Re Foster</i> (1950) 50 SR (NSW) 149 Service ideal; must keep good fame and character Explains why higher standards apply Opening line for duties/fitness answers. <i>Ziems v Prothonotary</i> (1957) 97 CLR 279 Not every lapse shows unfitness Balances personal life and profession Use for personal conduct questions. <i>Bolton v Law Society</i> [1994] 1 WLR 512 Reputation of profession Purpose of standards Sanction/policy. <i>LPCB v Morel</i> (2004) 88 SASR 401 Boundary between personal and professional Struck off Relationships with clients.
EXAM ISSUE TRIGGERS	- Question asks whether conduct is a breach of 'ethics, etiquette, courtesy or morality'. - Competing duties (client vs court vs third party). - Policy/essay prompt: is law a profession? should self-regulation continue?
APPLICATION CHECKLIST (IRAC)	Issue: which duty is engaged and to whom? Law: identify the source (LPA, ASCR rule number, Bar rule, case). Application: classify the conduct; where duties conflict, apply ASCR r 3 (court prevails). Conclusion: state the consequence (discipline, civil liability, none).
COMMON TRAPS & DISTINCTIONS	- Always give the exact rule number (lecturer emphasises sub-rules, e.g. r 7.1 vs 7.2). - Do not drift into policy in a problem question unless asked ('Am I answering the question?'). △ ASCR edition: guide uses both 2012 and 2023 - cite ASCR 2023 and verify. - Wasserstrom: role-differentiated amorality is most defensible in criminal defence; less so in advisory work.
MODEL EXAM PARAGRAPH	The issue is whether [practitioner]'s conduct in [conduct] breaches their professional obligations. As a [solicitor/barrister], [practitioner] is bound by the <i>Legal Profession Act 2007</i> (Qld) and the [ASCR/Bar Rules]. ASCR r 4.1.[x] requires a solicitor to [duty], and r 3 makes the duty to the court paramount. Here, [facts] show [compliance/breach] because [reason]. Under s 420(1)(a) a breach of the rules is capable of constituting unsatisfactory professional conduct or professional misconduct. Therefore [conclusion].
MODEL EXAM ANSWERS	Full exam-style answers are in the separate LAWS11072 Model Exam Answers document: 1A — Ethics vs etiquette 1B — Competing duties: client vs court