

The concept of Professional Responsibility

- **Ethics:** means different things to different people. Some see ethics as somewhere in between law and morality, while others equate ethics with a sense of honesty and integrity and so consider that persons who display “greater” honesty and integrity exhibit a “higher” standard of ethics than those who display lesser doses of these desirable attributes. Yet to speak of degrees of honesty or integrity is to devalue the absoluteness of those very concepts (Dal Pont pg.3). Some commentators resort to moral philosophy, adopting the concepts of teleological and deontological ethics.
 - **Teleological theory:** The best known teleological theory is *utilitarianism*, the adherents to which contend that the consequences or results of a particular action dictate its “rightness” and should, therefore, govern the outcome of an ethical dilemma. The action that engenders the greatest amount of favourable consequences, maximising utility, should prevail. The principal difficulty with utilitarianism is that it justifies action that may be objectively unethical by the favourable consequence of that action. *Many see the lawyer’s role in this light: the favourable consequence for the client justifies conduct that some may perceive as unethical* (Dal Pont pg 4).
 - **Deontological theory:** Deontologists argue that the “right” action is independent of its consequences; “rightness” is to be assessed by reference to a system of rules that may need to be ranked hierarchically to ensure consistency. What is ethical is in no way influenced by social norms of particular societies (relativism) or by each individual (subjectivism) (Dal Pont pg 4). For example, the notion that lawyers must foster truth above all else is a deontological one.
- **Legal Ethics:** Central to professional responsibility is honesty in members of the legal profession, a concept often viewed as at the core of ethical behaviour, both within and outside the legal profession. In the legal arena it is reflected in copious statements by the courts, legislatures, regulatory bodies and the like extolling the need for unwavering honesty in members of the profession. Unless lawyers display what has been judicially described as “the overriding duty of honesty that they owe to the courts, their clients and to their fellow practitioners”, public and judicial confidence in the proper administration of justice will, it is reasoned, be undermined (*Chamberlain v Law Society of the Australian Capital Territory (1993) 118 ALR 54 at 61 per Black CJ*).

Fiduciary duties: An equitable duty to act in good faith for the benefit of another, for example it may involve a relationship of trust and confidence or of confidential relations (*Boardman v Phipps [1967] 2 AC 46*). Fiduciary duties aim to promote loyalty by lawyer to client; the attendant duty to avoid a conflict of interest, between the lawyers own interest and the interests of