

Legal Ethics Presentation

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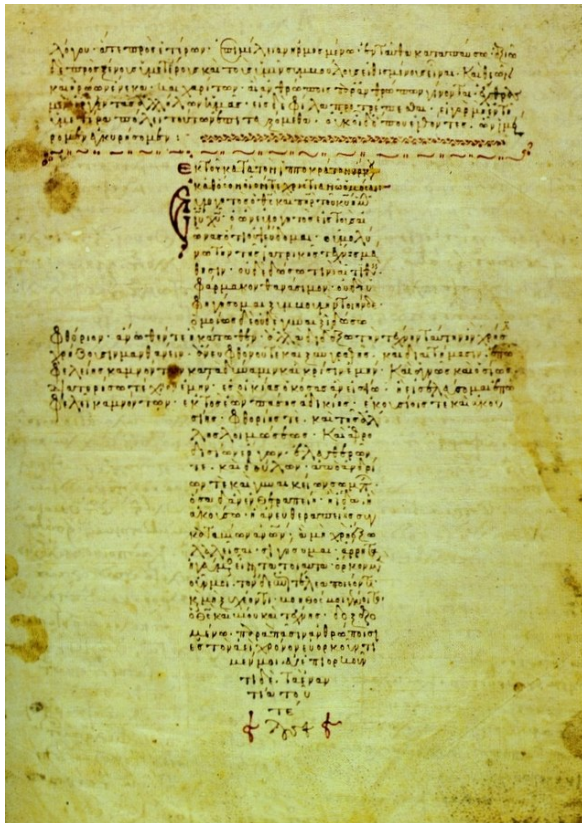
What are Legal Ethics?

Ethics is a branch of philosophy that involves codifying, defending, and recommending concepts of right and wrong conduct.

- Applied in the context of a profession such as law, “professional ethics” encompasses the personal and corporate standards of behaviour expected of legal professionals.
- Professionals exercise specialist knowledge and skill. How the use of this knowledge should be governed when providing a service to the public can be considered a moral issue and is termed “professional ethics”.

What are Legal Ethics?

It is the ability to make judgments, apply skills, and reach informed decisions in situations where the general public cannot because they have not attained the necessary knowledge and skills. One of the earliest examples of professional ethics is the Hippocratic oath to which medical doctors still adhere.



*12th-Century Byzantine
manuscript of the Hippocratic oath*



Sources of Legal Ethics

- Historically, legal ethics have found expression through Court decisions in common law jurisdictions.
- Modern legal ethics are mostly enshrined in legislation or a legislative offshoot such as the *Professional Conduct Rules*

Sources of Legal Ethics

- *Legal Profession Uniform Law Act 2014*
- *Various sets of Conduct and Regulatory Rules*
- *Codes of Ethics (LIV)*

Sources of Legal Ethics



Code of Ethics

As a member of the Law Institute of Victoria (LIV), I/we acknowledge the role of our profession in serving our community in the administration of justice. We recognise that the law should protect the rights and freedoms of members of society.

We understand that we are responsible to our community to observe high standards of conduct and behaviour when we perform our duties to the courts, our clients and our fellow practitioners.

Our conduct and behaviour should reflect the character we aspire to have as a profession.

This means that as individuals engaged in the profession and as a profession:

- We primarily serve the interests of justice.
- We act competently and diligently in the service of our clients.
- We advance our clients' interests above our own.
- We act confidentially and in the protection of all client information.
- We act together for the mutual benefit of our profession.
- We avoid any conflict of interest and duties.
- We observe strictly our duty to the Court of which we are officers to ensure the proper and efficient administration of justice.
- We seek to maintain the highest standards of integrity, honesty and fairness in all our dealings.
- We charge fairly for our work.

Sources of Legal Ethics

LIV Ethics Guidelines

LIV Ethics Guidelines are published with the approval of the LIV Council. Each Guideline is published after rigorous research, drafting and consultation. Click on the links below to download a PDF copy of the various Guidelines.

- [Advertising Guidelines \(PDF\) \(17 November 2016\)](#)
- [Australian Taxation Office Access to Lawyers' Premises \(PDF\) Law Council of Australia. \(September 1991\)](#)
- [Communicating with Another Practitioner's Client Guidelines \(PDF\) \(17 December 2015\)](#)
- [Conflict of Interest Guidelines \(PDF\) \(15 September 2016\)](#)
- [Direct-Marketing Guidelines \(PDF\) \(10 February 2017\)](#)
- [File Ownership, Retention & Destruction Guidelines \(PDF\) \(10 February 2017\)](#)
- [Guidelines on the Ethical Use of Social Media \(PDF\) \(17 November 2016\)](#)
- [Guidelines for Police and Legal Practitioners at Police Stations \(PDF\) \(3 October 2001\)](#)
- [Inadvertent Disclosure Guidelines \(PDF\) \(17 December 2015\)](#)
- [Information Barrier Guidelines \(PDF\) \(20 April 2006\)](#)
- [Information Barrier Guidelines Summary \(PDF\) \(17 November 2016\)](#)
- [Interviewing and Conferring with Witnesses Guidelines \(PDF\) \(10 February 2017\)](#)
- [Letters of Demand Guidelines \(PDF\) \(15 October 2015\)](#)
- [Notices to produce in bankruptcy & insolvency \(PDF\) \(19 November 2015\)](#)
- [Powers of Attorney Guidelines \(PDF\) \(18 July 2013\) – This guideline is under review due to the introduction of the new *Powers of Attorney Act 2014 \(Vic\)*.](#)
- [Referral Fees Guidelines \(PDF\) \(27 July 2017\)](#)
- [Releasing Money from Trust Guidelines \(PDF\) \(17 November 2016\)](#)
- [Guidelines for the Representation of Co-Defendants In Criminal Proceedings \(PDF\) \(27 October 2017\)](#)
- [Search Warrant Guidelines \(AFP/LCA\) \(PDF\) \(3 March 1997\)](#)
- [Subpoenaed Documents Guidelines \(PDF\) \(27 July 2017\)](#)
- [Undertakings Guideline \(PDF\) \(17 December 2015\)](#)

Sources of Legal Ethics

- LIV Ethics Committee Rulings
- Colleagues
- CPD
- Gut Instinct
- Lawyers Weekly (?)

Case Study 1

Russell Kennedy commenced acting for a client who had sustained work related physical and psychological injuries. The client was seeking compensation.

- The matter progressed somewhat and a legal proceeding was commenced.
- Whilst taking the client's instructions for a detailed witness statement, Darren gradually became concerned that the client may not have capacity to give instructions.
- The client had brought in a new bundle of documents. Darren quickly checks the documents whilst the client is out for a smoko. There was a medical report to the effect that, if the client was served with an application to appoint a guardian, it was likely that the client would become suicidal.
- What should Darren do? What ethical issues arise?

Case Study 1

Discussion Points Case Study 1

Solicitors' Conduct Rules 2015

- 8. CLIENT INSTRUCTIONS
 - 8.1 A solicitor must follow a client's lawful, proper and competent instructions
- What about confidentiality?
- What about the client's case and credibility?

Case Study 2

Bob and John were having a dispute.

- Russell Kennedy was acting for Bob, a director of Fast Wheels Pty Ltd.
- Bob was in dispute with John, the other director of Fast Wheels, in relation to their respective settlement entitlements following the sale of a business. The dispute related to whether funds contributed to Fast Wheels by Bob was by way of a loan, which would have payment priority, or start-up capital.
- John was represented by another law firm, which claimed that Russell Kennedy had a conflict of interests, as it had previously acted for John by incorporating Slow Wheels Pty Ltd, of which John was a co-director, and had also drafted and settled the Fast Wheels' Shareholder and Unitholder Deeds.
- Can Russell Kennedy act for Bob?

Case Study 2

Discussion Points Case Study 2

Solicitors' Conduct Rules 2015 – Rule 10. Conflicts Concerning Former Clients

- 10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by Rule 10.2.
- 10.2 A solicitor or law practice who or which is in possession of information which is confidential to a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter UNLESS:
 - 10.2.1 the former client has given informed written consent to the solicitor or law practice so acting, or
 - 10.2.2 an effective information barrier has been established.

Case Study 2

Discussion Points Case Study 2

- Is there a real and sensible risk of the misuse of confidential information by Russell Kennedy in the legal proceedings?
- Is there any breach of the duty of loyalty owed by Russell Kennedy to its alleged former client, John?
- What would a reasonable observer think about whether it was contrary to the administration of justice for Russell Kennedy to continue acting?

Case Study 3

Between April and July 2005 Russell Kennedy acted for Jeff Jones in a dispute regarding the failed purchase of a property. The dispute was ultimately resolved, without litigation.

- Later on, in May 2009 Jeff Jones incorporated “JJ Pty Ltd” a sole shareholder/director company.
- In April 2015 JJ commenced legal proceedings in the Supreme Court against “Property Solutions Pty Ltd” in an unrelated matter, for the recovery of a debt. Russell Kennedy Lawyer Morgan began advising Property Solutions.
- Through his new solicitors, Jeff Jones claimed Russell Kennedy was conflicted in acting against JJ’s interests, since it held confidential information obtained from him during the earlier retainer.
- What should Morgan do? What ethical issues arise?

Case Study 3

Discussion Points Case Study 3

What Should Morgan be thinking about?

Case Study 4

Sharp Lawyers holds a paper certificate of title to Joan's house.

- Joan is now represented by Russell Kennedy and wants to sell her house. She asks Solomon to retrieve her title back from Sharp Lawyers so that Russell Kennedy can start preparing a vendor's statement and a contract.
- Solomon writes to Sharp Lawyers enclosing a signed authority from Joan for the release of the title. They email him back and say that the 'Registrar's Requirements for Paper Conveyancing Transactions' require that Verification of Identity must first be undertaken before they can release the title to him.
- Solomon cracks it and replies that the client authority is sufficient.
- But is he right?

Case Study 4

Discussion Points Case Study 4

Is the written client authority sufficient? If not, why not? If it is, in what circumstances might it not be sufficient?

Case Study 5

Russell Kennedy acts for Excellence International Pty Ltd in relation to a dispute Excellence is having with one of its agents. Excellence provides educational services to domestic and international students who are sourced by agents with whom Excellence enters into agency agreements.

- The agents are paid a commission based on the fees paid by the students that it recruits. Sharp Lawyers acts for the agents. The dispute relates to the terms of the agency agreement between Excellence and the agents.
- Russell Kennedy finds out that Excellence used to be represented by Sharp Lawyers. It demands that Sharp Lawyers ceases to act.
- Are Sharp Lawyers conflicted? What factors could influence your decision?

Case Study 5

Discussion Points Case Study 5

Conduct rules

Common law considerations

Other?

Ethics – Take Away Points

- **Make a habit of considering ethical issues from the moment a file lands on your desk.**
- **Conflict questions ought be resolved early on, for the client's sake, and the firm's sake.**
- **Be alive to the possible consequences of changes in your instructions as a matter progresses. Ethical issues often emerge later on.**
- **When you're not sure, discuss it with a senior colleague. There are rarely black and white answers, but there are always prudent or inappropriate responses.**

Questions

Disclaimer

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

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