

## The Legal Profession

### Thinking about Ethics and Duties

In Australia the definition of 'legal practitioner' can vary depending on which State or Territory one is registered in. It is a requirement of being a lawyer that a person holds an academic legal qualification. This qualification entitles one to be called a lawyer. To be a legal practitioner, a lawyer must undergo further practical legal training or undertake training under the supervision of legal practitioners. This entitles one to a practicing certificate which then allows someone to practice law as a barrister and solicitor, or as a barrister or solicitor. As the terminology can be quite important it is worth recapping some key terms from *Connecting with Law* (see p288):

#### Key terms

*Bar Association* = an association that assists in the regulation and coordination of the work of barristers

*Barrister* = a lawyer who is a member of a Bar Association, accepts briefs from solicitors to represent clients in courts and tribunals and writes formal opinions about legal issues but does not typically maintain files or trust accounts for clients.

*Brief* = the bundle of legal documents given by a solicitor to a barrister. It is usually tied with a pink ribbon and has a summary at the front of the facts, legal issues, the outcome the client seeks, and the specific instruction (usually to attend at a hearing or provide an opinion).

*Chambers* = the traditional name for the building a barrister works from. Barristers usually share a premises and share secretarial support.

*Counsel* = another term for a barrister, someone doing advocacy work in a court or tribunal

*Divided profession* = where there are two separate types of practitioners, admitted as either barristers or solicitors, but not as both (as for example England).

*Fused profession* = where legal practitioners are admitted as both barristers and solicitors and are permitted to do both kinds of work. Frequently some choose to practice exclusively as a barrister, and others do predominantly solicitor's work except for small mentions of matters in court.

*Lawyer* = a person who holds an undergraduate qualification in law.

*Legal Practitioner* = encompasses both solicitors and barristers and means that a person is not only a lawyer but admitted and registered to practice law by the Supreme Court.

*Senior Counsel* = *Queen's Counsel* = an experienced barrister appointed to senior rank (said to have taken 'silk'). Senior Counsel is the newer term.

*Solicitor* = the lawyer who represents the parties in a transaction, interviews the client, gives legal advice, maintains files, prepares legal documents, briefs barristers, and handles trust funds on behalf of clients. Solicitors can practice in partnership or as companies.

*Connecting with Law* explains the kinds of work that lawyers undertake, and explains the relative demographics of the Australian legal profession. In chapter 12 there is material about the duties of legal practitioners. These duties are to the courts and to their clients. Many duties are set out in the Model Rules for practitioner conduct.

Access the latest ones here:

<http://www.lawcouncil.asn.au/library/policies-&-guidelines/national-profession/model-rules.cfm>

<http://www.liv.asn.au/regulation/ethics/about/ethics-Links.html>

These rules have been rolled out across the Australian states and Territories largely as a template. Check with your local law society for updates.

### Some ethical dilemmas

The following scenarios seek to help you explore some of the complex duties and ethical dilemmas that are part of lawyering. First you should review the key duties of barristers and solicitors (see textbook pp293-98 and pp301-03).

Consider the following: *is the conduct by the legal practitioner permissible?*

Your client Mr R, instructs you to act on his and his company's behalf in a legal transaction to purchase a small property from a neighbour, Mr S. You are the only lawyer in this rural Queensland town and agree to act for Mr R. Mr R asks you to check the title and the council zoning, the water rights and easements, make an offer, and, if accepted have the land surveyed and transferred to him.

- 1 You (the lawyer) agree to act for Mr R and you tell him that you charge Law Society Scale of fees. Mr R agrees.  
ETHICAL/LEGAL    NOT SURE    UNETHICAL
- 2 You (the lawyer) agree to act for Mr R and you tell him that you charge double the Law Society Scale of fees. He agrees.  
ETHICAL/LEGAL    NOT SURE    UNETHICAL
- 3 You (the lawyer) ask Mr R for money up-front to commence action. He agrees.  
ETHICAL/LEGAL    NOT SURE    UNETHICAL
- 4 You place the client's money in a high interest, at call account. The bank states that it is higher interest than your usual trust account, so you electronically transfer the funds and intend to split the interest 50/50 with the client  
ETHICAL/LEGAL    NOT SURE    UNETHICAL
- 5 Mr S approaches you. He has heard that Mr R wants to sell and also needs some legal help with the transaction. He asks if you will represent him as well. You are the only lawyer for 200km and agree to handle the transaction for both men.  
ETHICAL/LEGAL    NOT SURE    UNETHICAL
- 6 You require more money for the land title searching. You approach Mr R, but he tells you that he is strapped for cash this week as he is due money from a customer who has not paid a major account. He asks you to loan him \$1000.00. You have the money free, and he agrees to repay you a week later. Do you lend it to Mr R? Would it be acceptable if you lent Mr S \$1000 too?  
YES, its ETHICAL/LEGAL    NOT SURE    NO, it's UNETHICAL
- 7 It is revealed in the community newspaper that Mr S has been interviewed by police about child sexual offences some 30 years earlier. No charges were laid but the community is unhappy and have told you to that it will affect your legal business to keep representing Mr S. Can you cease to

act for Mr S, explaining that there is some sort of 'conflict of interest' in acting for both parties?

YES, it's ETHICAL/LLEGAL      NOT SURE      NO, it's UNETHICAL

- 8 While you are talking to Mr S, he mentions that he is very upset at the article about his alleged child abuse. He explains that the issue was 'complex' but does not deny being the perpetrator. He explains that he was 'mentally unwell' at the time. He tells you that he expects this will be kept as a client confidence. Should you keep this confidence at all costs?

YES      NOT SURE      NO

- 9 The property transaction is eventually settled and the transaction complete. A year later Mr R takes Mr S to court alleging that Mr S did not disclose that there was toxic waste buried on the land. You take the matter to court and the judge finds against Mr R. He is very unhappy with your performance in court, in particular, alleges that you did not adequately put his case very well to the judge, omitting information that he told you to mention in court. You decided to leave some of that information out on strategic grounds. Has the lawyer breached duties? Can you be sued?

YES      NOT SURE      NO

The above are important scenarios that reflect the importance of ethical and legal duties when practicing and studying law. It is critical that you think about these issues while studying law.

To help answer the problems above review the Queensland Conduct rules here: <http://www.qls.com.au/content/lwp/wcm/resources/file/ebab47084578c22/legal-profession-solicitors-rules-v1-Jun07.pdf>

The Law Institute of Victoria (LIV) has an excellent resource on its website that has the answers to most of these questions and countless more questions that you may not even have thought of. There are links to Ethics Committee Rulings, an example of which is was located at

[http://www.liv.asn.au/regulation/ethics/rulings/20071201\\_R4513.html](http://www.liv.asn.au/regulation/ethics/rulings/20071201_R4513.html)

**Other Links:**

Access to articles on lawyers' ethical duties

<http://www.lawsociety.com.au/page.asp?partID=17438>

Information for law students in NSW

<http://www.lawsociety.com.au/page.asp?partID=17731>

Russell Cocks, *Ethics Handbook: Questions and Answers* (2004)