

EXERCISE

Ethical decision making

Below are two sets of ethics exercises to supplement Chapter 12 referred to on page 382 of the textbook.

Knowing Your Boundaries

What is the problem with each of the following scenarios?

- 1 Clients do not want to vaccinate their child. They approach a lawyer for advice on whether there are any legal ramifications for not doing so, and their lawyer advises them they should immunise their child because it protects not only the child but other children at school and the broader community, and besides, vaccinations are not really harmful to humans.
- 2 A client has missed a few mortgage payments since they have been unemployed for the past few months. The client approaches a lawyer for advice on how they can stop the bank from foreclosing as a result of their ongoing default, because they want to stay in the home if they can. The lawyer advises them that they should sell up and clear the mortgage, or refinance with another lender.
- 3 A client wants to do their will, and approaches a lawyer to draw it up. The lawyer has pictures of Guide Dogs Australia in the office. The client says they want to leave all their assets to the Salvation Army, and the lawyer says that the Guide Dogs do good work and it would be a better organisation to leave a legacy to.
- 4 A client goes to a lawyer in a state of distress. Their estranged partner came to the house and broke a window last night, and they want to take out an apprehended violence order (AVO) against him. They say they are incredibly scared and are having difficulty sleeping. The lawyer tells the client she can stay over the night.
- 5 A client goes to a divorce lawyer. During the period of acting for the client, the divorce lawyer starts a sexual relationship with the client.

Notes for answers

In the first two scenarios, the lawyer is stepping beyond the boundaries in giving medical, ethical, moral, and financial advice. The lawyer should only be giving legal advice.

In the third scenario, the lawyer is using their personal views to influence the client's decision making. In the fourth scenario, the lawyer is overstepping the role and becoming a personal friend and support for the client. It would be better to advise the client to stay at a friend's house or ask a friend to stay with them.

In the last scenario, it is clearly unprofessional to start a relationship with a client, particularly a person in an emotionally sensitive period of life who is going through a divorce.

Ethical Decision Making Exercise

What would you do if:

- 1 You are at uni and you go to print a document and see that someone has left behind a copy of their completed assignment. You have to do the same assignment too and you've really been struggling to get started. You:
 - a Without reading it, hand the paper into the librarian, or to the student if they are identified and you know them, or you shred it.
 - b Take the paper home with you in case you get really stuck.
 - c Read over the paper and use it as a general guide, taking care not to use the same words and structure.
 - d Hand the paper in as your own.

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- 2 You have an assignment to do, which raises issues of family law. A good friend of the family is a barrister in this area. You call her and she tells you the leading cases and legislation, as well as her opinion on where the law is heading and what she would say in relation to the particular assignment question. You:
- Use the information she has given you in your paper, including the opinion where the law is heading, which you agree with.
 - Take the tip on which cases and legislation to look at, and study them for your paper.
 - Refer to her views and footnote your interview with her and the date.
 - Would never be in this position. It is always entirely your own work.
- 3 Your uni friend calls you and says that he has been really sick, a family member has died suddenly, he has just come out of a negative relationship and he is waiting on the results of some medical tests. He says he has missed some classes and wants your class notes, your summaries from the weekly readings, and your draft assignment. You:
- Give them all to him – he’s had a rough time.
 - Give him your class notes and summaries of the readings, but not your draft assignment.
 - Give him your class notes only – after all, he only missed the classes. The rest he can catch up on himself, or get an extension.
 - Give him nothing and refer him to the teacher.
- 4 Your class has a class attendance requirement. It is such a hassle because you hate getting up and ready for a 9 am class, particularly after a heavy weekend. Your friend at uni feels the same and tells you that she has a deal going with another student where they take it in turns to attend, and sign in for each other. She offers to include you in the arrangement. You:
- Accept. Saves you going to two out of every three classes!
 - Refuse at first but once you’ve missed the maximum number of classes, join in the arrangement.
 - Refuse. You’re worried that you’d get caught and don’t think it’s the right thing.
 - Refuse, and report the arrangement to the teacher – it is academic misconduct and if you say nothing you are an accessory to it.
- 5 Your friend asks you to witness his signature on a contract. You check the law and find that you don’t have to be a lawyer or a Justice of the Peace to sign it – anyone over 18 years of age can be a witness. So you agree, and meet your friend at a café. The friend pulls out the contract, and you see he has already signed and dated it a few days back. He asks you to sign the witness section and put the same date as the one he put. You:
- Sign and date it as requested. After all, you know who he is.
 - Sign it but put today’s date.
 - Get him to re-sign it and re-date it in front of you, and then sign and date it as a witness.
 - Tell him he’ll have to print a fresh copy for you to witness, with him to sign the document in front of you.

Notes

- 1 **a** Your assignment should be your own work, so you shouldn’t take advantage of finding someone else’s assignment. Although it is very difficult not to look and read the paper, it is a decision that we make as a professional. Indeed the way a professional is defined is by the choices we make when nobody else can see us or will know about it. Therefore in this situation we should either hand the paper in or destroy it, without reading it.
- 2 **c** or **d** are acceptable. Your assignment should be your own work, and if you receive any assistance or guidance you should acknowledge the input and the views expressed, so they are not presented as if they were your own creation.
- 3 **b**, **c** or **d** are acceptable. It is good to support friends and totally acceptable to give a copy of notes you have taken in class to a friend. But it is not acceptable to give a copy of your draft assignment to another student. It is your decision whether to hand over your summaries of the readings – they are your work, and if you are happy to share that, it is your decision. But remember that independent learning skills are an attribute most law schools try to foster in their law students, and giving the summaries to your friend is not helping them to develop their own problem solving and coping mechanisms.

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- 4 **c** or **d** are acceptable. Signing any document as someone else is fraud. Conduct during university studies can carry with you into your professional life. For examples of actions by law students which have affected their ability to be admitted to legal practice, see pages 37–39 which discuss the digested article Mary Wyburn, ‘Disclosure of prior student academic misconduct in admission to legal practice: lessons for universities and the courts’ (2008) 8(2) QUTLJ 314 (at http://www.law.qut.edu.au/ljj/editions/v8n2/pdf/3_Disclosure_Student_Academic_Misconduct_WYBURN.pdf). If you know other students are engaging in academic misconduct and you don’t say anything, it depends on the academic misconduct policy of your University as to whether you have a positive obligation to report it or not.
- 5 **c** or **d** are acceptable. Signing as a witness means witnessing the person signing, and the date on which they signed it. It is not acceptable, even if you know the person and their signature, to sign as a witness when you did not witness the signature. It is also not acceptable to back-date a signature.