

THE GOOD LAWYER

The Good Lawyer explores the ethical and professional challenges that confront people who work in the law – or are considering it – and offers principled and pragmatic advice about how to overcome such challenges. It shows you how to develop personal judgment when you may be pulled one way by rules, another way by decided cases and yet another way by conventional ‘role morality’.

Going beyond typical treatments of lawyers’ ethical pitfalls, this book takes a holistic approach that begins with your innate humanity. It urges you to examine your motives for seeking a career in law, to foster a deep understanding of what it means to be ‘good’, and to draw on your virtue and judgment when difficult choices arise, rather than relying on compliance with rules or codes.

The Good Lawyer analyses four important areas of legal ethics – truth and deception, professional secrets, conflicts of interest, and professional competence – and explains the choices that are available when determining a course of moral action. It links theory to practice, and includes many examples, diagrams and source documents to illustrate ethical concepts, scenarios and decision making.

Written by an expert on legal ethics, *The Good Lawyer* encourages you to develop a sense of social and moral responsibility as the foundation of better legal practice, and is an invaluable reference for students considering a law degree, or a career in law, and for new lawyers seeking more insight into the moral dimensions of their profession.

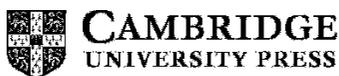
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To Maria, Angus, Dan, James and Hugh

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PREFACE

There is a significant double standard facing law students and new Australian lawyers.

What the profession generally provides – and wants to provide, no matter what law societies say – is an ongoing winnowing process for new graduates. Firms assert that they provide interesting work and a rewarding career, but the economic model of many depends still on stretching and moulding new lawyers to the point where those least able to cope leave within a few years. This is not peculiar to law and is indeed no different from the wider market economy, but contemporary law graduates' personal characteristics and expectations leave them particularly unprepared.

Today's graduates are used to feeling anxious at law school, but are articulate, optimistic and overly expectant of power. In their first workplace, they are often confused by a lack of gender equality and disappointed as the months go by when things do not change much. Today's new lawyers become adept at comparing their lack of life–work balance to that of their non-lawyer friends and are often disillusioned by repetitive work with little opportunity to 'make a difference'. Their relief from no longer 'being broke' fades. So departure seems like their only option.

Law societies see this reality gap quite clearly, yet are relatively powerless to change the attitudes of managing partners in the largest firms. These lawyers quietly communicate their acceptance of an 'eat what you kill' approach and are generally content with the model. To generalise, with profits per partner the reference point – per month or per quarter – and global boards of directors in control, there is little immediate incentive for such lawyers to take a longer term approach. As they see it, both increasing cost pressures and continuing economic uncertainty require them to in effect exploit new graduates so that only the strongest – that is, those who generate the most fees – survive and remain in the profession. Short of the

true calamities of the sort that blighted everyone in the 20th century, there is no prospect of a major medium-term upset in these priorities.

But smaller firms, though still large, can have more time for wider and deeper values. Some of these grasp the advantages of nurturing their new lawyers' wider and deeper motives, and their sense of developing professional responsibility. These firms know that their longer term reputations – and their financial futures – depend on their employing exactly this sort of lawyer.

As legal educators, we will do best to develop this mature sort of law graduate rather than the commercially effective but often, it seems, morally shallow individual. The graduates we want to create will be as knowledgeable as any and more skilled in a practice-ready sense than most; but they will also be aware of and be developing their values and virtues. They will identify with their emotional intelligence and interpersonal sensitivity and they will have jobs because they will be willing to work where others will not – for example, in smaller firms and in regional and rural areas.

The general premise is that society does not necessarily need more lawyers, but it does need and will pay a premium for better lawyers. Good lawyers. This book tries to generate an enthusiasm for good lawyering in Year 11–12 students, in law students, in practical legal training students, in new lawyers and in law teachers. *The Good Lawyer* researches the way in which general morality can align good legal education with good legal practice, so that from cradle to grave, good and not-so-good lawyers are strengthened.

Adrian Evans
February 2014

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David Luban's edited 1983 collection (*The Good Lawyer: Lawyers' Roles and Lawyers' Ethics*, Rowman & Allanheld, Totowa, NJ) is the primary inspiration for this work.

Christopher Peterson and Martin Seligman's *Character Strengths and Virtues: A Handbook and Classification* (Oxford University Press, New York, 2004) has also been influential. Table 3.2 is derived with permission from the work of Stan Van Hooft (specifically Table 1, in *Understanding Virtue Ethics*, Acumen Publishing, Chesham, Buckinghamshire, 2006), which in turn was influenced by my colleague Justin Oakley's earlier general classifications (see Justin Oakley, 'Varieties of Virtue Ethics' (1996) *IX Ratio* (New Series) 128) of the distinctions between virtue ethics and both consequential and Kantian approaches to ethical problem solving.

The self-assessment tool published in Appendix A has been previously published in the appendix to Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (2nd edn, Cambridge University Press, Melbourne, 2014), and is fully discussed in Adrian Evans and Helen Forgasz 'Framing Lawyers' Choices: Factor Analysis of a Psychological Scale to Self-Assess Lawyers' Ethical Preferences' ((2013) 16(1) *Legal Ethics* 134).

Considerable thanks are due to my clinical and legal ethics colleagues at Monash University law school and to my clients over the years, all of whom have reinforced the need for ways and means to think about legal ethics problems in a coherent way, since many of the ethical dramas facing new lawyers do not present themselves with any real clarity.