

INDEX

- academic integrity of law students, 24
- active and passive deceit, 117–19
 and ‘acceptable silence’, 119
 applicable law and conduct rules, 119
 consequentialist perspective, 118
 Kantian ethics perspective, 118
 virtue ethics perspective, 118
- administration of justice, 151, 166, 206
- admission to legal practice, 22–7, 175
 character test, 22–3, 72, 80
 disclosure of criminal history, 23
 disclosure requirements, 25, 26
- adversarial advocacy, 66, 92
- advocates’ immunity, 182–4
 applicable law and conduct rules, 183
 consequentialist perspective, 183
 Kantian ethics perspective, 183
 virtue ethics perspective, 183
- agency, 66
- Allens Arthur Robinson, 170–1
- Aristotle, 4, 86, 98
- articles of clerkship, 22
- artificial intelligence, 194–5
- AUSTRAC, 191
- Australian Bar Association, 206
Barristers’ Conduct Rules, 204
- Australian Education Network, 11
- Australian Qualifications Framework, 3
- Australian Solicitors’ Conduct Rules*, 8, 53,
 100, 116, 151, 204
 adoption of in Australian
 jurisdictions, 53
 composite nature of, 54
 and conflicts of interest, 55, 158, 175
 and ethical principles, 54
- exceptions to confidentiality, 140
 and role morality, 91
 Rule 9, confidentiality, 139–42
 Rule 10, successive conflict, 172
 Rule 11, concurrent client conflict,
 167–8, 169
 rules of discovery as guidance for
 action, 101
- autonomy, 93
- AWB Ltd, 93–4, 146–8
- Baker and McKenzie (law firm), 50
- barristers, 32, 90
 ethical opportunities and challenges, 44
 obligations of, 90
- Bathurst, Chief Justice Tom, 47
- Beaton Research and Consulting, 87
- benevolence, 202
- Big Pharma, 170–1
- bribery, 35, 146–8, 189
see also corruption
- British American Tobacco Australia
 Services, 34–5
- Canadian Bar Association Code of
 Professional Conduct, 203
- Canadian legal profession, 72
- Carrick, Damien, 187–8
- character, 11–13, 85–113
 and reputation, 86
 strengthening of, 86
 and virtues, 97
- charges for services, 161, 163–4
 applicable law and conduct rules,
 164

- approaches to, 161, 189
- consequentialist perspective, 163
- Kantian ethics perspective, 164
- six-minute billing, 5, 41, 189
- virtue ethics perspective, 163
- civil litigation, ethical opportunities and challenges, 40–2
- Clayton Utz (law firm), 34, 136, 173
- client–client conflicts of interest,
 - instability of, 170–1
- client privilege, 9, 63, 138–43, 148
 - and confidentiality, 139
 - and corruption, 146–8
 - restrictions disallowing, 143
 - uses to which it is put, 143
- clients' funds, stealing, 52
- clinical legal education, 12, 15
 - Best Practices for CLE*, 12
- cloud storage of documents, 137–8
- Clyne v NSW Bar Association*, 124
- Cocking, Dean, 102
- collaborative law
 - and conflicts of interest, 158
 - ethical opportunities and challenges, 39
- commercial fraud, 190–1
- commercial law, 16
 - and conflicts of interest, 157, 164
 - ethical opportunities and challenges, 40–2, 100
- commercialism
 - and competence, 179–81
 - sustainable, 179
- Commissioner of Stamp Duties v Byrnes*, 129
- community law, ethical opportunities and challenges, 43
- compassion, 202
- competence, 9
 - and artificial intelligence, 194–5
 - and billing and bribery, 188–92
 - commercial, 180
 - components of, 178
 - and continuing professional development, 192–4
 - in contract and tort law, 181–4
 - financial, 10, 179, 184–8
 - and goodness, 3–5
 - maintaining, 192–7
 - and morality, 10, 178–9, 193, 197
 - morality of, 178–99
 - obligation of, 179, 181
 - risk management, 196–7
 - specialist accreditation, 195–6
- competition among lawyers, 2, 208
- concurrent conflicts of interest
 - applicable law and conduct rules, 171
 - and ASCR 11, 167–8
 - 'commercial' and prohibited conflicts, 165
 - consequentialist perspective, 171
 - court intervention in, 166
 - informed consent, 168
 - Kantian ethics perspective, 171
 - virtue ethics perspective, 170
- confidentiality, 9, 63, 134, 138–43, 166
 - and ASCR 9, 139–42
 - and client privilege, 139
 - and decisions about care for disabled clients, 140
 - and trust, 151
- conflicts of interest, 2, 9, 155–77
 - and the ASCR, 55
 - client–client, 162–71
 - 'commercial' and prohibited conflicts, 165
 - concurrent conflicted, 162–71
 - definition, 155–60
 - and general morality, 175
 - information barriers, 167, 169
 - judgment on the meanings of terms, 168, 173
 - lawyer–client conflicts, 160–4
 - preventative purpose of the rule, 159
 - and role morality, 156
 - successive conflicts, 169–74
- consequentialism, 7, 70, 71–2, 95, 192, 207
 - as guidance for action, 101
- contempt of court, 130
- continuing professional development, 10, 192–4, 207
 - length and content of, 193, 194
 - outcomes from, 194
 - quality and effectiveness of programs, 194

- contract law, 181–4
- Corbin, Lillian, 35
- corporate in-house counsel, 204
 - and confidentiality, 141
 - ethical opportunities and challenges, 42
- corporate/transactional law
 - and confidentiality, 141
 - and conflicts of interest, 157, 164
 - culture of firms, 106
 - and ethical dispute resolution, 50
 - ethical opportunities and challenges, 40–2
 - and general morality, 93
 - and role morality, 92, 93, 94
- corruption, 146–8
 - applicable law and conduct rules, 147
 - consequentialist perspective, 147
 - Kantian ethics perspective, 147
 - and money laundering, 190–1
 - virtue ethics perspective, 147
 - see also* bribery
- Council of Australian Law Deans, 12
- courage, 88
- creative tax law, 33–4
- crime, and law, 69
- criminal law
 - conduct rules on silence, 117
 - and conflicts of interest, 157, 164
 - ethical opportunities and challenges, 38
 - lawyers who know too much, 125–7
 - murder, 144–6
 - and role morality, 8, 92, 125
- criminal law and knowledge, 125–7
 - applicable law and conduct rules, 127
 - consequentialist perspective, 127
 - Kantian ethics perspective, 127
 - virtue ethics perspective, 126
- Cummins, Philip, 159
- Daicoff, Susan, 87
- Dale, Christopher, 173–4
- Daugerdas, Paul, 33–4
- deontological ethics, 70
- depression, 17, 20, 89
- detachment, 92
- discovery, 100
 - use of AI in, 194
 - procedural rules of, 148
- dispute resolution, ethical, 50, 122
- documents
 - back-dated, 105
 - changing nature of record-keeping, 136
 - cloud storage of, 137–8
 - destruction of, 93, 120–2
 - as evidence, 120
 - hiding or disposing of, 120–2
 - production of, 34–5, 120–2
 - retention of corporate documents, 122
- D’Orta-Ekenaike v Victoria Legal Aid et al.*, 182
- due diligence, 191, 192
- duties of lawyers, 115
- duty not to abuse process, 122–5
 - applicable law and conduct rules, 124
 - consequentialist perspective, 124
 - difficulties in identifying abuse, 123
 - Kantian ethics perspective, 124
 - virtue ethics perspective, 124
- Eames, Justice Geoffrey, 34
- emotion, 18–21
- Enron Corporation, 48, 94, 137
- entitlements, clients’, 67–7
- ethical awareness, 104, 106
- ethical decision making, 69, 73, 87
 - role of emotions in, 19
- ethical opportunities and challenges, 37
- ethics, 6, 62–84
 - consequentialist, 7, 70, 71–2, 95, 192, 207
 - guidance from different frameworks, 101
 - Kantian, 7, 70, 92, 95
 - and law, 68
 - virtue ethics, 4, 7, 72, 96, 208, 209
 - see also* general morality, morality, role morality
- ethics assessment scale, 10, 213–17
- ethics of duty, 95, 209
 - deontic character of, 74–5
 - duty as absolute, 77
 - duty based on general principles, 77

- duty justified by reason, 78
- emphasis on what action to take, 74–6
- goodness as rightness, 76
- impartiality of duty, 78–9
- importance of rules, 78
- moral theory of, 73
- practical necessity as obligation and obedience, 77
- universality of, 79
- and virtue ethics, 74–9
- expertise, and goodness, 3–5
- family law
 - and conflicts of interest, 157, 158, 164
 - ethical opportunities and challenges, 38–9
 - and role morality, 91, 92
- Farrow, Trevor, 67, 203
- fidelity compensation, 220–2
- fiduciary responsibility, 156, 160, 166, 181
- Financial Action Task Force, 191
- financial competency, 9, 179, 184–8
 - consequences of dishonesty, 185, 187–8
- ‘fit and proper person’ test, 22–3, 72, 80
- Garrow, Robert, 144–6
- general morality, 7, 70, 86–7, 150, 151, 200, 202
 - and conflicts of interest, 175
 - and legal ethics, 85, 208
 - as social capital, 208
 - strengthening of, 203–7
- general practice law, ethical opportunities and challenges, 39
- Giannareli v Wraith*, 182
- global financial crisis, 48, 94
- global warming, 50
- goodness, 72, 207
 - choosing to be a good lawyer, 32–61
 - definition, 3
 - and expertise, 3–5
 - practice of, 62
 - teaching of, 5
 - and virtue, 100
- Google, 135–6, 194
- government lawyers, ethical opportunities and challenges, 42
- hiding embarrassing documents, 120–2
 - applicable law and conduct rules, 122
 - consequentialist perspective, 121
 - Kantian ethics perspective, 122
 - virtue ethics perspective, 121
- hiding the true purpose of a legal action, 122–5
- Hippocratic oath, 63
- honesty, 118
- Hood, Brian, 35
- humanity, 200
- independence, 48, 161
- informed consent, 168
- integrity, 24, 206
- International Bar Association, 201
 - definition of commercialism, 180
 - resolution on professionalism and commercialism, 180
- James Hardie Industries Limited, 93, 117, 136
- Jenkins and Gilchrist (law firm), 33–4, 128
- judgment, 6, 178, 192
 - guidance on, 54
- Juris Doctor degree, 3, 16, 20
- justice, 66, 67, 69–73, 88, 98, 118, 161, 202
 - dedication to, 13, 201
 - the objective of the legal system, 96
 - promotion of through ethical dispute resolution, 50
- Kantian ethics, 7, 70, 92, 95
 - categorical imperative, 71
 - duty-based nature of, 71
 - as guidance for action, 101
- Keddies Lawyers, 163–4
- Kessler, Judge Gladys, 94–5, 120
- Kierkegaard, Soren, 86
- Kirby, Judge Michael, 12
- Kronman, Anthony, 36

- Lake Pleasant bodies case, 144–6
 Larcombe, Wendy, 20
 Large Law Firm Group, 55, 158, 208
 large law firms, 8
 autonomy in, 93
 conflict clearing centres, 105, 169
 and conflicts of interest, 9, 55, 156, 157,
 172, 173
 culture of, 106
 domination of industry sectors, 55
 employment in, 17
 ethical audits of, 106
 ethics of, 105
 information barriers, 173
 and loyalty, 159
 misconduct, 106
 and morality, 104–6
 regulation of, 36
 reputation, 55
Latilla v Inland Revenue Commissioner, 129
 law
 and authority, 66, 200–2
 and character, 85
 and crime, 69
 and ethics, 68
 mystique and power of, 18
 positivist and normative
 understandings of, 15
 reasons for studying, 1–2
 Law Council of Australia, 53, 203, 206
 Large Law Firm Group, 55, 158, 208
 law firms
 actual practice and ethical policies, 46
 approaches to charges for services,
 161, 189
 approaches to questioning, 45
 choice of, 32–61
 culture of, 33–5, 87, 204
 ethical culture of, 45, 47, 51
 life–work balance, 42, 46, 208, 210
 looking after clients, 46
 policy on handling ethical issues, 46
 pro bono work, 46
 questions to ask of, 45–7
 reputation, 46
 time sheets, 47
 working environment, 47–51, 209–11
 Law Institute of Victoria, 196
 law schools, 1
 choice of, 1, 5
 culture of, 19
 identification of good schools, 11–14
 questions to ask of, 14–15
 reactions to questioning, 15
 lawyer–client conflicts, 160–4
 over costs, 161
 types of, 160
 lawyers
 approaches to charges for services, 161,
 189
 character and, 85–113
 choice of clients, 48
 communication about costs, 162
 contribution to social functioning,
 11–13
 cost of, 91
 cultural leadership, 88
 and depression, 17
 disciplinary prosecutions, 36, 65
 duties of, 62–4, 115
 examination of their own virtue, 96
 examples of poor lawyering, 33–5
 expectations of success, 17
 good lawyers, 32–61
 humanity of, 200
 integration of personal and
 professional selves, 99
 integration of rational and emotional
 lives, 99, 125, 190
 integrity of, 94, 206
 leaving the profession, 45, 209
 licensing of, 204
 mental health of, 52
 moral activists, 103
 number and distribution of, 2
 obeying and applying the law, 62
 popular perceptions of, 8, 89
 pro bono work, 201
 relationship of care, 103
 responsible lawyers, 103
 role of, 32
 safety nets for, 218–23

- self-care, 209
- substance abuse, 52, 53
- typology of, 7, 102, 209
- virtues of, 98
- women, 210
- zealous advocates, 103, 114
- leadership, cultural, 88
- leaving the scene of an accident, 149–50
 - applicable law and conduct rules, 150
 - consequentialist perspective, 149
 - Kantian ethics perspective, 149–50
 - virtue ethics perspective, 149
- legal aid, funding for, 221
 - applicable law and conduct rules, 222
 - consequentialist perspective, 222
 - Kantian ethics perspective, 222
 - virtue ethics perspective, 222
- legal communities, 32–3
- legal education, 1–31, 207
 - admission to legal practice, 22–7
 - attributes of, 11–14
 - balance of socio-legal and commercial emphases, 15, 16
 - commercialism and competence, 179–81
 - elective subjects, 5, 15–16
 - emotional intelligence, 12, 15
 - emotional resilience and wellbeing, 20
 - ethical sensitivity, 12
 - experiential learning, 19
 - identification of good schools, 11–14
 - and interest in law, 12
 - keeping up to date, 188, 192, 194
 - legal ethics, 13, 15
 - orientation of, 13
 - positivist and normative understandings of law, 15
 - practical legal training, 21–2, 207
 - pre-admission stage, 21
 - pro bono* work, 15
 - process of, 16–17
 - research capacity, 13
 - and student health, 18–21
 - subjects covered, 1
 - theoretical knowledge, 11
 - Threshold Learning Outcomes, 21
 - traineeships, 22
 - types of degrees, 3
- legal ethics
 - and general morality, 85
 - self-assessment of preferences, 213–17
 - virtue and character as foundation, 95–7
- legal practice
 - admission to, 22–7
 - character and attitudes in, 102–4
 - choosing a law firm, 32–61
 - discipline structures, 203–7
 - economic and structural challenges, 6
 - ethical challenges of, 2, 68–9
 - identification of good environments, 33
 - moral realities of, 5
 - moral sensitivity, 69
 - and role morality, 89–91, 102–4
 - sole practitioners, 157
 - technological and cultural challenges, 10, 201
 - and virtue ethics, 80
 - women in, 210
 - and zealous advocacy, 114
- legal process outsourcing, 6
- legal process, subjectivity of, 99
- legal rules, 6
- Legal Services Commissioner, 130, 208
- Legal Services Commissioner v Mullins*, 187
- Legal Services Commissioner v Stirling (Legal Practice)*, 118
- Legal Services Council, 208
- life–work balance, 42, 46, 208, 210
- Lincoln, Abraham, 6, 68
- LLB degree, 3, 16, 20
- Logan, Alton, 63–4, 66, 144
- loyalty, 155–77
 - definition, 156
 - indivisibility of, 157, 172
- Luban, David, 3–4, 7, 54, 67, 94, 200
- Machiavelli, Nicolo, 102
- Magarey Farlam, 187–8, 220
- Markovits, Daniel, 102, 106
- Mayne (drug manufacturer), 170–1
- McCabe, Rolah, 34–5, 120–2

- McCabe v British American Tobacco*
Australia Services, 120–2, 136, 143
 successive conflict connected to,
 173, 174
- McGee* case, 149–50, 151, 204
- mediators, 39, 123
- Meek v Fleming*, 117
- mega-corporate ‘enablers’, 40–2
- mental health, management of, 17–18,
 52, 105
- misconduct, 52–3, 65, 130
- money laundering, 190
 indicators of, 191
- Moorhead, Richard, 72
- moral activists, 103, 115
- moral regeneration, 37
- moral sensitivity, 69
- morality
 and behaviour, 64–5
 centrality to lawyering, 67
 and competence, 178–9, 197
 evolution of, 201
 general morality, 7, 70, 85, 86–7
 and individuality, 65
 and lawyering, 65–8
 and neurology, 64–5
 role morality, 7, 66, 89–91
- murder, 144–6
- Myers, Alan QC, 174
- negligence, 179, 196
- neuroscience, 64
- NGO lawyers, ethical opportunities and
 challenges, 43–4
- Note Printing Australia, 35
- Oakley, Justin, 73, 90, 102
- oral evidence, 120
- Parker, Christine, 7, 209
- parliamentary counsel, ethical
 opportunities and challenges, 42
- personality, 87
see also character
- Petersen, Christopher, 88
- Poole, Melanie, 18–19
- positive psychology, 8, 87–9, 97, 209
- positivism, 66
- practical legal training, 21–2, 207
 commercial providers, 21
 inside a law firm, 21
- practical wisdom, 10, 200–12
- practising certificates, renewal of, 193
- privacy, 99, 151
 and client privilege, 142
 and cloud storage, 137–8
 computer passwords and, 136–7
 unravelling of, 135–6, 141
- pro bono* work, 15, 46, 201, 207
- professional competence, 9
see also competence
- professional development, 10
see also continuing professional
 development
- professional indemnity, 196, 218
- professional life and private life, 24
see also life–work balance
- professional secrecy, 134–54
 corruption, 146–8
 leaving the scene of an accident, 148–50
 murder, 144–6
see also secrecy
- professional standards schemes, 219–20
- professionalism, 13, 72, 99, 141
 character, context and capacity, 73
 commercialised culture, 35
 and commercialism, 48, 179, 184
- prosecutors, ethical opportunities and
 challenges, 42
- Rakoff, Judge Jed, 48, 69, 94
- rationality, 18–21
- Re OG* case, 24
- regulation, 10, 52–3, 202, 205
 coercive investigation, 36, 37
 and ethical infrastructure, 204
 failures of, 36–7
 need for a formal complaint, 36
 parties involved in, 207
 practical wisdom in, 207–9
 regulatory tribunals, 130
 uniform model for, 205

- relationship of care, 103, 115, 151
- reputation, 32, 46
 - and character, 86
 - ethical, 105
 - and virtues, 102
- Reserve Bank of Australia, 35, 48
- resilience, 18, 88
 - moral, 209–11
 - organisational, 210
- responsibility, professional, 37
- responsible lawyers, 103, 115, 151
- Richardson's case*, 24
- risk management, 196–7
 - mechanisms of, 196
- role morality, 7, 8, 66, 89–91, 118, 201
 - and conflicts of interest, 156
 - criticisms of, 90, 91–5
 - and detachment, 91
 - function of, 92
 - and legal practice, 102–4
 - limits of, 151
 - psychological toll of, 91
- rule of law, 13, 15, 37, 202
 - 'thin' concept of, 95
- Scruton, Roger, 64–5
- secrecy, 2, 9, 134–8, 146–8
 - leaving the scene of an accident, 148–50
 - and murder, 144–6
- secrecy about murder, 144–6
 - applicable law and conduct rules, 145
 - consequentialist perspective, 145
 - Kantian ethics perspective, 145
 - virtue ethics perspective, 145
- Securify, 35
- self-respect, 80, 141
- Seligman, Martin, 88
- Snow, Chris, 187–8
- solicitors, ethical opportunities and challenges, 42
- specialist accreditation, 195–6
 - programs available, 196
- Steel, Judge David, 190
- stress, 17, 50
 - see also* mental health, depression
- striking off, 130, 187
- studying law, reasons for, 1–2
- supervised workplace training, 21
- Survive Law* website, 46
- tax avoidance, 94, 128–9
 - applicable law and conduct rules, 129
 - consequentialist perspective, 129
 - Kantian ethics perspective, 129
 - and tax evasion, 128
 - virtue ethics perspective, 129
- tax evasion, and tax avoidance, 128
- taxation law, 33–4, 128
- teleological ethics, 70
- Tertiary Education Quality Standards Agency, 11
- Threshold Learning Outcomes, 21
- Tomain, Joseph, 4, 96
- tort law, 181–4
 - duty of care, 181
- traineeships, 22
- transactional law, 164
 - and confidentiality, 141
 - and conflicts of interest, 157
 - and general morality, 93
 - and role morality, 92, 94
- transparency, 161
- tribunals, and role morality, 92
- trust, 142, 195
 - and confidentiality, 151
- trust accounts, 52, 184
 - consequences of dishonesty, 188
 - misappropriation of funds in, 187
 - and money laundering, 190
 - regulations on, 185, 186
- truth and deception, 2, 8, 114–33
 - active and passive deceit, 119–19
 - case studies, 116
 - consequences of being caught, 130
 - criminal lawyers who know too much, 125–7
 - duty not to abuse process, 122–5
 - hiding embarrassing documents, 120–2
 - hiding the true purpose of a legal action, 122–5

- truth and deception (cont.)
 tax avoidance, 128–9
 tools for analysis of, 114–16
Tuckiar v The King, 126–7
- Uniform Conduct Rules*, 53–6
 Uniform Law, 185, 203, 204
 Uniform Law Legal Services Council
 function of the Commissioner, 206
 independence of the Commissioner,
 207
 membership of, 205
 unjust enrichment, 189
 unsatisfactory conduct, 52
 utilitarianism, 71–2
- values, 6, 62–84
 Van Hooft, Stan, 73, 97
 virtue ethics, 4, 7, 70, 72, 96, 208, 209
 aretaic character of, 74–5
 caring perspective, 78
 criticisms of, 98–101
 culture-relativity of, 79
 emphasis on character, 74–6, 100
 and ethics of duty, 74–9
 extension beyond legal duties, 79–4
 goodness as excellence, 76
 as guidance for action, 99, 101
 and legal practice, 80
 need for judgment, 77
 and paternalism, 99
 practical necessity as expression of
 character and response to values,
 77
 responsiveness to circumstances, 77
 virtue influenced by emotions, 78
 virtue is partial, 78–9
- virtues, 6, 62–84, 88
 benevolence, 202
 and character, 97
 compassion, 202
 courage, 88
 honesty, 118
 identification of, 97–8
 instruments for evaluation of, 89
 justice, 88, 118, 161, 202
 self-respect, 80, 141
 transparency, 161
 wisdom, 88, 161, 181, 192
- Wendel, Brad, 66, 67
Westraders case, 129
White Industries v Flower and Hart,
 123–5, 136
Why Good Lawyers Matter, 72
 wisdom, 88, 161, 181, 192
 practical wisdom, 10, 200–12
 women lawyers, 210
- zealous advocacy, 7, 66, 80, 89–91, 103,
 114
 limits of, 114