# Contents

*Preface* page ix  
*List of figures* xi  
*Acknowledgements* xii

1 **An opportunity for law societies**  1  
   1.1 Professionalism versus commercialism: An opportunity for law societies  1  
   1.2 Standing aside from self-interest  6  
   1.3 Ethics at the centre of professionalism  10  
   1.4 Younger lawyers’ disconnection: Older lawyers’ denial  14  
   1.5 Ethics assessments as ‘central value propositions’  16  
   1.6 Preventing public intervention  18

2 **Ethical failures, research and core qualities**  20  
   2.1 Education without assessment is wasted effort  20  
   2.2 Representative Australian cases of ethical dysfunction  21  
   2.3 North American experience: Over-zealous and over-dependent  29  
   2.4 Conflicting loyalties inside large UK and US firms  34  
   2.5 Research into lawyers’ ethics  38  
   2.6 Core qualities of professional activity  48

3 **Understanding ethical methods and types**  62  
   3.1 Awareness of ethical issues  62  
   3.2 Ethical approaches or methods  64  
   3.3 Lawyers’ ethical types  72  
   3.4 Strengths and weaknesses of the dominant approach to legal ethics  75  
   3.5 Ethical complexity  81  
   3.6 Ethical complexity and moral courage: The requirement to judge  87  
   3.7 From virtue to courage  91

4 **Mechanisms to offset business pressure on legal ethics**  92  
   4.1 Virtuous lawyers as acute businessmen and women  92  
   4.2 Information barriers as paradigms of ethics versus business  93
## CONTENTS

4.3 The apparent conflict between law as a profession or as a business 95
4.4 Connecting personal values to ethical consciousness 98
4.5 Testing lawyers' competence, and indirectly their ethics 101
4.6 Institutional structures in support of individuals' ethics: Regulation of incorporated legal practices 115
4.7 The credibility of legal risk management 116
4.8 Post-admission training in competence and ethics: Not making enough progress 119
4.9 The need for practitioner opinion 124

5 Discovering practitioners' opinions about ethics assessment and psychological testing for integrity 126
5.1 Why consider practitioners' views? 126
5.2 Quantitative ranking of legal professionalism (ethics) issues 128
5.3 Practitioners' concerns for professionalism 131
5.4 Conclusion to concerns for professionalism 135
5.5 The climate for psychological testing for honesty and integrity 136
5.6 Significance of studies of lawyer attributes and personality 138
5.7 Assessing psychological health 142
5.8 Unravelling honesty and dishonesty 147
5.9 Assessing trustworthiness and integrity 150
5.10 Psychological testing for integrity 152
5.11 Recommendations: Assessing psychological preparedness for legal practice 159
5.12 Possible questions for practitioners about trust and integrity issues 160

6 Developing character: Disciplinary histories and clients' assessments 163
6.1 The relevance of the past 163
6.2 Disclosable prior offences in Victoria 165
6.3 Can clients fairly assess their lawyers' ethics? 172
6.4 Prior large-scale surveys of clients 173
6.5 Client satisfaction as an indicator of ‘quality’ 173
6.6 Client rating of interpersonal skills and accountability 176
6.7 Client file audits 180
6.8 Opinions of corporate clients 184
6.9 Usefulness of file audits 185
6.10 Recommendations: Developing character through disciplinary histories and client opinion 185

7 Measuring awareness of values and ethics 188
7.1 Towards assessment of lawyers' ethics 188
7.2 Being aware of (personal) values and emotions 191
7.3 Research assessments of ethics and ‘complex judgment’ 195
CONTENTS

7.4 The Melbourne Study: Lawyers’ awareness of values and ethics 203
7.5 Awareness promotes intentionality 207
7.6 Measuring a lawyer’s preference for an ethical type 209
7.7 Summary methodology for scale development 212
7.8 Implications for a comprehensive scale for assessing lawyers’ ethics 213
7.9 Assessing ethics through peer interview 214
7.10 Template example of a peer interview assessing lawyers’ ethics 218
7.11 Accumulating assessment ratings to produce a composite rating or index 220
7.12 Consequences of an inadequate assessment rating 221
7.13 Recommendations: Achieving and sustaining lawyers’ ethics 223

8 Entrenching ethics assessment 225
8.1 Improvements, not solutions 225
8.2 The Melbourne Study and CPD 228
8.3 Evidence for the effect of CLE 230
8.4 Continuing opportunities for law societies 231
8.5 The cost benefits of ethics assessment 234
8.6 Overall recommendations 236

Appendix A  Research Methods: The Melbourne Study 240
Appendix B  Awareness of ethical type: Detailed methodology for scale development 250
Appendix C  Prototype scale of preference for legal ethical type 254
Index 257