

CONTENTS

<i>Preface</i>	<i>ix</i>
<i>About the authors</i>	<i>x</i>
<i>Acknowledgements</i>	<i>xi</i>
<i>List of abbreviations</i>	<i>xiii</i>
<i>List of figures and tables</i>	<i>xv</i>
<i>List of case studies</i>	<i>xvi</i>
<i>Table of cases</i>	<i>xviii</i>
<i>Table of statutes</i>	<i>xxiii</i>
<i>Table of ASCR</i>	<i>xxvii</i>
1 Introduction: values in practice	1
Introduction: an overview of this book	2
Global issues affecting legal practice and lawyers' ethics	4
What is the role of lawyers?	10
Ethical decision-making and ethical action	22
Conclusion	25
Recommended further reading	25
2 Approaches to ethical lawyering	27
Introduction	28
Different approaches to lawyers' ethics	28
Adversarial advocacy: the traditional conception of legal ethics	31
Limitations of adversarial advocacy	34
Responsible lawyering: officer of the court and trustee of the legal system	36
Moral activism: agents for justice with clients and the law	41
Ethics of care: relational lawyering	45
Being explicit about our ethics	52
Conclusion	55
Recommended further reading	55
3 Professionalism and the regulation of lawyers' ethics	57
Introduction	58
Self-regulation: professional community and social trustee professionalism	60

Competition regulation and the legal profession as a business	68
Regulation of the Australian legal profession today	72
Conclusion	96
Recommended further reading	97
4 Confidentiality: boundaries and disclosure	99
Introduction	100
Rationale for confidentiality	101
Lawyers' obligations of confidentiality	102
Maintaining confidentiality in an interconnected world	106
Client legal privilege	109
Public interest exceptions to confidentiality: should lawyers' obligations of confidentiality be absolute?	117
Why blow a careful whistle?	126
Conclusion	136
Recommended further reading	136
5 Ethics in criminal justice	137
Introduction	138
The criminal trial defence	140
The prosecution	158
Criminal advocacy generally	162
Ethics in criminal justice: from the local criminal trial to global justice	163
Conclusion	166
Recommended further reading	167
6 Ethical challenges in civil dispute resolution	168
Introduction	169
The harms of excessive adversarialism	171
The harms associated with lack of care and competence	174
The law of lawyering for fair civil processes	175
Moral activism: what sort of conversations do lawyers need to have with their clients?	198
An ethics of care for lawyers in negotiation and mediation?	202
Conclusion	208
Recommended further reading	208

7 Conflicting loyalties	210
Introduction	211
What do we mean by a relationship of loyalty?	213
Alternative ethical approaches to client loyalty	241
Conclusion	245
Recommended further reading	246
8 Lawyers' fees and costs: communicating well with clients and avoiding overcharging	247
Introduction	248
Methods of charging for legal services	250
Wider ethical problems with lawyers' fees and billing practices	263
Curbing billing excesses and providing guidance to the profession	269
Negotiating fair and reasonable costs agreements and disputes about costs	277
Conclusion	281
Recommended further reading	282
9 Corporate and government lawyers	283
Introduction	284
'Corporate lawyers'	284
Rationalisation in a general and moral sense	293
Corporate lawyers as corporate citizens	299
Legal ethics and business ethics	305
Government lawyers	321
Conclusion	324
Recommended further reading	325
10 Lawyers' ethics in the Anthropocene	326
Introduction	327
Moral activist	328
Responsible lawyering	332
Adversarial advocate	335
Ethics of care	339
Law reform	340
Conclusion	344
Recommended further reading	344

11 Conclusion: values and legal professionalism	346
Introduction	347
The significance of personal values in legal professionalism	348
Wellbeing, values and professionalism	351
Measuring awareness of ethical preference	352
Conclusion	356
<i>Appendix: Self-assessment of legal ethical preferences</i>	<i>357</i>
<i>Part 1: What do you think about these statements?</i>	<i>357</i>
<i>Part 2: What is your ethical preference?</i>	<i>360</i>
<i>Index</i>	<i>363</i>