

# The Making of a Good Lawyer

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## The Making of a Good Lawyer



The spectacle of a solicitor ... falsely asserting a date for the execution of an instrument ... conveys a very poor image of the honesty and integrity of solicitors and so tends to bring the whole profession and its standards into disrepute. It cannot in my opinion be excused by resorting to the explanation that the solicitor in this appeal was young and, it was said, inexperienced. In a matter like this, and perhaps in most others, *basic honesty is not a quality that is ordinarily acquired through experience, or by lengthy practice of trying one's best to be honest.*

***Queensland Law Society v Bax* [1999] 2 Qd R 9, 13  
per McPherson JA (emphasis added)**



## Outline

1. What is meant by a *good* lawyer?
2. How do we try to make a good lawyer before admission?
3. How can we try to make a good lawyer after admission?

# What is meant by a good lawyer ?



- ❖ The word ‘good’ is used in a moral sense
- ❖ ‘The measure of a lawyer is not the law’
- ❖ Morals by reference to general community standards; cf how the law shadows these moral standards – the standards ‘that a member of the public is entitled to expect of a reasonably competent’ lawyer: s 420 *Legal Profession Act 2007* (Qld)
- ❖ The two dimensions –
  - ❖ Ethical awareness. The *knowledge* of what a good lawyer is
  - ❖ The *conduct, practice and behaviour* of a good lawyer

# What is meant by a good lawyer ?



- ❖ **Community standards – efforts at resisting ‘cocooning’**
- ❖ **Eg, *NSW Law Society v Foreman* (1994) 34 NSWLR 408 ; *Baker Johnson v Jorgensen* [2002] QDC 205**
- ❖ **Reasons for cocooning, the rise of group ‘ethical blindness’**
  - ❖ **Overworking, mental fatigue**
  - ❖ **Tendencies to socialise only in the work environment**
  - ❖ **External pressure, siege mentalities**
  - ❖ **Lack of shared experiences in common with the broader community**

# What is meant by a good lawyer ?



The *Legal Profession (Solicitors) Rule 2007* (Qld) – relationship with community expectations of lawyers

- ❖ **Almost always necessary:** cf, Bar Association of Queensland, *Report to the Legal Services Commissioner - Biddle and Keelty v Keim*, 17 December 2007
  
- ❖ **Not sufficient –**
  - ❖ The Rule is not exhaustive of legal rules. The common law still applies, and sometimes differs: eg Rule 10, Rule 24
  - ❖ The Rule and the common law rules do not address all situations. ‘The rules run out’



## The role of the university law school

- ❖ The extension of *knowledge*: Pelikan, *The Idea of the University: A Reexamination* (1992) 32-43; Newman, *The Idea of a University* (1959 ed) 127-47
- ❖ The university can therefore –
  - ❖ Assure of ethical *awareness*
  - ❖ Give no assurance of ethical *conduct, practice and behaviour*
- ❖ War stories
  - ❖ Student A – disorganisation
  - ❖ Student B – rule manipulation



## The external requirements

- ❖ **The ‘Priestley’ 11 – mandatory academic content for law degree to be approved by Admissions Board**
- ❖ **The Council of Australian Law Deans (CALD) minimum standards – aspirations, potential self-regulation of Australian law schools**

# Making a good lawyer before admission



## The 'Priestley' area of knowledge

### PROFESSIONAL CONDUCT (including basic Trust Accounting)

Professional and personal conduct in respect of practitioner's duty: (a) to the law; (b) to the Courts; (c) to clients, including a basic knowledge of the principles of trust accounting; and (d) to fellow practitioners.

OR

Topics of such breadth and depth as to satisfy the following guidelines. The topics should include knowledge of the various pertinent rules concerning a practitioner's duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles of trust accounting.

.... [and there's more]



## The 'Priestley' area of knowledge [continued ...]

The aims of the trust account segment of Professional Conduct are:

- (a) To impart an understanding of the legal requirements on solicitors for dealing with trust property.
- (b) To help students obtain a level of competence in, and understanding of, the recording requirements for trust accounts and other trust dealings.

Areas covered should include:

- (a) Provisions of the relevant State or Territory legislation governing the legal profession which relate to the handling of trust money and other trust property.
- (b) Legislative provisions which enable the proper identification of trust moneys.
- (c) The ramifications of breach of trust.
- (d) Methods of maintaining trust accounts records. This includes class exercises in recording of receipts, payments and direct payments of trust moneys and of investments (including mortgage investments) by solicitors on behalf of their clients.
- (e) A detailed study of any relevant legislation, regulations or rules relating to trust accounting.



## CALD minimum standards (Draft March 2008)

### 2.3 Curriculum content

2.3.1 The curriculum includes coverage of all of the academic requirements specified for the purposes of admission to practice as a legal practitioner in Australia.

2.3.2 General requirements: The curriculum seeks to develop ... the values of ethical legal practice, professional responsibility, and community service.

2.3.3 In particular, the curriculum, seeks to develop

– a. knowledge and understanding of the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their *pro bono* obligations.

...

– d. ***internalisation of the values that underpin the principles of ethical conduct and professional responsibility*** [emphasis added].

# Making a good lawyer before admission



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2.3.3 In particular, the curriculum, seeks to develop

– a. knowledge and understanding of the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their *pro bono* obligations.

...

– d. awareness of and sensitivity to, and, ***so far as is practicable, internalisation of, the values that underpin the principles of ethical conduct***, professional responsibility, and community service [emphasis added].

# Making a good lawyer before admission



## Ethics education in Queensland law schools

### The Priestley requirements

Compulsory for the degree 5/6

Elective in the degree 1/6

So, you can expect all graduates to *know* –

- ❖ The structure of the profession
- ❖ The regulation of the profession, complaints and discipline
- ❖ Instructions and retainer (including cab-rank obligations for the Bar)
- ❖ Fees and methods of costing
- ❖ Competence
- ❖ Conflicts of duty and interests, conflicting duties (including information barriers)
- ❖ Trust account management
- ❖ Duties in litigation (hopeless cases, alleging fraud, witnesses, guilty clients)
- ❖ Confidentiality and privilege

# Making a good lawyer before admission



## Ethics education in Queensland law schools

### The structure of ethics learning in the law degree

Single course\* exclusively dedicated to Priestley requirements 6/6

Moral theory and deliberation also addressed 4/6

Ethics education also pervasive through the law degree

- Two courses 2/6

- Five courses 2/6

\* or equivalent

So, you can expect graduates from *most* law schools to *know* –

- ❖ That ethical thinking demands more than rule compliance
- ❖ The importance of moral dispositions like truthfulness, fidelity to client, propriety, competence



### The role of the employing law practice

- ❖ **Reinforcing knowledge of lawyers' ethics**
- ❖ **Mentoring in ethical practice**

## Making a good lawyer after admission



### Reinforcing knowledge of lawyers' ethics

- ❖ Having the *Solicitors Rule* available
- ❖ Continuing Professional Development

# Making a good lawyer after admission



## Mentoring

[A] young lawyer's ethical standards are likely to be shaped far more by his or her mentors in the early years of practice than by the experiences one acquires in the limited practice settings available in law school. Too often, practicing lawyers fail to appreciate their own responsibilities in this area ... Law schools can, and should, teach [the fundamental professional] values in clinical and traditional courses and should instill in students the desire to achieve them in the course of their professional careers. The efforts of the law schools, however, will mean little if the practicing bar shuns its own responsibilities for inculcating professional values. Practicing lawyers can teach by the power of example. ... Later, in a young lawyer's early years of practice, partners, associates, other mentors, and adversaries may be more significant than law teachers in teaching these professional values.

**FK Zemans and VG Rosenblum, *The Making of a Public Profession*, 171–2**

# Making a good lawyer after admission



## Mentoring

See Kay, Hagan and Parker, 'Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development' (2009) 31(1) *Law & Policy* 69-110

- ❖ A holistic approach
- ❖ The kind of mentoring –
  - ❖ *Formal* – organisationally arranged, involuntary, shorter periods
  - ❖ *Informal* – spontaneous, genuine mentor-protégé relationship, as long as six years
    - ❖ Superior career, psychosocial and role-modeling
    - ❖ Less access for women: '.. the dearth of mentors for women lawyers' (93)
- ❖ Formal mentoring programs
  - ❖ Partners to understand the importance of mentoring
  - ❖ Mentoring seen as a professional obligation of senior lawyers

# Making a good lawyer after admission



## Mentoring – what about small practices?

See Wallace and Kay, 'The Professionalism of Practising Law: A Comparison Across Work Contexts' (2008) 29 *Journal of Organizational Behaviour* 1021-1047

- ❖ The larger the practice –
  - ❖ The more likely there is internal mentoring
  - ❖ The fewer the risks of poor mentoring
  
- ❖ For the small-firm lawyer –
  - ❖ The importance of professional associations, and professional sub-associations, for ethical role-models
  - ❖ External mentoring could be the practice's ethical obligation

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