

## INSIDE LAWYERS' ETHICS

*Christine Parker, Adrian Evans*

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*“Would you tell me, please,  
which way I ought to go from here?”  
“That depends a good deal on where  
you want to get to,” said the Cat.  
“I don’t much care where--” said Alice.  
“Then it doesn’t matter  
which way you go,” said the Cat.  
Alice’s Adventures in Wonderland  
by Lewis Carroll*

In the thick of activity and chaos that a lawyer calls life, the Question of ethics and values in the practice of his or her profession makes its presence known like a ghostly apparition. It is a constant presence. As much as it always hovers nearby, however, it is also always silent.

The Question always sits upon the thick stacks of the lawyer’s pleadings, resting its chin on its hands, and looks like it is thinking. It accompanies the lawyer while he or she rushes to beat deadlines and meets reglamentary periods, constantly at the heels, and looks weary. It peers over the lawyer’s shoulder interestedly during billing periods. It is always in attendance during hearings and trials, bringing its own seat whenever the lawyer overlooks reserving it one; and it always tries to wrangle a good spot to afford it a better view of the proceedings – and to afford the lawyer a better view of the Question itself.

When the exhausted lawyer nods off to sleep in the night, the Question perches itself upon one of the bedposts; and, whether it enters the lawyer’s

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dreams or not, there it will wait until morning. It will greet the lawyer again the next day. When the lawyer splashes water on his or her face in the sink, or when he or she reaches for the toothbrush – at the first moment of the day that the lawyer looks into his or her own face in the mirror, the Question bids the lawyer a pleasant morning.

As a silent presence, the Question is bound to be ignored in the regular cacophony of a lawyer's calendar. Whether the lawyer manages to squeeze in a moment to bolt the doors and confront the Question squarely and alone; or brushes it aside yet again for sheer lack of time, or need, or for any other reason he or she deems justified – the Question stays. It will not object to its being overridden once more, or a million times over; for it will linger in perpetuity, anyway.

*Inside Lawyers' Ethics* gives voice to the silent Question that hangs suspended in midair wherever a lawyer is playing a role and a choice has to be made. Bringing to stark light the ethical consideration in a number of different aspects of lawyering, this slim volume is surprisingly packed with case studies and illustrations of both common and difficult ethical dilemmas faced by modern lawyers. Set in the Australian legal milieu, *Inside Lawyers' Ethics* nevertheless finds common ground with local legal practice by using a thoughtful selection of ethics cases that are universally familiar.

Beginning with the process of ethical reflection and decision-making as it should progress, step by step, within a lawyer's consciousness when faced with an ethical problem, authors Christine Parker and Adrian Evans introduce the ethical choice at its inception: in the mind of the lawyer who must make the root decision between what is the right or wrong thing to do, given a set of facts and the corresponding moral conflict they produce.

Having introduced ethical reasoning as a vigilant awareness in the lawyer's mind, the authors go on to lay down the four main approaches to lawyers' ethics in the setting of Australian legal practice, namely: Adversarial Advocacy, Responsible Lawyering, Moral Activism, and Ethics of Care. Throughout the book, these four approaches are used to apply in various ethical problems in the legal practice singly or simultaneously; with reference to the Australian Model Laws and Model Rules that guide their local attorneys' behavior and professional conduct.

The ethical behavior of a lawyer is obviously influenced by more than his private principles, beliefs, and priorities. Subsequently presented in this book is how the legal profession, as a whole, bears upon the lawyer's personal views and convictions. The authors discuss the regulatory atmosphere within which Australian lawyers operate, and expound on the three basic models that govern the regulation of the legal profession in general – Self-regulation, Co-regulation, and Independent Regulation. The authors later on provide the real-life ethical problem presented by the situation where lawyers hold in trust the funds of their clients without informing the latter of their right to receive interest; and how, in such a circumstance, the relation between a lawyer's personal ethics come into play with those of legal institutions.

This book also probes into the application of ethical reasoning and decision-making in civil and criminal litigation. The authors focus on the seemingly excessive adversarialism of Australian lawyers in civil cases and attempt to unravel the cause of such behavior in the given setting. Shifting to criminal litigation, the authors examine the position of the criminal defense lawyer as the classic case wherein adversarial advocacy becomes essential, and the concomitant abuse of function that a prosecutor may commit if he or she carries out his or her role in the vein of adversarialism.

This book likewise looks into lawyers' ethics beyond the realms of the courtroom – in cases that do not arrive at litigation, and are settled amicably through negotiation and alternative dispute resolution (ADR). The authors provide cases wherein ethical issues present themselves in negotiation of settlement of disputes, and in mediation as a method of ADR, reflectively differentiating the ethical considerations of lawyers who act in a representative capacity in negotiation or mediation on the one hand, and those of lawyers who take on a facilitating role in the negotiation or mediation process, on the other.

Leaving the courtroom and the negotiation table, the authors of this book go straight to the heart of the lawyer-client relationship and its ethical implications. It is the lawyer's professional responsibility to provide his client with the so-called trilogy of duties: loyalty, confidentiality and care. In view of these core duties, and taking into consideration the four approaches to legal ethics earlier identified, the authors of this book try to determine the extent and limits of client loyalty following the underlying principles of adversarial advocacy. Terming such client loyalty as an "unadulterated loyalty" under the said advocacy, the authors further enrich the concept by fusing it with the perspectives provided by the other three approaches.

A somewhat notorious aspect of the lawyer-client relationship is the computation of remuneration to be received by the attorney for the services he or she has rendered for his or her client. This book goes on to analyze the ethical issues raised by lawyers' billing; first, by presenting the usual methods by which lawyers compute the fees they charge and identifying their ethical flaws. Later on, this book presents an extended evaluation of time-based billing, a method of computing attorneys' costs and fees that is popular for being ethically questionable. Concluding this chapter, the authors suggest alternative methods for determining lawyers' fees that are more sensitive to the ethical consideration in law practice.

As private businesses and commerce play a dominant role in the economy of every nation, lawyers engaged in the practice of commercial law find themselves thrust into the limelight with virtually every economic transaction or activity. This book thus dedicates a chapter to the ethical issues that corporate lawyers face, presenting various cases wherein corporate lawyers have assisted their clients with the commission and concealment of corporate misconduct because of their adversarial approach to legal ethics. The book goes further by suggesting that corporate law practice may necessitate the application of the principles of moral activism instead of adversarialism, in order to improve the ethical deficiency in corporate law practice.

From the courts, to the negotiation table, to the heart of the lawyer-client relationship, this book finishes up by exploring what is at the crux of every ethical choice that has to be made in the practice of law – the lawyer's personal values-awareness. This book identifies the personal challenges faced by lawyers in Australia in view of the good character requirement for admission to practice, and the working atmosphere in their law firms as they struggle to juggle work and other commitments in life. Towards the end, this book gives a method of utilizing case studies for students and lawyers alike to practice exercising their ethical reasoning, decision-making and judgment in potential ethical dilemmas.

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The essayist and law professor Thane Rosenbaum once articulated that "Legal ethics is a misnomer... Lawyers conducting themselves legally are not necessarily conducting themselves morally." Such a bleak insight on the profession that we law students are aspiring to enter must invite us to ponder more reflectively on our reasons and convictions in desiring to become

attorneys in the future. Having yet to face the ethical problems that the law practice presents in real life, we must begin early on to build a strong set of personal values, and an awareness of such values, that will not be shaken in the future when bombarded with ethical pressure in practice. Absent such preparation, we are likely to perpetuate the situation given at the beginning of this review, which contemplates the ethical question in the legal practice as a pale and silent ghost that is often ignored by the lawyer in the face of other pressing concerns.

While the law student has to make early preparations, lawyers already in practice may have to put in double of the same effort to reinforce and enhance their existing personal ethics and values. A demanding profession that entails one to act quickly and constantly make snap decisions, given little or no thinking time, cannot mean that such decisions and acts may be made without any thought at all, and without any regard to their ethical repercussions. On the contrary, it is the motivation behind every such ethical choice that defines the weak or upstanding lawyer. Every ethical dilemma is a crossroads where the lawyer finds himself compelled to weigh out conflicting moral interests to arrive at what is the right or wrong thing to do; which direction to take. Armed with infirm beliefs or ethical priorities, how would the lawyer go about in such a situation? Lewis Carroll put the simplest of words in the Cheshire Cat's mouth: "Then it doesn't matter which way you go."

For lawyers, *Inside Lawyers Ethics* takes one for a brisk jog to reinvigorate one's ethical views and beliefs in the practice of law. For the law student, on the other hand, the first step to building a solid ethical foundation within oneself may yet to be taken – and such step may very well be to pick up *Inside Lawyers' Ethics* and start reading. The quickening of the stride, however, begins at the close of the same as it leaves its student readers with the question: "Have you, in reading this book, developed any better ideas as to what motivates you to become a lawyer?"