Profession is derived from *professio* and means a public statement or promise. A legal professional should therefore be worthy of public trust and should carry out his professional duties with public-spiritedness and the highest standards of ethical trust.

**Characteristics:**

- Knowledge puts the professional in a position of authority vis-à-vis the client who has no other option but to trust the professional and should therefore be able to rely on his integrity
- Commitment to promote the basic good of society, in this case justice
- Discretion which means they do not blindly accede to their clients or other authorities
- Willingness to accept personal responsibility for actions and for maintaining public confidence in the profession
- Sense of common identity and established moral community
- Abide by code of legal ethics
- Enforced by the profession itself and the courts

**The ethical crisis in the legal profession**

Lawyers seem willing to sell their souls to the highest bidder. They make use of truth, rationality, justice and other moral values in an instrumental sense - only in so far as these values aid the lawyer to manipulate other legal actors to reach pre-determined outcomes for their clients. They regard themselves as carrying out just another form of business, selling goods and (legal) services at the highest possible fee in order to make as big a profit as possible.

The survival mentality is brought about by increasing competition owing to growing numbers of law graduates and an accompanying growth in law firms, a sluggish economic environment, affirmative action, the rising costs of running offices, and the entry of financial institutions, estate agents, tax-planners, in-house legal advisors, and accountants into fields which were previously the exclusive domain of attorneys. Globalisation also adds pressure by bringing in foreign competitors.

Apart from the competitive business environment, the present climate of lawlessness in SA is also contributing to the moral crisis experienced.

**Nicolson & Webb:**

Dominance of formalism and liberalism is the main problem.

Ethical formalism tends to consider obedience to formally laid down norms as the beginning and end of ethical obligation. Gap is left unfilled by teaching students to keep their noses clean by avoiding possible disciplinary proceedings. Treating clients as *homo oeconomicus* of classical liberal theory may lead to paternalistic invasions of client autonomy where lawyers make unfounded assumptions about their needs, desires and interests, and treat cases as purely technical problems of how most effectively to vindicate their legal rights. Much of content and enforcement of self-regulation has reflected the needs and interests of the professions themselves rather than those they are supposed to serve. Through the influence of formalism and liberalism current professional ethical norms act to undermine lawyers’ ability to play a truly positive social role. A lawyer’s legal philosophy will influence his understanding of his ethical responsibilities as a lawyer. A move away from an ethics based on formalism and liberalism to one which requires lawyers to consider the contextual factors relevant to their representation of clients and the impact on specific and general others would go at least some way towards encouraging a more ethical profession.

Lawyers should be required to take into account the real life situation of their clients, including all their needs, desires and interests and the possible impact of their actions on third parties, the general public and the environment. There should be a greater limit on the lawyer’s general duty of loyalty.

**Primary values** (level one: general statement of underlying values):

1. Good faith and trust, which applies to both lawyers in their proximate face to face dealings with clients and others, and to clients themselves
2. Non-maleficence, which requires lawyers to refrain from harming others
3. Beneficence, which requires lawyers to do good and prevent harm to others

**More specific general principles (between client and lawyer):**

1. Loyalty; presumption that lawyer will exercise all necessary zeal on behalf of their clients (partisanship) and will keep secret all their confidential information
Legal ethics

2. Integrity; they cannot pass on moral responsibility to clients. Lawyers are obliged to consider the impact on their personal moral integrity, the integrity of the profession as a whole and the interests of affected third parties, the general public, and the environment.

3. Candour; the quality of being open and honest in expression. Good faith representation requires mutual expectation of honest and open communication between lawyer and client with regard to all material aspects of the transaction, and, as far as is compatible with the duty of loyalty, between lawyer and third parties.

4. Informed consent; clients are entitled to sufficient information to enable them to participate effectively in decision-making throughout the retainer’s duration.

**Contextual factors**

Most general of the factors is the question of relevant interests, desires and needs - not only in material terms but also in emotional and psychological terms. This is crucial in determining

1. The informational needs and expectations of clients and what aspects of the case are material for the purposes of the candour principle
2. When failures of candour will justify the retainer’s termination, and
3. What steps in the representation are ‘major’ for the purposes of informed consent

Similar to a decision making schema.

One factor which will frequently be relevant is the question of the balance of power between lawyer and client, and between lawyers, and affected others. Much depends, also, on whether the case involves criminal defence, civil litigation, mediation, negotiation, facilitation or advice giving.

**Codes can play two important functions:**

1. To assist development of lawyers’ moral character
2. By exposing law students to the various dilemmas and moral consideration that apply in different areas of practice, the codes can help them make ethically informed choices as to what type of legal practice they pursue.

**Possible objections to a contextual approach**

1. It would be too demanding in terms of time and effort to expect lawyers to use the decision-making schemas.
2. Direct converse argument of the above: providing lawyers with discretion to resolve ethical dilemmas will make it too easy for those bent on immoral behaviour to get away with it, thus increasing the overall level of lawyer immorality.

**Incorporation of the contextual approach**

1. Into legal education at both initial and vocational stages of legal education. Students must consciously develop the capacity for a more sophisticated form of reasoning which recognises the centrality of ethical sensitivity and judgment in the Aristotelian tradition of moral wisdom.
2. Into the practises at the academy itself
3. Into the business and organisations, law should become a profession once again
   a. Develop clearer practices and higher expectations as regards client care and professional responsibility
   b. Professions need to work hard in ensuring that cost regimes - and particularly the new conditional fee arrangements - are transparent and that mechanisms for complaining about or taxing costs are kept simple and inexpensive.
   c. A lawyer should be able to advise from the perspective of an independent and morally active member of the local community. This could empower the clients to achieve autonomy in an ethical manner within the context of a just community.
   d. Universities must continue to encourage the opening up of legal education to previously excluded groups
   e. The increased ability of solicitors to undertake advocacy may result in greater attention to autonomy-in-relation and a greater concern about the impact of client representation on others.
   f. The ethical case supports moves towards more inquisitorial procedures instead of accusatorial procedures, leading to a different attitude of assisting the courts.

Rossouw

Why do people lose faith?
Legal ethics

1. Professional ethics impedes proper service; some of the rules were described as unfair stumbling blocks hindering lawyers from executing their duties properly
2. Professional ethics cannot be enforced;
3. Professional ethics as professional ideology; application seems to outsiders merely be done to protect the interests of the legal profession, and neglecting the interests of clients.
4. Professional ethics are not economically viable; severe competition (see above)

Ad 1. Deals not with the professional ethics as such, but merely with the current code.
Ad 2. Based on lack of enforcement, if changes are made with regard to efficiency and visibility of the enforcement, objection can be set aside
Ad 3. Serious, but not sufficient. Not all wisdom about the proper role of professions in society reposes in those at the top of the professional heap.
Ad 4. Are lawyers ordinary business persons?

See above, the features associated with profession.

Three reasons that they are not ordinary business man:
1. The aim of justice will be thwarted. Legal industry will be regarded as the ideological partner of the middle class, not the custodian of justice for all.
2. It will undermine public trust in the profession
3. It will drown certain voices, making them inaudible

Why then ethics?
1. To protect the professional nature of legal services
2. To guide new entrants to the profession
3. To offer assistance in moral decision-making
4. To ensure fair competition between legal practitioners
5. To secure the trust of clients
6. To discipline unprofessional behaviour

An ethical-philosophical perspective on the crisis in the legal profession
Ethics is the philosophical discipline in which the requirements of decency with regard to human conduct and the difference between good and evil and right and wrong are investigated.
Legal ethics refers in general to human conduct between law and ethics (or morality) in any given society.
In a narrow sense it refers to the ethical standards of professional conduct applicable to the field of law.

Lewis (traditional approach) states that ethical philosophy does not form part of his study and that it is not necessary to plunge into philosophy of ethics because the purpose of his book is to set out the rules of conduct which an attorney is require to obey. Needed is an entirely practical approach to the professional conduct.

Most of what is called legal ethics is similar to rules made by administrative agencies. It is regulatory. Its appeal is not to conscience but to sanction. An individual lawyer's attitude towards legal rules is central to his approach to moral responsibility. Some have a positive legal mentality, others see positive rules as secondary, and even subordinate, to spiritual and cultural sources of ethical guidance.
The legalistic approach to professional conduct is not philosophically neutral but rests implicitly on philosophical assumptions (formalism, positivism and legalism) which reigned supreme in legal circles and became the target of intense legal philosophical criticism during the 20th century.

Role differentiated behaviour: lawyers are expected to respond differently to moral problems in their role as lawyers as they would as private individuals outside that professional capacity. Lawyers are forced to disregard their own views on whether their client had acted ethically or not: Ethics of the hired gun.

---

1 Legal ethics: A guide to professional conduct for SA attorneys (1982)
According to the adversary system, it is not the task of legal representatives to decide whether or not their clients are guilty or accountable (task of judge), but rather to act as a mouthpiece for their clients. Legal representatives are not independent or impartial. The system will result in justice and the equal protection of everybody’s rights. Premise is that everyone has equal access to legal representation and relatively equal bargaining power.

Practitioners act in the interest of their clients and have to defend their interests fearlessly and even aggressively, in both criminal and civil cases. In the exercise of their professional duties they sometimes do things which they would ordinarily regard as immoral or unethical and which in their normal lives they would not do.

**How to justify?**

1. Role-differentiated or role-based approach: legal practitioners play a role and their aggressive and unethical conduct goes with their role as legal practitioner. The morally good will be uncomfortable. This approach regards legal practitioners as mere occupants of roles and not as autonomous, self-driven entities. It also forces the morally good to betray their own moral ideals.

2. A second way is to try to redescribe their professional role in such a way that they do not have to renounce their own ethical ideals or integrity.

This may still have chilling consequences. There can therefore be no moral justification for the immoral conduct of legal practitioners.

**Wasserstrom**

There are two accusations:

1. Lawyer-client relationship renders lawyer at best systematically amoral, at worst more than occasionally amoral in dealing with rest of mankind
2. Lawyer-client relationship is immoral because the lawyer is in a dominant position and treats client impersonal and paternalistic

The lawyer is an amoral technician whose skills and knowledge is available to those with whom the client-relationship is established. But can we refuse morally objectionable actions? He suggests that the hired gun concept can best be defended in the case of the criminal lawyer, but that it cannot serve as model for lawyers in general. Four reasons are mentioned:

1. The legitimacy of role-differentiated behaviour can be sustained only if the adversarial criminal law system is itself legitimate.
2. Role-differentiated behaviour justifies a cut-throat, winner takes all, capitalistic ethic competitiveness rather than cooperativeness, aggressiveness rather than accommodating and ruthlessness rather than compassion and pragmatic rather than principle.
3. Lawyers cannot adopt a purely role-differentiated perspective as easily as medical doctors can, because it is intrinsically good to cure a disease, but in no way can it be intrinsically good to win every lawsuit at all costs (which I do not agree with, a doctor too is limited in his curing)
4. Lawyers pay the price because it is hard to divorce one’s professional way of thinking from other aspects of one’s life.

A number of philosophical approaches to legal ethics

**Rule-governed ethics (duty)**

Based on the idea that in order to judge human conduct, it is necessary to establish first the ethical rule governing particular conduct. This rule then takes precedence over everything else, such as consequences of the conduct. The rule has two qualities:

1. It describes what ought to be done, duty, and once accepted,
2. One has the obligation to obey.

**Immanuel Kant** is an exponent. According to him the first principle is that in any ethical situation one should act in the same way one would have others act in a similar situation. This ethics is known as **deontology or deontic ethics**.

---

2 Lawyers as professionals: some moral issues
This implies universalising one's action. Obedience is necessary because moral goodness is desired by all. This first principle is **categorical imperative**. Principles that are intrinsically valid, good in and of themselves which must be obeyed in all situations and under all circumstances. Kant is aware that at times people act contrarily. They then act according to the hypothetical imperative. When an air hostess is kind for different reasons than kindness. This is commandment of reason that applies only conditionally, not because it is morally good, but because they are trained that way. The conduct of lawyers who merely meet the minimum standards is described as formalistic, positivistic and legalistic. It falls within the hypothetical imperative.

Rule-based ethics is haunted by the difficulty to explain the origin of the moral sense of duty or respect for the law which it takes to be the key to ethical conduct.

**Utilitarianism**
May be considered as simply one of a number of purpose-oriented or teleological theories. What is relevant is the purpose which the action is intended to achieve. Theories are often called consequentialist. Moral judgment in the case of utilitarianism boils down to the decision whether or not a given result is useful, meaning one that induces and promotes the happiness of the greatest number in society. Jeremy Bentham is a philosopher who argues this basis. The problem is that not everything that is useful is by necessity right. Professional guidelines may be useful to avoid mistakes etc.

**Virtue ethics**
Virtue in ancient Greece was regarded as an excellence, *arete*. Aristotle describes the kind of person one should strive to become. When deciding how to act the question is not simply what the rules prescribe, nor what would be useful to achieve, but what a person of good moral character would do in the same circumstances. Some of the virtues essential to a perfect life can only be developed by participating in the public affairs of the state. He believed that bios politikos, a life devoted to public-political affairs of the polis, was the highest level of life that could be attained. Crucial is that it centres on the search for the specific virtue (excellence) required in order to act ethically in a given situation.

Anthony Kronman suggests that a life in the law is valuable not because of money or status or justice it makes possible, but because of the unique type of person or character it allows the lawyer to become. The primary virtue of lawyers is the ability to make good, reflective judgements.

If virtue cannot be learned, those who are not gifted with virtue cannot be expected to act ethically.

**Feminist ethics**
Feminine traits such as empathy, care, nurturing and social commitment may transform legal ethics and processes, as well as the image of the typical legal professional.

**Postmodern ethics**
Characteristic is the view that universal morality has come to an end. Diversity confronts the postmodern human being in all aspects of life. The challenge is how to deal with diversity or difference. The moral domain for the postmodernist is the terrain of uncertainty.
Characteristics:
1. The demise of the belief in the universal validity of a particular (Western) life-style or morality
2. The celebration of difference
3. The rejection of absolutes as well as universals, and
4. The recognition of the necessity to accept uncertainty and indeterminacy as a way of life

Ethics no longer is the substance or content of law, politics and morality, but becomes a warning flag. Ethics can thus only point to what is not yet or what is not justice. It cannot state what justice is or prescribe a substantive content to our laws or morality.

**Conclusion**
Legal ethics

There are two approaches to the discussion of professional conduct. Lawyers have either claimed that the professional conduct is a question of positive law and therefore unconnected to the disputed philosophical questions of ethical philosophy (Lewis), or they have simply assumed that the only or best way to approach moral responsibility is in a rule based fashion, thus regarding other ethical approaches like virtue ethics.

**Living in the Law - Kronman**

**What are the reasons for choosing a life as a lawyer?**

**Money and honor**

It is desirable because it offers great opportunities for wealth and prestige, for a disproportionate share of society’s material resources and high professional status. This is to view one’s career as a vehicle for accumulating things that are needed in other areas of life. Whether he leads a life that in an overall sense is to be admired or regarded with pity and contempt, is a question that ultimately turns on the nature of the ends he uses the external rewards of his work to pursue. This is a very instrumental view, very unattractive because it takes in too much of life, or too much what is important in life. They run the risk of losing their identity or personality. The presence in every person’s life of some rough division between those involvements and activities that constitute his character or personality on the one hand, and those, on the other, that do no, between those that make someone the person he is and those one merely has or does.

But to practice law requires not just formal knowledge of the law, but also certain qualities of mind and temperament.

**Public-Spiritedness**

Some choose law because they are committed to the public good and believe that law is the most direct path to its attainment.

- Any lawyer who lacks this attitude altogether is to that extent a professional failure.
- The public-spirited view is not the only view capable of justifying a career in the law. Some seek more than the general promotion of the public good. This is a way of working for the public good by placing special emphasis on political engagement for instance.
- And it sometimes resembles the instrumental view. On the one side, even the most thoroughgoing instrumentalists may use the material freedom to pursue projects that though lacking public-spiritedness, cannot fairly be called selfish. On the other side, an unbending devotion to the public good can sometimes be coupled with an instrumental view of the contribution one is expected to make.

**Judgment**

According to Kronman it is the process of deliberating about and deciding personal, moral and political problems.

**Deduction and intuition**

Striking feature of judgment is its non-deductive character. Rarely is it a matter of simply deriving the appropriate conclusion from a set of established maxims by means of a fixed method. Good judgment are in fact most clearly revealed in those situations where the method of deduction is the least applicable. Is it than intuition? Intuition is a form of direct insight or apprehension distinct from any species of understanding at which one is able to arrive by reasoning alone. To have that, is to simply see that something is the case.

But the notion that judgment is a form of intuition is misleading too. If judgment is conceived of as a process of reflection followed by the moment of intuitive insight, then the assessment of the soundness of a particular judgment can never depend on reasons that support it. A person of good judgment is able to provide a compelling framework of ideas for the decisions he arrives at. If intuition is a gift, we should expect to see evidence of it even in very young people. But the kind of intuitive insight that good judgment requires is universally associated with long experience and hence with age. Also, if it is a gift, what does intuition have to do with character, which always takes time to develop and cannot be regarded as a gift at all.

**Sympathy and detachment**

What is needed is a certain measure of compassion. It is necessary to hold something in reserve even while making a maximum effort at imaginative understanding. To be both sympathetic and detached is difficult. Can I live with it? I involves both the individual and those in his network relationships.

**Deliberation and choice**

Ascribing sound judgment implies he is able to entertain an especially wide range of alternatives by is able as well to make the proper choice among them. It is the difference in the consequences that important choices have for achievement or preservation of integrity that marks the line between those decisions that show good judgment and those that do not. Deliberation is neither deduction nor intuition. It is the compassionate survey of alternatives viewed simultaneously from a distance, and those who show excellence in deliberation and whose judgment we value are the
men and women best able to meet these conflicting requirements and to endure the often considerable tension between them.

Judgment and character
The person who shows good judgment in deliberation will be marked as much by his affective dispositions as by his intellectual powers, and he will know more than others do because he feels what they cannot. Where these dispositions are habitual, they constitute traits of character, defining features of one’s person.

Politics
Judgment also has a public face. Where there is disagreement about the character and aims of a community, the associational concerns of those who are responsible for maintaining its well-being assume a much greater scope and urgency. It is when this happens that we say that the concerns in question have become political in character. Before deciding, he must survey the alternatives, place himself in the position of each of the controversialists and make an effort to see matters from their view. He must entertain their concern.

The good lawyer
To achieve competence in the practice of law one must master a considerable body of doctrine and be familiar with the distinctive forms of argument the law employs. It is how wisely he makes the judgements his professional tasks require what sets him apart. Law practice is an activity that can be performed. To excel, one must possess good judgment. Also, the practice of law tends to promote the development of this same trait. It is a trait of character. Lawyer who accepts this can justify his choice of career in terms the instrumentalist cannot, as the choice of a way of life and type of character. A good judge, a good counselor and a good advocate must possess this quality of sound judgment.

Judging
A judge must try to see the claims of the parties in their best possible light, with as much sympathy as able short of actually endorsing any of the positions in question. He must appreciate what the decision means to parties and those identifying with them. Otherwise, bias or favouritism, and hardheartedness.

Counseling
Judges are obliged to remain neutral, lawyers are expected to show partiality toward the interests of their clients, to advance these interests. Clients often come with confused or conflicting ends and it is his job to help see what it is he wishes to do and to decide whether he really wants it. Judgment is needed, the same combination of sympathy and detachment that a person needs in order to deliberate wisely about his own ends. Compassion and objectivity. It is also his job to find a framework of rights and obligations to accommodate the different and conflicting interests of those involved.

Advocacy
His job begins only when the client’s interests have already been fixed with a high degree of certainty. It seems all he needs is manipulative power, to be cunning. He argues his case before strangers who are unacquainted with his character and who have neither time nor opportunity to learn of it. One must be in the habit of looking at the case judicially, and since a judge’s direct concern is with the community of law, an advocate who sees things from his perspective and attends to his concerns will be careful to frame is own arguments so as to emphasise the congruence between interests of his client and those of the legal community. He must survey the interests with the same sympathetic detachment the judge himself does. Lack of judgment is a liability.

Conclusion
To live in the law rather than off it, is to submit to its discipline and to accepts its ideals, among which the attainment and exercise of good judgment or practical wisdom. To aim at this is to aim at a particular conception of character and at the way of life associated with it.

Portia Redux: another look at Gender; Feminism, and legal ethics - Carrie Menkel-Meadow
Opposed to male moral reasoning was the female ethic of care. This was grounded in a relational, connected, contextual form of reasoning which focused on people, as well as the substance of a problem. Women are more likely, but not exclusively, to reason from a care perspective that relies on notions of responsibility, human connection, and care. Women are more likely to rearrange rules or principles or to seek incrementally inclusive solutions in order to accommodate the needs of people. But shown is too an ability to shift from one mode of reasoning to another, suggesting that humans are capable of reasoning from different perspectives. What is significant is the tendency to start with a particular focus or choice, regarded by some as the moral default or preferred position. What remains is the role that socialisation and other social factors like professional context, play in the choices people make. What difference would entrance of women into a profession make if there was some validity to the claims of relational feminism?
Law practice
It is argued that women may be more likely to adopt a less confrontational, more mediational approach. Epstein however maintains that there may be more variation among individuals within a particular gender than differences across gender. It is too early to tell whether there is push or pull in terms of which directions women or other outsiders in law pursue.

Production of legal knowledge
Just as two heads are better than one, the inclusion of both genders will increase the number of ideas and the quality.

Legal Ethics and Moral Decision-making
We find that the social contractarians create a legal system in which the community of lawyers adopts rules to specify behaviour a priori, to create a sense of community, and to set bounds on what will be acceptable behaviour. The drafting of ethics codes by law societies seems a clear illustration of that contract at work. The key to an ethic of justice is a rights consciousness that is located in the right not to be interfered with, personal and individual liberty. From this we can see the foundations of the adversary system. Against this philosophy is the ethic of care that struggles with rules, prefers to make decisions in contexts, tries to keep the parties in relation and conceives of a responsibility towards others. Do these produce different principles or processes for resolving ethical dilemmas?
The Jacks found gender to be associated with different moral orientations and responses to the ethical dilemmas and they noted that responses to ethical dilemmas were situationally based. Both female and male lawyers responded clearly with a justice of rights orientation when the ethical or professional norms were clear. Thus, the professional role, legal education and an understanding of norms of the profession could often trump gender patterns in moral reasoning.

Portia
Is seen as the symbol of mercy and Shylock as the symbol of justice, judgement and Law. Portia in her speech represents a feminine mediating force in law, calling for the tempering of justice with mercy and appealing to hearts as well as sceptres. This is rejected by Shylock. Portia then becomes an extraordinary, albeit conventional lawyer. Has mercy triumphed? No, she has merely shown to be manipulative of language. Her robes are those of the professional role and mantle she must take on. Those who have relied on Portia as the metaphor for women's role in the legal profession, see three roles.
1. Women would inhabit the role differently if they could overcome men’s domination of the profession.
2. Women will construct the profession and the legal system to be more co-operative, more contextualised, less rule-bound, more responsible to others, as well as clients, and more conscious of socially just ends.
3. Women will refuse to capitulate to a macho ethic of law and will try to incorporate their own integration of psycho-social health and family balance into their roles as lawyers.

Implications for a gendered view of legal ethics: of care, mercy and other soft values
Contradictory readings for Portia? She is flawed but admirable human being trying to conduct her affairs in a world in which women could not speak openly as a lawyer or plead for mercy or justice. Women cannot take all of the credit for asking that justice be tempered with mercy. Mercy without justice is not necessarily a good thing either. Legal systems both need justice and mercy and something is served by remembering and observing when they act in opposition to each other, in order to use one as a corrective for the other.
Tronto: ethic of care consists of several elements: it must be contextual. The perspective of care suggests that conflict be resolved or worked out with the least harm to parties and with concern for the continuance of relationships.
Under current rules and formulations, a lawyer may take account of the other party only if her client shares an ethic of care. Increasingly we see the impulse of an ethic of care being articulated in practical terms in mediation and ADR. This is what Portia tried. Yet ethic of care also presents problems, for whom shall we care?
Feminists have argued that adding women to the development of legal doctrine, legal ethics and law practice will expand, broaden and transform the way we produce and use law. It also creates the obvious benefit of providing lawyers who can serve the previously underrepresented or unrepresented, or represent better those interests served by more conventional lawyers. Public attention to issues of gender and racial differential treatment may result in pressures to the profession to clean up its act if it wishes to improve its already tarnished reputation.
Attention to gender issues and quality of life issues with which women are more likely concerned, may cause the profession as a whole to re-evaluate the demand of its greedy institutions which seem to require so much devotion to work.
Broadly defined legal ethics in Menkel-Meadow's view is enhanced by taking into account the values of others, those previously outside the profession.
**Practice of law as a profession**

Good lawyer is linked to the idea that law is practised as profession, not merely as a job, perhaps even a calling. A legal professional’s conduct should justify the trust placed in him by his clients, adversaries and the courts. Lawyers find their social role permeated by ethics. Rule-based ethics of professional codes is a limited version of ethics, and rules are being obeyed out of fear for sanction, not out of conscience. This approach has led to a very restrictive interpretation of three claims traditionally:

1. He acts like a professional
2. He always remains morally a fit and proper person for the legal profession and
3. He has a duty to obey the law

**The requirement of a good character or of being a fit and proper person**

Section 15 of the Attorneys Act states that a court may only enroll applicant if such person in the discretion of the court is a fit and proper person to be so admitted and enrolled. Section 22 states that a practising attorney may be struck off if that attorney in he discretion of the court is not a fit and proper person to continue to practise as an attorney. Only persons of certain character are therefore allowed to practise as lawyers. This underlines the moral basis to the profession. By adopting a virtue ethical perspective it is assumed that a certain quality or excellence is required. Reason: they are entrusted with matter related to the affairs, honour, money, property, confidential information and lives of their clients and should be worthy of this trust and confidence. The public is protected. It is generally accepted that the state has an inherent duty to act for the public good and to safeguard the administration of justice from those who might subvert it through dishonesty, perjury or the like. Some have argued that moral virtues and character are universal and applicable over the ages and across cultures (McDowell). Moral character has been described as embracing truthfulness, a high degree of honour, a good sense of discretion and a strict observance of fiduciary responsibility. The concept has also been criticised as unusually ambiguous, fuzzy, creating potential for arbitrary and discriminatory application and reflecting subjective views and prejudices of the person applying the criterion.

Today, individuals in the US are typically denied admission on account of violations of the law, acts involving dishonesty or fraud, abuse of legal process, disregard for financial obligations and failure to file tax returns, mental or emotional instability and evidence of drug or alcohol abuse. McDowell maintains that the concept should be retained as a powerful inhibitor of unethical conduct as as something to which to aspire.

When Ghandi applied, he was a person of Indian origin and as such not fit and proper. In another case, Wookey (female) was refused because she was a woman. The bench relied on Roman-Dutch law and its exclusion from legal practice of persons who could be termed unfit and improper, including the deaf, the blind, pagans, Jews, person denouncing Christian Trinity and women.

Fisher was struck of the roll because of his opposition to apartheid. And recently the refusal to register a Rastafarian who had in the past illegally used dagga during religious ceremonies and intended to do so in future. Can the standard be changed over time?

One may assume that any qualification for admission must be clearly related to the public interest and the applicant’s fitness or capacity to practice law. The fit and proper person standard and the principle of character screening (to prevent abuse by criminally minded attorneys) have both been accepted as constitutionally valid without serious consideration to the exclusionary impact this has had in the past. Nor have stricter rules for application been laid down to curb further and future abuse of this open-ended standard.

Can a clear cut distinction be drawn between the professional and private life?

The American Bar Association’s Model Code of Professional Responsibilities does not distinguish. However, the Model Rules do and state that committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects amounts to professional misconduct. The issue is not settled in SA. The rationale is probably that if you do something which brings you into disrepute, the profession and the administration of justice will also be brought into disrepute. Other difficulties: past conduct and history are not good indicators, personal information that needs to be given bears no meaningful relationship to the public interest, infringement of privacy.

Law is understood in a positivistic sense as the legal rules currently enforced by recognised state institutions. The virtue ethical approach to the legal profession has been overshadowed by the rule-based approach.

**The usefulness of Good Moral Character - McDowell**

Is good moral character used differently today than it was when character rather than expertise was central to professional culture? The concept is used in at least four different situations:

- When certifying that a person is eligible for professional licensing
Legal ethics

- When recommending applicant for employment in the professional world
- When revoking one’s professional licence for having acted unethically
- As a demanding aspirational concept which students and professionals should strive to cultivate for themselves

The concept has much the same core meaning today as it had for our grandparents. It signifies the professional possesses and practices certain virtues or traits, such as truthfulness, dedication to high levels of competence, loyalty to clients and the profession, trustworthiness, courage in carrying out professional responsibilities, a desire to serve the public instead of mere striving for private gain and the disposition to make decent, rational decisions in actual contexts of difficult judgment (See the Model Code). Ambiguities:

1. Character may carry class connotations which are culturally defined
2. Caused by the application of the concept to a series of problematic moral issues over which there is currently ideological or political disagreement; the concept is a weapon in those conflicts.

As a threshold qualification for licensing
At the outset of professional education, the concept is almost always a purely formal requirement. It is difficult to obtain sufficient reliable evidence, there is the possibility that character may change or be improved in the course of the education and a profession’s expertise may be studied by those who have no intention of ever practising. The concept is used as a minimum set of character or ethical qualifications. This character must be maintained throughout the professional career if the person does not want to risk losing his license. In this sense, the concept is primarily negative, signifying that nothing drastically unethical is known or that he has not been convicted of a crime. There is also the potential legal liability of slander.

As a condition for Employment
The popular view appears to be that there is no particular need to be virtuous, as long as you appear to be. Getting caught is the real impropriety. Use of the concept in this context is the most ambiguous since there is little agreement or even conscious thought by either employer or recommender about which of the many purposes of recommendation might be supposed to fulfil.

The decertification Problem
The difficulties of subjective judgment disappear when there is a proceeding for terminating a practitioner’s licence. Judgment after the fact that can be established and evaluated in a legal process. Lack of moral character may be inferred from improper actions but that inference is not essential in order to decide whether the professional has forfeited his right to a licence.

As Aspirational Concept
It represents the higher set of ethical expectations and character qualities which we use to identify exceptional members of the profession. Components: among its ethical virtues are extraordinary fidelity, total honesty, genuine compassion and commitment to public service. Its content not fixed, its goals more general. Satisfying its demands can take many forms. Primary importance is its aspirational role. Not just meeting the minimum standards of professional competence, and to refrain from acting in ways that could lead to criminal prosecution, we must expect more of ourselves and each other. It could be justified on utilitarian grounds. It will help to avoid the pitfalls leading to decertification. If almost all professional judgements have an ethical dimension and actions of questionable morality that lead to harmful effects can be rationalised or defended as good faith errors in judgements, then good moral character is an important factor in trying to constrain such errors. But aspirational moral character is placed above utility.

Warning
One questionable use is the use as a control mechanism, pushing professionals toward conformist and safe behaviour. Preference is to retain it as an ethical and aspirational guide and when penalising it should be used with great caution.

Conclusion
The concept cannot be reliably or responsibly used to predict the future moral conduct and ought to be abandoned as such. The problem is the reliability of predictions based on limited information. Formal professional structure must vigourously weed out those who have acted unprofessionally and thereby damages clients or others, but only based on objective criteria and actual acts of wrongdoing, not subjective judgements.
Legal ethics

It should operate as a side constraint on the exercise of professional expertise. Given the bad repute now suffered there is temptation to use the concept as essentially a PR gambit designed both to persuade the public that we are not merely business people and to try to compel professionals to be sufficiently circumspect so as not to call that claim into serious question. If the vast majority is of high moral character, there is no need to make the claim. If they are not, the claim is unpersuasive. Either way, it is hypocritical.

**Does a lawyer’s Character Matter? - Eshete**

The interests that the lawyer serves are not always good, it may not even be legal rights at all. In an unjust system a person may not be morally entitled to his legal rights. The adversarial lawyer must take sides in social disputes without being disquieted by the possibility of landing on the morally wrong side. The adversarial conception of the lawyer thus transforms the role’s unfortunate hazards into its virtues. In light of the perils of criminal conviction, lawyers need not worry much over the merits of their clients’ interests. In protecting the criminal defendant, the lawyer can rest assured that he is promoting an individual’s worthy aim to remain free and to avoid cruel and degrading treatment. Also, given the state’s powerful interest and formidable authority in criminal punishment, it is difficult to see how it is in need of the defense lawyer’s assistance and co-operation.

**Hypothesis: John Rawls:** When an individual decides what to be, he adopts a particular plan of life. In time choice will lead him to acquire a definite pattern of wants and aspirations, some aspects of which are peculiar to him while others are typical of occupation or way of life. A firm and settled disposition to truthfulness, fairness, goodwill and the like would thwart the lawyer’s capacity to do his tasks well. To excel, combative character traits such as cunning are most beneficial. Persons of good character who resort to shady means of their trade while managing to maintain a lively picture of the justified, ultimate aims of their vocation will no doubt regret their infidelity to truth and justice as well as their unfairness to particular individuals. Others who have less self-mastery and a less firm attachment to ideals are more likely to lose sight of the more distant justifying aims of the profession. Still different lawyers may acquire unworthy aspirations: they prize the acts of cunning, manipulation and humiliation for their own sake.

**Halo-effect:** produced when a person makes himself believe that worldly success in a profession or a way of life is a sure sign of success in other dimensions that are less accessible to public appreciation and appraisal. Lawyers must adopt a rather strange attitude toward their work: they must see what they do professionally as a form of acting.

A sharp gulf separates us from stage performance: there is no decision we can make or action we can take that would alter the characters’ fate. And it is in just this crucial respect that the lawyer’s representation departs from the actor’s. On the Aristotelian interpretation, the adversarial procedure forces lawyers to lower their sights. By adhering to the procedure, lawyers withdraw their vision from higher aims of justice. Instead, they descend to the humbler good ends of a client’s triumph and an opponent’s defeat.

Here justice dictates that individuals stay out of each other’s way and when their paths cross it determines who should have the right of way. Aristotle’s conclusion that men of less than complete virtue make the best soldiers is based on too narrow a construal of aims. There is no good deed than can always be better accomplished by a person of less virtue. To envision the lawyer as always engaged in the single-minded pursuit of the client’s triumph, we would have to endow them with a psychology far more impoverished than that of most people.

Rawls entertains the thought that a man cannot be deeply dissatisfied with having led a life that on the most accurate available information about himself and his circumstances he has selected as the rationally best life. The lawyer living up to his adversarial station is in a worse predicament. In doing what is required, he would be undertaking morally questionable acts and acquiring unattractive traits of character, and this occasions not just natural regret, it would be good grounds for moral regret.

The object of legal suits is not always to resolve factual disputes. In a wide range of cases litigation is sometimes aimed at bringing about changes in the law. In legal disputes over institutional wrongs, lawyers cannot maintain their adversarial role. He may find that different parties of those opposed to the institutional wrong suffer different kinds of harms to their interests at the hands of the institution. The lawyer then has to ascertain which of the conflicting interests of the victims should be represented, and this decision cannot be easy or non-controversial. And a responsible decision must look beyond conflicting interests to the underlying public values of the legal system.

Unlike the judge the lawyer is not exempted from the responsibility of representing certain interests. The difficulty being that the lawyer cannot properly discharge these duties by adhering to the adversarial role.

A better way of understanding would be under the traditional conception of fair political representation. This has at least three justifying aims:

1. Since public decisions promote the interests of some and obstruct those of others, fair representation of all affected is required to ensure that the interests of those excluded are not disregarded
2. Public decisions are principled and people seek decisions that best realise the principles to which they subscribe
3. Public decisions must result in practical arrangements that those participating in them can endure. An ideal of representation needs to satisfy all three aims. Without going into details, it is not hard to see that the adversarial lawyer is not well suited to live up to the ideal of fair political representation.

**Prince v President, Cape Law Society 2000(3)**
Crimes resulting from deep-seated and bona fide political or religious convictions necessarily reflect adversely on the good character of a legal practitioner. What the council found objectionable in this case was not merely his convictions in the past, but also and particularly his avowed intention of contravening the law in future. Mthiyana AJA: I wish to add the following: the judge in Mandela-case stated that the sole question is whether the facts show him to be of such character that he is not worthy to remain in the ranks of an honourable profession. This case is distinguishable because it was a case of a person who it was sought to strike off the roll on the basis of a previous conviction and not because of an avowed intention to continue to break the law. The oath is important, an implied condition of the right to continue in practice. A violation of which reflects upon the attorney’s fitness to remain in profession.

**A shift from character (virtue) to rules (duties)?**
Initially a character test (approach which emphasises virtue) was applied by the courts and the question was whether the political motive behind criminal conduct reflected a corrupt character. With the rise of apartheid state, more and more emphasis was placed on legal practitioner’s duty to obey the law as such. The shift bears testimony to the hold of legal positivism and legal formalism. Ex parte Krause: as a general rule, persons with previous convictions would not be admitted to the legal profession. However, it was not the mere fact of a previous conviction that mattered, but the question whether the conviction reflected negatively upon the personal honour of the person involved. This principle was applied again in the case against Mandela. The final test is whether the offence indicates that the person involved is of such a character that he is not worthy to remain in the ranks of an honourable profession. His offence was not and there is nothing in his conduct which renders him unfit.

The Matthews-case brought an end to the investigation of character of politically motivated legal practitioners. From then on, struggle lawyers could rely on the old character test, while the establishment would rely on the duty to obey the law. Matthew had two prior convictions under the Suppression of Communism Act. The court now reasoned that the real question was not whether participation in the Defiance Campaign disclosed a lack of integrity, honesty and honour, but whether it could be reconciled with the duty of an attorney to uphold all existing laws of the land. Not motive. It rested on the fact that every legal practitioner is required to swear an oath of allegiance to state and the law. Truth and Reconciliation Commission: by participating in the legal system and by keeping it intact, lawyers legitimised the apartheid state and sustained its longevity. Lawyers who remained blindly obedient to the apartheid laws betrayed the ultimate purpose of law. The duty to uphold the law cannot be understood as one to uphold every positive law, but should be understood as the duty to hold the legal system accountable to its final objective or moral end, the pursuit of justice.

In the case against Fischer, the court found he had deliberately misled the court. It is the duty of a lawyer to further the administration of justice in accordance with the laws of the country and not to frustrate it. It is the court’s duty to uphold and enforce the laws of the country. It would be inconsistent with that duty for the court to allow an advocate to remain on the roll when he is defying these laws and instigates others to defy these laws.
Ex parte Moseneke: at 14 he had attended PAC meetings. Only offence. Court stated that the serious offence if which applicant had been convicted would at the time of its commission had rendered him unfit, but since he had undergone a complete and permanent reformation his character had been reformed to such an extent that he was now a fit and proper person.

Maqubela: the inherent character of the offence, particularly a common law one, is not altered by virtue of the fact that the motive for its commission is proved to be political.

Two approaches come to the force:
1. Virtue ethical, emphasises the moral character of the legal practitioner and asks whether the offence discloses a dishonourable or disgraceful character
2. Rule ethical, focuses on the objective duties of the legal practitioner who is an officer of the court. The second gradually displaced the first.

Different: not political but religious: Gareth Prince. The Supreme Court refused explicitly to follow the character approach developed in Mandela and Krause and preferred to adopt the rule or duty approach and emphasised the objective duty to obey the law.
Sachs however has no problem to concede that, in spite of his open defiance of the dagga prohibition, Prince has shown himself to be a person of principle, willing to sacrifice his career and material interests in pursuance of his beliefs. It seems that he is of opinion that his religious but illegal use of dagga does not render him unfit. Possible danger is the anarchy. Serious dangers may attach to civil disobedience or to violent resistance. It may be argued that resistance is justified when:
- laws are immoral (individual conscience)
- It is based on the individual's religious beliefs
- Positive law is unjust and not worthy of respect (Locke)
- Utility so dictates

Conscience against the law: Mahatma Ghandi, Nelson Mandela and Bram Fisher as practising lawyers during the struggle - Le Roux

Ghandi regarded legal victories as hollow and understood the task of a lawyer rather to reconcile litigating parties and re-establish a lasting and amicable relationship between them. This meant exploring alternative dispute resolution methods. Facts mean trust and once we adhere to truth the law comes to our aid naturally. Ghandi on a certain case: Should it be allowed to continue to be fought out in court, it might go on indefinitely and to no advantage of either party.

Ghandi was objected to because he was an Indian person. Legal work frequently took the form of defending friends and strangers who had been arrested and dragged before court for acts of civil disobedience based on their political convictions. Mandela explained: the question is why I should willingly lend myself to a campaign whose ultimate aim was to bring about a strike against the proclaimed policy of the government of this country. I encountered difficulties because of the colour of my skin and because of my membership and support of the antenuptial contract. We continued to occupy premises in the city, illegally. The threat of prosecution and ejection hung menacingly over us throughout this period. It was an act of defiance of the law. We were aware that it was but nevertheless, that act had been forced upon us against our wishes, and we could do not other than to choose between compliance with the law and compliance with our conscience. We were constantly aware that no matter how well, how correctly, how adequately we pursued our career of law, we could not become a prosecutor, or a magistrate or a judge. There was nothing dishonourable in an attorney identifying himself with his people in their struggle for political rights, even if his activities should infringe upon the laws of the country. The SC rejected the application of the Law Society. There is continuously a conflict between his conscience and the law. The law as it is applied, the law as it is written and designed by the Nationalist government, is a law which is in our view immoral, unjust and intolerable. Our consciences dictate that we must protect against it, that we must oppose it and that we must attempt to alter it. The dilemma is that men of honesty, men of purpose, men of public morality and of conscience can only have one answer, to follow the dictates of the conscience irrespective of the consequences.

Fischer felt that it was no longer possible to combine his role as a lawyer and political activist. He explains he can no longer serve justice in the way he attempted during the past 30 years and can only do it in the way he has chosen. He does not because of a desire to be immoral, but because to act otherwise would for him be immoral. Fischer stated that when a man is on trial for his political beliefs and actions, two courses are open. He can either confess to his transgressions and plead for mercy or he can justify his beliefs and explain why he has acted as he did. He accepted the general rule that for the protection of society, laws should be obeyed. But when the laws themselves become immoral and require the citizen to take part in an organised system of oppression, if only by his silence and apathy, then he believed that a higher duty arises. This compels one to refuse to recognise such law.

The TRC found that the legal community stood to blame for the role it played during the years of apartheid. It lent a measure of legitimacy to the regime. What lawyers should have done, it held, was to strip the Emperor of his clothes and to expose the naked power and violence upon which the apartheid regime was founded. Ghandi, Mandela and Fischer claimed that their duty as lawyers was to serve justice, not the existing law. All three practised law, not for the money, status, power or any other instrumental reason, but as an integral part of an active political life directed towards the public good.

Incorporated Law Society Transvaal v Mandela

The fact that an attorney has deliberately disobeyed the law does not necessarily disqualify him from practising his profession or justify the court in removing his name from the roll. The mere fact of a conviction is not sufficient. The Court must consider the nature and circumstances of the conviction and then determine whether the attorney concerned is a fit and proper person to remain an attorney. Petition: he committed acts which constituted a contravention as a result of which he was indicted and convicted. He was charged with encouraging a scheme which
aimed at bringing about certain social and political changes. Judge: while I think that in certain circumstances an attorney who is privileged to practise in the courts may be expected to observe laws more strictly, the fact that an attorney has deliberately disobeyed does not necessarily disqualify him. The offence had nothing to do with his practise as an attorney. Principle was stated in Ex Parte Krause. He must not be punished again by being struck of the roll or suspended.

**Natal Law Society v Maqubela**
Participation in a conspiracy which resulted in various explosions which caused damage to property and injuries to persons. During the time of practise, he did so to the best of his ability, conducting himself with the necessary propriety and integrity and observing all rules, regulations and laws applicable to members of his profession (he said). In addition he strictly adhered to all rules of professional ethics applicable. Court: while I think that in certain circumstances an attorney who is privileged to practice in the Courts may be expected to observe laws more strictly than others, the fact that an attorney has deliberately disobeyed the law does not necessarily disqualify him from practising his profession or justify removing his name. We are not concerned in this case with misconduct committed by an attorney in his professional capacity. Court not satisfied that the offences are entirely unrelated to his fitness to practice. Respondent has not renounced the acts and still regards them as the only effective method of protest. In course of argument his counsel was asked what his decision would be were he to act for a client facing similar charges who told him he intended perjuring himself to avoid conviction. It could hardly be gainsaid that the ethical requirements of his profession would not prevail. Although he has never acted unprofessionally in the past, the reply does not adequately answer the question posed. Having regard to the inherent gravity of the offence, its constituent unlawful acts and their consequences, the Court does not consider they can be excused by the underlying motive for their commission. Taking all into consideration, they are regarded as dishonourable and morally reprehensible and they disqualify respondent from continuing practice.

**Society of Advocates of SA v Fischer**
Breach of solemn assurance that he would stand his trial dishonest conduct. Facing charges of being member of unlawful activities in respect of that organisation and that these acts calculated to further the objects of Communism. Gave evidence he had no intention of leaving country, he did not fear trial, practising advocate with status of senior counsel, that if he was given permission overseas, he would return. Absolute faith in integrity. He went overseas and returned. But then did later not appear, but stayed in the country because “it is the duty of every true opponent of this Government to remain in this country and to oppose its monstrous policy of apartheid with every means in its power. I can no longer serve justice in the way I have attempted to do during the past 30 years, I can do it only in the way I have now chosen. It requires act of will to overcome his deeply rooted respect of legality, and he takes the step only when he feels that, whatever the consequences to himself, his political conscience no longer permits him to do otherwise.”
Breach of faith is conduct not related to professions and should not be stigmatised as dishonourable conduct? He made full use his status and his breach of solemn assurance can clearly be stigmatised as dishonest conduct. He himself admits that he is not fit to remain on the roll where it would be duty to further administration of justice to the best of his abilities. But impossible for this Court to foresee what will happen in the future.

**Rice v Society of Advocates of SA**
Late Abram Fischer's name was removed from roll following failure to appear after release on bail. Application posthumous by his daughters for reinstatement. Since the days of the SA war it has been recognised that political offences committed because of a belief in the overriding moral validity of a political principle, do not in themselves justify the disbarment of a person. Presumably because it is assumed not to have bearing on the professional integrity of the person concerned. It was stated that statements made by Fischer amounted to this: there must be rational and purposive relationship between law and morality and particularly between law and justice. The law must have a moral defensible content. It is that which compels my fidelity to it. Not without significance that the Court in application for striking off noted that insofar as a future application for his readmission was concerned, it was impossible for the court to foresee what would happen and that the court was concerned with the laws then in force and with the structure of society as it then existed in this country.

**Prince v President of Law Society, Cape of Good Hope 1998**
Prince confirmed that he would continue to possess and use cannabis in the future. The Council's attitude is that the possession and/or use of cannabis is prohibited by law and that a person who states that his intention is to continue to break the law cannot be regarded as a fit and proper person to have a contract of community service registered as his conduct may bring the profession into disrepute. It cannot be said that the Law society has acted in a manner which justifies the conclusion that it has failed to apply its mind properly or that it has acted so unreasonably that the inference is warranted that it did not apply its mind. No basis for the court to interfere.

**Professional codes for legal practitioners**

Ethics for attorneys in SA are regulated by the Attorneys Act. The law societies lay down binding rules for the members of the legal profession on their registers and rules which are intended to:

1. Protect and promote the legal profession
2. Protect the individual practitioner
3. Protect and safeguard the interests of the client in the context of the relationship between lawyer and client

The SCA contains rules pertaining admission, authorisation to practise and conduct. Admission of Advocates Act: suspension if court is satisfied that he is not a fit and proper person to continue to practise as an advocate. An application may be made by the General Council of the Bar of SA or by the Bar Council or by the Society of Advocates. This section gives effect to the inherent power of the court to control and discipline the practitioners who practise within its jurisdiction.

Disciplinary hearings are sui generis. Evidence which would have been inadmissible in ordinary civil proceedings may be considered. A mere investigation of conduct may affect the whole future career and must be kept in mind.

Preponderance of probability whether the offence has been established. When the Bar Council applies it acts in execution of its duties as disciplining body and custos morum of the profession.

Any person who is admitted must take an oath: to truly and honestly demean himself in the practice according to the best of his ability and knowledge, and to be faithful to the RSA. In open court.

**Codes of ethics for legal professionals in SA**

Outsiders feel that they have no access to a simplified, easily understandable professional code and hence do not know what conduct is regarded as unethical or dishonest. They are therefore not able to lay complaints. It feels that since complaints are handled by colleagues of the accused in the legal profession, the latter will be protected against accusation from the public. Practitioners are also reluctant to report colleagues. Practitioners themselves are also suspicious of codes. They are not always enforced by law societies. They fear that by trying to encourage clients to do the right thing, these may go to somebody else who is willing to carry out their wishes.

Self-regulation presumes that the conduct of a practitioner will not be judged against a code, but by colleagues who exhibit those virtues inherent in morally good practitioners. The formalistic idea that legal ethics is no more than the compliance with a legal code makes a mockery of this justification, reduces law to another business enterprise and exposes the continued existence of the law and bar societies as no more than agencies created to protect vested interests.

Based on Nicolson and Webb: a code of legal ethics generally seeks to

- protect the professional nature of legal services by stressing the obligation of professionals to serve justice and the public
- correct the imbalance in the relationship between the professional and the client
- maintain public confidence
- protect the public against improper conduct or incompetence by prescribing and guaranteeing the standards of skill, learning and conduct required
- provide practitioners and newcomers with the broad parameters for making morally responsible choices in testing situations
- ensure fair competition between legal practitioners
- discipline unprofessional behaviour

Professional codes are a mixture of canons, ethical considerations and disciplinary rules.

Canons are statements of axiomatic, unassailable norms which express in general terms the standards of professional conduct expected of lawyers, and from which ethical considerations and disciplinary rules are derived. Some are integrity, objectivity, fairness, power of judgment, dignity and respect.

Ethical considerations guide a professional in specific situations.
Disciplinary rules are directional and prescriptive in nature (a practitioner must withdraw from a case where he or she appears for two accused and finds interest between them). They state the minimum level of conduct. Argued is that the conscience and disposition of the practitioner remain the touchstone for his conduct.

Aspirational ethical values
Honesty and trustworthiness
Apart from his or her knowledge of the law, technical skill and the ability to work hard, a "fit and proper" legal practitioner should have impeccable integrity. By "integrity" we understand reliability, honesty and the ability to withstand the temptation to do something irregular or dishonest for personal gain when conducting a client's affairs. Lawyer has the obligation to be honest to the client, to the court, to other lawyers and to third parties and society in general. Justifying dishonesty towards other on behalf of or in the interest of a client is often based on utilitarianism, not on virtue ethics, or even on the role-differentiated approach. A practitioner is in the first place under no obligation to accept a client's mandate.

Society of Advocates and the Natal Law Society v Merret
Allegations that Merret had deliberately misled the court. He denied. In the Court’s view he made a patently dishonest attempt to excuse his misleading reply on the basis that he did not fully understand the question or appreciate its significance. His evidence was evasive, inconsistent and thoroughly unsatisfactory. Court pointed out that the same standard was required in relations between advocates and between advocates and attorneys - the proper administration of justice could not easily survive if the professions were not scrupulous of the truth in their dealings with each other and with the court. On the question whether the attorneys representing defendant knew the matter was going to proceed unopposed, he replied they knew and that they did not file appearance. In fact, they did not know. Merret argued that in misleading the court he had not done so deliberately or dishonestly and that he had learnt his lesson and would not repeat his error. On the authority of Swain (below) the court held that it could not implicitly trust in or believe what he had said.

Swain v Society of Advocates, Natal
Application for admission as advocate. Refused. Appeal.
An attorney’s duty to his client depends on what the attorney is employed to do. It is a contractual relationship based on mandate. Throughout long career as officer of the Court his career was without blemish and this conduct should be seen as a fall from grace. Same principles apply to admission of advocate as do to his re-admission. There is suspicion that he procured a written agreement which contains a release from payment of a certain amount of money by P, who was a client of appellant and a document called indemnity, and he did so procure these to protect his own interests at the expense of W, client at the time, and he acted mala fide when he procured these documents. W was injured in a motor collision while he was a non-fare paying passenger in a motor care driven by P. Appellant caused summons to be issued on behalf of P against the insurer of the other motor car. Subsequent, he agreed to work for W as well and instituted action on W's behalf against the insurance company. He failed to give notice of W's claim to the company and a plea of prescription was filed. Appellant settled the claim at R6000. In his affidavit he made no mention of this. He had W sign a document designed to protect P. Court held that failure to disclose this with the reason why he had settled it, was a breach of the utmost good faith which the professions require.

Good judgment
A legal practitioner should have a sense of equity and fairness, be able to act impartially and to exercise good judgment. Legal practitioners should be able to judge matters objectively, carefully and deliberately. They should possess the decision-making skills necessary to arrive at equitable results. See Kronman.

The ideal legal practitioner - Du Plessis
To his mind a successful practitioner should possess and display certain qualities, most of which cannot in toto be acquired learning. Du Plessis tries to explain what integrity, objectivity, dignity and power of judgment are all about. The remaining knowledge and technical skill, capacity for hard work, respect for the legal order and legal procedures and sense of equity should also not be alien.

Integrity
Can be described as upright steadfastness or impeccable honesty - the immunity against the temptation to do something dishonest or irregular for the sake of personal gain. Legal practitioners are officers of the court - the same that allows
them to practice. In consequence they are and should be measured by the same stringent criteria which apply to judicial officers. Practitioners are supposed to be trained servants of a public legal order.

Morris: Council has a duty to the court which, subject to his duty not to disclose the confidences of his client, overrides his obligations to his client.

He may not help him in a way that his dishonesty or knavishness is promoted. What is at stake is the maintenance of a proper balance between never misleading the court and never walking out on one’s client just because a lack of success seems inevitable. One wicked turn deserves another, the last tending to outdo the first.

Objectivity
Frequently identified with fairness and impartiality. Possessing integrity inter alia amounts to not having one’s judgment determined, blurred or simply influenced by considerations of personal gain. Objectivity requires that no irrelevant considerations whatsoever should bear upon one’s judgment.

As with integrity, objectivity also tends to be an inborn quality. It can however be practised and improved. Where human beings are concerned, the ideal of total mechanical objectivity can never be attained. Let us be objective by recognising our subjectivity.

Dignity
For justice to be seen done. Not only should they conduct themselves in a dignified fashion, but they also have a duty to maintain and promote the dignity of the court. Contempt of court is a common law as well as statutory offence. A legal academic training members of a dignified profession should ex necessitate conduct himself in a dignified fashion. Sound knowledge of our legal tradition and heritage may also serve as an educational aid providing students with an insight into the worth and dignity of perhaps the oldest honourable profession known to Western man.

Power of judgment
He should possess the very skill of decision-making or judgment which, though to a certain extent inborn, is also susceptible to training and improvement. He should be able to link up his power of judgment with a sound knowledge of the law and a sensitive regard for the peculiarities of each unique concrete situation.

Knowledge and technical skill
At least let them be legal experts.

Capacity for hard work
Not only a law student should be able to master a considerable volume of work, but he should also be able to do it in a relatively short time.

Respect for legal order
Respect for the path(s) of the law, or the pursuit of legality. A case in point is Fischer. On his behalf it was contended that his breach of faith in estreating his bail is firstly conduct not related to his profession and secondly should not be stigmatised as dishonourable conduct. He relied on his status as senior counsel to induce the court to give bail and he has been guilty of subversive conduct and he intended to persevere with it. Unfit. Referring to Mandela, where it was held that the contravention of provisions of Act 44 of 1950 had no bearing upon status or fitness as a practitioner, the judge president remarked that the court appears to have overlooked the fact that it is the duty of the attorney to further administration of justice in accordance with the laws of the country, not to frustrate it.

It is the duty of all legal practitioners, not to incite persons to commit breaches of the law and it is also their duty to administer and to further the administration of justice.

Law societies
Are suitable institutions providing the necessary channels for positive or orderly protest.

Object
While it is also the object of law societies and bar councils to maintain and enhance the prestige status and dignity of the profession, it is respectfully submitted that a professional society should not, neither by offhandedly approving of nor by vehemently opposing specific political groupings, involve itself in the atrocities of party politics where often persons and personalities rather than the very cause of law and justice are at stake. On the other hand, they are automatically involved in politics in its broader context. Jurisprudence linked with a moderate sensitivity to political theory may bear the desired fruits.

In the final analysis law students should be convinced that:

1. Legality, for the sake of justice, ought to pay, and
2. That not being the case, that orderly channels for changing the status quo do exist and should first be exhausted

Sense of equity
Equity is often identified with justice. If may be defined as the capacity to relate the objectives of a legal order as an order of justice via the application of its normative precepts, to the peculiarities of each unique, concrete situation.
Every legal precept may have its exceptions when applied to concrete problems should become a law-reaching rule, without exceptions.

**Conclusion**
Eight qualities which can at least in principle be taught to or cultivated.

**Directional SA professional rules**
Disciplinary rules have a directional and prescriptive nature. They state the minimum level of conduct or of character requirements. There are six relationships defined when the rules of professional conduct apply.

**Lawyer’s relationship with law and state**
They must respect the legal order and the state. A state without law or legal order is not a state and the idea of law without a state is empty. Legal practitioners are guardians of the law and trained servants. They should not deliberately contravene the law nor incite or help others to do so. They may advise clients to organise affairs in a way to limit liabilities and use loopholes. Those whose intention is to contravene the law in future, are not fit (Prince). Once a lawyer has exhausted all lawful means of bringing about the desired change in the law, may he then engage civil disobedience? Cases of Mandela and Fischer. Not just upholding the law, but also justice. Apart from being an honourable lawyer, he must be an honourable citizen and should act morally in his personal relationships.

**Lawyer’s relationship with clients**
Integrity means that practitioners should put the administration of justice and the interests of their clients above their own interests and their right to compensation for services rendered. They should seek to balance the interests of their clients with the interests of the community. Honest in advising. Before mandate is accepted, consider whether they have the ability and knowledge to do the work. Advocates are obliged to accept the brief if they are available and able to do the work. Attorneys initiate contract between advocate and client. Advocates are litigation specialists. All attorneys must keep separate trust banking account in which all money held or received on account of others must be deposited. Fees may be paid only through an attorney. Legal practitioners should not acquire a financial interest in the subject matter. Of mandate is accepted, attorney should carry out work with care, skill and commitment that may reasonably be expected. An advocate should be loyal to his client and should fearlessly promote the case of the client to the best of his abilities.

If something dishonest is required from the practitioner himself, he should refuse to co-operate and should even consider withdrawing from the case (Du Plessis).

There is a contractual obligations of confidentiality. Apart from that, confidential communications in SA law made with a view to litigation, as well as all confidential communications made for the purpose of giving or receiving legal advice or assistance, are considered privileged information.

The attorney in claiming it, must not act in his own interest, but for the benefit of the client. Exception is where the legislature expressly excludes it or where the client consented.

Advocates should act fairly towards the opposition and they may not cross over after obtained information related to the client's case.

In determining the fee, one must consider:
(1) the time and labour required, the novelty and difficulty of the questions involved and the skill requisite to properly conduct the case
(2) the customary charges by counsel of comparable standing for similar services, and
(3) the amount involved in the controversy and its importance to the client

Die Algemene Balieraad van SA v Johan van de Berg:
1. He had assisted with or finalised a statement by H made under oath while he knew or suspected it to be false
2. He had accepted a brief directly from H and had undertaken not to investigate the existence of certain persons or entities
3. He had undertaken a mandate to control H’s international investment fund and to pay out 44 billion dollars to investors in the fund
4. He had received exorbitant fees and had transgressed exchange control regulations
5. He had made false statements
He would lose his professional independence and ability to act in interest of client. Court found his conduct incompatible with the high standards of absolute personal integrity and scrupulous honesty demanded from advocates. Not fit. Removed from roll.

Summerley: to be struck of roll:
1. Determine whether law society on balance of probabilities established the offending conduct
2. Determine whether attorney is still a fit and proper person
3. Decide whether person not fit and proper deserves the ultimate penalty or suspension.

Striking off usually for those who acted dishonestly while transgressions not involving dishonesty are usually visited with suspension. On appeal the SCA found misconduct did not involve dishonesty and did not reflect on integrity. Mismanagement not misappropriation, but result of lack of insight.

Lawyer's relationship with colleagues
Utmost courtesy and fairness. A failure to adhere to the professional guidelines may be proof of lack of integrity which makes them unfit to practise. Lawyers should not advertise and never solicit business.

Lawyer's relationship with the courts
Court should be able at all time to rely on honesty and on the veracity of their statements. In ex parte applications, practitioners are obliged to act in the utmost good faith and to put all relevant facts to the court so that the court may have full knowledge of the circumstances of the case. In motion court proceedings advocates should bring to the attention of the court any deviations from the usual forms and offer an explanation for this. They may not abuse court procedures or use delay tactics. Not act in contempt of court. Matters should be settled by the courts, not the media. Legal practitioners may not make statements to the media with regard to cases in which they are involved. The duty to the court is greater than the duty towards their clients except the confidentiality.

Judges and integrity of the courts
Section 174(1) of the Constitution provides that judges must be South African citizens who are “appropriately qualified” and “fit and proper persons”. Section 165: judges are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

S v Mamabolo: media spokesman guilty of contempt of court, following media report in which he criticised a judicial order, calling the judge’s decision to grant bail a mistake. The following aspects discussed in this case are important: the public accountability of judges, the integrity of the court and its officers, and the crime of contempt of court (also known as “scandalising the court”). Members of the public have a right to form opinions about court judgements in good faith and to make these public. Freedom to debate does not mean that attacks can be made with impunity on the judiciary as an institution or on individual judges. Contempt is the unlawful and intentional violation of the dignity, repute or authority of a judicial body, or inference in the administration of justice in a matter pending before it. The crime of contempt of court does not aim to protect the feelings or even reputation of judges or to grant them any additional protection against defamation other than that available to other persons. Constitutional Court: Having no constituency, no purse and no sword, the Judiciary must rely on moral authority. It cannot function properly without the support and trust of the public. Judges speak in court and only in court, they are not at liberty to defend or even debate their decisions in public.

The Constitutional Court held in this respect that no one expects judges to be infallible. What is expected from them is honesty, integrity and self-discipline, and that the process of resolution followed by them should be analytical, rational, and reasoned. (In this respect you should refer to the virtues -honesty, integrity, trustworthiness, good judgment and objectivity, which are discussed in your study material and which are regarded as characteristic of a morally good legal practitioner. You should also refer to role-differentiated behaviour and the critique against such an approach.)

Impeachment and removal is available in extreme cases only, namely incapacity, gross incompetence or gross misconduct, section 177. Resolution of NA, ⅔ of its members. Suspension on advice of the Judicial Service Commission during procedure.
Until now, professional standards have been enforced informally through the Judge President of the particular court. No code of ethics for judges is currently in force.
Legal ethics

Lawyer’s relationship with the public
The community should be shown that attorneys who depart from the high standards of professional behaviour required of them will not go unpunished. Witnesses who are subpoenaed to appear in court are performing a public duty in coming to court and should be treated with respect. Only if an advocate or attorney is able to prove reasonable grounds for making defamatory statements, and to show that this promotes his client’s case will he be able to rely on this privilege.

Fine v Society of Advocates of SA
Advocate, misconduct. Court must decide whether or not the advocate whose conduct is under review is a fit and proper person to continue practice and then, if he is not, whether to suspend him or strike him off the roll. Save for this single lapse, he has proved himself to be a promising member of the legal profession and for his age made an above average contribution to the profession. He stated that he was holding sufficient funds on behalf of his client. When he did not obtain the funds he paid the first month’s rent out of his personal funds. It is submitted that when he signed, he knew the facts stated were false and that receiving party knew he was a practising advocate and was prepared for that reason to accept assurance. Not possible to rely with any confidence on his integrity. Strike of roll.