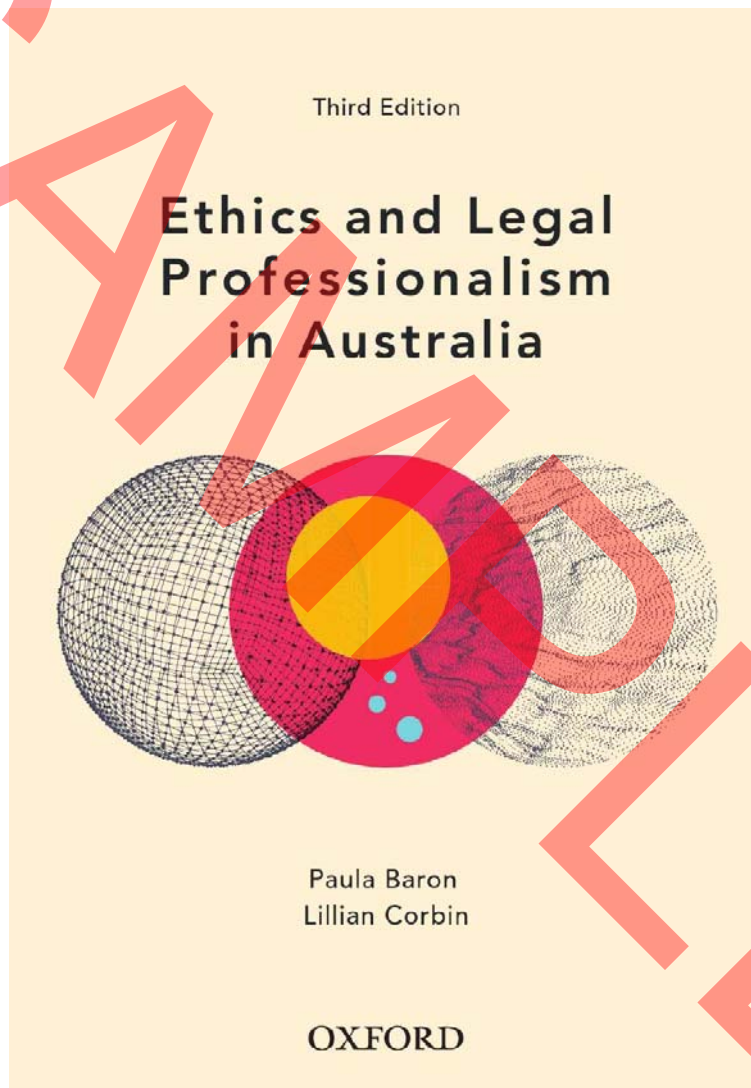


# ***Ethics and Legal Professionalism in Australia Third Edition***

## **Instructor's Resource Manual**



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# Chapter 1 What is 'Lawyering'?

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## Chapter Summary

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In this chapter you will engage with the fundamental question of what 'lawyering' means. The discussion will focus on notions of lawyering, lawyering and the composition of the legal profession, lawyering as a profession or business and the reshaping of legal practice in contemporary times.

## Chapter Objectives

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At the end of this chapter, you should be able to:

1. outline the formal definition of lawyering and contrast it with your own view.
2. discuss various notions of lawyering.
3. present a reasonable argument as to whether lawyering is/should be a business or a profession.
4. discuss ways in which the legal profession has changed in contemporary times.
5. discuss diversity in relation to the legal profession.

## Key Terms

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*Change:* The manner in which the traditional legal practice has adapted to advances in technology, business structures and marketing practices.

*Commercialisation:* Lawyering as a vehicle for maximising clients' interests with a view to making money for both the client and the lawyer.

*Diversity:* This refers to the many forms of legal practice, gender and ethnicity of individuals involved in legal practice.

*Lawyering:* This refers to what lawyers do, including problem solving, legal analysis, legal research, factual investigation, communication, counselling, negotiation and other forms of alternative dispute resolution (ADR).

*Legal profession:* The legal profession consists of persons qualified to engage in legal practice or lawyering and whose practise or lawyering activities are regulated by relevant professional bodies.

*Technology advance:* The impact of technology on the legal profession and legal practice. This is referred to as 'legal disruption'.

## Tutorial Activity

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Divide class into groups. Depending on class size, a maximum of four persons in a group is suggested.

Each group should engage in the following:

1. On separate sheets of paper, each member of the group should write down their view of what lawyering entails.
2. Each person should read out what they have written. The group should then engage in finding similarities and differences between the group members.
3. Next, the group should attempt to draft a definition of lawyering.
4. The whole class should then come together and each group should share draft definition of lawyering as agreed.
5. The whole class should attempt to identify differences and similarities in group definitions and draft a definition of lawyering as a class.

## Short Answer Questions

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1. Is lawyering all about problem solving? Give reasons for your answer.

Answer

This question requires the student's opinion about the role of lawyers within society.

Answers should draw on the nature and type of work performed by lawyers and the various areas in which lawyer skills are required.

2. What factors have contributed to changes in the legal profession?

Answer

Technology, commercialisation, managerialism.

3. To what extent has technology reshaped the legal profession? Does this raise ethical issues? Give reasons for your answer.

Answer

Students to discuss briefly: disruption through technological advances, artificial intelligence.

Ethical issues include confidentiality, competence and courtesy in communications.

4. What are your views about the commercialisation of lawyering? Should lawyering be a business or a profession?

Answer

Answer should address:

- The meaning of legal practice
- The nature of work carried out

- Relevance of work to the public and the need to promote public confidence
- Training required and development of expertise
- The demands of legal practice
- The need for profit
- Legal practice and meeting clients' demands.

5. To what extent is the legal profession diverse? Are traditional understandings of the legal professional still relevant in contemporary times?

Answer

Answers should draw on the diversity of the profession, including membership, organisational structures, specialisation and diverse paths open to law students.

### Sample essay topic with suggested list of criteria

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1. Changes to the legal profession in the last 15 years have had significant impact on lawyers' well-being. Discuss.

Answer

- a. What are the changes? Technological advance, marketing, managerialism, human resources, corporate clients.
- b. How have changes affected the way law is practised?
- c. What are the implications for members of the profession?
- d. Are there attempts to address the issues identified?
- e. What do you suggest?

*A marking guideline has been provided on page 35 to help determine the quality of student answers.*

### Further Reading

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1. G.K. Hadfield & D.L. Rhode, How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering, (2016) 67 *Hastings L.J.* 1191

Please note, Multiple Choice Questions for this chapter are available in the Testbank.

# Marking Guidelines

Marking guidelines	Mark range											
	1	2	3	4	5	6	7	8	9	10	Total	
1.Understanding of subject matter												
Does the answer present an understanding of the relevant legal issues?												
Are key legal issues focused on, and minor issues addressed in less depth?												
2.Structure												
Is there a clear structure around an argument that answers the question posed?												
Does the answer flow naturally from section to section?												
3.Relevant use of authorities												
Are arguments supported by relevant use of primary sources (case law, legislation) and/or secondary sources (books, book chapters, journal articles, online articles) where relevant?												
Are adequate comparisons and contrasts drawn with relevant case law, fact patterns or other scenarios?												
4.Cogency of argument												
Have counter-arguments been addressed such that the answer presents the strongest possible argument in response to the question?												
Are the arguments offered both critical and analytical and is there a clear and persuasive conclusion?												
Should policy considerations underpin some aspects of the discussion?												
5.Use of language												
Does the answer provide accurate grammar, spelling and punctuation?												
											Total	

Scale	Grade	Scale	Grade	Scale	Grade	Scale	Grade	Scale	Grade
100	High Distinction	84-80	Distinction	74-70	Credit	64-60	Pass	49-40	Fail
99-95	(HD)	79-75	(D)	69-65	(C)	59-55	(P)	<40	(F)
94-90						54-50			
89-85									

## CHAPTER 1

### Multiple-choice Questions

Chapter	What is 'Lawyering'?	
Question 1	Lawyering involves:	
	A	Problem solving
	B	Identifying legal issues
	C	Negotiation
	D	Risk management
Correct	E	All of the above

Chapter	What is 'Lawyering'?	
Question 2	Which of the following is false? Popular culture:	
	A	Has contributed to public perception of lawyering
Correct	B	Is a factor in determining legal professional ethics
	C	Reveals public attitude towards lawyers
	D	Is not a determinant of law school curriculum
	E	All of the above

Chapter	What is 'Lawyering'?	
Question 3	New lawyering involves:	
	A	A lawyer acting as an expert directing the client
Correct	B	A client-centred approach
	C	Adversarial problem solving
	D	Zealous advocacy
	E	None of the above

Chapter	What is 'Lawyering'?	
Question 4	Specialisation in the legal profession has to proceed cautiously because:	
	A	Law is not easily segmented
	B	There is complexity and inconsistency in the



		requirements of regulation of specialisation
	<b>C</b>	Legal practice requires knowledge of areas that are of general application
<b>Correct</b>	<b>D</b>	A, b and c above
	<b>E</b>	Globalisation, which is an impetus for specialisation, is slowing

<b>Chapter</b>	What is 'Lawyering'?	
<b>Question 5</b>	Changes in the legal profession has led to:	
	<b>A</b>	Competition with other professions
<b>Correct</b>	<b>B</b>	Prioritisation of managerial, budgetary and entrepreneurial skills
	<b>C</b>	Increased focus on anti-competitive strategies.
	<b>D</b>	Application of economic benchmarks by corporate law firms.
	<b>E</b>	Decreased transparency