Lawyers' professional (ethical) behaviour is under challenge as a result of major public disclosures in recent years. In an effort to deal with such challenges, a focus on ethical fundamentals is called for. It is not unreasonable to assume that lawyers' moral reasoning might play some role in the decisions that are made in everyday legal practice, especially those that lead to subsequent criticism. However, until now there has been a dearth of research into ethical responses of Australian lawyers or law students. A longitudinal study exploring the relationships between values and ethical behaviour for early-career legal practitioners has been concluded. This study situated participants within hypothetical contexts that provided for ethical dilemmas and comprised a representative Australian cohort of final year law students, tracking them through their first two years of employment or further study. Of particular interest in the conclusions reached in this study was the effect of gender, clinical experience and prior ethics education on changing responses. Findings suggested that there were significant differences over time in responses to ethical dilemmas, particularly for females and participants who experienced clinical and ethics-focused subjects during their law degree. Like females, participants who had completed a clinical placement and ethics course were more likely to exhibit significant changes in responses across the three years of the study. The direction of change could be said to be largely in the direction of better ethical conduct. This could be a consequence of greater exposure to ethical dilemmas and scenarios during clinical placement experiences and ethics courses. The implications of results are discussed in the contexts of ethics education in a tertiary educational environment, and post-admission to legal practice.

**Introduction**

Research intended to understand the effects of legal education (including individual subjects within the law degree) and the practice environment must take into account the importance of the passage of time. This article is one of a number reporting on the results of a large longitudinal study of Australian law
students’ and lawyers’ values. Although many of the developments described in this article were preceded by our research, a central motive for undertaking this study was the need for empirical information about lawyers’ responses to ethical challenge over time, in the hope that the behavioural concerns which were even then evident in Australian lawyers might be better addressed.

Legal but Not Ethical Practice?
Post-Enron, some say that ethical sensitivity has become significantly more important to both business and the legal profession in Western jurisdictions, but this is a doubtful proposition. When things get tough, lawyers still tend to retreat into the bunker, with the statement that ‘ethics are no more than what the law requires.’

Consider the angst inherent in *McCabe v British American Tobacco,* where a corporate client’s desire to destroy its own documents was characterised at first instance as a strategy devised by its lawyers and lacking an innocent intention. Some law firms would have us believe that all ethical strategies are win–win in nature — that any ethical challenge can be met without hurting profits, and that in fact the present culture of legal practice fully supports ethical behaviour. This proposition is highly unlikely. When a newspaper interviewed a young corporate lawyer about ethics and asked (immediately after the initial decision in *McCabe*) whether he and his colleagues had conversations about ethics around the coffee machine, the response was derisory: ‘Apart from anything else, there is no timesheet code for “ethical discussion”.’

Even when ethics are expressly on the agenda, the discussion is not usually about what ethical content actually means, but is circular and merely begs the question of accountability. David Fagan, chief executive partner of Clayton Utz, was also interviewed shortly after the initial *McCabe* decision. Mr Fagan is reported to have said that there is no conflict between ethics and business: when the two are in conflict, the lawyer must cease to act. Further, he considered that morality has no place in the advice given to a client, provided everything is done within ethical standards. These standards, he asserted, are (just) a necessary legal framework for the legal system. Ethical behaviour, he concluded, is just pragmatic (that is, good business) — it has nothing to do with altruism.

Similar concerns surfaced after the James Hardie fiasco became public. In that case, a long-established asbestos manufacturer, James Hardie Industries, faced with a $1.4 billion compensation payment to past and future victims of asbestos, provided a local compensation fund with just under $300 million in

---

1 See, for example, ‘Just a Degree of Smoothing Means More Enrons Will Come: Author’, *The Age, Business,* 3 October 2005, 3, which confirms the prospects for further Enron-Like collapses.
3 *McCabe v British American Tobacco* [2002] VSC 73.
4 Simons (2002), p 1, citing Professor Marie Joyce, then chair of the Australian Psychological Society’s ethics committee.
assets and tried to evade responsibility for additional payments by moving its corporate headquarters to the Netherlands in 2001. During an inquiry into the affair, the corporation’s lawyers were asked why they had not stood back and asked themselves what they should be advising their client to do. The firm responded to the effect that they were advising their client on the letter of the law, no more and no less.7

The latest, and perhaps the most damaging, of all judicial or quasi-judicial pronouncements on this perverse phenomenon emerged from the United States in 2006. The long-running cycle of big tobacco litigation in that jurisdiction has followed a similar course to Australia. The judgment of Judge Gladys Kessler, of the United States District Court, delivered what some might call a knock-out blow to the collective reputation of the legal profession. While we still feel confident that there are many more honourable lawyers than dishonourable ones, Judge Kessler, in a finding that the tobacco industry breached racketeering laws in a conspiracy to deceive the public, had this comment about the lawyers involved:

Finally, a word must be said about the role of lawyers in this fifty-year history of deceiving smokers, potential smokers, and the American public about the hazards of smoking and second-hand smoke, and the addictiveness of nicotine. At every stage, lawyers played an absolutely central role in the creation and perpetuation of the Enterprise and the implementation of its fraudulent schemes. They devised and coordinated both national and international strategy; they directed scientists as to what research they should and should not undertake; they vetted scientific research papers and reports as well as public relations materials to ensure that the interests of the Enterprise would be protected; they identified ‘friendly’ scientific witnesses, subsidized them with grants from the Center for Tobacco Research and the Center for Indoor Air Research, paid them enormous fees, and often hid the relationship between those witnesses and the industry; and they devised and carried out document destruction policies and took shelter behind baseless assertions of the attorney-client privilege. What a sad and disquieting chapter in the history of an honorable and often courageous profession.8

It is difficult for lawyers to have it both ways. If ethical behaviour is truly pragmatic (sensible) behaviour, why are ethical standards failing to inspire, let alone generate, the best behaviour? The reality that legal ethics is/are considerably more than what the law requires, is confronting because such a focus requires an adherence to notions of justice which can edge out some powerful client demands. The actual relationship between the quality of justice

---

and the values and behaviour of its (legal) practitioners is accordingly of obvious importance to an international ‘justice priority’, arguably even more so now that we are facing a painful choice between whether or not to fully support the Rule of Law within a ‘War on Terror’ context.9

Alienation of Lawyers

The United States is gradually moving towards better education in professionalism for lawyers — that is, education which concentrates on ethical development. A number of empirical studies in that country have progressively added to knowledge about the characteristics of law students and lawyers in ethics contexts. The recent Carnegie Report on legal education has capped off much of this work by placing great importance on educational strategies which use clinical methods in an effort to impart better ethical consciousness in law students.10 Earlier, a number of other US studies pointed to psychological problems in law students, to their tendency to disassociate from communal responsibility and to the negative role of legal education in that pathology.11 Carrington and Conley investigated alienation of law students as early as 1997, perceiving a trend in attitudes towards disinterest and disengagement.12

---

9 The recent case of David Hicks at Guantanamo Bay is a case in point. While many prominent lawyers — including, to its credit, the Law Council of Australia, protested the lack of a fair ‘trial’ process against Hicks, the Howard federal government remained publicly adamant for several years that Hicks’ ‘access’ to the rule of law had not been sacrificed. See, for example Law Council of Australia (2006).

10 Heins reported in 1983 that US law students experienced significantly higher levels of academic stress than medical students, and medical students were four times more likely to seek help: see Heins (1983), pp 520–21. This suggests that law students denied stress or used ‘maladaptive’ methods to deal with it: Shanfield et al (1985) reported that 12 per cent of law students experienced significant (psychiatrically evaluated and treated) depression compared with 3–9 per cent of the general population: see Shanfield (1985), p 72. Benjamin’s 1983 study showed that pre-law American students were not disproportionally distressed, but later exhibited steadily increasing stress levels as law students — stress which did not abate until about two years after graduation: see Benjamin (1986), pp 250–301). Finally Daicoff, as recently as 1997, says that: ‘The research uniformly portrays law students as dominant, competitive, leadership-oriented, socially confident, extroverted, sociable, free from anxiety and insecurity, ebullient, and at ease in interpersonal relations.’ Daicoff (1997), p 1372). However, the ‘inner world’ of the law student can be discordant, with a high level of psychological distress in evidence after peeling back the confident exterior. They can score low on a ‘Sense of Wellbeing’ scale and can be also seen in intrapersonal terms as ‘insecure, defensive, distant and lacking in maturity and socialization’: see Daicoff (1997), p 1375.

11 Carrington and Conley (1976–77), p 887. Carrington and Conley distinguish alienation from dissatisfaction. They describe the latter as a feeling of annoyance with many if not most aspects of the law school experience: pp 892–96. They suggest that one in seven Michigan Law School students were then in effect emotionally and intellectually withdrawing from law school without formally dropping out. The formal withdrawal rate was then one in 20. The importance of the differential between the ‘alienation rate’ and actual withdrawals was that alienated students tended to graduate and some at least presumably entered practice, though this last conclusion was not a part of the study. Subjects in their single law school study of 185
their study at Michigan Law School, they found that, while they thought the majority of law students were not alienated, those who were had little apparent interest in law reform, social contribution or personal integrity, regardless of social background.

Replicating some of these themes in an Australian study, Anderson et al (1973) found that no more than 20 per cent of entering law students were motivated by altruism concerns, compared with 25–35 per cent for other professions. Status concerns were more common among men than women in all professions. This body of research is undoubtedly intriguing for our present purposes. Although its importance should not be over-emphasised for an Australia 30 years removed, it is important to note the researchers' agreement that law students in their era appeared to be less socially engaged as time passed, and perhaps less oriented towards social accountability for their actions. Alienation was evidently serious by the early 1990s. Granfield and colleagues were then arguing that law students were still experiencing a negative transformation in their ideals as a result of their law school experience. The American Bar Association decided to recommend, as a result of the 1992 MacCrate Report, that law schools revisit the development of values and a sense of professional responsibility in their graduates. It is therefore not unlikely that a significant group of current Australian law students identify with values other than social contribution or personal integrity.

**A Mandate for Law Schools**

Reporting on the 2000 collapse of HIH Insurance, Justice Neville Owen linked the failure of that insurer in part to the lack of sufficient tertiary ethics education in Australia, and called for particular attention to the ethical failings of lawyers. Note this comment by Justice Owen concerning the involvement of lawyers in the HIH implosion:

Inter-year students from three courses in civil procedure, administrative law and creditor's rights were not randomly selected. Nevertheless, the authors contended that the sample was representative of Michigan Law School at the time because of the nature of the courses chosen and the seniority of the students.

---

16 Anderson (1973), pp 42–45. "[L]aw students' cynicism increases and idealism decreases as a result of law school": p 45.
17 Anderson (1973), pp 42–45.
18 Granfield (1992). Granfield and many others were then identifying 'decontextualisation' of law school — that is, the pursuit of technique independent of moral accountability — as being at the root of the problem in the American legal profession. See, for example, Kronman (1993); Rhode (1992); Bezdek (1992).
Right and wrong are moral concepts, and morality does not exist in a vacuum. I think all those who participate in the direction and management of public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values. They must then apply those tenets in the decision-making process. The education system — particularly at tertiary level — should take seriously the responsibility it has to inculcate in students a sense of ethical method.21

Law schools have generally assumed homogeneity in values and it has suited the profession to go along with this view. After all, if values differentiation were established, two consequences would follow. First, the profession would eventually have to acknowledge the role of ongoing development of ethical consciousness. The beginnings of this awareness are evident in Victoria, where the Campbell Report into post-admission legal training has recommended — and the Attorney-General has accepted as from 2007 — at least one hour of ethics tuition per annum for each current practitioner.22 Second, law schools themselves will inevitably have to address not just instruction in the rules of conduct (something which many do only reluctantly in any event), but also the development of values awareness in law students.21

While values education work is continuing to some extent in universities in Australia, particularly through graduate skills programs, it is at best intermittent across the higher education sector and uncoordinated at the national or professional level. In other words, the impact of post-secondary education on values development and ethical understandings in the preparation of Australian lawyers, teachers, engineers, scientists and business professionals is unknown.

The Female Advantage?

One of the more appealing possibilities is to ask whether there is something different about female lawyers, at least in terms of their attitude to ethical practice and the service ideal of professionalism. If it were possible to say that in Australia, women in legal practice evidence ‘better’ values or respond to ethical challenges with a greater sense, for example, of relational care for their clients, there might be a social policy basis for quite radical public funding decisions, even financially supporting on an affirmative action basis an otherwise discriminatory advancement of women through law school and the profession. While it is true that modern Australian law schools suffer no lack of female graduates, their survival and progress through the practice environment is far less certain.24 Menkel-Meadow is notable in her conviction that women are oriented toward mediation-biased lawyering and persuasively argues for their

23 One method for such development is outlined in Parker and Evans (2007).
24 See, for example, ‘Women Celebrate Achievements’ (2006), which refers to the continuing difficulties experienced by women in progressing to the upper levels of the legal profession.
positive impact in mitigating the impact of role morality. On the other hand, Jack and Jack assert that women can become more ‘male’ than their male colleagues — that is, more aggressive — if they take on male modes of operation in the law, though how and why they are put in the position of progressively internalising male norms in this way is surely the operative issue.

Bogoch conducted a perceptive socio-linguistic study which suggested that the true position in relation to lawyers’ male–female difference is somewhere between these extremes. She analysed a number of conversations between male and female lawyers and their clients in an Israeli legal aid office, looking for socio-linguistic patterns in the way that they controlled the interviews and managed their clients’ expectations. Nineteen initial conversations between seven lawyers and their clients were recorded, leading to a coding of 8750 utterances according to their indications of power or cooperation. Importantly, both men and women lawyers were equally adept at dominating their clients, though female lawyers dealing with male clients were also dealing with an observable ‘reverse dominance’ effect, counteracting subtle efforts by their clients to dominate them. Bogoch uncovered patterns of complexity, rather than a straightforward ‘yes, women lawyers behave better than men’.

In summary, prior empirical ‘snapshot’ studies suggest that the (Western) legal education process could be implicated in desensitising lawyers’ ethical consciousness and, if the context is one of zealous advocacy, this occurs regardless of gender. Justice Owen has linked poor ethical behaviour with a need for better legal ethics education in the wake of the HIH collapse. The notorious case studies described earlier in this paper also point in this direction. If it were possible to observe in Australian lawyers a similar progressive desensitivity to that apparently occurring in the United States, and to show a link to law school experiences, the combination of empirical findings would support a general review of legal education — including legal ethics education — and post-admission training.

**Longitudinal Studies**

The impact of legal education (and in particular ethics education) can best be ascertained through longitudinal research designs which can observe changes over time in attitudes and behaviour as students become professionals. There is a dearth of such studies. However, a ‘panel’ design, following the same group of students during their law degree, was in fact used in a study by Erlanger and Klegon of Wisconsin-Madison Law School students between 1973 and 1975. The researchers were cautious about the interpretation of their results due to the

---

26 Jack (1994).
28 The indices recorded were the amount of talk, topic control, intrusions and challenges.
limitations of their sample size; the sample comprised 136 students — that is, 63 per cent of the class.\(^\text{32}\) However, they described their first-year respondents as ‘politically liberal, moderately oriented toward reform and pro bono work and moderately disinclined to practice corporate law’\(^\text{33}\), with females statistically important in this group.\(^\text{34}\) However they later observed, with the passage of time, some movement towards more conservative political views and a resigned determination not so much to evade their moral responsibilities as to make the best of the corporate law environment:

> Although students generally enter law school with the belief that tax law is dry and unexciting, our informal interviews indicate that they leave with the view that it is dry, boring and critically important.\(^\text{35}\)

In respect of their attitude toward pro bono opportunities, the passage of time in law school appeared to lessen their commitment to voluntary legal work,\(^\text{36}\) but the researchers remained hesitant as to the cause of these changes:

> Since the study lacked a control group, we cannot determine the extent to which the apparently conservative influence of legal education is actually the product of a changed political climate, of a tendency of people to become less radical as they assume more responsibility or of a tendency for people with deep-seated public interest commitments to avoid law school.\(^\text{37}\)

**Impact of Clinical/Ethics Education**

Other studies that have aimed to investigate the impact of education on ethical attitudes and intentions have used, in the main, qualitative and cross-sectional designs. Granfield and Koenig took a qualitative approach to researching the issue of moral and ethical ambiguity for young lawyers in legal practice in a study of 40 young lawyers who had graduated from Harvard Law School in the late 1980s and who had, at the time of interview, been in practice in a variety of legal environments for approximately four years.\(^\text{38}\) Questions raised in in-depth interviews dealt with career path, ethical dilemmas, discrimination and work pressure.\(^\text{39}\)


\(^{38}\) Granfield and Koenig (2002–03). The interviews reported in this article were in the main conducted in 1993, about 10 years prior to publication. Their objective was to see how law school ethics education might be improved to deal with the disconnection between the ABA professional conduct rules, which typically lionised the ideal of zealous advocacy over all other considerations, and the personal moral standards of lawyers.

Respondents were highly critical of the conduct rules because of their ‘failure to give guidance on the unique problems they confronted’, and considered their law school instruction in ethics was ‘too nebulous’ to be of assistance.

Many of our respondents reported obeying the professional code of legal ethics even if it meant violating their personal moral codes. The ethical qualms that respondents experienced were commonly viewed as symptoms of personal weakness that should not be allowed to interfere with their professional responsibilities.

Although the influence of role morality may not be quite as pervasive in Australia as it is in the United States, the tendency reported to objectify all legal work as morally neutral, as part of a game or even as desensitising, was typical in these elite lawyers, from perhaps the most influential of American law schools: ‘I used to care about how things I did as a lawyer affected people, but I don’t find myself asking those questions anymore.’ For most (and the sample was gender balanced), pro bono activity was not a part of social reform, but a way to attract new clients, to obtain good publicity and to do favours for current clients.

In another early American study, Rathjen administered a questionnaire to 177 first-year (1975–76) students at the Tennessee College of Law, followed by a second and third administration (total N=341) to upper-class students in a required subject later in 1976. The samples were not randomly selected, but again the researcher considered them to be representative because they constituted 54 per cent of the law school population. Overall, females represented 77 per cent of those surveyed, their mean age was 25, they had a slight leaning toward Democrat allegiance, were predominantly Protestant and half of them expressed a personal motivation for choosing a legal career. Nevertheless, Rathjen did not follow the same students through law school, and he acknowledged that his results suffer from this limitation.

Rathjen coded responses according to legal orientation (advocate, group advocate — that is, acting for individuals or groups — and civil libertarians); legal ideology (traditionalist and reformer); and legal values (entrepreneurial, special entrepreneurial and ‘social welfarist’). He expected that the general effect of the law school experience would be essentially conservative — that is, the passage of time would produce a perceptible hardening of attitudes. He

---

confirmed his hypotheses, reporting a shift towards individual advocacy, traditionalist ideology and entrepreneurial perspectives. 48

What did, however, prove very interesting were the results of Rathjen's multiple regression analysis, which attempted to identify the causes of the changes in attitude. Isolating variables such as year in law school, political party preference, social motivation for seeking a law career, economic motivation for a law career, religious preference, specialised practice intentions, birth region or educational experience, he found that the most important predictor was 'year in law school'. 49

Rathjen concluded that the passage of time through law school itself affects legal values and, depending on the perspective of the observer, not necessarily for the better. If it were possible to repeat these results in a contemporary Australian setting, and to do so with a larger study that followed the same people over time, such an investigation would have more convincing empirical relevance for efforts to improve lawyers' professionalism.

Over the period 2001–03, a large group of Australian final-year undergraduate law students/early year practitioners were surveyed in a longitudinal study of values by the authors. We wished to understand what decisions they would make and what values might drive those decisions, in relation to some potentially difficult behavioural choices confronting them in legal practice. The approach taken was to postulate hypothetical situations that might be related to some of the commonplace failures facing the profession and to gather information about likely behaviours. These scenarios were validated in an earlier pilot study, and elicited behavioural intention on a range of everyday ethical problems. 50 Ajzen and Fishbein's 51 theory of planned behaviour suggests that behavioural intention is the best predictor of actual behaviour. However antecedents to behavioural intention relate to attitudes towards the behaviour, subjective norms (ie what one believes others believe about that behaviour) and perceived control (ie belief that one is able to control personally the performance of that behaviour).

Hsu and Kuo 52 found that the influence of volitional control in particular was a significant moderator of behavioural intention. They suggested that different ethical behaviours may have associated differences in volitional control, because some outcomes of that behaviour will be more uncertain, and perhaps out of the control of the decision maker. While our study did not include a measure of control, it may be important for further research in the area of ethical decision-making for lawyers.

---

48 Rathjen (1976–77), pp 95–96. These findings were consistent with those of Thielen, who had found in 1969 that law students' responses to ethical conundrums were higher at the end of law school but regressed after the entry to practice, as a result of that entry. See Thielen, (1969).
51 Ajzen and Fishbein (1980).
52 Hsu and Kuo (2003).
Summary of Results from an Australian Longitudinal Study: Factors Affecting Behavioural Intention

To test the assumption that lawyers' aspirations are based on shared personal and professional values, final-year law students were asked to rate instrumental and terminal values according to the Rokeach categorisation,53 much as Rathjen’s much earlier US work had done.54 ‘Terminal’ values are those which are descriptive of general goals or end states of existence (for example, equality, freedom, inner harmony), whereas ‘Instrumental’ values are descriptive of modes of conduct (for example, being broadminded, capable, loving). Findings suggested that the assumption of homogenous instrumental or terminal values among law students is empirically incorrect.55

Discrete analysis of Year 1 findings further suggested that educational experiences may contribute to the value hierarchies that are developed and used within the context of responding to ethical scenarios. They showed that, while there were no significant differences between students who had or had not completed an ethics subject during their law degree on the importance they placed on a selection of instrumental and terminal values, there was a significant difference for students who had completed a clinical placement.56 These students were more likely to value ‘helpfulness’, ‘responsibility’, ‘equality’, ‘happiness’ and ‘wisdom’. These values reflect a socially responsible orientation, which may also appear to be more salient for women. Findings that investigated the importance of these values on behavioural intention showed that the most important values associated with behaviour consistent with ethical conduct were ‘honesty’ and ‘equality’.57 Similar to findings by Menkel-Meadow in a US context,58 we found that females were more likely to express socially responsible values when weighing social dilemmas, and were likely to be more aware of environmental cues.59

Having established that educational experience and gender may affect changes in value bases over time, we were interested in investigating how these variables affect the actual responses to ethical dilemmas over time as law graduates transition into their early careers. Our observations suggested that the passage of time was generally (though not always, among female lawyers) associated with increasing role morality — that is, behaviour aligned with the

53 Rokeach (1973). Rokeach’s seminal work on values and ideology (see in particular Rokeach, 1979) had suggested that overvaluing equality is predictive of more liberal (in the American sense) political leanings, whilst overvaluing freedom is indicative of a conservative ideological orientation.
54 Rathjen (1976–77).
57 Palermo and Evans (2006a).
58 Menkel-Meadow (1985).
59 Palermo and Evans (2006b).
professional conduct rules was reinforced over time — and that the influence of the legal work place appeared to be associated with that reinforcement.69

We reiterate that earlier North American investigations of ethical consciousness and behavioural intention have borne out concerns for law students’ ethical orientation and sense of social responsibility. Several of these studies, now quite dated, suggested that female law students showed — at least in some areas of practice — a greater sense of moral accountability, but that the law school experience itself tended to degrade desirable ethical qualities. Several studies assessed students of different seniority in the same law school and concluded that both public spiritedness and concerns for justice tended to be replaced in the upper years of law school with lower levels of interest in community priorities and a greater determination to achieve individual success, but only one such study looked at the effect of the passage of time in the responses of a single sample. The lack of sample consistency is a deficiency in the literature that requires attention.

Similarly, in earlier studies, it is not entirely clear whether students’ experience of courses of professional responsibility (that is, legal ethics) aided or retarded their commitment to ethics — or indeed had any discernible effect. In the case of clinical legal education, a methodology now much lauded for its effectiveness in developing ethical consciousness, there are no empirical studies which test for such a connection, although assertions to this effect have been commonplace for decades.61

The aim of this study was therefore to investigate whether there were, in an Australian setting, any differences between men and women, and early career lawyers who had completed an ethics course or a clinical placement, on their responses to ethical scenarios over time. Specifically, the study had the following hypotheses:

- There will be significant differences in ethical behavioural intention between males and females, and those people with differing educational experiences (namely ethical course/clinical placement): between group difference hypothesis.

- There will be significant differences in the pattern of responses over time to ethical scenarios for males and females separately, and for those individuals who had completed an ethics course versus those who had not; and those who had completed a clinical placement versus those who had not: within group difference hypothesis.

69 Palermo and Evans (2006b).

61 See generally, Sullivan (2007). The idea of a connection between better ethical behaviour (described as ‘professionalism’) and clinical methods was first promulgated by Jerome Frank in 1933. See Frank (1933).
Method

Participants

Year 1

Law faculties across Australia were asked to assist in distributing surveys to students enrolled in the final year of their law degrees. A total of 700 individuals responded to the mail questionnaire, representing approximately 18 per cent of the population of 4000 Australian final-year law students. All jurisdictions were represented in the final sample, although most respondents came from New South Wales, Victoria, and Queensland. Females accounted for 61 per cent and males for 39 per cent of respondents. Sixty per cent of the sample categorised themselves in the 18–25 years age group and 72 per cent classified themselves as ‘Australian’.

The majority of the sample were single (70 per cent) and had no children (84 per cent). Most had parents with professional, teaching or business backgrounds. Based on the Australian Bureau of Statistics (Index of Education and Occupation) classification of socio-economic status,62 as derived from postcodes of residence, most of the sample was classified as residing in homes with a high socio-economic status classification (61 per cent).

Nearly 70 per cent of respondents had completed an ‘ethics’ course, and might therefore be thought to have had some exposure to the ethical issues of practice, while only 40 per cent had experienced a ‘clinical’ course in law. Overall, we concluded the sample was generally representative of the population of law graduates in Australia.

Year 2

Year 1 respondents who had indicated their consent to participation in the longitudinal study were contacted via email, phone or by mail. A total of 412 participants returned completed surveys in Year 2 (conducted on paper or online). The sample characteristics mirrored those of the sample in Year 1. Variations from this were that females accounted for a slightly higher proportion of the sample (64 per cent) and more of the younger participants continued with the study in Year 2 (56.4 per cent). Table 1 presents the distribution of occupational classifications of the sample in the second year of the study. It shows that the great majority of the sample had gained employment in legal practice/law and business settings.

Year 3

A total of 362 participants returned completed surveys in Year 3 (either by mail or on an online basis). Sample attrition appeared to be spread evenly across characteristics of the sample so that the Year 3 sample appeared well representative of the sample in Year 2.

There did not appear to be any significant differences between males’ and females’ educational experiences, thus about 43 per cent of males and 47 percent of females had completed a clinical placement and 69 per cent of males and 63 per cent of females had completed an ethics subject.

Table 1: Distribution of participants’ occupations in Year 2 of the study (ie year after graduation)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Frequency</th>
<th>Valid % (missing not included)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal practice/law</td>
<td>231</td>
<td>65.44</td>
</tr>
<tr>
<td>Student</td>
<td>43</td>
<td>12.18</td>
</tr>
<tr>
<td>Admin/public service</td>
<td>20</td>
<td>5.67</td>
</tr>
<tr>
<td>Business</td>
<td>17</td>
<td>4.82</td>
</tr>
<tr>
<td>Accountant</td>
<td>9</td>
<td>2.55</td>
</tr>
<tr>
<td>Academic/teacher</td>
<td>8</td>
<td>2.27</td>
</tr>
<tr>
<td>Science and computing</td>
<td>7</td>
<td>1.98</td>
</tr>
<tr>
<td>Unemployed</td>
<td>7</td>
<td>1.98</td>
</tr>
<tr>
<td>Health</td>
<td>5</td>
<td>1.42</td>
</tr>
<tr>
<td>Army</td>
<td>2</td>
<td>0.56</td>
</tr>
<tr>
<td>Policy</td>
<td>2</td>
<td>0.56</td>
</tr>
<tr>
<td>Farmer</td>
<td>1</td>
<td>0.28</td>
</tr>
<tr>
<td>Police</td>
<td>1</td>
<td>0.28</td>
</tr>
<tr>
<td>Missing/unknown</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>412</strong></td>
<td><strong>99.99</strong></td>
</tr>
</tbody>
</table>

Procedure

The survey utilised an oblique measurement of law students' values, based upon responses to survey questions which were piloted earlier. We deployed the practice of the hypothetical situation, adding a personal dimension to further reduce the level of abstraction and assist in actual values identification. Full scenarios presented to participants are attached in Appendix 1. It is suggested that these scenarios be perused before proceeding with the remainder of this paper.

Participants were asked to indicate their probable behaviour in each scenario with a 'yes' or 'no' response. Since the scenarios were also relatively commonplace, it was reasoned that a degree of personal identification with the lawyer's dilemma (in each scenario) would emerge. These hypotheticals were changed slightly across the three years of the study period to reduce the effects of learned behaviour. That is, slight variations in ethical scenarios limited the potential for respondents to simply repeat from memory, their prior year decisions and values choices.

To determine the direction of change from one year to the next, participants’ dichotomous responses over time were grouped across the three

---

years of the study into an eight-category ‘change’ variable with varying categories reflecting different response directions. Categories comprised for example, yyy (ie participants responded ‘yes’ in all three years); and yyn (ie participants responded ‘yes’ in Years 1 and 2, but ‘no’ in Year 3 of the study). Following this methodology, change variables included the following categories: yyy, nnn (denoting no change); yyn, yyy, nyy, nny (denoting change from Year 1 to 3); and nyn, yny (denoting a flip in response in Year 2 but no changes between responses in Years 1 and 3).

Cross-tabulations with the variables of interest in the study were conducted to investigate whether there were any significant differences in the direction of change between males and females, and among participants with varying experiences of clinical placement and ethics education.

Cross-tabulations were produced for scenario responses for the three years of the study, to ascertain changes in the distribution of responses over time. These data are displayed in bar graphs in the results section and elucidate any changes between males and females, and participants with differing educational experiences.

However, this analysis is limiting in that it does not show variations in individual participants' responses over time. To ascertain the magnitude of change in individual frequencies of responses from one year of the study to the next, Cochran Q tests were produced. Cochran Q provides a method for testing differences between three or more matched sets of frequencies. It is particularly useful for measuring changes in frequencies across time which are, in effect, dependent samples.\(^\text{64}\) Dependency is likely here because, even though efforts were made to reduce the impact of learned responses, a participant’s response in Year 3 is inevitably related to the responses given in Years 1 and 2.\(^\text{65}\) Frequencies are presented graphically where significant agreement or disagreement is found. Due to the large amount of tests conducted in this study, Bonferroni\(^\text{66}\) adjustments were made to alpha criteria.

Results

Changing Responses to Reported Behaviour Over Time

Figure 1 displays the proportions of participants who exhibited the response pattern indicated in each of the 8 categories previously mentioned. Chi Square statistics showed that there were significant differences across these categories for each of the scenarios:

- In Scenario 1 [a new lawyer confronted with firm pressure to bill more hours rather than take on an important pro bono case], just under 50 per cent of participants had no change in their responses over the three years,

\(^{64}\) The Cochran Q procedure tests the null hypothesis that multiple related proportions are the same. The Cochran test is a multivariate extension of the McNemar test used for two related samples. Cochran's Q statistic is a Chi-Square variate formed by a ratio of the variation in success across tasks to the variation in success within subjects.


\(^{66}\) Gravetter and Wallnau (2004).
(with about 25 per cent each saying that they would/would not take on pro
bono work). Further, 20 per cent changed their decision in Year 2 only to
revert back to their initial response in Year 3 ($X^2 (7) = 91.32, p<.0001$).

- In Scenario 2 [an associate has the ability to give significant work to a close
friend to whom they are indebted, or a major corporation, but not to both,
knowing that the corporation is more valuable to the firm], 35 per cent of
participants stayed their course over the three years in responding that they
would not act for the corporation. However 27 per cent of participants
changed their minds from an initial ‘yes’ response ($X^2 (7) = 157.97,
p<.0001$).

- In Scenario 3 [a senior practitioner discovers their nephew’s involvement in
a trust deficiency in their firm and must decide whether to report], the
results were interesting as 60 per cent of participants changed their response
in Year 2 and reinforced that decision in Year 3 ($X^2 (7) = 227.30, p<.0001$).

- In Scenario 4 [whether to take advantage of a tip from a client’s CEO about
the likely increase in the price of shares in that corporation], Scenario
5 [whether to save their marriage by working fewer hours or assist their
career by doing the opposite], Scenario 7 [a prosecutor who discovers his
dughter is a drug dealer is challenged to forget his knowledge] and
Scenario 9 [whether a lawyer turned fundraiser for the Greens should offer
promises regarding government contracts to donors, in return for those
donations], the majority of participants maintained their decisions not to
purchase shares ($X^2 (7) = 861.61, p<.000$), not to take on extra hours
($X^2 (7) = 509.13, p<.000$), not to report a daughter involved in criminal
activity ($X^2 (7) = 701.00, p<.0001$) and not to make representations to
potential political donors ($X^2 (7) = 462.61, p<.0001$).

- In Scenario 6 [where a family lawyer acting for a husband — but knowing
the wife as well — becomes aware that the husband is concealing assets and
must choose whether to continue to act for the husband], on the other hand,
participants either maintained their resolve to not represent their friend, or
changed their mind in various directions about this scenario ($X^2 (7) =
410.00, p<.0001$).

- In Scenario 8 [a junior lawyer is pressured by a superior to significantly
round-up recorded hours on a file], almost 70 percent of participants
maintained the same response in Year 3 as they had in Year 1, however
about 12 percent had changed their mind in Year 2 before reverting back to
the original Year 1 response ($X^2 (7) = 174.85, p<.0001$).

- In Scenario 10 [whether to refer for counselling a close colleague who is
obviously not coping with life], whilst over 47 per cent of participants
maintained their responses in favour of referring the colleague, an
additional 18 percent changed their mind in Years 2 and 3 ($X^2 (7) = 382.72,
p<.0001$).
Finally, in Scenario 11 [a breach of confidentiality would result if a family law client were reported for what is arguably fairly clear evidence of severe child abuse], 45 percent of participants maintained their responses in favour of breaking client confidentiality, and an additional 23 percent had eventually changed their minds in favour of this decision by Year 3 \(X^2 (7) = 296.67, p<.0001\).

**Figure 1:** Proportions of participants who responded according to patterns denoted in each change category across 11 scenarios

**Changing Responses to Reported Behaviour Over Time: Differences Between Males and Females, and Participants with Differing Educational Experiences**

To test whether there were any differences between groups on overall behavioural intentions, Chi Square tests performed on changing patterns of responses across the three years of the study showed that, for most scenarios, there were no differences between the patterns of changing responses between participants who had or had not completed a clinical placement, or an ethics course. However, differences between males and females were found for...
changing responses in Scenario 11 (X2(7) = 21.25, p<.002). Females were more likely than males to indicate that they would breach client confidentiality in Year 1 of the study, and then to reinforce that decision in Years 2 and 3. In addition, females who indicated they would not breach client confidentiality in Year 1, were also more likely than males to change their mind from a ‘no’ to ‘yes’ in Year 2 and to maintain that response in Year 3.

**Within-group Differences: Males and Females**

While grouped data did not show significant variations between males and females, it was hypothesised that there would be significant variations in responses over time for males and females (considered separately) that differed from those that might be expected from chance alone.

To investigate these within-group differences Cochran Q tests were performed on each of the responses over time for males and females separately. Results are presented in Table 2. Where there were significant differences between responses across Years 1 to 3, percentage ‘yes’ responses are presented in graphical form in Figure 2.

Results in Figure 2 show that females were more likely to reinforce their decisions about taking on a pro-bono case in Year 2, and then to change their minds about that in Year 3 and decline the opportunity. The same trend was true for responses in Scenario 2, which related to refraining from acting for the corporation and also Scenario 4, which was concerned with decisions to refrain from purchasing shares.

In Scenario 10, responses shifted significantly over time for both males and females, with both groups changing their minds from initially indicating they would refer the colleague in Year 1, to suggesting they may not in Year 2, and then reverting to Year 1 responses in Year 3. Finally, just as with the basic Chi Square result for Scenario 11, there were significant differences between responses for females on that scenario according to Cochran Q tests, with a steady reinforcement of the decision to breach confidentiality across the three years of the study.

**Within-group Differences: Experience of Clinical Practice**

While grouped data did not show significant variations between groups differing in their experiences of clinical practice, it was hypothesised that there would be significant variations in responses over time for these groups separately, that differ from those that might be expected by chance.

To investigate these within-group differences Cochran Q tests were performed on each of the responses over time for clinical and non-clinical groups separately. Results are presented in Table 3. Where there were significant differences in responses between Years 1 and 3, percentage ‘yes’ responses are presented in graphical form in Figure 3.
Table 2: Cochran Q tests for differences between responses over time for males and females separately

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Sex</th>
<th>Cochran's Q (df=2)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>males</td>
<td>8.35</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>12.27*</td>
<td>180</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>males</td>
<td>0.59</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>24.36*</td>
<td>182</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>males</td>
<td>3.47</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>1.71</td>
<td>187</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>males</td>
<td>3.12</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>13.23*</td>
<td>188</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>males</td>
<td>5.03</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>0.33</td>
<td>182</td>
</tr>
<tr>
<td>Scenario 6</td>
<td>males</td>
<td>0.12</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>7.42</td>
<td>184</td>
</tr>
<tr>
<td>Scenario 7</td>
<td>males</td>
<td>0.21</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>0.90</td>
<td>186</td>
</tr>
<tr>
<td>Scenario 8</td>
<td>males</td>
<td>1.95</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>14.43*</td>
<td>184</td>
</tr>
<tr>
<td>Scenario 9</td>
<td>males</td>
<td>0.29</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>1.20</td>
<td>187</td>
</tr>
<tr>
<td>Scenario 10</td>
<td>males</td>
<td>29.92*</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>47.71*</td>
<td>185</td>
</tr>
<tr>
<td>Scenario 11</td>
<td>males</td>
<td>4.13</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>females</td>
<td>17.95*</td>
<td>186</td>
</tr>
</tbody>
</table>

Note: *p<.002
Note: Scenarios yes denote:
1 would take on Pro Bono case
2 would act for the corporation
4 would purchase shares
8 would round up hours
9 would make misrepresentation to potential donors
10 would refer the colleague
11 would break confidentiality and inform welfare

Figure 2: Male and female responses to scenarios, Years 1–3 (%)
Results in Figure 3 show that participants who had completed a clinical placement were more likely to indicate that they would take on the pro bono case in Year 1, to reinforce that decision in Year 2, but then to change their minds again in Year 3. In other words those with clinical experience were apparently less interested, over time, in pro bono work.

This decline in 'yes' responses was also evident for the non-clinical placement group in relation to Scenario 4, and in the arguably opposite 'ethical direction'. The majority of participants who had not completed a clinical placement were more likely to indicate that they would not purchase shares, suggesting that they were becoming more aware of their ethical responsibility over time, regardless of clinical experience. This disinclination was reinforced across the years of the study.

In Scenario 10, responses changed significantly over time for both groups, with both changing their minds from initially indicating they would refer the colleague in Year 1, to suggesting they may not in Year 2 and then reverting to Year 1 responses in Year 3 of the study.

Table 3: Cochran Q tests for differences between responses over time for participants who had and had not completed a clinical placement

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Group</th>
<th>Cochran's Q (df = 2)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>no clinical</td>
<td>4.25</td>
<td>153</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>14.90*</td>
<td>131</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>no clinical</td>
<td>7.77</td>
<td>154</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>12.78*</td>
<td>132</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>no clinical</td>
<td>1.76</td>
<td>159</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>0.37</td>
<td>134</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>no clinical</td>
<td>13.85*</td>
<td>157</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>3.38</td>
<td>134</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>no clinical</td>
<td>2.42</td>
<td>154</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>2.00</td>
<td>133</td>
</tr>
<tr>
<td>Scenario 6</td>
<td>no clinical</td>
<td>4.10</td>
<td>156</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>2.00</td>
<td>133</td>
</tr>
<tr>
<td>Scenario 7</td>
<td>no clinical</td>
<td>6.05</td>
<td>156</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>3.56</td>
<td>134</td>
</tr>
<tr>
<td>Scenario 8</td>
<td>no clinical</td>
<td>3.97</td>
<td>156</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>12.67</td>
<td>134</td>
</tr>
<tr>
<td>Scenario 9</td>
<td>no clinical</td>
<td>0.60</td>
<td>158</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>3.00</td>
<td>134</td>
</tr>
<tr>
<td>Scenario 10</td>
<td>no clinical</td>
<td>33.30*</td>
<td>158</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>44.90*</td>
<td>133</td>
</tr>
<tr>
<td>Scenario 11</td>
<td>no clinical</td>
<td>4.67</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>clinical placement</td>
<td>19.08</td>
<td>130</td>
</tr>
</tbody>
</table>

Note: *p<.002
Within Group Differences: Prior Completion of an Ethics Course

As with groups differentiated by clinical placement experience, we hypothesised that there may have been significant variations in responses over time, compared to those expected by chance, for groups who had or had not completed an ethics course.

Results of Cochran Q tests are presented in Table 4, with Figure 3 graphically presenting percentages of ‘yes’ responses for scenarios where there were significant differences.

Figure 3 showed that the majority of participants in the group who had taken an ethics course indicated a preference to act for the corporation in Year 1 responses to Scenario 2. However, their responses dramatically changed by year 3 in the opposite direction. The same was true for responses to Scenario 4 (related to significantly decreased responses in favour of purchasing shares), and finally also in Scenario 8 (related to a diminishing resolve to round-up hours).

Both groups (that is, those who had and had not taken an ethics course) were more likely to initially favour referring a colleague for counselling, then to change their responses in Year 2 and again change back to Year 1 preferences in Year 3. Lastly, in Scenario 11, participants who had completed an ethics course significantly increased responses in favour of breaking confidentiality across the three years of the study.

Note: Scenarios yes denote:
2. would act for the corporation
4. would purchase shares
8. would round up hours
10. would refer the colleague
11. would break confidentiality and inform welfare

Figure 4: Responses by ethics/non-ethics groups, Years 1–3 (%)
Table 4: Cochran Q tests for differences between responses over time for participants who had and had not completed a clinical placement

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Group</th>
<th>Cochran’s Q (df = 2)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>no ethics</td>
<td>10.48</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>7.31</td>
<td>194</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>no ethics</td>
<td>1.45</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>21.46*</td>
<td>195</td>
</tr>
<tr>
<td>Scenario 3</td>
<td>no ethics</td>
<td>1.31</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>1.60</td>
<td>200</td>
</tr>
<tr>
<td>Scenario 4</td>
<td>no ethics</td>
<td>5.83</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>12.57*</td>
<td>198</td>
</tr>
<tr>
<td>Scenario 5</td>
<td>no ethics</td>
<td>2.85</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>2.43</td>
<td>196</td>
</tr>
<tr>
<td>Scenario 6</td>
<td>no ethics</td>
<td>3.35</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>1.88</td>
<td>198</td>
</tr>
<tr>
<td>Scenario 7</td>
<td>no ethics</td>
<td>0.32</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>1.08</td>
<td>199</td>
</tr>
<tr>
<td>Scenario 8</td>
<td>no ethics</td>
<td>2.51</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>12.87*</td>
<td>201</td>
</tr>
<tr>
<td>Scenario 9</td>
<td>no ethics</td>
<td>2.80</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>5.56</td>
<td>198</td>
</tr>
<tr>
<td>Scenario 10</td>
<td>no ethics</td>
<td>15.32*</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>63.24*</td>
<td>198</td>
</tr>
<tr>
<td>Scenario 11</td>
<td>no ethics</td>
<td>3.60</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>ethics</td>
<td>15.28*</td>
<td>196</td>
</tr>
</tbody>
</table>

Note: *p<.002

Discussion
This study aimed to investigate the variables that are likely to mediate change over time, in response to ethical dilemmas. Our investigation concentrated on postulated relationships between ‘better’ ethical behaviour and each of the effects of gender, selective student exposure to clinical methods and participation in ethics courses. Any such relationships would be important for the future of legal education in the context of repeated and notorious ethical ‘failures’ by individual lawyers and major law firms in recent years.

The results presented above suggest that there were significant differences in responses for particular groups (that is, among women and those who have undertaken an ethics course as well as a clinical placement, as compared to males and those without these educational experiences), across the three years of the study. However these differences were present as within-group rather
than between-group differences. The exception was differences between males and females on responses to Scenario 11 (breaking confidentiality) over time. It appears that females in particular may be likely to maintain their resolve in favour of breaking confidentiality in Scenario 11. Findings suggested that women and participants who had completed an ethics subject were more likely to increase their resolve to break client confidentiality in this scenario. Depending on the frame of reference, these results were of considerable concern. The issue of child abuse is one of very high profile in Australia. The deaths of young children at the hands of their fathers or males known to their mothers comprise regular features on commercial television. Nevertheless, confidentiality has been described as one of the ‘core values’ of the Australian legal profession

and, despite some policy concerns which now question the utility of confidentiality and client privilege in achieving just results in the trial process, client confidentiality remains undeniably crucial as a lynchpin of common law systems of representation.

However, it was not at all surprising that approximately 60 per cent of participants in Year 1 indicated that they would break client confidentiality. In preliminary discussions about the Year 1 findings, we attributed this finding to the fact that these respondents had not then, for the most part, experienced the realities of legal practice and, in particular, the trust ordinarily placed in lawyers by their clients. Therefore the finding that individuals from two groups in this study achieved greater agreement over time in favour of breaking client confidentiality is important, and indicates at least one limit to the preparedness of the profession to respect clients’ ‘secrets’.

Females also significantly changed their responses across the three years in the direction of not acting for a corporation, purchasing shares or rounding up hours, in Scenarios 2, 4 and 8. In the last scenario, not just women but also participants who had completed an ethics course shared an increasing resolve over time to not round up hours on a bill — a pleasing result. Those with clinical experience might be thought to be somewhat ‘out in the cold’ in this scenario, except for the fact that no clinical programs in Australia operate on a fee-for-service basis and clinical graduates have no within-clinic experience of billing clients.

Interestingly, however, women appear to become less enthusiastic about pro bono work after a year in the legal workforce (Scenario 1) — perhaps, we speculate, because of their realisation that they must work that much harder to maintain their position vis-a-vis males. Pro bono activity may be considered a primary indicator of a professional attitude. Indeed, some writers are adamant that the quality of ‘altruism’ — which for the purposes of this study we have compacted somewhat into a forced choice about whether or not to give something to the community — is an archetype of professionalism.

However results for the pro bono scenario were concerning and could be suggestive of some ethical dilution as a lawyer moves further beyond the date of their

---


68 See Prince Jefri Bolkiah v KPMG (a firm) [1999] 2 WLR 215 at 266, per Lord Millett.

admission to practice. Thus, while all women and participants who had completed a clinical placement were more likely to increase their resolve to take on the pro bono case over time in the second year, this resolve weakened in the third year.

This may indicate some hardening of response over time, reminiscent of Jack\textsuperscript{70} and Bogoch\textsuperscript{71} in a shift in female attitudes as they engage more with a male-dominated profession.

While noting these reservations, the results do appear compelling, in that they tend to confirm Gilligan and Menkel-Meadow's views that women place more importance on relational rather than individualistic considerations in forming their vocational identity.\textsuperscript{72} If better ethical function is a professional priority, there may be a basis, for example, for law foundations to financially support new female lawyers to stay in the profession and adopt, as Bogoch\textsuperscript{73} might contend, alternative dispute resolution and other relational approaches to concluding legal disputes.

Like females, participants who had completed a clinical placement and ethics course were more likely to exhibit significant changes in responses across the three years of the study. The direction of change could be said to be largely, but not entirely, in the direction of better ethical conduct.

The trust defalcation scenario illustrates ethical ambivalence eloquently. Lawyer thefts have been a major embarrassment to the Australasian legal profession over the years. In all Australian jurisdictions, the requirement to report a trust deficiency is mandatory, no matter the size of the deficiency or its possible cause. Findings suggest that, while the overall proportion of participants willing to keep the deficiency secret was very high (with no significant differences between or within groups), over 60 per cent of participants were also likely to change their mind about this scenario in the second year of the study, and that response was reinforced in the third year. There appears to be an unknown driver of change that occurs in the first year out for graduates (Year 2 of the study); however, the impact of this driver appears to be split evenly across participants who changed their mind (in favour or not) about reporting. Although new practitioners might be expected to acquire unsettling knowledge of cases of trust defalcations,\textsuperscript{74} this knowledge might be expected to push all respondents towards reporting theft, rather than secrecy.

\textsuperscript{70} Jack (1994).
\textsuperscript{71} Bogoch (1997).
\textsuperscript{72} Gilligan (1982).
\textsuperscript{73} Bogoch (1997).
\textsuperscript{74} In New Zealand in 1992, a small Upper Hutt firm managed to steal over NZ$65 million, causing the entire New Zealand fidelity fund to become insolvent. In Victoria, the local fidelity fund went into technical deficit in 1993 after a series of major thefts. The political fallout was enough for the then conservative state government to put in place a review of the system of self-regulation of the fidelity compensation process, leading in due course to legislation establishing co-regulation across all aspects of legal professional regulation in that state (Legal Practice Act 1966 and Legal Profession Act 2004, Vic).
More research on this issue is clearly justified, as it is in relation to close-to-
home criminality.

The 'daughter drug dealer' (Scenario 7) was also designed to push
respondents towards the limits of what might be called personal-professional
tension. However, few felt ethically challenged and little change was evident,
with a strong desire to protect this child: there were no significant differences
across or within groups in responses over time.

Apart from these scenarios, better ethical consciousness could be a
consequence of greater exposure to ethical dilemmas and scenarios during
placement experiences and ethics courses. The insider trading scenario
(Scenario 4) was directed towards the broad issues of business ethics. Although
Enron, Worldcom and related corporate failures were an international scandal
only after this survey was completed, there were many signs in Australian
corporate experience that the last two decades of the century were marked by an
excess of what must be defined as corporate greed.\textsuperscript{75} We considered that it was
important to attempt to measure the extent to which students — many of whom
would be going to business/law firm-related workplaces\textsuperscript{76} — were sensitised to
the values inherent in the phenomenon of greed and over-identified with their
clients’ interests.

Findings suggest that women were likely to strengthen their resolve to
avoid the purchase of shares based on inside knowledge over the three years of
this study. Participants who had completed a clinical placement and/or an ethics
course were (thankfully) also more likely to increase their resolve not to
purchase shares when responding to this scenario over time. We cannot help but
wonder whether, among those in-house counsel and large firm lawyers whose
actions have recently been scrutinised for doubtful litigation and transactional
decisions, the requirement of a clinical experience and linked ethics course
within their undergraduate experience would have deflected their arguably anti-
social actions in those cases. We could speculate (and it is admittedly pure
speculation) that each of those lawyers had not participated in such programs,
because they are likely to be alumni of elite law schools who have traditionally
regarded clinical experience as superfluous or too expensive, and ethics courses
as rote instruction in role morality.

However, these results should be interpreted cautiously in light of the fact
that clinical placement is an optional part of the law degree in most Australian
universities. Although informal control groups were present — in the form of
the respondents who had not undertaken either clinical or ethics courses — it is

\textsuperscript{75} A major Australian insurer, HIH was beset by archetypal breaches of governance during the
late 1990s, as this quote from the Melbourne \textit{Age} shows: ‘Rodney Adler summoned Brad
Cooper to a hotel room early yesterday morning to warn him against telling the truth about an
alleged insider trading deal, Mr Cooper told the HIH Royal Commission today. The
entrepreneur and long-time associate of Mr Adler is appearing at the commission for the
second time to answer questions about a $1 million short-trading share deal to prop up HIH’s
ailing share price in August 1999.’ \textit{Age}, Melbourne, 14 October 2002.

\textsuperscript{76} Nearly 75 per cent of Australian law graduates were destined for legal professional and
‘business professional’ positions in 2000 and 2001, according to the Australian Graduate
still extremely difficult to untangle the effects of any clinical placement from the selection bias inherent in the sample of participants who had self-selected their clinical experience. Thus establishment of a significant link between clinical experience and better ethical attitudes is almost (but not quite) there.

Conclusions

The results of this study indicate significant differences over time in responses to ethical dilemmas, particularly for females and participants who experienced clinical and ethics-focused subjects during their law degree. For women, clinical and perhaps ethics graduates, there are significant differences between their responses from one year to the next. Yet these differences do not show up for men, non-clinical and non-ethics participants. It would therefore appear that women, clinical and ethics graduates are being 'affected' by the transition to work in more positive ways than the other groups.

While the behavioural outcomes projected by this research are limited due to their intentional rather than observed natures, sample self-selection, and the lack of formally constituted control groups, the results do provide some evidence of the impact of participating in a clinical placement program in particular, and weaker evidence in relation to the effects of having completed an ethics course. There is also a third, tentative indication, particularly evident among women in their eventual decisions about pro bono work, that the effects on ethical consciousness of any tertiary legal education experience dissipate over time and in the face of the (powerful and male-controlled) law firm environment. There is clearly a limit to what can be achieved from undergraduate legal ethics education and a case for ongoing, post-admission training in the same discipline.

These results should also be interpreted cautiously because clinical placement in Australian legal education is an optional element of nearly all law courses. The differences noted here may be a reflection of the characteristics of those students who are more likely to volunteer to participate in a clinical placement, rather than as a consequence of participation in the program itself. More research that utilises controlled pre- and post-test designs is warranted to ascertain the efficacy of clinical placement as an effective intervention towards the development of professional ethical conduct.

Within these cautions the results may still be generalised in terms of their depiction of the current pool of early-career lawyers in Australia and the patterns of change and persistence elucidated in this paper. Responses to some scenarios pointed to a sense of moral sophistication — that is, an ability to exercise complex ethical judgment — while others show the opposite. If earlier US studies suggested law student alienation, lack of interest in public responsibilities and a general desensitising effect, over time, of legal education per se, our study only partially revises those findings. There can be no complacency that Justice Owen's call for better ethics education in law schools is on track, particularly when outrageous cases continue to come to light. This study and its predecessors, here and overseas, generally confirm the broadly liberal effect of Western legal education. Rights rather than responsibilities, and
positivism as opposed to normative analysis, appear to be the mantras, in legal ethics as much as anywhere.

Since this study generally asserts that clinical experience, and perhaps the study of ethics, could be improving ethical consciousness (and even more so among women), the academy does have some parochial empirical information on which to build further moral accountability into the LLB. The parameters of such accountability could usefully be explored in further targeted research. The cases of lawyer failure described early in this article surely mandate a decision by the Council of Australian Law Deans to endorse such research.

There are, however, reasons to be anxious about the depth and strength of the professionalism that Australian law schools are capable of nurturing in their LLB students. Pressure to teach an amorphous ‘liberal arts replacement’ degree, rather than a pre-admission qualification (to which only half the graduates may be committed), is exacerbating to the point that the graduate law degree may be a more productive environment in which to try to encourage growth in values and to impart professional ethics with more longevity than appears to be now occurring.

What is also disconcerting in this study, however, is the dilution of any positive effect of clinical or ethics education as students’ transition to the workplace and time take their toll. Who will take responsibility for counteracting the morality of the market — a market which has spectacularly failed in recent cases — with the morality of service, responsibility and integrity? Whether before or after admission to practice, there are no obvious contenders for the role except for the law schools and law societies. We think there is enough indication in the findings of this study that their methods, before and after admission, ought to involve clinical experience and development of values awareness among new lawyers.

Appendix 1: Scenarios Used to Elicit Ethical Responses

Scenario 1: Pro bono
You are a new solicitor working in a large commercial law firm. A voluntary public-interest organisation approaches you to work on a prominent test case about women who kill in self-defence. Your interest in this area is well known. The work would be pro bono and very high profile for you personally, but of little interest to your firm. The matter requires a lot of time and work. Your senior partner, however, wants you to increase your billable hours for the firm. The firm does not usually do any pro bono work, but there is no actual policy against it. Your time is currently so limited that you could only realistically do one or the other. Would you agree to work on the public-interest case?

Scenario 2: Personal over corporation
You are a junior associate of a small commercial law firm with a niche reputation in the area of privatisation tendering processes. Your firm has tentatively been approached by a significant corporation to help draft its tender submission for a privatised public transport contract. Your firm would almost
certainly gain an enormous amount of new work from this corporation if you were to take them on as a new client. At the same time, you become aware that a close friend, who has not previously been a client, is about to request and will expect your help with their tender for the same government contract. You owe a great deal to this friend at a personal level. However, in your opinion the potential new corporate client is more likely to be successful in their tender due to size and experience. The work this corporation would generate far outweighs that of your old friend. The choice is yours alone in this case, as you have been head hunted by the firm to take responsibility for developing this area of the practice. Thus, in this situation, it is of no assistance to decide solely on the basis of first come first served. Would you act for the corporation and therefore detrimentally affect the relationship with your old friend?

Scenario 3: Reporting trust account deficiency

You are a partner in the firm of AMBD. Your nephew (the son of your elder sister) is an associate in the firm. You discover your nephew has a minor gambling problem and has taken money from the firm’s trust account to cover his debts. Fortunately, you discover the problem in its very early stages. Your nephew is now undergoing counselling for his gambling addiction and appears to be recovering. The amount missing from the trust account is relatively small and you are certain it could be reimbursed without attracting any attention. Would you report the matter to the local law society?

Scenario 4: Insider trading

Despite long hours and a great deal of work, you have been struggling for some months to make ends meet in your first couple of years as an employee lawyer. You have a HECS debt that you would like to clear and a close friend with whom you are very keen to move in and set up a home. A corporate client of your firm, for whom you have done some useful work, takes the partner responsible, yourself and others in your section to lunch to celebrate (confidentially) the award of a tender. You know that the client is grateful and wants to recognise your collective contributions to this particular success. The client CEO says as much and, in addition to the usual hints about more work, speculates off-handedly that the price of the company’s shares is likely to reflect the win once it is all announced. Would you purchase shares in the company before the public announcement of the tender success?

Scenario 5: Work vs family

You are a junior solicitor working for a large city firm. The long working hours are causing a lot of pressure at home with your partner and your young children. This issue has been the topic of many recent conversations at home. The firm’s managing practitioner asks you to show commitment on a file. This would involve even longer hours than usual, with many late nights for at least the next month. The managing practitioner has intimated that if you perform well in this task, it could lead to a promotion. Working longer hours would cause a serious
argument at home and be highly detrimental to your relationship with your family. Would you take on the extra hours?

**Scenario 6: Friendship challenged**

You are a sole practitioner specialising in family law. A client approaches you to handle his divorce. You and your spouse have been good friends of this person and you also know his wife and children reasonably well. While drafting the property settlement, you suspect your friend has not declared all his assets. The settlement would leave his wife and children with little security and they would probably experience some financial hardship. Your friend says that his list of assets is complete. You are not convinced but you cannot realistically get more information. Would you continue to represent your friend?

**Scenario 7: Concealing criminal activity**

You are a deputy public prosecutor who has concentrated on drug trafficking cases. You have argued to many juries that every case of drug dealing harms society and must be reported and dealt with by the police. You discover that your daughter has been selling cannabis to other students at her school. Your partner implores you not to report the matter, and threatens to end your relationship (already strained by overwork) if you do. Would you report the matter to the police?

**Scenario 8: Rounding up hours**

While on a summer clerkship with a large and well-respected commercial firm, you are (naturally) concerned to make a good impression. It is your second-last year of law school and you are desperate for Articles. The partner supervising you decides to give you some of her files to get ready for ‘costing’. She asks you to total the number of hours which she has spent on each file and, from her harried expression, it is pretty clear that she is concerned to charge out a significant amount on each file. She asks you to ‘round up’ her hours to the next hundred in each file, saying that, on average, clients are happy because the main thing they demand is quality work. You know that these clients are entirely satisfied with the firm and that your supervisor is not about to debate the issue with you. Would you round up the hours as requested?

**Scenario 9: Proposals to political party donors**

As a young and aware lawyer, you have for some years been anxious that the major political parties are unaware of or too nervous about the seriousness of global warming. You are in consequence very frustrated and personally despondent about your future and Australia’s future, to the point of a willingness to promote political change in any way possible.

As a pro bono contributor to the Greens’ election effort, you are asked to assist its local candidate by raising campaign funds from progressive law firms, barristers and old friends from law school. You know that significant funding is essential if the party is to have any chance in the likely ‘balance of power’
environment (with the Democrats in the centre, One Nation on the right and numerous independents, all seeking office).

You expect a major re-alignment of government policies if the Greens secure the balance of power. Your preferred approach, already quite successful, is to verbally represent to potential donors that you will ‘put in a good word’ for them when it comes to contracts and consultancies, in the event that the Greens are successful. You are receiving highly appreciative feedback from the candidate about the money already raised.

You fully intend to act on your promise to donors should the Greens achieve this balance, but you know that the party is very ‘pure’ and virtually certain to consider itself uncommitted to any corporate benefactor. Would you make the proposed representation to potential donors?

Scenario 10: Refer colleague for counselling
You and your best friend founded a practice together 10 years ago. The practice has been moderately successful. Your friend (and partner) has just been through a complex and bitter divorce. Since he has been separated from his family his only interest is work. You have begun to notice personality changes which lead you to question his mental stability. His advice in some matters has become legally questionable and may be in breach of professional standards. He has rejected any suggestion of needing a break or some professional treatment. Would you ask the local law society or regulator to arrange to counsel him?

Scenario 11: Client confidentiality
You are acting for a mother of three small children in a divorce and intervention order matter. Your client has previously shown you some old photographs of bruises and marks on the children which she claims were inflicted not by their father, but by her new boyfriend. One of the children now has blurred vision. Your client now instructs you to stop all legal proceedings as she intends to return to the children’s father with her children. You believe the children will be at risk if this happens but you know ‘mandatory reporting’ does not apply to lawyers in your state. Would you break client confidentiality and inform the relevant welfare department of your fears?

References

Secondary Sources


New South Wales Special Commission of Inquiry into the Medical Research and Compensation Foundation (2004), Report.


'Race for That Dream Job Gets Tougher', Age, 9 November, p 5.


Milton Rokeach (1979) 'Some Unresolved Issues in Theories of Beliefs, Attitudes and Values' 27 Nebraska Symposium of Motivation 261.


Case

Prince Jefri Bolkiah v KPMG (a firm) [1999] 2 WLR 215.

Legislation

Legal Practice Act 1966 (Vic).

Legal profession Act 2004 (Vic).