

Ethics in the legal profession assignment

[Art & Culture](#)



**ASSIGN
BUSTER**

1. 0 ETHICS IN THE LEGAL PROFESSION 1. 1 Ethics 1. 11 What is Ethics?

Ethics, also known as moral philosophy, is a branch of philosophy that addresses questions about morality??? that is, concepts such as good and evil, right and wrong, virtue and vice, justice and crime, etc. 1. 11 Why is Ethics important? Ethics is a requirement for human life. It is our means of deciding a course of action. Without it, our actions would be random and aimless. There would be no way to work towards a goal because there would be no way to pick between a limitless numbers of goals.

Even with an ethical standard, we may be unable to pursue our goals with the possibility of success. To the degree which a rational ethical standard is taken, we are able to correctly organize our goals and actions to accomplish our most important values. Any flaw in our ethics will reduce our ability to be successful in our endeavors. 1. 12 What are the key elements of a proper Ethics? A proper foundation of ethics requires a standard of value to which all goals and actions can be compared to. This standard is our own lives, and the happiness which makes them livable.

This is our ultimate standard of value, the goal in which an ethical man must always aim. It is arrived at by an examination of man's nature, and recognizing his peculiar needs. A system of ethics must further consist of not only emergency situations, but the day to day choices we make constantly. It must include our relations to others, and recognize their importance not only to our physical survival, but to our well-being and happiness. It must recognize that our lives are an end in themselves, and that sacrifice is not only not necessary, but destructive. 1. 2 Morality and Ethics 1. 21 Morals

Morals have a greater social element to values and tend to have a very broad acceptance. Morals are far more about good and bad than other values. We thus judge others more strongly on morals than values. A person can be described as immoral, yet there is no word for them not following values. We can picture morality versus value in Hindu lifestyle. Wearing belly-revealing clothes in Hindu culture is normal as it is one their values but in Islam, not covering up is considered as immoral as the act of not covering up could arouse the men's desire which could promote sexual activities such as harassment or rape. . 22 Ethics You can have professional ethics, but you seldom hear about professional morals. Ethics tend to be codified into a formal system or set of rules which are explicitly adopted by a group of people. Thus you have medical ethics. Ethics are thus internally defined and adopted, whilst morals tend to be externally imposed on other people. Thus, we have legal ethics. The rules of conduct in legal ethics only govern the law practitioners, such as the lawyers and judges.

If you accuse someone of being unethical such as delegating a lawyer's job to his clerk, it is equivalent of calling them unprofessional and may well be taken as a significant insult and perceived more personally than if you called them immoral (which of course they may also not like). Understand the differences between the morals and ethics of the other person. If there is conflict between these, then they probably have it hidden from themselves and you may carefully use these as a lever. Beware of transgressing the other person's morals, as this is particularly how they will judge you.

Talking about professional ethics puts you on a high moral platform and encourages the other person to either join you or look up to you. 1. 3 What
<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

amounts to being unethical in the legal profession? Willful blindness is something that good lawyers know is unethical and bad lawyering. Normally, after graduating, law students would pursue chambering. After chambering, they would be called to the bar. Assuming you have all passed your tests, you would probably say, “ Ahhh.. at last, no more tests”. But let me tell you something. It’s only the beginning of tests and tests and more tests.

One question you need to ask yourself is this; when you are called to the Bar, with the robing and all that, it’s all nice and lovely, you have your parties, your family and friends will all be there all there. You ought to ask yourself this question: What role do I have in the administration of Justice in this country? When you get a Practicing Certificate, do you have a role, or is the Practicing Certificate merely a license for you to go out and make money. Well, is this what you are going to be or are you going to be a member of the society of this country involved in the administration of Justice?

This is the question you have to ask yourself. Because once you have looked at yourself and asked; where do I go from here? That will determine your career path. Are you able to fully be faithful to what you have been taught? Are you going to have integrity in your practice? Are you going to keep to the Ethics? Here are some things to ponder. After being called to the bar, some of be offered jobs while some may not. The following are the categories for those who are going into practice ??? especially in the big cities like Kuala Lumpur and the bigger towns.

There are integrated firms that do both banking and corporate, i. e. non-litigation work and the litigation firms, or you might join smaller firms that

specialize purely in litigation or conveyancing. Let's deal with the non-litigation matters first. 1. 31 Non-Litigation Matters Here then comes your first test. The Solicitors' Remuneration Order (SRO) that is the hot topic these days, " Can you give discounts? " You don't know about others, but clients will tell you that the other guy is doing it, don't you know? And there are ingenious ways of doing it.

If you are with the smaller firms, you say, fine, we charge, issue a bill for full fees, give him his 25% discount by way of cash cheque or cash and no one will know. But, let me warn you. There is a very efficient Secretary of the Bar. Before long, you will get a letter asking you for the details of the last two months' billings for all conveyancing transactions. And let me tell you, they can get very detailed. What's more you will have to affirm a Statutory Declaration. So, if you have been giving discounts, although they may be undetected, are you going to swear a false declaration? You have to ask yourself that. That's your first test.

Now the issue of the SRO, as it is called, has eclipsed the other problems for the non-litigation lawyers. There have always been this problem of " ambulance-chasing" and contingency fees. At certain times over the past 45 years, these were hot topics. Lawyers have standing arrangements with casualty ward attendants in hospitals and with policemen who come to follow up and investigate accidents. These touts will bring work to lawyers, and these lawyers charge 20%, 30%, or 40% or whatever, and share the spoils with these people. That will be your second test. Even today, I bet you, if you set up practice, you will be approached by touts.

Are you going to say yes or no to them? This is only the second test, so there are lots and lots of tests facing you. For those of you who will choose to be doing conveyancing, you may be fortunate of getting many cases and may do up to 35 files a month (averaging 1? file a day) and on top of that you will have to attend Court and do mention cases. So figuring that by the time you are back in the office in two hours, not including the half-hour 'chit chat' in the coffee shop after the mentions, the next question is whether you would meet each of the 35 clients, of the 35 files every month?

Most of the lawyers nowadays would delegate their works to their conveyancing clerk. So when you come back from Court, there will be a stack of files and all you need to do is only to attest the signatures of borrowers whom she has never met or seen! These are the pressures on us in practice. Now, if we can't pass the smaller tests, then when the big one comes, how are we going to pass it? These are the realities when you apply for a job. These are the things you'll be asked to do. So are you going to do them? Another incident on non-litigation matters involve the Housing Developers Association (HDA) agreements.

We do have a problem because the majority of developers have somehow established this practice of appointing lawyers, who queue up for this sort of work, on to the panel for the purchasers. It seems a little strange, since the Legal Profession Act says that you cannot act for a developer and also act for the purchaser unless you strictly observe certain rules. So, you have a panel of lawyers, appointed by the developer to act for the purchasers. If you were given an offer by a developer friend who thought he was doing you a favour. He appointed you to act for the purchaser.

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

Where then would your loyalty lie? Would it be to the purchaser who was going to pay my fee? Say, in the course of the construction of the building, a certificate comes out from your architect stating that it is time to make a progress payment. You would ask the purchaser to check, say, whether the roof is completed. If not, don't pay. Your developer friend would surely be surprised. He would say, "Tiara, you can't do that to me!" There you are, there's a conflict here, isn't there. Or take the instance when the building is completed and it is hand-over time.

If you see a few cracks here and there, you may have to advise the purchaser not to accept it, but to insist on the repairs by the developer. You would even say "If you have to, sue him". Definitely you can't sue your friend. Therefore, you can't accept that invitation. This sort of test is difficult. This is especially so if you are on your own or in partnership. Cash though is important, if you are getting your salary, you won't bother too much. For this particular thing, if you do some mental arithmetic, you will realize the figure represented a half year's cash flow for your firm".

But once you start thinking like that, you will find ways to justify how you can accept an invitation which you ought not to accept. So that's the final test for those of you who are thinking of non-litigation work. 1. 32 Litigation matters Litigation ??? it is tough these days. We then had good Judges, though I'm not saying we don't have good Judges today. They were much considerate in subjecting contempt of court to a lawyer despite being lacking in manner due to inexperience. Today, the advocacy in Court is quite different. If any one of you were to say something that is normal but not to the judge liking, BANG!

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

The next thing is, “ Contempt of Court”. Now, this is changing, and I’m glad that throughout this period, we were still fighting it. We have a strong Bar. Here we go back to the first question posed: Do you have a role to play, or are you merely getting a licence to make money? You have a role to play. You must support the Bar. The Bar is the only institution left in this country, fighting for Justice. We are working together, the Judiciary, the Bar, the Prosecutor’s office, no distinction. It’s not ‘ them’ and ‘ us’, we are one.

Members of the Bar are eligible to become Judges, unfortunately some of our members of the Bar, once they become Judges, the first thing they do is whack their former members of the Bar for Contempt. It is unfortunate. But if you look at it seriously, the role of the Bar is indispensable in this country, and thank God, we still have that. Those who want to go into practice, doing litigation will have to cope with more serious problems than those who are not doing litigation. Firstly, you have the Judiciary to deal with, then you have postponements after postponements and you get blamed for it.

You have to ask yourself now and again. Are members of the Bar also guilty of contributing to delays? Some of them are, some are not. While doing litigation, we will have problems with other members of the Bar who would ring you up and ask for an adjournment for invalid reasons such as still feeling hangover for partying up all night. You should not ask for an adjournment unless you’ve got a valid reason. Not because you have messed up your diary. Serves you right if you’ve messed it up. Get someone else in your firm to do it or give it to somebody else.

You have a duty, not only to your client, but to the Courts. You are a partner in the administration of justice. So, bear this in mind, don't ask for an adjournment just because you may have a date tomorrow or because you've been drinking too much the night before and, you don't feel up to it. That's not right. You must take Court cases seriously. We cannot point fingers at the Judiciary, if we are irresponsible in obtaining postponements, and say, "Hey, these are the fellows postponing our cases all the time, because Judges have to attend functions, because the Sultan called for them to attend some ceremony. That's very irresponsible for a Judge or Magistrate, to adjourn a hearing because a Sultan has invited him to attend some ceremony in the Istana. He is not beholden to the Sultan, he is beholden to the administration of Justice, and a case has been fixed. It must be heard on that day. Just think of the poor accused, especially criminal cases and especially one on remand, not on bail. He's been waiting for his trial and it's held up and adjourned again. So these are the problems we face. Then, your contribution to society! Will you take part in legal aid?

Thank God, the Bar Council has done this. For those who are doing criminal work to accept assigned cases. Assigned cases are for those who can't afford a counsel. So you are paid 100 or 500 dollars for a brief, whereas, if the accused had money, he probably would be paying 500, 000. He gets the best lawyer. But because this chap hasn't got the funds, he gets an assigned counsel who is paid 500 dollars. And all the good lawyers, the busy ones, the successful ones, find it impossible to accept. So, again, where is the level playing field? These are the tests you will all have to go through.

On your part, in dealing with each other, first, don't ask for adjournments unless you have a valid reason. And for the other guy, when you ask for a reason for the adjournment, and if the reason is a silly one, you should refuse it. You have a duty, not only to your client, but to the administration of Justice. It is your duty to the whole system, not to just play along with the 'You scratch my back, I scratch yours mentality'. If we do that the Bar Council will not be able to stand up to the AG's Chambers or to the Judiciary and say "Hey, you are fellows who keep delaying! , when our own members are doing the same thing. So, we must co-operate and remember, they are not the other side but on our side. Those doing criminal work, the prosecution, and the defense are on the same side. We are presenting the case to the Courts, using our skills for our respective clients, prosecution or the defense, and the Judge is independent to deal with Justice. Remember that. Now you have all these problems for you if you go into practice, it's not easy getting a job. There are lots of applicants. Now for those who are looking further afield, perhaps you might think: Let me go in-house.

Usually this happens after two or three years in practice, about the time after you've have experienced enough frustration, you may say: Ok, let me go 'in-house'. Here are other tests. You'll find that after two or three years in practice, in either litigation or non-litigation or a mixture of both, and you join, let's say a banking group as an "in-house" legal officer, you get a decent salary, slightly higher than what you get from outside, and then, comes the temptations. You'll find that your colleagues, your peers, some who have been your friends, are going to be even better friends than before.

Some who were nasty to you before will now be very nice to you. They will be hoping that you will pass them work. That's the little power you have there. Once you do "in-house" work. Here again is the test which relates to the ethics. Assuming you is in the position where you can recommend work. You have this fellow who sucks up to you, is really nice to you, takes you out for lunch, expensive outings and so on, but he's actually a dumb lawyer. You need a lawyer for a particular work and this other guy is really most suitable, but he hasn't been sucking up to you. Who are you to recommend? First test, if ou fail this first one, you're going to be in trouble. You get used to this someone being nice to you, taking you out to lunch, to dinner, overseas trip, then before long you'll be calculating commission. So you also have your tests, you also have your temptations. For those who want to join the Legal and Judicial Service. There you are, you have another opening for yourself. Join the Legal Service or the Judicial service. There is a career path. You have to do the right thing. Your test would be there. Prosecuting or defending, or whoever you are prosecuting, are you going to tow the line of your political masters, when you shouldn't be?

The test is going to be there again. So overall, you will be tested every day of your career. Whether you are going to practice in non-litigation work, litigation work, in-house or join the AG's Chambers. Let's go back to the fundamental question that has been asked earlier. Will you merely be licensed to practice and not be involved in what's happening around you? The answer was there right from day one when I started. We must participate in the administration of Justice. The Judiciary has gone through a difficult period. But the Bar has always been consistent.

The Bar has consistently remained independent and has defended the independence of the judiciary. We must continue to be independent. Of course we have had problems. Well, we're probably facing another suit again for holding this last Annual General Meeting without a quorum. Fine, these differences of views are part of the working of an independent Bar. These are, in a way, healthy. If you disagree with what the President says, challenge him. But what we must do is we must remain united, and not allow the Judiciary and the whole administration of Justice to be brought to a stage where there is no more strength left for us to fight. or 5 years before his death, Tun Suffian, whom we admire and love, said, out of desperation, after the sacking of Tun Salleh Abbas, " You know, we have reached a stage where, if I'm innocent and I'm charged in Court, I'll be very worried!. " That was, I think the bottom, the very bottom. But we must not despair. We must hold hope. We must have the courage to keep fighting. We can only do that if each one of us today asks ourselves this question, " Am I merely licensed to practice or am I going to support the administration of justice? When the Bar Council calls for another demonstration – let's say we're going to peacefully march protesting on some valid issue – will you join them? There are some firms where there's a directive, from the management to the young associates, it is that if you do that, you do that on your own time, not on billable hours. It is a shame. It should be left to the discretion of the associate, as to whether he or she would have the conviction to say, " I will support this cause, therefore, I'm going to march. If it's going to take up some of my time, I'll make up for it and come back at night and work".

If you can do that, fine, that is a decision you make. That decision, each of us must make for ourselves. So, don't shelter under the umbrella of the excuse that your employer would not be happy, you might get sacked. No. You have to make a decision. We all have to have our tests and if we fail the little ones, and the big one comes, we're not going to make it. Reflect a bit on your role. And when you go out to practice, whichever route you choose, just remember this, you have to make your own decision; do not let others make them for you.

2. 0 ROLES OF A LAWYER IN THE SOCIETY

Commonly knows that the advocates and solicitors play a big role in our societies. It is as part of our governing system that the advocate has their own place in the society. The essential function can be stated simply as to ensure that both sides of a dispute are heard, and that each side can be argued strongly, whatever the nature of the cause, and however popular or unpopular it might be, and without any comeback against the advocate. The advocates are cogs in the machinery of justice. The fundamental roles of an advocate are clearly laid down and remain unchanged, and they are not just historical but are soundly based.

First of all, the role of advocates in society is towards the client. The advocate, whether arguing forcibly or with quiet persuasion, has the strongest of duties to his client. As Lord Brougham, when defending Queen Caroline before the House of Lords, said: " An advocate by the sacred duty which he owes to his client knows in the discharge of that office but one person in the world — that client and none other. ... He must not regard the alarm, the suffering, the torment, the destruction which he may bring on any

other...” This is maybe understood as the indifference to the harm which is brought on others is sometimes criticized by the public.

People do not like to see victims of rape aggressively cross-examined to suggest that they gave consent or cross-examination of children in assault cases. The advocates then can easily be portrayed as callous. The modern Bar would unreservedly accept that these are distasteful parts of their duty, which they do not relish and which should be discharged without any greater forensic offensiveness than is absolutely necessary to the case. No unattractive questions should be asked or allegations made unless it is essential to put the cause across.

But, unpleasant as it can be, the duty in appropriate cases still remains a clear one. As the duty to serve the clients play a major role for the advocates in their field of work, this is must be fulfilled, as it is tempered by the advocate’s duty to the Court. As Lord Diplock said that the special characteristic of a barrister’s work upon which the greatest stress is laid is that he does owe a duty also to the Court. This is an over-riding duty which he must observe even though to do so in a particular case may appear to be contrary to the interests of his clients.

Then, to protect the rights and liabilities of the citizen, however appears to be the most basic role as being an advocate. These basic duties explain why it is so important that society should respect the independence of the advocate. This independence has been traditionally regarded throughout the common law as fundamental. It enables the advocate to resist all pressures in an unpopular cause, and to present the case without fear or favour.

Without this independence, there would be no effective rule of law and the basic duty of the advocate to protect the rights and liberties of the citizen could not be fulfilled.

This does not mean that the profession should be wholly free from controls. It is wholly appropriate, as is the case in many countries, for there to be some statutory framework which lays down the guidelines within which the profession ensures that there are adequate qualifications, rules of practice, and a disciplinary code. But within this framework, it is immensely important that the profession, and individual advocates, should be independent. Next, the essential roles for the existence of advocates are to uphold the human rights of people, and often these have to be upheld against the state.

To do this effectively, the profession must be as independent as possible of the state. This principle does not exist for the convenience of lawyers. It exists for the benefit of society as a whole, and needs to be widely emphasized by the profession and by government if the freedoms important to a democratic society are to be sustained. Besides, the role as advocates is that, they have considerable responsibilities as they permitted by society to conduct cases in court. Here, it is not just of normal responsibilities, but of the way in which they conduct their cases.

The advocates must do so in a way which commands the respect of the tribunals before whom they appear, the public whom they serve, and society which observes their work. The work that the advocates play is highly visible, and the way in which they do it is the ultimate safeguard of their profession. The important thing is that, as the advocates, they cannot expect society to

respect them, or value their work, unless their standards are high. In judging the role of advocates in society, the most important key, which must never be forgotten, is that the advocates are not the audience.

The advocates have throughout to be asking with the difficult question. This sensitivity as to the advocates to the tribunal requires flexibility. Often the most important aspect in a case which is tried by a judge alone is what is called the Socratic dialogue or, more prosaically, the questions from the tribunal and the answers of counsel. Here, in determine the role of advocates in societies, it must be emphasizes that, if the profession of advocate is dependent in part on the strength of the professional body, so it is also dependent on the strength of the judiciary.

The advocates are all know of the great importance to a case of the quality of a judge who hears the argument and decides it. They also know the confidence that they feed in seeking to argue a good point before a judge. In the advocate's societies, it is immensely important that they seek to secure a high standard of appointment to the Bench, and that as advocates, they seek to assist the court in its lonely and sometimes difficult duty of deciding what the right result of a case is.

It is also important that they should be able to have the confidence that judges are truly independent of government, secure in the holding of their office under the Constitution, and so able to decide cases fairly as between the citizen and the state. For it is important for the advocate to uphold the individual, then how much more crucial it is that the judge should see it as a

sacred duty to do so. Furthermore, there is one other aspect of the role of the advocate, and indeed of the judiciary. This is judicial review.

Generally, the advocates are all aware that the important and integral task of them is of the extent to which the promotion of human rights. One of the great developments of the last 30 years has been the extent to which the courts have been vigilant to protect the citizen against the state through judicial review. They have insisted that the state acted within the powers conferred upon it by legislation, and that wherever appropriate procedures of natural justice or basic fairness were followed, and that decisions should not be manifestly perverse or unreasonable.

The late Lord Diplock described judicial review as the greatest development of the law in his lifetime. It is important that it should not be whittled away, and that courts should be vigilant to ensure that government is acting within the scope of its powers. There are obviously sensitive areas, such as national security, where the power of the court to intervene is necessarily more limited than in other cases. But even here, the courts have a clear duty to be vigilant.

However much the executive may be the judge of the needs of national security, it is important that the courts should be satisfied that powers have bona fide been exercised for genuine purposes of national security. The power of detention without trial is one which, in a civilized system of law, is an exception to all our normal fair procedures. Whilst the role of the courts may be limited, it is important that they are prepared where appropriate to discharge it vigorously to ensure that there is no abuse of power. The

decision in *Liversidge v Anderson* was an abdication of the judicial role and it was rightly set aside in England years ago.

In this area, just as in upholding the freedom of speech of the advocate and the profession as a whole, the task of the judge in society is of the greatest importance. This in turn means that it is for the advocate not only to argue the point firmly and clearly, but individually and as part of the profession to uphold the independence of the judiciary. The advocates are there to uphold justice, and to represent their client as their major role in societies. Any case for a client in court is a matter of acute anxiety, uncertainty and often anguish. The advocates need their skill, common sense, courage, tact and articulacy.

They were in a very real sense, a champion who stood alone for their clients in answer to a most important challenge. From the perspective of those who engage in this service, they will know just how important is the work the advocates do for their clients. It is demanding, it may be very exhausting, and sometimes they have their failures. If they strain every sinew to perform to the best of their ability, it is all immensely worthwhile. Not least is this because by doing so, the advocates help to keep the flame of freedom alive. And that's makes the role of advocates in our society can be proud of.

And also in order to exercise their duties, they must follow the legal ethics which were provided for them in managing their business in better ways. So that, as to act accordingly with the roles provided by law to the lawyers, the starting point of action be brought by the lawyers are commonly setting up their legal own firm or some may works under the supervision of the senior

lawyers. But as to the topic, the main focus is to the setting up of the legal firm and how the management of the legal firm takes place. 3. 0 LAW FIRM AND THE TYPES A law firm is a business entity formed by one or more lawyers to engage in the practice of law.

The primary service rendered by a law firm is to advise clients (individuals or corporations) about their legal rights and responsibilities, and to represent clients in civil or criminal cases, business transactions, and other matters in which legal advice and other assistance are sought. Law firms are organized in a variety of ways, depending on the jurisdiction in which the firm practices. Common arrangements include: 1. Sole proprietorship, in which the attorney is the law firm and is responsible for all profit, loss and liability. 2. General partnership, in which all of the attorneys in the firm equally share ownership and liability. . Professional corporations, which issue stock to the attorneys in a fashion similar to that of a business corporation. 4. Limited liability Company, in which the attorney-owners are called “ members” but are not directly liable to third party creditors of the law firm. 5. Professional association, which operates similarly to a professional corporation or a limited liability company. 6. Limited liability partnership (LLP), in which the attorney-owners are partners with one another, but no partner neither is liable to any creditor of the law firm nor is any partner liable for any negligence on the part of any other partner.

The LLP is taxed as a partnership while enjoying the liability protection of a corporation. Among all of these law firms,, the general law firm practiced in Malaysia is General Partnership which governs under Legal Professional Act 1976. 4. 0 LAW AND ETHICS IN THE CONTEXT OF GLOBAL BUSINESS TREND <https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

Global business issues reveal a growing gap between the Southeast Asian business developments and Business Law, and more importantly, between Business Law and ethics. There are consequently, not only legal lacunae, but also laws that are either not implemented or broken with impunity.

It also shows a noticeable amount of legal firms misconducts in managing the firm and performing their job especially in the ethical issues.

Consequently, there are growing dependence on ethical rules and codes of behavior to regulate global business. The question of whether the lack of moral persuasion in morally neutral laws is the reason for this, must be raised for consideration. This necessarily leads to the jurisprudential question of the meaning and nature of law and its relationship with ethics.

The major theories of western jurisprudence, particularly, Anglo-American, i. e. Natural Law, Legal Positivism, Legal Realism, and also Islamic Law have to be re-examined and discussed. The post World-War II European Positivist-Natural Law debate on whether law is morally neutral was not an exhaustive debate as it failed to include the theories of Legal Realism and Islamic Law. The debate must be revived to include these legal theories in the context of Southeast Asian negative global business trends.

New insights to the nature of law must be found to overcome the present impotency of the law to respond to the ethical dimensions of global business issues. Therefore, it is not only necessary to recognize the long overdue need for jurisprudence to be an ‘ applied science’ of law, but also the need for a concerted effort by Southeast Asia’s legal jurists, judges, academicians, policy-makers, and legislators, to replace piecemeal development of law to

reflect the past ethos of the Asian people and their region, before global capitalism brought with it Godless materialism as the predominant human value. . 1 Law and Ethics To seek reliance on the ethics from the legal perspective, first we need to know what ethics is generally and legally. Generally, ethics can be defined as the discipline dealing with what is good and bad with moral duty and obligation. It also can be seen as a set of moral principles or the principles of conduct governing an individual or a group. Legally, it is the branch of philosophy that defines what is good for the individual and for society and establishes the nature of obligations, or duties, that people owe themselves and one another.

In modern society, ethics define how individuals, professionals, and corporations choose to interact with one another. 4. 2 Ethics from Naturalist View The word ethics is derived from the Greek word ethos, which means “ character,” and from the Latin word mores, which means “ customs. ” A naturalist, Aristotle was one of the first great philosophers to study ethics. To him, ethics was more than a moral, religious, or legal concept. He believed that the most important element in ethical behavior is knowledge that actions are accomplished for the betterment of the common good.

He asked whether actions performed by individuals or groups are good both for an individual or a group and for society. To determine what is ethically good for the individual and for society, Aristotle said, it is necessary to possess three virtues of practical wisdom: temperance, courage, and justice.

4. 3 Ethics from Positivist View The moral articulation of legal ethics as positive law, in the form of governmentally approved ethical rules, makes legal ethics vulnerable to positivist jurisprudence.

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

This vulnerability unnecessarily constrains the moral content of legal ethics. A positivist approach to existing ethical codes could drive both lawyers and their disciplinary institutions to needlessly characterize some morally-motivated conduct not expressly permitted by them, as impermissible ethical disobedience. This positivist approach may, at the same time seriously undermine the justification for engaging in such so-called disobedience. “ Ethical disobedience” can be defined as morally desirable action taken in apparent violation of the governing rules or conduct.

Ethical disobedience must be distinguished from “ ethical misconduct”, which is caused by negligence, by ignorance of the rules and their application, or for venial reasons. 4. 4 Types of Ethics From the Western jurisprudence perspective, ethics have been divided into two main categories namely teleological and deontological. Teleological or consequentialist approaches to ethics emphasize the consequences or results of an action or decision. Whether actions are right or wrong depends on whether harm or good results from the action.

Teleological theories, including utilitarianism, egoism, and care, claim that acts do not have intrinsic value but should be judged on the basis of the consequences they produce and on how they affect others. Utilitarianism, as a teleological approach, takes a societal perspective on costs and benefits of ethical choice, suggesting that an action should be evaluated according to how much good or harm it causes and should consider the effects on all parties.

Utilitarianism is meant to promote the welfare of all persons by minimizing harm and maximizing benefits, that is, using the criterion of achieving the greatest good for the greatest number, thus taking precedence over concerns of duties, rights, or justice. Another type of the ethical conduct is deontological which symbolize an obligation or duty. Deontological ethics is also known as the categorical imperative, or nonconsequentialist approach.

It is often claims that certain actions in themselves are intrinsically good or bad or right or wrong, and are not to be judged by their results. Every person should act only on those principles that he or she would prescribe as universal laws, applied to everyone, assuming that what is right for one person is right for all persons. Rights, justice, truth-telling, and virtue ethics all are deontological forms of ethical reasoning.

4. 5 Ethics in Islamic Context
Within an Islamic context, the term most closely related to ethics in the Qur'an is khuluq.

The Qur'an also uses a whole array of terms to describe the concept of goodness: khayr (goodness), birr (righteousness), qist (equity), ' adl (equilibrium and justice), haqq (truth and right), ma'ruf (known and approved), and taqwa (piety). Pious actions are described as salihat and impious actions are described as sayyi'at.

4. 6 Solutions In Malaysia, The Bar Council endorses the view of the Minister that the education system and discipline at university level should be restructured to produce more ethical lawyers.

The Bar Council refers to the statements of Datuk Seri Dr Rais Yatim, Minister in the Prime Minister's Department, published in the newspapers on

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

30 June 2002 in relation to the 400 complaints against lawyers. The Bar Council endorses the view of the Minister that the education system and discipline at university level should be restructured to produce more ethical lawyers. Specifically, legal ethics should be viewed as a major subject, taught at the earliest available opportunity at university to provide students with a thorough grounding of the proper spirit in which lawyers should practice.

The subject of legal ethics, encompassing the areas of discipline, professional legal conduct and honesty is a crucial part of a lawyer's education, equal in its importance to substantive law subjects. Additionally, by the time students begin pupillage, they should already have a good grasp of what makes a good lawyer. This should include a knowledge of how to handle clients' money ethically and the manner in which they are to deal with other lawyers and the courts.

Such education should imbue a correct and broad mindset in students that should guide them, during their pupillage, as they begin to apply the legal knowledge they have acquired in theory to specific real-life cases. Another alternative to the above solution is that the lawyers should follow the concept of ethics founded by the western or Islamic philosophers to lead a proper practice of conducting legal business conduct. It is not only limited to a legal analysis but is also an exercise in determining what the lawyers ought morally to do.

Lawyers are subject to a strong prima facie moral obligation to comply with the body of law that regulates legal practice. Unlike private citizens, lawyers

in every jurisdiction have taken an oath of office, which is plausibly interpreted as containing a promise to obey at least that part of the law governing their actions as lawyers. That part of the law would definitely include their ethical conduct as lawyers.

5. 0 ETHICAL ORIENTATION OF CORPORATE GIFTS

Corporate gifts are items that can show the appreciation and concern of a business towards its clients and employees.

Items like customized pens, clocks and leather briefcases are some of the more popular choices. The type of corporate gift that a business will give to a particular client depends on the relationship the two entities have. There is always the question on whether corporate gifts should carry the company logo and other contact details. The general rule is that they should contain less information on the company. Since corporate gifts do not function like promotional items, then having the company logo and details is not required.

As mentioned earlier, the gifts are primarily to show the appreciation of the company to its stakeholders or clients. Corporate gift giving is also an opportunity to connect with the clients and strengthen the ties. Except for a member of a governing body or other civil service, there is likely nothing corrupt about the giving and receiving of corporate gifts. Giving and receiving gifts is generally forbidden amongst elected or public officials because they wish to avoid any dishonest activity. After all, corporations are well within their rights to do something nice for the people they work with, especially around the holidays.

Bribery is a very serious case where the accusation alone will tarnish the reputation of any company that it falls on. Corporations need not give up

hand-greasing niceties that serve to show appreciation for a job well done. In giving gifts, the person or company giving need to be aware of the size and scope of gift-giving as well as the circumstances under which gifts are passed to business partners. There are a few guidelines to keep in mind when giving corporate gifts that may help corporations to differentiate between what is acceptable and what will bring about legal action.

First, the party giving must check the corporate policies. Many companies and government offices will have a gift policy limiting the monetary value of a gift or prohibiting gifts. Be sure to check with the recipients to determine the limitations of gift giving so they don't have to return the item. However, if a company has no guidelines in place for such gifts, there are a few easy rules to be followed. Cash gifts are a big red flag. The fastest way for a corporation to catch the attention of authorities is to transfer money to another company, especially one that they are attempting to form a deal with.

Second, determine what the items suitable for giving as gifts are. Knowing what to buy a corporate client is the biggest challenge of business gift buying. It's difficult to know the clients on a personal level in many cases. The best bet is to call the customers and ask them what they like, their hobbies, etc. , to give you a great idea of what to buy. As mentioned earlier, monetary gifts are best to be avoided. Large financial gifts will almost always be considered a bribe. Another way to gain unwanted attention is to transfer money across international borders.

In fact, there is a need to check international laws before shipping anything to another country. Third, there is a need to aware of the cultural differences. Each country and culture will have their own rules for corporate gift buying. For instance, in China, a gift should never be wrapped in white since it symbolizes death. To prevent the receiving party misunderstood the intention of the gifts, a research should be done whether there is a cultural difference and if there is, what are the appropriate gifts and the manner in giving the gifts.

Therefore, most people have a good idea of what constitutes going too far when it comes to gift-giving. Common sense should be taken into consideration in giving corporate gifts and always alert of the laws and bribery legislation. Whether it is the giving or the receiving the gifts, a corporation should seek to its legal department to ensure that the gifts are legal according to the law. If those two essentials had been complete the corporation should be able to give gifts without having to worry about resulting investigations for corruption. Now we come up to the issue whether a lawyer can make a corporate gift.

There is no specific provision stating that lawyers are prohibited from giving corporate gift. A lawyer can either give or receive gift as long as no conflicts of interest arises. However, the gifts should be not likely to show any element of bribe or tout which will bring the profession into disrepute parallel with Rule 31 Legal Profession (Practice and Etiquette) Rules 1978. This rule states that lawyer shall uphold the dignity of the profession. It is important to distinguish a corporate gift with a promotional gift as lawyers are prohibited from promoting themselves.

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

Another issue that is likely to be discussed in the legal profession is whether a lawyer can accept gift from its client. Lawyer may accept gift from client subject to general standard of fairness and in the absence of undue influence. Nevertheless, a gift to a lawyer from a client is presumptively improper. To show that a gift to a lawyer is proper, the burden is on the lawyer to show there was no undue influence or undue advantage because of the relation. The attorney fully and faithfully discharges his duty to the client and the client was fully informed as to the nature and effect of the gift.

Gift can also be made if it is considerable in “ amount” or “ value” but these two term is opened to different interpretations. It is difficult to determine the considerable amount or value which is proper to be a gift to the lawyer. A case where a client gives a gift to the lawyer can be seen in *Radin v Opperman*. In this case, the court held that a transaction between the attorney and the client will be regarded with suspicion and that it will be presumptively void, subject to prove by the lawyer, usually to disinterested persons, that the transaction was fair and fully intended by the client.

If the client voluntarily offers to make a gifts to the lawyer, the lawyer should urge that his client secure disinterested advice from an independent, competent person who is aware of all the circumstances. Another case is in the *Matter of Whitelaw*. In this case, an attorney advice a widow to make several \$10000 gifts to various acquaintances and relatives to avoids adverse tax consequences. Subsequently, the attorney becomes aware that the widow had given gifts of \$10000 to both him and his wife. The attorney then file a petition for voluntary discipline and the Supreme Court suspended him for 6 months and ordered him to make restitution.

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

The court held that the punishment was because of the attorney's failure to notify his client of the potential conflict of interest. Here is an example of case where a lawyer used undue influence to the client. In the case of *Cuthberth v Heidiseick*, an attorney convinced and actually assisted his 8 years old client in transferring \$19975 worth amount of stock to him. The court held that the client did not possess the mental alertness and vigor of the lawyer and that she received no independent and disinterested advice regarding her transfer of stock.

Therefore, the gift is invalid even the client had endorsed the transfer. Based from all the examples of cases, we could see that a gift to the lawyer by his client is presumptively improper. However, lawyers can receive gifts from their client if it is made subject to general standard of fairness and in the absence of undue influence.

7. 0 ETHIC IN ETIQUETTE AND COMMUNICATION

6. 1 Difference between Ethic And Etiquette

" Ethic" has more to do with moral principles and " etiquette" with manners, although both govern the way people behave. The term is " work ethic".

Someone with a strong work ethic, for example, believes that he must work conscientiously at everything he does, and that means working hard, carefully and honestly. " Etiquette" is the accepted code of behaviour among people in a group or society. For example, it's considered?? bad etiquette?? for a student to be sending SMS messages via his handphone to his friends while a teacher is teaching in a classroom. But it is downright?? unethical?? for students to be SMSing answers to Multiple Choice Questions to one another during an examination.

6. 2 ETHIC IN ETIQUETTE AND COMMUNICATION

6. 1 Duties to the court

You must: a) Bring to the attention

<https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

of the court all relevant decisions and legislative provisions of which you are aware, whether or not their effect is favorable to your case; b) Assist the court in the fair administration of justice; c) Bring any procedural irregularity to the court's attention during the trial itself and not reserve such matter to be raised on appeal; d) Take all reasonable and practical steps to avoid unnecessary expense or waste the court's time; for example be punctual for your case and don't adopt delaying tactic when conduct the case.) Observe the rules relating to disclosure of documents/information. You must not: a) Deceive or knowingly or recklessly mislead the court. For example, if your client tells you that he or she has committed a similar offence in the past for which he or she was never caught, you cannot tell the court in mitigation that this was the only time your client has done such a thing.

Equally if , your client tells you he or she is guilty but insists on pleading not guilty, you may continue to represent him or her and make the prosecution prove their case against him – but the ways in which you can test the prosecution case against him or her will be limited. You can test and probe the view that the witness had of the alleged perpetrator exposing the fact that the lighting conditions were poor or the witness was quite far away from the scene, but you cannot assert that which you know to be false, eg. You cannot suggest to a witness that your client was elsewhere at the time; b) Misquote the evidence;) Make assertions of fraud without clear instructions to do so and without reasonably credible material which establishes a prima facie case of fraud; d) Manufacture or assist your client to manufacture a defence or other explanation for his or her conduct: e) Devise facts which will assist in advancing your lay client's case; f) Make statements or ask

questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person; g) Express your personal opinions, view or belief to the court unless invited by the court to do so; h) By assertion in a speech impugn a witness whom you have had the opportunity to cross-examine unless in cross-examination you have given the witness the opportunity to answer the allegation Overall what need to be emphasized in the duties of the court you must be honest, frank and candid in delivering your case without misleading the court even though the case is not in your favour. You are required to state your client's case as strongly as you can but within the parameters of the fact and the law. It is also prudent for you to cite relevant authorities to the court, even it is adverse to your case, but distinguish them if necessary.

6. 3 Conventions of etiquette These derive from custom, and can be divided into do's and don'ts. As a lawyer you must:

- a) Dress and robe appropriately; which it reflects confidence, respect and positive reflection of the organization you represent.
- b) Use the correct mode of address for the judge or tribunal. By virtue of Practice Direction No: 1 of 1985, Tan Sri Dato' Mohamed Salleh Abas, Lord President , Supreme Court, Malaysia, at the inaugural of the Supreme Court handed down the following practice direction on the mode designation of judges In trial or proceeding : – i. Ketua Hakim Negara as Yang Amat Arif ii. Hakim Besar Malaya as Yang Amat Arif iii. Hakim Besar Borneo as Yang Anmat Arif iv. Hakim Mahkamah Agung Dan Hakim Mahkamah Tinggi as Yang Arif v. Penolong Kanan Pendaftar as Tuan/Puan Pendaftar vi.

Hakim Mahkamah Sesyen as Tuan/Puan Hakim vii. Majistret as Tuan/Puan Majistret. c) Stand when the judge enters and leaves the courtroom. He or

she will normally bow before being seated and you should return the bow. You should also bow to the judge when leaving court and, if the judge is already in the courtroom, as you sit down; these acts reflect respect and courtesy towards the court. d) Sit down if your opponent rises to object. Only one advocate should be on their ' feet at the same time unless the judge is addressing you both; which indicates that you respect your opponent and by this the judge can focus on the argument by your opponent.) Show courtesy and respect to your opponent and the other personnel in the courtroom; f) Accept blame when you are at fault and apologise. On the other and you must not: a) Leave the judge unattended', that is where there is no other advocate present in the courtroom, wait' for a signal from the judge before leaving; b) Speak or shuffle papers while a witness is taking the oath; c) Comment on the evidence as it is being given; d) Make faces/sigh to show a jury your incredulity of an opponent's witness; , e) Show your emotions at a verdict or a judge's ruling; f) Continue to argue a point after the judge has heard the arguments and ruled upon it; the proper place for this is an appeal. 6. 4 Cross-cultural communication in the courtroom

It is not suggested that any advocate will intentionally cause offence to any party in the courtroom. However working in a multi-cultural society often requires sensitivity to the ways in which norms and customs may differ from one community to another. It is important to recognize the influence of your own cultural background on your unconscious perceptions and behaviors and to bear in mind that: a) No matter how well intentioned, use of racial and ethnic terms (such as colored, oriental or half caste) are liable to give offence; b) Cultural differences in body language can contribute to

misunderstanding and conflicts between members of ethnic minorities and, or example, police officers; c) On the other hand, stereotyped notions about the body language of particular cultures should be avoided; d) There may be differences in language – jargon, slang and metaphors – which may not be familiar to all witnesses/jury members and so on; e) Words may not have the same meaning in all cultures, for example, descriptions of family relationships (eg, uncle, cousin) and times of the day (afternoon and evening); f) Just because someone responds to questions in English in court, that does not mean that person necessarily understands fully what has been said; for example when a Chinese witness nods on the statement given in Malay, it does not mean that he is fully understood what is being communicated to him g) In some cultures, looking away rather than maintaining eye contact is not necessarily a sign of dishonesty or disrespect – it may be the opposite! Equally, raised voices do not necessarily equate with loss of control or aggression.

6.5 Preconceptions

A preconception is an opinion or idea which is conceived or framed prior to actual knowledge.

It is important to recognise your own preconceptions and how these may affect your judgment in your work as a barrister.

- i. Is a client more likely to be guilty because he or she is unemployed?
- ii. Do you believe what your client tells you more easily if he or she is well dressed, articulate, educated?
- iii. Do you listen easily to what a client has to say because he or she is inarticulate or poorly educated?
- iv. Does a fact that a client has a previous conviction for dishonesty mean that he or she is more likely to have committed a crime of violence?
- v. Do you believe your opponent is trustworthy because she is attractive and initially friendly?

your opponent is less competent than you because she looks younger than you? Or because she confides that she has not done a lot of this type of work before? vii. Do you believe your opponent is more competent than you because he looks older than you? viii. Do you let your opponent's bragging of her experience undermine your confidence so that you advise your client to compromise on less favourable terms? It is important to know your preconception of your client as they are likely to affect your judgment. By relying on premature assumptions or beliefs, the way you approach, prepare, and present the case, the way you communicate with your client your opponent, the court, the way you advise, negotiate or argue the case will be effected as you will be less able to communicate effectively with the client, you may lose the confidence of the client and your solicitor, you are likely to convey your opponent on the court by gesture and body language, your apathy towards your client. Therefore, you must recognize these preconceptions and learn to differentiate between assumptions and actual knowledge to avoid from prejudices a client, opponent or a tribunal.

CONCLUSION A relationship exists between law and ethics. In some instances, law and ethics overlap and what is perceived as unethical is also illegal. In other situations, they do not overlap. In some cases, what is perceived as unethical is still legal, and in others, what is illegal is perceived as ethical. A behavior may be perceived as ethical to one person or group but might not be perceived as ethical by another.

Further complicating this dichotomy of behavior, laws may have been legislated, effectively stating the government's position, and presumably the majority opinion, on the behavior. As a result, in today's diverse business

environment, one must consider that law and ethics are not necessarily the same thing. Aristotle said that deciding what is the best ethical course is not easy. Reasonable people will disagree on what is right. This article is intended to raise questions, not to provide answers. Many more issues of ethics in law for business could be considered. ————— [2]. <http://en.wikipedia.org/wiki/Ethics> [3]. http://www.importanceofphilosophy.com/Ethics_Main.html [4]. http://changingminds.org/explanations/values/values_morals_ethics.htm [5]. http://www.malaysianbar.org.my/legal_profession/ethics_in_the_legal_profession.html [6]. <http://lib.iium.edu.my/mom2/cm/content/view/view.jsp?key=veKld2eA4IjyA0jwaSTRZwgvkulo5P4F20051207150219593> [7]. Ibid [8]. Ibid [9]. <http://www.merriam-webster.com/dictionary/ethics> [10]. <http://legal-dictionary.thefreedictionary.com/Ethics,+Legal> [11]. 80 Iowa L. Rev. 901 (1994-95) Taking Ethics Seriously: Beyond Positivist Jurisprudence in Legal Ethics; Strassberg, Maura, p. 901 [12]. http://www.google.com.my/url?a=t&rct=j&q=teleological+ethics+in+western+jurisprudence+practice&source=web&cd=7&ved=0CEIQFjAG&url=http%3A%2F%2Fwww.ts.mu.edu%2Fcontent%2F42%2F42.4%2F42.4.4.pdf&ei=HKHsTo6DI4qrrAehgamICQ&usg=AFQjCNHPoq1e_2QK7VSeo0CSYP08fcHsFg&cad=rja [13]. Fakhry, Majid, *Ethical Theories in Islam*, Leiden: E. J. Brill, 1991, pp. 12-13. [14]. http://www.malaysianbar.org.my/press_statements/_misconduct_of_lawyers_.html [15]. Ibid. [16]. Ibid. [17]. <http://www.onediy.com/gifts/> [18]. <http://www.internationalvisioncollective.org/ethical-business/guidelines-for-corporate-gifting/> [19]. <http://www.gentlemenvip.com/home/?p=558> [20]. <https://assignbuster.com/ethics-in-the-legal-profession-assignment/>

[http://sbinformation. about. om/od/sales/a/corporategifts. htm](http://sbinformation.about.com/od/sales/a/corporategifts.htm) [21].

[http://sbinformation. about. com/od/sales/a/corporategifts. htm](http://sbinformation.about.com/od/sales/a/corporategifts.htm) [22].

[http://sbinformation. about. com/od/sales/a/corporategifts. htm](http://sbinformation.about.com/od/sales/a/corporategifts.htm) [23].

[http://government. lawyers. com/Giving-or-Receiving-Gifts-May-Get-You-Into-Trouble. html](http://government.lawyers.com/Giving-or-Receiving-Gifts-May-Get-You-Into-Trouble.html) [24].

Rule 31 Legal Profession (Practice and Etiquette) Rules 1978 [25].

[https://litigationessentials. lexisnexis. com/webcd/app? action= DocumentDisplay&crawlid= 1&srctype= smi&srcid= 3B15&doctype= cite&docid= 24+J. +Legal+Prof. +445&key=](https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=24+J.+Legal+Prof.+445&key=d5dd766d3f60e307e02807d367a8f241)

[d5dd766d3f60e307e02807d367a8f241](https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=24+J.+Legal+Prof.+445&key=d5dd766d3f60e307e02807d367a8f241) [26].

407 N. Y. S. 2d 303 (N. Y. App. Div. 1978). [27].

492 S. E. 2d at 236(Ga. 1997). [28].

364 S. W. 2d 583 (Mo. 1963).