

An analysis of the evolution of ethics in legal education

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1 Introduction

Ethics has always been a point of contention in the legal profession as it is integral to how the profession operates and is often where the profession can be placed into a negative light. As a democratic country which is based on the rule of law, ethical enforcement is imperative.¹ There is much to consider when reflecting on the legal practitioner's role in society but the purpose of requiring a lawyer to be a moral and ethical individual is due to the fact that they are required to enforce the law. If the legal practitioner lacks respect for the law, it would be difficult for the legal practitioner to form part of the enforcement of the law. It is also important that the value the legal practitioner brings to society is one of upholding a good ethical compass. However, ethical legal practitioners do not start with being ethical legal practitioners but rather ethical legal students.

Once a law student has completed their Bachelor of Laws ('LLB') they are then eligible to apply for their articles of clerkship. The clerkship allows the law student to work under the supervision of an established legal practitioner as their principal.

Many law teachers and faculties throughout the world attempt to teach the law student about being an ethical individual. However, it is imperative to understand what ethics is in the context of legal education in order to dissect the evolution of ethics. For the purpose of this chapter, Garner's definition of legal ethics will be utilised, that is "*The minimum*

¹ M Robertson & H Kruuse 'Legal ethics education in South Africa: possibilities, challenges and opportunities' (2016) *South African Journal on Human Rights* 345.

*standards of appropriate conduct within the legal profession, involving the duties that its members owe one another, their clients and the courts ... [t]he written regulations governing those duties.”*²

The public views a lawyer as someone who is noble³ and who can lead through good, moral decision making. While morality is different from ethics, it is for the most part understood to be similar in the eyes of the public. Legal ethics is simply an extension of ethics as whole. Ethics is an indication of one’s morality and therefore one who lacks morality lacks ethics.⁴

The above sets the tone for the reason of this chapter’s focus being that of ethics in legal education. This chapter considers what role does contemporary ethical challenges (such as technology, diversity and globalisation) play in shaping legal education today? As well as how do teaching methods and assessments of legal ethics impact the development of ethical behaviour among law students?

Law faculties hold the responsibility of creating successful and ethical legal professionals and the way this is done should be through continuous rigorous reminders of what is expected of the legal practitioner and the profession as a whole.⁵ While the years a candidate legal practitioner spends under their articles of clerkship is invaluable to the legal profession, the candidate legal practitioner principal cannot be expected to teach legal ethics to the postgraduate. The morality should already be engrained into who the candidate legal practitioner is. The candidate’s principal is merely showing them the practical real-life experience of being a legal practitioner.

This chapter considers what ethics is for the purpose and impact on legal education and then briefly explore the origin of the fit and proper requirements, if there have been any changes to it over the years and then focuses on where the author has identified areas that may require possible revision and consideration of adapting to contemporary ethical issues such as the impact of the introduction of Generative-Artificial Intelligence (‘Gen-AI’) on the legal practitioner. While gender inequality

2 BA Garner (ed) *Black’s Law Dictionary* 8th ed.

3 M Slabbert ‘The requirement of being a “fit and proper” person for the legal profession (2011) *Potchefstroom Electronic Legal Journal* 20114.

4 CH Van Zyl IV & J Visser ‘Legal ethics, rules of conduct and the moral compass - considerations from a law student’s perspective’ (2016) *PER / PELJ* 2016(19).

5 Van Zyl IV & Visser (n 4).

is a relevant contemporary ethical issue it will not be the focus of this chapter.

This chapter also reflects on the inherent moral compass of an individual which is intrinsic to an individual and whether someone is moral or not comes back to who they are. However, a good moral compass can be cultivated. Furthermore, what can be taught is how one responds to certain situations. It is easy to identify that a legal practitioner who is willing to lie and cheat for their client lacks a good moral compass and in turn when provided with an opportunity, will lie and cheat for their own benefit. A moral compass requires a moral perspective.⁶

2 Significance of legal ethics in the profession

On a daily basis legal practitioners are required to make difficult decisions and often the decisions are related to what is the morally correct thing to do.⁷ For example, having evidence which would ensure a positive outcome for their client but knowing the evidence was obtained in a questionable way, the legal practitioner in this case must prioritise the moral impact on society and not just the outcome for their client. This is a lot easier said than done. Legal practitioners must encompass the traits of a person with integrity, reliability, and honesty but these are not personality traits that can be taught from an educational perspective.⁸

Often South Africa's protective Constitution is well-regarded as being "citizen centric" ensuring the separation of powers doctrine is entrenched into South African legislation and practice as is the rule of law. However, this means very little if those who are enforcing the rule of law fail to have a real understanding, respect or regard for it.

Ethics in the legal profession is invaluable as legal professionals are expected to lead society with their ethical compass and be able to carry out the instructions and interests of their clients in a way that is beneficial to the greater society at large.⁹ Legal practitioners are tested on a daily basis¹⁰ as to what is the most ethical response to a situation and most of the time there is no one correct answer.

6 Van Zyl IV & Visser (n 4).

7 Van Zyl IV & Visser (n 4).

8 Van Zyl IV & Visser (n 4).

9 Robertson & Kruuse (n 1).

10 Van Zyl IV & Visser (n 4).

The ethical integrity of the legal practitioner should be impenetrable as noted in *Vassen v Law Society of the Cape of Good Hope*,¹¹ by Acting Judge Eksteen that society “...must be able to rest assured that the attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly.”¹² This is confirmation that there is an expectation on the legal practitioner to be exemplary as an example of an ethical individual to ensure that the public can seamlessly trust that when they are receiving advice from the practitioner it is honest but also when they give their money to be held in a trust account, for the client’s benefit, that the money is only used in accordance with the client’s instructions.

The candidate legal practitioner needs to obtain permission from the Legal Practice Council, to appear in court, on behalf of their principal, they must pass the fit and proper assessment. The assessment of fit and proper is done in a short 15-minute meeting with a seasoned legal practitioner. The assessor uses their discretion to award the endorsement of being fit and proper or not.¹³

When considering a fit and proper person for the purposes of practicing law, it is often the focus of the candidate on being moral and acting with integrity, but legal ethics goes further than this. Legal ethics also requires a legal practitioner to be respectful, of the court and their opposition, to be honest and to be courteous, once again, not simply to their client or the court but their opposition and society as a whole.

Interestingly, the “fit and proper” requirement has never been defined, despite the importance and impact it has on the legal industry.¹⁴ The deliberate failure of defining this key concept has allowed for subjective interpretation of the concept through the years.¹⁵

The fit and proper assessment is one which is fallible as it is a long-term decision based on a relatively simple fifteen-minute discussion. Often, one could believe, it comes down to the instinct of the senior legal practitioner and their value-judgment. The issue one may encounter is the tired, disgruntled, or uninterested senior practitioner or even worse,

11 *Vassen v Law Society of the Cape of Good Hope* 1998 ZASCA.

12 *Vassen v Law Society* (n 11) 14-15.

13 When may a candidate attorney be considered a ‘fit and proper’ person by Nonkululeko Sibanyoni, Lindsey Keller Attorneys [https:// www.lindsaykeller.com/when-may-a-candidate-attorney-be-considered-a-fit-and-proper-pers](https://www.lindsaykeller.com/when-may-a-candidate-attorney-be-considered-a-fit-and-proper-pers).

14 Slabbert (n 3).

15 Slabbert (n 3).

one who has also lost their ethical way as illustrated in the Singh and Associates case.¹⁶ In this case, the candidate legal practitioner was allowed to draft the application to appeal and in her preparation included several fictitious precedents.¹⁷ Pietermaritzburg High Court Judge Elsja-Marie Bezuidenhout stated - “while the real source of the authorities quoted remain unknown” it was likely that the firm had relied on AI technology which was “irresponsible and downright unprofessional”.¹⁸ One of the red flags to emerge from this case was that the seasoned legal practitioner, who was the candidate’s principal, refused to acknowledge that the candidate had committed any wrongdoing¹⁹ which is part of a greater issue that if he could not be honest with the court, could he be honest with the impressionable candidate and lastly could he be honest with the client. The answer to all of these questions is “no” which is the reason the situation is such a great example of how one could be ethical but make bad ethical decisions.

There is an opportunity to help prepare legal practitioners manage unethical situations by allowing them to be prepared for what is to come. In practice, it is becoming more commonplace that even seasoned legal practitioners are battling with keeping up with the ethical stance required of a legal practitioner, which is quite disheartening. Many have great ambitions of being an ethical individual and of being respectful of the law. However, the nature of the legal profession including behaving in a fair way in the adversarial engagements with the opponents. However, once placed in the physical situation they may find it difficult to lose. For example if the legal practitioner has evidence that could change the outcome of their case, but the evidence has not been obtained in the correct way, or the chain of evidence has been corrupted and/or compromised the moral legal practitioner will disregard that evidence. This may be incredibly difficult for the those with questionable morals. For some, even with a good moral compass it could be difficult as if we reflect on our criminal practitioner whose prime focus is to save someone’s freedom and where the use or admission of evidence will

16 Sibanyoni (n 13).

17 Lawyers in deep trouble for using AI to draft court papers by Tania Broughton – <https://groundup.org.za/article/lawyers-in-deep-trouble-for-using-ai-to-draft-court-papers/> (accessed 14 January 2025).

18 Broughton (above).

19 Broughton (n 17).

change a person's life, it becomes harder to do the right thing. Relying on a criminal case example is an easier approach to establish motivation by a legal practitioner to want to help and not simply wanting financial gain from assisting the client. However, the same situation could occur for a merger where one document appearing or disappearing in the due diligence could change the value of the merger by millions of rands. No one wants to be the person who costs their client millions of rands, even if it is the ethical thing to do.

3 Development of modern legal ethics

For the purpose of this chapter, a moral compass is considered to be what CH Van Zyl IV and J Visser have identified as the internal feeling of what is right and what is wrong.²⁰ This requires everyday practice and starts from being punctual to lectures, be honest in disclosing the student's resources and how they found it. In relation to Gen-AI, the very nature of the concept is cutting edge and therefore by the time books are written on how to navigate the space, new technologies have been created. Therefore, this means that the legal ethics module cannot simply prepare the student for every situation they may encounter but rather prepare the law student's moral compass by engraining ethics throughout the LLB. Integrity and morality which is required of the legal practitioner are concepts of who someone *is* (inherently) not only who they want to be. It is more likely that a moral person can perform immoral acts than an immoral person performing moral acts. This simply means that it is easier to cultivate morality as an internal compass than to teach moral actions to an immoral compass.

An example of a case which should no longer be relevant due to the evolving nature of the communities in South Africa, is the infamous Prince case.²¹ Prince was a practising Rastafarian, and smoking cannabis is an accepted norm within the culture. Prince was convicted before his application to be admitted as an attorney, of possession of cannabis. The constitutional case unpacked Prince's life choices by considering the balance of his conscience and his career however, cannabis has since been

20 Van Zyl IV & Visser (n 4).

21 *Prince v President of the Law Society, Cape of Good Hope* 1998 (8) BCLR 976 (C), *Prince v President, Cape Law Society* 2000(3) SA 845 (SCA), *Prince v President, Cape Law Society* 2002 (2) SA 794 (CC).

legalised for home use²² which means that Prince's use of cannabis would not be of any substance. M Slabbert noted in her 2011 paper²³ that the Constitutional Court missed their opportunity to discuss the impact of changes in morality in the community and ironically, this change in morality took a few years but eventually materialised.

The evolution of technology has historically also been something that has made people uncomfortable but online learning has evolved from 1984 at a tertiary level.²⁴ The reliance on something non-human was strange, and it took time for the humans to be open and excited about how knowledge could become more accessible and be conducted without direct access to a book. The blended learning approach was also something that slowly evolved until the COVID-19 pandemic escalated a need for learning to continue despite lockdown. Blended learning is a method which assisted with ensuring learning continued but also the integrity of the education was not compromised. The spike in online learning allowed for more opportunities of cheating or manipulating the system. Gen-AI may have recently spiked interest but the ease of the using other systems to answer a question that the student should know how to answer without an aid also increased. This is how the focus to encourage students to practice intellectual integrity in their submissions became a focus in the educational space.

Understanding the impact of plagiarism as well as copyright infringement may be new to many faculties but should be commonplace in the legal educational space. However, intellectual property law is traditionally introduced in the third or fourth year of a LLB yet the principles of it are required for the first-year student as soon as they have their first non-invigilated assessment. One could argue this is once again a principle that may be introduced too late.

Blended learning students are assumed to be interested in deeper learning²⁵ and this should be encouraging to ensure that despite the

22 Cannabis for Private Purposes Act 7 of 2024.

23 Slabbert (n 3).

24 Adamas University 'A brief history on online education' (2020) <https://adamasuniversity.ac.in/a-brief-history-of-onlineeducation/> (accessed 25 June 2025).

25 X Chen, X Xu, YJ Wu & WF Pok "Learners" continuous use intention of blended learning: TAM-SET model. Sustainable e-learning and education with intelligence.' (2022) 16428. <https://doi.org/10.3390/su142416428> (accessed 10 June 2024)

online learning opportunity, learning does not need to be compromised. The introduction of Gen-AI could actually be incredibly beneficial to ensuring that the blended learners are also receiving the same support that that who are contact learners only do. Not everything attached to the novelty of Gen-AI is negative, in fact, there is more positive movement in embracing the newness and the sharing of lessons.

This chapter has approached the legal professional holistically under the consideration of the impact of Gen-AI on the legal profession, but it would be a missed opportunity to not acknowledge that a criminal legal practitioner and a civil legal practitioner would need to consider ethics from different perspectives. Civil matters are often motivated by money or rather damages, and criminal matters are motivated by freedom. The person who advocates for someone's freedom may be otherwise motivated. This supports the notion that legal ethics should not be a one-size fits all nor a one module learning approach.

4 Integration of ethics into LLB curricula

The different universities assess legal ethics at different NQF levels; however it does not seem to be consistent, nor does it seem that any higher learning institutions have elected to include it their first-year coursework. Some have argued, not inculcating legal ethics from the first year of the LLB could mean that the later instruction 'is too little too late'.²⁶

The law student needs to be taught on how to direct their moral compass. Often law students are motivated by the possible riches that they could accumulate from the legal profession and/or the motivation to help society, irrespective of their "why" all legal professionals need to operate with the same ethical approach to what is morally expected of the profession.²⁷

It would appear that several public and private institutions have interestingly relied on their ethics modules to provide the theoretical background to how ethics are established and have missed the opportunity to engage the students with practical, real-life scenarios that could help

26 D Henriss-Anderssen 'Teaching legal ethics to first year law students,' (2002) *Legal Education Review* Vol. 13 : Iss. 1 , Article 3.

27 Van Zyl IV & Visser (n 4).

the student as they encounter similar type issues in practice. This is a missed opportunity as law teachers have a responsibility to prepare the student for what they will encounter in practice, to ensure they are able to practice law and be useful to society as whole. The theories of law are limited in the impact they would make to the student's practical encounter with ethical issues and are more jurisprudential in nature.

It is imperative to understand that the legal practitioner has an obligation to be always fit and proper but that there is also a great need to cultivate the morality in a law student from the inception of their legal studies. The culture of behaving in a professional, ethical and moral manner throughout their studies will make a difference in ensuring that law students have been placed in a culture of ethics as undertaking from the inception of their studies and not something that is taught in their final year.

Perhaps the ethics module, across institutions, should have clear learning objectives, such as:²⁸

- (i) The ability to respond to a client or colleague in a civil manner
- (ii) The ability to identify an ethical dilemma
- (iii) Understanding the different legislations which may indicate an ethical stance. (This will include fiduciary duties and possible conflicts of interest responses and the integration of the Protection of Personal Information Act²⁹ impact).
- (iv) The ability to understand and apply the law in the best interests of the public.
- (v) An awareness (with a potential simulation in the module) of professional conduct with other legal practitioners.

This could be established through learning outcomes for example:³⁰

- (i) Analyse the regulatory framework which governs the legal profession to ensure that the law student is able to respond appropriately.
- (ii) Engage in discussions related to complex ethical issues to provide an appropriate ethical response to the situation.

28 A Boon 'Legal ethics at the initial stage: A model curriculum' (2010) https://www.academia.edu/838032/Legal_Ethics_at_the_Initial_Stage_A_Model_Curriculum (13 February 2025)

29 Protection of Personal Information Act 4 of 2013.

30 Boon (n 28).

- (iii) Evaluate the role of the legal practitioner with relation to different institutions (such as the Legal Practice Council), the judiciary and other legal professionals to ensure the law student can be an active member in an appropriate way.
- (iv) Identify ethical challenges based on a set of facts and formulate an appropriate response.
- (v) Demonstrate knowledge and understanding of political influence on the legal profession to respond to legal ethical issues.

The law student being able to inculcate this type of ethical thinking is imperative to cultivating an ethical legal professional culture.³¹ The legal curriculum must also be aligned with the overall LLB's exit level outcomes of the qualification.

An example of an assessment question whether it be an assignment or a written unseen question for a first law student is something as simple as:

Example NQF Level 5 Question

Your client admits to you that they have committed a crime such as rob the bank, and they would like you to tell the court that you were actually with them at the time of the robbery. Is this an ethical thing to do for the benefit of your client?

The question is simple. It is uncomplicated in what is right and what is wrong, but it will already activate the student to get the student thinking like that of a legal practitioner. This question illustrates that the individual can inherently know something is wrong and still want to help the client but understand that lying is wrong.

Another example could be:

Example NQF Level 6 Question

You have started a new firm and your client your potential client approaches you and request that you provide them with an alibi without you asking any questions you agree. Is this the correct approach to obtain the client's business?

Again, it is a simple concept that will inculcate responsible and ethical thinking into the law student from the first year. These types of questions

31 Boon (n 28).

could be introduced into the Introduction to Law modules or the equivalent of the institution.

In other NQF level modules there are several module options the law teacher can provide learning opportunities for confrontation with ethical conundrums such as the law of delict, as well as the obvious ones such as the law of evidence and law of criminal procedure and then more than likely the ethics law module. The different faculties could elect to incorporate legal ethics holistically by allowing all the law teachers to work together on agreed ethical outcomes for the law student, although this could be challenging to maintain academic freedom. However, it is possible to achieve this by allowing each of the law teachers on the modules for the qualification to agree on the ethical synergy of the qualification, the synergy being that certain ethical outcomes should be achieved throughout the LLB. This approach allows each law teacher to present their individual stance on the learning of ethics but encourages the thought process that what is taught in one model should carry across in another model. This is true for not only modules within a year but for a student to be able to reflect on all the years of their LLB as ethical learning opportunities.

One might question the reason ethics being inculcated into the LLB is imperative however, as discussed above, the candidate legal practitioner needs to have already activated their internal moral compass and not simply awaken it when doing their articles. Ultimately, the LLB makes the candidate legal practitioner, and then ultimately making the legal practitioner a more ethical individual. An example of an NQF level five has been provided however, an example of level eight question is not necessary as it is usually found within the ethics module.

However, ethics can be questioned in more than the ethics module, for example, it could be questioned as part of a set of effects provided in a tax law module a set of information could be provided and then provide the student with sufficient facts that the question of whether the client is guilty of tax evasion or avoidance. Often students are requested to consider this situation from the taxpayer's perspective, but, if the facts are sufficiently murky, the legal practitioner should have to make some level of an ethical judgment call. Often the tax student in this example will attempt to find an easy way to get their client to not be guilty of tax evasion. However, that in itself tests their ethical compass. Another way to approach the tax example, is to get the student to be

in the shoes of the presiding officer, to consider from a bird's eye view what is morally correct or not. The example is actually allowing the student to mediate the matter, and they are then put in a position where they need to look at both sides of the taxpayer's behaviour and consider the holistic implications of the taxpayer and their financial decisions. It is incredibly likely that the student could decide they do not have adequate information, and this should even be encouraged. The student should want to request additional information as by requesting more information, this allows the student to put themselves in the position again of both sides. This ultimately puts the student in a position of considering what is the ethically correct approach and not only what is the law but how does the law get used in the right way.

The assessment of legal ethics can no longer be seen to be a tick box module that can be snuck into the LLB but one that needs to be addressed several times throughout the LLB qualification.

Assessments need to be building blocks from the first year of the LLB and be fully inculcated by the fourth year to ensure full understanding and appreciation of the ethical stance a law graduate needs to uphold.

Perhaps more portfolios of evidence and simulations could be used where the student relies on group work on how to approach real life problems through malleable ethical scenarios.

5 The future of ethics in legal education

It is impossible to teach someone to be a good person and attempting to define what makes a morally good person "good" is challenging. However, the research in this chapter indicates that goodness (or for the purposes of this chapter, morality) cannot be taught. It is who you are, although academic training³² could improve upon someone's morality through exposure to the appropriate and morally correct approach.

It is easy to remember that law students come from diverse backgrounds, but it is easily forgotten that the law teachers themselves come from different cultural backgrounds³³ and this may affect the teaching of what is considered legally ethical or not. However, this

32 Du Plessis 'The ideal legal practitioner (from an academic angle)' (1981) *De Rebus* 424-427 https://hdl.handle.net/10520/AJA02500329_3735 (accessed 20 December 2024).

33 Slabbert notes this in reference to Du Plessis' background.

does not need to be a hinderance but rather an opportunity to build a suppository for all legal ethics law teachers, should they opt to share within their communities of practice. Possibly one of the contemporary issues that the law student is encountering in terms of is whether or not the law teacher has been adequately open to confronting modern legal ethical issues. As the law teacher also wades through what is moral or not through their own learnings, research and traditional culture and communities.³⁴

It is common knowledge that candidate legal practitioners have a strong history of battling with paper three of the attorney's admission exams, ie Attorneys Ethics. Perhaps this can be remedied through early interventions, which some universities have already started, including the paper three type questions into the curriculum. However, due to the nature of academia law teachers generally have carte blanche as to how they choose to assess content as long as it indicates that the student has learnt the module outcomes and met the exit level outcomes of the qualification. A few higher educational institutions have taken to incorporating some of the similar type questions into their ethics module or even some of the other modules like contract law or legal accounting. They have used these modules to prepare the LLB student for what paper three would expect of them. Students have historically reviewed the past papers and considered the questions to be simple and yet the failure rate has not matched that confidence. It is possible to be an ethical person with a good moral compass and fail paper three. The issue is how is that possible. One possible conclusion is that there is a lack of understanding of the question. On the other hand it could be that what one person views as ethical may not be considered unethical by someone else. If there is no continuous conversation, with the same messaging, of what is considered ethical, then it is no wonder that so many legal professionals are being struck off the roll for unethical behaviour. This poor behaviour has resulted in some doubt being cast onto the legal profession and the integrity once fully associated with the profession has been watered down.³⁵

34 Van Zyl IV & Visser (n 4).

35 T Harban 'Ethics: Time to reassess legal ethics in the changing environment' (2018) <https://www.derebus.org.za/ethics-time-to-reassess-legal-ethics-in-the-changing-environment/> (accessed 30 August 2024).

One cannot forget ethics is indicative of the society that one forms a part of and therefore how society views situations often dictate how the legal practitioner should approach it. That being said, even as the moral compass of some countries, such as South Africa, evolve to be more forgiving of certain acts for example government corruption, as there is nothing the public thinks they can do, the legal practitioner cannot adopt this approach to what is criminally correct or not. Legal practitioners must consider the communities they are embedded into but not allow that to determine alone their responses to the situations before them. The community's ethos should be considered but not be a ruling factor in how the legal practitioner should respond. This is how legal ethics in practice is changing and as such this should be included in how the law student is taught about ethics.

Practically speaking, inculcating legal ethics into several modules through the LLB as well as stand-alone module is practical for the blended learning environment. The application-based concepts and questions would be simple to illustrate through video scenarios and letting the student progress through the different stages of ethical conundrums the legal practitioner encounters in practice. The course could also provide for the different ethical conundrums the student may encounter such as plagiarism, copyright infringement, unethical use of Gen AI to name a few.

As time has passed, there been many people who have falsely presented themselves as legal practitioners without having the correct qualifications, which one in the same indicates that they lack integrity for not being a fit and proper person, however, the ease of which technology has made life in the 21st-century easier to manipulate people. This an indication of the context of the contemporary issues that need to be considered when reviewing legal ethics for the law student. Technology in many ways has created a need for a more aggressive approach to holding onto what the core of ethical behaviour looks like to the legal practitioner.³⁶ The law student also has to manage this emerging cutting-edge intervention called Gen-AI which has made everything 'easier' for the student and it is imperative that we teach student that there is nothing wrong with using Gen-AI but it is about using it responsibly. For example, some

36 B Shaw-Parker 'Legal and professional contexts' <https://juristopedia.com/what-is-ethics-legal/> (accessed 20 August 2024).

universities have created a Gen- AI policy, which allows for students to use it to consult the system, but it also encourages them to make sure that they have referenced it correctly. The policies encourage the student not to attempt to pass off the work of a generative platform as their own but to use it to work responsibly. The legal professional is uniquely positioned to navigate not only every day legal ethics but also emerging technologies to ensure there is clear, reliable delivery of legal services without compromising ethical standards or the client.³⁷ Perhaps using Gen-AI to answer an ethical question would be a smart way to integrate contemporary learning issues into one.

It is also important that as part of the process of using Gen-AI that law teachers are also focusing on teaching the student how to correctly prompt Gen- AI to ensure the system is not being abused but used appropriately. Unfortunately, Gen-AI does make it easier to cheat or to pass off the work as someone else's as we have seen in some cases, but it is to allow the student to use it responsibly and not be afraid to admit they have used it. Ultimately in the world that is evolving there is nothing unethical with using Gen-AI in so long as it is being used to support learning.

For some, Gen-AI has almost become a dirty word amongst the teachers (not only law teachers) and the newness of the system scares some educators, and for the less experienced law teachers it is something that could either be exciting or blasphemous as found in this LinkedIn post a student reflected on how they enjoyed engaging with Gen-AI, as part of the learning experience.³⁸ This is because the student had been provided the opportunity to actually used of AI responsible way realistically in a world which requires things faster and more accurately and well-versed than before the legal practitioner is going to feel the pressure of needing to be the quickest and the most effective in how they communicate.³⁹ Sometimes Gen-AI may provide the legal practitioner with quickest answer for an uncomplicated question, however if the legal practitioner simply copies and pastes that Gen-AI generated answer and shares it with the client, that would be fraudulent and it is deceptive.

37 Shaw-Parker (n 36).

38 A Swedayal (2024) https://www.linkedin.com/posts/akira-pr-sewdayal_teamwin-llb-intellectualpropertylaw-ugcPost-7260345335397371904-o7yr?utm_source=share&utm_medium=member_android (accessed 19 November 2024).

39 Swedayal (n 38).

The legal practitioner should rather create the Gen-AI answer and then reflect and moderate the proposed answer to ensure that the content is firstly, correct and secondly that the legal practitioner is in agreement with the findings of Gen-AI. It would be prudent behaviour of the legal practitioner to ensure they have fact checked the recommendation as it is commonly known that ChatGPT, for example, may provide incorrect answers, sometimes innocently and sometimes deliberately.

It is up to the law teacher to educate the law student on what smart work looks like in practice. Several academics are not actively practicing and at times that could be where the short fall comes in in terms of the knowledge gap and the practice gap. However, it is imperative to ensure that the modules that law teachers provide to the law student are ones that benefit them and that have a practical element. Perhaps what could be done is to allow a practicing legal practitioner the opportunity to provide an overview or honest feedback to a curriculum. Academics are proud and passionate about their modules (or areas of specialisation) and more so about their academic freedom but the opportunity to balance, academic freedom against the best interest of the law student needs to be considered. This would be an extension of the legal ethical educators expanding on their community of practice knowledge.

6 Concluding remarks

Ethics should be introduced in any of the introductory law modules the public or private institutions include in their LLB curriculum. Perhaps the law faculties need to consider an entrance exam of morality which then allows the, once accepted, student to be directed to the most appropriate legal ethics module. Law teachers can include ethical conundrums in their assessments and include the mark allocation as part of the skills a student must use to answer a question completely. This approach will benefit the student as thinking ethically will become as natural to the student as writing full sentences. Perhaps, a radical thought but practical one, as the law teacher endeavours to decolonise their curricula, that they can inculcate ethics into the curriculum alongside the intention to Africanise the curricula. Perhaps an audacious statement but one that upon reflection can be identified to be powerful and impactful on how it will affect the future of legal practitioners.

Ethics is continuously evolving as illustrated in this chapter and it is for the law teacher to integrate the current and possible future ethical

conundrums to the law student to prepare them for the world they will work and the industry they may lead in once their studies have been completed.

Several practitioners are struck off the role due to the fact that they prioritise the interests of their clients in an adversarial legal system⁴⁰ which really only requires providing both sides of the legal issue to have a fair chance. Often practitioners will do “whatever is necessary” to win the case to ensure their client is happy so that the client briefs them again. This is further pressured by wanting to be the best or most successful as the legal field is a highly competitive one.⁴¹ However, it seems to be lost on practitioners (and perhaps society too) that an ethical, provide the best honest perspective of a case, is what is best for society at large. It is due to this failing morality by the profession that law teachers need to be more aggressive in how they challenge the law student to manage situations of the best outcome for a client versus the most ethical outcome for society. It is not always possible to achieve both as it is likely that there will be a losing party to a legal matter.

Most of this chapter has addressed the contemporary issues that is that ethics changes on a day-to-day basis and is an extension of the communities one resides or works in. Often legal practitioners are expected to respond appropriately to difficult scenarios in a fair, legal and mostly unemotional way. This expectation of emotional detachment is which could almost be considered the super-hero characteristic of a legal practitioner. Removing the emotional element from a decision is not something which is easily accomplished and unless required by your profession, usually frowned upon by the very community the legal practitioner may be trying to protect.

The focus of this chapter has been the contemporary issues, however, there is no benefit to simply identifying a problem without troubleshooting potential solutions. Legal ethics being integral to the profession has repeatedly been asserted and that teaching a law student how to think or respond ethically cannot be done in one module across a four-year qualification. This needs to be inculcated into the law student’s learning from the inception of joining the law degree program. This may seem radical but twenty years ago, expecting law students to have a

40 Van Zyl IV & Visser (n 4).

41 Van Zyl IV & Visser (n 4).

minimum standard of computer knowledge seemed radical and yet now grade one students are now encouraged to use tablets to learn.

In conclusion, it is imperative that the law teacher is open to adapting with the evolution of legal ethics, which will ensure that more student receives the most appropriate exposure to practical scenarios that they may encounter in practice and continue to hold onto the title of fit and proper. Legal practitioners need to be reminded that being a part of the profession requires one to be of unquestionable and immovable on the line of ethical behaviour.⁴²

Perhaps the LPC could also consider creating a loose definition of fit and proper which could guide the court system to ensure that all parties are speaking the same language and there are many useful insights from the courts' provided one liners as to what is a fit and proper means. However, in a generation where what is acceptable and not often changes there should be some guidelines. Legal practitioners hold professional duties to society and the legal profession, as a whole, which requires the legal practitioner to ensure they are ethical in their actions, irrespective of whether the ethical rules have been codified or not.⁴³

Moral and ethical behaviour is a culture that must continuously cultivated through the law students, their legal studies as well as in practice. It is something that is never going to be as simple and/or as cut and dry as they encounter in the scenarios in their classroom but that is usually because the legal practitioner in practice has to respond to a set of facts that could not have been imagined.

⁴² *Law Society Transvaal v Matthews* 1989 (4) SA 389 (T) at 395.

⁴³ Harban (n 35).