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FACULTY OF LAW • Tel: (046) 603 8427/8

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# ETHICS AND PROFESSIONAL RESPONSIBILITY

2021

## COURSE GUIDE



Lecturer: Helen  
Kruise

Office: F5B, Law  
Faculty

Email: [h.kruise@ru.ac.za](mailto:h.kruise@ru.ac.za)

## 1. OVERVIEW AND PURPOSE

Ethics and Professional Responsibility is a compulsory course in the final year of LLB. Legal 'ethics' (in the broad sense) forms part of both the Attorneys' and Advocates' Admission Examinations. This course should go some way to preparing you to write and pass these examinations. But examinations aside, this course considers the relation between practical legal training in ethics (based on articles and pupillage training) and general ethical theorising. This focus arises out of the fear that rote-learning of legal ethical rules and practice without theory lacks direction; becoming little more than a loose amalgam of reactions to specific cases.<sup>1</sup> Thus, the course combines both the theory of 'ethical lawyering' and the practice of lawyers governed by the various rules of the law society, general bar and case law. This structure attempts to speak to the two dimensions of legal ethics, that is, to individual and to collective responsibility – both to personal decision making and to professional regulation.

The course follows the lead of Evans and Parker, whose approach is to 'accept that lawyers must first know where they fit in relation to social theories of ethics... because lawyers must operate as everyday "judges" inside fairly well-defined roles, as part of the justice system'.<sup>2</sup>

The aim of the course is thus to focus on a variety of real-life studies to help you develop an **ethically-responsible decision-making process** which requires a variety of different steps:

- Awareness of ethical issues that arise in practice;
- Awareness of our own values and dispositions;
- Awareness of situational pressures and behaviour modifications;
- Making choices between the range of standards and values that are available to help resolve those ethical issues (including professional conduct rules but not exclusively so);
- Implement that resolution in practice.<sup>3</sup>

To this end, the course is designed to deal with both regulatory aspects, but also psychological aspects through the method of group discussion of case scenarios with reference to ethical 'resources' (see additional documents at the end of this guide).

I hope you find the course both interesting and fulfilling. Most importantly, I hope that you are able to implement the principles learnt in this course into your professional lives in the future. I regard this course as a useful stepping stone to your impending career whether it involves you becoming a legal practitioner or not.

## 2. ASSUMPTIONS OF PRIOR LEARNING

In order to successfully complete this course, students should:

- be capable of communicating competently in written and spoken English;
- be capable of critically analyzing and extracting relevant legal information from case law, legislation and other source material;
- be aware of the influence of Constitutional principles on source material; and
- be capable of independent learning.

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<sup>1</sup> See LaFollette's remarks about ethics in general in H LaFollette (ed) *The Oxford Handbook of Practical Ethics* (2003) 8.

<sup>2</sup> C Parker and A Evans 'Inside Lawyers' Ethics' 2 ed (2014) 11.

<sup>3</sup> Based on Parker and Evans 13 and K E Goodpastor 'The Concept of Corporate Responsibility' (1983) *Journal of Business Ethics* 1, 7-9.

### 3. OUTCOMES

In addition to those outcomes included under the 'Overview and Purpose' heading above:

#### 3.1 Knowledge Outcomes:

It is intended that students know and understand:

- The different approaches to legal ethics.
- The purpose and function of legal ethics.
- The sources of legal ethical rules.
- Lessons from social and behavioral psychology for legal practitioners
- The kinds of ethical dilemmas which lawyers face.
- Some of the most important rules and principles of legal ethics.
- Typical professional negligence situations

#### 3.2 Skills Outcomes:

It is intended that students should be able to:

- Debate current ethical issues and think critically about existing practices.
- Assess the impact that situational pressure and individual behaviour has on practice.
- Apply ethical rules to practical scenarios.

#### 3.3 Values Outcomes:

Reflected under 'Overview and Purpose' heading above.

### 4. TEACHING METHOD:

This course is taught by **Mrs Helen Kruise** and runs for 13 weeks. The course will take the form of online lectures scheduled weekly. The course is divided into a variety of topics which will be covered in the 2<sup>nd</sup> semester in the online lectures and zoom meetings where possible.

Students are expected to read consistently throughout the term, ensuring that they complete the readings set out for each week of the course.

There is no comprehensive handout for the course and as such, students are expected to take their own notes and to supplement these with readings provided in the course guide. Students are expected to assume responsibility for their own learning by independent study according to guidance provided by the reading list. Throughout the course and assessment, problem-solving scenarios will be put before students on a regular basis.

Students are referred to the Faculty's Student Handbook in respect of any issues that arise. Students are welcome to discuss problems with the lecturer. If students feel uncomfortable in raising problems with the lecturer, students are welcome to discuss/write to their student representative and/or the Dean or Deputy Dean of the Faculty.

### 5. SOURCES OF REFERENCE:

You need not purchase any book(s) for this course. Most materials are available through the Rhodes Databases, but where they are not, I will upload materials onto RUCConnected.

- A useful but limited (outdated and arguably narrow-minded!) source of reference is: E A L Lewis *Legal ethics: a guide to professional conduct for South African attorneys* (1982) Juta: Cape Town.

Unfortunately, there is very little written in South Africa regarding the nature of ethics in the legal profession apart from the more practical book written by Hoffman (see I M Hoffman *Lewis & Kyrrou's handy hints on legal practice* (1997) Butterworths: Cape Town). However, there is a very useful

commentary on the Legal Practice Act 28 of 2014 that is available on the Rhodes library database (LexisNexis). It is a useful resource in considering the sections of the course dealing with the Legal Practice Act's provisions, rules and code of conduct. The commentary is: P Ellis, AT Lamey, and L Kilbourn *The South African Legal Practitioner: A commentary on the Legal Practice Act* (LexisNexis). Last updated: November 2020.

The following international texts are extremely useful especially in the context of comparing approaches to legal ethics in two foreign jurisdictions, namely Australia and the United States. Where possible I will upload excerpts of these books subject to a DALRO application:

- C Parker and A Evans *Inside Lawyers' Ethics* 2 ed (2014) Cambridge University Press: Melbourne.
- M H Freedman and A Smith *Understanding Lawyer's Ethics* (2016) 5 ed Carolina Academic Press: Carolina.

Another useful foreign text, albeit dense, is:

- D Nicholson and J Webb *Professional Legal Ethics: Critical Interrogations* (1999) Oxford University Press: Oxford

You are advised to consult the Attorneys' journal, *De Rebus*, and the Advocates' journal, *The Advocate*, for topical ethical issues in legal practice.

## 6. STUDENT ASSESSMENT

The final mark for the course is comprised of the following components:

Class work: 40

Examination: 60

**Total: 100 marks**

## 7. COURSE STRUCTURE (TOPICS COVERED)

### THIRD TERM: CONTEXT OF MAKING ETHICAL DECISIONS AS A LAWYER IN SOUTH AFRICA

Week 1	General introduction to the course
Week 2	The state of the SA legal profession and SA's current regulatory framework
Week 3	Lawyers and role morality (1)
Week 4	Lawyers and role morality (2)
Week 5	Situational and dispositional variables (1)
Week 6	Situational and dispositional variables (2)

### FOURTH TERM: APPLICATION OF PRINCIPLES IN THIRD TERM IN PRACTICE

Week 7	The fit and proper requirement: registration, admission, debarment
Week 8	The fit and proper requirement: rationalisation vs justification
Week 9	The lawyer's duty to client, court & interests of justice: Conflicts of interest
Week 10	The lawyer's duty to client, court & interests of justice: Disclosures
Week 11a	The lawyer's duty to client, court & interests of justice: Effective legal process
Week 11b	Regulatory capture: the Bobroffs
Week 12a	Money matters: management of trust accounts
Week 12b	Professional responsibility (malpractice claims)
Week 13	Revision and preparation for final assessment