

# **LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY SUMMARY**



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## What is Ethics?

Ethics refers to a set of ideals and understandings that govern how particular professionals are to act and the standards that are expected of said people in those roles. It is a branch of philosophy which is the systematic study of reflective choice (decision problems), of the standards of right and wrong (moral principles) by which it is to be guided, and of the good or bad (consequences) toward which it may ultimately be directed.

We see this across most disciplines such as Law, Medicine or Education, but it also permeates culture generally in that we come to expect certain similar standards of other groups or bodies that we interact with such as Political or Commercial entities. We have expectations that we believe should be met and it is often a terrible situation where ethical considerations or standards are either ignored or not met, often resulting in quite serious outcomes for those affected.

In this module, we will focus on the legal study of Ethics, what this means both in practice and in theory. We will touch on where our legal ethical standards are founded and the legislation that determines these standards and safeguards for clients and lawyers alike.

## The Relevant Authorities

The complexity of law is unmanageable without rules and conventions. There are two key pieces of legislation that you will be continuously referring to as you work your way through legal ethics. It is **strongly recommended** that you get a copy of each early and mark up your statutes as you go. These are:

- The Lawyers and Conveyancers Act 2006 (LCA)
- The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (The Rules)

The other authorities that you will use are:

- The Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (Trust Account Regulations)
- NZLS Trust Accounting Guidelines
- Financial Transactions Reporting Act 1996

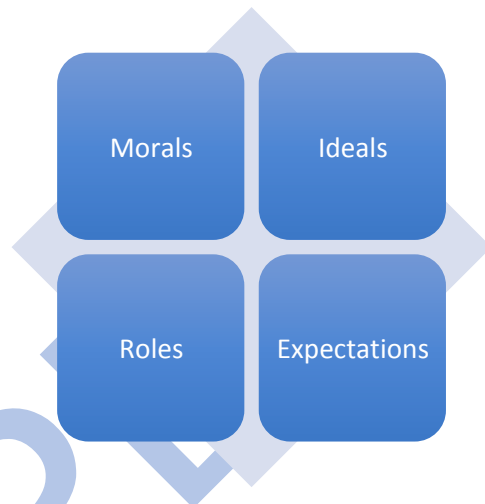
There also key overlaps with other statutes – remember the **specific trumps the general**:

- Evidence Act 2006
- Children, Young Persons, and Their Families Act 1989
- Employments Relations Act 2000
- Residential Tenancies Act 1986
- Human Rights Act 1993

## Sources of Ethics

When we speak about values, a few key terms come to mind. Often those of valiant or empathetic nature. Some examples being respect for others, integrity, fairness or accountability.

When we assess our own values, if we were to compare them to others, the results would quite likely be different. This is because the truism that you are a product of your surroundings is indeed correct; we are shaped by our own experiences, the people we meet, the materials and education available to us all play key roles in what we begin to fixate on and become important to us. The situation is such that there is no such thing as a universal value.



As everyone is different, and every situation is different, there is a wealth of possible values that could make the list. Human behaviourists generally adhere to the belief that values are both unique and central to human existence, they guide and coordinate human behaviour, ultimately non-universal in nature. On the other hand, there are some theorists that have argued that there are indeed universal structures that guide human values, which can be narrowed down to what the driving forces are behind how we act and interact. We are consistently confronted with the fact that there is no single understanding of morals generally, ideals or principles, commitments, roles or expectations. This understanding is central to the understanding of legal ethics. Legal ethics exist to both protect people operating under and subject to the law, but also to solidify a certain set of agreed principles that generate accountability and fairness for all who encounter the legal practice.

### Values, Morality and Ethics: Different or the Same?

There is a basic understanding that ethics are influenced by moral standards or values and there is uniformity. These are similar concepts, but are distinct.

- Your **personal values** determine how you think and act of your own accord. We can call this our moral compass or one's personality.
- **Morality** relates to what we as persons should be like and how we should act. The term comes from the Latin word *Mores* meaning character or habitual activities – things that are learned through custom or repetitive behaviours from others.
- **Ethics** is concerned with the “why” of morality – it reaches beyond opinion or feelings and adopts a rational approach to determining what is morally right.

When one acts morally, one is acting in response to some organised system of principles, which may be those we have thought about to ourselves, or those that we may have accepted as an existing system. Most of us are happy to confer to the existing rules of an

established system. Morality involves this moral system and a reasoning and thinking of the principles within.

### Ethical Subjectivism, Post-Modernism & Cultural Relativism

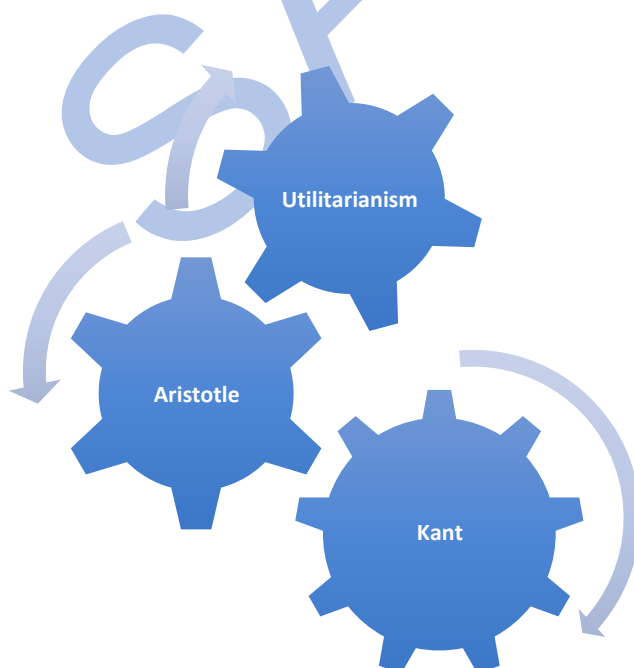
Ethical subjectivism argues that our moral opinions are based on our feelings and that there is no such thing as right and wrong; because this reflects our own approval and disapproval. This means it is impossible to argue with someone else about morality. If we assume moral truths are truths of reason then surely one cannot take this subjective approach and it is permissible to say a correct answer to a moral question depends on the reason to society.

This ethical subjectivism has become more popular though the postmodernism movement. It was held that two types of truths could both be truths at the same time, and as such it is impossible to exercise any judgement at all. This is a philosophy for our own time and has gained much support in the West due to their loss of self-confidence and belief in their own society and strength.

Cultural relativism is based on the observation that society have to some extent, different moral codes; there can thus be no objective truth. Does this mean we must tolerate all moral codes even if we believe our own is better? This attitude of not being judgemental of other cultures can lead to the tolerance of unpleasant things. Any coherent society and legal system must live by one system and agree on fundamental things though, as we cannot have a coherent society when there are differences on fundamental things.

It could be argued differences of cultures does not mean there is no objective right and wrong, but rather what people are disagreeing about is simply a detail which is an irrelevant detail when it comes to fundamental principles, e.g. the disposal of the dead – buried, burned or eaten? If we accept most modernism and cultural relativism we cannot criticise other cultures or our own, and so moral progress would become impossible.

### Moral Philosophy



As part of the New Zealand LLB curriculum for Legal Ethics, students must also be examined on classical theories and foundations of ethics generally – this is also known as “Moral Philosophy”. As this is such a small component of your ethics course, we will only touch on the core learning outcomes.

There are three significant players in moral philosophy, these are the doctrine of Utilitarianism, Aristotle’s arguments and those of Immanuel Kant. They can seem a little daunting at first, but become much more

straight forward the more practice you have engaging with the.

Each approach the issue of personal motivation and ethics in a different way. We will discuss the three in turn.

### Utilitarianism - J Bentham 1748-1832

Utilitarianism is “that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question”.<sup>1</sup>

“The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness”.<sup>2</sup>

Bentham’s approach is that morality is not about abstract rules, but is a matter about trying to bring as much happiness as possible into the world. This theory is often put with the phrase “the greatest good for the greatest number”. This severely unprincipled approach was only possible and necessary in a time when there was likely much more misery about, and when it seemed there were ways in dealing with such misery. What does utilitarianism leave out? There is no talk of god or abstract moral rules – the point is the happiness of human beings in this world and nothing more. Actions are assessed as right or wrong depending on how much happiness is produced. The actions that are most moral are those which created the most happiness. No one’s happiness is can ever be greater than that of anyone else. In principle, nothing is intrinsically right or wrong, but rather we must judge actions depending on their consequences.



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<sup>1</sup> Bentham, *The Principles of Morals and Legislation*, I 2.

<sup>2</sup> Mill, ‘Utilitarianism’, 2.2.