A close-up, high-contrast image of an owl's face, looking directly forward. The owl's large, round eyes are prominent, with dark pupils and light-colored irises. The feathers around the eyes and on the face are detailed and textured. The overall color palette is a mix of browns, greys, and whites, with a slightly grainy texture.

## PART 1

# Knowing

In Part 1, 'Knowing', we address the broad areas of knowledge that must be understood by every new law student. On completing Part 1 you will know about:

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<b>CHAPTER 2</b>	<b>FUNDAMENTAL LEGAL CONCEPTS</b>	<b>41</b>
<b>CHAPTER 3</b>	<b>A HISTORY OF AUSTRALIAN LAW</b>	<b>83</b>
<b>CHAPTER 4</b>	<b>THE AUSTRALIAN LEGAL SYSTEM</b>	<b>113</b>
<b>CHAPTER 5</b>	<b>THE SOURCES OF LAW IN AUSTRALIA</b>	<b>145</b>



A large, stylized owl face in a light blue color serves as the background for the top half of the page. The owl's eyes are large and circular, and its feathers are detailed with a fine, radiating pattern.

## CHAPTER 1

# The life of a lawyer

### Chapter objectives

#### The life of a lawyer

#### Being a lawyer: myths and realities

##### Myths about being a lawyer

All lawyers earn a lot of money

There is a right side and a wrong side in every legal dispute

A lawyer needs only to be good at arguing

Legal work is glamorous and exciting

##### The realities of legal practice

Lawyers help people

Lawyers give clear advice about complicated problems

Lawyers are negotiators and advocates

Lawyers read a lot

#### A diversity of career options

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## CHAPTER OBJECTIVES

Upon completion of this chapter you should be able to explain:

- the myths and realities of being a lawyer,
  - the diverse range of career opportunities available to you as a result of completing a law degree,
  - the various ways to make the most of your legal education from your first year as a law student, and
  - the meaning and importance of developing a positive professional identity as both a law student and a future lawyer.
- 

# The life of a lawyer

This book aims to support you, the new law student, in your efforts to learn the fundamental knowledge, acquire the practical skills and develop the basic attributes that you need to complete your legal studies and become a successful new lawyer.

By enrolling in your law degree, you have taken the first step in your journey towards becoming a member of a long-standing and honourable profession — the legal profession. What made you decide to be a lawyer? Perhaps someone in your family introduced you to the idea, or you were inspired by a lawyer you had read about in a book or seen on TV or in a movie. Perhaps you had the opportunity to speak to a practising lawyer at some point in your life, or you attended a legal trial. Perhaps you have arrived at law school knowing that you have wanted to be a lawyer your entire life ... or perhaps you have arrived feeling unsure about your decision to study law and with no idea about what you want to do with your law degree when you graduate.

### THINK

Why did you choose to study law?

The people sitting next to you in your lectures, tutorials and workshops all have different backgrounds and different reasons for deciding to become a law student. Some of the older students have come to law school to begin a new career after having already worked for many years or after spending time raising children.

Most of the students, however, have come to law school straight from high school. Some have chosen to study law simply because they think that a legal career is one in which they will make a lot of money or because they achieved the marks required to get into law school and they are not really sure what else to do. Some were gently (or perhaps not so gently) pushed into studying law by well-meaning teachers at school, or by parents who expect them to study either medicine or law (and, since they do not like the sight of blood, they chose law).

We want to start this chapter by reassuring you that, whatever your background, you have made the right decision in choosing to study law. A career as a lawyer is one that has the potential to be intellectually challenging and personally fulfilling ... and maybe even financially rewarding. And, even if you eventually decide not to become a lawyer, the knowledge, skills and attitudes that you will acquire at law school — the in-depth knowledge of the law, the exceptional research, thinking and communication skills and the commitment to justice, ethics and professionalism — can be applied to a wide range of careers and professional pursuits.

In this chapter, we begin examining some of the myths and realities about being a legal professional before introducing you to the diverse range of career opportunities available



to you as a result of completing a law degree. By presenting the many options that will be open to you once you graduate, we hope to encourage you to think expansively in planning your legal career. One of the luxuries of being in the first year of your legal education is that you do not have to make any hard-and-fast decisions about your future career for some time. Taking the time to identify and to learn more about what aspects of the law truly interest you, what excites your passion and what motivates you will pay off when the time comes for you to decide what type of lawyer you are going to be.

We then offer some strategies to help you make the most of your legal education from your first year. And, in the final section of this chapter, we discuss the importance of developing a positive professional identity while at law school, encouraging you to start thinking not only about what you want to *do* as a lawyer, but also who you want to *be*. This will lay the foundation for your professional and ethical values as a new lawyer.

## Being a lawyer: myths and realities

So, what will it be like to be a new lawyer? As a legal professional, you will advise and advocate on behalf of individuals, businesses, organisations and governments. The problems you will be called upon to solve will be challenging and complex. You will provide an important service to the community by assisting people with their transactions and legal affairs, negotiating on their behalf and advocating for their rights and interests to be recognised and protected.

Beyond that, it is not very easy to describe exactly what a typical lawyer does on a day-to-day basis. This is because, these days, there is no such thing as a ‘typical lawyer’. A day in the life of a criminal lawyer is very different from a day in the life of a commercial leasing lawyer, and different again from that of an employment lawyer. Depending on whether you are a solicitor or barrister, whether you work in private practice or the community sector, for an international firm or for the government, you will work with the law in different ways and experience different work environments, different levels of interaction with clients and different levels of workload.

Before we look in more detail at some of the many career options available to lawyers and at some examples of a typical day in the life of different types of legal professionals, we will address some of the myths and describe some of the realities of legal practice. There is considerable value in thinking about these things at the start of your legal studies. Having a general insight into who a lawyer is and what a lawyer does can help you to make sense of the complex rules and concepts in the substantive law that you will be learning over the next few years.

## Myths about being a lawyer

If you have seen legal practice only on TV or in the movies, you probably have a relatively superficial understanding of the legal profession and how it works. Legal practice as it is portrayed on screen often appears to be quite exciting, and that can certainly be true in reality, but on a daily basis legal practice is also difficult, complex and very demanding. Developing a realistic view of the legal profession will help you to manage the stresses and rigours of law school.

In this section we address four popular myths about being a lawyer.<sup>1</sup>

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1. From Sally Kane, *5 Myths Regarding the Practice of Law* (2012) <<http://legalcareers.about.com/od/practicetips/a/lawyermyths.htm>>.

## All lawyers earn a lot of money

It is true that some lawyers make a lot of money, and many others make a more-than-comfortable living. But most of the lawyers who make significant amounts of money are working in ‘top-tier’ law firms. These firms are large private practice firms that are very selective about whom they hire. They usually take only the very best students from the most prestigious law schools.

### RESEARCH

Which are the ‘top-tier’ law firms in Australia?

The reality is that the vast majority of lawyers work in smaller firms — often in suburban firms or practices in regional areas of Australia — or in government. In these positions the conditions are often good, but the level of pay is not as high as in the large private practice firms.

If you are thinking that high financial rewards are something you would like to achieve in your legal career, then it would be a good idea to talk to a young lawyer in one of the large firms to get a clear picture about what that sort of lawyering involves and how you might plan your approach to your legal education and extra-curricular activities to give yourself the best chance of securing such a position upon graduation. One thing to think about is that working for top-tier law firms often involves a very significant and stressful workload. It would not be an exaggeration to say that to earn those significant amounts of money you need to be prepared to work 60 to 80 hours a week. Working long hours with what are often high-stake commercial matters is demanding and taxing. There are sacrifices you will have to make in terms of the time you get to spend with family and friends. If you do choose this path, it is important for you to ensure that you work actively to manage and protect your work–life balance and your personal wellbeing.

Interestingly, surveys of government lawyers consistently indicate that, while they do not get paid as highly as some other lawyers, they often experience higher levels of career satisfaction. This may have something to do with the nature of government legal work, which we explore in more detail later in this chapter, and with public-sector working conditions, which often allow for a better balance between work and personal life.

### RESEARCH

Visit [www.mycareer.com.au](http://www.mycareer.com.au). What is the current average salary for those working in the legal sector in your State or Territory?

## There is a right side and a wrong side in every legal dispute

While many students come to law school seeking a secure financial future, many others come with the hope of righting the wrongs of the world and fighting for justice. Some lawyers devote their careers to fighting to make a difference to the lives of vulnerable people, backing the underdog in legal matters and strongly advocating for people’s rights.

### RESEARCH

Who is Erin Brokovich? Why did they make a movie about her?

Realistically, as a lawyer, your main concern should not be your profile as an advocate for justice. Your main concern should be your client and their needs, and what is required to effectively and efficiently represent their interests on the basis of the relevant facts and the applicable law. In most disputes there is not necessarily one party who is clearly on the side of goodness and justice seeking to triumph over another party who is clearly on the side of injustice and evil. Legal disputes are usually far more complex

than that. There are always at least two sides to every story, and deciding who is ‘right’ and who is ‘wrong’ is rarely easy.

## A lawyer needs only to be good at arguing

It is certainly true that, as a lawyer, you have to be an effective *advocate*. And it is wonderful to watch an experienced, articulate and sharp legal advocate at work; visiting a court to observe the advocacy skills of experienced lawyers in the context of litigation is a constructive and enjoyable way to spend a free afternoon while you are at law school. However, good advocacy is not just about arguing in court and engaging in a verbal battle with an opponent. Advocacy is not necessarily adversarial. Advocacy is about *persuasion*. As a legal advocate you persuade your audience — whether this is a judge, a jury or the lawyer for the other side — through the use of logical, well-researched, well-reasoned points based on the relevant facts and the relevant law. The reality of practice is that in order to advocate for your client’s best interests you often need to negotiate for them effectively, keep them out of court and facilitate a compromise between all the parties.

We will discuss the importance of good communication skills, and being able to persuade your audience effectively, in chapter 9.

## Legal work is glamorous and exciting

Lawyers on television shows are usually portrayed as glamorous litigators. But this portrayal is often far from the reality of day-to-day practice. In fact, the majority of the work lawyers do takes place well away from the courtroom. Very few legal disputes actually proceed to trial. Most disputes are settled out of court through negotiation and other methods of dispute resolution. And most lawyers are advisers rather than litigators.

The daily life of the average lawyer is not really what you would call glamorous. It can be exciting but it can also be mundane. Most lawyers, especially solicitors, spend a lot of their time in their offices reading documents, interviewing clients, researching the law, and drafting letters, briefs and memorandums of advice. This work is at times intellectually rigorous and challenging, but a lot of what occupies a lawyer’s working day is relatively routine and repetitive.

### THINK

Can you think of any fictional portrayals of lawyers that capture the more mundane aspect of legal practice?

While ‘glamorous’ is not necessarily a good descriptor for a lot of legal work, it is nevertheless important to dress well as a lawyer. Casual dress is rarely appropriate in most areas of professional legal practice. Rather, lawyers wear suits and formal business attire. Dressing well shows respect for your audience: for your client, your legal colleagues, for the court or for the mediator. Looking well groomed and professional also commands respect from your audience. It can work to inspire trust, and it conveys an image of professionalism and polish.

## The realities of legal practice

While there is an enormous variety of types of lawyer, in this section we attempt to identify and describe some of the common realities of legal practice.<sup>2</sup> If you find yourself immediately relating to any of these features of legal practice, this is a positive sign that you have made the right decision to become a lawyer. If the matters discussed below do

2. From Jim Riley, *Do I Want To Be a Lawyer?* (2012) <<http://academic.regis.edu/jriley/lawyer.htm>>.

not strike a chord with you, do not worry. They can be something for you to think about, and the exercise will highlight some possible areas of development for you.

## Lawyers help people

In essence, the legal profession is a *helping* profession. People come to lawyers for help with problems and issues that they cannot manage themselves. These problems often concern important aspects of their lives. Lawyers use their knowledge of the law and their practical legal skills to advise people about their legal rights and responsibilities, and to take action on their behalf. Lawyers are therefore often involved in very significant events in people's lives. For example, the advice of a family lawyer to parents who have separated and cannot agree with whom the children will live has an impact on the way that family is structured into the future, and ultimately an impact on the lives and development of both the parents and the children as they get older. A wills and estate lawyer's advice to someone drafting a will has an impact on the distribution of their estate upon their passing, and this will influence the lives of many of their relatives.

### THINK

Think of some other examples of types of legal advice that have a significant impact upon the lives of the clients being advised.

In order to help your clients, you must be able to understand the problems your clients bring to you and be able to work out legal and other ways of solving those problems. Through the advice you give your clients and the actions you take on their behalf, you will make an important difference in their lives. Legal work can be challenging because it requires you to be able to empathise with clients in order to understand their needs and concerns. It also requires you to be able to objectively analyse those needs and concerns in order to identify the relevant legal issues that must be managed or dealt with, and to apply the relevant law to those issues in order to develop a workable response within the confines of the law that is in the client's interests.

## Lawyers give clear advice about complicated problems

We are living in a world that is becoming increasingly complex. From a global perspective, there is now much more interaction between countries, their people and their laws. In Australia, on a domestic level, the developing complexity of society has meant that the law has also become more complex and often very technical. The legal system itself is very complicated with many different layers and a high level of formality. Lawyers working in this complex environment need to be able to understand the relevant law and the system in which it can be used, analyse the law in the context of the particular problems being considered and apply the law to the client's issues so as to resolve their problems as effectively as possible. In addition, a lawyer needs to be able to communicate the results of these analytical processes with the client — and often with a range of other audiences such as other lawyers, courts and tribunals.

People come to lawyers for their expert knowledge and ability to work with the complexity of the law and the legal system. Clients have different levels of expertise and knowledge of the law themselves. Some clients are quite sophisticated in their understanding of the legal problems they need help with and their legal context. Others have little understanding of, or perhaps even misunderstand, what the law prohibits or requires. A lawyer must be able to talk with and advise the client at the appropriate level of sophistication. If a client cannot understand their lawyer's advice, they will be unable to make an informed choice about how to proceed.



As a lawyer you will therefore need exceptional communication skills. Good oral communication skills are critical for working in face-to-face contexts: talking with clients, understanding their issues and taking their instructions. Good written communication skills are critical for communicating effectively by letter and by email, and for writing clear legal documents. As a lawyer you will need to be able to speak and write clearly and with precision. The most intelligent lawyer in the world would be ineffective if they cannot communicate well with others and help them to understand what they are saying. Exceptional legal communication — in both written and verbal forms — is an art that you will continue to develop throughout your legal career.

## Lawyers are negotiators and advocates

In addition to their exceptional communication skills, lawyers also help people by using *negotiation* skills to solve legal problems and resolve legal disputes using discussion and compromise; and *advocacy* skills to stand up for the client and argue on their behalf using the law. By fulfilling the roles of negotiator and advocate as required, lawyers help their clients to get the results they want, avoid detrimental outcomes or come to an acceptable compromise in a difficult situation.

Negotiation skills are used daily in legal practice. Lawyers negotiate with other lawyers and other parties on behalf of their clients, they negotiate in dispute resolution environments such as mediations and conciliations and they even assist clients to negotiate their way through the legal system itself. As explained earlier, advocacy skills are also used in negotiation. This is because, when negotiating, a lawyer is always representing the best interests of their clients and seeking to obtain the best outcome for them through persuasion and advocacy. Advocacy skills are also used in more formal environments such as arbitration, courts and tribunals. It is important to remember that advocacy on behalf of a client does not always mean being adversarial. Good lawyers are not aggressive and combative unless it is absolutely necessary to serve the best interests of the client.

### THINK

Think of circumstances when it would be appropriate for a lawyer to be (a) a persuasive negotiator and (b) an aggressive advocate.

In fulfilling the roles of negotiator and advocate a lawyer must always seek to provide their client with enough information about the law and about the possible options available to them to ensure that the client is in a position to make informed choices about how their legal matter should proceed. Ultimately, it is for the client to choose and decide, on the basis of expert legal advice, what is the best way to serve their needs and interests. Even if a lawyer would personally choose a different course of action, if they have advised their client thoroughly, then they must accept the client's decision. This point is explored in more detail in chapter 13.

## Lawyers read a lot

The study and practice of law will involve you spending a lot of time reading, perhaps more than you might expect. At law school, in order to learn the law, you will have to read and understand an enormous number of case reports, legislation, textbooks, legal encyclopaedias and journal articles. And in legal practice the reading will continue as you learn more about the law, as you learn about new areas of practice and in order to keep up with changes and developments in the law.

The willingness to do a lot of reading is one of the most important elements of a successful approach to legal education and of competent legal practice. Your future as a law student and a new lawyer will involve many, many hours of reading every day.

**THINK**

Do you feel an enthusiastic connection with any of the four 'realities' of legal practice described above? If so, take some time to think more deeply about why you connected with them. Think about experiences that you have had in the past that might form the basis of the connection and how you can consciously harness this connection as a source of motivation while you are at law school.

You will not necessarily be immediately and overwhelmingly enthusiastic about all of these realities of legal practice. But things will change. There are aspects of your professional identity that will start to develop in your first year of legal education, and you will continue to develop them throughout your legal career. We examine the notion of an emergent professional identity in more detail below.

**THINK**

Has what you have learned so far changed your idea of what it might mean to be a legal professional? Are you starting to develop a clearer sense of why you are doing your law degree and where you see yourself going with it in the future?

Practice as a legal professional can be very rewarding. You will live a life as someone who can truly make a difference in the community and to the lives of your clients. But lawyering is hard work and requires commitment and dedication. Law is not a profession for people who are lazy! In order to get the most out of your legal career you need to embrace the fact that it is a demanding vocation involving a lifelong pursuit of learning and a commitment to professionalism.

**THINK**

Use the following checklist to identify areas you might need to work on as you progress through your legal education on your way to becoming a new lawyer.<sup>3</sup>

- ☐ I enjoy working with people and their problems.
- ☐ I have a capacity for hard work.
- ☐ I like public speaking.
- ☐ I perform well under pressure.
- ☐ I enjoy working with words.
- ☐ I have an analytical mind.
- ☐ I have good communication skills.
- ☐ I can be very persuasive.
- ☐ I do not mind working long hours.
- ☐ I welcome intellectual challenge.
- ☐ I expect some routine and repetitive work to be part of the job.
- ☐ I do not expect legal work to be glamorous and exciting every day.
- ☐ I have excellent problem-solving skills.
- ☐ I have the ability to deal with complexity.

**REVISION**

Before proceeding, ensure that you can answer each of the following questions.

1. Identify and explain each of the four popular myths about being a lawyer.
2. In what ways do lawyers help people?
3. Why do lawyers need exceptional communication skills?
4. What does it mean to say that lawyers are (a) negotiators and (b) advocates?
5. Why do lawyers have to read a lot?

3. From Margareta Olsson, *Careers for Law Graduates* (Australian Law Students Association, 2003) 2.

# A diversity of career options

In the past, most law graduates were assured of securing a job in the ‘legal profession’, which was often defined in a limited sense as working in private legal practice as either a solicitor or a barrister. Certainly, when the authors of this text were at law school in the mid 1980s, it was assumed that we would practice law either at the bar as a barrister or in a firm as a solicitor. (As it happens we both chose the latter option before becoming academics.)

Today, law students are encouraged to consider a wide range of legal career options before making a decision about what to do upon graduation. There are many, many career choices available to you today; law graduates are ‘sought after by government departments, large publicly-listed companies, medium-sized companies, trade unions, the media, legal publishers and other organisations’.<sup>4</sup>

In this section we begin by examining the differences between the two traditional career paths available to law graduates: becoming a solicitor and becoming a barrister. We then describe the various work sectors in which a law graduate may find employment: the private sector, the public sector, the community sector, the judiciary and alternative career options such as the academy. This list is certainly not exhaustive in terms of identifying all of your options on graduation. There are many other job opportunities for legal practitioners, and many law graduates end up using their knowledge of the law and their practical legal skills in a range of non-legal careers including senior management, diplomacy, journalism, business ownership and policy development.

## Traditional career paths

In Australia, the legal profession has two branches: barristers and solicitors. In New South Wales and Queensland, legal practitioners must be either a solicitor or a barrister. In other jurisdictions, a legal practitioner is entitled to practise as both.

### Solicitors

Solicitors provide a variety of legal services in relation to the legal aspects of both personal and business matters. This work is generally office based, although solicitors sometimes represent their clients in court, especially the lower courts. Solicitors provide legal advice about transactions and disputes, draft legal documents and conduct legal negotiations on behalf of their clients. A person consults a solicitor if they, for example, have been involved in an accident, have been discriminated against, have been unfairly dismissed from employment, are buying or selling a house, are involved in a relationship breakdown, are establishing a business or have been charged with a criminal offence.

If you are a solicitor you will:

- interview clients about their needs and problems,
- provide legal advice and recommend appropriate courses of action,
- draft contracts, deeds, trusts, wills, leases and other documents,
- carry out investigations on behalf of a client,
- prepare cases for court and arrange witnesses,
- act as a trustee, a guardian or the executor of a client’s will,
- conduct legal research, and
- keep up to date with legal developments by reading court decisions and law journals.

#### RESEARCH

Visit the website of a large Australian law firm. What kind of services do they provide?

4. Ibid.

Many solicitors choose to specialise in a particular legal area such as property law, probate law, workers' compensation, family law, personal injuries, litigation, commercial and corporate law, administrative law or criminal law. Other solicitors choose to be general practitioners, providing legal services in a wide range of fields.

In a serious and complex legal matter, a solicitor may 'brief' a barrister to provide an opinion or undertake advocacy work in court on behalf of the solicitor's client. A brief is a document or set of documents about a case that outlines the backgrounds, facts and context of the case for the barrister.

Solicitors deal directly with members of the public on a daily basis, and often work in practice teams. Thus, in order to be a successful solicitor, you need good people skills and exceptional written and spoken communication skills. You need to be able to explain the law to your clients in plain English, and you also need to be able to communicate efficiently and professionally with colleagues, mediators, tribunal members and judges.

## Barristers

Barristers are lawyers who provide legal advice and opinions, and who specialise in representing clients before courts or tribunals. As a general rule, barristers do not deal directly with members of the public; instead, they take 'briefs' from solicitors.

If you are a barrister you will:

- argue cases before civil, criminal and industrial courts,
- argue cases before tribunals and arbitrators,
- provide advice and opinions about difficult legal questions,
- confer with instructing solicitors,
- speak with clients and witnesses prior to court proceedings,
- draft court documents such as pleadings and affidavits,
- draft a range of other legal documents,
- conduct legal research, and
- keep up to date with legal developments by reading court decisions and law journals.

Like solicitors, barristers work across the full range of areas of law but often specialise in areas such as criminal, civil, family, administrative, tax, and commercial and corporate law. Barristers also work as arbitrators and as specialist negotiators and mediators.

Barristers are typically sole traders; that is, they are self-employed and rely almost entirely upon their own efforts to generate an income. However, groups of barristers often organise themselves into small groups of offices that are called *chambers*. Junior barristers initially work as 'readers' under the guidance of a Master. A Master is an experienced barrister who has agreed to share their chambers with a reader and who allows the reader to accompany them to court.

Barristers are often (but not always) people who are extroverts, who love to speak in public and who thrive on winning an argument. They are energised by rigorous legal debate and the 'cut and thrust' of adversarial advocacy in litigation. Barristers have to be able to think 'on their feet', need a thorough understanding of the rules of evidence and must work well under pressure.

If you decide to become a barrister, it is possible to apply for admission to the bar immediately upon completion of your law degree and your practical legal training. However, since barristers do not advertise and rely on briefs from solicitors to get work, they have to establish a reputation for legal competence first. It is therefore more common for aspiring barristers to first work as a solicitor for a number of years to gain practical legal experience, build up a professional network and establish a reputation.

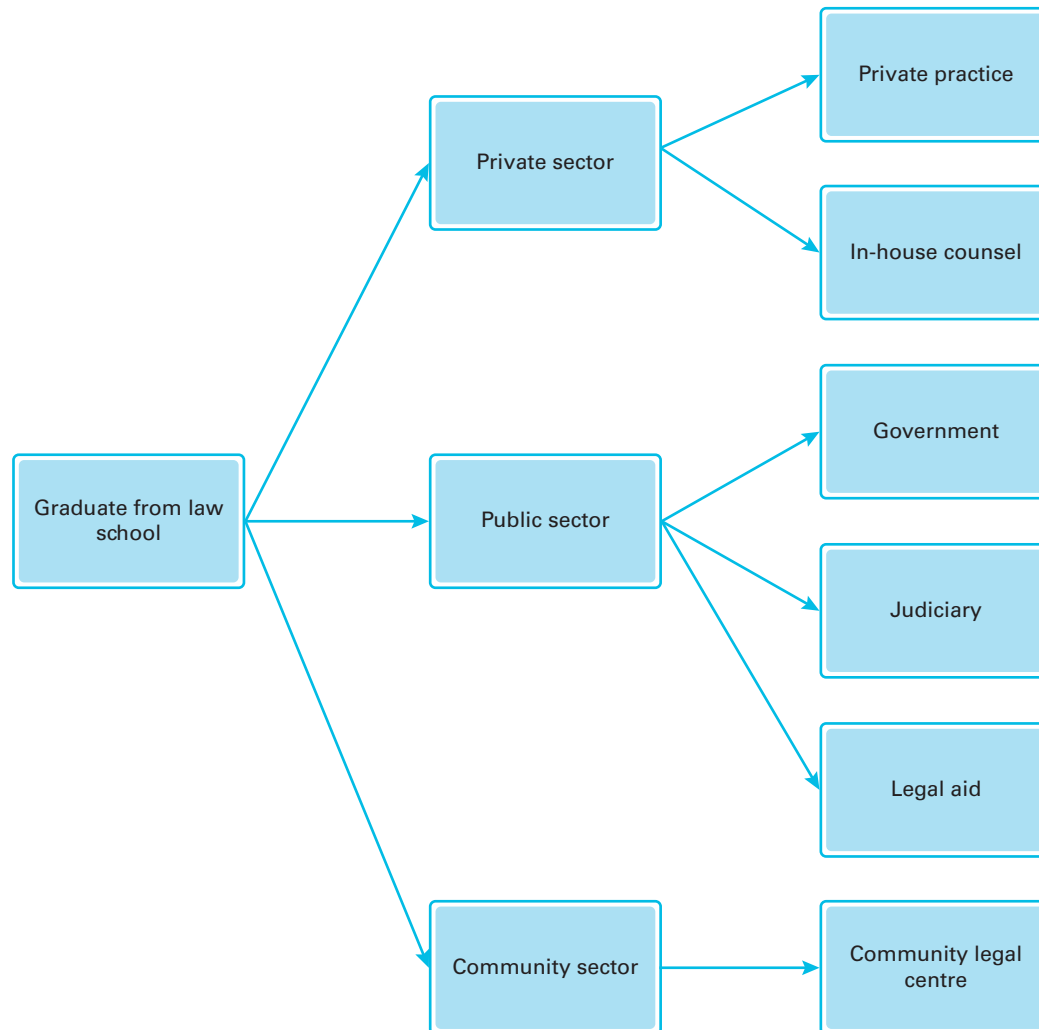
### THINK

Do you see yourself working as a solicitor or as a barrister? Identify the reasons for your preference.



## Work sectors

In this section, we examine the various work sectors in which a legal graduate can choose to practice. This list of private, public and community sector employment opportunities set out in figure 1.1 is not meant to be exhaustive; it is indicative only of the significant range of career options available to you upon graduation from law school. You should also bear in mind that your legal knowledge, skills and attitudes are highly transferable; you may start out working in one area of the profession, but you will not be locked into that area for life, and you will enjoy a relatively high degree of flexibility in your ongoing career choices.



**FIGURE 1.1** Work sectors for law graduates

### Private sector

A lawyer working in the private sector is employed by (or is an owner of) a non-government-owned, profit-seeking organisation.

#### Private practice

A solicitor working for a law firm and a barrister who is a self-employed sole trader are both said to be in 'private practice'. In this section we focus upon what it is like to be a solicitor in private practice.

While some law firms consist of a solicitor practising on their own as a sole trader (with or without other solicitors as employees), most law firms consist of two or more solicitors in partnership (again, with or without other solicitors as employees). Law firms can be large, medium-sized or small, and the nature of legal practice, and your experience as a solicitor, will be quite different depending on the size of the firm you are working for.

**THINK**

Solicitors traditionally form partnerships because they were historically prohibited from incorporating (forming a company). Why do you think this prohibition might have been imposed?

A law firm is generally considered to be a *small firm* if it is owned by a single lawyer or by a partnership of up to five lawyers. Most small firms are in suburban or country areas. The legal work done by small firms tends to be in the areas of conveyancing (facilitating the transfer of real estate, including residential properties), business law, wills and estates, family law and criminal law. The clients of small firms tend to be individuals, families and small businesses who value a close solicitor–client relationship and who are looking for cost-efficient and practical solutions to their legal concerns.

A career as a suburban lawyer or even a ‘bush lawyer’ is very different from city practice, but the lifestyle and the benefits of close relationships with clients certainly make it an attractive option for some law graduates. If you choose to join a small firm when you graduate, you will almost certainly start to have direct responsibility for client files quite quickly, and while you will be supervised by a more experienced lawyer you will be expected to work independently. Since small-firm work is very generalist, you will get to deal with a wide variety of legal transactions, issues and disputes, and you will very quickly gain a wide range of experience in very hands-on circumstances.

*Medium-sized firms* generally have from five to twenty partners and tend to be located in the city or the inner-city suburbs. The client base of medium-sized firms is usually somewhat broader than that of small firms in that, as well as small businesses and individual clients, it often includes larger corporations. Joining a medium-sized firm means that you will get to work with a wider range of partners, senior associates and solicitors across different areas of the law, and you will often deal with more complex legal issues. Many medium-sized firms have a specific area of specialisation and expertise, such as insurance law, personal litigation or family law.

*Large firms* usually have more than twenty partners and are usually located in one or more capital cities. Their work is often very complex and focussed upon specialised areas of law such as corporate and commercial law, intellectual property law, and mergers and acquisitions. When you first join a large firm it is likely that you will be rotated around different areas of the firm to give you a broad range of experience and help you to decide upon the area of law in which you would like to specialise. You will usually work under the relatively close supervision of a partner or other experienced lawyer and, until you acquire some experience of your own, you will usually assist with large and complex legal matters rather than be expected to run your own matters. Large firms often provide their lawyers with in-house ongoing training and have extensive resources such as well-stocked libraries (including one or more librarians). Some large firms even have their own kitchens and chefs to cook for the partners and clients. Large firms also have a relatively strict hierarchy of partners and senior associates that you will have to work within . . . and gradually work your way up. Impressing the partners and getting ahead in a large law firm often involves working very long hours.

**THINK**

If you were to become a solicitor, what size firm do you think you would prefer to work for? Why?

While you are still at law school, you might be interested in applying for a *summer clerkship* with a law firm. This can be a very useful experience for learning about the expectations associated with working in a law firm and will help you to decide what kind of firm you want to work for upon graduation. Summer clerkships are usually undertaken between early December and mid February in the summer prior to commencing your final year of law school. Your law student association will have more information about applying for a clerkship in your area. If you complete a summer clerkship with a law firm, and your time with the firm is successful, you may be offered a job with that firm upon graduation. For many students, having such a firm offer of employment can take a lot of the stress out of their final year of study. However, you should not feel too disappointed if you do not complete a clerkship. There is a lot of competition for only a very few places, and most of the law students obtaining jobs upon graduation did not complete a clerkship.

After working for a few years as an employed solicitor in a law firm, you may decide that you want to become a partner in the firm. A junior solicitor within a medium-sized or large law firm can expect to wait at least five years, but more usually up to ten years, before being in a position to consider a partnership. The offer of a partnership is usually made to solicitors who have a proven track record in meeting the relevant selection criteria, including financial performance (the number of billable hours generated per month or year), business development activities, managing more junior solicitors and making a general contribution to the firm. In a medium-sized firm, a potential candidate for partnership may have to generate billings of up to \$500 000 a year. It is somewhat easier to become a partner in a small firm. Some employed solicitors choose to leave employment to start their own firm.

#### THINK

What would be the differences between becoming a partner in an existing firm and starting your own firm?

### In-house counsel

Becoming an *in-house counsel* (or ‘corporate lawyer’) is an alternative to private practice. An in-house counsel is a lawyer who is employed by a large organisation to provide legal advice and representation within the organisation and to liaise with law firms and barristers engaged by the organisation. In-house lawyers provide a broad range of commercially oriented, relatively technical and detailed advice. Publicly listed companies like BHP, Shell, and IBM employ in-house counsel, as do major banks, such as the Commonwealth Bank, ANZ and the National Australia Bank, and large accounting firms, such as Price Waterhouse Coopers.

To be successful in applying for a position as an in-house counsel, you would generally need at least three to five years of post-admission experience with a large law firm in the areas of commercial and corporate law.

### Public sector

Lawyers working in the public sector include those employed by government and members of the judiciary.

#### Government

Various government departments and agencies at the local, State and Federal levels employ large numbers of lawyers. Government lawyers provide a broad range of legal services including the provision of legal advice, management of legal transactions, drafting of legislation and development of legal policy. Government lawyers often contribute to efforts to improve the legal and justice systems and to the operation of the law in a range of areas such as housing, education and defence. They engage in legal research, legal writing and liaising with lobby groups and stakeholders.

Government lawyers may be employed within the Australian Law Reform Commission and various State Law Reform Commissions, as ministerial advisers or researchers in parliamentary libraries, or as court registrars assisting in the administration of the courts. Government lawyers are usually solicitors, although barristers also work in government in a range of specialist advocacy roles such as public prosecutors (prosecuting criminal defendants on behalf of the Crown), public defenders (defending criminal defendants for the Legal Aid office) and Crown lawyers (representing the Crown in civil litigation).

#### RESEARCH

What is the Office of Parliamentary Counsel? What do they do?

The stable working conditions and regular work hours make becoming a government lawyer an attractive option for some law graduates. Working in the public sector is often conducive to achieving a healthy work–life balance, and there is usually no pressure to record excessive billable hours.

### Judiciary

Judges are usually appointed by the State Governor (or, at the Federal level, the Governor-General) acting on the advice of the relevant Attorney-General. With a few exceptions, judges are appointed from the ranks of practising barristers. As such, becoming a member of the judiciary is not really a career option for new graduates. If you have an ambition to become a judge, you should first become a barrister and, if you acquire the appropriate reputation and expertise after years of practice, you may be approached and asked to consider joining the judiciary.

## Ex-chief justice to judge judges

*The Australian*, 26 May 2008 <<http://www.theaustralian.com.au/news/nation/ex-chief-justice-to-judge-judges/story-e6frg6nf-111116441478>>.

The federal Government has chosen former chief justice Gerard Brennan to ‘judge the judges’ as part of its revamped judicial appointments process.

Sir Gerard and former federal court judge Jane Matthews will help screen prospective members of the Federal Court and draw up a short list for Attorney-General Robert McClelland. They will join the deputy secretary of the Commonwealth Attorney-General’s Department, Ian Govey, and the current Chief Justice of the Federal Court, Michael Black, on a panel that has the right to interview candidates — a first for the federal courts. The Government has also settled on its advisory panel for the Federal Magistrates Court, with former Family Court judge Sue Morgan joining Chief Federal Magistrate John Pascoe and a senior departmental official.

...

The panels will be busy, as job advertisements for both courts were recently placed in national newspapers to meet the shortages caused by retirement and judges moving to other courts. The Federal Court has lost Justice Mark Weinberg to the Victorian Court of Appeal and Justice James Allsop to the NSW Court of Appeal. Justice Rodney Madgwick retired this month and Justice Roger Gyles and Ronald Sackville will follow him. The federal magistrates have up to five vacancies.

The shortfall has caused worries on both courts, more so because Mr McClelland has not hired anyone since the Rudd Government was elected in November last year. The only judicial appointment announced by the Attorney-General has been to put Federal Court judge Justice Garry Downes on the Supreme Court of Norfolk Island.

Mr McClelland has said he was ‘aware of the need to fill the vacancies as quickly as possible’. He also has to name a new Chief Justice of the High Court to replace Murray Gleeson, who must retire in August, but has ruled out a panel for the apex of the national legal system, as most of the candidates were serving judicial officers. The federal panels will



draw up a short list of five contenders, from which the Attorney-General said he expected to choose a candidate. He has reserved the right to go beyond their recommendations.

The Howard government preferred to keep its deliberations in-house, but occasionally advertised for magistrates. Justice Sackville has said the revamped system was an 'idea whose time had come' and the appointments process had not worked satisfactorily at a federal level in recent years.

The advertisements called for applicants with 'strong interpersonal and communication skill' and 'personal and professional qualities such as tact, courtesy, communication skills, impartiality, integrity, ability to work under pressure and the ability (or the capacity quickly to develop the ability) to deliver clear and concise judgments'.

A more realistic option for law graduates is becoming a *judge's associate*. Every judge in the intermediate and superior courts has an associate, as do many magistrates in the lower courts. A judge's associate can be generally seen as a judge's personal assistant and research officer. They undertake a lot of the administrative work involved with running the judge's chambers, such as completing necessary paperwork, managing the listing of cases, and liaising with barristers, court staff and other members of the legal profession. Depending on the judge, they might also do legal research and help with the writing of the judge's speeches and the drafting of judgements. Much of their day is spent sitting in court with the judge observing legal trials first hand, and for this reason many graduates who wish to become barristers choose to begin their careers as judge's associates.

Associates are usually appointed for a period of one year, depending on the preferences of the particular judge, and they are usually recent law graduates. However, having graduated from law school is not necessarily a requirement, and you may be able to apply to be an associate while you are still studying law.

### Legal aid

Some lawyers work for legal aid commissions. *Legal aid* is a government-funded system for the provision of legal services to those who cannot afford to pay for them. Modern legal aid schemes in Australia were pioneered by the Federal Government in 1973 with the establishment of the Australian Legal Aid Office. This was later followed by the establishment of the various State Legal Aid Commissions (see table 1.1). The Australian Legal Aid Office has since been abolished, and instead the Federal Government provides funding to State Legal Aid Commissions to be applied towards the provision of legal services in matters involving Federal jurisdiction.

**TABLE 1.1** Legal aid commissions

Jurisdiction	Legal aid commission
ACT	Legal Aid ACT <a href="http://www.legalaidact.org.au">www.legalaidact.org.au</a>
New South Wales	Legal Aid New South Wales <a href="http://www.legalaid.nsw.gov.au">www.legalaid.nsw.gov.au</a>
Northern Territory	Northern Territory Legal Aid Commission <a href="http://www.ntlac.nt.gov.au">www.ntlac.nt.gov.au</a>
Queensland	Legal Aid Queensland <a href="http://www.legalaid.qld.gov.au">www.legalaid.qld.gov.au</a>
South Australia	Legal Services Commission of South Australia <a href="http://www.lsc.sa.gov.au">www.lsc.sa.gov.au</a>
Tasmania	Legal Aid Commission of Tasmania <a href="http://www.legalaid.tas.gov.au">www.legalaid.tas.gov.au</a>

(continued)

TABLE 1.1 (continued)

Jurisdiction	Legal aid commission
Victoria	Victoria Legal Aid www.legalaid.vic.gov.au
Western Australia	Legal Aid Western Australia www.legalaid.wa.gov.au

State legal aid schemes rely on State Government funding, and legal aid commissions are often underfunded. While the provision of legal assistance to those in need can be enormously satisfying on a personal level, the funding constraints can make legal practice in this area very frustrating.

Legal aid will be examined in more detail in chapter 12.

## Community sector

Many law graduates choose to work in the community sector, using their legal knowledge and skills to help the impoverished and disadvantaged.

### Community legal centres

Community legal centres were first established in Australia in the early 1970s. The services that they provide, usually free of charge, include advice and referral, some limited representation in special cases, research into legal problems for the purposes of law reform, and community legal education. Some provide general advice services to people from a range of backgrounds, and others provide specialist advice services to certain members of the community such as women, immigrants or Indigenous Australians. Community legal centres are usually staffed by a small group of committed employees supported by volunteer lawyers.

There is likely to be a community legal centre in your local area; visit the website of the National Association of Community Legal Centres at [www.nacclc.org.au](http://www.nacclc.org.au). If the centre is taking on volunteers, consider becoming a volunteer. You will not only make a contribution to achieving access to justice, but also have an opportunity to learn a lot about the law and legal practice from experienced practitioners.

Community legal centres, and the issue of access to justice generally, will be examined in more detail in chapter 12.

## Alternative legal careers

In this section we briefly describe some of the more non-traditional areas of legal practice, including some that you may never have considered.

### Alternative dispute resolution

Specialising in alternative dispute resolution is a career option for those law graduates who are committed to working in non-adversarial ways to resolve legal issues and disputes, who are creative problem solvers and who have outstanding communication skills. The term *alternative dispute resolution* (ADR) refers to a range of techniques — including ‘mediation’, ‘arbitration’ and ‘conciliation’ — that seek to resolve disputes without the need to resort to litigation, i.e. going to court. ADR methods can help to reduce the legal costs associated with resolving a dispute and thereby make justice more accessible.

#### RESEARCH

Visit the website of the National Alternative Dispute Resolution Advisory Council at [www.nadrac.gov.au](http://www.nadrac.gov.au) and locate the glossary of terms. What are the differences between ‘mediation’, ‘arbitration’, ‘conciliation’ and ‘adjudication’?

In most jurisdictions, only a small proportion of disputes actually result in court proceedings. Many disputes these days are resolved using ADR. In some areas of law such

as family law, anti-discrimination law, Federal civil matters and personal injuries matters, some form of ADR is legislatively required before a matter can be filed in a court or tribunal. Court-directed ADR is also becoming increasingly common. In some jurisdictions, the 'A' in ADR refers not to 'alternative' but to *appropriate* dispute resolution.

Many lawyers who specialise in ADR represent clients during mediation, conciliation or arbitration. Some work as the actual mediator, conciliator or arbitrator. To fulfil these roles professionally and effectively, training in ADR and a commitment to non-adversarial lawyering are both necessary. Specialising in ADR would not be appropriate for lawyers who prefer to practise law aggressively and adversarially.

### Legal academic

If you enjoy legal research and helping others to understand the law, then you might be suited to a career in academia.

The three key areas of academic practice are research, teaching and service (to the university, the profession and the community). No two days are ever the same as an academic, and academics enjoy relatively flexible working hours. It would be a mistake, however, to think of the legal academy as an easy option. It is certainly a very different working environment compared with private practice, and it might seem to be relatively relaxed, but the demands of teaching large numbers of students, marking assessments, conducting legal research, publishing scholarly articles and books, and developing and promoting yourself as an expert in a particular field can be quite stressful. Nevertheless — and we admit to being biased in this regard — an academic career is very rewarding.

A postgraduate degree in law such as a Master of Laws is often expected of applicants for academic positions, even for the lowest academic level in a law school, that of an *Associate Lecturer* (see figure 1.2). Many people do not start there, however. A lot of them start their academic careers teaching on a part-time basis as a tutor while they are studying or working in private practice. They develop their teaching expertise and begin to write and publish in an area of interest. This allows them to start building a teaching portfolio and a research profile, which will be very useful when they apply for a full-time academic position.

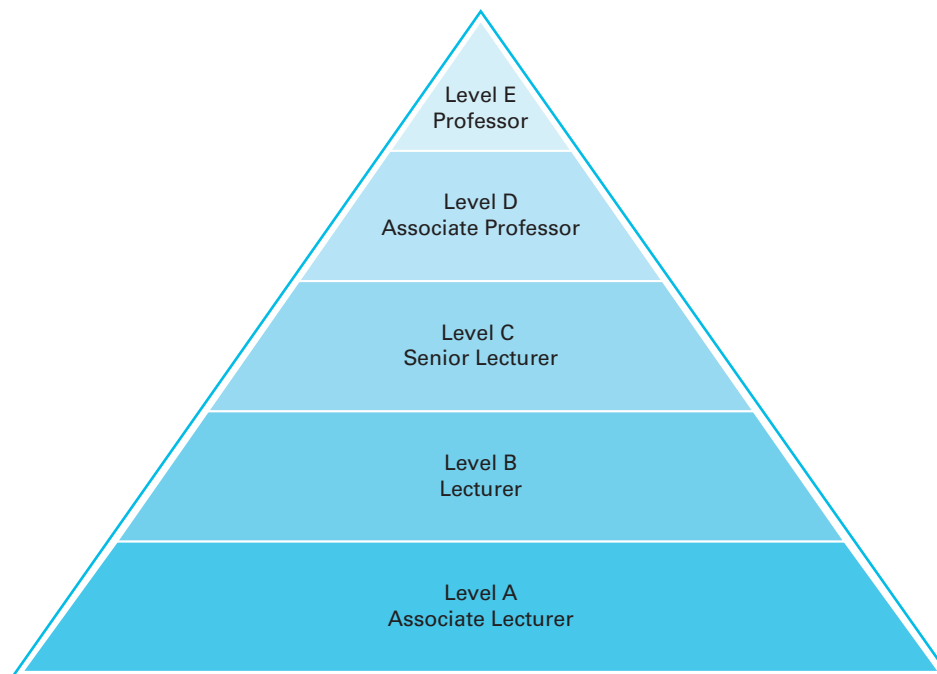


FIGURE 1.2 Academic levels

To be eligible for appointment at the higher levels of academia, such as those of *Lecturer* and *Senior Lecturer*, you will almost certainly need a PhD. And it is only after you develop a national or international profile as an expert in a particular field that you can consider applying to be an *Associate Professor* or a full *Professor*.

#### RESEARCH

Do applicants for academic positions in your law school need formal teaching qualifications?

### Law librarian

A career as a law librarian may suit you if you are a well-organised person who thrives on legal research and enjoys helping others find information. Law librarians work in law libraries in universities, in the State and Federal courts, and in the State and Federal parliaments.

### Legal publishing

There is a range of career opportunities in the field of legal publishing, including legal editors (who are often subject area specialists) and sales positions (selling textbooks to universities). If you have strong writing and analysis skills, excellent people skills and a propensity for sales, marketing or promotions, then legal publishing may be a good career option for you — as long as you can manage working well to deadlines.

### Legal consultant

Legal consultants are self-employed lawyers who provide specialist legal advice as well as research, writing and analysis support to other lawyers in the private and public sectors. They may be brought in to assist with very complex legal matters or with a diverse spectrum of legal work, including the drafting of legal memoranda, briefs and submissions, the provision of policy-related research and analysis, or the undertaking of specific research into, say, a particular product, litigant or company, or expert witnesses. Legal consultants are professional researchers with extensive knowledge and expertise in modern research tools and techniques. They are also expected to be creative problem solvers.

### Paralegal

Many law students work as *paralegals* (or ‘law clerks’) while they are completing their degrees. Paralegals work in law firms, with barristers, in government, in the legal departments of large companies and in the courts. Work done by paralegals includes:

- conducting routine legal searches relating to, for example, land titles, companies, business names and bankruptcies,
- completing routine property settlements,
- conducting basic legal research and investigations,
- filling in and lodging legal forms,
- conducting follow-up interviews with clients,
- drafting pro forma letters and clauses for contracts,
- assisting with administrative matters such as accounts and record keeping,
- preparing statements of evidence by witnesses,
- organising witnesses to attend court,
- putting together briefing papers when a barrister is being briefed, and
- assisting lawyers appearing in court.

Most paralegal work is relatively routine clerical work. However, it does provide exposure to interesting legal matters, hands-on legal experience and access to networks of legal practitioners. These will all be extremely helpful when you are seeking employment upon completion of your law degree.



**THINK**

Consider which of the alternative career opportunities above interest you the most.

**REVISION**

Before proceeding, ensure that you can answer each of the following questions.

1. What is the difference between a 'solicitor' and a 'barrister'?
2. What kinds of legal services are provided by solicitors?
3. What kinds of legal services are provided by barristers?
4. Outline the differences between legal work in (a) the private sector, (b) the public sector and (c) the community sector.
5. What are the features of working in private practice for (a) a small firm, (b) a medium-sized firm and (c) a large firm?
6. What are the benefits of a summer clerkship?
7. What is an 'in-house counsel'?
8. What kind of work is done by government lawyers?
9. How are judges appointed?
10. What is a 'judge's associate'?
11. What are (a) legal aid and (b) community legal centres?
12. How does ADR differ from litigation?
13. What are the features of a career (a) as a legal academic, (b) as a legal librarian, (c) in legal publishing and (d) as a legal consultant?
14. What is a 'paralegal'?

## Your legal education

The previous section illustrated the considerable range of career options available to you upon graduation from law school. There is, however, only one path leading to these many options: successful completion of a law degree. It might seem fairly obvious, but your time at law school is a critical foundation for your future as a legal professional.

In this section, we outline the history of legal education in Australia and present an overview of contemporary approaches to legal education in order to help you to understand why your law degree is structured the way it is and appreciate the various contexts of your legal education experience. We conclude by outlining some of the ways you can strategically make the most of your legal education.

**THINK**

What has your experience of legal education been like so far? Has it met your expectations? Is it different from what you expected? Are you getting to know your fellow students and starting to feel at home at law school? You should! You're going to be there together for a few more years!

## Legal education in Australia

As you are no doubt already aware by now, a Bachelor of Laws degree (LLB) or a Juris Doctor degree (JD) usually consists of a combination of compulsory law subjects and elective law and non-law subjects. A law degree usually takes three to six years to complete, depending on whether you are enrolled in a single degree program or a dual degree program, or in an undergraduate program or a postgraduate program. Most law subjects consist of between two and four hours of class time each week (typically comprising lectures, tutorials or workshop-style seminars) as well as many more hours of independent study using textbooks, case reports, legislation, journal articles and online resources. Law school assessment methods include written examinations, assignments and essays, moots, class presentations and online assessment. And, when you have successfully completed

your LLB or JD and satisfied the practical legal training (PLT) requirements, you will be qualified to practise law in Australia.

#### RESEARCH

What are the 'practical legal training' requirements that must be completed before a law graduate is qualified to practise law?

## A brief history of legal education

Law schools have been around for a very long time. The discipline of law has been a part of the university for as long as there have been universities; it is one of the founding disciplines. It was first taught at the University of Bologna in Italy in the 12th century and was later taught in England at the universities of Oxford and Cambridge.

The first law schools sought to provide a *liberal* education. Legal education within the university had nothing to do with training for legal practice. Instead, the emphasis was on legal philosophy and legal history. Those who studied law at university were unlikely to become lawyers who practised.

Early legal education in Australia, however, was far more *vocational*, or practical, in nature. In fact, law was not even taught at university. Until the latter half of the 19th century, people in Australia who wanted to become lawyers were trained by experienced legal practitioners. Colonial legal education thus consisted solely of on-the-job training, with the consequence that legal knowledge was relatively narrow and primarily practical. Theoretical development of the discipline was minimal.

Eventually, concern within the Australian community about the ability, competence and respectability of the colonial lawyers (some of whom were former convicts) led to a recognition of the need to improve the image of the profession. The colonial governments intervened, and steps were taken to shift responsibility for professional legal education from the legal profession to the universities.

The first law school in Australia was established at the University of Sydney in 1855. The decision to start teaching law at university was a controversial one. Many scholars in other disciplines viewed law as a practical vocation rather than as an academic discipline, and insisted that the teaching of law should not take place at a university. As one critic famously claimed:

In point of substantial merit the law school belongs in the modern university no more than a school of fencing or dancing.<sup>5</sup>

Nevertheless, the political power of the profession eventually overcame any resistance. Law schools were subsequently established at the University of Melbourne in 1857, the University of Adelaide in 1883, the University of Tasmania in 1893, the University of Western Australia in 1927 and the University of Queensland in 1935.

The approach of the first Australian law schools to teaching law was strictly vocational rather than liberal. The legal profession controlled both the content of the curriculum and its teaching. Law teachers were usually practitioners appointed to the university on a part-time basis, and lectures were given in the evenings to students who were studying part-time while completing articles of clerkship (legal apprenticeships). The discipline was accorded a relatively low status by other scholars, and the law schools were perceived as mere 'adjuncts to the profession' rather than truly academic institutions.

#### THINK

What are the differences between teaching law as a vocational education and teaching law as a liberal education? What are the benefits and disadvantages of each approach? Is one approach more appropriate than the other?

5. Thorstein Veblen, *The Higher Learning in America* (American Centuries Series, 1918).

After World War II, the academic status of Australian legal education began to improve. The approaches and practices of the profession at that time were perceived by the Australian Government as lagging behind those in directly comparable countries, and changes to university legal education were made as a means of ‘modernising’ the legal profession. Part-time teaching by practitioners was discouraged, and the number of full-time legal academics was increased significantly. This led to the emergence of the ‘professional law teacher’ or ‘legal academic’, and to a concerted endeavour to adopt a more scholarly approach to the study and teaching of law. With the existence of larger numbers of full-time legal academics, other scholars began to accord the discipline a greater level of academic credibility.

The new full-time law teachers in Australia set about establishing themselves as a distinctive branch of the legal profession. They marginalised, and eventually (at least to some extent) excluded, legal practitioners from the process of legal education. Professional law teachers distinguished themselves from legal practitioners by developing and emphasising a new and distinctive way of thinking about and teaching law. Whereas legal practitioners had taught law as a disjointed collection of rules and procedures, the legal academics taught law as a scientific and rigorous academic discipline. Australian law schools abandoned vocationalism and embraced a *doctrinal* approach to teaching and learning about law.

The taking of a doctrinal approach to teaching law involved dividing the law into discrete subject areas, such as contract law, tort law and criminal law. Each subject area had its own set of principles or *doctrines* to be identified, clarified and memorised. Social policy, politics and non-legal data were considered to be largely irrelevant to the study of law in law school. Students were to spend their entire time at law school learning about legal doctrine; there was no need to look beyond the confines of legal doctrine to understand law and its operation, or to develop skills that would support the practice of law.

The new approach to teaching law de-emphasised the connections with legal practice, leaving it to the profession to provide graduates with legal training, and instead focused upon teaching law students the *science* of law. At the same time, the new approach maintained the separation of law from other disciplines in the university by emphasising the differences between the study of law and the study of other disciplines such as history or the social sciences. The doctrinal approach thus served to enhance and protect the discipline’s newfound academic credibility. Australian law students were taught legal doctrine and little else for much of the history of legal education in this country. In fact, for many years any suggestion that the doctrinal approach might be deficient was regarded as rather controversial.

#### THINK

If the study of law focuses entirely on doctrine, are students of law missing out on anything that might be useful for practice? If so, what might that be? What are the implications of a doctrine-dominated curriculum for students who do not go on to practise law?

In 1987 the Commonwealth Tertiary Education Commission issued a report about Australian legal education: *Australian Law Schools: A Discipline Assessment*, typically referred to as ‘the Pearce Report’.<sup>6</sup> The Pearce Report identified a number of serious problems with Australian legal education, including a lack of commitment by law schools to teaching, student dissatisfaction with the intellectual calibre of their studies, ‘dreary’ programs, and conflicts and divisions among academic staff at certain schools. The report concluded that Australian legal education at the time was, among other things, insufficiently theoretical and critical.

6. Dennis Pearce et al, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Committee* (AGPS, 1987).

The report also acknowledged the significant gap between the legal academy and the legal profession and emphasised the importance of teaching law students how to *practise* law. The report contained several recommendations about practical legal training courses and suggestions to law schools about participating in ‘continuing legal education’ (the ongoing education of legal practitioners). The report also expressed the view that it was the law school’s role to prepare graduates for a range of careers in both the private and public sectors. It therefore encouraged Australia’s law schools to seriously rethink the purely doctrinal approach and to do more to meet student expectations that a law degree prepares students for a career in law.

The publication of the Pearce Report marked an important shift in the relationship between law schools and government. Law schools were no longer left alone to regulate themselves, free to decide for themselves how best to teach law. Instead, law schools were to be viewed as instruments of economic policy, to be regularly assessed against benchmarks of community expectation and fiscal responsibility.

## Contemporary legal education

At the time of the Pearce Report, there were twelve law schools in Australia. These were the six ‘first-wave’ law schools listed earlier and six post-war, ‘second-wave’ law schools: the Australian National University, Monash University, Macquarie University, the University of New South Wales, the Queensland Institute (later University) of Technology and the University of Technology, Sydney. The report recommended that no new law schools be opened, but this recommendation was not followed.

### RESEARCH

Go to the Council of Australian Law Deans website at [www.cald.asn.au](http://www.cald.asn.au). How many law schools are there now in Australia?

### THINK

Statistics vary but some indicate that there are currently more students of law than there are practitioners of law in Australia. What does this indicate about opportunities for working in legal practice and the need to think laterally about the application of your legal knowledge and skills on graduation?

The increase in the number of law schools in Australia clearly indicates that they are very popular with university administrators. Law schools are relatively prestigious, they attract high-performing students, and they are relatively cheap to establish and to run.<sup>7</sup>

On the other hand, as you are no doubt very well aware, law students are increasingly obliged to bear the considerable costs of their own education. It is therefore not surprising that law students are in increasing numbers demanding better service from universities, value for money and the ability to complete their degree in the shortest possible time.

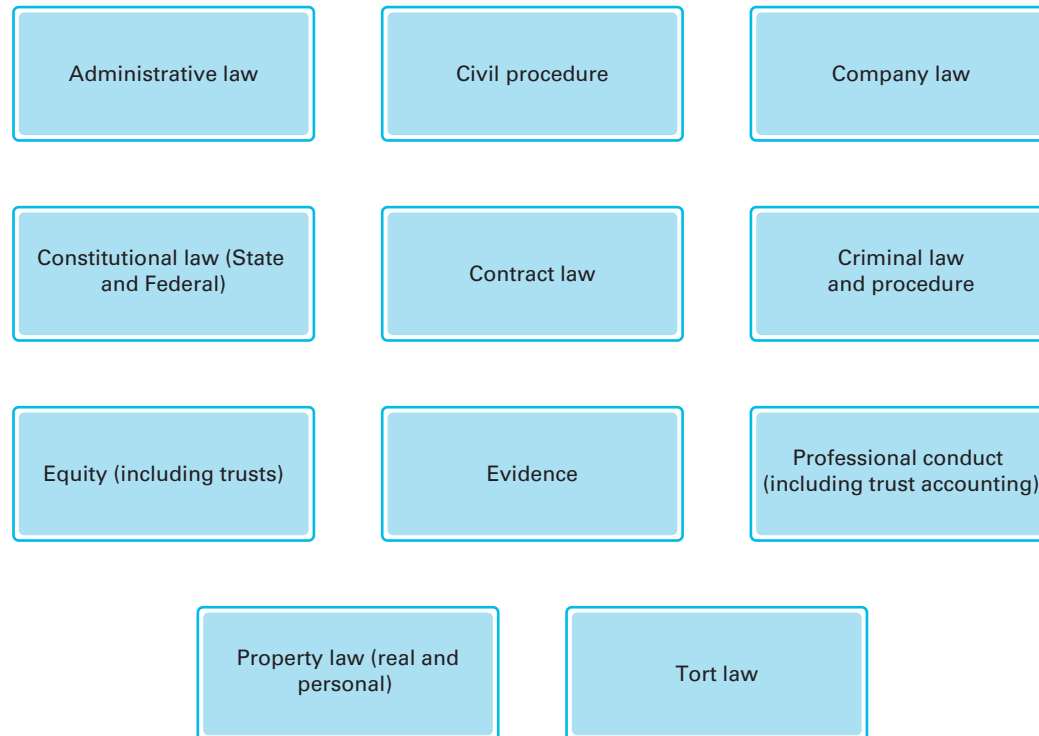
There is also considerable pressure exerted on law schools by the practising profession to ensure that the law degree not only satisfies admission requirements, but also provides graduates who can ‘hit the ground running’. Influence by the profession is facilitated by ever-closer relations between law schools and the law firms in the local area: practitioners are frequently consulted about the content and structure of the law degree; practitioners contribute to teaching in undergraduate and postgraduate law courses; and a large proportion of full-time academics have recent or current professional experience. Law firms

7. David Weisbrot, ‘Recent Statistical Trends in Australian Legal Education’ (1990–1991) 2 *Legal Education Review* 219, 219.



regularly sponsor events such as mooting competitions, academic prizes, scholarships and law school functions, and partners, barristers and judges are often appointed as ‘adjunct professors’ to the school.

Pressure from the profession also manifests in the form of admission requirements, particularly the list of eleven areas of substantive knowledge that must be covered by students before they are allowed to be admitted to practice (see figure 1.3). This list is known as the *Priestley 11*. While law schools are not compelled to offer all eleven areas of knowledge in their core curriculum, most schools nevertheless do so, and most students prefer to cover the Priestley 11 courses during their university education. Even those who do not intend to practise law almost always enrol in these courses, ‘just in case’.



**FIGURE 1.3** The Priestley 11

#### THINK

What important areas of law are noticeably absent from the Priestley 11?

One of the most important developments in Australian legal education in recent years is the drafting of the Threshold Learning Outcomes for Law. In December 2010 the Australian Learning and Teaching Council published the *Bachelor of Laws Learning and Teaching Academic Standards Statement*.<sup>8</sup> The Statement sets out six ‘Threshold Learning Outcomes’ (TLOs) for the Bachelor of Laws degree. These six TLOs represent what a Bachelor of Laws graduate is expected ‘to know, understand and be able to do as a result of learning’.<sup>9</sup> They cover ‘knowledge’ (TLO1), ‘ethics and professional responsibility’ (TLO2), ‘thinking skills’ (TLO3), ‘research skills’ (TLO4), ‘communication and collaboration’ (TLO5) and ‘self-management’ (TLO6) (see figure 1.4).

8. Sally Kift, Mark Israel and Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

9. Ibid 1, citing the Australian Qualifications Framework.



**FIGURE 1.4** Threshold Learning Outcomes for Law

While, at the time of writing, these TLOs did not have any formal standing in relation to legal admission requirements, they are likely to inform the standards regulation and auditing of law schools by the new Tertiary Education Quality Standards Agency. This agency has only recently come into force. Its role is to ensure that universities at large adhere to standards in the provision of their degree offerings. All law schools in Australia will be required to establish that they provide a certain standard of legal education in line with the requirements of the Australian Quality Framework. The TLOs have been designed to satisfy these requirements and so will be extremely relevant to the incoming quality assurance processes for tertiary legal education. The TLOs have also been designed with reference to good practice in legal education around the world — so they do in fact represent what a law student needs to know and be able to do on graduation.

We have designed this textbook with the TLOs in mind. In fact, both authors were actively involved in the development of the TLOs, and we understand their requirements rather well. By working through this textbook, you will be sure to develop much of the knowledge, skills and attitudes that make up the TLOs, at least at a first-year level. You are therefore laying a very strong foundation for the rest of your legal studies. This is one strategy that you are already using to make the most of your legal education. In the next section we explore some additional ways in which you can make the best use of your time at law school.

## Making the most of your legal education

To make the most of your time at law school you need to ensure that you look after yourself and your wellbeing so that you can learn effectively and efficiently and be as active and as engaged as possible. The self-management skills described in chapter 10 will help you in this regard. In this section, we offer some additional strategies for getting the most out of your legal education (see figure 1.5).



**FIGURE 1.5** Making the most of your legal education

Adopting these strategies will stand you in very good stead when the time comes for you to make the important decisions about your future as a legal professional.

## Learn effectively

Traditional approaches to legal education tended to conceptualise teaching as the transmission of detailed legal doctrine to law students who were passive and empty receptacles waiting to receive that knowledge from the law teacher. Contemporary education scholarship, however, insists that this model of teaching is impractical, unrealistic and ineffective. Instead, teaching should be *the facilitation of effective learning*. As Paul Ramsden, an Australian tertiary education expert, told law teachers in Australia:

Teaching means more than instructing and performing and extends more broadly to providing a context in which students engage productively with subject matter. There is now a widespread view in academic development circles, derived directly from the student learning research, that we should concentrate on learning, on what the learner does and why the learner thinks he or she is doing it, rather than what the teacher does.<sup>10</sup>

This means that, while your law teachers will be focusing on providing the materials and the conditions necessary to facilitate your learning, at the end of the day it is your responsibility to take the steps necessary to make your own learning as effective as possible. This can be as simple as having the discipline to attend all of your classes, taking advantage of additional learning opportunities (such as information retrieval and legal research workshops run through your law library) and knowing your way around the online resources for each of the law subjects you are studying.

Effective learners adopt a ‘deep’ approach to learning. They work hard to achieve a meaningful level of understanding, examine arguments critically, question the assumptions on which they are based and relate them to previous knowledge and understanding.<sup>11</sup> Deep learners can be contrasted with students who adopt a superficial or ‘surface’ approach to learning. A surface approach to learning involves, for example, trying to memorise the subject content, missing lectures, not preparing for tutorials, completing assignments the night before they are due and relying on other students’ summaries of subjects to study for exams. Students who adopt a surface approach to learning do not question the assumptions that underpin the material or relate it to context or their own previous knowledge. They do not make the most of their time at law school.

### TWELVE EXAM TIPS

1. *Exam preparation starts on the first day of the course.* Working steadily throughout the semester is far more likely to lead to examination success than leaving the hard work until the end of the semester and cramming for the examination. Markers will be assessing you on your reasoning skills and on the depth and sophistication of your understanding of the course material, not on your ability to regurgitate case names and points made by the lecturer in class.
2. *Pay close attention to what the lecturer says about the examination in the subject outline and in class.* You will be told what you can and cannot take into the examination with you. Many lecturers provide their students with quite detailed information about the format and even the content of the

10. Paul Ramsden, ‘Improving the Quality of Higher Education: Lessons from Research on Student Learning and Educational Leadership’ (1995) 6 *Legal Education Review* 3, 4.

11. Ference Marton and Roger Säljö, ‘On Qualitative Differences in Learning — 2: Outcomes as a Function of the Learner’s Conception of the Risk’ (1976) 46 *British Journal of Educational Psychology* 115.

examination. And make sure you understand the lecturer's expectations about the way the examination questions should be answered by you: Should/can you use headings? Are bullet points acceptable? How much detail is expected in case citations? Do essays need an introduction and a conclusion?

3. *Access copies of previous examination papers — these are often available from the library or the course website.* Many lecturers use similar examination questions from year to year, and looking at previous examination papers may give you a better understanding of what to expect. Do NOT, however, make the mistake of assuming that the questions will be the same as or similar to those used in previous years; if the curriculum has changed, if the law has changed and/or if the lecturer has changed, the questions are likely to be quite different in form and content. If there is an inconsistency between what the lecturer has told you about this year's examination and the form and content of previous examinations, give greater weight to what the lecturer has told you.
4. *When studying for the examination, do more than simply read through your notes.* The best way to prepare for an examination is to practise doing what it is that you will be called upon to do on the day of the examination. Put together your own practice examination papers using tutorial questions, questions from past examination papers and questions from the textbook. Set aside the same amount of time you will have when you do the actual examination. Put yourself in the same conditions: no mobile phone, no interruptions and no access to any materials other than those you will have on the day of the examination. Have a go at completing the examination, and then mark your answers using the marking criteria provided by the lecturer, or get another student in the course to do it for you. *The more often you do this the better prepared you will be.*
5. *Prepare for the examination physically as well as mentally.* Try to get in some physical exercise between intensive study sessions. Get a good night's sleep before the examination. Eat a healthy meal before the examination. Take water to the examination and stay hydrated. Use the minutes leading up to the start of the examination to try to relax; take some deep breaths and calm your mind.
6. *Read the examination paper carefully.* Read the examination instructions and make sure you understand what you are being asked to do. If you have any doubts, don't be afraid to put up your hand and seek clarification — the lecturer will usually be in the room for the first part of the examination. Students often fail to read the instructions and end up making a mistake, such as answering more or fewer questions than they were supposed to. And make sure you read the examination questions carefully. Read each question at least twice before you start writing. Questions on law papers can be long and complicated. Once you are permitted to write on the question paper, use your pen to underline key passages and jot down brief notes. Again, it is astonishing how many students lose marks simply because they misread or misunderstood the question they were being asked on the examination.
7. *Plan your answers.* Use the perusal time and the first few minutes of the writing time to think about how you are going to answer each question. Prepare brief answer outlines. Don't feel that you have to start writing your answers as soon as the writing time commences; an answer that is carefully planned and well organised will receive better marks than an answer that is rambling, unclear and verbose.



	8. <i>Show your reasoning.</i> In a law examination the marker is less concerned with your final answer than with the process of reasoning that you used to reach your conclusions. Show your reasoning process in as much detail as possible. Explain clearly and convincingly why you reached a particular conclusion or formed a particular view. Setting out your reasoning in detail will also give you more opportunities to demonstrate your knowledge and understanding of the course material.
	9. <i>Support your statements of law.</i> Wherever possible, support any statement that you make about the law by referring to the relevant statutory provisions or precedents.
	10. <i>Consider the marker.</i> Bear in mind throughout the examination that, at some point in the near future, someone is going to have to read through and mark your answers. Do whatever you can to make it easy for them to find ways to give you marks. Write legibly; if you know that your handwriting is difficult to read, especially if you are writing quickly, make the effort to write clearly, perhaps by using a larger font size or writing on every second line. Divide your answer into paragraphs. Use headings and subheadings where appropriate. Underline or highlight key points and important cases and legislation.
	11. <i>Keep an eye on the clock.</i> Don't be taken by surprise when the invigilators tell you to stop writing. Work out an appropriate amount of time to spend on each question, leaving some extra time at the end for checking, and stick to your schedule. If you have given yourself 20 minutes to write an answer and at the end of the 20 minutes you aren't finished, quickly jot down a few points and a conclusion (leaving some blank space between points), move on to the next question, and go back and fill in the details in the first question later if you still have time.
	12. See Tip 1.

### Learn efficiently

Contemporary law students lead very complex lives and have to balance many competing priorities: study, family, work and other interests such as sport or community service. In such circumstances, in order to make your learning effective, you need to think about how to make your learning *efficient*. How you do this will depend on your own learning style and the nature and mix of the priorities that you are trying to balance. We suggest, however, that you consider implementing some of the following strategies:

- *Attend class regularly.* If you are an external student or unable to make it onto campus at the set class time, listen to a recording of the class if it is available. Effective learning can often be achieved more efficiently by listening to someone explain and unpack concepts and issues. If you do not attend class, you could actually end up spending a lot more time trying to understand the content of a subject by going through written materials. Attending class means you will have the opportunity to ask questions about things you do not fully understand. You will have opportunities to connect with other students and to share your knowledge as well as your experiences of law school. Hints and tips about assessment are often given in the lectures and tutorials, and you will miss them if you are not there!

<b>THINK</b>	What plans do you have in place to cover the possibility that you will miss a class?
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- *Use the resources that are provided.* Law teachers spend a lot of time designing their subjects to support your learning. Take advantage of all the work that has been done for you by accessing those materials and resources. In addition, there are a lot of resources and support services provided centrally by your university that can help you to learn effectively by freeing you from worrying about other issues and allowing you to focus on your learning. For example, every university has counselling and financial services, equity and disability services, and tertiary learning support services.
- *Do not cut corners.* To graduate with a law degree represents a high level of achievement. Efficient learning is not learning that just scrapes through. Although some people will tell you that 51% in a subject represents 1% of wasted and unnecessary effort, this is simply not true. Make sure that you put as much effort as possible into your legal studies and achieve the highest results you can. You deserve to have your ability recognised, but standards are high at law school and you need to put effort in to get good results. This means you need to maximise your study time in the context of all your other commitments. Consider all the things you can do to improve your academic performance. Can you come onto campus an hour before classes start and spend time in the library doing independent study? Can you get together after class with a group of fellow students to go over the subject content for the week and do some practice exam questions together? Think about using the PowerPoint slides put up by your lecturers as a start to writing your own notes and a summary of the subject; these notes will help with tutorial preparation and studying for the exam.

#### THINK

Are you aiming for a pass or for a higher grade? Why?

- *Take care of yourself.* Your learning will be ineffective and inefficient if you do not look after your own wellbeing. We will say more about this in chapter 10, but for now it can be as simple as making sure that you exercise, that you eat properly, that you get enough sleep and that you look after your relationships with people who matter to you.

## Get work experience

Some law firms offer opportunities for law students to acquire formal work experience while studying, and some law schools offer subjects that give you the chance to learn in a legal workplace. Getting some work experience while you are studying will help you to make sense of the legal doctrine you are learning about. It will give you a practical context to inform your learning and help you to understand the realities of practice. Practical exposure to the world of legal work will help you to test out your own understanding of the requirements and rigours of a particular area of practice and to manage your expectations. It can also provide an opportunity to get to know lawyers practising in the field. If you develop a keen interest in a particular area of law while at law school, consider getting some work experience in the field. It will help you to work out whether it is a direction you want to pursue upon graduation and give you some future contacts to facilitate that direction.

Work experience in fields other than law will still be beneficial. For example, a range of workplace experiences will enhance your CV. If you spend time working for any large organisation or small business, you will be learning about how they operate. Businesses are valuable clients for law firms, and an understanding of how they operate will be very useful once you enter legal practice. Working in fields other than law will also help you to develop valuable transferable skills such as collaboration skills, communication skills and working with a client focus.

**THINK**

Do you have any work experience? In what fields? How will what you have learned be useful in legal practice?

## Volunteer

We explained earlier the important roles played by community legal centres in Australia. If you are unable to, or are not interested in, securing work experience with a law firm, you should certainly consider volunteering at a community legal centre. Community legal centres offer a range of volunteering opportunities, including helping to coordinate evening sessions for the provision of free legal advice, collating and updating libraries and resources, answering the phone or even helping with the maintenance and cleaning of the centre's premises. Being able to include information about your volunteering activities on your CV sends a positive message to future employers about your commitment to the law and to justice.

## Compete

Competing with your fellow law students helps hone your legal skills. There are many opportunities to compete at law school. For example, you can get involved in *mooting* (mock trials conducted in a courtroom setting) competitions, and in negotiation, essay writing and client interviewing competitions. These activities are certainly time consuming, and they can take you out of your comfort zone, but it is for exactly these reasons that they can be very valuable learning experiences and add another dimension to your law school experience.

**RESEARCH**

What mooting opportunities are available at your law school?

## Get involved

Being active and involved is a key element of engaged, effective and efficient learning. Make the effort to get to know your student peers, speak up in classes and ask questions. All law schools in Australia have law student associations that offer an excellent opportunity to get involved and make the most of your time at law school. Holding an office in a student association is certainly a valuable addition to your CV. If you do not have the capacity to make that level of commitment or you are just not interested in that sort of role, you can still get involved by taking advantage of the events organised by student associations. These include 'meet the profession' events, friendly debates, grudge sports matches against rival law schools and law balls. Get involved with these events and be an active member of your study body. You will reap the benefits in terms of your sense of belonging and wellbeing at law school, as well as your learning outcomes.

**RESEARCH**

What events does your law student association offer for first-year law students?

This section has offered some strategies for making the most of your time at law school. Your legal studies are an important time of preparation for working out the direction of your future professional practice and for the development of your legal identity. In the next section, we focus on the notion of developing an emergent professional identity and how you can connect to the values of the profession by taking academic integrity seriously.

## REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. What are the main characteristics of a law degree in Australia?
2. Why was the initial approach to legal education in Australia a vocational one?
3. When and why did a more doctrinal approach to legal education emerge?
4. What impact did the 1987 Pearce Report have on legal education in Australia?
5. What is the 'Priestly 11'?
6. What are the six Threshold Learning Outcomes for Law?
7. What are the characteristics of effective learning?
8. Outline four strategies for engaging in efficient learning.
9. Why are (a) the acquisition of work experience and (b) volunteering important strategies for success at law school?
10. Outline the benefits of competing and getting involved at law school.

# Developing a professional identity

The legal profession is sometimes subject to harsh criticism and lawyers find themselves the subjects of some rather derogatory jokes. Many people think that lawyers are manipulative, dishonest and duplicitous. Surveys of the public about the integrity of various professions often put lawyers at the bottom of the list.

The truth is that lawyers have a range of ethical duties that they need to fulfil. One of the most important is the duty to the client. However, while lawyers are expected to be zealous advocates for their clients and to seek to advance their client's interests in every legal way possible, including taking advantage of every loophole available, lawyers also have ethical duties and responsibilities to the court and to the law itself.

Balancing these competing ethical obligations is certainly not easy, and lawyers do not always get it right. We will examine ethics in more detail in chapter 13. In this section we focus on engaging with a sense of what it means to 'lead a good life in the law' by developing a professional identity.<sup>12</sup>

## What is a 'professional identity'?

A 'professional identity' is difficult to define clearly because it is not a static concept.<sup>13</sup> According to identity theory, however, your professional identity includes your self-concept as a member of the legal profession and your internalised beliefs, values, expectations, motives and behaviours that arise from how you perceive yourself in your professional role.<sup>14</sup> Your professional identity involves not only how you see yourself as a lawyer, but also how others see you.

Your professional identity as a law student, and later as a lawyer, is only one of the many identities you will have. You have other dominant roles in your life to which identities attach. You might be a coach, a musician or a sportsperson, or you might have an

12. Richard O Brooks, 'Ethical Legal Identity and Professional Responsibility' (1990–1991) 4 *Georgetown Journal of Legal Ethics* 317, 317.

13. Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2010) 4 *Phoenix Law Review* 19, 30.

14. Sheldon Stryker and Peter J Burke, 'The Past, Present and Future of an Identity Theory' (2000) 63 *Social Psychology Quarterly* 284, 286.

identity connected to being a sibling, a friend or a parent. It is also important to keep a clear sense of your personal identity — your own personal values and beliefs — in addition to your other identities, because your personal identity is an important cornerstone and should inform and integrate with your other identities.

At law school, your professional identity as a lawyer will emerge and begin to develop. You may have already had an existing professional identity when you arrived at law school, one that was shaped and influenced by a range of sources including portrayals of lawyers in popular culture.<sup>15</sup> This is your starting point. As you begin to extend that identity and test out some of your understandings of the elements of that identity, you will receive feedback from your teachers and peers, and you will have learning experiences that will self-verify your understanding of what it means to be a legal professional, or challenge you to reconsider it. This is all connected to the process of acculturation into the profession and to your developing sense of belonging within both the law school and the legal profession itself.

#### THINK

What was the perception of the professional identity of lawyers that you brought with you to law school? How does this sit with your own sense of your personal identity? Does it match up or are there some differences?

## The importance of a positive professional identity

It is important that from your first year of law school you reflect upon your emerging professional identity. This is because law school is where you are first introduced to what is expected of lawyers in their professional role. A range of literature supports the idea that the law school environment and legal education ‘play a significant role in the development of students’ professional identities’.<sup>16</sup> In first year it has been suggested that ‘students’ personal and professional identities are particularly mutable and adaptable, and that this is also a time when the salience of identities can change’.<sup>17</sup> It has also been said that the impact of your formative years at law school will stay with you into legal practice and for the long term. One writer has even suggested that the influences on your professional identity at law school will impact on you for the rest of your career.<sup>18</sup> And according to another writer, ‘the way one pursues a legal life may affect one’s ultimate happiness’.<sup>19</sup>

For these reasons, it is important for you to focus consciously upon developing a *positive* professional identity rather than a negative one. A positive professional identity might be influenced by a positive view of the role of lawyers as defenders of rights, as upholders of duties, as champions of the rule of law and as resolvers of disputes.

#### THINK

What are the negative views of the role of lawyers that you should be wary of adopting as part of your own professional identity?

15. Michael Asimow, ‘Popular Culture and the Adversary System’ (2007) 40 *Loyola Law Review* 653, 669.

16. Kath Hall, Molly Townes O’Brien and Stephen Tang, ‘Developing a Professional Identity in Law Schools: A View from Australia’ (2010) 4 *Phoenix Law Review* 19, 33.

17. *Ibid* 36.

18. Daisy Hurst Floyd, ‘Lost Opportunity: Legal Education and the Development of Professional Identity’ (2007) 30 *Hamline Law Review* 555, 562.

19. Richard O Brooks, ‘Ethical Legal Identity and Professional Responsibility’ (1990–1991) 4 *Georgetown Journal of Legal Ethics* 317, 320.



Another way to build a positive professional identity is to work on the formation of a positive *ethical* identity. There is a range of ethical identities that represent the ‘good’ lawyer. Brooks offers the following list of possible ethical identities of lawyers.<sup>20</sup>

#### LEGAL ETHICAL IDENTITIES

- Institutional status-related identities:
- The officer of the court
  - The law-abiding citizen
  - The constitutional lawyer
- Organisational function-oriented identities:
- The advocate
  - The problem solver
  - The social engineer
  - The reflective craftsman
- Place in market-oriented identities:
- The businessperson lawyer
  - The member of a regulated industry
- Politically oriented identities:
- The statesperson lawyer
  - The servant of the people
  - Public interest lawyer
- Morally oriented identities:
- A good person and moral advocate
  - The gentleperson lawyer
  - The professional
  - The advocate as friend
  - The religious lawyer

#### THINK

Identify those aspects of the list that you can relate to. Can you formulate an emergent ethical identity for yourself as a lawyer using those items from the list? What needs to be added?

The task of working out your ethical identity as a key part of your positive professional identity is a process that may take many years — it will possibly be a work in progress over your entire life. In the following section, however, we suggest that you can make a good start on developing your ethical identity by engaging with the ethical requirements of academic integrity while at law school and ensuring that you do not commit plagiarism in your academic writing.

## Academic integrity

As a first-year law student you need to ensure that you approach all of your assessment with *academic integrity*. Working with academic integrity means that you do not make use of other people’s words, ideas, research findings or information without acknowledging the source. It also means you do not claim work completed by someone else, or part of their work, as your own. Words to describe failing to work with academic integrity include *plagiarism*, *cheating* and *collusion*.

Academic integrity is the cornerstone of the academic enterprise. If you claim someone else’s work as your own, you are in effect lying about your authorship. If you fail to acknowledge the sources that inform your thinking and theorising, you are effectively stealing those ideas and falsely holding out that you came up with them on your own. As Corbin and Carter have said, ‘to plagiarise in law school is to demonstrate a

20. Richard O Brooks, ‘Ethical Legal Identity and Professional Responsibility’ (1990–1991) 4 *Georgetown Journal of Legal Ethics* 317, 322.

lack of constant vigilance in abiding by the ethical dictates of one's professional community'.<sup>21</sup> On the other hand, when you write with academic integrity and thoroughly reference and acknowledge the sources that have influenced your work, you demonstrate a deep knowledge of the field, a commitment to research and a breadth of reading. It is positively in your interests to take academic integrity seriously, and it is positively against them not to.

There will of course be times at law school when you will be tempted to cut corners. It is very easy to access material electronically. Assignments on a range of topics can be bought online or through student contacts. Our message to you is that it simply is not worth it, for a range of reasons; perhaps the most compelling is that university disciplinary action against you for plagiarism is a consideration that goes to the issue of whether you are a 'fit and proper person to be admitted', and 'of good fame and character'. These things are consistent criteria around Australia for you to be considered suitable for admission to the profession. A disciplinary action against you for plagiarism at university leading to a finding of guilt is a matter that according to, for example, section 9(1)(g)(ii) of the *Legal Profession Act 2007* (Qld) makes you someone who 'has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt'. As Justice de Jersey said of his decision to refuse admission to a recent law graduate:

Legal practitioners must exhibit a degree of integrity which engenders in the Court and in clients unquestioning confidence in the completely honest discharge of their professional commitments. Cheating in the academic course which leads to the qualification central to practice and at a time so close to the application for admission must preclude our presently being satisfied of this applicant's fitness.<sup>22</sup>

#### RESEARCH

What are the consequences of plagiarism at your university?

## Avoiding plagiarism when conducting legal research

### What is plagiarism?

Plagiarism is the act of using of another person's work without appropriate acknowledgement. If you have presented another person's work as your own, you have committed plagiarism *even if you did not intend to do so*.

Plagiarism includes (but is not limited to) presenting as your own work material that you have:

- copied verbatim,
- paraphrased, summarised or the wording of which you have simply rearranged,
- expressed in your own words but which contains another person's idea or interpretation, or
- 'cut and pasted' from multiple sources.

The plagiarism can relate to a paragraph, a series of sentences, a single sentence or even part of a sentence.

You also commit plagiarism if you present as your own independent work any work that you have in fact done in collaboration with other students. This form of plagiarism is known as 'collusion'.

### What are the consequences of committing plagiarism?

Plagiarism constitutes academic misconduct. A finding of academic misconduct usually carries with it a range of penalties from zero marks for the piece of assessment in question through to expulsion from the university, and the finding is noted on your academic record.

21. Lillian Corbin and Justin Carter, 'Is Plagiarism Indicative of Prospective Legal Practice?' (2008) 17 *Legal Education Review* 53.  
22. *Re AJG* [2004] QCA 88 (Unreported, de Jersey CJ, Jerrard JA and Philippides J, 15 March 2004) 4.

Since a finding of academic misconduct relates to your personal character, it must be disclosed if you are seeking admission as a legal practitioner, and it can be the basis for an objection to your admission. *The consequences for law students of a finding of academic misconduct are therefore extremely serious.*

### **How do I avoid committing plagiarism?**

It is certainly not the case that you cannot include the words or ideas of others when you conduct legal research — in fact, it is unavoidable. What you are not permitted to do is present those words or ideas without identifying them as the words or ideas of others.

If you include another person's idea or interpretation in your work, you must indicate the original source of that idea or interpretation by including a 'reference'. If in addition to including the other person's idea or interpretation you use their actual words, then in addition to including a reference you must clearly indicate that the words are not your own by either putting them in quotation marks (for shorter extracts) or by putting the extract in a separate paragraph that is indented and in a smaller font.

### **Direct quotes**

You directly quote a source if you repeat exactly the words used in the source.

If your work contains a direct quote but you do not attribute the quote to another source by including a reference, you are presenting the quote as if it is your own work. *This is plagiarism.*

If you attach a reference to the quote but you do not make it clear that you are using the exact wording of the source, you are presenting the particular expression of the original author's idea as if it is your own expression. *This is still plagiarism.*

If you include a direct quote in your work you should (1) include a reference and (2) make it clear that it is a quote by either placing it in quotation marks or indenting the quote and using a smaller font.

Alternatively, you can paraphrase or summarise the original source.

### **Paraphrasing**

Paraphrasing involves using your own words to express the ideas of another person in the same or a similar level of detail. As a general rule it is not necessary to provide quotation marks or indenting when paraphrasing. However, you must still include a reference.

### **Summarising**

A summary is a brief restatement of the ideas of another person. Even if the actual wording is very different from the original source, you must still include a reference.

### **Substituting words**

Using a form of words that is substantially the same as those used in the original version but with only a few words changed in an attempt to avoid the need for quotation marks or indenting is not a paraphrase or summary of the original version. Rather it is equivalent to a direct quotation.

Even if the original source is referenced, you are still presenting the words of the original author as your own words. *This is still plagiarism.* You should either (1) use all of the original words and show them to be a direct quote or (2) paraphrase or summarise the original words.

### **Do I have to attribute everything?**

There are some rules of law that are so elementary and uncontroversial that any person who has any level of legal education is able to assert them without citing authority. For example, if you were to state that a contract is a legally enforceable agreement, you would not need to cite the source of that idea. As long as you are using your own words to state such a proposition, there is no need to cite a source. Of course, if you are directly quoting another source, then the words must be properly referenced.

#### REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. What is a 'professional identity'?
2. Why is it important to develop a positive professional identity?
3. What are some examples of positive ethical identities for lawyers?
4. What is academic integrity and how is it relevant to the development of a positive professional identity?

## Checklist

Now that you have worked through the chapter you should be able to explain:

- ☐ the myths and realities of being a lawyer,
- ☐ the diverse range of career opportunities that are available to you as a result of completing a law degree,
- ☐ the various ways to make the most of your legal education from your first year as a law student, and
- ☐ the meaning and importance of developing a positive professional identity as both a law student and a future lawyer.

## Exercises

### Exercise 1.1

Articulate in as much detail as possible what sort of legal work you would like to do as a lawyer and why you are drawn to this work.

### Exercise 1.2

Review the features and content of the law degree in which you are presently enrolled. What will be the likely impact upon the curriculum if compliance with the Threshold Learning Outcomes for Law is made mandatory for all law schools?

### Exercise 1.3

Conduct some online research and identify the differences between the way law is taught in Australia and the way it is taught in (a) the UK and (b) the USA.

### Exercise 1.4

Explain the notion of 'academic integrity' and how it can form the ethical foundations for your future as a legal professional.

### Exercise 1.5

Design a poster 'selling' the legal profession as a career and describing both the benefits of being a lawyer and the range of possible job options.

## Further reading

Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, ALRC Report 89 (2000) <<http://www.alrc.gov.au/report-89>>

Brooks, Richard O, 'Ethical Legal Identity and Professional Responsibility' (1990–1991) 4 *Georgetown Journal of Legal Ethics* 317

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