

“Put yourself in my place...”

Vulnerability theory and ethical dilemmas in a fractured legal sector

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“Hello, Jane?
You might not
remember me
but you taught
me five years
ago. Sorry to
bother you, but
have you got a
minute ...?”

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Legislation & Regulation: compounding rather than ameliorating ethical dilemmas?

- A fractured legal services context
- The Legal Services Act 2007 s1
 - “promoting competition in the provision of services”
 - “encouraging an independent, strong, diverse and effective legal profession”
- Codes of Conduct and neoliberalism
 - OFR and the conduct of solicitors
- Competition between firms, within firms and between professions
 - Fragmentation of the sector
 - Case study – intellectual property work and branding: solicitor vs. registered trade mark attorney.
- Tension with in house counsel

The need for resilience

- resilience at two levels:
 - of the firm against other providers, other professions and the unregulated sector,
 - and by the individual against senior lawyers or non-lawyer managers under pressure

Our working definition of ethics

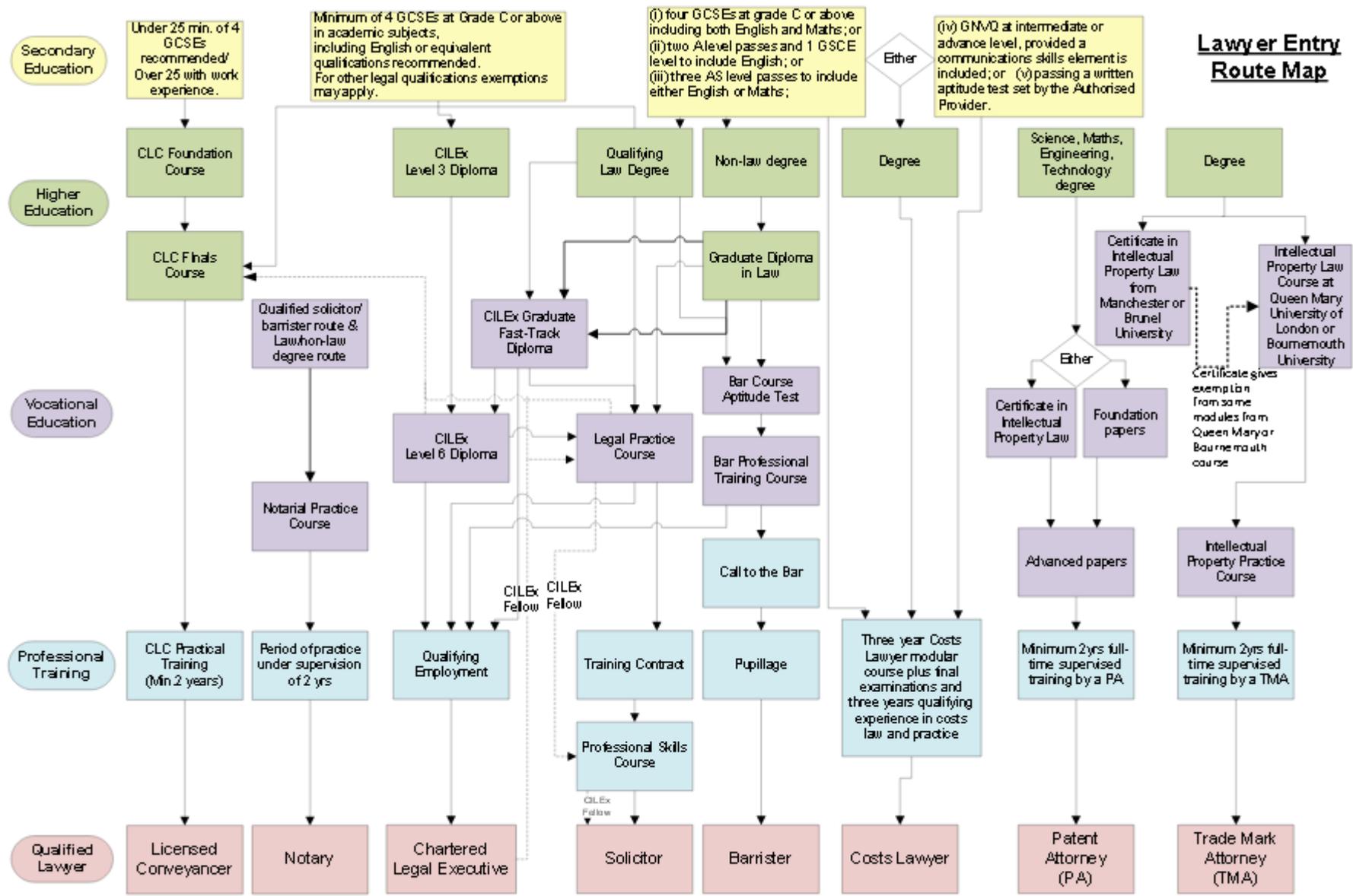
“1 the arrangements made by society for the delivery of legal services and in particular of the legal profession, its structures, roles and responsibilities (sometimes termed macro legal ethics); and

2 the roles and responsibilities of individual lawyers in the provision of legal services together with the ethical implications of those roles (sometimes termed micro legal ethics): and

3 the wider social context, especially the philosophical, economic and sociological context in which lawyers work”

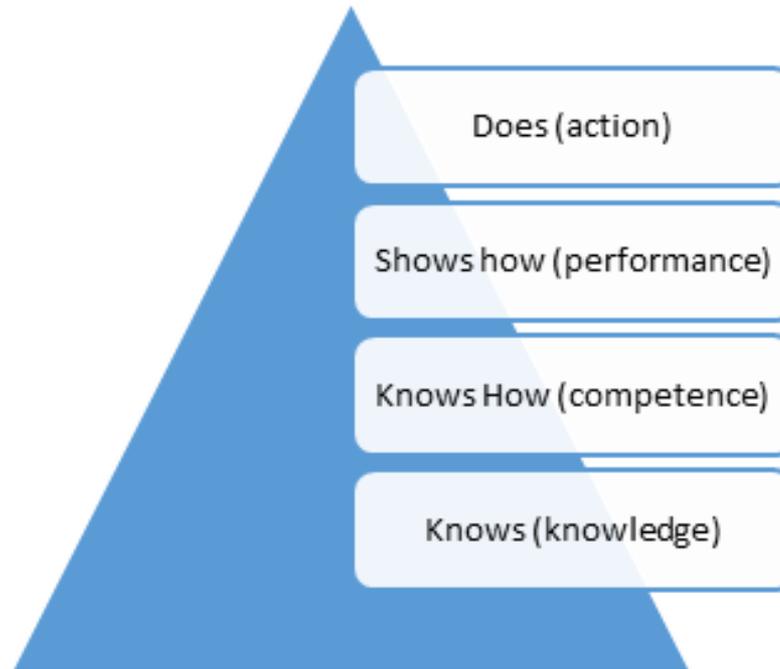
Richard O’Dair, *Legal Ethics Text and Materials* (Butterworths 2001),
p 5

Lawyer Entry Route Map



Disclaimer: "This map includes the main routes of entry to the eight branches of the legal profession. It has been developed for illustrative purposes only and does not include every possible route of entry. The relevant Approved Regulator should be contacted to obtain accurate and up to date information based on personal circumstances."

Miller's pyramid: resilience & ethical "competence"?



George E Miller, 'The Assessment of Clinical Skills/Competence/Performance' (1990) 65 Academic Medicine S63

The myth of ethical resilience at the point of qualification

- Miller's pyramid and a definition of competence
- Legal education and the preparation for "good practice"
 - The hectic environment and context
 - Pressure for training contracts and paralegal positions
 - Competition for "panel" based work
 - Pressure from clients and supervisors
- Problems inherent in developing expertise in ethical action
 - Impact of specialisation
 - Allegiance to "the family"
 - Risk management as a factor in infantilising ethical reasoning

Ethical competence at the point of qualification?

	Australia	Canada	Bar	SRA QLTS	SRA EM	SRA SQE	TM
Identify code/rules			X			X	x
Understand code	X	X	X	X	X	X	
Understand/apply principles behind the code				X		X	
Apply code/follow rules (implies in straightforward contexts)	X		X			X	X
Identify ethical issue	X	X	X		X	X	
Apply judgment/critical thinking		X		X	X		
Identify how to act/own limitations/necessity to ask	X			X general	X general		X general
Identify appropriate source of help	X						
Ask for help	X					X	
Awareness of difficulties in so doing	X						
Make effective use of answer/guidance			X			X	
Resist pressure to act unethically						X	
Make decision/resolve dilemma/ "respond appropriately"		X		X			
Act responsibly/ethically/with integrity			X	X			

The missing resource: The trusted outsider & the academy as proxy

- The special place of the vocational lecturer and the “practitioner tutor”
 - Ethical mentors emerge rather than being appointed
- The need to maintain and enhance the “practice based” context
 - Comparison with medicine
- Need for a resilience “script” for action
- What next?

Put yourself in my
place ... see if you can
stand the awful hurt I
feel inside

The Isley Brothers, 'Put Yourself in My
Place'.

