

1-1-2005

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### Recommended Citation

Palermo, Josephine and Evans, Adrian (2005) "Australian Law Students' Values: How They Impact on Ethical Behaviour," *Legal Education Review*: Vol. 15 : Iss. 1 , Article 2.  
Available at: <https://epublications.bond.edu.au/ler/vol15/iss1/2>

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# Australian Law Students' Values: How They Impact on Ethical Behaviour

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*Josephine Palermo\* & Adrian Evans\*\**

## Introduction

This paper focuses on the values that underpin legal practitioners' behaviour. In a globalising legal profession information about the values bases' of lawyers is critical to understanding the ways in which a "justice agenda" (arguably, a primary responsibility of the profession) may be sustained into the 21st century. However, there has been a dearth of research into the value systems of lawyers or law students. This paper attempts to investigate what values are characteristic of the mass of Australian lawyers in their last year of law school. It is part of a larger longitudinal study, now nearing completion, which aims to provide longitudinal information about the value sets of these same law students, as they become early-career lawyers and to understand how their values develop or degrade over time.

Public and professional discussion about lawyers' behaviour is perennial to the point of cliché in many national legal systems. Commentary thrives because it is ordinarily based on anecdotal and usually passionate, "war" stories. The latest of these cases is perhaps amongst the worst. *James Hardie Industries*, with the active cooperation of its in-house counsel and external lawyers, deliberately relocated its corporate headquarters to the Netherlands in order to avoid paying billions in compensation for asbestos-related diseases caused, with its knowledge, by its building products.<sup>1</sup> Yet these war

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This paper arises from research funded by the Australian Research Council under a grant made to Assoc Professor Evans, Professor Stephen Parker (Deputy Vice Chancellor, Monash University) and Ms Palermo.

1 C Merritt, Options Canvassed For Hardie Law Changes *The Australian Financial Review* 12 November 2004, at 59. Hardie's lawyers were *Allens*

stories, although often accurate,<sup>2</sup> are dismissed because they are seen as “one offs” and not demonstrable of any wider reality. While anecdotes might influence politicians, they do not necessarily persuade Law Deans or the profession that systemic problems are involved. Even the recent findings of the *HIH* Royal Commission, which included a call for renewed vigour in tertiary ethics education,<sup>3</sup> have not obviously

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*Arthur Robinson*, one of the big six Australian law firms. During the enquiry, *Allens* was asked why they had not stood back and asked themselves what they *should* be advising their client to do. *Allens* responded to the effect that that they were advising their client on the letter of the law, no more and no less. See R Ackland, *Irresistible Charms* (2004) 26(38) *Business Review Weekly* 48. A succinct history of the *Hardie* affair, up until the appointment of David Jackson QC to investigate the matter, may be viewed in the Australian Parliamentary Library [www.aph.gov.au/library/pubs/rn/2004-05/05rn12.htm](http://www.aph.gov.au/library/pubs/rn/2004-05/05rn12.htm) (accessed 22 November 2005). The Jackson Inquiry (Report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation, 21 September 2004, NSW Cabinet Office [www.cabinet.nsw.gov.au/publications.html](http://www.cabinet.nsw.gov.au/publications.html) (accessed 22 November 2005) was commissioned by the NSW Government in an attempt to discover who was responsible for the under-funding of the asbestosis compensation process. Commissioner Jackson considered that *Hardie* had misled the community as to its true purpose in relocating to the Netherlands: “The second observation concerns the quite misleading statements made on behalf of JHIL at the time of separation, and the culture of denial adopted as the shortcomings in the Foundation’s funding began to emerge. For nearly thirty years in this country we have had standards for business communications. Such communications are not to be misleading or deceptive....In my opinion they were not here observed” (Part A, p 13, para 1.26). The attempt by *Hardie* to avoid extensive financial obligation to its former employees and other users of asbestos products, is still unresolved. The NSW Government has now advised the company that it has until Saturday 26 November 2005 in which to finally agree to pay compensation, after which NSW will legislate to apply *Hardie* subsidiary company assets to the compensation process. See Jonathan Porter and Jack Schmidtknecht, *Week Till Hardie Forced to Settle* *The Australian* 22 November 2005, at 7.

- 2 Note this comment by Justice Neville Owen concerning the involvement of lawyers in the recent *HIH* implosion: “The Lawyers: *HIH* approached various legal advisers from time to time to provide guidance on particular matters. There were occasions when the legal advice given fell short of what one would expect in the circumstances. One such occasion involved the provision of advice in a situation where the potential for a conflict of interest was obvious. Another entailed advice that sought to explain how to effect an arrangement in a way that would ‘get around’ certain provisions of the Corporations Law that otherwise prohibited the arrangement. It is also disappointing that lawyers were among those involved in what I call the ‘dash for cash’ in the days leading up to 15 March 2001”. *The Failure of HIH Insurance: A Critical Assessment, The Regulators, External Advisers, The Lawyers*, pp xiii-lxv <http://www.hihroyalcom.gov.au/finalreport/index.htm> (accessed 21 November 2005).
- 3 Owen, *supra* note 2 (from “The Royal Commission: A Personal Perspective”, in Vol 1, *The Failure of HIH: A Critical Assessment*, pp xiii-lxv) “Right and wrong are moral concepts, and morality does not exist in a vacuum. I think all those who participate in the direction and management of

affected either the learning priorities of law schools or the approach that the profession takes to dealing with disciplined practitioners.

Post the *Enron Corporation* collapse,<sup>4</sup> some say that ethical sensitivity has become significantly more important to both business and the legal profession in western jurisdictions, but this is a doubtful proposition. When things get tough, lawyers still retreat into the bunker, with the statement that “ethics are no more than what the law requires”.<sup>5</sup> The reality – that legal ethics is/are considerably more than what the law requires – is confronting because such a focus requires an adherence to notions of justice which can edge out some client demands. The actual relationship between the quality of justice and the values/behaviour of its (legal) practitioners is accordingly of obvious importance to an international “justice priority”, arguably even more so, now that we are facing a choice between whether or not to fully support the Rule of Law, within a “War on Terror” context.

We have focused on values not only because they may be said to underlie “ethics” at a fundamental level, but also because they are widely discussed nowadays, although rarely investigated. Law schools have always assumed homogeneity in values and it has suited the profession to go along with this view. An initial task in our investigation was to establish whether there is an empirical basis for the assumption that lawyers’ aspirations are based on shared personal and professional values. Having established whether the assumption is empirically correct, we then need to ask “what role does education play in the reinforcement of personal values appropriate for the legal profession?” and

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public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values. They must then apply those tenets in the decision-making process. The education system—particularly at tertiary level—should take seriously the responsibility it has to inculcate in students a sense of ethical method”.

4 *Enron Corporation*, with the assistance of its lawyers and accountants, constructed a sophisticated series of misleading financial accounts designed to keep the existence of huge debts off its main balance sheet. When the true nature of the debt was about to become public, the company with its auditors and lawyers, began a hurried document destruction program in order to prevent the full picture emerging as to the history of the debt-deception process. See Deborah L Rhode & Paul D Paton, Lawyers, Ethics and Enron (2002) 8 *Stanford Journal of Law Business and Finance* 9.

5 D Wighton & A Parker, SEC Boss Hits Back at Critics of Reform *The Australian* 21 September 2004, at 25.

“what attitude can the profession play to values, in the post-admission context?”.

The concept of value systems has been of interest across a wide range of social scientific research.<sup>6</sup> Milton Rokeach's theory of human values identified values as mental entities or very general attitudes, personality types, or individual collective ideas that serve as standards or criteria of conduct.<sup>7</sup>

Studying value orientations is therefore important because a substantial body of research indicates that values predict world views and hence have great potential to predict behaviours in work places.<sup>8</sup>

The influence of personal values on decision making has also recently been recognised as an integral factor in theories of managerial decision making.<sup>9</sup> These are important relationships for lawyers, considering the diverse destinations of law graduates. Lawyers who subscribe to values which emphasise the importance of wealth creation or employer loyalty (above all else) may be inclined to behave consistently with those attitudes within their professional environments. Issues of systemic justice and ethical decision-making may therefore at times run counter to decision-making priorities in some firms and institutions.

Research that has studied the relationships between values, attitudes and behaviours indicate that there is a weak direct relationship between values and actual behaviours. However there is evidence of strong relationships between values and *behaviour relevant* attitudes.<sup>10</sup> These include attitudes towards civil rights, international affairs, religion, political activism and choice of academic area.<sup>11</sup>

Due to the indirect effects of personal values on behaviour, research findings are mixed in organisational and business contexts. In a study of male partners in CPA firms, researchers found that personal values had little impact on auditors' perceptions of the moral intensity of an ethical dilemma.<sup>12</sup>

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6 M Rokeach & SJ Rokeach, Stability and Change in American Value Priorities 1968-1981 (1989) 44(5) *American Psychologist* 775.

7 M Rokeach, *The Nature of Human Values* (New York: Free Press, 1973).

8 Z Wharton & HR Harmatz, Responses to the Economy Among Two Value Orientation Segments (1995) 16 *Journal of Economic Psychology* 205.

9 WE Shafer, RE Morris & AA Ketchand, Effects of Personal Values on Auditors' Ethical Decisions (2001) 14(3) *Accounting, Auditing & Accountability Journal* 254.

10 Wharton & Harmatz, *supra* note 8, at 205.

11 Shafer, Morris & Ketchand, *supra* note 9 at 254.

12 *Id.*

Earlier, McCarthy<sup>13</sup> had found no significant relationships between personal values and ethical orientation in her sample of American accounting students. She specifically compared the value systems of first-year Accounting students and those at the end of their degrees, and concluded that little evidence existed that ethical orientation improved through their exposure to codes of ethics or completion of ethics subjects.

However, the existence of gender differences in value hierarchies of men and women is evidenced in a plethora of studies. For example, Hotel,<sup>14</sup> who interviewed 36 lawyers predominantly practicing in family law, found that men were less likely to identify moral conflict in a particular scenario because they were more likely to identify fully with their professional role. Their vocational identity was that of "hired gun" where they perceived no greater obligation than that to the client, thus abdicating any moral or ethical responsibility to themselves. Kreie<sup>15</sup> also found significant differences between male and female students in their assessment of ethical and unethical behaviours. They found that women tended to be more conservative, and were more likely to consider environmental cues as well as their personal values.

While other studies have addressed the effects of values on ethical decision making in an auditing context for Accountants and business professionals, the current study is the first Australian study to address, empirically, the effects of values on ethical decision making in the legal context, among legal professionals. The study investigated the impact of value weightings on reported behaviors in a number of ethical scenarios for male and female students in their final year of their law degree. Results are reported here with a minimum of conventional statistical format, before discussion of the educational and re-educational implications.

## Method

### *Participants*

Law Faculties across Australia were asked to assist in distributed surveys to students enrolled in the final year of

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13 In McCarthy, Professional Ethics Code Conflict Situations: Ethical and Value Orientation of Collegiate Accounting Students (1997) 16 *Journal of Business Ethics* 1467.

14 C Hotel & J Brockman, Legal Ethics in the Practice of Family Law: Playing Chess While Mountain Climbing (1997) 16(8) *Journal of Business Ethics* 809.

15 J Kreie & TP Cronan, How Men and Women View Ethics (1998) 41(9) *Association for Computing Machinery: Communications of the ACM* 70.

their law degrees. Seven hundred individuals responded to the mail questionnaire, representing approximately 18 per cent of a population of four thousand Australian final year law students. All jurisdictions were represented in the final sample, although most respondents came from NSW, Victoria and Queensland. Females accounted for 61 per cent (n=431) and males 39 per cent (n= 272) of respondents. Sixty per cent of the sample categorised themselves in the 18-25 age group and 72 per cent classified themselves as "Australian".

The majority of the sample were single (70%) and had no children (84%). Most had parents with professional, teaching or business backgrounds. Based on the Australian Bureau of Statistics (Index of Education and Occupation) classification of socio-economic status<sup>16</sup> as derived from postcodes of residence, most of the sample was classified as residing in homes with high socio-economic status classifications (61%).

Nearly 70 per cent had completed an "ethics" course and might therefore be thought to have some exposure to the ethical issues of practice, while only 40 per cent had experienced a "clinical" course.

All in all, we consider the sample was representative of the population of law graduates in Australia.

### *Effects of Values on Ethical Decision Making*

To examine the effects of value weightings on ethical decision making, it was necessary to situate respondents' responses within contexts that provided for ethical dilemmas. The survey utilised an oblique measurement of law students' values, based upon their own responses to survey questions which were piloted in a 1998 survey of Monash law graduates.<sup>17</sup> Rather than directly ask students about their values, we deployed the practice of the hypothetical situation, adding a personal dimension to further reduce the level of abstraction and assist in actual values identification. Extracts of scenarios presented to participants are presented in Table 1.

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16 G Sinclair, J Doughney & J Palermo, Equity indicators: Measures of socio-economic status at an Australian University. (2003) 12(1) *Journal of Institutional Research* 74.

17 Adrian Evans, Lawyers' Perceptions of their Values: An Empirical Assessment of Monash University Graduates in Law 1980-1998, (2001) 2 (1&2) *Legal Education Review* 219.



**Table 1****Scenarios used to elicit ethical responses**

**Scenario 1 – Pro Bono:** You are a new solicitor working in a large commercial law firm. The matter requires a lot of time and work. Your senior partner however wants you to increase your billable hours for the firm. The firm does not usually do any *pro bono* work but there is no actual policy against it. Your time is currently so limited you could only realistically do one or the other. **Would you agree to work on the public interest case?**

**Scenario 2 – Personal v Professional:** You are a junior associate of a small commercial law firm with a niche reputation in the area of privatisation tendering processes. Your firm has been tentatively approached by a significant corporation to help them draft their tender submission for a privatised public transport contract. Your firm would almost certainly gain an enormous amount of new work from this corporation if you were to take them on as a new client. At the same time you become aware that a close friend, who has not previously been a client, is about to request and will expect your help with their tender for the same government contract. **Would you act for the corporation and therefore detrimentally effect the relationship with your old friend?**

**Scenario 3 – Personal v Professional:** You are a Partner in the firm of AMBD. Your nephew (the son of your elder sister) is an associate in the firm. You discover your nephew has a minor gambling problem and has taken money from the firm's trust account to cover his debts. **Would you report the matter to the local law society?**

**Scenario 4 – Insider Trading :** A corporate client of your firm, for whom you have done some useful work, takes the partner responsible, yourself and others in your section to lunch to celebrate (confidentially) the award of a tender. You know that the client is grateful and wants to recognise your collective contributions to this particular success. The client CEO says as much and, in addition to the usual hints about more work, speculates off-handedly that the price of the company's shares is likely to reflect the win once it is all announced. **Would you purchase shares in the company before the public announcement of the tender success?**

**Scenario 5 – Work over Family:** You are a junior solicitor working for a large city firm. The long working hours are causing a lot of pressure at home with your partner and your



young children. The firm's managing practitioner asks you to show commitment on a file. This would involve even longer hours than usual with many late nights for at least the next month. Working longer hours would cause a serious argument at home and be highly detrimental to your relationship with your family. **Would you take on the extra hours?**

**Scenario 6 – Personal Loyalty:** You are a sole practitioner specialising in family law. A client approaches you to handle his divorce. You and your spouse have been good friends of this person and you also know his wife and children reasonably well. Whilst drafting the property settlement you suspect your friend has not declared all his assets. Your friend says that his list of assets is complete. You are not convinced but you cannot realistically get more information. **Would you continue to represent your friend?**

**Scenario 7 – Family v The Law:** You are a DPP prosecutor who has concentrated on drug trafficking cases. You have argued to many juries that every case of drug dealing harms society and must be reported and dealt with by the Police. You discover that your daughter has been selling cannabis to other students at her school. Your partner implores you not to report the matter and threatens to end your relationship (already strained by overwork) if you do. **Would you report the matter to the Police?**

**Scenario 8 – Rounding-up Hours** While on a summer clerkship with a large and well-respected commercial firm, you are (naturally) concerned with making a good impression. It is your second last year of law school and you are desperate for Articles. The partner supervising you decides to give you some of her files to get ready for "costing". She asks you to total the number of hours which she has spent on each file and, from her harried expression, it is pretty clear that she is concerned to charge out a significant amount on each file. She asks you to "round up" her hours to the next hundred in each file, saying that, on average, clients are happy because the main thing they demand is quality work. You know that these clients are entirely satisfied with the firm and that your supervisor is not about to debate the issue with you. **Would you round up the hours as requested?**

**Scenario 9 – Proposals to political party donors** As a young and aware lawyer, you have for some years been anxious that the major political parties are unaware of or too nervous about the seriousness of global warming. As a *pro bono* contributor

to the *Greens'* election effort, you are asked to assist its local candidate by raising campaign funds from progressive law firms, barristers and old friends from law school. Your preferred approach, already quite successful, is to verbally represent to potential donors that you will "put in a good word" for them when it comes to contracts and consultancy, in the event that the *Greens* are successful. You fully intend to act on your promise to donors should the *Greens* achieve this balance, but you know that the party is very "pure" and virtually certain to consider itself uncommitted to any corporate benefactor. **Would you make the proposed representation to potential donors?**

**Scenario 10 – Counselling a Colleague:** You and your best friend founded a practice together 10 years ago. The practice has been moderately successful. Your friend (and Partner) has just been through a complex and bitter divorce. Since he has been separated from his family his only interest is work. You have begun to notice personality changes which lead you to question his mental stability. His advice in some matters has become legally questionable and may be in breach of professional standards. He has rejected any suggestion of needing a break or some professional treatment. **Would you ask the local law society or regulator to arrange to counsel him?**

**Scenario 11 – Confidentiality:** You are acting for a mother of three small children in a divorce and intervention order matter. Your client has previously shown you some old photographs of bruises and marks on the children which she claims were inflicted not by their father, but by her new boyfriend. One of the children now has blurred vision. Your client now instructs you to stop all legal proceedings as she intends to return to the children's father with her children. You believe the children will be at risk if this happens but you know "mandatory reporting" does not apply to lawyers in your state. **Would you break client confidentiality and inform the relevant welfare department of your fears?**

Participants were asked to indicate their probable behaviour, and after reflecting on their decision they were also asked to weight the importance, in making that decision, of a number of *behaviour relevant values* (BRVs), on a scale ranging from 1 = not important to 5 = very important. Since the scenarios were also relatively commonplace, it was reasoned that a degree of personal identification with the lawyer's dilemma (in each

scenario) would emerge. We then applied statistical methods to the responses, in the interests of producing the “hard data” that might influence professional opinion. Behaviour relevant values specific to each of the scenarios were used as independent variables in analyses of variance of reported behaviour, for each of the 11 ethical scenarios.

## Results

### *Reported Behaviours*

In order to establish the general pattern of reported behaviour, frequencies of behavioural indicators for both samples, and males and females were examined and are presented in Figure 1. While the majority of responses are in the expected direction, the number of participants who indicated they would choose to act in ways that could be generally considered as opposed to the requirements of professional codes of conduct was surprising. For example, only a small majority of the sample would agree to take on *pro bono* work in Scenario 1. Further, a minority of the sample would report a trust account deficiency in Scenario 3, whilst over 55 per cent would round up hours in Scenario 8, and misrepresent covenants to potential donors to a political party in Scenario 9.

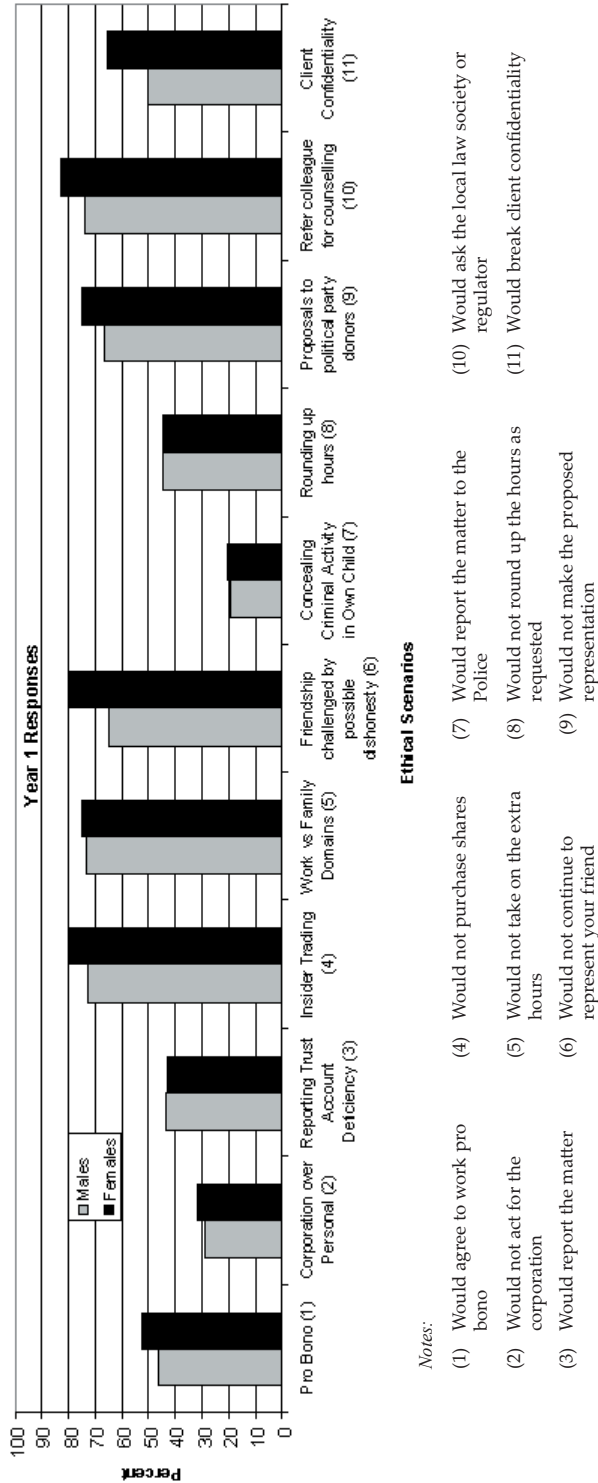
Chi-square tests were conducted to ascertain whether there were any significant association between reported behaviours and gender. Results suggested that *females* would be significantly more likely to take on the *pro bono* work ( $\chi^2 = 3.98$ ,  $p < .05$ ); refer the colleague to the local law society or regulator ( $\chi^2 = 10.08$ ,  $p < .01$ ); and break client confidentiality and inform the relevant welfare department ( $\chi^2 = 15.82$ ,  $p < .001$ ).

Results also indicated that *females* were slightly less likely to report the trust deficiency ( $\chi^2 = 5.65$ ,  $p < .05$ ); purchase shares in a company before the public announcement of the tender success ( $\chi^2 = 6.33$ ,  $p < .05$ ); continue to represent the friend in the divorce proceedings ( $\chi^2 = 21.52$ ,  $p < .001$ ); and make the misrepresented presentation to donors ( $\chi^2 = 7.20$ ,  $p < .01$ ).

### *Values Dimensions as Predictors of Reported Behaviours*

We then began to work out which values most influenced the decisions made, in either direction. Mean (or average) responses on behaviour relevant values (BRVs) for each scenario were analysed to investigate differences in value weightings assigned according to participants' reported behaviour. As

Figure 1  
Proportion of males and females who indicated behaviour generally considered to be consistent with professional codes of conduct in scenarios



results in Figures 2 to 5<sup>18</sup> demonstrate, there were significant differences in BRVs according to how participants' reported their behavioural choices on different scenarios. Where there were gender differences on BRV values, females tended to weight BRVs as more salient to their decisions than did males. In other words, female law students appear to more closely identify with values, *per se*.

## Discussion

The results of this study indicated a statistically significant association between espoused personal values and ethical decision making. While the behavioural outcomes used in this study were limited to their intentional rather than observed natures, the results do provide evidence of the impact of personal values as predictors of reported behaviours in ethically intensive dilemmas. In most of the scenarios, females (but not males, as a rule) were more likely to indicate the importance to their thinking, of behaviour relevant values. The results of each scenario are discussed in turn below. In addition, the differences between males and females on mean weightings assigned to behaviour relevant values confirms previous studies that suggest women will tend to consider exterior environmental cues as well as their own personal values, more than men.<sup>19</sup>

*Pro bono* activity may be considered a primary indicator of a professional attitude. Indeed, some writers are adamant that the quality of "altruism" – which for the purposes of this study we have compacted somewhat into a forced choice about whether to give something to the community or not – is an archetype of professionalism.<sup>20</sup> It was of considerable interest that only a small majority of respondents (all still in law school at the time of the survey) considered that they would commit to a public interest *pro bono* matter (50.8%). Significant mean differences (that is, differences which were not explained by mere chance alone) were evident between

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18 In Figures 2-5, the reference to the "donation to political parties" scenario identified a behaviour-relevant value of "responsibility to the community".

19 Hotel *supra* note 14; Kreie *supra* note 15.

20 T Glennon, Lawyers and Caring: Building an Ethic of Care into Professional Responsibility (1992) 43 (4) *Hastings Law Journal* 1175; A Kronman, Professionalism (1999) 2 *Journal of the Institute for the Study of Legal Ethics* 89; J Gobbo, Idealism under Stress: Legal Practice in Victoria (2000) 12 *Law Institute Journal* 85; RK Warren, Transcript from Professionalism Conference, 52(3) *South Carolina L R* 489-490 (Spring 2001); N Preston, Virtue Theory – Links to Professionalism in Noel Preston *Understanding Ethics* 2nd ed (Sydney: Federation Press, 2001) 58.

participants who would take on the *pro bono* case, for all values except professional ambition ( $F(5,565) = 124.50, p < .001$ ), with women more likely to undertake *pro bono* cases than men. Women were more likely to prioritise the value of "access to justice", whereas males were more likely to prioritise "business efficacy" ( $5,656 = 11.54, p < .001$ ).

*Personal over corporation:* The majority of respondents considered that they would act for the corporation and place that decision before their concern for a close friendship (67.9%). "Personal achievement", and "business efficacy" ( $F(4,665) = 71.57, p < .001$ ), appeared to be important in the decision to prioritise the corporation over their friendship, suggesting an individualistic orientation towards this scenario.

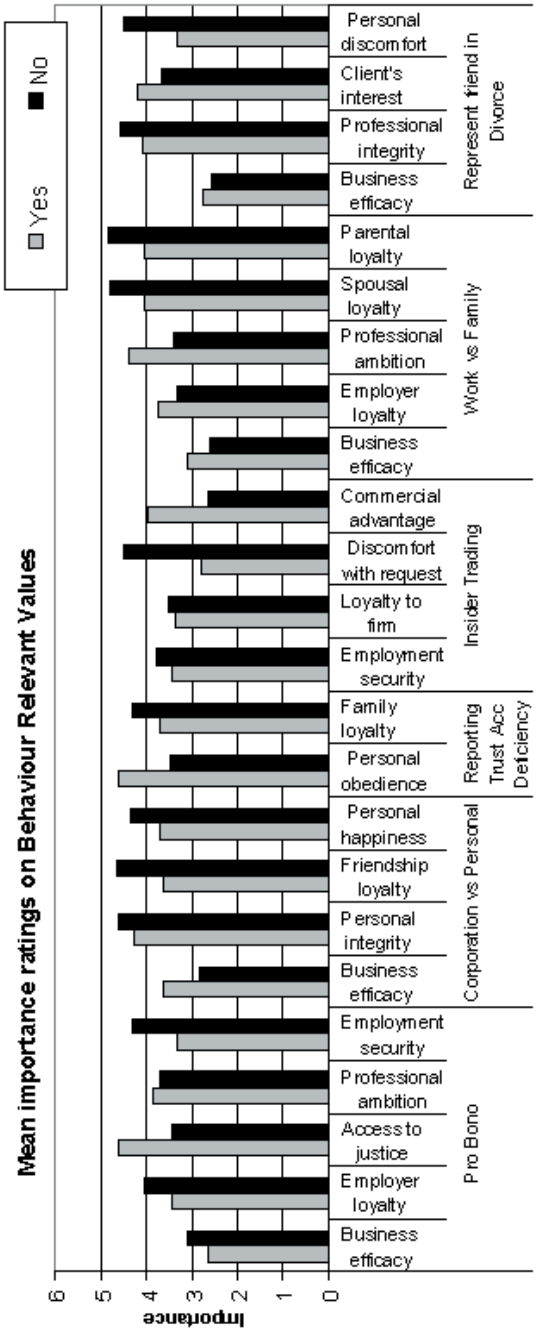
The question posed in the Scenario, *Reporting Trust Account Deficiency* sought to explore the connection between personal integrity – involving a relatively close family member – and the specific requirements of trust account administration. Trust defalcations have been a major embarrassment to the Australasian legal profession over the years. In New Zealand in 1992, a small Upper Hutt firm, *Renshaw and Edwards*, managed to steal over NZ\$50 million, causing the entire New Zealand fidelity fund to become insolvent.<sup>21</sup> In Victoria, both the local fidelity fund, which went into technical deficit in 1993 after a series of major thefts, and the theft of \$6 million in Queensland by "Flash" Harry Smith in 1999, have played a role in the demise of self-regulation in that State.<sup>22</sup> The International Bar Association considers defalcations so important that it dedicates an international committee to prevention and detection of defalcation.<sup>23</sup>

21 The two partners of Renshaw and Edwards stole in order to fund failed horse racing and property "speculation". Approximately NZ\$30m was eventually paid out by the NZ fidelity fund to defrauded clients and each member of the New Zealand society was compulsorily levied NZ \$10,000 to pay for this. The circumstances surrounding the case and the very controversial levy were discussed in *Amptmeyer v New Zealand Law Society* (High Court of New Zealand, 1st March 1994, CP 373/93, unreported). The political and financial context of the defalcation is discussed in Adrian Evans, *The Development and Control of the Solicitors Guarantee Fund (Victoria) and Its Ethical Implications for the Legal Profession*, LLM Thesis, Monash University, Australia, 1997 at 175.

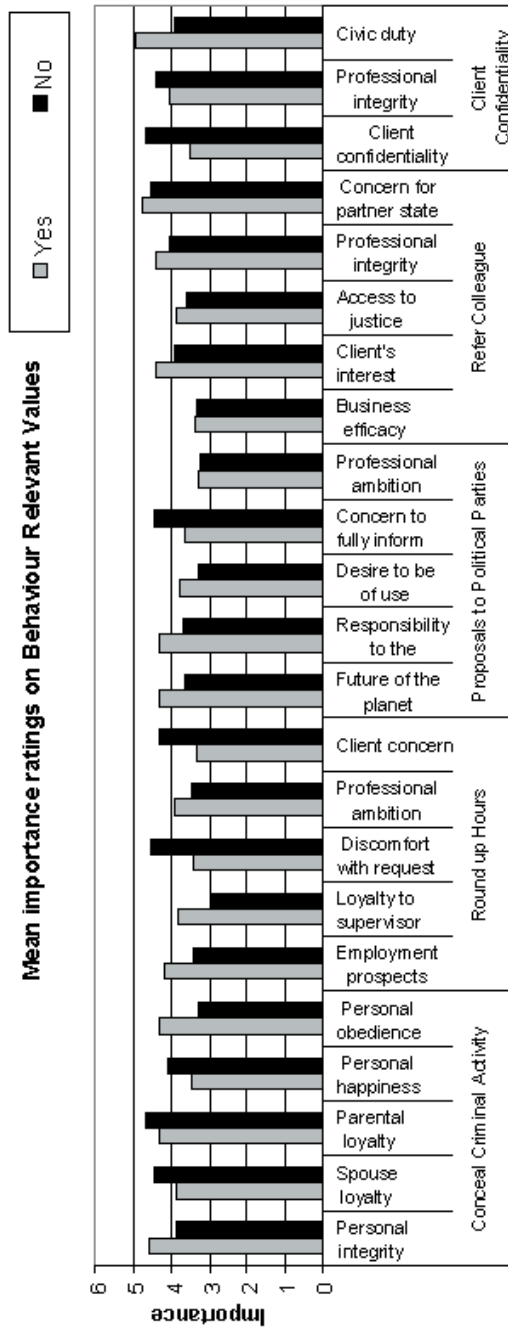
22 Evans, *id* at 92-126; Adrian Evans, *Queensland's Fidelity Compensation 1990-2004: The End of the Money Tree* (2004) 23 *The University of Queensland Law Journal* 397.

23 International Bar Association, Committee 23 – Client Protection.

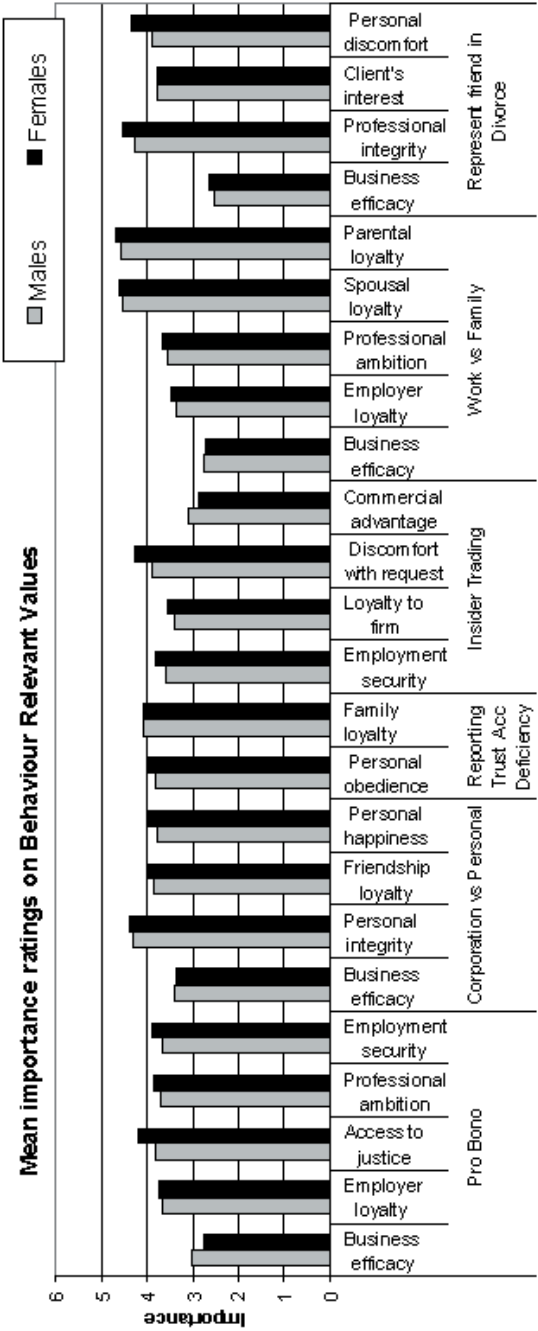
Figures 2 and 3  
Mean responses of importance of behaviour relevant values for each Scenario, according to reported behaviours

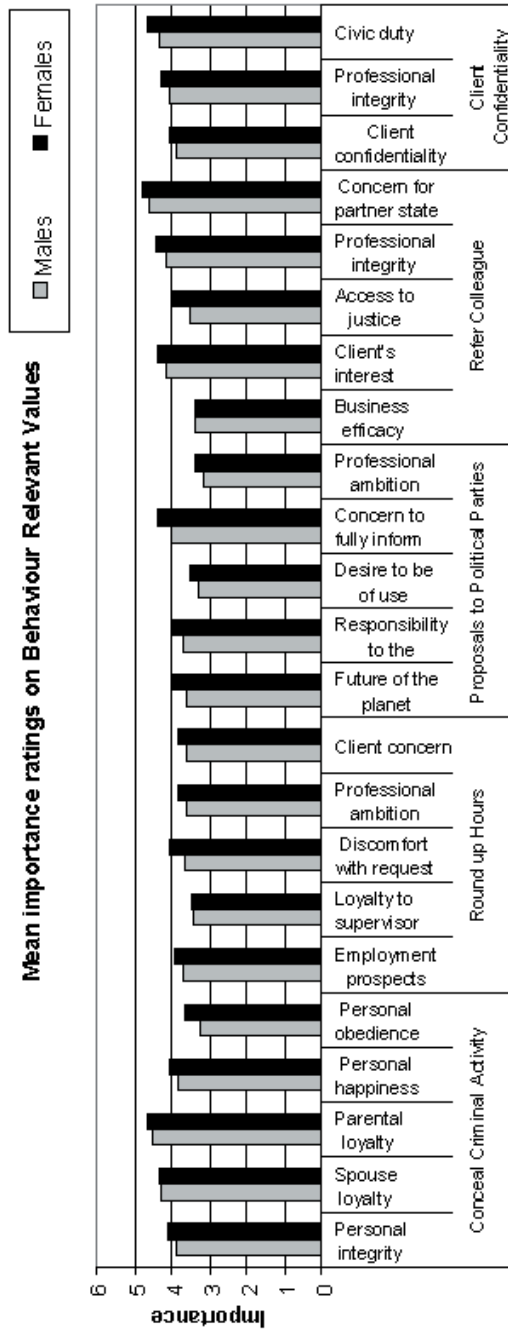






Figures 4 and 5  
Mean responses of importance of behaviour relevant values for each Scenario, for males and females





In all Australian jurisdictions the requirement to report a trust deficiency is mandatory, no matter the size of the deficiency or its possible cause. As mentioned, 70 per cent of students had completed an ethics subject before completing this survey. We assume, but of course cannot be certain, that respondents were therefore more likely to be aware of the reporting requirement than not. Nevertheless, a sizeable majority of law students were prepared to remain silent when aware of a trust account deficiency which involved a relative (60%). Interestingly, males and females reported similar results on the behaviour related values that were salient in their decision. Means for respondents who indicated they *would* report the matter to the police suggest that personal obedience was given priority over family loyalty in informing their decision ( $F(2,676) = 228.70$ ,  $p < .001$ ). Therefore it appears that personal instrumentality or self-interest, rather than general concern for others, may have been a motivating force in the decision to remain silent. We are particularly concerned to see whether this majority decision to tolerate defalcations is reflected in the follow-up study of these law students, as they enter practice.

The scenario, *Insider Trading* is directed towards the broad issues of business ethics in an area closely related to legal practice. Although *Enron*<sup>24</sup> and related corporate failures were an international scandal only after this survey was completed, there were many signs in Australian corporate experience that the last two decades of the century were marked by an excess of what must be defined as corporate greed.<sup>25</sup> We considered that it was important to attempt to measure the extent to which students – many of whom would be going to business/law firm related workplaces<sup>26</sup> – were sensitised to the values inherent in the phenomenon of greed.

The majority of law students (75.7%), recognised the “insider trading” opportunity as inappropriate, however,

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24 *Enron* supra note 4.

25 For example, *HIH* was beset by archetypal breaches of governance during the late 1990s, as this quote from *The Age* shows: “Rodney Adler summoned Brad Cooper to a hotel room early yesterday morning to warn him against telling the truth about an alleged insider trading deal, Mr Cooper told the *HIH* Royal Commission today. The entrepreneur and long-time associate of Mr Adler is appearing at the commission for the second time to answer questions about a \$1 million short-trading share deal to prop up *HIH*’s ailing share price in August 1999”, *The Age* 14 October 2002 <http://www.theage.com.au/articles/2002/10/14/1034561084719.html> (accessed 21 November 2005).

26 Nearly 75% of Australian law graduates were destined for legal professional and “business professional” positions in 2000 and 2001, according to the Australian Graduate Careers Council, M Ketchell, Race for That Dream Job Gets Tougher *The Age* 9 November 2002, at 5.

23.2 per cent were apparently unconcerned. Some may think that one quarter of all law students is far too high; however, we are inclined to consider that law students were commendably aware of the slippery slope represented by inside access to share market information. Of the quarter who would abuse the information, the motivating values were associated with "personal achievement" and the benefits of "commercial advantage" within the firm ( $F(4,666) = 157.69, p < .001$ ). As expected, females tended to identify the ethical intensity of the issue, as evidenced by their greater concern or discomfort with the use of the information ( $F(4, 666) = 5.14, p < .001$ ).

*Work over Family Domains:* Findings suggest that values such as "employer loyalty", "business efficacy" and "professional ambition" were important in prioritising work over family duties. This finding may indicate students' perceptions of organisational cultures in law firms, which are generally not work-life friendly, or intolerant of spill-over effects from one life sphere to the other. This may be of greater concern for females who tended to prioritise family related values, more so than males ( $F(5, 666) = 2.48, p < .001$ ).

*Represent Friend in Divorce:* "Professional integrity" and "personal discomfort" were given weight over other BRVs ( $F(4, 673) = 79.81, p < .001$ ), and these values were more likely to be more important for women than for men ( $F(4, 673) = 6.73, p < .001$ ). Again, as seen in responses to other scenarios, value systems that prioritised personal gain through work, such as "personal achievement", informed the choices of 26 per cent of respondents who would ignore the questioning motivations of their friend and continue to act for this client.

The scenario, *Criminal Activity in Own Child*, was similar to the above "nephew/trust deficiency" and is designed to push respondents towards the limits of what might be called "personal-professional tension". In this situation, a very large proportion of law students indicated they would remain silent (79.4%). Findings suggested that the values "personal integrity", and "personal obedience" were salient in the decision to report the daughter in the scenario whereas "parental" and "spouse loyalty", and "personal happiness" were given weight in the majority decision not to report the matter to the police ( $F(5, 664) = 60.88, p < .001$ ).

There were also significant differences between males and females in their responses to value priorities on this scenario ( $F(5,664) = 6.15, p < .001$ ). Mean differences indicated that females were more likely than males to prioritise "personal integrity", "parental loyalty", "personal happiness" and

“personal obedience”. As with the defalcation scenario, this result suggests a pronounced inability in law students to understand the significant personal implications of a decision to seek admission to practice

*Rounding up hours on a client bill:* A considerable majority of law students were prepared, when requested, to *round-up hours* on a file to the next 100 hours for the purposes of billing a client (56.6%). In a number of cases, it is likely that such an increase would add many thousands of dollars to a client’s bill.

Some observers who have commented on this scenario have remarked that the process of settling the final amount of a bill is complex and that the partner responsible for each client account will often vary a bill up or down, after basic time calculations have occurred. In that context, it may be said that this request, made to a summer clerk, is hardly improper. In trialling the question, however, practitioners were of the contrary view and we think that, given that the question asks about rounding-up *hours* (not dollars) to the next one hundred, it was reasonable to ask for a choice.

There were significant differences on BRVs according to participants’ reported behaviours on this Scenario. For participants who would round-up hours, “employment prospects”, “professional ambition” and “loyalty to supervisor” were prioritised in the decision making process. “Discomfort with request”, and “client concern” were assigned greater weight for those participants who indicated they would not round-up the hours ( $F(5,664) = 100.65$ ,  $p < .001$ ). Interestingly, females were more likely to prioritise all these values, more so than males, in their decision making process ( $F(5,664) = 6.88$ ,  $p < .001$ ). However, females did not differ in their propensity to round-up the hours. This result does not support the anecdotal complaint that overcharging is endemic to the profession, but it does suggest that articulated clerks who are asked to overcharge a client are unlikely to have the inclination or confidence to resist.

*Proposals to political party donors:* Underlying motivating values might be more complex than originally thought in this scenario because other values prioritised in the decision included “concern for the future of the planet”, “responsibility to the environment”, and “desire to be of use”, as well as “professional ambition”. In this scenario, females were less likely to make the mis-represented proposal to potential donors, perhaps indicative of their greater awareness of the values tension presented in this dilemma ( $F(5,656) = 5.95$ ,  $p < .001$ ).

*Refer colleague for counselling:* Participants were likely to prioritise values such as “access to justice”, “professional integrity”, “client’s interest” and “concern for partner state of mind” in their decision to make the referral ( $F(5,664) = 10.92$ ,  $p < .001$ ). Therefore, the values that differentiated participants’ reported choices were those that were associated with an internal focus and desire to achieve a sense of equanimity within oneself and with others. This may explain why females were more likely than males to report the colleague for counselling.

*Breaching client confidentiality:* We considered it necessary to construct a suitably difficult context in which to investigate the limits of confidentiality. The issue of child abuse is of very high profile in Australia. The deaths of young children at the hands of their fathers or males known to their mothers, comprise regular features in metropolitan newspapers. Nevertheless, confidentiality has been described as one of the “core values” of the Australian legal profession<sup>27</sup> and, despite some policy concerns which now question the utility of confidentiality in achieving just results in the trial process, it remains undeniably crucial as a lynch pin of common law systems of representation.<sup>28</sup>

In this socially notorious scenario, most law students would breach client confidentiality (59.3%) and the conflict raised provoked anguished comment among respondents. The values that influenced their decision included values associated with ideas about civic duty; whereas, “client confidentiality” and “professional integrity” were given weight in informing a decision not to break confidentiality ( $F(3,661) = 295.66$ ,  $p < .001$ ). We are again not surprised by this result and attribute it to the fact that these respondents had not then, for the most part, experienced the realities of legal practice and in particular, the trust ordinarily placed in lawyers by their clients.

## Implications

While these findings, taken together, do not reflect well on the efforts of law schools to inculcate a “justice ethic” within the basic law degree, they do indicate a greater propensity for female students to be more aware of behavioural relevant values when confronted with ethical dilemmas. These findings, however, need to be interpreted cautiously.

27 Ian Dunn, Incorporation and MDP’s (2000) 74(9) *Law Institute Journal* 3. Mr Dunn is the former CEO, Law Institute of Victoria.

28 *Prince Jefri Bolkiah v KPMG (a firm)* (1999) 2 WLR 215 at 266, per Lord Millett.



A limitation of the design of this study is in our inability to distinguish participants' reported intentions from the effects of social desirability: that is, some respondents may tend to report intentions which they consider to be socially desirable. The gender differences evidenced here could therefore be a consequence of greater social desirability effects on female students' responses. While considering these cautions, results do appear compelling, in that they confirm prior studies of gender differences.<sup>29</sup>

On the basis of these first year results alone, it may be suggested that law student values, and the specific needs of gender groups, generally require more specific attention in curricula than has been the case to date. As McCarthy<sup>30</sup> suggested, the implication of these findings requires revisiting legal ethics education in the context of individual substantive law subjects and the incorporation of multidisciplinary, normative expertise from practitioners and the social sciences. Rokeach<sup>31</sup> suggests that value change is possible only when discrepancies are presented that threaten self-cognition: in other words, when individuals are able to reflect on the differences between their own intentions and social norms. It is only then that self-motivation is enhanced or threatened, depending on the clarity of the reflection process. Awareness of discrepancies between values related to the self-concept, compared with those values generally considered preferable in ethical systems, can lead to dissatisfaction or "dissonance" and allow change in cognition and behaviour. In short, values awareness, explored in context, is likely to be a more productive route for legal ethics education.

If the forthcoming analyses of post-graduation responses to this study (by Articled Clerks and first/second year practitioners) indicate continuing discrepancies between ethical norms and intentions, there will be an urgent need for generalised values-awareness processes within the admitted fraternity.

Although we have looked only at the general population of law students/practitioners, the special case of practitioners who are identified as having behavioural problems by the disciplinary process, could raise a more pressing need. Arguably, depending on the degree of significance of associated values-behaviours among disciplined practitioners,

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29 C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982).

30 McCarthy, *supra* note 13, at 1467.

31 M Rokeach, *Some Unresolved Issues in Theories of Beliefs, Attitudes and Values* (1979) 27 *Nebraska Symposium of Motivation* 261.

there may be a strong case for the profession, in the exercise of its self-governance, to prescribe particularly focussed values awareness regimes for those who seek a return to practice or whose practising certificates have conditions attached as a result of unsatisfactory conduct or misconduct. Such activity may be well-regarded by community and state, and the majority of practitioners, as in the interests of both the profession and the community.