
The Law Practice Landscape of Greater China

Choosing to be a 'Good' Lawyer in a Good Law Firm

2.1 The Connection between Good Lawyering and Good Legal Communities

Good lawyers need a credible, practical framework to be good *in*, so to speak. So *where* you practise law and *who* you practise it with are important in supporting your good lawyering. Lawyers' reputations matter because there is a fundamental two-way connection between being a good lawyer and being in a good (that is, morally sustainable) legal practice.

The sum total of how you see your role as a lawyer will define you as you advance through the law. This is where you begin to develop your reputation: the hard-to-pin-down mix of what others think of your knowledge and skills, your trustworthiness, your willingness to prepare thoroughly and your sense of appropriate ethical behaviour. Notice that this list begins but does not stop with your general intelligence (IQ). High IQ will not be enough to mark your professionalism or determine your success, because they depend on the harder things – the virtues (trust, diligence and judgment) – that must be demonstrated just as convincingly as your intelligence.

So the environment where you start being a lawyer needs to be ethically healthy: it should provide good role models or mentors, help you manage your stress, encourage clear thinking about ethics and carefully expose you to the wider realities of professionalism. This chapter addresses the ethical challenges posed by different types of legal practice and law firms in the Greater China setting. The case studies, practice lists and questions are there to emphasise that you can decide to choose a healthy legal ethical community, where you are most likely to find a nurturing, meaningful future as a legal practitioner.

The difficulty with identifying the good environments to work in is that while they are far more numerous than dodgy workplaces when

assessed across the profession as a whole, there is not any easy way to distinguish them from the others. The contents of law firm websites and marketing campaigns are unhelpful because they focus on attracting clients, not lawyers. There is a buyers’ market for legal talent and that will continue as long as student entry into law schools keeps growing. And firm websites invariably emphasize ‘24/7’ availability to clients rather than the fact that their clients are likely to receive more considered, ethical and value-adding comprehensive service from lawyers who are happy, engaged and have a life away from the office; in short, from lawyers who feel they have a meaningful future ahead of them. So while knowing which particular firm could be good to work for and with is not easy, we do know a fair bit about what issues to consider in avoiding the not-so-good lawyers, law firms and corporate employers. Even these have something to teach us. In the cases summarized in Table 2.1 some consistent themes show what to be wary of.

2.2 Common Themes in Major Examples of Poor Lawyering

Table 2.1. *Themes in poor lawyering*

Case, incident, exam question or research report	Themes of the ethical danger zone
Offering bribes by a unit	
In the PRC, the crime of ‘offering bribes by a unit’ refers to someone who offers bribes to seek illegitimate benefits, or who, in violation of state regulations, gives government officials kickbacks or services.	Personal greed
The Henan Province Lawyers’ Association cancelled Liu Xianyang’s membership in 2018 because he committed the crime of ‘offering bribes by a unit’. Liu was the legal counsel of a real estate company in Anyang City, Henan Province. Liu bribed the former deputy director of Anyang intermediate people’s court, who was handling a loan dispute case for the real estate company. The bribery involved 2.06 million yuan for unjust enrichment. Liu was sentenced to 2 years’ imprisonment.	
On 28 September 2018, the Department of Justice of Henan Province imposed an administrative penalty on Liu by revoking his lawyer’s practice certificate.	

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
<p>And on 9 October 2018, the Henan Lawyers' Association confirmed the disciplinary action and cancelled Liu's membership.</p>	
Offering bribes to a judge	
Case 1	
<p>On 30 March 2020, the Lawyers Association of Huanggang City, Hubei Province suspended Zhang Yang's membership rights for 9 months because he had bribed the judge. Zhang gave 20,000 yuan (in cash) to the judge for his help in a case. The Association stated that Zhang truthfully confessed the bribery, cooperated with the Association during the investigation process and was remorseful.</p>	<p>Lack of legal expertise, laziness and greed</p>
Case 2	
<p>On 6 April 2012, Tsai-Teng-wang was disbarred by the Taiwan Attorneys' Disciplinary Committee because he had bribed a judge. Tsai was the lawyer of Yeh, who was caught gambling and using heroin. Tsai told Yeh that the judge-in-charge of the case was his ex-coworker. On 9 February 1995, the judge solicited bribes from Tsai. Yeh and Tsai decided to give the judge 1 million TW\$. Tsai was sentenced to 34 months' imprisonment in 2003 for bribery. The judge was sentenced to 11 years' imprisonment.^a</p>	
Case 3	
<p>Tien was the Taiwan attorney of his client Tu Yi-wen. On 13 July 1992, Tien told Tu that he needed to give 200,000 TW\$ to the judge in order to win the case. Tien received the money but did not pay the judge. Tu reached a settlement with the plaintiff and the court approved it. After the hearing, Tu was drunk and accidentally mentioned that Tien had bribed the judge. The judge heard about this and started to investigate Tien. Tien was sentenced to 2 years' imprisonment.</p>	

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
On 10 October 2010, Tien Tzai-chuan was disbarred by the Taiwan Attorney Disciplinary Committee because he had solicited bribes. ^b	
Receiving bribes	
Yuan Xiwu, a Shandong Province Wenxin law firm lawyer, received a public reprimand from the Weifang City Lawyers Association on 21 October 2019.	No understanding of personal integrity
Yuan was handling disputes over a real estate transaction between Tian, Zhang, Gong and Zhu. Yuan alleged that the judge had asked for money and he therefore asked his clients for the same. Yuan was reprimanded for violating Article 28 of the disciplinary rules (provisional) of the All-China Lawyers' Association. ^c	False belief that the judge was giving him permission to attempt to bribe others
Accepting instructions privately and receiving fees in a private capacity	
On 1 August 2018, the Guangdong Provincial Department of Justice reported to the Beijing Municipal Bureau of Justice that Da Weihuan, an employed lawyer of Beijing Yuanjia law firm, was suspected of illegal practice. According to the investigation conducted by the Beijing Lawyers' Association, and while an employee of the law firm, Da was also de facto an employee receiving a monthly salary from a legal services company. Additionally, Da provided legal services for four other persons privately. On 20 June 2019, the Beijing Lawyers' Association suspended Da's membership for 6 months.	Failure to respect his law firm's right to receive his full attention Greed
Charging clients without permission	
On 16 April 2020, The Lawyers' Association of Huizhou City, Guangdong Province, suspended the membership rights of Luo Liming for 4 months, after Luo charged clients illegally.	Incompetence, deception of clients
According to the investigation by the Association, Luo received money from his clients using his private	

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
bank account. He also failed to pay filing fees to the court on time and caused the case to be treated as withdrawn by the court.	
Failure to properly witness documents	
On 16 July 2019, the Lawyers' Association of Foshan City, Guangdong Province, publicly reprimanded Huang Wanmin, formerly of Guangdong Juyinghua law firm.	Incompetence Failure to properly issue an Invoice
According to the Association's investigation, Huang witnessed the signing of powers of attorney by five clients in 2017 and 2018. She also issued witness certificates and signed all the five certificates with the official seal of Guangdong Juyinghua law firm. However, Huang only signed a written retainer with one of the clients and did not issue any invoice to them. Moreover, Huang negligently failed to identify forged signatures in the powers of attorneys.	
Charging contingency fees	
On 21 April 2020, the Beijing Lawyers' Association publicly reprimanded Beijing Ross law firm.	Receiving a contingency fee in a criminal case
Beijing Ross acted for a client in a criminal case on a contingency fee basis and did not issue an invoice for the proper fee in a timely manner. The firm failed to handle the case properly and also tried to avoid investigation.	
The law firm lawyer handling the case, Wang Zhiqiang, had his membership of Beijing Lawyers Association suspended for 3 months owing to his failure to fulfil his duties. The complaint said that Wang failed to exercise due diligence and received an unauthorized payment while acting for a criminal defendant. The Ministry of Justice was also recommended to impose corresponding penalties.	
Engaging in legal services as a 'non-lawyer'	
On 12 August 2019, the Chongqing City Lawyers' Association publicly reprimanded Chongqing	Failure to respect the public right to be

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
<p>Qianwei law firm for facilitating the illegal practice of staff who did not hold a lawyers' practising certificate.</p> <p>The Association received a complaint that the law firm employed a person who had not obtained a practice certificate, to serve as the person-in-charge of the law firm and to provide legal services in the capacity of a lawyer.</p>	<p>represented by a trained and ethical lawyer</p>
Forgery and falsification of documents	
Case 1	
<p>Between 2008 and 2015, Chang Chih-kang acted in several criminal, civil and administrative law cases. Chang failed to submit important legal documents to the court on time. So he decided to falsify documents such as court summonses and other notices.</p> <p>On 12 April 2019, Chang was sanctioned with a 2-year suspension by the Taiwan Attorney Disciplinary Committee, and separately sentenced to 3 years' imprisonment for falsification of a document.^d</p>	<p>Deceit, instead of honesty</p>
Case 2	
<p>In 2011, a City University of Hong Kong JD student falsified her transcript to successfully enrol in the PCLL programme at the University of Hong Kong. Without completing the PCLL programme, she then secured employment with a law firm as a trainee solicitor by using a forged PCLL certificate in 2015.</p> <p>Later on, the Law Society of Hong Kong found out that the student had not passed the PCLL programme, and she surrendered to police after being fired by the firm.</p> <p>The student was convicted of two charges of using false instruments, two charges of theft and one charge of falsifying a statutory declaration, and was sentenced to 9 months' imprisonment in 2018.^e</p>	

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
Subornation of perjury	
<p>Lawyer Chuo Pin-Jieh was the advocate for a scammer named Wu in 2016. Chuo gave confidential information to Wu's associate Lyu, in order to help him fabricate false testimony to the court.</p> <p>Chuo felt remorse for his behaviour, but on 17 April 2020, he was suspended for 6 months for subornation of perjury, and also sentenced to 7 months' imprisonment with 3 years' probation.^f</p>	<p>Breach of confidentiality</p> <p>Duty not to mislead the court</p>
Abuse of process	
<p>In 2013, the defence advocate in a Hong Kong indecent assault case was accused of stalling a trial deliberately in order to earn more fees. The trial took 19 days and lasted for nearly four months. A similar trial would normally only take one or two days in normal practice.</p> <p>It was alleged that he wasted the Court's time by questioning witnesses unnecessarily. Also, he claimed he would not be available to continue the defence on the date at which the Magistrate proposed to adjourn, because he would be on vacation outside Hong Kong – when he had not yet confirmed and paid for an airline ticket.</p> <p>Apart from the abuse of process, the Tribunal also found the other four complaints substantiated: insulting and/or annoying a witness, misleading the Court, failure to defend his client competently and engaging in conduct during the trial that was discourteous to the Court.</p> <p>In 2019, the HK Barristers' Disciplinary Tribunal suspended the barrister from practising as a barrister for 3 years.^g</p>	<p>Greed</p>
Theft/Obtaining client's property by deception	
<p>On 3 July 2012, a Hong Kong solicitor stole HK\$ 24,000 from his client. Tong also deceived his client by saying they needed to pay the HK Immigration</p>	<p>Greed</p>

Table 2.1. (*cont.*)

Case, incident, exam question or research report	Themes of the ethical danger zone
<p>department HK\$ 3,000. The solicitor was sentenced to 4.5 months' imprisonment with 1-year probation in 2014.</p> <p>In 2015, the solicitor was then convicted of three charges of theft. He charged his clients HK\$ 40,000 in fees, but he refused to refund this sum after his client's legal aid application was approved. He was sentenced to serve a community service order for 160 hours.</p> <p>Finally, in 2018, the HK Solicitors' Disciplinary Tribunal decided to strike the solicitor's name from the Roll of Solicitors.^h</p>	
Embezzlement	
<p>A Hong Kong solicitor was convicted on one count of using false instruments and three counts of theft. He embezzled over HK\$ 2 million when she dealt with mortgage loan and compensation claims cases between 2003 and 2008. He was sentenced to 45 months' imprisonment in 2011.</p> <p>The HK Solicitors' Disciplinary Tribunal decided the conduct of the solicitor was 'unbefitting of a solicitor' and in 2012 decided to strike his name from the Roll of Solicitors.ⁱ</p>	

^a See <https://gazette.nat.gov.tw/egFront/detail.do?metaid=53231&log=detailLog>

^b See <https://gazette.nat.gov.tw/egFront/detail.do?metaid=42327&log=detailLog>

^c See www.chinalawtranslate.com/en/lawyers-association-disciplinary-rules-provisional-comment-draft/

^d See <https://gazette.nat.gov.tw/egFront/detail.do?metaid=107438&log=detailLog>

^e See DCCC 380/2018 / [2018] HKDC 1274; www.hk01.com.

^f See www.twba.org.tw/Manage/magz/UploadFile/6214_123-124-108%E5%B9%B4%E5%BA%A637%E8%99%9F-%E5%8D%93%E5%93%81%E4%BB%8B.pdf.

^g See www.hkba.org/sites/default/files/15074_Statement%20of%20Findings_2019-4-3.pdf; www.hkba.org/sites/default/files/Reasons%20for%20Sentence%2020190718.pdf.

^h See www.hk-lawyer.org/content/tong-yee-chun-%E2%80%9CRespondent%E2%80%9D.

ⁱ See www.hk-lawyer.org/content/yen-hau-ming-anna-respondent.

2.3 Failures of Lawyers' Regulation, Not Just of Lawyers' Character

The cases and situations mentioned above are just some of those that have laid down a broad trail for the good lawyer to avoid, though that should not be hard for anyone who reads the records of disciplinary cases. You may think that some lawyers' professional failures are just a matter of personal faults, but this is a simplification. There are structural faults at work here that go beyond individuals' bad lawyering.

For example, the power of the Hong Kong Law Society to intervene in the practice of law firms has been criticized recently. In December 2020, the Law Society made a rare move to intervene and shut down Messrs. Wong & Fung, a local law firm, for its misappropriation of clients' funds in a serious breach of the Solicitors' Accounts Rules, including overdrawing on clients' trust accounts and allowing unqualified people to be authorized signatories. It was reported that HK\$375 million (US\$48 million) from about 10,000 clients was locked in the firm's client trust account. A partner of the firm sought judicial review of the Law Society's intervention and more than 900 clients wrote to the judge hearing the matter, complaining that the intervention was causing delay to their sale and purchase activities in the local property market. Another group of 120 clients also failed to see any sense of urgency in the Law Society's decision to intervene.

In Taiwan, the ineffectiveness of the Lawyers' Law to regulate 'non-qualified' lawyers was exposed recently. In February 2021, a US-qualified lawyer named Zheng Zhemin handled a probate case for a client dealing with the overseas assets of her deceased husband. When they had a dispute over the fee after completion of the case, it was found out that Zheng was not a qualified lawyer in Taiwan, which breached the relevant provisions in the Taiwan Lawyers' Law. However, the prosecutor in charge eventually decided not to prosecute Zheng because he never described himself as a qualified lawyer in Taiwan, even though he stated on his personal card that he was a qualified lawyer registered with the Federal Courts of United States.

Finally, in Mainland China, while there is plenty of disciplinary prosecution of sole practitioners and smaller-law firm misbehaviour, there is little discipline of the largest law firms or lawyers involved in the large corporate scandals. A 2018 report lists the following disciplinary cases against individual lawyers in the Peoples Republic of China during 2017:

- 6,805 complaints were received by various lawyers' associations (provincial, district and municipal levels)

- 409 disciplinary actions were commenced, of which
 - 137 were sanctioned by cautions, accounting for 33.50% of the total
 - 121 were sanctioned by open and circulated criticism, accounting for 29.58%
 - 50 were publicly reprimanded, accounting for 12.22%
 - 43 were given a warning, accounting for 10.51%
 - membership rights were suspended in 42 cases, accounting for 10.27%
 - there were 16 cases of membership cancellation, accounting for 3.91% of the total number of sanctions.¹

Only 16% of total complaints by the public resulted in disciplinary charges. It is important to ask why there is such a big gap between the number of complaints and the number of disciplinary charges.

The prosecution imbalance may be a feature of lawyers' regulation in mainland China, and disciplinary enforcement of legal professional responsibility will probably remain a marginal operation affecting (for the most part) the smaller law firms and lawyers. Another more fundamental strategy is necessary if the public interest in 'good' lawyering is to be supported. We consider that better and pre-emptive legal ethics education is central to change and social growth, and this is the reason why we have written this book. Moral regeneration, clichéd and naïve as this concept sounds to many, is nevertheless important in that education. Ethics education raises awareness of the high stakes for society when lawyers are not trusted and offers a path, though admittedly a difficult and narrow one, to individual lawyers – one that provides a useful moral template for practising law responsibly.

Chapter 3 explores the ethical knowledge and courage needed on that path. But first, it will help to understand more of the specific ethical opportunities and challenges faced by particular types of legal practice. The following table (Table 2.2) has two columns: column 1 categorises lawyers according to their general area of work and in column 2 these are divided up according to the ethical opportunities and challenges associated with each area. Opportunities represent your chance to be and do good. The challenges are just that: they are present some or all of the time and must be faced up to.

The best way to use this table is to select what type of lawyer and what type of practice you see yourself connecting to. Then consider the associated opportunities and challenges. Ask yourself: 'What area of law and type of practice will best enable me to be a good lawyer?'

2.4 The Ethical Environment in Different Areas of Law and Types of Legal Practice

There are many types of law practice. Table 2.2 describes the options that may be open to you and their individual ethical challenges.

Table 2.2. *Ethical challenges and opportunities faced by different types of legal practice*

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
Criminal defence lawyers	<ul style="list-style-type: none"> • You will concentrate on defences and pleas of 'guilty' in local and regional courts, rarely in national courts. • You will have a heroic role and do much to safeguard the Rule of Law. • You must withstand client pressure to bend truth and hide guilt. You will need to understand detailed advocacy rules about what you can say and do, for example, in the PRC: • the rule that allows you to keep confidential what your client tells you, except where the information compromises national or public security or endangers personal safety (Article 6, Rules on the Handling of Criminal Cases^a), • the rule that allows a law firm to represent two criminal defendants in the same case, but tries to manage the conflict of interest by appointing different lawyers for each defendant (Article 13, Rules on the Handling of Criminal Cases^b) • will you feel able to ask if your client has made a confession after being tortured (Article 22(9), Rules on the Handling of Criminal Cases^c) • are the 'compulsory measures' which restrict your client's liberty prior to trial, fair and reasonable? (Article 62, Rules on the Handling of Criminal Cases^d) • You will need to deal with extreme Public Procurator pressure on your client to plead guilty to small charges to avoid trial on more serious matters.

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
Family lawyers	<ul style="list-style-type: none"> • Sometimes, you will have doubts about the legality of sources of funds that clients intend to use to pay your legal fees. <p>See Chapter 5 for more information.</p>
	<ul style="list-style-type: none"> • You are a caring and often compassionate person, but you also prefer to find a small team of supportive colleagues to work with. • You will need high-level emotional intelligence and resilience in order to deliver your best work; this is highly satisfying for an appropriate personality motivated by compassion and a love of justice. • You must withstand clients' pressure to 'hide' assets such as land or shares, or to be aggressive and to delay settlement as a punitive strategy in dealing with their estranged partners. <p>See Chapter 7 for more information.</p> <ul style="list-style-type: none"> • You will receive client pressure to 'sue the bastard' immediately. Resist this pressure and divert your client into alternative dispute resolution. • Your clients have little understanding of the time needed to prepare a case and, owing to their understandable stress, can project their grief, anger and frustration on to you in complaints about delays and overcharging. • You must be verbally clear and confirm in writing the level of your likely fees, in advance of commencing any work. • You will need to deal with pressure to reduce fees where your clients are poor. <p>See Chapter 5 for more information.</p> <ul style="list-style-type: none"> • Threats of violence are sometimes received from ex-partners of clients or made by clients against the lives of the other party, or their own lawyer. Very occasionally, these threats are acted upon. If you receive a threat, you will have to consider whether to report it.

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
General practitioners (in land transfers, minor criminal cases, civil debt, family law, minor civil cases, wills and estates)	<ul style="list-style-type: none"> • General practice (GP) lawyers are often highly experienced, wise and well respected. • As a conscientious GP lawyer, you can develop a wide and deep knowledge of your clients as individuals and make a major contribution to their success and welfare, but your own financial future may be stronger as a GP if you work in a regional centre or rural area where there are few other lawyers. • Fees received in city general practice can be too small to cover your costs of practice, with capacity to make only a modest income. See Chapter 7 for more information. • The economics of city practice mean that GPs do best in work areas where there is limited competition and longstanding reputations are intact, but this can lead to conflicts of interest arising from pressure to act for both sides in some property and commercial transactions. • However, in rural areas you can be isolated and there can be problems in staying up to date with the law. Depression can be a problem. • More disciplinary prosecutions occur in this area than for other categories of lawyer, for a range of offences surrounding stealing clients' money (from clients' trust accounts), overcharging, delay and mistakes leading to client financial loss.
Civil litigators; commercial and corporate/ transactional lawyers; corporate 'enablers' – large and very large law firms with international clients	<ul style="list-style-type: none"> • You will 'add' ethical value to a transaction or case, in the sense that your real expertise is in your ability to provide truly independent, strategic, ethical judgment, so that a business plan that is financially and environmentally sustainable is advised, rather than any less stable or shorter-term plan. • There is opportunity for real character development for you, as a contribution to value-adding judgment.

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
	<ul style="list-style-type: none"> • Research a law firm to see if it has an 'Ethical infrastructure' – the collection of informal policies and formal guidelines that determine how the law firm behaves in ethically difficult situations – the best law firms will have an ethical infrastructure. • The rapid growth of international and particularly Indian legal process outsourcing (LPO), assisted by artificial intelligence (AI or 'sausage-machine law') will contribute to fewer jobs for traditionally oriented transactional lawyers in large firms. This means less work for lawyers who are only technically competent, and lack long-term ethics. • LPO pressures will encourage more firms to greater specialization, so that you may need to be clearer about your own specialization and have some relevant voluntary or clinical legal education experience before you apply for a job. However, if you specialize too early, you may be less flexible in your longer-term career. You can manage these risks in law school by undertaking both a general clinic and then a specialized clinic, before you graduate. • In very large commercial law firms you can expect an increased use of psychological and even surveillance profiling before a job offer to you as a new employee lawyer is confirmed. The profile typically desired is one of 'conscientious' work habits, politically conservative or centrist values, and a psychological openness to being 'moulded' by firm culture. Despite such profiling, you will also need to show psychological balance, so that you do not fit the profile of the so-called typical person attracted to law, who has 'high IQ', but 'low accessing EQ'.^e

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
	<p>See Chapters 3 and 4 for more information.</p> <ul style="list-style-type: none"> • You will need to be aware of an apparent priority of business profit over ethical behaviour, where the two are in conflict. In large law firms with international clients, there is a tendency to account for and bill to clients, every 6 <i>minutes</i> spent on a client file. Six-minute time intervals are used because they equate to one-tenth of 1 hour and are easily managed by digital time tracking systems. An Australian Chief Justice has said: 'Young lawyers have little or no interaction with clients. They are motivated to bill as much as possible in the interests of career advancement. This conflicts with their professional duties to act honestly and efficiently. . . . Their duties as lawyers are superceded by personal gain.' He added that firms who rely on the billable hour for commercial reasons may end up paying a higher price in the end. '[Young lawyers] will avoid firms that are governed by the billable hour. They won't stay long, so it's not a [good] commercial strategy in the end. . . . The courts now attract the brightest graduates, and the one thing they have in common is a desire to avoid the mega firms. It is a problem, and one thing that these firms are going to have to confront [lest they] end up with mindless drones adding six minutes here and there, to the general dissatisfaction of clients.'^f • Be aware that large-firm lawyers can experience reduced independence because of their identification with their large clients' causes, plans and strategies, or more independence if they are respected for their willingness to question the wisdom of some plans and strategies. • You will likely be inside a firm that faces pressure to act for corporations with legal, but morally

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
	<p>compromised and dangerous businesses (for example, tobacco, alcohol and arms manufacturers, or manufacturing processes with unrestricted greenhouse emissions).</p> <ul style="list-style-type: none"> • Working days of 7am–9pm will be common (though not universal), leading to resentment, life–work tension, relationship stress at home and an attitude that ‘others should also work hard if I have to’. • You may face ‘budget’ pressure to bill a minimum fee level every month –regardless of whether the firm uses 6-minute timesheet intervals or versions of a fixed price to measure value and therefore the size of the client’s bill. • There may be pressure from some senior lawyers to ‘round up’ hours on time sheets (that is, to overcharge clients, which is really the same as stealing from them) to achieve budget targets. • You will need courage to confront work cultures inside some larger firms that rationalize poor (unethical) behaviour so that it is normalized and becomes acceptable.⁸ • New lawyers in larger firms can face repetitive work in their early months, leading to boredom and hyper-competitiveness to escape such work by billing more. <p><i>Recommendations:</i></p> <p>If you know you prefer a commercial or corporate legal practice environment:</p> <ul style="list-style-type: none"> ... first seek out the second- or mid-tier and niche firms and assess their capacity to deliver a balanced, ‘good’ life. ... prioritize your conscience and self-respect, because that draws on your character. ... consider using the list of issues above to identify the right firm for you.

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
Corporate/in-house lawyers	<ul style="list-style-type: none"> • With less pressure to work ultra-long hours, you will have more time to assess and consider the nature of your work, and better life–work balance. <p>See Chapter 5 for more information.</p> <ul style="list-style-type: none"> • This offers you the capacity and opportunity to ethically guide your employer on a safe course of conduct. • However, you may experience a lack of independence from your employer/client. • You will have no other client, no other income source and little comradeship in a small legal department and will therefore encounter pressure to do what your corporation requires, regardless of morality.
Government lawyers (including lawyers who make government laws)	<ul style="list-style-type: none"> • You will have a relatively stable if lower-paid career compared to some commercial law peers, but over time you will have the chance to mould good law-making and will often be able to achieve a better life–work balance than peers in private practice. • You will occasionally face powerful pressure to do what government requires, regardless of morality. For example, consider the extreme historical case of the German government lawyers who set up the legal structure behind the Nazi Nuremberg Laws,^h and the US lawyers who authored the Pentagon ‘Torture Memos’.ⁱ
Public Procurators	<ul style="list-style-type: none"> • You will be trusted to prosecute crime and seek justice on behalf of the people and in so doing, strengthen society. • Public procurators must faithfully ‘... implement the Constitution and laws, safeguard social fairness and justice, and serve the people whole-heartedly’.^j • You must be ‘... diligent and responsible, be honest and upright, and abide by professional ethics’.^k

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
Barristers (in the Hong Kong SAR)	See Chapter 4 for more information.
	<ul style="list-style-type: none"> • You are not supposed to be too zealous because the state (or state authority) that you represent is generally more powerful than a defendant, but you will often feel an emotional pressure to aggressively 'hurt' defendants in the interests of victims; such pressure must be tempered according to criminal procedure rules that mandate a fair presentation of the case for the prosecution.^l • You must balance the discretion not to prosecute someone by weighing up competing public interests: that is, by balancing the likely prospects of a successful prosecution (in the interests of individual victims or government revenue) against the substantial cost of mounting a case that fails to prove a sufficient offence. • You will also have to manage a sub-category of discretion to negotiate 'deals' with defendants for 'guilty' pleas to lesser charges and consider what victims will think of such deals. • You are a lawyer who <i>only</i> appears in courts and tribunals. You will have a certain amount of prestige, independence and – opportunity to concentrate in areas of work that interest you. • You will appear in all courts and tribunals and face challenges similar to those of criminal defence solicitors. • You will encounter the historical 'cab-rank' rule, which nominally requires you to appear for a client even if you do not like or believe them,^m and you must resist the temptation to abuse the rule: by, for example, being 'unavailable', or declining the work if your 'normal fee' cannot be met.ⁿ • It has been asserted that some barristers use the cab-rank principle in order to justify their

Table 2.2. (*cont.*)

Broad descriptions of lawyers' work	Organisational categories and types of legal practice – plus the ethical opportunities and challenges
	<p>representation of morally questionable clients in civil cases, but other barristers reject this criticism and ask 'Why is there such pressure for the advocate to identify with their client?'</p> <ul style="list-style-type: none"> • You will face continuous client pressure to distort truth and hide guilt, even though it may be subtle in many cases. It is rarely easy to decide where the line is between putting your client's case forward in a properly zealous manner (see Chapters 3 and 4) and consciously obscuring the truth. • As with criminal defence solicitors, there is also constant pressure to navigate detailed advocacy rules about permissible deception (see above and Chapter 5). • You must deal with public prosecutor/procurator pressure on your client to plead guilty to lesser charges to avoid trial on more serious matters, where a successful defence will be difficult but not impossible. • Ongoing reductions in the availability of legal aid may mean that you have less time and capacity to prepare thoroughly. • On occasion, you will be doubtful as to the legality of sources of funds that your client intends to use to pay their legal fees.

^a All China Lawyers' Association, *Rules on the Handling of Criminal Cases by Lawyers*, No. 51 [2017], Article 6.

^b *Ibid.*, Article 13.

^c *Ibid.*, Article 22(9).

^d *Ibid.*, Article 62.

^e Rachel Nickless, 'Mental aid course is a know-brainer', *Australian Financial Review*, 22 June 2012, 43.

^f *Lawyers' Weekly*, n 33, 1. Bathurst CJ was speaking at the 2012 Commonwealth Lawyers Association Regional Law Conference, Sydney. See also Michael Bradley, 'The time sheet shuffle', *The Australian, Legal Affairs*, 4 May 2012, 43.

Table 2.2. (*cont.*)

^g To the point that challenging that culture can itself be seen as unethical (that is, disloyal). Parker and Rostain have attempted to get beneath the argument about whether business or professional ethics are to blame for lawyers' 'poor moral behaviours, beginning with the example of the James Hardie's external lawyer' (Allens), who insufficiently identified the importance of fully funding the corporation's asbestos compensation fund. Their conclusion is that large firm lawyers' networks are monochrome, narrow and few, and that they are simply withdrawing socially, psychologically and personally, to the point that they do not automatically recognize any alternatives to purely business imperatives in their decision-making. See Tanina Rostain and Christine Parker, 'Law firms, global capital and the sociological imagination' (2012) 80 *Fordham Law Review* 2347.

^h Nazi lawyer Wilhelm Frick and his colleagues created the Final Solution through the use of law and official policy. In 1933 the Law for the Restoration of the Professional Civil Service banned Jews from government jobs. Other laws followed, culminating with the Nuremberg Laws, the Law for the Protection of German Blood and German Honour, and the Reich Citizenship Law. See the US National Archives – Nuremberg Laws, at www.archives.gov/publications/prologue/2010/winter/nuremberg.html. For a 2005 film that dramatizes the Nazi courts' suppression of Germans' internal resistance, see *Sophie Scholl – The Final Days* (Dir. Marc Rothemund).

ⁱ See Robert K. Vischer, 'Legal advice as moral perspective' (2006) 19 *Georgetown Journal of Legal Ethics* 225 and more generally, Ch. 3. See also Carol Coulter, 'Public confuse solicitor with client – Assange lawyer', *Irish Times*, 4 October 2012.

^j *Public Procurators' Law of the People's Republic of China* (2019 Revision), Article 3 at Procurators Law of the People's Republic of China (npc.gov.cn).

^k *Ibid.*, Article 4.

^l See *ibid.*; Christine Parker and Adrian Evans, *Inside Lawyers' Ethics*, 3rd ed., Cambridge University Press, Port Melbourne, 2018, n 29, 148.

^m See Gino Dal Pont, *Lawyers' Professional Responsibility* (5th ed.), Thomson Reuters, Melbourne, 2015, para. 3.140.

ⁿ *Ibid.*, paras. 3.150–75. A recent UK report has recommended its abolition. See www.legalfutures.co.uk/latest-news/end-line-cab-rank-rule.

2.5 Questions New Lawyers Can Ask Law Firms When Assessing Their Worth

After reflecting on any preference you have for a particular type of legal practice, you can start to think about how to approach a particular law firm. Compiling a list of questions to put to a potential employer is hardly new. Many of us are coached before job interviews on how to

present ourselves and what to say in order to perform as well as possible. Coaches and family also advise on issues we ought to ask about, for example, leave arrangements, professional development, child care availability and for public and personal health reasons – the ability to work at home several days a week. It's not necessary to list all those issues here since there are plenty of places where that information will be available when you need it, but it is possible that the policies and practices that constitute the moral worth of the workplace will not be readily accessible, and so a checklist of such material could be useful.

Some law firms will think it presumptuous that you wish to ask searching questions about ethical issues, but the law firms worth working for will adjust quickly enough and be ready to provide meaningful answers, or agree to provide them later if the partner or HR person interviewing you does not know the firm's position in detail. Obviously, the way in which your questions are answered will also tell you quite a lot.

It's best to start by providing an explanation for your queries. Partners will be immediately curious as to why you want to know about ethics, and will be understandably defensive if you don't seem genuine. You could be a plant for another firm, a sort of mystery shopper out to do some damage! They may also think you are joking, given the relatively small number of lawyer jobs available at any one time and the increasing number of applicants for positions. But you won't be joking, because there is little point in going to a firm that is not going to engage your integrity and stimulate a deserved loyalty. A high salary will not make up for any bad workplace culture issues. The partner interviewing you should know about this. They will usually prefer to employ a new lawyer who will stay for a while, considering the time and money that must be spent to integrate you into the firm. In effect, you are re-establishing the scene: the interview becomes not so much one of you as an employee but of your potential employer; not so much a buyer's market as a seller's market.

So it's reasonable and realistic to explain that you are *not* trying to be arrogant or patronizing or even overconfident: you are looking to build a reputation not just for skill, but also for ethics and professionalism – and all of these matters are important to you in deciding who to work for. Explain further that you've done your homework and have tried to ask around about what it's like to work for the firm and that you have some queries arising from the feedback you have received. Indicate that you've looked at local legal websites and talked with your contacts. And make sure you actually do this, because this is how you will learn about the firm you are about to interview.

If that is all received and accepted well enough, consider asking some of these questions about firm culture and ethics, depending on the type of firm you are talking to and your sense of the personalities of your interviewers. Start with easier issues:

1. 'How does the firm support pro bono work?' 'What is the firm's attitude to my professional development?' 'Would I be encouraged to specialize in one area of law in due course?'
2. 'What practices or policies does the firm have in place for life-work balance?' 'What plans does the firm have to protect employees from future pandemics?'
3. 'Does the firm have a written policy on handling ethical issues when they come up?' 'For example, if I were to come across a client who wanted to know if I or we had ever acted for another named individual or another corporation, is there an office manual or database program that will guide me on what to do?' [If the answer is 'Just tell your partner and let them handle it', see Ch. 6 and be cautious.]
4. 'Based on what I've heard, I'm wondering are there any real differences between the actual practice of the firm and what the ethics manual sets out or what the firm's policy is?'
5. [In a large firm] 'What approach does the firm have to acting against a former client?'
6. 'How does the firm resolve difficult ethical issues if one partner wants to do one thing and another has a different view: for example, as to how much to bill a particular client?'
7. 'How is the firm's public reputation, as far as you can tell?'
8. 'What do you generally expect your employees to do in looking after clients and attracting new ones? For example, am I expected to socialize with them or bring in a new client a month, or what?'
9. 'Does the firm use time sheets to work out clients' bills, or some form of value adding in addition to time sheets, or what? How is that process typically applied in a [standard matter]?'
10. 'In relation to my own time sheets, am I required to complete and sign off on them daily, weekly or monthly? If I can't recall precisely how much time I spent on a particular file, what do I do?'
11. 'What processes does the firm go through if I don't meet budget?'
12. 'What is the firm's attitude to working for clients that emit large amounts of greenhouse gases into the atmosphere?'
13. 'Does the firm earn a large proportion of its fees from clients with bad reputations for ignoring climate change?'

14. Does the firm require that its internal Artificial Intelligence (AI) programs are scrutinized for their ethical decision-making, by humans, on a regular basis?
15. 'Does the firm have a policy on *formally* reporting corruption or money laundering to its clients, if they are discovered during work for such clients?'
16. 'Does the firm agree with the international "best practice" norm of reporting its clients for suspected money laundering, without informing those clients first?'

As you will appreciate, the very direct nature of these questions will be more easily handled by a 'good' partner working for a good firm, but they will be harder for others. It could be suggested that it's unrealistic to expect you to ask these sorts of questions because many new graduates just won't have enough confidence to do so, but if you've read this book right through, you will have developed enough confidence and self-awareness to ask at least some of these questions.

Consider this: if you have just read this list and decided that you are *not* going to ask any of these questions (because you don't think you will get the job if you do), will you still be happy not to know any of the answers?

If you've already explained that you want to know about the firm's 'ethical culture' because you want to contribute to a supportive and healthy climate, you can't do much more to show your own integrity. Good firms have thought about most of these issues and will take these questions seriously. The best firms will be intrigued because you are standing out from all the other people they are interviewing. But if the interview proceeds badly because the interviewers feel offended or embarrassed, move on until you find a firm that wants good lawyers.

Alternatively, you may decide not to be so confronting at your next interview at another firm. But will you be content not to know about their attitudes to these things and their attitudes to your questioning, next time around?

2.6 Inside the Ideal Commercial Law Firm

Once you have the job, staying 'good' and, in due course, contributing to the firm being better (as in good, better, best!) will be a rewarding and invigorating ride. But while you will be intensely stimulated, being on the inside of the ideal law firm does mean work, and a lot of it. This journey will not just be one of value-adding ethics to the firm's whole strategic direction, but also being *independent* in your day to day activity.

Consider Figure 2.1, which offers a sobering 2013 US assessment of the professionalism *versus* commercialism debate from New York District Court Judge Jed Rakoff,² who made several comments about what it means to have the courage to be truly independent:

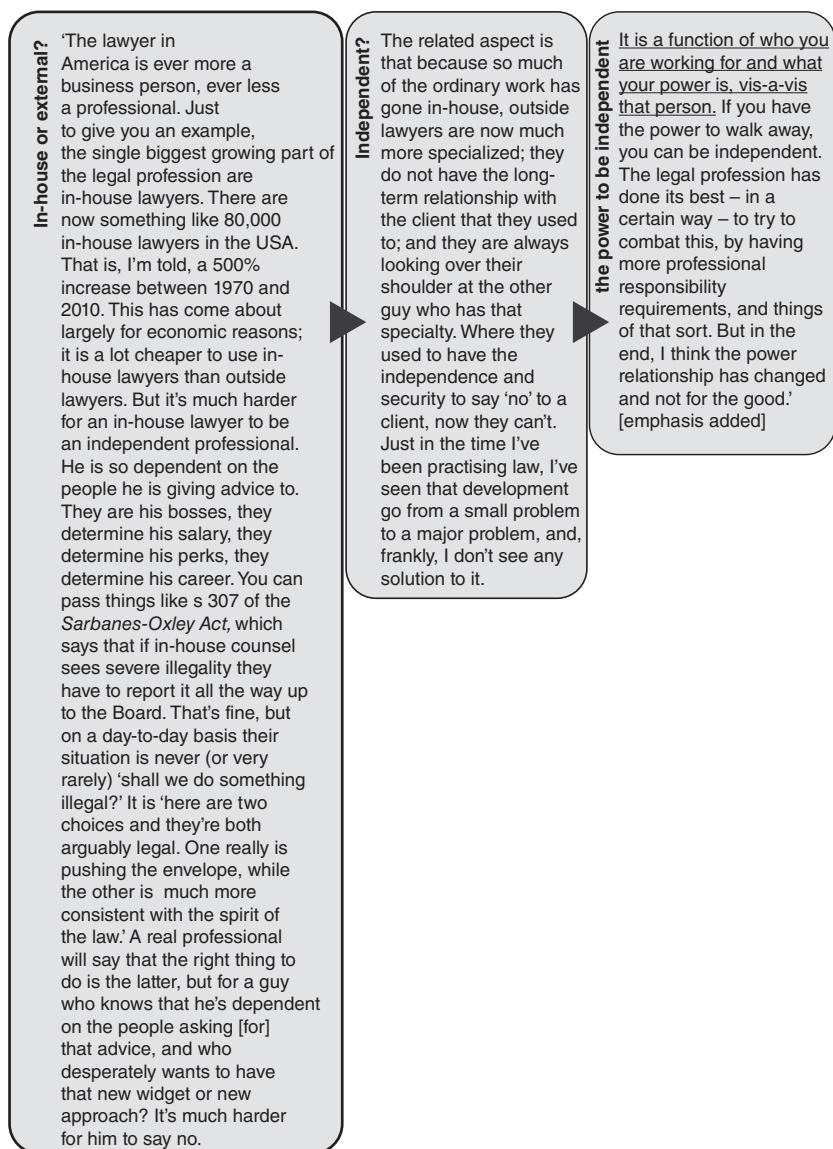


Figure 2.1 Arguably legal

The ideal firm for a new lawyer is one where your partner will support your need to say 'no' to a client from time to time because they realize that the firm's longer-term reputation will be put at risk and could easily be undone at some future point should someone like Judge Rakoff look at why you did not say 'no'. The ideal corporation (if you are an in-house lawyer) likewise realizes that its share price is intricately linked to its brand and reputation, and is therefore attracted to longer-term share stability. Your boss (or general counsel if you work inside a corporation) may be aware of the Enron case,³ of the global financial crisis and probably also of the corruption cases discussed earlier in this chapter – and will not want their firm's name raised in court or in the media.

There are also difficult decisions to be made in representing the relatively few corporations (or individuals) that may be considered 'bad'. There may be no truly bad companies or people and, just as it is said that everyone is a mixture of good and bad, so also must be companies, which are made up of highly complex individuals. As a good lawyer, you may consider it your role to act for such companies in order to modify their behaviour from the inside. Tobacco lawyers and lawyers that work for highly polluting companies, both in-house and external, could say this, and if they did, they would be entitled to a hearing. But they would also assert that someone has to act for tobacco manufacturers. This second claim can be challenged.

Regardless of whether you are in a private firm or are an in-house corporate lawyer, are you independent enough to say 'no' to a client when your professionalism requires it?

Are you ready for the next time you will be faced with this challenge?

Lawyers generally have some choice about who they represent and there are always some lawyers who will properly act for unpopular clients. Society is generally the better for it. But there is no solid moral basis for saying we ourselves must act for an unpopular or bad client in a civil (not criminal) case when we know that others will. If our conscious ethical judgment is that in so acting we would support immoral or unethical behaviour, any compulsion to act is itself immoral and certainly nonsensical. Apart from the admirable legal requirement for a lawyer to take on a pro bono case in the PRC,⁴ there is no law and no compelling legal ethic which says that lawyers must act for *anyone* who comes along. So if we choose not to, how is that offensive? When four men and one minor were charged with the

repeated rape and murder of a young woman on a bus in Delhi in India in 2012, the local bar association declined to endorse any legal representation for the defendants. But some lawyers came forward regardless.⁵ The idea that an alleged 'bad' individual or corporation will go without civil representation because all lawyers reject them as clients is factually incorrect.

And there are some other trends to keep in mind. Personal anxiety tends to be increasing for lawyers as much as for anyone. If being anxious about the future is just a sign of being more or less sane, perhaps it is anxiety rather than depression that we all need to watch? Mindfulness – the capacity of the human mind to focus on itself and slow down its thinking while improving its reflection – shows potential to help lawyers reduce their sense of personal anxiety and strengthen their ability to make ethical decisions.⁶ Will your ideal law firm get on board with mindfulness training? And is your ideal boss attentive enough to you to understand when you need to get some help for over-anxiety? In response to this global trend, some law schools in Greater China 'teach ... mindful ethics to help future lawyers cope with pressure brought about by globalized legal practice'.⁷

Global warming and general species' extinction are also becoming very much worse, but there are still a few corporate clients who are hoping that these planetary-wide problems will solve themselves with technology alone, and that they will not need to change too much in their own operations. It is likely that some of the world's important governments are not reducing emissions fast enough or conserving enough plant, animal and insect habitats. Business generally is still too focused on the short term, and some business sectors are still unwilling to accept what is happening to our ecosphere and completely restructure in favour of truly sustainable operations. All this implies much slower economic growth on a global scale, and that is frightening to most, but not all. With the exception of insurers and reinsurers, corporate business plans are likely still to be underdeveloped and not yet resilient enough to cope with major environmental disruption, public health challenges, greater debtor delay in paying invoices and (if this is possible) less predictable business cycles. Pandemics are very dangerous, of course, but they are easier to cope with than climate collapse, especially if some business sectors continue to resist the need for rapid change in their operations. All of this flows through to your law firm as well. So there is much for you to do in adding value to clients' business planning and

doing it ethically. More than ever, sustainable commercial activity will have to be ethically sound.

For similar reasons, the connections between lawyering as assisting private commercial relationships (transactional law) and as promoting justice through ethical dispute resolution will become more obvious. There does not need to be a big gulf between the two. Some global law firms are already preparing for this more integrated scenario.⁸ Try to locate and attract those clients whose priorities recognize the absolute connection between environmental and political sustainability and get to know, as thoroughly as you can, how those businesses operate, how they organize themselves financially and how you can add to their stability. If you are doing all this, then you cannot do more, and you can be generally confident that you are living up to your ethical obligations. Legal regulation and legal regulators will also tend to leave you alone.

In the final part of this chapter, the impact of the rules about ethical conduct are discussed. Just as law students have challenges with mental health and substance abuse, so too do lawyers, even more. Unhealthy legal practice environments can fertilize instability and offer considerable opportunity for ill-health, as the lists of disciplinary tribunal cases above make clear. Figure 2.2 summarizes what happens when things get out of balance in a lawyer's life.

2.7 The Regulation of Not-So-Good Lawyering

If admission to legal practice is difficult for those who cannot meet a fairly high standard of virtuous character,⁹ it is easier for lawyers, once admitted, to stay admitted even when their behaviour slips. But there are a few provisos. The regulators – and, if necessary, the courts – take a moderately understanding approach to any mental health or substance abuse issues of practising lawyers, providing you have not:

- stolen or 'borrowed' your clients' money. Stealing clients' funds will usually ruin your career. (There are, unfortunately, many lawyers who have become addicted to gambling and 'borrowed' from their clients' funds or who have unknowingly been depressed and, facing a need to 'top up' their business overdraft or gamble more, have turned to their client trust account and systematically stolen from clients over months and sometimes years.)

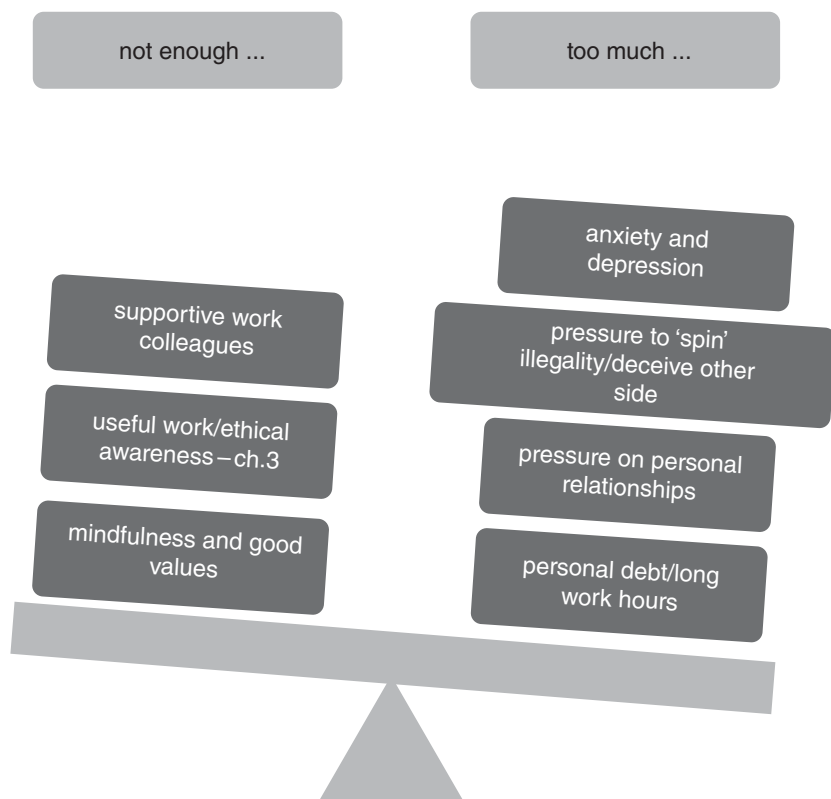


Figure 2.2 Life balance

- actively misled, lied to or refused to cooperate with a court or public prosecutors and public procurator, or
- committed an act of general misconduct that undermines the reputation of the legal profession and the law (for example, drug importation or other serious criminal activity).

Outside this list of ‘do nots’, the regulator in each of the PRC, Hong Kong and Taiwan can also prosecute you for many types of misconduct. Most of these offences relate to clients: for example, overcharging, delay and breaches of the professional rules of conduct (see Table 2.3). But apart from these, and even despite these prosecutions, regulators will often make some effort to help you get back to health if depression or substance abuse overcomes you for a period. If your mental health is at risk, you will need to make an effort to recover, and you will need to be candid about what you are doing to get on top of things.

Table 2.3. *Key procedural rules about investigating lawyer misconduct in Greater China*

	Hong Kong SAR	
Peoples Republic of China	<i>Law Society of Hong Kong</i>	Republic of Taiwan
<i>All China Law Association</i>	<i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>
<i>List of relevant laws</i>		
<i>Lawyers' Law of the People's Republic of China – 2017</i>	<i>Legal Practitioners' Ordinance</i>	<i>Attorney Regulation Act, 2010</i>
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014</i>	[updated 2020 – applies to all solicitors and barristers in HK]	<i>Taiwan Bar Association, Code of Ethics</i>
[In the PRC, different sets of rules control lawyers' behaviour. These rules are discussed generally in this table and in Section 2.8, at Table 2.4. Specific rules that deal with specific issues in legal ethics are covered in later chapters, especially criminal cases (Ch. 5), confidentiality (Ch. 6) and conflicts of interest (Ch. 7)]	<i>Law Society of Hong Kong, Guide to Professional Conduct 2013</i> (for solicitors) and <i>The Code of Conduct of The Bar of The Hong Kong SAR</i> (' <i>Bar Code of Conduct</i> ' updated 2020 – for barristers)	[All attorneys are controlled by the Attorney Regulation Act, which in turn gives all disciplinary rule-making power to the Taiwan Bar Association]
	<i>The Professional Conduct of Lawyers in Hong Kong</i> , Lexis-Nexis, Hong Kong (loose leaf), Division 15, 'Solicitors and the Disciplinary Process', contains a thorough examination of this topic.	
<i>Definitions of misconduct</i>		
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i>	<i>The Legal Practitioners' Ordinance</i> s 2(2) states that '... any conduct of a trainee solicitor or employee of a solicitor which would reasonably be regarded as disgraceful, dishonourable or discreditable by a solicitor of good repute	<i>Attorney Regulation Act</i>
<i>Ch. 1, Article 3</i> defines 'misconduct' exhaustively as '... violations of the laws, regulations, charters, all business norms established by the		<i>Article 39</i> An attorney is subject to disciplinary action who: 1. has violated provisions set forth in the third sentence of Article 20, Article 21, Article 22, Article

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
Lawyers' Association, publicly known codes of conduct for the legal industry that members commit while conducting their work as lawyers or while conducting affairs related to handling or performing work as lawyers, <i>as well as</i> acts committed by members outside of their professional work as lawyers that gravely harm the image of the legal industry, or acts violating basic conditions for applying to work as lawyers such as acts contrary to good moral conduct.'	shall be deemed misconduct'. The <i>Bar Code of Conduct</i> 4.1 states that it is the duty of every barrister ... (b) not to engage in conduct (whether in pursuit of his profession or otherwise ... which is: (i) dishonest or otherwise discreditable to a barrister; (ii) likely to bring the profession of barrister into disrepute or otherwise diminish public confidence in the profession of barrister; or (iii) prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice; (c) to observe the ethics and etiquette of his profession; and (d) to be competent. ... Under the <i>Bar Code of Conduct</i> 4.2 , 'serious failure' to comply with para 4.1 shall be professional misconduct (punishable under the	24, Article 26, any of Articles 28–37, of [the Attorney Regulation Act]; or, 2. who has been convicted of a crime except 'non-intentional' crimes. 3. who seriously violates attorney code of ethics or the Articles of Incorporation of the Bar Association in which they are members.

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
	Legal Practitioners' Ordinance), and under 4.3, less serious conduct (as decided by the Bar Council) is a 'breach of proper professional standards' and punishable by admonition and advice as to future conduct.	
	The Bar Code of Conduct s4.4 declares that a barrister's deceit or failure to disclose their relevant dishonest conduct occurring prior to their admission, as professional misconduct or a breach of proper professional standards.	
Penalties		
Lawyers' Law of the People's Republic of China – 2017 Article 47 For any of the following conduct of a lawyer, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall give a warning and may impose a fine of not more than 5,000 yuan;	The Legal Practitioners' Ordinance s9AB contains a procedure for summary disposal of an offence if the solicitor admits fault and pays a fixed fine and the Law Society's costs. The Legal Practitioners Ordinance s10(2) allows a Solicitors Disciplinary Tribunal (and s37 contains similar provisions with respect to Barristers' Disciplinary Tribunals) power to make such	Attorney Regulation Act Article 44 Disciplinary action can be one of: 1. a warning; 2. a reprimand; 3. suspension of the right to practise law for a period not exceeding two years; 4. Disbarment. Code of Ethics Article 49 Where a lawyer has violated this Code,

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not more than three months: . . .	order as it thinks fit including imposing a fine no greater than HK\$500,000, suspension from practice and striking off. Sanctions can be imposed if there is a breach of a statutory duty, LSHK Practice Directions or the LSHK Guide to Professional Conduct The Tribunal need not make a finding of professional misconduct.	the bar association to which he/she belongs shall review the violation and take one of the following actions:
3. Representing both parties in a same case, or representing a client in a legal affair that has any conflict of interest with himself or his close relative; . . .		1. Counsel him/her.
5. Refusing to perform his legal aid obligation.		2. Give him/her a warning.
Article 48		3. Where the violation is a serious one, forward his/her case to the relevant agency and request for action.
For any of the following conduct of a lawyer, the justice administrative authority . . . shall give a warning and may impose a fine of not more than 10,000 yuan;	The <i>Legal Practitioners' Ordinance</i> s11 (for solicitors) and s36 for barristers, allows a tribunal to make additional orders to assist its proper functions.	
if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not less than three months but not more than six months:		
1. Accepting authorization or charging fees privately, or accepting		

Table 2.3. (*cont.*)

	Hong Kong SAR	
Peoples Republic of China	<i>Law Society of Hong Kong</i>	Republic of Taiwan
<i>All China Law Association</i>	<i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>

property or any other
benefit from a client;

2. Refusing to defend or
represent a client, or
failing to appear before
court in litigation or
arbitration, without good
reasons, after accepting
authorization; . . .

4. Divulging a trade secret
or personal privacy.

Article 49

For any of the following
conduct of a lawyer, the
justice administrative
authority . . . shall
impose a penalty of
cessation of practice for
not less than six months
but not more than one
year and may impose a
fine of not more than
50,000 yuan;

and if there is any illegal
income, shall confiscate
the illegal income;

if the circumstances are
serious, the justice
administrative authority of
a province, autonomous
region or municipality
directly under the
Central Government
shall revoke his lawyer's
practicing certificate;

and if a crime is
constituted, he shall be
pursued for criminal
liability:

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
<ol style="list-style-type: none"> 1. Meeting a judge, prosecutor, arbitrator or any other relevant staffer in violation of provisions . . . 2. Bribing, bribing as an intermediary or instigating or inducing a party to bribe a judge, prosecutor, arbitrator or any other relevant staffer . . . 4. Deliberately providing false evidence or threatening or inducing others to provide false evidence, or obstructing the opposite party's legal obtaining of evidence; . . . 8. Delivering a speech that compromising the national security, maliciously defaming others or seriously disrupting the court order; or 9. Divulging a national secret. 		
<p>Where a criminal penalty is imposed on a lawyer for an intentional crime, the justice administrative authority . . . shall revoke his lawyer's practising certificate.</p>		
<p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014:</i></p>		

Table 2.3. (*cont.*)

	Hong Kong SAR	
Peoples Republic of China	<i>Law Society of Hong Kong</i>	Republic of Taiwan
<i>All China Law Association</i>	<i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>

Articles 14, 18 and 19:

Disciplinary
punishments range from
admonition to warning,
circulation of a criticism
notice, public censure,
and suspension of part or
all of the rights of
membership for 6
months–1 year and
finally, cancellation of
membership credentials.

Less serious or first-time
offences are more likely
to receive lighter
penalties.

Article 15 allows other
orders to compel lawyers
to return fees and
documents and attend
special training.

Article 48 refers to lawyers'
activities that threaten
national security.

Articles 96–98 allow
mediation to occur at
any time between the
parties, but the
disciplinary committee
can proceed to
punishment even if the
mediation is successful
and the complainant
withdraws their
complaint.

Successful mediation may
however, allow a reduced
disciplinary penalty.

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
<i>Complaints</i>		
<p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i></p> <p>Article 4:</p> <p>[A] Lawyers' Association can investigate a lawyer even if no complaint has been received.</p>	<p>Articles of Association of the Law Society of Hong Kong,</p> <p>Article 18(d)</p> <p>empowers the Law Society to investigate any charge of misconduct against any solicitor (whether a member of the LSHK or not), or an employee of a solicitor, and to prosecute any disciplinary proceedings.</p> <p>Complaints are made in writing on a complaint form, but the Standing Committee on Compliance can investigate on its own motion (without a complaint being received).</p> <p><i>The Legal Practitioners' Ordinance</i> s35 provides, in respect of complaints to the Bar Council about a barrister's conduct, that a complainant may apply to the Chief Judge for a complaint to be referred to a Barristers' Disciplinary Tribunal, if the Bar Council itself does not take this action within 6 months of receiving that complaint.</p>	<p><i>Attorney Regulation Act</i></p> <p>Article 40</p> <p>Disciplinary action against an attorney may be initiated by the High Court Prosecutors Office or subdivision thereof, or by a District Court Prosecutors Office. Upon initiation the case will be forwarded to the Bar Association Disciplinary Committee having jurisdiction over the attorney . . .</p> <p>A Bar Association may through a resolution reached at a General Meeting or at a Joint Executive Supervisor Meeting refer an attorney for disciplinary proceedings to the Attorneys' Discipline Committee having jurisdiction.</p>

Table 2.3. (*cont.*)

	Hong Kong SAR	
Peoples Republic of China	<i>Law Society of Hong Kong</i>	Republic of Taiwan
<i>All China Law Association</i>	<i>Hong Kong Bar Association</i>	<i>Taiwan Bar Association</i>
<i>Investigations and disciplinary panels</i>		
<i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014.</i>	Under the <i>Legal Practitioners' Ordinance</i>	<i>Attorney Regulation Act</i>
Article 5: The Disciplinary Committee must observe the principles of objectivity and fairness.	s9–9A investigations are delegated to the Conduct Section of the Compliance Department of the LSHK;	Article 41
<i>Lawyers' Law of the People's Republic of China – 2017</i>	the adjudication of complaints is delegated to a LSHK Investigation Committee; and the review of Investigation Committee decisions	Attorney Disciplinary Committees shall be composed of three High Court judges, one High Court prosecutor from High Court Prosecutors Office in parallel with said High Court, and five attorneys.
Article 37	and the institution of disciplinary proceedings is delegated to the LSHK Standing Committee on Compliance.	Such Attorney Disciplinary Committees shall elect one of their members to act as the Chief Commissioner.
The personal rights of a lawyer in practicing law shall not be infringed upon.	The Legal Practitioners Ordinance, s9	
The representation or defence opinions presented in court by a lawyer shall not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order.	establishes a Solicitors' Disciplinary Tribunal Panel.	
Where a lawyer is suspected of a crime during participation in a legal proceeding, the criminal investigation authority shall notify the law firm employing the lawyer or the bar association to which the	The Panel consists of not more than 120 practising solicitors of at least 10 years' standing, not more than 10 foreign lawyers and not more than 60 lay members.	
	All the members of the Panel and its Convenor are appointed by the Chief Justice of Hong Kong.	
	Under s9B(1) , every tribunal consists of	

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
<p>lawyer belongs in a timely manner; and where a lawyer is legally detained or arrested, the criminal investigation authority shall notify the lawyer's family in accordance with the provisions of the Criminal Procedure Law.</p> <p>Article 52 requires actionable misconduct to be discovered and followed up within 2 years; unless the circumstances are serious, in which case a 2/3 majority of a disciplinary committee can extend the time limit.</p> <p>Article 60 requires members of disciplinary committees to <i>recuse</i> themselves where they have a range of conflicts of interest, including '... other circumstances which could influence the <i>fairness</i> of case-handling'.</p> <p>Article 68 states that the lawyers' association professional discipline department shall notify the lawyer and the complainant of the time and place for a hearing,</p>	<p>2 solicitors and 1 lay member.</p> <p>The Legal Practitioners' Ordinance s34 provides for a Barristers' Disciplinary Tribunal Panel appointed by the Chief Justice consisting of between 6–15 practising Senior Counsel of Hong Kong, between 6–20 other practising barristers of at least 7 years' standing and between 5–25 lay persons who are not in any way connected with the practice of the law.</p> <p>Each Barristers' Disciplinary Tribunal consists of a senior counsel, another barrister and a lay member.</p>	

Table 2.3. (*cont.*)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
<p>with at least 5 working days' notice.</p> <p>Importantly, where the complainant or the lawyer do not make statements, offer a defence or participate in the hearing, their silence will be '... viewed as a waiver and does not influence the disciplinary committee's decision making'.</p> <p>Article 81 states that after disciplinary decisions are made, the details should be sent to the <i>China Lawyers' Credit Network</i>.</p>		
<i>Review and appeals</i>		
<p><i>Lawyers' Association Rules for Punishment of Members' Misconduct – 2014</i></p> <p>Articles 82–95 permit a lawyer to seek a review of a disciplinary committee decision.</p>	<p><i>Legal Practitioners' Ordinance</i></p> <p>s13 provides a solicitor with a general right of appeal to the Court of Appeal within 21 days of a Tribunal's decision, and the appeal will be heard in open court. Similar provisions exist under s37B for barristers.</p> <p>In most cases, the Law Society is expected to publish a summary of the Tribunal's findings after any appeal rights expire (s13A).</p>	<p><i>Attorney Regulation Act</i></p> <p>Article 42</p> <p>The right to appeal for review of Attorney Disciplinary Committee rulings shall lie with the disciplined lawyer, the prosecutors' office, competent authorities or the Bar Association which referred the case for discipline. Such appeals shall be made to the Bar Discipline Review Committee.</p>

Table 2.3. (cont.)

Peoples Republic of China <i>All China Law Association</i>	Hong Kong SAR <i>Law Society of Hong Kong</i> <i>Hong Kong Bar Association</i>	Republic of Taiwan <i>Taiwan Bar Association</i>
	Interestingly, there is no general requirement on the Bar Council to publish a tribunal decision in relation to barristers' conduct, and barristers can apply under s38 to vary the decision of a Barristers' Disciplinary Tribunal decision which suspends them or strikes their name off the roll.	Article 43 Bar Discipline Review Committees shall be composed of four Supreme Court Justices, 2 prosecutors from the Supreme Court Prosecutors' Office, five attorneys, and two scholars. Such Bar Discipline Review Committees shall elect one of their members to act as the Chief Commissioner.

There is now enough knowledge of substance abuse issues in the legal community to say fairly confidently that you will get help from regulators, law societies and bar associations if you ask for it, or get someone to ask on your behalf. The point is, in theory, simple: let others know what is going on and they will want to help you. And remember, the obligation to be honest is continuous.

From time to time, you will also need to take note of the actual rules for investigating lawyers' misconduct, as set out in Table 2.3.

You may know that corruption is increasingly a major ethical and moral problem globally. And as we have seen in Table 2.1, lawyers are also prone to greed, bribery and corruption.¹⁰ Unfortunately, there is a structural weakness in some law associations around the world when confronting corruption among their members. That weakness is their desire to control, discipline and punish their own members without independent and external scrutiny of their actions. This weakness is a type of cultural conflict of interest and, as can be seen from Table 2.3, is present in the law associations of Greater China also. In the

interests of the global reputation of good Chinese lawyers, we think it is desirable for Greater China law associations to avoid this structural conflict of interest, just as they require their members to avoid conflicts in their own law firms. Reform would require the creation of an independent complaints commissioner who would receive, investigate and prosecute all complaints on behalf of clients in each part of Greater China. It is not too much to ask that each of the PRC, Taiwan and Hong Kong take this action to collectively strengthen the capacity of the Asian legal profession and, in so doing, seek to encourage greater uniformity of the differing lawyer conduct rules of each jurisdiction, in the interests of more reliable trade and commerce across Greater China.

2.8 Key Ethical Rules Affecting Lawyers in Greater China

In Table 2.4, we set out the general principles covered by the key ethical rules affecting Greater China.

As far as we can determine, there has not yet been any attempt to compare and critique the various lawyer ‘conduct rules’ across Greater China. Table 2.4 represents an effort to do just this. Future lawyers who hope to practise law across the PRC, Taiwan and Hong Kong will find this comparison useful, but we would like to go further and anchor our discussion of these rules in deeper waters: that is, in the context of international conduct rules and global systems of morality, including Confucian teaching.

In the absence of a common set of lawyer conduct rules across Greater China, we suggest that both law students and lawyers will be better suited to global practice norms if they read and consider the International Bar Association’s *International Principles on Conduct for the Legal Profession* (2011).¹¹

The International Bar Association (IBA) developed the *Principles* in conjunction with law associations worldwide over a number of years. The process was complex and the result is not entirely satisfactory, but there is no other body that could have achieved as much. The IBA hopes these rules will eventually become law around the world, but they can only have a useful effect in those states and territories that accept their wisdom. We refer to the *Principles* as appropriate in Chapters 4 to 7.

Table 2.4. *Legal professional conduct in greater China key ethical rules^a*

	Hong Kong SAR	
People's Republic of China	Law Society of Hong Kong	Republic of Taiwan
All China Law Association	Bar Association of Hong Kong	Taiwan Bar Association
<i>Relevant laws</i>		
<i>Lawyers' Law of the People's Republic of China – 2017</i>	<i>Legal Practitioners' Ordinance</i>	<i>Attorney Regulation Act</i>
All China Law Association	Law Society of Hong Kong	Taiwan Bar Association
<i>Codes of Profession Conduct for Lawyers – 2018</i>	<i>Solicitors' Practice Rules</i>	<i>Code of Ethics</i>
	Law Society of Hong Kong	
	<i>Professional Guide – 2013</i>	
	Bar Association of Hong Kong	
	<i>Bar Code of Conduct</i>	
<i>General principles</i>		
All China Law Association (ACLA)	The Legal Practitioners Ordinance s72AA	Attorney Regulation Act Article 1
The Codes of Profession Conduct for Lawyers – 2018	allows the Bar Council to make rules about the professional practice, conduct and discipline of barristers, and	Attorneys take upon themselves the goals of promoting social justice, protecting human rights, and contributing to democratic government and the rule of law.
requires all lawyers to be members of the ACLA or a local law association.	s73 gives similar powers to the Council of the Law Society in respect of solicitors.	Guided by these professional goals, with the spirit of self-regulation and self-governance attorneys should strive to faithfully execute their professional responsibilities, contribute to the preservation of social order, and work towards the improvement of the legal system.
The ACLA is the disciplinary body with power to interpret the code. The ACLA or local lawyers' body cannot make rules inconsistent with the Code.	It is noted that both the Bar Council and the Law Society are fully self-regulating, and have the power to decide if their members are or are not in breach of proper professional standards.	
<i>Lawyers' Law of the People's Republic of China – 2017</i>	Law Society of Hong Kong	
Article 1	<i>Professional Guide – 2013</i>	
This Law has been made to improve the lawyer system, standardize the	11.03 Duty to report misconduct	

Table 2.4. (cont.)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
practising conduct of lawyers, safeguard the legal practice of law by lawyers, and discharge the functions of lawyers in the building of a socialist legal system.	A solicitor is under a duty to report to the Council, where necessary after having obtained his client's consent, any professional misconduct or dishonesty on the part of another solicitor or a member of his staff, or of any other person purporting to represent or to be in the employment of another solicitor or firm.	Code of Ethics Article 44 A lawyer, on learning that there is concrete factual evidence that another lawyer has violated this Code, ought to report such violation to the bar association to which the latter belongs, except where he/she has a confidentiality obligation for not doing so.
Article 3 In practising law, a lawyer must observe the Constitution and laws and adhere to the professional ethics and practising disciplines of lawyers . . .	Law Society of Hong Kong Professional Guide – 2013 Sec. 5.06: Third party instructions Where instructions are received not from a client but from a third party purporting to represent that client, a solicitor should obtain written instructions from the client that he wishes him to act. In any case of doubt he should see the client or take other appropriate steps to confirm instructions.	
Article 42 Lawyers and law firms shall perform their obligations of legal aid according to the state provisions, provide the aided persons with standard legal services, and protect the legal rights and interests of the aided persons.		
Article 46 The professional code and disciplinary rules made by a lawyers' association shall not conflict with the relevant laws and administrative regulations and rules.	Sec. 5.17: Communication with client A solicitor is under a duty to keep his client properly informed and to comply with reasonable requests from the client for	

Table 2.4. (*cont.*)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
	information concerning his affairs.	
	Sec. 7.01: Loyalty, openness and fairness	
	... a solicitor owes a fiduciary duty to his client. He must act with loyalty, openness and fairness towards his client.	
All China Law Association Codes of Profession Conduct For Lawyers – 2018	Law Society of Hong Kong Professional Guide – 2013	Attorney Regulation Act Article 28
Article 3	Sec. 10.02: The duty of a solicitor	An attorney shall not engage in fraudulent or beguiling acts towards their client, the court, prosecution agencies or judicial police.
A lawyer shall deem it as a basic requirement for the legal profession to uphold the leadership of the Communist Party of China and support the socialist rule of law.	A solicitor must treat the court with courtesy and respect and must represent his client resolutely, honourably and within the limits of the law.	Article 29
Article 6	Sec.10.03: Duty to court	An attorney shall not engage in acts that may harm the attorney's reputation or credibility.
No lawyer shall manipulate an individual case by using his or her identity as a lawyer or in the name of a law firm to attack the socialist system or conduct any activity jeopardizing national security;	A solicitor must never knowingly attempt to deceive or participate in the deception of a court.	Article 32
nor shall the lawyer, by using his or her identity as a lawyer, incite, abet or organize an interest	Solicitors' Practice Rules Rule 2 states that 'A solicitor shall not, in the course of practising as a solicitor, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair – (a) his independence or integrity;	An attorney should not engage in businesses that damage the dignity and reputation of the attorney profession.
		Taiwan Bar Association Code of Ethics Article 4
		A lawyer shall be regardful of the freedom and independence of his/ her duties.

Table 2.4. (cont.)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
group in interrupting or breaking the normal social order . . .	(b) the freedom of any person to instruct a solicitor of his choice;	Article 6 A lawyer shall be prudent in his/her words and careful of his/her acts so as to conform to the savour and dignity of the legal profession.
Article 7 A lawyer shall be honest, faithful, diligent, devoted to his or her duties, protect the client's legitimate rights and interests according to the facts and laws, maintain the correct implementation of law and safeguard social fairness and justice.	(c) his duty to act in the best interests of his client; (d) his own reputation or the reputation of the profession; (e) a proper standard of work; or (f) his duty to the court. ⁷	Article 8 A lawyer shall perform his/her duties in line with the principle of honesty, fairness, rationality and conscience.
Article 15 No lawyer shall commit any of the following acts: . . .	For barristers, the <i>Bar Code of Conduct s10.29</i> emphasizes that 'A practising barrister has an overriding duty to the Court to act with candour and independence in the interests of justice.'	Article 11 A lawyer shall not be tied down by the outcome of winning or losing a lawsuit, thereby overlooking the discovery of the truth.
1. acts which have a negative impact on society and damage the reputation of legal profession; 2. acts which obstruct the exercise of power, in accordance with law, by state judicial and administrative organs; . . .	Under the <i>Bar Code of Conduct s5.15</i> , a 'barrister cannot enter into partnership or employment or other similar relationship with . . . any other person in connection with [their] practice as a barrister'. Similarly, the <i>Bar Code of Conduct s10.3</i> makes it clear that ' . . . a practising barrister must not:	
	(a) compromise his professional standards in order to please his professional or lay	

Table 2.4. (*cont.*)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
	client, the Court or a third party; or (b) permit his absolute independence, integrity and freedom from his personal interests or external pressures to be compromised or do anything in such circumstances as may lead to any inference that his absolute independence, integrity and freedom from his personal interests or external pressures may be compromised.'	
	<i>Law Society of Hong Kong Professional Guide – 2013</i> Sec. 9.06: Mediation A solicitor may act as a mediator between two or more parties in a dispute but if a solicitor does so he must make it clear to each party, preferably in writing, that he is acting solely in the resolution of their differences.	
<i>Fees and costs</i>		
[Note the significant difference between the PRC, Taiwan and Hong Kong in relation to contingency fees]		
National Development & Reform Commission and the Ministry of Justice,	<i>Law Society of Hong Kong Professional Guide – 2013</i> Sec. 4.01: Inform clients about costs	<i>Attorney Regulation Act Article 37</i> An attorney shall not demand in advance, or

Table 2.4. (*cont.*)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
Measures for the Administration on Lawyers' Charging Activities, 2006 Article 3 Lawyers' charging activities shall follow the principles of openness and fairness ... and good faith. Article 4 Lawyers' service charges shall follow the guidance prices of the government and the market regulated prices. Article 6 The benchmark price and its floating degree of the government guidance prices shall be determined by the competent pricing department of the people's government of each province, autonomous region or municipality. Article 8 The government shall take into full consideration the local economic development level, the social acceptance level as well as the long-term development of the	On taking instructions a solicitor should normally give his client the best information he can under the circumstances about the likely costs of the matter. The solicitor should discuss with the client how the costs and disbursements are to be met and must consider whether the client (if an individual) may be eligible and should apply for legal aid (including legal advice and assistance) or the assistance of the Duty Lawyer Service. Sec. 4.02: Agreed fees must be recorded When fees have been agreed with a client the solicitor must promptly provide the client with a written record of the agreement, signed by the solicitor stating what the fee is, and what it covers and whether it includes disbursements. See also <i>Legal Practitioners' Ordinance</i> , s56. Sec. 4.03: Provide details of fees If no fee has been agreed or estimate given, a solicitor should tell his client how the fee will be calculated, for example, whether on the basis of an hourly rate	receive fees beyond those specified or provided for in Legal Codes, Attorney Code of Ethics or Bar Association Articles of Incorporation. Code of Ethics Article 35 A lawyer shall expressly inform a client of the amount of his/her remuneration or the method of calculating his/ her remuneration ... Code of Ethics Article 35 ... A lawyer may not enter into an agreement for contingent fee payment with a client in the case of a family matter, criminal matter, or juvenile matter.

Table 2.4. (*cont.*)

People's Republic of China All China Law Association	Hong Kong SAR Law Society of Hong Kong Bar Association of Hong Kong	Republic of Taiwan Taiwan Bar Association
legal industry in determining the price of lawyers' services. The lawyers' service price shall be determined on the basis of a lawyer's average service cost to the society plus reasonable profits and statutory taxes.	plus any mark-up, a percentage of the value of the transaction or a combination of both, or any other proposed basis. —	
Article 9 The market regulated service prices of a lawyer shall be determined through consultations between and by a law firm and its client. The following factors shall be taken into account when a law firm is consulting about lawyers' charges with its client:	Legal Practitioners' Ordinance (Cap 159) s58 allows a solicitor to make an agreement with their client in writing as to their legal fees, in respect of any contentious business, which provides that the solicitor shall be paid '...either by a gross sum or by salary, or otherwise, and at either a greater or a less rate than that at which he would otherwise have been entitled to be remunerated'. See also s 64(1). —	
1. the time to be spent on the work; 2. complexity of the legal issue; 3. economic bear-ability of the client; 4. risks and liabilities that the lawyer may assume and undertake; and 5. the lawyer's social reputation and professional practising level. . .	Hong Kong Bar Code and Hong Kong Solicitors' Guide Principle 4.17. Contingency fees, where a solicitor or barrister agrees to accept a fee as a <i>percentage</i> of the damages recovered where a case is won, but no fee at all if the case is lost, are <i>prohibited</i> for all lawyers in Hong Kong.	
Article 10 A lawyer may charge according to different		

Table 2.4. (cont.)

	Hong Kong SAR	
People's Republic of China	Law Society of Hong Kong	Republic of Taiwan
All China Law Association	Bar Association of Hong Kong	Taiwan Bar Association

types of services: case
by case service charges,
proportional service
charges and time-based
service charges.

The case-by-case service
charges shall apply to
legal matters not
involving property
issues.

The proportional service
charges shall apply to
legal matters involving
property issues.

The time-based service
charges may apply to
all kinds of legal
matters.

Article 11

For civil cases involving
property issues, if the
client insists on
following a risk agency
mechanism even after
having been informed
of guidance prices of
the government, then a
law firm may charge on
a risk agency basis, but
in no way the risk
agency charging
method shall apply to:

1. cases of marriage or
inheritance;
2. cases about asking for
social insurance
treatment or minimum
living treatment;

Table 2.4. (cont.)

People's Republic of China All China Law Association	Hong Kong SAR		Republic of Taiwan Taiwan Bar Association
	Law Society of Hong Kong	Bar Association of Hong Kong	
3. cases about asking for payments for supporting parents or children, alimonies, pensions for the disabled or families of the deceased, welfare payments, or compensations for work-related injuries; or			
4. cases about asking for payments for employment remunerations, etc.			

Article 12

The risk agency charging method is prohibited to be applied to criminal cases, administrative cases, cases about state compensations, and cases of collective litigations.

Article 13

For risk agency charging method, a law firm shall sign a risk agency contract with its client, specifying risks and liabilities both parties may assume, the way of payment, and the amount or proportion that will be charged thereof. For risk agency charging method, the ceiling amount shall be

Table 2.4. (cont.)

	Hong Kong SAR	
People's Republic of China	Law Society of Hong Kong	Republic of Taiwan
All China Law Association	Bar Association of Hong Kong	Taiwan Bar Association
<hr/>		
in no way over 30% of the amount involved in a case as specified in the risk agency contract.		
All China Law Association		
<i>Codes of Profession</i>		
<i>Conduct for Lawyers – 2017</i>		
Article 35		
A lawyer shall negotiate with a client about the scope, content, power, cost and time limit for the entrusted arrangements, and after an agreement is reached through negotiation, the law firm shall conclude an agency agreement with the client.		
Article 48		
A law firm may conclude, in accordance with law and under the premise of recovering money or property regarding the subject matter, <i>an agreement with a party or client to accept a certain percentage of money or payment-in-kind as lawyer's fees.</i>		
<hr/>		

^a Detailed rules for each of the PRC, Hong Kong and Taiwan are included in Ch.5 relating to criminal cases, Ch. 6 for confidentiality and Ch. 7 for conflicts of interest. In respect of the People's Republic of China, the All China Law Association *Rules on the Handling of Criminal Cases by (Defence) Lawyers* and the *Code of Conduct for Lawyers to Promote Business* are discussed in Ch. 5.

Each time you consider a conduct rule such as that set out in Tables 2.3 and 2.4, and those discussed in detail in Chapters 4–7, it is important to think about whether there is a wider principle or statutory provision that affects the area you are specifically interested in – and, indeed, even a wider case decision. There is nothing contentious in this statement. But it is David Luban’s argument that you ought also to consider fundamental moral positions before you make a decision and, if necessary, defer to morality where it is in conflict with ‘the law’.¹² Chapter 3 explores the issue in detail and supports Luban, arguing that some rules and case law are not enough to guide lawyers’ judgment in all situations.

Whichever part of Greater China you hope to practise law in, your conduct as a good Chinese lawyer should be understood as part of a hierarchy of influences, as Figure 2.3 indicates.

Consideration of underlying ethical principles is important when interpreting any lawyers’ conduct rule because their general effect is to give a set of very mixed messages to lawyers. Conduct rules are supposed to represent the collective opinion of the state and the profession as to the moral standards expected of lawyers and to give a reference point for deciding whether disciplinary proceedings should be commenced for inappropriate conduct. They are also supposed to provide guidance to newer lawyers, but at the same time can never represent the last word on our ethical obligations. In fact, for new lawyers practising law across different parts of East and Southeast Asia, local conduct rules can offer a false sense of security as to their wider obligations across the region.

Examples of rules’ failure to give good moral guidance to lawyers are not hard to find, and most of these amount to a conflict of loyalties. Although moral principles ought to be obvious to lawyers, conduct rules can make it easier for lawyers and law firms to tolerate certain conflicts when they should be sceptical and cautious. For example, consider the different conduct rules that refer to contingency fees, as mentioned in Table 2.4. Contingency fees allow a lawyer to claim a fee from a client that can be much higher than normal fees – which are calculated only in relation to the actual work done for the client – if the lawyer achieves a higher financial settlement for their client. In fact, the contingent fee payable can often be a *percentage* of the final settlement or judgment. The temptation is for the lawyer to cut corners and even bribe people to get a higher settlement or judgment, so that they can get a higher final fee. As we discuss further in Chapter 7 below, a contingent fee introduces a direct conflict of interest between the client and their lawyer.

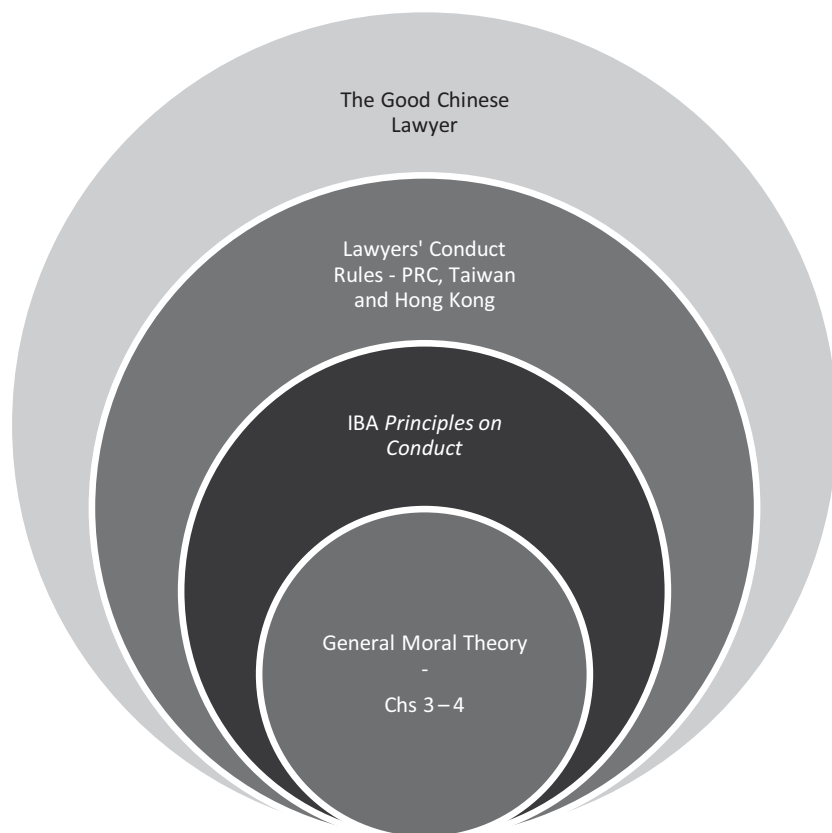


Figure 2.3 Moral legitimacy and conduct rules

Contingency fees are conditionally allowed in the PRC¹³ and Taiwan¹⁴ but, at present, that conflict is tolerated by those regulators.

And larger commercial law firms are also at greater moral risk than smaller firms. Large firms are large because they tend to command sufficient expertise and reputation to dominate the legal advice and representation available to entire industry sectors. To give one example, it is common for large firm partners over their careers to act for several corporations inside the one business sector, such as manufacturing. But these companies subdivide operating divisions or are taken over by new companies on an ongoing basis. New companies tend to look to the larger firms for their lawyers and naturally, the large law firms want that work and want to keep smaller firms (which have fewer conflicts

problems) out of the picture. So these partners must constantly check to see that they have not previously acted for a corporation that might have interests that conflict in some way with those of the new player. The conflicts-checking process is expensive and irritating for the large firms, and globally, they have become interested from time to time in arguing that they should be separately regulated from all other lawyers (with more relaxed rules about conflicts).¹⁵

It is important to the large firms to keep looking for ways and means to take on clients who do have current, opposing interests or who are opposed to a former client, even though both strategies strike many other lawyers as offensive and as undermining both the independence of lawyers and their loyalty to their clients. In Chapter 7 we consider the conflict of interest rules across the different parts of Greater China in detail, but for now it is enough to say that there is a risk that, just as conflicts of interest have been a major problem elsewhere in the legal world, there is also a risk that over time, large Asian law firms will suffer morally and run a reputational risk from ignoring conflicts.

The conduct rules of the All China Law Association, the Hong Kong Law Society and Bar Association, and the Taiwan Bar Association are an imperfect guide to best practice conduct, but they do represent 'the law'. Consideration and comparison of their different provisions in the context of the IBA *Principles* and general moral theory, is the best way to understand your own obligations as you enter legal practice and gain experience. We start this process in Chapters 3 and 4, which provide the necessary general moral framework.

Notes

- 1 See 'Ten classic cases of disciplinary sanctions released by All China Lawyer Association in 2017', 30 March 2018.
- 2 See Tom Wicker, 'Judicious activism', *IBA Global Insight*, International Bar Association, February/March 2013, p 19.
- 3 Enron Corporation, a Texas-based oil and financial markets conglomerate and once the seventh-largest corporation in the United States with revenue of over \$100 billion, collapsed because of essentially immoral reclassification of massive corporate debt as 'off-balance sheet', allowing the company to, in effect, trade while insolvent and dig itself even deeper into debt. The circumstances surrounding Enron's collapse generated a wealth of commentary. See, for example, D. Rhode and P. Paton, 'Lawyers, ethics, and Enron' (2002) 8 *Stanford Journal of Law, Business & Finance* 9, and other contributions to the 'Symposium – Enron: Lessons and implications' (2002) 8(1) *Stanford Journal of Law, Business & Finance*; Robert W. Gordon, 'A new role for lawyers? The corporate counselor

- after Enron', in Susan D. Carle, *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader*, New York University Press, New York, 2005.
- 4 See All China Law Association, *Codes of Profession Conduct for Lawyers*, 2018, Article 94: 'Lawyers and law firms shall perform legal aid obligations in accordance with the relevant provisions of the state, provide legal services for persons requiring aid and protect the legitimate rights and interests of such persons.'
 - 5 See www.firstpost.com/india/delhi-rape-three-accused-finally-find-lawyers-to-defend-them-581454.html.
 - 6 See, for example, L.L. Riskin, 'Awareness and ethics in dispute resolution and law: Why mindfulness tends to foster ethical behavior' (2009) 50 *South Texas Law Review*, 493–503; S.L. Rogers & J.L. Jacobowitz, 'Mindful eEthics and the cultivation of concentration' (2014) 15 *Nevada Law Journal*, 730.
 - 7 For example, the course on 'Innovation, Creativity and Ethics for Globalized Legal Practice' taught at the University of Hong Kong Faculty of Law.
 - 8 Baker and McKenzie developed one of the world's first climate change practices and were consequentially well-positioned to advise on other connected challenges to business.
 - 9 See Ch. 1.9: Managing your mental health.
 - 10 In Taiwan there has been a complex case involving suggestions that the willingness of some ROC judges and prosecutors to receive gifts could be tolerated providing they did not offend the so-called '533 Principles'. These 'principles' purportedly allowed gifts (bribes) consisting of no more than 'five times of dining', 'less than three shirts' and 'less than three expansive tonics' (alcoholic drinks). Report to the authors from Thomas Chen, Professor and Director of Institute of Technology Law, National Yang Ming Chiao Tung University School of Law, on file with the authors.
 - 11 See IBA guides, rules and other free materials (ibanet.org). These Principles are available in multiple languages.
 - 12 See Ch. 1.
 - 13 See All China Law Association, *Codes of Profession Conduct for Lawyers* – 2017, Article 48.
 - 14 See Taiwan Bar Association, *Code of Ethics*, Article 35, at 全國律師聯合會 Taiwan Bar Association (twba.org.tw).
 - 15 See, for example, Joan Loughrey, 'Large law firms, sophisticated clients and the regulation of conflicts of interest in England and Wales' (2011) 14(20) *Legal Ethics* 215 and John Flood, 'Solicitors' regulation authority balks at separate city regulator [blog: Random academic thoughts]', 18 October 2010, at www.johnflood.com/blog/2010/10/solicitors-regulation-authority-balks-at-separate-city-regulator.