Introduction
1. Thank you Eleneth Woolley for inviting me to speak about my practical understanding of professional responsibility.

2. Before I begin my remarks, I wish to acknowledge the traditional custodians of the land on which we meet, the Wurundjeri people of the Kulin Nation, and pay my respect to their Elders past and present.

Australian Lawyer and Officer of the Court
3. In a few years’ time, you will be admitted to practice as an Australian Lawyer and as an Officer of the Supreme Court of Victoria.

4. The form of the oath of office you will take is likely to be as follows:

   I swear by Almighty God that I will well and honestly conduct myself in the practice of my profession as a member of the Australian legal profession and as an Officer of this Honourable Court to the best of my knowledge and ability.¹

5. As an Officer of the Court, there is only one over-arching rule to remember and follow in order to minimise a multiplicity of ethical and other conflict-of-interests type problems.

6. Do not do anything, and for anyone, that will land you in jail!

7. It sounds simple enough. But it all starts with how you wish to conduct yourself from the time you begin your education.

8. The question to be answered, from the day you commence studying law, is whether you are a ‘fit and proper person’ to be admitted as an Australian Lawyer and as an Officer of the Court.

¹ M Ent Inn (Swinburne), LLM (Monash), BSc (Computers), MAICD is a Barrister at Law practising in general commercial and corporate law.

¹ See Form 2-14 of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 where the form of the affirmation is also included.
9. The Legal Services Board will assess this question in accordance to the requirements of the law.  

10. The answer will either be ‘yes’ or ‘no’. In other words, you are either a ‘suitable’ person to join the legal profession or you are not.

11. Are you a person of honesty and integrity? These traits go to your character as a person.

12. Good character is not a question of the opinion others may have on you. It is to be judged by your actions and motivations.  

13. Are you in good health, physically and mentally? Your well-being is also important to ensure that you can discharge your duty to the Court and to your clients.

14. You must, therefore, ensure that you are of ‘good standing’ in the eyes of the Legal Services Board if you are to obtain a certificate and recommendation for admission to the legal profession.

15. Your family upbringing and personal values will undoubtedly be a guide as to how you conduct yourself.

16. My wife, who is a risk and governance specialist, often says, ‘values are not just about what you will do. It is about what you won’t do’.

17. It is not just about doing things right, which is important. But it is also about doing the right thing.

18. For example, avoid plagiarism when doing your assignment. Don't provide false and misleading information in your application for an extension of time for an assignment. Don't even be tempted to falsify medical certificates to obtain an extension of time. Call out inappropriate behaviour.  

19. It is trite to say this but avoid, at all cost, unlawful or criminal activities.

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2 The Legal Profession Uniform Application Act 2014 (Vic) (LPUAA) governs all aspects of the legal profession. The Legal Profession Uniform Law Rules is a schedule to the LPUAA. See also the Legal Profession Uniform Admission Rules 2015.

3 Melbourne v The Queen (1999) 198 CLR 1, 25 at [66].

4 Rule 42 of the Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015 prohibits conduct which constitutes discrimination, sexual harassment, or workplace bullying. See also rule 123 of the Legal Profession Uniform Conduct (Barristers) Rules 2015.
20. If you have a sordid past, you will be required to make ‘full and frank disclosure’. There is no guarantee that the Legal Services Board will grant you a certificate for admission.

21. If that is the case, you will have earned a law degree but will never be able to practise law.

22. Once you are admitted to the legal profession, you continue a life-long journey of maintaining your impeccable reputation, as your practising certificate is to be renewed on a yearly basis.  

23. While you may develop expertise over time and mature as a person, the one criterion you will consistently be assessed against is whether you are a ‘fit and proper person’.

*Duty to the Court*

24. Leaving to one side what you may be doing in your ‘private’ life, I want to address what it means to be an Officer of the Court.

25. In her speech at the Judicial Conference of Australia Colloquium, the Hon. Marilyn Warren AC spoke on *The duty owed to the Court – sometimes forgotten* and said:

> The lawyer’s duty to the court is an incident of the lawyer’s duty to the proper administration of justice. This duty arises as a result of the position of the legal practitioner as an officer of the court and an integral participant in the administration of justice. The practitioner’s role is not merely to push his or her client’s interests in the adversarial process, rather the practitioner has a duty to ‘assist the court in the doing of justice according to law.’

26. A lawyer’s first duty is to the Court. This duty is not differentiated between a person practising exclusively as a barrister or as a solicitor, whether as a corporate or government lawyer, although the rules governing barristers’ conduct and solicitors’ conduct differ slightly in its application.

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5 In Victoria and New South Wales, lawyers are subject to the *Legal Profession Uniform Rules* made by the Legal Services Council. For a collection of links to these Uniform Rules, see [http://lsbc.vic.gov.au/?page_id=248](http://lsbc.vic.gov.au/?page_id=248).


7 For barristers, this duty is stated as an ‘overriding duty to the court’: see s. 23 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015*. For solicitors, this duty is stated as ‘paramount and prevails to the extent of inconsistency with any other duty’: see s. 3 Part 2 of the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*. 
27. At the cold face of the adversarial process in Court, a barrister’s duty to the Court has immediacy and is paramount to the proper administration of justice.  

28. This duty requires barristers to act honestly and with integrity at all times. For example, a barrister must not mislead the Court in presenting his or her case. He or she must always provide frank disclosures to the Court.

29. Barristers, solicitors, and judges are part of the process of doing justice according to the law. The desire to win a case at all cost should not have any part to play in assessing a practitioner’s duty towards the Court.

30. This duty applies equally when engaging in non-contentious work, for example in paper work or transactional matters.

31. Finally, I want to talk about the conduct of a legal practitioner.

Conflict of interest

32. At the heart of professional legal practice is the fundamental principle that one must avoid situations of conflict of interest between the interest of the client and one’s own personal interest.

33. It is always fraught with danger when a legal practitioner seeks to do business with a client as it will inevitably give rise to having to choose between one’s own interest and that of the client.

34. This sort of conflict of interest can be avoided by adopting a simple rule – don’t do any kind of entrepreneurial or commercial business with your own client.

35. Another conflict that sometimes arises, particularly when acting as Counsel, is that you have to advise the lay client that his or her interest may conflict with the interests of Counsel’s instructing solicitor.

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8 Rules 4(a) and 24 of the Legal Profession Uniform Conduct (Barristers) Rules 2015.
9 Ibid, r. 24.
10 Ibid, r. 27.
11 This principle is reflected in r. 10.1 of the Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015. For barristers, see r. 101(b) of the Legal Profession Uniform Conduct (Barristers) Rules 2015.
12 See Legal Services Commissioner v Needham (Legal Practice) [2014] VCAT 305 where the solicitor became involved in property development business with his client, mixing entrepreneurial business with professional services.
13 Rule 120 of the Legal Profession Uniform Conduct (Barristers) Rules 2015 governs this scenario.
36. In *Legal Services Board v Diakou (Legal Practice)* 14 the law firm engaged Senior Counsel and me to act on behalf of the victims of a scheme that is popularly known as ‘Money for Living’.

37. While the firm had acted on behalf of the vendors in the scheme, who subsequently became victims of the scheme, it also did work purportedly at the direction of MFL, the operator of the scheme. This case demonstrates the danger in acting or purporting to act for both parties to a transaction. 15

38. The Tribunal considered that it was ‘clear … that the firm had become enmeshed in the scheme, and that in the circumstances, it was unrealistic … to argue that he was not also acting on behalf of MFL and under its direction. This was said to demonstrate the nature of the conflict and the magnitude of it. … The nature of the transactions demonstrated a very clear conflict of interest. The firm was engaged in nearly every level of legal work required by MFL to successfully complete each step of the scheme’. 16

39. Senior Counsel and I were retained by the law firm to issue proceedings against MFL and others. It became apparent to Counsel, and we formed the belief, that there was a conflict of interest between the interest of the victims and that of our instructing solicitor. 17

40. We advised our instructing solicitor of our belief. He withdrew from acting for the victims. With new solicitors retained, we completed the work in drafting the originating process against the relevant parties, including the joinder of our former instructing solicitor to the proceedings. We then withdrew from acting in the proceedings.

41. It is often the case that practitioners either refuse to accept or fail to recognise any conflict of interest arising, 18 which may lead to the laying of charges against the practitioner for misconduct.

**Misconduct**

42. When it comes to disciplinary matters, two types of conduct fall within Part 5.4 of the *Legal Profession Uniform Law*.

15 See also *Victorian Legal Services Commissioner v Christopher Wilson Altus Lawyers (Legal Practice)* [2015] VCAT 2059, at [10], [11], [15].
16 Ibid, at [21].
17 Ibid, at [29].
18 *Legal Services Commissioner v McNab (Legal Practice)* 2017] VCAT 1376, [33].
43. First, there is ‘unsatisfactory professional conduct’, which includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. 19

44. Secondly, there is ‘professional misconduct’. Section 297 of the Legal Profession Uniform Law provides:

(1) For the purposes of this Law, professional misconduct includes—

(a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

(2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

45. Acting or continuing to act in circumstances where a conflict of interest was apparent is likely to amount to unsatisfactory professional conduct. 20

46. Section 297 is broader in its scope and severity of application as a contravention will likely lead to a finding that the lawyer is not a ‘fit and proper person to engage in legal practice’.

47. Section 298 sets out, without limitation, conduct capable of constituting unsatisfactory professional conduct 21 or professional misconduct. 22

48. A finding of guilt for a statutory misconduct may result in the lawyer being struck off the roll of practitioners.

49. To date, there have been approximately 171 people struck off the roll of practitioners for professional misconduct. 23

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19 Section 296 of the Legal Profession Uniform Law.
20 Victorian Legal Services Commissioner v McNab (Legal Practice) [2017] VCAT 1376, [6], [33], [69].
22 See for example Victorian Legal Services Commissioner v Zindilis (Legal Practice) [2018] VCAT 585; Victorian Legal Services Commissioner v Lewenberg No 2 (Legal Practice) [2016] VCAT 556; Legal Services Commissioner v Wong (Legal Practice) [2009] VCAT 1728.
50. Such conduct includes conduct where there has been a conviction for a serious offence,\textsuperscript{24} or a tax offence;\textsuperscript{25} or an offence involving dishonesty.\textsuperscript{26}

51. It should be noted that charging more than a fair and reasonable amount for legal costs in connection with the practice of law is capable of constituting unsatisfactory professional conduct or professional misconduct.\textsuperscript{27}

52. A lawyer may also be found guilty of misconduct at common law\textsuperscript{28} where he or she has been personally implicated in conduct that would reasonably be regarded as disgraceful or dishonourable by solicitors of good repute and competency.\textsuperscript{29}

\textit{The undertaking}

53. You will have heard of the adage ‘My word is my bond’. In legal terms, it is called an \textit{undertaking}.

54. Rule 6 of the \textit{Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015} provides:

\begin{itemize}
  \item \textbf{6.1} A solicitor who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.
  \item \textbf{6.2} A solicitor must not seek from another solicitor, or that solicitor’s employee, associate, or agent, undertakings in respect of a matter, that
\end{itemize}

\textsuperscript{24} Associate Justice Mukhtar of the Supreme Court of Victoria ordered on 21 June 2011 that Ms Cecilia Nguyen be struck off the roll of legal practitioners following an application by the Legal Services Board. Ms Nguyen consented to this application. The Board resolved to make the strike-off application on the basis that Ms Nguyen had been found guilty and sentenced to a term of imprisonment for a serious offence and was no longer a fit and proper person to engage in legal practice. See http://lsbc.vic.gov.au/?p=48. See also \textit{Legal Services Commissioner v Andrew Minh Nguyen} [2013] VCS 443;\textsuperscript{25} See for example \textit{Legal Service Commissioner v Stirling (Legal Practice)} [2012] VCAT 347 and on appeal in \textit{Matthew Stirling v Legal Services Commissioner} [2013] VSCA 374;\textsuperscript{26} \textit{R v Philip Linacre} [2014] VSC 615 where the accused was sentenced to 12 years’ imprisonment with a non-parole period of 8 years.\textsuperscript{27} Section 298(d) of the \textit{Legal Profession Uniform Law}.\textsuperscript{28} See for example, \textit{Victorian Legal Services Commissioner v Ng (Legal Practice)} [2016] VCAT 1237; \textit{Legal Services Commissioner v Faigen and Ors (Legal Practice)} [2011] VCAT 1726; \textit{Legal Services Commissioner v Brott (Legal Practice)} [2011] VCAT 110 where the misconduct charges related to the respondent lawyer acting on behalf of two individuals without proper consent or instructions. The Tribunal referred the respondent lawyer to the Supreme Court with a recommendation that his name be struck off the roll of practitioners.\textsuperscript{29} \textit{Legal Services Commissioner v Piva (Legal Practice)} [2009] VCAT 1200, [8] where the Tribunal referred to \textit{Allinson v General Council of Medical Education and Registration} [1984] 1 QB 750; \textit{Re a Solicitor ex parte The Law Society} [1912] KB 302; \textit{Myers v Elman} [1940] AC 282; \textit{Guss v Law Institute of Victoria Ltd} [2006] VSCA 88 (21 April 2006). See also \textit{Legal Services Commissioner v Piva (Legal Practice)} [2009] VCAT 1981.
would require the co-operation of a third party who is not party to the undertaking.

55. A barrister, on the other hand, must not give an undertaking to the court on behalf of a solicitor or a client without express authority of the person concerned.  

56. Remember this important rule as a breach of an undertaking can have serious consequences.  

Conclusion

57. I began this talk by telling you what your future is likely to be – as an Australian Lawyer and as an Officer of the Court.

58. If you decide to practise the law, it will bring you immense professional satisfaction and personal achievement.

59. There will also be tough decisions you have to make but remember, ours is a collegiate profession and there are many resources and assistance you can seek when in need.

60. You will, however, have to work hard to maintain your ‘good standing’ and reputation from the time you begin your journey in law school until you retire from the legal profession.

61. The subject you are now undertaking is not a ‘fluffy’ subject. On the contrary, it is vital that you understand the rules of conduct governing the legal profession at the earliest possible moment.

62. Knowing such code of conduct will enable you to moderate your own behaviour when dealing with clients and your opponents but also more generally in your own day-to-day life.

63. It is both an honour and privilege to be granted a licence to practise law.

64. I wish you every success in the learning and practice of the law.

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30 Rule 121 of the Legal Profession Uniform Conduct (Barristers) Rules 2015.
31 See for example, Victorian Legal Services Commissioner v McNab (Legal Practice) [2017] VCAT 1376; The Victorian Bar Inc v Herskope [2004] VLPT 14.