

SUPRABHAT

GOOD MORNING

સુપરબહત

૨૩૨૯ સંવત્સરોના ૧૫૦ સંવત્સરો, ગુરુ, ભારત

IT'S JUST ETHICS



COMMONWEALTH LAW ASSOCIATION - 2023 - GOA

JEROME LYNCH KC

IN PART BY KIND PERMISSION OF THE HONOURABLE SOCIETY OF LINCOLN'S INN

OR HOW TO AVOID GETTING IT WRONG



[This Photo](#) by Unknown Author is licensed under
[CC BY-NC-ND](#)

Sir Owen Dixon, the Chief Justice of Australia, said in his address on the eve of taking oath of office:

“It is the duty of the barrister to stand between the subject and the Crown, between the rich and the poor, the powerful and the weak. It is necessary that while the Bar occupies an essential part in the administration of Justice, the barrister would be completely independent and work entirely as an individual drawing on his own resources of learning, ability and intelligence.”

To make that work we need a Code of Conduct

Not just provided by National or State statute or even the specific Bar Code of your local Bar - but by ourselves.

INTRODUCTION TO BAR CODES OF CONDUCT

INDIA - GOA

An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community...bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.

ENGLAND AND WALES

You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession

NIGERIA

A lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.



WHAT SHINES THROUGH FROM THOSE BASIC
PRINCIPLES IS PERHAPS ENCAPSULATED IN
JUST THREE WORDS
RESPECT HONESTY INTEGRITY



There is often not only one right answer to the multitude of ethical problems that may face us in our careers but these criteria and sound judgement based on a good understanding of the rules will provide the guiding light to reaching an answer that is just and fair.

PROBLEM ONE

Defendant, Laxmi is charged with theft of musical equipment. The Equipment was found in boot of Defendant's car two days later.

Instructions: Laxmi bought the musical equipment from a man called Suresh in a bar on a Friday night and did not know or believe that it was stolen goods. He doesn't know Suresh's surname or address, can't remember which bar.

Loser, Jose gives evidence that he left his van loaded with musical equipment stationary and unattended, but unlocked. No person had permission to take any of the equipment. On his return the equipment worth INR 100,000 was missing and found later in Defendant's possession.

No cross-examination on basis that there is no direct evidence as to the identity of the thief.

Call Defendant: Jose's half-brother, Antonio, is a friend. I told him my musical equipment had broken down. He said that Jose had some in the back of his van, which he was sure Jose wouldn't mind if I borrowed it. I assumed Antonio worked together with Jose and had authority to permit me to borrow it.

Cross-examination of Defendant: Q. "None of this was put to the loser?" A. "It's not my fault. My lawyer did not do his job properly."

WHERE DO YOU GO FROM HERE?

DO YOU INTERVENE TO TELL THE COURT
THAT IS ERRANT NONSENSE?

.....THAT THERE IS NOTHING IN YOUR
INSTRUCTIONS WHICH FORESHADOWS
THIS NEW STORY?

SUPPORT THE CLIENT'S STORY BY
STATING, INACCURATELY, THAT YOU DID
HAVE INSTRUCTIONS TO PUT THIS
STORY?

KEEP YOUR HEAD DOWN AND SAY
NOTHING?

JUDGE JOINS IN THE FUN

Q. “IS THAT RIGHT? WHY WASN’T THIS
PUT TO THE LOSER, JOSE?”

WHAT ARE YOUR CHOICES?

DROP YOUR CLIENT IN IT?

STAY BUTTONED UP?

HIDE!

SUPPOSE YOUR CLIENT IS RIGHT?

YOU OVERLOOKED THE ACCOUNT
GIVEN IN YOUR INSTRUCTIONS, AS SET
OUT IN YOUR CLIENT'S PROOF WHEN
CROSS-EXAMINING THE LOSER. THE
BROTHER IS AT COURT AND YOU DO
HAVE A WITNESS STATEMENT FROM HIM.

WHAT DO YOU DO NOW?

DO YOU BEAR YOUR BREAST AND
CONFESS ALL?

COULD YOU ASK THE LOSER BE RECALLED
FOR THE CASE TO BE PUT TO HIM?

DO YOU KEEP QUIET?

HIDE!

PROBLEM TWO

Partner sends you off to Vasco Criminal Court. – Allegation of **dangerous driving**. Prosecution tells you they have just the one eye witness who will say that he saw your client overtaking on a blind corner approaching a hump-backed bridge which involved his vehicle veering across the road and crashing into a cow.

Conference at Court (I):

This witness is a notorious local drunk and a habitual weed smoker who cannot be relied upon to see anything except with double vision.

- Do you put this to the witness?
- How do you put it?
- Do you put all of it?
- Why do you put it?
- To what issue does it go?

Conference at Court (II):

This witness is a pimp and a brothel-keeper

- Do you put this to the witness?
- Why do you put it? To what issue does it go?
- Do you wish to make any further enquiry?
- How do you put the allegation?

Prosecution tells you that the witness has **no previous convictions?**

Can you still put this to the witness?

Prosecution tells you that the witness has **three previous convictions** for living off immoral earnings and one for keeping a disorderly house.

Is that enough?

Conference at Court (III):

“This witness has borne a grudge against me ever since I gave information to the police about his criminal activities which resulted in his arrest, investigation of his criminality and a lot of hassle by the police”

- Do you put this to the witness?
- How do you put it?
- Why do you put it? To what issue does it go?

Conference at Court (IV):

“This witness is an Alien from Alpha Centauri whose evidence is being dictated from an orbiting spaceship!”

PROBLEM THREE

Mr Patel is getting divorced from...Mrs Patel. It is an acrimonious divorce with the decree nisi having been granted the previous year. There is now before the court the issue of the continuing provision for her and the 14 children. Mrs Patel gives some evidence-in-chief to augment her affidavit. She is about to be cross-examined by Mr Patel's counsel when the judge decides to adjourn the case to the next session in two weeks time. The judge gives the usual warning about not discussing the evidence with anyone as she is part way through her evidence.

Six days later she calls her lead lawyer (SC) to discuss the possibility of calling an expert accountant to assist her with identifying the size of the lump-sum she would need for a clean-break from her ex-husband to live in the lifestyle to which she has become accustomed. They have a two hour conference together and with the potential expert. This followed-up with email correspondence.

You return from holiday to discover what has happened.

- What do you say to your leader?
- What do you say if anything to the other side?
- What do you say to the judge?

You are representing the husband and by a stroke of luck you find out that the witness has been speaking to her counsel.

- What do you do?
- What do you say if anything to the other side?
- What do you say to the judge?

PROBLEM FOUR

Your 45-year-old client was convicted last month of a serious wounding with a knife committed on 13th March 2022. He tells you that he has a previous conviction for a similar offence six years ago. You are given the print-out of his previous convictions which show a couple of shopliftings, an old drugs offence, but nothing for violence. It does not show that he has a conviction for a similar wounding in 2015.

What are you going to do about it?

- Say nothing?
- Tell prosecuting counsel?
- Tell the judge that the list of previous convictions is incomplete?

- Is it proper and lawful to say nothing about the previous conviction for violence?
- If you say nothing, may you say anything in mitigation about your client's previous criminal record as disclosed by the Prosecution?
- By maintaining silence about the previous conviction, are you deceiving the Court? Are you misleading the Court?

PROBLEM FIVE

On reading the papers in this case of attempted murder your client confessed to the police in interview. That is the only evidence of his guilt. Your instructions are that your client will plead guilty. However, you notice a serious flaw in the evidence and its admissibility. You construct a legal argument which if successful would mean the evidence of the interview would be excluded meaning the prosecution would have no case and they would have to offer “no evidence”.

What do you do knowing your client has admitted it and continues to do so to you?

In preparing the argument, it being a novel point, you find there is no Goan authority to assist on point, indeed there isn't anywhere in India, but you find very helpful guidance directly on point in Canada and the UK, upon which you intend to rely. But you also find several cases in Australia which completely undermines your case.

What do you do?

- Can you simply not rely on the Australian cases?

If you don't rely on them what happens if the judge asks you if you have come across those authorities?

What if he tells you after you have succeeded in your argument that he intends to kill the same person?



JUST REMEMBER



THERE'S NO RIGHT WAY TO DO A
WRONG THING

JEROME LYNCH KC

CLA MARCH 2023