



COMMONWEALTH LAW CONFERENCE 2025

**WELCOME
MER#BA**

6th-10th April
2025



VisitMalta
Incentives & Meetings

IT'S JUST ETHICS



OR HOW TO AVOID GETTING IT WRONG



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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

MALTA *IL-KAMRA TAL-AVUKATI*

This code defines the requirements of professional conduct for advocates. The purpose of this Code is to ensure that advocates do not act abusively or negligently or in a manner repugnant to the decorum, dignity or honour of their profession or in such manner as could seriously affect the trust conferred on them.

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

Mrs Farrugia is getting divorced. It is acrimonious. The decree nisi was granted last year. There is now before the court the issue of the continuing provision for her and the 14 children. Mrs Farrugia gives some evidence-in-chief to augment her affidavit. She is about to be cross-examined by Mr Farrugia'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 case with anyone as she is part way through her evidence.

Six days later Mrs Farrugia calls her lead counsel 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 is followed-up with email correspondence.

You are junior counsel for Mrs Farrugia and return from a short holiday to discover what has happened.

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

Suppose you are representing Mr Farrugia and by a stroke of luck you find out that Mrs Farrugia has been speaking to her counsel.

- What do you do?
- Do you tell your client?
- What do you say if anything to the other side?
- What do you say to the judge?

PROBLEM TWO

Firm send you off to The Criminal Court of Judicature (Magistrate) – your client faces an allegation of **dangerous driving**. Prosecution have just the one eye-witness who will say that he saw your client overtaking on a blind bend, approaching a hump-backed bridge, travelling too fast which involved his vehicle veering across the road and crashing into a chicken farm.

Conference at Court (I): Client says:

This witness is a notorious local drunk 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?
- What happens if you don't put it and your client says it from the witness box?

Conference at Court (II): Your client says:

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?
- How would you put the allegation?
- Do you wish to make any further enquiry?

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.

How is any of this relevant to the issues?

Conference at Court (III):Your client says,

“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

Air Malta and HSBC are in a dispute over a loan facility provided by the bank to the company. Air Malta come to your firm for assistance in the dispute. The firm carry out a conflicts check and discover that one member of the firm does some very occasional advisory work relating to employment law for HSBC.

- Can you act for Air Malta?
- Can you ask HSBC if you can act for Air Malta?
- Do you have to tell Air Malta that colleagues in the firm act for HSBC?
- Does it make a difference if HSBC say its ok but they will not be using the firm again if you do?

- Your colleague says he hasn't done any work for HSBC for the past 2 years but he has been nurturing them and says he doesn't want to give them up as a client.
- The Air Malta work is lucrative and immediate so you take the work.

Let's assume you are of the view that given the firm has done no work for HSBC for 2 years and even then, was of a very different character so you don't tell anyone and proceed to take the work from Air Malta.

You get to court and at the first interlocutory hearing counsel for HSBC say you're are conflicted and should not be representing Air Malta.

PROBLEM FOUR

Your 45-year-old client was convicted last month of a serious wounding with a knife committed on 13th September 2024. 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 2018.

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 Maltese authority to assist you, 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