(A) Introduction

1. Sometimes a founding lawyer leaves behind him a great law firm. Harris Kyriakides is one of eminent firms in Cyprus. It has a tier 1 ranking in tax, it is renowned in asset recovery. It has an intern programme with the University of Oxford. Harris Kyriakides mentored many young lawyers including those who became judges and business leaders. After leaving court he would from time to time return to offer a young lawyers words of advice. Representative law suits are a key area spurred by competition cases. Harris Kyriakides authored an article about the challenges of introducing them into Cyprus. He was a visionary. His standards are a legacy to his family his firm and all of us. It is a privilege to give this lecture in his memory today.
2. Legal ethics is about what a lawyer should do in a court and in the office, what are best practices and what should not be done. Pro Bono work is based on duty. Avoiding dishonesty is a requirement. Most legal systems regulate their lawyers. These prohibitions are often shaped by the state’s history. Cyprus’s location is at a cultural, linguistic, and historic crossroads between [Europe](https://www.britannica.com/place/Europe) and [Asia](https://www.britannica.com/place/Asia). In 1191, the island ruled by a self styled Emperor, a former Governor who had rebelled from the Byzantine Empire. The fleet gathered for the third Crusade numbered 100 ships and 17,000 men. Certain of the force including Richard the Lionheart found themselves caught in a storm which led to finding refuge on Cyprus. Eventually hostilities led to the island being seized by Richard the Lionheart , who sold it to the Crusading order of the Knights Templar. This was not a success for the local population and resulted in Richard reseizing the island and giving it to Guy de Lusignan the King of Jerusalem who had been defeated by Saladin . The Knights Templar had their English Headquarters in their Round, Temple Church, which after their destruction in1307 was given to the Knights Hospitaller who leased the Temple area to two colleges of lawyers which became Middle and Inner Temple.

(B) Dr Proudman’s case

1. There is a set of chambers in Middle Temple called Goldsmith Chambers. One of its tenants is Dr Charlotte Proudman. She is a senior research associate at Cambridge into gender inequality. She is an ardent advocate and campaigner in support of the rights of women. She is a junior counsel at the English Bar. One of her cases was in the Family Division before a highly respected retired High Court judge. Following judgment in a tweet thread in April 2022 after losing the case in which the former wife made allegations of abuse, which were upheld on the facts, Ms Proudman voiced concerns. ““I do not accept the judge’s reasoning. This judgment has echoes of the ‘boys’ club’ which still exists among men in powerful positions.” This last sentence has captured widespread public and media attention.
2. The Garrick Club is a private members’ club in Covent Garden which admitted only male members. It is a club with members in high positions including in the law. It enables networking . The criticized judgment was given by Sir Jonathan Cohen the former Chairman of the Governors of my old school, and a member of the Club. It is published on Bailii and freely available to the public. The judgment itself is well written and balanced with criticisms of both the former husband and wife. It includes findings of acts of reckless violence by the husband.
3. Dr Proudman had raised a point of general public interest and importance on whether judges should be members of the Club. The Bar Regulator the BSB has brought disciplinary proceedings against her which threaten suspension of her practising certificate for up to a year and a fine of up to £50,000. When Sir Jonathan’s judgment is read together with the tweets and knowing Dr Proudman’s very public background as an ardent campaigner the reasonable person would be most unlikely to think any the less of the retired judge or question the work he put into preparing what appears to be a painstaking judgment. The charges include alleged breach of duty of integrity and diminishing public confidence in the profession.
4. Dr Proudman is in certain respects a controversial figure for traditionalists – who accuse her of using her position as a barrister to promote her views, or a career outside of the Bar, and attacking the judge in public. Following the charges Dr Proudman has drawn attention to a large number of tweets from male lawyers whose identities have been kept confidential, critical of specific judges. These tweets are hard hitting but she points out that no-one has brought any disciplinary charges based upon them. Predictably she argues that there hads been unlawful discrimination against women by the Bar Standards Board (“the BSB”), a public body, which has resulted in the bringing of these charges. After detailed submissions, the judge who chairs the bar’s disciplinary tribunal has decided that this is an issue which will need to be considered by the 3 person tribunal which is to hear the case in December. His judgment is detailed impressive and independent. The BSB is a public body – it is bound by the ECHR and the Equality Act. The issue raised goes to whether the prosecution of the charges should be ended as an abuse of the process. However it is an issue which turns on the particular facts. It includes the state of mind of those at the BSB responsible for the charges. It has yet to be considered on the merits and I say no more about it. It is sub judice, first before a tribunal and then with a possible appeal to the High Court.
5. Leaving these aside, the case raises three issues which are of public importance on legal ethics.

(B) (i) Freedom of Speech

1. First freedom of speech. Our legal system is only human and not perfect. Courts and judges are separate from and independent of the Government. Appeals on questions of fact often fail because the judge has had the advantage of hearing the witnesses and being present for the whole of the trial. Public access to the courts reflects the importance of public confidence. Freedom of speech is part of everyone’s rights to autonomy and is a most precious safeguard to individual liberties. The BSB argues that freedom of speech is curtailed by Dr Proudman’s voluntary position as a member of the Bar. This proposition taken on its own is unobjectionable. There are a number of examples.
2. As a lawyer to a party there are responsibilities owed to the client to act in the best interests of the client and to maintain confidentiality. As a lawyer there is a responsibility not to engage in conduct undermining public confidence in the due administration. Another is not to engage in conduct undermining the due administration of justice including knowingly misleading the court.
3. Those reading the tweet would bear in mind that Dr Proudman was the losing advocate and her views on women’s rights are well publicised and readily available through Google or AI. As stated by the Chairman of the Bar Tribunal in his judgment no-one suggests that her observation in the tweet was otherwise than her honest view.
4. In England and in Ireland the lawyer can seek informal advice from an ethics advisor or a senior member of the profession but this is in no way binding on the regulator.
5. But what are the rules? The New York Rules 3.6 on Trial Publicity are directed to prohibiting “..public communication [which] will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” But in this case adjudication had ended and no-one suggests that Dr Proudman infringed rules of confidentiality. If free speech was to be curtailed post adjudication, fairness and the public interest suggest that this should only be done in clear precise regulatory rules which tell the barrister and those who may offer advice, exactly what the lawyer is not free to do. Part of the difficulties which have arisen is the use by the BSB of rules formulated in very general terms. The BSB’s social media guidance says “In general terms, any conduct on social media which might be said to be inconsistent with the standards expected of barristers may amount to a breach of the BSB Handbook”. This appears in guidance of several pages. There is a real danger that lack of definition in the Bar Code chills freedom of speech. It also leaves the lawyer not knowing in advance of what thy might or might not do.
6. In a letter to the UK government, four special United Nations rapporteurs on violence against women and girls, freedom of opinion and expression, human rights defenders and discrimination against women and girls made this very point. It expressed concern about both the BSB investigation into Proudman and the online abuse aimed at her by people unconnected with the proceedings or the family law case. They said: “While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are concerned that the ongoing harassment of Dr Proudman, combined with the BSB’s decision to take disciplinary proceedings may send a disconcerting message that legal professionals who dare to challenge alleged systemic gender bias against mothers in custody cases, and women who are survivors of domestic violence, will be punished.
7. “It may also lead to fear within the community of women human rights defenders, academics and practising lawyers and barristers who are working to defend the rights of women within the UK, that such decisions will significantly deter victims further from reporting and/or voicing their abuse; thus placing women and children at further risk of significant harm.”
8. The letter, sent in May but first [published on Monday](https://twitter.com/UNSRVAW/status/1812824349117694304) 15th July 2024 , highlighted “misogynistic and sexist” alleged online attacks against Dr Proudman and said this was facilitated by gaps in the BSB’s code of conduct and social media guidance regarding this specific threat.
9. The special rapporteurs also expressed concern “at reports that disciplinary proceedings against Dr Proudman are directly related to her professional activities as a lawyer”. The letter said that if this was the case, it would be in breach of the conditions lawyers are entitled to in order to perform their professional duties and reminded the government that “lawyers, as all other people living in the United Kingdom, are entitled to freedom of expression”.
10. The argument of the regulator is that it is not possible for it to specify in advance all the situations which would constitute misconduct. In contrast New York has specified certain prohibited situations and in doing so has clarified those in which the lawyer has a green light.
11. This is an illustration of a point of general application. Ethical rules breach of which have consequences should normally be clearly formulated with bright line guidance. Rules formulated in terms of an outcome to be achieved leave open for debate what rules regulate the lawyer’s conduct at the time of commission.

(B) (ii) The Duty to “Enhance” public confidence

1. Secondly , what should judges do to “enhance” public confidence? The word “enhance” is important.
2. Sir Jonathan is the Former Master of the Skinners Company which is a charitable institution. No-one doubts his bona fides. He cannot speak in his own defence.
3. However the publicity has resulted in resignations from the Club. Caesar’s wife must be beyond suspicion. There is a separate system for regulations of Judges . States are invited by the UN resolution 2006/23 to encourage their judiciaires to take into consideration the Bangalore Principles of Judicial Conduct. These principles are respected and applied for the English judiciary and in common law jurisdictions. Article 2.2 provides

2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary

The wording is broad and not limited to cases of actual or apparent bias. The word “enhances” is used is addition to “maintains”. The wording is carefully chosen.

1. Some might take the view that in modern times it is now unbecoming for a judge to be a member of such a club. It does not “enhance” public confidence. The Judicial Office has stated that four senior named judges have resigned. The Secretary to the Cabinet Office, the most senior Civil Servant, resigned There has been a question in Parliament. These changes mark a shifting in attidudes in our society. There has been a letter to the BSB signed by the MP and women’s activists. The Club voted 60-40 to be able to admit women. The complex process of becoming a member takes between 2 -5 years. Judi Dench who played M in the James Bond films may replace the real head of MI6, who resigned. Dr Proudman may have misjudged her criticism but her words have opened closed doors to women and raised an important issue. Dr Proudman makes this point in a posed photograph with a Garrick Club tie.

(B) (iii) Miscarriages of Justice

1. Thirdly, Miscarriages of Justice. The supposed justification is that Dr Proudman has brought the administration of justice into disrepute. The argument is that if she had not criticized the judgment the public would continue to have confidence. The criticism was of the judge in a case in which she had appeared. But after judgment, as long as the lawyer respects confidentiality and does not act contrary to the interests of their client, does that really make a difference?
2. All systems carry the risk of miscarriage of justice. I suggest that a principal aim of legal ethics in our new age should be and is to avoid miscarriages of justice. Miscarriage is a possibility in any legal system. Recent events in England have served to underline its importance and the seriousness of the consequences when it occurs.
3. In England there is currently a public inquiry into what is recognised to be a series of miscarriages of justice in the criminal system in private prosecutions brought by the Post Office. The Post Office public inquiry is establishing how sub post masters were victims of the Horizon System , a central computerised system. The sub post masters were often ordinary people doing their best for the local community. They were required by the Post Office to pay sums they could not possibly afford generated by a system plagued by faults. Prosecutions were supported by computer evidence. Innocent people were pressurised into pleading guilty from fear of getting longer sentences. The faults were not disclosed even when known about by lawyers working for the post office in conducting its private prosecutions. Innocent defendants were imprisoned their families impoverished, and one committed suicide. Civil proceedings were brought by an action group and the litigation funders received most of the proceeds. It became apparent to the public that the appeal system was insufficient to correct all the miscarriages of justice. One of the difficulties was cases where there was other evidence not based on Horizon on which a postmaster could have been convicted. Criminal defence is conducted under the pressure that absence of an early guilty plea forfeits the established discounts and may make all the difference to whether there is a custodial sentence. Horizon misled defendants and their lawyers so there were early guilty pleas. It could also have affected how other evidence was regarded. The relevant money might not have been lost at all or paid out to third parties taking advantage of a flawed system or paid out by mistake. Other evidence seemingly strong might have been left unchallenged. Years after the event some post masters and witnesses had died. Parliament intervened with legislation.

1. It has been pointed out that judges who heard the post office cases prosecuting sub postmasters, did not know of the other cases and the evidence which has emerged in the course of the public inquiry. This is a feature of cases of miscarriage. Judges are anxious to do justice and ensure it is done. But justice may be blind through lack of knowledge of the truth.
2. Miscarriages are not a new phenomenon or limited to England. In 1898 in an open letter to the President of the French Republic Emile Zola wrote “J’Accuse..!”. Zola risked his career and more, and on 13 January 1898 published J'Accuse…! on the front page of the Paris daily L'Aurore. Zola's publication accused the highest levels of the French Army of obstruction of justice and antisemitism by having wrongfully convicted Alfred Dreyfus to life imprisonment on Devil's Island. Zola was prosecuted for criminal libel. Dreyfus was reconvicted by the military. Zola fled to England in the wake of pending prosecution for criminal libel. It took French legislation to reverse the prosecutions and decisions. Captain Dreyfus was eventually completely exonerated by the Supreme Court of France in 1906 .
3. In 1914 Louis Brandeis wrote “Sunlight is the best of disinfectants”. It is a principle stated by that great man who became a Supreme Court Justice. It is the sunlight which allowed the miscarriage to be corrected. It should be respected by those who are considering inflicting punishment for exercise of freedom of speech. It is the mark of a wise person to learn from their mistakes. The Chinese have another saying – it is wiser to learn from the mistakes of others.

(C) A lawyer’s Private Life

1. Interference with personal autonomy. One problem area faced by regulators is to what extent should a lawyer’s private life be properly the subject of disciplinary proceedings. My answer would be as little as possible. Once the front door is shut the regulator should stay outside.
2. Does a practising lawyer act with lack of integrity for criticising in the media the behaviour of a politician or a member of the Royal Family or a member of the public? I emphasise that the question is restricted to the conduct of a practising lawyer in making public statements Others in the public service may be in an entirely different position. An example might be of a high ranking officer in the Army criticising acts of the Ministry of Defence on defence spending or recruitment.
3. My answer for the practising lawyer is that free speech is curtailed by law including the availability of criminal or civil proceedings. The legal regulator should avoid if at all possible disputes concerning the conduct of a practising lawyer involving freedom of speech except with clear justification. They go to a person’s autonomy as an individual and his personal freedoms. There are problems of spontaneous misjudgments best soon forgotten. Junior members of the profession may make an ill considered remark. There are problems of context and meaning. There are problems of overreach where the regulator is seeking to achieve political choices. There are problems of misuse of limited resources better employed elsewhere such as breaches of ethics which leave individuals facing miscarriage of justice. There are cases of partner dispute which are best left to be resolved by agreement or arbitration or if necessary in court. Lawyers are members of society. It is a society in which increasing numbers are well educated many with university degrees. People today are often well versed in the problems presented by social media.

(D) Zealous advancement of the case

1. Within the confines of the Rules of Professional Conduct, a lawyer’s duty, as a member of “the highest of the professions,” is to “zealously” advance the client’s cause. The principle applies in several of the rules of conduct governing the Cyprus Bar. But what is the lawyer to do when the interest of the client conflicts with the interest of the nation? This question of incompatible roles of attorney and citizen arose in Queen Caroline’s Case (1820),arguably the most famous divorce trial in history and a lawyer’s dream case, for the litigants were none other than the King and Queen of England and the grounds and defence were allegations of adultery.
2. George IV succeeded to the throne in 1820. He was very unlike his moral, predecessor. George IV was a self-indulgent spendthrift, famous for gambling, drinking, overeating, womanizing and wild parties with his friends. As “The Times” observed, the King was “a hard-drinking, swearing man who at all times would prefer a girl and a bottle to politics and a sermon.” He was viewed with disfavour by many for his arrogance and extravagance; yet he was witty and known for his stylish, albeit lavish, taste in fashion and furnishings.
3. While Prince of Wales, George secretly wed a twice-widowed commoner by the name of Maria Fitzherbert, but the union was illegal under UK law for two reasons: the King had not approved the marriage and she was Catholic. Nevertheless, the Prince had found an imprisoned clergyman to perform the wedding upon the promise of a bishopric when he inherited the crown. Although apparently loving Fitzherbert, George maintained a string of mistresses, often married women. In 1795, in order to secure payment of his huge debts by Parliament, the Prince agreed to his father’s choice of a suitable wife, his German first cousin whom he had never met: Caroline of Brunswick. As one historian concluded: “Their marriage holds the dubious distinction of being surely the worst match in British history.”
4. Upon first seeing his fiancée, Prince George gasped and turned to his attendant saying, “I am not well, pray get me a glass of brandy!” Caroline was an obese, loud, foul-mouthed woman. Her face was obscured by makeup and she had body odour. The fastidiously clean Prince was repulsed. She also appeared to be vain, greedy, spoiled and crude. She was said to have enjoyed telling vulgar stories, courted publicity, wore an overabundance of long pink feathers, her necklines plunged to her waist, and she rode in a carriage designed to look like a giant seashell. At social events, she painted her cheeks blood red and it appeared she glued sequins about her face.
5. The royal couple deeply hated each other from the start. George had to get drunk to get through the ceremony and wedding night. He fell asleep on the bedroom floor. Although Caroline gave birth nine months later, George disinherited Caroline two days after their daughter was born and the parties soon permanently separated with the Princess settling in Italy. He promised to provide income only if she stayed out of the country.
6. For a time, the Prince hoped to negotiate a divorce, but her financial demands were too great. Upon becoming the King in January of 1820, he delayed the coronation ceremony to once more try for a settlement, but to no avail. In June she appeared in London with great fanfare demanding her rights as Queen. He responded by pressuring the government into introducing “A Bill to Deprive Her Majesty Caroline Amelia Elizabeth of the Title, Prerogatives, Rights, Privileges, and Pretentions of Queen Consort of this Realm, and to Dissolve the Marriage between his Majesty and the Said Queen.”
7. The debate on the Bill became what has been called the trial of Queen Caroline. She was defended by Henry Brougham, a social reformer and opponent of the slave trade,. In the beginning, he was confronted with evidence, sent by the King in two green velvet bags, indicating that the Queen was guilty of holding obscene parties and had many adulterous liaisons about the Mediterranean with her secretary, a mysterious Italian adventurer named Bartolomeo Bergami, with whom it was alleged she had bathed. A committee of 15 peers decided it sufficed for the Bill to be presented.
8. This documentary evidence and a parade of Italian witnesses arrived, Cross examination showed that the principal witness was unable to give evidence about basic facts concerning the Queen and the running of her household. Under the questioning the witness replied over 200 times “Non mio ricordo”. Each answer suggested the witness had been bribed and coached. The standard response was turned into a pamphlet using an unflattering image of the King asked “Who are you?”. It became a public joke.
9. Damaging testimony was often contradicted by prior inconsistent written statements pulled from the King’s green bags. Brougham presented the evidence of the King’s indiscretions. And Queen Caroline, stated “that the only time she committed adultery was when she went to bed with ‘Mrs. Fitzherbert’s husband.’” Brougham called his line of defence attacking the King’s conduct, the Queen’s “right of recrimination.” It went to the circumstances in which the evidence in the green bags had been prepared and its credibility. The government eventually abandoned the Bill, and Caroline remained Queen.
10. Over the objections of many who urged Brougham not to do so for the good of the country, Brougham presented evidence of George’s many affairs and his invalid marriage to Maria Fitzherbert. To his critics Brougham who went on to become Lord Chancellor, replied:

“[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences,.”

1. His point was that it would have been unethical to follow responsibilities not to bring the King into disrepute to the detriment of his client.

(E) Ethics and Confidentiality

1. The duty to client is an important one. The rules on confidentiality are also important. The rules of legal professional privilege are based on the need for the utmost confidentiality being given to communications between lawyer and client. This allows the client to get advice given solely in his best interests and free from the risk of prejudicing his position. It is so sacrosanct that the privilege is overriding even when non production may cause a miscarriage of justice. Confidentiality allows the doing of justice.

(F) Ethics and Coaching Winesses

1. England lawyers have an obligation not practice or coach witnesses. R v Momodou [2005] EWCA Crim 177, [2005] 1 WLR 3442, [2005] 2 Cr App R 6. This has been addressed in a 15 page 44 paragraph release from the Ethics Committee of the General Council of the Bar. A theme is familiarisation with court procedure is allowed but that a court should have the witness’s recollection and not an account put together for the witness by lawyers. It is acceptable to go over what questions may be asked. It is another to suggest the answers. Evidence is affected by limitations of us as people. Many people cannot remember what they had for breakfast. Some evidence is reconstruction. Most witnesses have difficulties of reconstruction. There is also a rule that whilst the witness is giving evidence he must not discuss matters relevant to his evidence with anyone. So when he goes home he can discuss the weather but not how the cross examination has been going.
2. In one English case the client thought he found the answer by suggesting that the lawyers travelled to the US only to be told that the English rules bind English counsel wherever their advice happens to be given.
3. American litigators regularly use witness preparation, and some would , upon reflection, consider it a fundamental duty of representation and a basic element of effective advocacy when a lawyer discusses the case with a witness, the lawyer must not try to bend the witness’s story or put words in the witness’s mouth. As an old New York disciplinary case puts it: ‘[The lawyer’s] duty is to extract the facts from the witness, not to pour them

into him; to learn what the witness does know, not to teach him what he ought to know.’

1. The practical literature in the United States almost uniformly views the failure to interview available witnesses prior to testimony as a combination of strategic lunacy and gross negligence. One author – using a common American vernacular “woodshedding”, f preparing a witness– states this perhaps more strongly: “the first rule, then, is to woodshed in every instance, rehearsing both direct and cross-examination,” going on to remark that “it is probably unethical to fail to prepare a witness.” Similarly, other authors have declared that a lawyer who does not prepare all witnesses is “derelict in his professional duties.” witness preparation is considered important, and even essential. Witness preparation may include rehearsal of testimony. A lawyer may suggest choice words that might be employed to make the witness’s meaning clear. However, a lawyer may not assist the witness to testify falsely as to a material fact.
2. Coaching provides an illustration of how ethics rules can widely differ between jurisdictions. As long as the rules are clear justice can be done on a level playing field.

(G) A duty of honesty

1. Certain principles are fundamental. In the Ten commandments the requirement is not to bear false witness against Thy neighbour. The commandment does not bar all lying or deception for example in times of war. Sometimes people tell what is called a “white” lie to achieve a bona fide end. However for legal professionals there is an absolute prohibition on telling lies to opponents or the court. This is for good reason if lies are told it corrupts the legal process. It interferes with the court discharging its functions. It also may lead to a miscarriage of justice.
2. An example is in Meek v Fleming [1961] 2 QB 366 at the trial by jury of a case of assault and wrongful imprisonment against a policeman the result of which turned on whether the plaintiff's or the defendant's evidence was believed, deliberate steps were taken by leading counsel for the defence to keep from the court the fact that the defendant had been demoted from inspector to station sergeant for deceiving a court of law in the course of his duty. During the trial he was repeatedly referred to as Inspector. The duty to the client did not justify misleading the court. The well known leading counsel accepted personal responsibility for what was done supposedly in the interests of his client and was suspended from practice for a short period.
3. There is a difference between using false words yourself and someone else using false words. In a recent case counsel persisted with a case which the instructing solicitor in court knew to be false. It concerned an injunction obtained ex parte. But it illustrates a wider point if a lie is told in court by the client the lawyer has a responsibility to correct it. In some cases it will be sufficient for the lawyer to insist it be corrected and if not withdraw from the case. In others in particular where the lawyer has made a representation which is false it is not.
4. The Solicitors Regulatory Authority (“the SRA”) distinguishes between dishonesty and “lack of integrity”. The problem with the practical examples given by the SRA of cases decided by the Court of Appeal are that courts can be much more reserved about finding dishonesty. Lack of integrity has a broad amorphous reach which is not confined to false statements and lying. There is also a distinction between lying and not making disclosure of the truth. The obligation to tell the truth when communicating does not necessarily impose a duty to speak in the first place.
5. Cases very much depend on their own particular facts. If a lawyer knows of a plan to give perjured evidence his duty is to withdraw from the case. If a lawyer knows that a court for disclosure has been broken he must persuade the client to provide the missing document or withdraw. In one case in court Lord Mustill when acting as counsel in court at trial, snatched an undisclosed document and gave it to the other side. The lawyer must not be part of what he knows to be lying to the court. Not producing documents ordered to be disclosed is a breach of the court order to which the lawyer cannot be a party. By the stage of the trial it was too late to withdraw.
6. Once in a criminal case the client has told his lawyer he is guilty then the lawyer can only put the other side to proof. He cannot advance an affirmative case of absence of guilt if that would involve lying to the court or misleading the court.
7. These principles are easy to state but sometimes not easy to apply. In Gray’s Inn Library there is a two panel exhibition about a most terrible miscarriage case. Timothy Evans was of low intellect. He told the police he had murdered his wife and daughter, was convicted of murder and executed. But two years later many more dead bodies were found at the same address and the murderer, a man called Christie, confessed. The facts of the case are a vivid example of what appears to be the case even from a confession may not be the truth. People tell lies for many different reasons. One may be to protect a woman he loves. Bearing False witness requires something which is false. There can be evidence apparently overwhelming which on meticulous and fair scrutiny leaves a lingering doubt. Legal Ethics must be about avoiding injustice, not producing it.
8. There is also the case where a lawyer has critical evidence and settles the case without disclosing it. If this is done sufficiently early in litigation and the evidence is privileged the lawyer is likely to have done nothing wrong. He has not lied or been a party to a lie. But what if the evidence is that of a witness who has already started giving evidence and verified his witness statement. A further example is where material documents which should be disclosed under an order have not been disclosed. Circumstances can arise as the case progresses which require the situation to be corrected by disclosure before a settlement can be concluded.
9. A question asked after an ethics lecture in Stanford University came from a senior US Lawyer. Take the case of a driver stopped in the United States by a policeman whilst driving his car. He is asked “Have you been drinking?” He immediately phones his local lawyer and asks what should I say? Should the lawyer without asking him whether he has been drinking advise him to answer “No”. After all he has a duty to advise in the best interests of the client. Change the facts and assume he tells the lawyer he has been drinking does this make a difference? One would have thought an answer like tell him the truth would leave the lawyer without many clients. Perhaps the answer might be I will leave that one to you. Can the lawyer suggest revealing some limited consumption but several hours previously? He can as long as he does not know it to be untrue. But once he comes to defend a charge in court the position has changed. Before appearing the lawyer has a responsibility properly to investigate the facts. In the absence of words to the contrary his words are of a lawyer who will be assumed to have done this.
10. The duty of honesty like that of integrity can involve difficult questions of judgment particularly where different rules are in conflict.

(H) Complaints from the opposite side

1. Other than to be honest and not to lie a lawyer generally owes no duty to the other side. There are limited exceptions. However those on the other side are often very willing to inflict hardship and public embarrassment on opposing lawyers. Clients do ask about suing the opposing lawyer for defamation. Supposed lack of integrity allegations can be made without full information on what the lawyer knew or what their function was in the opposing legal team. In England the public are encouraged to make complaints on the internet. These internet complaints may be made in a moment. This produces many complaints from parties on the other side. Lawyers should not be constantly having to look over their shoulders to avoid not only misconduct but also allegations of misconduct. They should not be under the burden of scrutinising each email not only for what is being done but also to protect themselves against future allegations. This interferes with the due discharge of their functions. Such complaints can impose unnecessary financial burden on the regulator which are recouped from the profession including junior members. Any system enforcing ethics needs to be administered by persons well versed in how lawyers practice and with good judgment.

(I) International Arbitration

1. What happens in International arbitrations? There is no code of ethics governing international arbitration. But the parties should be on a level playing field. In practice the panel, the representatives the witnesses may come from a variety of different jurisdictions with different rules. The LCIA Rules 2020 were apparently drafted conscious of the differences in practice:

“20.6   Subject to the mandatory provisions of any applicable law, rules of law and any order of the Arbitral Tribunal otherwise, it shall not be improper for any party or its authorised representatives to interview any potential witness for the purpose of presenting his or her testimony in written form to the Arbitral Tribunal or producing such person as an oral witness at any hearing.”

If the rules are to be clarified it is a matter for the Arbitral Tribunal.

1. In a recent case involving an award against Nigeria in 2017 for US$6 billion the presentation before the Tribunal for Nigeria was inept and the case advanced by the claimant lied about the giving of bribes. There had also been cheating with one side seeing the other’s confidential papers. On this last point it is not every case in which this would be even an advantage or affect the result. An experienced lawyer may not be helped at all by confirmation of inferences readily to be made from the other side’s conduct of a case.
2. Proof of it in the Nigerian case together with the bribes resulted in the award being set aside and the papers being sent by the judge to the lawyers’ regulators. A passage in the judgment contained an exoneration of the tribunal. It had made an award on facts very different from the true facts. The Judge asked rhetorically - What was the distinguished panel to do?
3. Arbitration is not just about accepting what is said by lawyers or on behalf of parties. Arbitrators are there to do justice between the parties. Assumptions may be made that lawyers are acting bona fide but if there are contrary indications the panel should refuse to make an award and direct enquiries to establish the true position. Better for the tribunal to check thoroughly into what has been going on. Arbitrators are part of the administration of justice. The duty to act fairly is one owed to the parties. It is fundamental in international arbitration. It is referred to in section 33 of the English Arbitration Act 1996 . If a tribunal is on notice that a party’s representatives are failing in their functions depending on the nature and extent there can be a responsibility to notify that party.
4. A further situation which is a well known problem is that of using awards for money laundering. An award is made by consent and money paid apparently as damages but in reality to launder black money. Arbitrators are on the look out for this. They should also guard against miscarriages of justice arising from breaches of ethical rules.

(J) The need for effective regulation and remedies.

1. This takes me back to the miscarriages in the Post Office case. How did these happen? In a number of the cases postmasters pleaded guilty to avoid a more severe sentence. Those guilty verdicts were taken in court before a judge who would not know of all the other cases on the Horizon system. The Post Office lawyers were conducting these private prosecutions. There is evidence of certain lawyers knowing of defects and bugs in the Horizon system and not disclosing this to the defence or the court. It is fundamental to the criminal justice system that there is disclosure of material evidence which may assist the defence. The same is true of ex parte applications for injunctions. These are cases where abstention from lying whilst necessary is not sufficient. They are also cases where as a result years may elapse and immense damage can be done including to innocent members of a defendant’s family. It is not enough to rely on a system of appeal or compensation many years later to put matters right. There must be careful scrutiny of the ethical position to avoid miscarriage at the earlier stage.
2. In the Post Office case the postmasters backed by litigation funders sued the Post Office on the Post Office standard form contracts. The ensuing litigation saw the Post Office using its resources to avoid being held liable. The Post Office challenged the judge’s impartiality and brought proceedings before the Court of Appeal to recuse the judge. Eventually the proceeds of the successful litigation went to paying off the funders.
3. Parliamentary intervention was achieved from an ITV series which told the public what had happened. It echoes what happened in France in the Dreyfus case. But little too late has been done for the families. Correction of miscarriage may take many years. One aspect is English law on damages for breach of contract . This compensates those who are parties to the contract have a cause of action and have suffered the particular financial loss. English law on damages for breach of contract compensates families for holidays ruined. But family members in the Post Office cases may not have a cause of action in contract, or the resources to sue. Children may have been sentenced by the Post Office to childhoods in harsh conditions and which denied them opportunities. In addition the intervening years may have produced limitation defences. Ethical rules do not help when those affected by breaches have no redress. Regulators may impose sanctions but they provide no compensation to victims and their families.

(K) Conclusion

1. Legal Ethics is not an academic subject. It is an area for practical rules which everyone understands in advance. An important aim, affecting their content, should be and is the avoidance of miscarriages of justice. Cyprus is a modern sovereign state. The democratic state is free to do what is reasonable fair and just. This must take into account how life is lived and law is practised in Cyprus.
2. Legal Ethics also covers areas which are voluntary outside the review of judges and regulators. Like Harris Kyriakides helping junior members of the profession. Legal Ethics are in a new Age.