The UK and US used to be on part one of substantive versions, but now we are in section two; right of dignity and/or justice. Part 2 of formal version and part 6 substantive version.

Definition of Rights

- Entick v Carrington – Early case of evidence produced in court following a search of property, whether evidence was beyond the search and admissible. The courts were starting to explore the rule of law over the power of state.
- "Be a power so broad ‘... one should naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant... If it is law, it will be found in our books. If it is not to be found there, it is not law.’" – Entick v Carrington
- R v SoS for the Home Dep – Exploring definition of what laws are
- "...Unless there is the clearest provision to the contrary, Parliament must be presumed not to legislate contrary to the rule of law. And the rule of law enforced minimum standards of fairness, both substantive and procedural." – R v SoS for Home Department.

Bangalore Principles of Judicial Conduct
Based on Values of:

- Judicial independence – Is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. UK Supreme Court Guide to judicial conduct.
- Impartiality
- Integrity
- Propriety
- Competence and diligence.

What is professionalism?

- "... A specific historical formation in which members of an occupation exercise a substantial degree of control over the market for their services, usually though an occupational association.” – RL Abel 'The decline of Professionalism?'
- Process of professionalism:
  i) Occupation
  ii) Body of Knowledge
  iii) Training
  iv) Association
  v) Theory of knowledge
  vi) Licensing people
  vii) Go on to a process of monopolising delivery of that service
  viii) Ethics
v) Modernise professional regulation
iv) Reform complaints procedure

This act defines a lawyer as ‘a person who is a regulated person in relation to an approved regulator has a duty to comply with the regulatory arrangements of the approved regulator as they apply to that person.” LSA s.176

Reserved Legal Activities:

- LSA 2007 s.12(1) states that “reserved legal activity” means;
  a) the exercise of a right of audience
  b) the conduct of litigation
  c) reserved instrument activities
  d) probate activities
  e) notarial activities
  f) the administration of oaths

- When a person carries out a reserved legal activity without being an authorised person:
  - S.14(1) It is an offence for a person to carry on an activity which is a reserved legal activity unless that person is entitled to.
  - S.14(3) A person who is guilty is liable, on a) a summary conviction, to imprisonment for a term not exceeding 12 months, or a fine,, and b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine.

- Who are the approved persons? Solicitors; Barristers; Legal Executives; licenced executives; patent attorneys, trade mark attorneys.

Legal Services Board:

- Representative body for solicitors – The Law Society
- Regulatory body for solicitors – The Solicitors Regulation Authority
- Both of the above are separate entities.
- S.29 LSA – Prohibition on the board interfering with representative functions.

Regulatory Philosophy:

- Approved regulators have a duty to promote the regulatory objectives.
- S.28 LSA.
- Key changes in regulatory focus;
  i) Entity
  ii) Relationship
  iii) Outcomes focus
  iv) Risk

Rule Focused:

- Solicitor Code of Conduct 2007, Rule 2.02(2)
- You must both at the outset and, as necessary, during the course of the matter; (a) agree on an appropriate level of service, (b) explain your responsibilities, (c) explain the clients’ responsibilities and more.

Outcomes-focused:

- These are mandatory principles that apply to all.
‘Heavy, hostile commercial litigation is a serious business. It is not a form of indoor sport and litigation solicitors do not owe each other duties to be friendly (so far as that goes beyond politeness) or to be chivalrous or sportsmanlike (so far as that goes beyond being fair). Nevertheless even in the most hostile litigation...solicitors must be scrupulously fair and not take unfair advantage of obvious mistakes... [This duty] is intensified if the solicitor in question has been a major contributing cause of the mistake.’

Ablitt v Milles & Reeve (A firm) and Another

Wasted Costs orders

Rationale:

‘... a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent’.

Stated in R v Derby Magistrates’ Court, ex parte B

PACE s.10:

1)(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
(c) items enclosed with or referred to in such communications or made—
(i) in connection with the giving of legal advice; or
(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.
(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Who is a lawyer for the sake of LPP?

Section 190: Legal professional privilege
(1) Subsection (2) applies where an individual (“P”) who is not a barrister or solicitor—
(a) provides advocacy services as an authorised person in relation to the exercise of rights of audience,
(b) provides litigation services as an authorised person in relation to the conduct of litigation,
(c) provides conveyancing services as an authorised person in relation to reserved instrument activities, or
(d) provides probate services as an authorised person in relation to probate activities.
(2) Any communication, document, material or information relating to the provision of the services in question is privileged from disclosure in like manner as if P had at all material times been acting as P’s client’s solicitor.
(3) Subsection (4) applies where—
(a) a licensed body provides services to a client, and
(b) the individual (“E”) through whom the body provides those services—
(i) is a relevant lawyer, or
(ii) acts at the direction and under the supervision of a relevant lawyer ("the supervisor").
(4) Any communication, document, material or information relating to the provision of the services in question is privileged from disclosure only if, and to the extent that, it would have been privileged from disclosure if—
(a) the services had been provided by E or, if E is not a relevant lawyer, by the supervisor, and
(b) at all material times the client had been the client of E or, if E is not a relevant lawyer, of the supervisor.

Legal Advice Privilege absolute:

‘The protection applies only to those communications which directly seek or provide advice or which are given in a legal context, that involve the lawyer using his legal skills and which are directly related to the performance of the lawyer's professional duties’ (Passmore on Privilege 2nd edition 2006)

Corporate clients – Three Rivers District Council & Others v Governor and Company of the Bank of England No 6
In House Counsel – Akzo Novel Ltd and Anor v European Commission
Non-legal professionals providing legal advice – Prudential PLC and Prudential Ltd v Special Commissioner of income Tax and Philip Pandolfo

Confidentiality and LPP: The rule of law rationale:

‘…it is necessary in our society, a society in which the restraining and controlling framework is built upon a belief in the rule of law, that communications between clients and lawyers, whereby the clients are hoping for the assistance of the lawyer's legal skills in the management of their affairs, should be secure against the possibility of any scrutiny from others, whether the police, the executive, business competitors, inquisitive busybodies or anyone else. In part, subscribe to [the idea of the ‘rule of law rationale’]. It justifies, in my opinion, the retention of legal advice privilege in our law, notwithstanding that as a result cases may sometimes have to be decided in ignorance of relevant probative material.’

Three Rivers DC v B of E per Lord Scott

Litigation Privilege:

Protects confidential communications made after litigation has started, or is reasonably in prospect, between either the following;
A lawyer and a client
A lawyer and an agent, whether or not that agent is a lawyer
A lawyer and a third party
These communications must be for the role or dominant purpose of litigation, either;
For seeking or giving advice in relation to it,
For obtaining evidence to be used in it
For obtaining information leading to obtaining such evidence.

Exception: Advice Furthering a criminal purpose:

R v Ataou
Butler v Board of Trade
legal representation of the client according to the Statute and the Rules of Procedure and Evidence.

- 4. Counsel shall not engage in any improper conduct, such as demanding sexual relations, coercion, intimidation, or exercise any other undue influence in his or her relations with a client.

**International associations of lawyers:**

- 1. A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.
- 4. Lawyers shall treat their professional colleagues with the utmost courtesy and fairness.
- 10. Lawyers shall at all times give clients a candid opinion on any case.
- They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.
- Lawyers shall at any time be free to refuse to handle a case, unless it is assigned by a competent body.
- 11. Lawyers shall, when in the client’s interest, endeavour to reach a solution by settlement out of court rather than start legal proceedings. Lawyers should never stir up litigation.
- 13. Lawyers should never represent conflicting interests in litigation. In non-litigation matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This Rule also applies to all lawyers in a firm.

**Council of Bars and Law Societies of Europe:**

- (a) the independence of the lawyer and the freedom of the lawyer to pursue the client’s case;
- (b) the right and duty of the lawyer to keep clients’ matters confidential and to respect professional secrecy;
- (c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;
- (d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;
- (e) loyalty to the client;
- (f) fair treatment of clients in relation to fees;
- (g) the lawyer’s professional competence;
- (h) respect towards professional colleagues;
- (i) respect for the rule of law and the fair administration of justice; and
- (j) the self-regulation of the legal profession.’

Charter of core Principles of the European Legal Profession code of Conduct for European lawyers November 2013

**The Significance of the international codes:**