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Defining "Sharp Practice"

1. Law Society of Upper Canada, Rules of Professional Conduct, Rule 6.03(3)

A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights.

2. Law Society of British Columbia, Professional Conduct Handbook 1.4(3)

A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests which do not prejudice the rights of the client or the interests of justice.

3. What is/isn't a "slip"? http://www.lawsociety.bc.ca/docs/publications/handbook/ec/09-05_6.pdf

4. A mistake by opposing counsel http://www.lawsociety.bc.ca/docs/publications/handbook/ec/09-05_6.pdf
In negotiations between two lawyers with respect to a transaction, Lawyer A receives from Lawyer B draft 5 of the agreement between the clients. A clause that Lawyer B emphasized was very important to her client in a previous draft is missing from the latest draft, and does not seem to be covered by other parts of the agreement.

5. A mistake by the court system [http://www.lawsociety.bc.ca/docs/publications/handbook/ec/96-03\(7\).pdf](http://www.lawsociety.bc.ca/docs/publications/handbook/ec/96-03(7).pdf)

When a caveat has been filed in one Supreme Court registry but not in others through inadvertence, it is sharp practice for a lawyer to apply for letters of administration without notifying the lawyer who filed the caveat of the proposed application.

Practical Jewish Law: Taking advantage of an error

6. Maimonides, Mishneh Torah, Laws of Theft 7:8

אחד הנושא ונותן עם ישראל או עם הגוי עובד עבודה זרה אם מדד או שקל בחסר עובר בלא תעשה והייב להחזיר, וכן אסור להטעות את הגוי בחשבון אלא ידקדק עמו...

One who interacts with a Jew or a non-Jewish idolator, measuring or weighing dishonestly, violates a prohibition and is obligated to refund the money. Similarly, one may not trick a non-Jew in accounting; one must be precise...

7. Rabbi Moshe Isserles, Code of Jewish Law, Choshen Mishpat 28:1

ואפילו אמר לו: בא ועמוד עם עד אחד שיש לי ולא תעיד, רק שיפחד בעל חובי ויסבור שיש לי שני עדים ויודה לי, לא ישמע לו (טור).
One may not listen to someone who says, "Come stand beside my single witness, without testifying, so that my debtor will be afraid, thinking I have two witnesses, and will admit the debt."

The goal of litigation: Pursuit of Justice

8. Talmud, Berachot 6a

אמר רבין בר רב אדא אמר רבי יצחק ומנין לשלשה שיושבין בדין ששכינה עמהם...

Ravin bar Rav Ada cited Rabbi Yitzchak: ... How do we know that when three sit in judgment, Gd is with them?...

9. Talmud, Shabbat 10a

כל דיין שדן דין אמת לאמיתו אפילו שעה אחת מעלה עליו הכתוב כאילו נעשה שותף להקדוש ברוך הוא במעשה בראשית
A judge who judges truthfully, even for a moment, is viewed by Scripture as a partner of Gd in creation.

10. Talmud, Sanhedrin 7a

כל דיין שדן דין אמת לאמיתו משרה שכינה בישראל שנאמר... וכל דיין שאינו דן דין אמת לאמיתו גורם לשכינה שתסתלק מישראל...
A judge who judges truthfully causes the Shechinah to be manifest in Israel, as it is written... And a judge who does not judge truthfully causes the Shechinah to leave Israel, as it is written...

11. Talmud, Sanhedrin 7a

ההוא דהוה קאמר ואזיל: דאזיל מבי דינא שקל גלימא - ליזמר זמר, וליזיל באורחא. אמר ליה שמואל לרב יהודה: קרא כתיב וגם כל העם הזה על מקמו יבא בשלום.

Someone said, "One who leaves the court bereft of his cloak should sing as he walks." Shemuel said to Rav Yehudah, "This is a verse: 'Also, this entire nation [winners and losers] will come to its place in peace.'"

12. Eric B. Appleby, Legal Research Guide to Ethics (2006), <http://www.mlb.nb.ca/site/ffiles/ethics06.pdf>

The lawyer's duty to the state includes the entity, its systems and its people. The New Brunswick Code of Professional Conduct (2003), chapter 20, commentary 1, states: "The paramount duty of the lawyer is to serve the cause of justice." The British Columbia Canons of Legal Ethics (1992), chapter 1, states: "A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel, or assist any person to act in any way contrary to the law."

The goal of the human being: An Elevated Standard

13. Deuteronomy 6:18

וְעָשִׂיתָ הַיָּשָׁר וְהַטּוֹב בְּעֵינֵי ד'

And you shall do that which is righteous and good in the eyes of Gd...

14. Leviticus 19:2

קְדָשִׁים תִּהְיוּ כִּי קְדוֹשׁ אֲנִי ד' אֱלֹהֵיכֶם...

You shall be holy, for I, your Gd, am holy...

15. Talmud, Ketuvot 103a

ההוא גברא דאוגר ליה ריחיא לחבריה לטחינה לסוף איעתר זבין ריחיא וחמרא אמר ליה עד האידינא הוה טחיננא גבך השתא הב לי אגרא א"ל מיטחן טחיננא לך... אבל אית ליה טחינא לריחיא כגון זו כופין אותו על מדת סדום

A man rented out a mill to another, in exchange for doing his grinding. In the end he became wealthy, and he purchased another mill, with a donkey [to do the grinding]. The landlord said to the tenant, "Until now, I had you do my milling. Now, pay me money for rent." The tenant said, "I would continue to grind for you."... If the landlord has grain for grinding, then in a case like this we compel him to avoid the manner of Sodom.

16. Rabbi Aharon Lichtenstein, *Does Judaism Recognize an Ethic Independent of Halakhah?*

If, however, we recognize that Halakhah is multiplanar and many dimensional; that, properly conceived, it includes much more than is explicitly required or permitted by specific rules, we shall realize that the ethical moment we are seeking is itself an aspect of Halakhah.

17. Code of Jewish Law, Choshen Mishpat 366:1

גזלן מפורסם (שעסקיו בכך ותשובתו קשה) הבא לעשות תשובה מעצמו, אם אין הגזילה קיימת אין מקבלין ממנו, כדי שלא ימנע מלעשות תשובה; ואם רצה לצאת ידי שמים והחזיר, אין מוחין ביד הנגזל מלקבלו.

If a known thief [whose trade is theft, so that repentance is difficult for him] comes to repent on his own, then if the stolen item is no longer intact, we do not accept repayment, lest he be prevented from repenting. If the thief still wishes to satisfy Heaven and repay, we do not prevent the victim from accepting payment.

18. Talmud, Shevuot 31a

מנין לשלשה שנושין מנה באחד, שלא יהא אחד בעל דין ושנים עדים כדי שיוציאו מנה ויחלוקו? ת"ל: מדבר שקר תרחק.
How do we know that if someone owes three people a *maneh*, they should not arrange for one of them to be the plaintiff and the other two to serve as witnesses, to draw from him a *maneh* for them to split? It is written, "Distance yourself from falsehood."

A tricky case: Sharp practice to protect a victim

19. Talmud, Bava Kama 113a

מתני'. אין פורטין לא מתיבת המוכסין...
גמ'. והאמר שמואל: דינא דמלכותא דינא! אמר רב חנינא בר כהנא אמר שמואל: במוכס שאין לו קצבה; דבי ר' ינאי אמרי: במוכס העומד מאליו.

Mishnah: One may not use coins from the tax collector's box [for they are deemed 'stolen']...

Gemara: But Shemuel ruled that the law of the land is binding! Rav Chanina bar Kahana cited Shemuel to explain that this is regarding a tax collector without a fixed rate. In the yeshiva of Rabbi Yannai they said that this is regarding a self-appointed tax collector.

20. Rabbi Moshe Sofer, Responsa Chatam Sofer 2:Yoreh Deah 11

גבי עד אחד דעלמא שיודע בעצמו כי המעשה אמת נכון וראוי ה' לעשות כל הטצדקאות רק להציל העשוק ואפי' להצטרף עם עד שקר כיון שנפשו יודעת מאוד שהדין דין אמת אלא אפקעתא דמלכא הוא כי ד' ציוה שכן לא יעשה להצטרף עם עד רשע אף על פי שהמעשה אמת א"כ אין לך בו אלא חדושו דכשאותו הרשע לא נפסל בב"ד אף על פי שהוא מכיר ברשעו של זה יכול הוא להצטרף עמו להעיד במה שהוא יודע שהוא אמת נכון

Regarding a single witness who knows that his testimony is true: It would be appropriate for him to take every measure to save the victim, even combining with a false witness, since he knows that the testimony is true. It is Royal fiat that Gd has decreed that one may not join with a wicked witness even where his testimony is true, but we limit that novelty to its narrowest application; when the wicked person is not technically disqualified in court, then even though one knows him to be wicked, one may combine with him to testify in a matter which one knows to be true.

21. Rabbi Yaakov Lorberbaum of Lissa, Code of Jewish Law, Choshen Mishpat 12:Chiddushim 8

ואם יודע שהאמת אתו רק שהבי"ד לא יאמינו לו, יכול לבקש צדדים כדי שיבואו לידי פשרה, רק באופן שלא יהיה כרשע לפני בית דין.
If one knows that the truth is with him, but the court will not trust him, then he may seek ways to cause a compromise; he must only avoid acting as a wicked person before the court.

22. Maimonides to Avot 1:8

ואפילו ידע שהוא עשוק, ושבעל דינו טוען עליו בשקר לפי הכרע הסברה, אין מותר לו ללמדו טענה שתצילהו בשום פנים
Even where one knows that this party has been cheated, and that the opposing litigant is lying, one may in no way teach him claims that will assist him.