

Defining "Sharp Practice"

1. Law Society of Upper Canada, Rules of Professional Conduct, Rule 4.01(1) and 4.01(2)(h)
4.01(1) - When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.
4.01(2)(h) – When acting as an advocate, a lawyer shall not deliberately refrain from informing the tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent
2. Law Society of Upper Canada, Rules of Professional Conduct, Rule 6.01(1), 6.03(1), 6.03(3)
6.01(1) - A lawyer shall conduct himself or herself in such a way as to maintain the integrity of the profession.
6.03(1) - A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
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.

Examples of prohibited conduct

3. Sharp Practice [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.
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. Permissible http://www.lawsociety.bc.ca/docs/publications/handbook/ec/09-05_6.pdf
Lawyer A states in a conversation with Lawyer B that she will be issuing a writ against Lawyer B's client well within the limitation period which she states is two years. In fact, Lawyer B knows the limitation period is shorter than that stated by Lawyer A, but Lawyer B has made no comment himself on what the limitation period is.

Jewish Law: Relationship to the Administration of Justice

6. 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, G-d is with them?...

7. Talmud, Shabbat 10a

כל דין שדן דין אמת לאמיתו אפילו שעה אחת מעלה עליו הכתוב כאילו נעשה שותף להקב"ה במעשה בראשית

A judge who judges truthfully, even for a moment, is viewed by Scripture as a partner of G-d in creation.

8. Talmud, Sanhedrin 7a

כל דין שדן דין אמת לאמיתו משרה שכינה בישראל שנאמר...

A judge who judges truthfully causes the Shechinah to be manifest in Israel, as it is written...

9. Talmud, Sanhedrin 7a

דאזיל מבי דינא שקל גלימא, ליזמר זמר, וליזיל באורחא.

One who leaves the court bereft of his cloak should sing as he walks.

10. 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."

Jewish Law: Relationship to the Society and Other Lawyers

11. Talmud, Ketuvot 103a

ההוא גברא דאוגר ליה ריחיא לחבריה לטחינה לסוף איעתר זבין ריחיא וחמרא אמר ליה עד האידנא 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.

12. 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 וחייב להחזיר, וכן אסור להטעות את הגוי בחשבון אלא ידקדק עמו... והרי הוא אומר (דברים כ"ה ט"ז) "כי תועבת ד' אלקיך כל עושה אלה כל עושה עול" - מכל מקום.

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... Deuteronomy 25:16 says, "It is abhorrent before G-d to do these things, to perform any corrupt act," in any form.

Question: Sharp practice in pursuit of justice?

13. 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 instigate a compromise; he must only avoid acting as a wicked person before the court.

14. Talmud, Bava Kama 113a

מתני'. אין פורטין לא מתיבת המוכסין...

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.

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

גבי עד אחד דעלמא שיודע בעצמו כי המעשה אמת נכון וראוי הי' 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 lone 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. By Royal fiat, G-d 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.

16. 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.

17. 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."