INTRODUCTION

1. The project of creating the present book emerged in the context of young and prospective lawyers’ need to learn about legal ethics as well as the needs of all those who find moral dilemmas professionally relevant. The project partly arose from the recognition that legal ethics should be presented in a way that is accessible, engaging and devoid of excessive moralizing. The book is addressed to audiences interested in deontological issues related to legal professions, including academic teachers and legal practitioners who are engaged in teaching relevant subjects in different didactic contexts. The authors had set for themselves an ambitious task to prepare a book of legal ethics that could address problems arising at all stages in the development of the legal professional career, i.e. during legal studies, at the beginning of legal practice, and at all further stages of professional life, whether one’s own (when the lawyer has a moral dilemma in his or her own conduct) or related to someone else (when the lawyer faces a problem with someone else’s unethical behaviour in a professional setting). The book may also be of interest to lay people who come into contact with law, lawyers and their ethics-related dilemmas, for instance, administration officers, professionals in various public services, as well as private persons. The book has thus been designed as a vademecum, which can both inform and guide the reader, providing essential information within the scope of deontological ethics of various legal professions.

In recent years, the constantly growing number of legal faculties and students together with a high level of competition experienced in the legal services market, where services are often given outside professional corporations, have both triggered the necessity to raise ethics-related awareness and the ability to recognise proper ethical attitudes on the part of lawyers. The authors hope that there will soon come a time when courses in professional deontology will be included in compulsory curricula in legal studies departments in Poland, and that they will also find their place in the programmes of post-graduate legal trainings (legal internships). During legal studies, activities focused on academic legal counselling, such as training in legal clinics, appear to provide the most natural environment for relevant discussions. It is in legal clinics that students for the first time meet the opportunity to face real legal problems of the clinic’s clients and where they learn how to provide legal aid. It is
there that they may also face problems related to legal ethics. At the same time, clinical practice enables students to encounter law and experience the legal environment in practice, which often includes active methods of instruction. Teaching legal ethics in all didactic forms and addressed to various groups of students provides an excellent environment for the use of such methods, which the authors would like to prove in this book with the aim of encouraging their application. The book includes descriptions of many active teaching methods, which can be used in many different academic courses irrespective of their main topics. Method descriptions are enriched with ready-made scenarios for relevant activities and supplemented with sets of legal facts, which may be used to create innumerable practice activities of different types.

The book also provides a rich collection of legal facts. The presented set is composed mainly of judicial decisions from the years 2002-2009, published in the series *Decisions of the Supreme Court – Disciplinary Court* (*Orzecznictwo Sądu Najwyższego – Sądu Dyscyplinarnego*). The series publishes decisions reached in lawyers’ disciplinary processes, which may involve judges, prosecutors, Polish advocates, legal advisers and notaries, and for which the Supreme Court functions as an appellate court. This serial publication helps implement and practise the value of transparency in disciplinary procedures; it also plays an important role in terms of education and dissemination of information, as has been shown in our book. It further presents essential moral dilemmas in legal practice and the ways in which they are resolved in courts of justice. The book cites the most interesting cases published in the series, relevant decisions, as well as the most common and notorious types of disciplinary misconduct. Our collection has been enriched with materials made accessible thanks to the invaluable cooperation with the Łódź Court of Appeal and the District Chamber of Legal Advisers in Łódź. It is only thanks to the benevolent attitude of lawyers of these institutions that the project of creating our book was able to succeed. Words of gratitude are now duly directed to the Vice-President of Łódź Court of Appeals, Judge Zdzisław Klasztorny, together with the team of judges of the Court of Appeals in Łódź and the Dean’s Office authorities in the District Chamber of Legal Advisers in Łódź: Dean Czesława Kołuda and Vice-Dean Grzegorz Wyszogrodzki, as well as legal advisers associated within the chamber. We would also like to thank Zbigniew Wodo, the Dean of the District Bar Council in Łódź, for his kind support of our project. Our collection of legal facts and contexts includes clinical cases. We would like to express our gratitude to Aleksandra Kuszewska-Kłab of the Łódź Legal Clinic and Marlena Pecyna of the Kraków clinic for having shared with us their rich clinical experience and their thoughts with regard to many moral dilemmas encountered in student legal clinics, as well as for the preparation of relevant case materials.

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1 In the present book the literal translation of the Polish word “adwokat”, i.e. advocate, is used to mark the divide between the Polish category of “radca prawny” and “adwokat”; the category “radca prawny” is rendered as “legal adviser” to follow the nomenclature used by the European Commission and avoid confusion with English terms such as “solicitor”, “attorney”, or “barrister”, which correspond to different competences across different legal cultures. [translator’s note]
The first part of the book is an account of the basic problems pertinent to ethical and moral issues. It includes an outline account of the historical development of the ethical theory, a discussion of basic issues in ethics, existing codes of professional ethics, and a discussion of ethics-related principles of classic legal professions (of advocates and solicitors, legal advisers, judges, attorneys, and notaries). It also exposes a selection of ethical problems encountered in legal clinics.

The second part of our book provides an account of various non-directive methods with practical guidance for their application. These methods are suitable for use during different courses, including courses in legal ethics, and also, following minor modifications, for self-study contexts, in which a person facing a personal professional ethical problem in order to solve it has to engage in “a debate” with him- or herself, carry a “discussion” or a brainstorming session, define priorities, and verbalise the pro and con arguments. Different methods are presented with reference to a particular type of misconduct which is described on the basis of one complex exposition of the actual facts of the case. It has been the aim of the project to present various methodological and didactic possibilities with regard to the analysis of a given ethical problem, indicating the differences between particular activating methods.

The last part of the book is devoted to an account of the principles of professional conduct presented through the case study method related to various legal professions, including those constituting protective bodies (judges), bodies of control (prosecutors), and legal services (solicitors, i.e., in Poland, advocates and legal advisers). The book also provides a collection of exemplary scenarios against the background of the decisions given by disciplinary courts and related to notaries and the principle of ethical conduct within academic legal clinics. We further offer supplementary materials in the form of possible exam questions, sample questionnaire forms, seminar problems, etc. The principles of lawyers’ professional conduct have been defined in a novel way: instead of providing traditional commentaries to particular principles, the principles have been richly illustrated with selected cases describing professional misconduct, with the addition of relevant actual or suggested disciplinary decisions. Furthermore, with regard to every single discussed principle, the book provides ready-made and complete exemplary scenarios for course use, which include interactive methods introduced and discussed in the second part of the book, as well as guidance related to the procedural principle in question. The reader who will have taken the effort to read the entire guidebook might thus rightly feel that certain methodological issues are repeated. However, this arises from the authors’ effort to present the reader with a useful didactic tool, which allows for independent use of every single subject matter unit within the book without referring to its other sections.

2. Active teaching methods constitute an interesting didactic alternative in the academic teaching process, and, in general, in a teaching context. In fact, they may not be an alternative, but indeed more and more of a necessity. In the era of a wide availability of various libraries, as well as the Internet and all the knowledge ac-
cumulated within, accessing information tailored for students’ needs is not difficult. Currently, **knowledge (and information) is no longer controlled and portioned; it is widely accessible.** At present, the teaching process is becoming more and more a process focused on providing assistance in individual learning, i.e. in the acquisition of available knowledge, with the aim of academic teaching in practice helping the students develop well defined skills and reaffirming selected aspects of commonly accessible knowledge.

The traditional model in lawyers’ education is based on the lecture as the dominant didactic method. This is the case irrespective of the form of the course meetings, i.e. not only during practical classes, but also in seminars, at both academic level and in post-graduate legal trainings. Is this method didactically effective? Judging on the basis of methodological literature, it is not. To illustrate the problem it is worthwhile quoting the well-known, and frequently cited, learning pyramid, put forward by National Training Laboratories (Berhel, Maine, USA). The pyramid shows that, among various didactic methods, the lecture is the least effective method with regard to remembering the teaching contents, while it would be just trivial to assert that remembering is merely an introduction to the state of “knowing” and “having learnt”.

![Learning Pyramid](image)

**Table: What Do We Remember?**

<table>
<thead>
<tr>
<th>10% of what we read</th>
<th>20% of what we hear</th>
<th>30% of what we see</th>
<th>50% of what we hear and see</th>
<th>70% of what we say ourselves</th>
<th>90% of what we do ourselves</th>
</tr>
</thead>
</table>

**Figure 1: The learning pyramid**
Teaching is a fairly complex process in which two subjects are directly involved: the teacher and the student. It aims to produce a situation in which the student has acquired knowledge which he or she can actively apply. It is often the case that teachers miss the main didactic target of the process: in reality it is not so important that the lecture has been delivered; instead, what is crucial is the amount of knowledge acquired by the students. The first indispensable stage of the learning process is accumulation of knowledge, information, and thus building a kind of theoretical database with information culled from all accessible sources. In retrospect, in academic life, it was the eminent lecturer that functioned as the only guaranteed source of otherwise inaccessible exclusive knowledge within a certain field of study. It was the lecturer’s responsibility to deliver this knowledge *ex cathedra* to the students. Within this paradigm, academic teaching was basically about presentation and “revealing” current up-to-date knowledge to the students. Nowadays, due to the latest technological advancements and revolutionary changes in information and communication technologies, as well as a change in social needs and expectations, there are further requirements imposed on academic teachers. Modern higher education first of all presupposes teaching various skills: the skill to analyse, assess, critically compare, and correlate facts; the skill to draw conclusions and, in general, the ability to think critically, to formulate relevant arguments, to discuss, form one’s opinions, properly express one’s emotions and being able to control them, as well as being able to collaborate within a group. All these skills are often accompanied by the necessity to develop abilities needed in interpersonal interactions, communication skills and the ability to express empathy. Sometimes, purely technical and organisational skills become essential. Teaching based on passive didactic methods does not guarantee acquisition of such skills and abilities.

It is thus worthwhile using non-directive methods, which presuppose active participation of the learners and allow for a better acquisition and a greater memorability of the data and skills which are being taught. Activating methods have further a positive and inspiring impact on the teachers, who are placed in the novel position of active observers and experimenters.

Interactive methods engage participants of the didactic process in different spheres: intellectual, cognitive, psychological, including emotional, social, and even motor (e.g. in role playing) aspects. It is this multi-aspectual and interdisciplinary activity that brings about excellent didactic results in the teaching and learning process. Activating methods contribute to a better and more effective learning process. Teaching methods successfully tailored for desired didactic purposes ensure that students develop all the skills and abilities mentioned above to creatively apply the acquired knowledge. Active teaching methods facilitate the learning process, make it faster, enable practising acquired skills, and allow the students to accumulate experience. This is especially important in teaching legal ethics, but also beyond the subject.
In the publishing market it is easy to find books devoted to solicitors’, advocates’ and legal advisers’ ethics. However, if a prospective reader aims to learn about practically applicable issues pertinent to legal ethics and focused, for instance, on judges’, prosecutors’, and notaries’ ethical conduct, or about ethical problems encountered in legal clinics, the person will conclude that there is a lack of such publications, especially of publications which would embrace all problems relevant for the ethics of legal professions. Now we are presenting the readers with the first book of its kind. In addition, this book includes discussions with use of the case study method and other interactive methods. Our publication presents the basic principles in ethics of various legal professions. It points to the similarities and differences between these professions and allows for a better understanding of social roles played by lawyers. The book also provides easy and transparent access to disciplinary decisions which may be needed in disciplinary procedures and allows for a guided, but independent, solving of difficult moral dilemmas encountered in legal practice.

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PART I
CHAPTER 1

INTRODUCTORY ISSUES

1. The notions of ethics and morality

In common language the notions of “ethics” and “morality” are often used synonymously. Adjectives derived from these nouns, i.e. “ethical” and “moral” are also seen as equivalent. However, it is worth noticing that the words do not mean the same in all contexts and for all language users. The word “ethics” comes from the Greek _ethicos_ (ἐθικός), earlier derived from _ethos_ (ἐθός), spelled with an epsilon and referring to a custom, a habit, or a characteristic. It is noteworthy that in the Greek lexicon, there was another related word, _ethos_ (ήθος), spelled with the eta, which literally referred to a pigsty, a stable, or a barn, but was also used for a habitat, and a style of life. The possible polysemous relation between these two Greek lexemes is uncertain, but it is evident that both senses, although to a different degree, are reflected in the words currently used in modern languages, in which, next to the lexemes meaning “ethos” (e.g. in Polish both _ethos_ and _etos_ are used), there is “ethics” (cf. _etyka_ in Polish).

The word “morality”, in turn, is etymologically related to the Latin _mos_ (plural: _mores_), which referred to a feature, a custom, and to something necessary and essential. The word is also related to the adjective _moralis_, which may be translated as “proper”, “decent,” and “customary”.

For instance, in the Polish language, and in many contemporary languages, the word “morality” refers to personal beliefs with regard to what is good and what is evil. Its meaning may embrace systematised norms of conduct recognised as sources of internal commitments. It may also involve both norms of assessment applied in judging conduct and patterns of behaviour idealised in the form of one’s personal models of virtue. The word “morality” may also be applied to beliefs with regard to what is good and evil, shared within certain groups of people. In this sense we may speak of the morality of a given professional group, the morality of politicians, the morality of middle class, the morality of peasants, etc.
In everyday language, the difference between ethics and morality, if perceived at all, rests on the fact that beliefs concerning what is good and what is bad, which constitute morality, emerge in a spontaneous and intuitive way, while ethics is understood as a set of beliefs that arise from systematic consideration. Ethics, thus, is conceived of as a result of a certain kind of systematic reflection. Expectations with regard to beliefs constituting ethics usually presuppose some order and coherence, while moral beliefs do not have to meet such requirements. In common language, sometimes, ethics understood as a set of norms directing conduct and criteria for moral assessment declared by a person or a certain group of people is distinguished from morality understood as a real norm of conduct applied by a person or a group of people.

In this sense, ethics is juxtaposed to morality, or rather treated as a criterion on the basis of which it should be possible to evaluate a person’s morality. Using the words “ethics” and “morality” in these senses, we can put forward a reliable and non-contradictory claim that a certain person’s morality leaves much to be desired in the ethical perspective.

Eventually, it must be noted that ethics in a philosophical discourse is understood as a research field within practical philosophy, a study which tries to answer the question “How to live?”. In this sense, morality is understood as an object of ethical research. Thus, the relation between ethics and morality in this context is cognate to that between science (or a research discipline) and the object of its inquiry.

### 2. Ethics as a philosophical discipline

Ethics understood as a research discipline is subdivided into three fields: normative ethics, descriptive (practical) ethics (also known as moral philosophy), and metaethics. Normative ethics tries to determine which actions are morally good and which are morally bad. The methodology and the formal status of this field of investigation has for long been an object of dispute. There are theoreticians who consider normative ethics to be a full-fleshed discipline with its own methodology and with an ability to formulate judgments of scientific nature. Others deny it the status of a serious scientific field of research and treat it as an interface where not scientists, but moralists, preachers, and all types of moral authorities can interact. People of this orientation claim that the formal character of moral judgments makes it impossible to treat them as scientific theses.

A different situation is in the case of descriptive ethics. It does not try to answer the question: “What is morally good, and what is evil?”, but focuses on the question “What do people believe to be morally good, and what do they believe to be evil?”. This results in descriptive ethics making use of various methods of investigation which are adapted from social sciences, mainly psychology and sociology. Descrip-
The third field of philosophical ethics is metaethics, also referred to as general ethics (in contrast to particular ethics). It investigates not human conduct and its moral qualification, but the very meaning of linguistic expressions used in the discourse of ethics. In particular, metaethics is interested in the sense of the fundamental ethical notions, such as “good”, “bad”, “just”, “unjust”. Metaethics is also interested in the status of moral judgments, both in the statements expressing norms and their moral assessments. The core problem is whether such judgments refer to some objective, knowable reality, whether they are of cognitive character and have the logical value of either being true or false. Metaethics is further interested in the object of moral qualification, i.e. in the definition of the nature of human action; in moral responsibility; and, in particular, in who is the subject of such responsibility, how it is conditioned, how it can be triggered on or off, with regard to whom (or what) a human being (or a community) is morally responsible.

In our introduction to ethical issues, we will concentrate on presenting the most important controversies pertinent to metaethics.

3. The dispute over the meaning of the most fundamental concepts in moral discourse

The dispute over the meaning of the most fundamental concepts in moral discourse is closely related to the question of a formal status granted to moral judgments. Thus, it is worthwhile following the two mainstream approaches present within metaethical considerations.

The answers given to the question of the sense of the concept “good” can be divided into three groups. The first group gathers approaches which presuppose that it is possible to formulate a definition of the concept “good” that could render essential elements of its meaning functioning as labels for properties accessible empirically. These positions include approaches which identify moral good with pleasure (hedonism) and various models of natural law, as well as different utilitarian ethical conceptions. They constitute a large set of perspectives on ethical issues, which have dominated moral philosophy since the beginning of the twentieth century.

These approaches were criticised by G. E. Moore, a philosopher and an ethics theorist of Cambridge University, who in his book Principia ethica grouped them all under the common label of “naturalism”. Naturalistic approaches, according to Moore, all fall victim to a specific epistemic fallacy, which he dubbed the “naturalistic

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1 This label, in the form “nauka o moralności” [Eng. literally ‘science of/about morality’] was introduced by the Polish sociologist, Maria Ossowska, in her book: Foundations of the science of morality [Podstawy nauki o moralności], Warszawa 1957.
fallacy”. Moore explains the very essence of the fallacy in the following way. In defining complex concepts, Moore suggests, people analyse them into component parts, i.e. indicate meaningful elements which add up to the concept’s holistic meaning. Simple (non-complex) concepts cannot be defined, their meaning can only be demonstrated through the ostensive method. Whoever attempts to define a simple concept (e.g. the meaning of “yellow”), tries to achieve what is impossible. In Moore’s view, fundamental concepts used in moral discourse are simple concepts, thus, they are non-definable. However, Moore does not suggest that the non-definability of the term “good” means that formulating moral judgments is impossible. Such judgments are possible thanks to the cognitive faculty specific to humans: intuition. Thus, Moore is evidently an advocate of intuitionism.

Both proponents of various kinds of naturalism and intuitionists believe that moral judgements are of cognitive character, and, as a result, are qualified along the logical values of truth and falsity. Thus, both naturalism and intuitionism mark the cognitivist standpoint. This position is subjected to criticism by anti-cognitivism (also known as non-cognitivism or acognitivism), which denies moral judgments any moral character or logical value. It is the proponents of emotivism, a school of thinking which emerged in England in the thirties of the twentieth century, that are recognised as the first anti-cognitivists. However, selected ideas accepted as characteristic of this philosophical position can be traced back to the Scottish philosopher David Hume, who lived in the eighteenth century.

Emotivists claim that moral judgements are not statements about the external reality of the person who formulates them; instead, they are seen solely as an expression of emotions that the person experiences. It is only on the surface that a moral judgement appears to be a descriptive statement (e.g. “Killing the innocent is morally bad”). In reality, such a statement does not inform about a particular category of human action (killing the innocent, abortion, euthanasia, vivisection, or lying); it expresses the negative emotions experienced by the speaker.

In emotivist perspective, moral discourse is not at all directed at finding whether a moral judgment is true or false (if the logical value of such a moral judgement is at all questioned), but, much rather, it is directed at inducing a change in the emotional attitudes of the discussants. In this perspective, the only measure of the value of a moral argument in ethics-focused discourse is its effectiveness.

Emotivists adopted G. E. Moore’s concept of the naturalistic fallacy, however, they substantially modified its sense. Contemporary anti-cognitivists apply the label to every attempt of deriving “ought to” from “is”, or, in other words, of deriving norms from descriptive statements. Here, the naturalistic fallacy is fading into a kind of logical error.

The table below illustrates the relations between the naturalist, the intuitionist, and the emotivist standpoints.
Table 1. The relations between three theoretical standpoints: naturalism, intuitionism, and emotivism.

<table>
<thead>
<tr>
<th></th>
<th>naturalism</th>
<th>intuitionism</th>
<th>emotivism</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>possibility of formulating definitions of basic terms used in moral discourse</strong></td>
<td>definition is possible</td>
<td>definition is not possible</td>
<td>no opinion officially expressed</td>
</tr>
<tr>
<td><strong>formal status of moral judgments</strong></td>
<td>moral judgments are of cognitive character and are logically evaluable as true or false (cognitivism)</td>
<td>moral judgments are of cognitive character and are logically evaluable as true or false (cognitivism)</td>
<td>moral judgments are not cognitive in nature and are not logically evaluable as true or false (anti-cognitivism)</td>
</tr>
<tr>
<td><strong>character of moral discourse</strong></td>
<td>moral discourse is directed towards proving that moral judgments are true</td>
<td>moral discourse is directed towards proving that moral judgments are true</td>
<td>moral discourse is directed towards inducing a change in the emotional attitudes of discourse participants</td>
</tr>
</tbody>
</table>

4. Axiological objectivism and subjectivism

There is an ongoing dispute between the proponents of axiological objectivism and the proponents of axiological subjectivism with regard to the nature of moral values. These in favour of objectivism believe that moral values (or goods) exist in objective reality independently of man’s awareness of them, his will or desires. Values reside in the nature of the world, the nature of things and the nature of man. Ethical concepts which locate moral and ethical values in social awareness are also characterised by this objectivist perspective. In turn, for the proponents of axiological subjectivism, moral values are just expressions of man’s beliefs and preferences; in short, they only exist in the sphere of man’s psyche.

5. Absolutism and relativism in ethics

The objectivist position is usually correlated with an absolutist standpoint, while ethical subjectivism is firmly bound with ethical (moral) relativism.

The concept of ethical relativism is ambiguous. As an ethical (or rather metaethical) standpoint, it may take the form of axiological relativism, which claims that moral judgments can always be only relatively true or false and, as such, are all of equal

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1 The characteristics of ethical relativism presented here has been based on I. Lazari-Pawłowska’s paper “Relatywizm etyczny” (“Ethical relativism”) [In:] Etyka. Pisma wybrane [Ethics: Selected Papers], Wrocław–Warsaw–Cracow 1992, pp. 109–120.