

**Reflection will be the thing
that saves you**



The Mystery of Practice

..in the midst of their education for practice there was a profound sense of mystery. This feeling resulted from the fact that the students literally did not know what they were doing, and their teachers could not tell them - because what the teachers knew how to say the students could not at that point in their experience understand.

The students had to have the experience of trying to do the thing before they would be ready to understand the kind of explanations that the teachers could give them about what they were doing

Donald Schon, *Educating the Reflective Practitioner* (1987)

Practice and Variables

Research requires the removal of variables, whereas practice keeps being changed by variables from the outside.



Problem solving in the swamp

Imagine a high cliff overlooking a swamp. On the high cliff, you can continue the work of your doctoral thesis.In the swamp below [your] high cliff there are extremely messy social, technological, economic and political problems that are actually of very great importance. But the trouble is that in working on these problems professionals don't know how to be rigorous in any way that they have been trained to recognize.

Donald A Schon, *Educating the Reflective Practitioner*, (1995) 2 *Clinical Law Review* 231, 233.



Reflective Practice

One way to unravel the uncertainty, uniqueness and conflict is to reflectively converse with the situation.

This reflection-in-action hinges on the experience of surprise –because the expected often goes undetected!

Much of the reflection-in-practice can not be explained –until it is experienced.



How we teach ethics

Like any legal problem, ethical dilemmas are often posed to our students in a stripped-down hypothetical, giving only enough information to tease out the ethical issues as they engage the professional conduct rules.



You are the duty lawyer at Children's Court. A young man has come in to see you, he has been charged with possession of cannabis. He tells you that the police searched his house and found two bags of pot on the fridge. He also tells you that the bags were actually his dad's, but his dad is on parole and if he is charged, he will have to go back to jail.

The young man wants to plead guilty to the possession charge, he is very clear that he knows what he is doing and that he may end up with a criminal record –but he says he needs his dad to be out of prison and at home with him.

What will your advice be? What would you do?

Solicitor's Conduct Rules



3.1. A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.



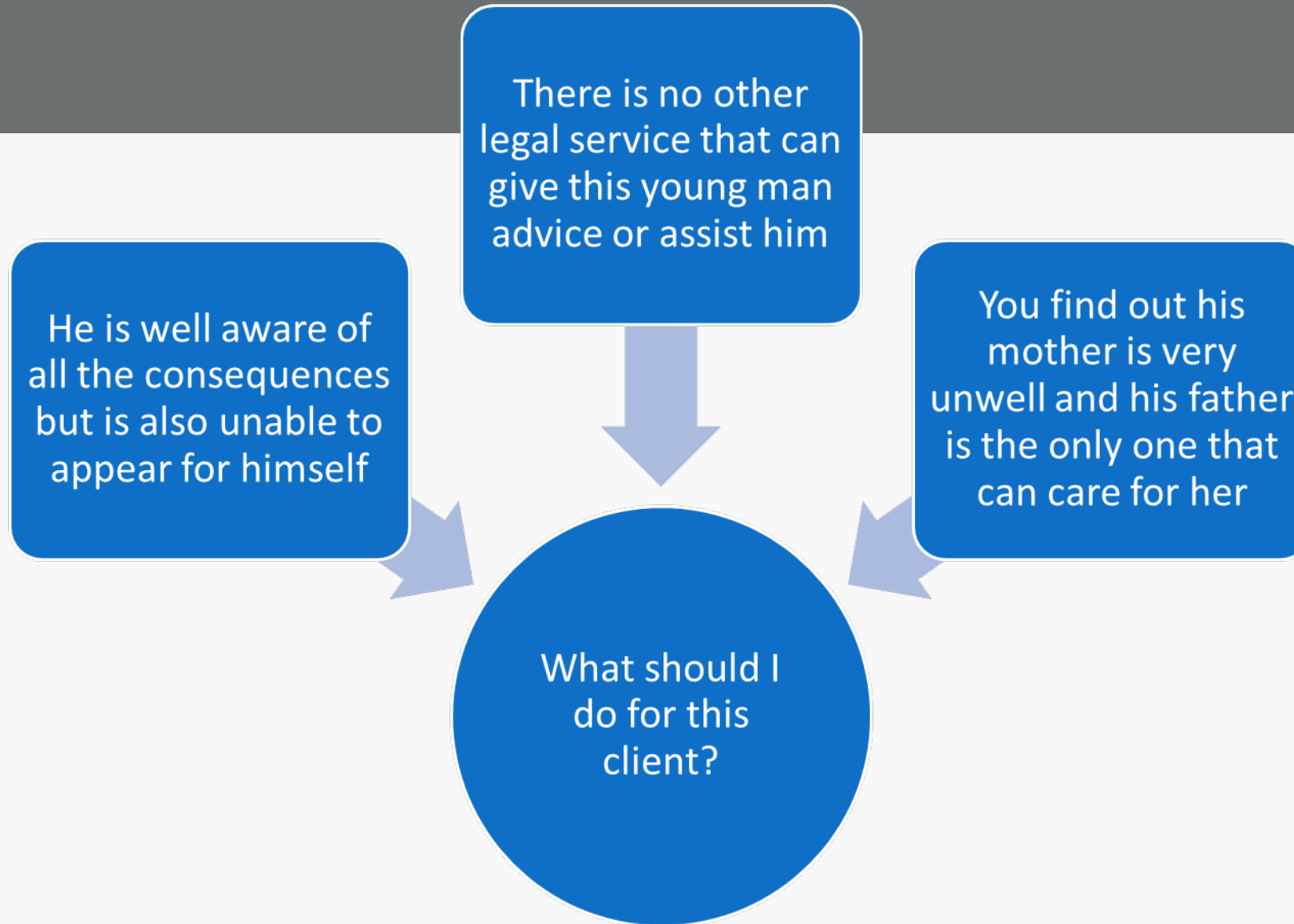
8.1. A solicitor must follow a client's lawful, proper and competent instructions



9.1. A solicitor must not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement



19.1. A solicitor must not deceive or knowingly or recklessly mislead the court



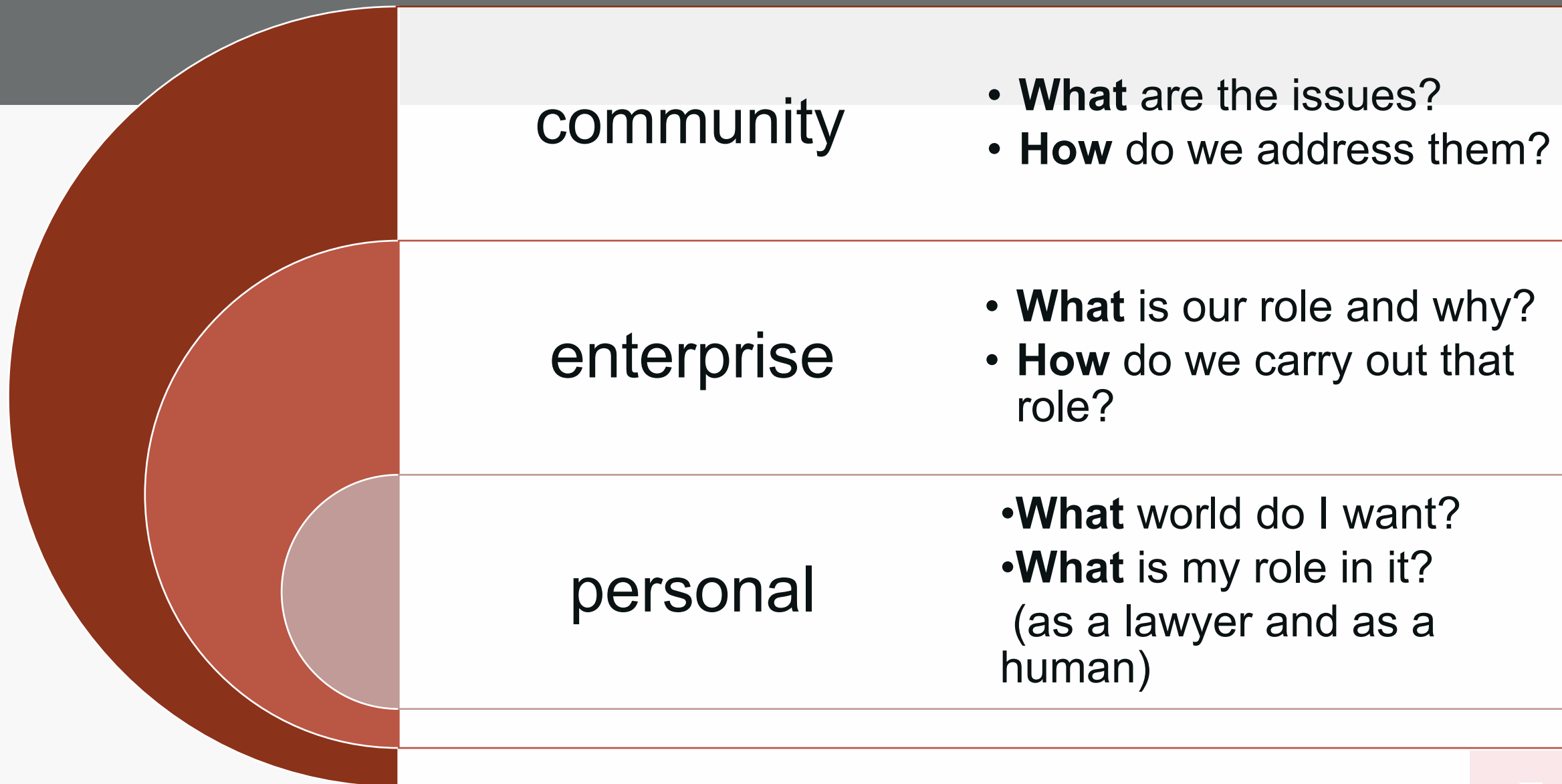
Teaching ethics through hypotheticals

- The real question for young practitioners, is “what would you do?” not “what should you do?” or “what do the professional conduct rules say?”
- In order to have them truly engage with the ethical issue and develop their own ethical judgement, they have to ask themselves: how does this ethical decision engage with my values? Not only, “how would I respond?” but “**why** would I respond that way?”

The mismatch of personal and organizational values has been identified as one of the key risk factors for the development of occupational burnout

(Maslach and Leiter, 1997).





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