

# The relationship between the emotional intelligence and ethical behaviour of attorneys

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## ABSTRACT

**Title:** The relationship between Emotional Intelligence and Ethical Behaviour of Attorneys.

**Key terms:** Emotional intelligence; ethics; ethical behaviour; ethical behaviour in law firms; emotional intelligence and attorneys; code of conduct in law firms; ethical challenges; attorneys; moral issue recognition; importance of ethical behaviour in law firms; importance of emotional intelligence in law firms; consequences of lack of emotional intelligence in law firms; teaching ethics, business ethics; IQ versus EQ; attorneys' EQ; decision making; ethical decision making; ability to make ethical decisions; self-awareness; attorneys' empathy towards clients.

Ethical behaviour is a significant topic of interest in the literature of business ethics and law. Many hypothetical models have been proposed in an attempt to clarify the process by which ethical decisions are made. Attorneys, who are responsible for the defence and implementation of the rights of the public, are often accused of unethical behaviour. Decision-making based on an ethical point of view is very important in the field of law but, the emotional intelligence of attorneys might be more important.

Minimum research has been done to substantiate the statement that emotional intelligence plays a pivotal role in the ethical behaviour of attorneys. This study examines the relationship between emotional intelligence and ethical behaviour of attorneys. The results should assist managers to determine the importance of emotional intelligence and ethical behaviour as a competitive advantage. The results should further assist managers to determine the need for further academic research on different factors that might have an influence on ethical behaviour.

The study population consisted mainly of white (65,90%), females (51,20%), working as associate attorneys (36,60%), between the ages of 21 and 30 (53,7%). Most the participants had less than 10 years' work experience and 53,70% had at least a degree.

Three questionnaires were administered, namely the Trait Emotional Intelligence Questionnaire – Short Form (TEIQue-SF) (Petrides, 2009), Virtue-Ethics Importance Scale (VAIS) (Swaim, 2004) and Consequential Scale (Tanner, *et al.*, 2007). Ethical dilemmas were also included in the survey to which participants had to indicate their acceptance or rejection of the noted dilemma.

Principal component factor analysis was performed on the three measurements. Acceptable KMO correlation matrix was found for the TEIQue-SF and the Consequential scale, however the KMO correlation matrix of the VAIS was found to be undesirable. The VEIS was therefore excluded in further statistical analysis. One factor was extracted from the TEIQue-SF, accounting 31,75% of the total variance. This factor was labelled Trait EI and had an acceptable Cronbach alpha coefficient of 0,79. Two factors were extracted from the Consequential Scale, explaining 51,85% of the total variance. These factors were labelled Deontological Beliefs and Utilitarian Beliefs and displayed Cronbach alpha coefficients ranging from 0,81 to 0,82.

No correlation was found between Trait EI, Deontological Beliefs and Utilitarian Beliefs in the sample of attorneys. This finding was in line with the findings by Pathak and colleagues (2013:113). Statistical and practical significant correlations were however, found between utilitarian beliefs and some of the ethical dilemmas. This is indicative that the higher an attorney's Utilitarian beliefs, i.e. believing that the end justifies the means, the more likely he or she may be to engage in behaviours that may not be perceived as ethical.

From the results, it can be concluded, that although the relation between emotional intelligence and ethical behaviour could not be confirm in the current study, that attorneys, in their profession, are expected to act in an ethical/unethical way despite of their level of emotional intelligence. Further research is therefore needed to clearly indicate to the legal profession how being emotional intelligent as well as acting ethical, can create a competitive edge and improve the perception of the profession.

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# CHAPTER ONE

## INTRODUCTION AND PROBLEM STATEMENT

### 1.1 INTRODUCTION

Attorneys play an integral part in the upholding of the law and in the Rule of Law, founded on standards and morals of integrity, justice and impartiality. Failing to uphold the ethical morality, may result in disrepute ending up in public disorder (Calvert, 2014:VII; MacFarlane, 2002). The future of the constitutional democracy of South Africa is argued to be in the hands of attorneys, who are responsible to defend and implement the rights of South African people (Manyathi-Jele, 2014:9). The profession is however often accused of unethical behaviour which is evident from newspaper articles, case law and various complaints received by the Law Society of South Africa (LSSA) (Broughton & Jansen, 2015:1; Slabbert, 2011:219).

At a summit held by the Law Society of South Africa, Krish Govender (cited by Manyathi-Jele, 2014:8), Chairperson of the LSSA ethics committee, stated that the acknowledgment and understanding of what ethics is about and the functionality thereof has always been a foremost difficulty. Ethics stretches further than honesty and being clean in one's conduct. Mr Govender further noted that ethics can be described as something beyond and further than honesty, such as fairness and lucidity. Helen Kruuse (cited by Manyathi-Jele, 2014:9) gave an articulated expression of the unethical behaviour of attorneys by referring to it as an ethical crisis of which the cause is not well understood, making it more difficult to address the crises. It appears that if ethical decision-making by attorneys is not upheld, it might lead to the downfall of the profession. This is a good enough reason to consider and support attorneys' consciousness of emotions and emotional reaction as it is suggested to assist in the identification of ethical problems as well as making the choice to act ethical when confronted with an ethical dilemma (Gaudine & Thorne, 2011:175).

Emotions are omnipresent in ethical decision-making (Krishnakumar & Rymph, 2012:321-322). The ability of a person to deal with emotions in a skilled manner seems to lead to that person making more ethical judgments (Eshete, 1984:272). Where the aim of formal legal education is focused on enabling law-students to apply the law, it fails in teaching them how to build up the capacity to evaluate what is right or wrong, or having a temperament to try to find out (Eshete, 1984:272). It is therefore necessary to scrutinize the ability of attorneys to deal with emotions especially if it is argued to be omnipresent when people make ethical decisions. Following the above, it may also be possible that the current law curriculums fail to include moral and ethical issues as well as personality issues that are important for successful practices within law. Emotions make one to act in a certain manner as it affects one's decisions and actions. It leads to the formulation of one's own rules based on one's understanding of what emotions involve (Mun, 2016). Emotions and acknowledgements of emotions impact ethical or legal decisions for example: the acknowledgement of humiliation and rage can influence the construction and execution of ethical requirements, laws, and other public policies (Mun, 2016).

Within the context of the current research, the ability to deal with emotions is conceptualised as Emotional Intelligence (EI). Emotional Intelligence (EI) can be described as the skill to decide on the right emotion suitable to a solution and the capability to converse these emotions efficiently whilst, at the same time having the emotional abilities with the consciousness to recognise and identify with other people's feelings (Agarwal & Chaudhary, 2013a:28).

During the last number of years, literature on managerial behaviour and empirical studies placed high emphasis on EI as a construct to ensure both personal and professional success (Pathak, Jaiswal, & Patwardhan, 2013:109). Agarwal and Chaudhary (2013a:28) found that EI plays an important role when it comes to ethical choices and opined that without EI, a manager is not likely to act ethical. Brovedani (2016:4) also argued that EI is crucial for an ethical leader when having to make decisions while finding himself in an ethical predicament by being able to manage his own emotions and those of others for the most desirous ethical outcome. In terms of the study population in the current research, Muir (2016:3-4) found that attorneys revealed high scores for Intelligence Quotient (IQ) whilst on the other

hand they revealed lower scores for EI. This might be a consequence of their viewpoint that emotions should be eliminated when applying the law (Muir, 2016:3-4).

Researchers have however, recognised the value of studying diverse factors that have an effect and impact on ethical behaviour and highlighted the need of ethical behaviour within the business sector (Rogerson, Gottlieb, Handelsman, Knapp, & Younggren, 2011:615). Still, there remain unsatisfactory studies on understanding how emotions truly impact ethical behaviour (Krishnakumar & Rymph, 2012:321-322; Rogerson, *et al.*, 2011:615). Very few studies have been done on the relationship between EI and ethical behaviour and it is recommended that further research should investigate this relationship (Pathak, *et al.*, 2013:111). The purpose of this research is therefore to explore the relationship between EI and Ethical Behaviour among a sample of attorneys.

## **1.2 PROBLEM STATEMENT**

It is universally accepted that the qualities of attorneys, such as integrity, reliability and honesty influence the relationship with their clients and with the public (Slabbert, 2011:212). The responsibilities of the legal profession to the court and to clients are encapsulated in a Code of Ethics or Rules of Practise (MacFarlane, 2002). Irrespective of this code, the legal profession has experienced a definite decline owing to the deteriorating perception of the importance of reputable traditions and norms of professional ethics excluding general, standard and basic integrity (MacFarlane, 2002). Displaying these good qualities are however not enough to ensure compliance with the minimum expected principles of the profession, resulting in something more being required from attorneys (McDowell, 1993:332-333). Although the legal profession is found on ethical objectives, it faces an ethical climate of lawlessness (Slabbert, 2011:223). If ethical behaviour is not upheld by attorneys, the nation can lose its life blood as remarked by the Constitutional Court's Judge Mohamed (cited by Slabbert, 2011:224).

Lacking Emotional Intelligence, can further lead to ethical failures (O'Brien, 2010:1). People, who are not self-aware of their own emotions, are not able to regulate their

emotions (O'Brien, 2010:1). They may lack drive and may struggle to display empathy towards other people's emotions (O'Brien, 2010:1). They will most likely also not have the necessary social skills and are often described as having a low EI (also known as Emotional Quotient (EQ)) (O'Brien, 2010:1). Research has indicated that EI has a direct impact on a company's reputation. This is owing to the certain behaviour of leaders and CEO's lacking the skill to show empathy resulting in a reduced trust and supportive base (O'Brien, 2010:2). When EI is however evident, difficult decisions can be eased (O'Brien, 2010:2). According to Krishnakumar and Rymph (2012:322), the skill to deal effectively with one's emotions can lead to improved decisions. However, as noted earlier, emotions are often not considered as a fundamental part to ethical decision making, resulting in it being either ignored or forced (Gaudine & Thorne, 2001:175).

Ethical morality has to be upheld by attorneys to prevent public disorder (Calvert, 2014:VII; MacFarlane, 2002). The importance, therefore, of ethical behaviour within any organisation, but more specifically within the legal industry together with the suggested omnipresence of emotions when being confronted with an ethical dilemma, makes further study in this area long overdue (Gaudine & Thorne, 2001:183).

The Centre for Creative Leadership confirmed the need to develop soft skills such as EI to promote the wellbeing of the business world (O'Brien, 2010:2). This is further evident in the argument of Helen Kruise (cited by Manyathi-Jele, 2014:10) that ethical codes and rules will never be able to deal with all ethical issues and therefore there is a need to develop soft skills to make good professional judgments and decisions. Gaudine and Thorne (2011:175) opined that all organisations effected by ethical dilemmas, should investigate and promote employees' awareness of emotions and their emotional responses, as it may lead to the identification of an ethical dilemma in the workplace and consequently to the choice of acting ethically in the given situation.

EI does not only benefit an organisation's productivity, it also leads to improved collaboration whilst minimising the chance of employees burning out (Mesmer-Magnus, Viswesvaran, Joseph, & Deshpande, 2008:225). With EI noted as an

important predictor of a person's ethicality and his or her view of the ethicality of others, there is a possibility that attorneys with high EI may be more proficient at reading the ethicality of others' actions, leading to more ethical behaviour (Mesmer-Magnus, *et al.*, 2008:225).

Despite previous research done by Agarwal and Chaudhary (2013a:28; 2013b:151), Deshpande and Joseph (2009:408), and Mesmer-Magnus, *et al.* (2008:225-239) on EI having an impact on ethical decision-making, a study done by Pathak, *et al.* (2013:113) indicated the contrary. It was found that the relation between emotional intelligence and ethics is not confirmed by the hypothesised relationship between these constructs and emotions (Pathak, *et al.*, 2013:111). It seems that the theory of emotion effecting ethical decision-making, still has to be established (Gaudine & Thorne, 2011:183), as well as the differences of demographic groups.

Ethical behaviour is a significant topic of interest in the literature of business ethics and many authors have proposed many hypothetical models in an attempt to clarify and forecast the process by which ethical decisions are made (Ford & Richardson, 1994:205). Within the current study, the relationship between EI and ethical behaviour will be explored amongst a sample of attorneys.

### **1.3 RESEARCH OBJECTIVES**

The research objectives are divided into general and specific objectives.

#### **1.3.1 General Objective**

The primary objective of this study is to explore the relationship between emotional intelligence and ethical behaviour of attorneys.

#### **1.3.2 Secondary Objectives**

The secondary objectives of the study are:

- To conceptualise ethical behaviour from the literature.
- To describe ethical behaviour within the legal profession from literature.
- To define emotional intelligence from the literature.
- To determine the importance of EI within the legal profession.
- To determine the relationship between the EI of attorneys and their ethical behavioural conduct.
- To make recommendations for future research and practice.
- To determine the significance of differences between the levels of EI and ethical behaviour of demographic groups.

#### **1.4 THE CONTEXT OF THE STUDY**

The study focuses on the relationship between the emotional intelligence and ethical behaviour of attorneys in law firms situated in the Gauteng area, South Africa. The study will be conducted on individuals practising as attorneys in various law firms as participants and questionnaires will be utilised as the measurement.

#### **1.5 RESEARCH METHODOLOGY**

##### **1.5.1 Literature Study**

Despite some previous research done on the correlation between EI and ethics, it is clear that this link is not verified yet (Pathak, *et al.*, 2013:111). The core focus of the literature review will be to determine the relationship between EI and ethical behaviour.

Books; academic journals and internet sources were consulted to give a theoretical exposition of and to prepare for this study:

- SAePublications
- Eric
- Academic Search Premier
- Emerald

- EBSCO host
- Internet
- Google Scholar
- Jutta
- JSTOR
- Lexis Nexis
- NWU (Northwest University) Institutional Repository

The following key terms were utilised: Emotional intelligence; ethics; ethical behaviour; ethical behaviour in law firms; emotional intelligence and attorneys; code of conduct in law firms; ethical challenges; attorneys; moral issue recognition; importance of ethical behaviour in law firms; importance of emotional intelligence in law firms; consequences of lack of emotional intelligence in law firms; teaching ethics, business ethics; IQ versus EQ; attorneys' EQ; decision making; ethical decision making; ability to make ethical decisions; self-awareness; attorneys' empathy towards clients.

## **1.5.2 Empirical Study**

### ***1.5.2.1 Research Design***

For the purpose of the objectives of this study, a quantitative approach, in the form of surveys / questionnaires, will be used. A cross-sectional survey will be used to collect the data and to attain the research objectives. Cross-sectional survey designs are used to examine groups of subjects in various stages of development simultaneously (Burns & Grove, 1993) in a short period, which can vary from one day to a few weeks (Du Plooy, 2001). The survey is a data-collection technique in which questionnaires are used to gather data about an identified population. This design is also used to assess the interrelationship among variables within a population (Shaughnessy & Zechmeister, 1997). The cross-sectional survey design is best suited to address the descriptive and predictive functions associated with the correlation design, whereby relationships between variables are examined.

### **1.5.2.2 Participants**

Consent to do the study at the various law firms will be requested. The population size will be 100 participants from both male and female practicing attorneys in various specialities. The sample size will be based on an availability sample and the nature and requirement of the survey participation will be on a voluntary basis and all information provided would be kept private and confidential.

Simple random sampling method will be used to collect the data. The setting for data collection will be in the various law firms in the Gauteng region.

### **1.5.3 Measuring Battery**

A survey questionnaire will be formulated to measure ethical behaviour and EI in different sections of the questionnaire respectively. Biographical information will also be drawn from the questionnaires for future research purposes on correlations.

Petrides' (2009) **Trait Emotional Intelligence Questionnaire – Short Form (TEIQue-SF)** will be used to measure the participants' emotional intelligence. It consists of 30-items which should be answered by way of a 7 point Likert scale based on sensitivity, reliability and validity as properties. The Short Form is mainly used in research designs with limited experimental time and tends to have somewhat lower internal consistencies than in the full form of the questionnaire. This instrument proves to be sufficiently reliable and shows temporal steadiness at the global, factor and facet levels. TEIQue's clear factor structure includes four different dimensions, but which is interrelated: Emotionality, Self-control, Sociability and Wellbeing (Petrides, 2009). He also noted that a one-factor structure, i.e. Global Trait EI, is suitable. In a review study done by Banerji and Tate (2013), TEIQue proved to be reliable with a score of 0,92.

Ethical Behaviour will be measured by the **Virtue Ethics Importance Scale (VEIS)** (Swaim, 2004). This scale was designed for the exploration of the ways in which people think about ethical constructs called virtue ethics. It consists of 25-items which should be answered by way of a 7 point Likert scale ranging from 0 = thinking your behaviour does not matter to 6 = thinking you should act in that manner all the

time. The reliability of this scale was proved to be sufficient with Cronbach's Alpha 0,73 (Swaim, 2004:18).

A second scale to measured ethical behaviour, the **Consequential Scale** (Tanner, Medin, & Iliev, 2007) will also be used. The Consequential Scale was designed to measure the degree to which the participants tend to display deontological thoughts (for example: some rules should never be broken, despite of the consequences) and/or utilitarian thoughts (for example: the only morally relevant dimension to judge an action is whether or not it resulted in a net positive outcome) (Robinson, 2012). It consists of 15-items which should be answered by way of a 5 point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree. The Consequential Scale is often used as a reliable measuring instrument (Tanner, *et al.*, 2007).

**Five ethical dilemmas** will also be formulated based on ethical confrontations attorneys often find themselves in/or might find themselves in based on the ethical code of attorneys within South Africa. This 9-item scale will be answered on a 5 point Likert scale ranging from 1 = Never acceptable to 5 = Always acceptable.

A questionnaire will also be developed to gather biographical information concerning the demographical characteristics of the participants which will include age, gender, ethnic group, work experience, educational level and employment level. The measuring instruments used will be founded on systematic observation, implying that another observer will be able to make the same observation due to it being replicable (Welman, *et al.* 2005:135).

#### **1.5.4 Statistical Analysis**

The statistical analysis will be carried with the help of the SPSS-programme (SPSS Inc., 2009). Exploratory factor analysis will be conducted by means of an oblique rotation using direct Oblimen (an Opblique method rotation) on the main constructs of the study. This technique presumes a nominal correlation between factors and will be utilised to determine the possible dimensions of the constructs. The purpose of factor analysis is to reduce the initial number of variables into a smaller and

therefore more manageable (easier to analyse and interpret) set of underlying dimensions (Yong & Pearce, 2013:79), called factors.

The adequateness of the sample will be determined by means of the Kaiser-Meyer-Olkin (KMO) correlation matrix and the diagonal element of the Anti-Image Correlation. The Bartlett's test of sphericity will also be calculated. This test allows for the examining of the relationship between variables and signifies if the data is suitable to continue with a factor analysis (Field, 2009:647). The KMO values will be interpreted and set out in a Table (Hair, Anderson, Thatham, & Black, 1998:99).

Descriptive statistics (e.g. means, standard deviations, skewness and kurtosis) will be used to analyse the data. Cronbach's alpha coefficients will be used to determine the internal consistency, homogeneity and un-dimensionality of the measuring instruments (Clark & Watson, 1995). Coefficient alpha contains important information regarding the proportion of variance of the items of a scale in terms of the total variance explained by that particular scale.

Pearson product-moment correlation coefficients will be used to specify the relationships between the variables. In terms of statistical significance, it is decided to set the value at a 95% confidence interval level ( $p < 0,05$ ). Effect sizes (Steyn, 1999) will be used to determine the practical significance of the findings. A cut-off point of 0,30 (medium effect, Cohen, 1988) is set for the practical significance of correlation coefficients.

Owing to the size of the sample of participants, T-test will be used to determine the differences of demographic groups. Effect size (Cohen, 1988; Steyn, 1999) will be used in addition to statistical significance to determine the significance of relationships. Effect sizes will serve to indicate whether the results obtained were practically significant. Steyn (2000) indicated that the following cut off points for effect sizes as indicated by Cohen (1988) was set for the practical significance of differences between means:

- $|\Delta| = 0,2$ : small effect

- $|\Delta| = 0,5$ : medium effect
- $|\Delta| = 0,8$ : large effect

## **1.6 LIMITATIONS OR ANTICIPATED PROBLEMS**

There are a considerable number of limitations in this study. The ethical environments of the legal industry in which attorneys operate are unique and therefore the findings of the study may not be valid to organisations other than law firms. The study might perhaps be biased on the fact that simple random sampling within selected law firms were utilised. People, in general, may not be open to admit acting unethical or having a low level of EI. This may result in them answering the questionnaires in a manner which is generally desirable (Deshpande & Joseph, 2009:408). The sample size might be a further limitation due to time and financial resources and further studies with a bigger sample size might have to confirm these findings.

## **1.7 MANAGERIAL IMPLICATIONS OF THE RESEARCH**

Managers should recognise the fact that ethical behaviour is becoming a competitive advantage (O'Brien, 2010:1). The study aims to prove that there is indeed a correlation between EI and ethical behaviour which redirects managers' focus to the development of EI rather than attempting to teach ethics alone.

Managers' EI have to be developed in order to build on the organizations' corporate reputation as the lack of EI can possibly lead to ethical failures within the business (O'Brien, 2010:1). Ethical behaviour as a requirement in the workplace is inevitable and managers / owners will always strive to educate or equip themselves with knowledge gained from literature that will enable them to manage this more effectively.

Any manager and/or legal practitioner will benefit from the information gained in this study as certain ethical choices are inevitable in the business environment. This study will put into perspective how EI can assist to recognise an ethical issue before

judging / acting upon it. It will suggest to managers that the focus should shift to the development of emotional intelligence skills in order to minimise unethical behaviour.

## **1.8 ETHICAL CONSIDERATION**

Each participant will be given an explanation on both the purpose and aims of the study and will be aware that participation is voluntary. Each participant will have to sign an informed consent. They will also be informed on the privilege of withdrawing from participating in the study. The participant must be aware that all their information, answers, data and actions will be kept confidential and only to be used for the purposes of the current study.

## **1.9 CHAPTER DIVISION**

The chapters in this mini-dissertation are presented as follows:

Chapter 2: Literature Review

Chapter 3: Research Design and Statistical Analysis

Chapter 4: Empirical Study

Chapter 5: Conclusions and Recommendations

## **1.10 CHAPTER SUMMARY**

Exploring the relationship between EI and ethical behaviour of attorneys is of importance in order to identify a reason/gap behind unethical behaviour which can further assist law firms and/or the legal industry to recognise the need to develop EI in order to possibly minimise unethical behaviour. Chapter 1 focused on the motivation for: the research; the problem statement; objectives; the context; research method; limitations and problems; managerial implications and ethical considerations engaged in this study. This was followed by a division of the chapters that follow:

Chapter 2 will focus on the literature review and the conceptualisation of ethical behaviour and the understanding how EI is related to or can influence ethical behaviour.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.1 INTRODUCTION

Attorneys are officers of the court and represent the public which includes individuals and legal persons (companies and businesses). In their profession, they have the responsibility to ensure quality of justice and at the same time to protect the society. Consequently, the utmost standards of ethical behaviour must be upheld (Brown, 2013:13). The profession is however, often accused of unethical behaviour, being evident from newspaper articles, case law and complaints received by the Law Society of South Africa (LSSA) (Broughton & Jansen, 2015:1; Slabbert, 2011:219). According to Krish Govender (cited by Manyathi-Jele, 2014:8), Chairperson of the LSSA ethics committee, the acknowledgment and understanding of what ethics is about and the functionality thereof has always been a foremost difficulty. He argues that ethics stretches further than honesty and being clean in your conduct by describing it as “something that is above that, much higher than that. It is about fairness and transparency”. Ethics tend to be either one of the following philosophies: (a) deontology - which is based on decision, (b) utilitarianism - which is based on prediction of consequences and (c) the right of society (Hansen, 1992:523).

The ethical responsibilities of attorneys to their clients are condensed in a Code of Ethics or Rules of the Practise, yet, the profession seems to find itself in a time where unethical conduct increases (Broughton & Jansen, 2015:1; Slabbert, 2011:219). The new Legal Practice Bill intends to end the practise of closed disciplinary hearings by opening same to media enquiry although, an average of 40% of the respondents, who concluded a survey on the Law Society’s website, feel that the new Legal Practice Bill is forced and unwanted (Saunderson-Meyer, 2014). It is not only expected from attorneys and legal professionals to implement suitable judgments in the workplace but, to also show commitment to professional ethics in their relationships with co-employees, clients, court staff and their

opponents by living to approved principles of ethical behaviour which comes down to the entire characteristic of the profession (Calvert, 2014:VII). An attorney's vow to act ethical implies that a commitment is made to the Code of Ethics and/or the Rules of Practise. However, this still does not imply that the attorney, acting in accordance with this code and/or rules, will not find himself or herself engaging in unethical practice (MacFarlane, 2002). Rules are simply a guideline and therefore more focus is needed on practical wisdom as rules will never be nuanced enough and are inadequate when it comes to ethical decisions having to be made (Brown, 2013:8).

One of the requirements to be admitted as an attorney is the qualification of being a "fit and proper" person. This implies that the intelligence quotient (IQ) of an attorney is not sufficient in itself but, an attorney will have to prove that he or she is a "fit and proper" person with the legal vicinity and who will act ethically at all times (Slabbert, 2011:209,212). This requirement is evaluated by way of a character screening based on character qualities including integrity, honesty, trustworthiness etc., even though the requirement as a "fit and proper" person is nowhere defined in legislation or regulations (Slabbert, 2011:212; Van Zyl, & Visser, 2016:2).

In various law cases the character of attorneys in line with being a "fit and proper" person, have been argued. In the case of *RE Ngwenya v Society of Advocates, Pretoria and Another* (South Africa, 2006), the court argued that reformation can only occur when the person admits that he or she acted wrongfully. The court also ruled that the attorney was not a "fit and proper" person based on the fact that the accused falsely persuaded an insurance company to pay out the monetary value of a life insurance policy to himself instead of the beneficiary. He also denied his actions regardless of all the evidence having proved the opposite. In another ruling, it was noted that qualities such as reliability, honesty and integrity are required to form part of an attorney's character (*Vassen v Law Society of the Cape, South Africa, 1998*). Touting and a reflection of a deficit in an attorney's trust account are further indications that such an attorney is not "fit and proper" and should be removed from the roll (*Botha and Others v Law Society, Northern Province, South Africa, 2009*).

To qualify a person as “fit and proper” is unfortunately not a guarantee that the person will act ethically at all times or that he or she is a person of moral goodness. In a study done by Parker and Ruschena (2011:1), it was found that attorneys may be more inclined to act unethical when they are convinced that: (a) it is needed to meet targets; (b) fellow co-employees are acting unethical; and (c) there is no alternative to be successful within the firm. To be a true “fit and proper” attorney involves patience, diligence, hard work, strategy, always considering his or her temperament and displaying sound judgment (Slabbert, 2011:225). All these characteristics depicted seem to be associated with emotional intelligence. Once a person is qualified as a “fit and proper” person, the question however, remains to what ethics is (Crane & Matten, 2010:4). The acknowledgment and understanding of what ethics is about and the functionality thereof has always been a foremost difficulty (Manyathi-Jele, 2014:8), leading to the next construct, ethical behaviour, being discussed.

## **2.2 ETHICAL BEHAVIOUR**

To act ethical, one must understand and acknowledge what ethics is. An attorney can however not be taught to be ethical but, attorneys can be taught to understand what the profession regards as acceptable and what is regarded as moral conduct (MacFarlane, 2002). A discussion follows on what ethics is and the role of ethics in the business- and legal sphere.

### **2.2.1 What is ethics within the business sphere?**

Ethics is a prominent business topic and the challenges flowing from it confront all organisations of any nature or line. Ethical behaviour is becoming more demanded by different stakeholders and the public but, despite this demand, unethical behaviour continuously arises in business around the globe (Crane & Matten, 2010:9;11). Unethical behaviour might be attributed to the lack of the acknowledgment and understanding of what ethics is, as explained in a summit by Krish Govender (cited by Manyathi-Jele, 2014:8). An attorney might not be educated to act ethical but, they can be educated on understanding what the profession regard as suitable and moral conduct (MacFarlane, 2002). An attorney,

for example, who is described as being honest, punctual and integrous will always inform the court of the truth, will not be late for court or appointments with clients and will never charge excessively (Van Zyl & Visser, 2016:8). However, an individual's ethical orientation (including honesty, integrity, duty, responsibility, justice, punctuality, self-interest, etc.) influences the pattern of ethical behaviour (Pathak, *et al.*, 2013:108). It therefore becomes more apparent that the lack of recognition and consideration of what ethics is, remains (Crane & Matten, 2010:4).

Ethics within the business sphere can be described as addressing issues as being either morally right or morally wrong in any situation. It is also important when decisions must be made. A well formulated definition is always an important basis for any hypothesis (Crane & Matten, 2010:5). There are numerous definitions on what ethics and business ethics is, as indicated in the Table below:

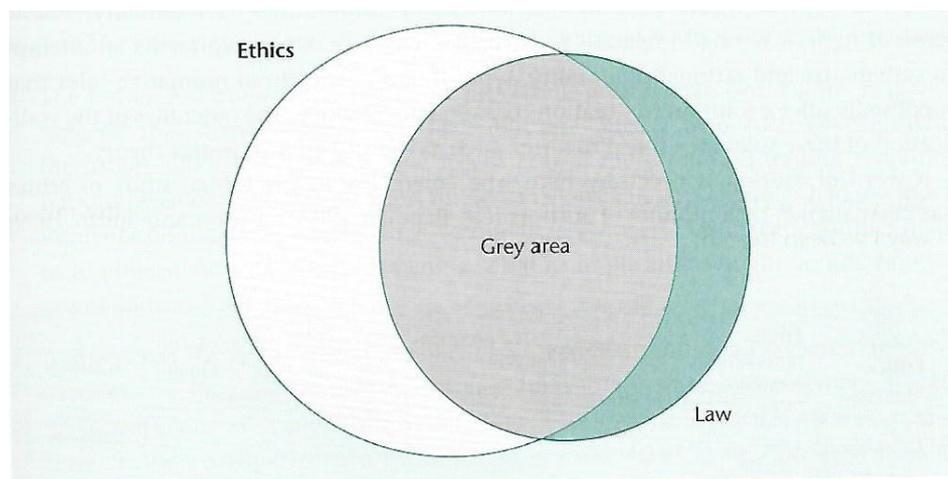
**Table 2.1**  
***Definitions of Ethics and Business Ethics***

Crane & Matten (2010:8)	“Ethics is concerned with the study of morality and the application of reason to elucidate specific rules and principles that determine right and wrong for a given situation.”
Crane & Matten (2010:4)	“Business ethics is the study of business situations, activities, and decisions where issues of right and wrong are addressed.”
MacDonald (2011)	“Ethics can be defined as the critical, structured examination of how we should behave – in particular, how we should constrain the pursuit of self-interest when our actions affect others.”
MacDonald (2011)	“Business ethics can be defined as the critical, structured examination of how people and institutions should behave in the world of commerce. In particular, it involves examining appropriate constraints on the pursuit of self-interest, or (for firms) profits, when the actions of individuals or firms affects others.”
Agarwal and Chaudhary (2013(a):29)	“Ethics tells us the way to behave in a certain acceptable manner in society so as not to harm others around us and to bring about the greatest good of the greatest number of people.”
Krish Govender (cited by Manyathi-Jele, 2014:8)	Ethics is more than honesty or being clean in your doings, it is “...something that is above that. It is about fairness and transparency.”

For purposes of this study, the definition of Crane and Matten (2010:8) will be followed, conceptualising ethics as being "... concerned with the study of morality and the application of reason to elucidate specific rules and principles that determine right and wrong for a given situation".

The question might arise as to what the difference is between ethics and the law itself, seeing that the law also differentiates between right and wrong. Crane and Matten (2010:7) indicated that if the law stipulates that one should stop at a red light to avoid disorder on the roads, the decision one makes whether to stop or not will not be an ethical decision. In a certain sense of logic, it can be said that business ethics starts where the law ends pertaining to issues not being addressed by the law as set out in Figure 2.1.

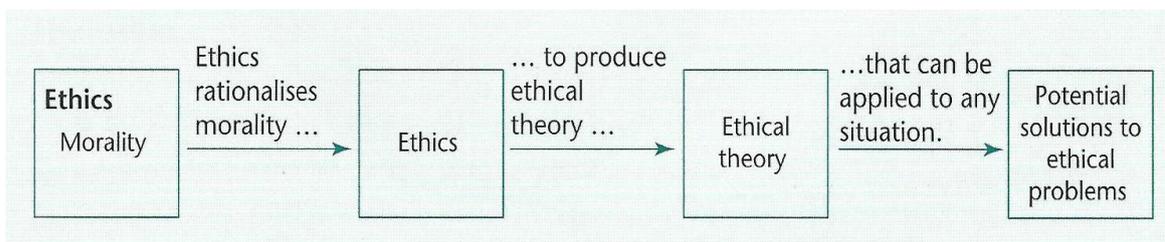
Business ethics involves making decisions within the "grey areas" of any organisation and/or where morals are inconsistent with each other (Crane & Matten, 2010:7). However, making decisions in a "grey area" still leaves many questions with regards to ethical decisions and without a clear-cut answer to certain ethical challenges. Business ethics can therefore not be taught like a subject as accounting to follow a certain prescribed procedure to make the right decision (Crane & Matten, 2010:7).



**Figure 2.1: The relationship between ethics and the law (Crane & Matten, 2010:7)**

Legal ethics is conceptualised by Van Zyl and Visser (2016:6) as the system of regulations which governs the conduct of attorneys and the moral and profession

duties that attorneys have towards each other, their clients and to the court. It is important to differentiate between “ethics” and “morality” as it is two different concepts. Certain behaviour might be ethical under a given ethical code but, at the same time in contrast with one’s own moral code and *vice versa* (Perry, Moore, Barry, Clayton, & Carrico, 2009:472). Morality involves one’s beliefs, values and norms which is part of a social course of action which allows differentiating between right and wrong (Crane & Matten, 2010:8). Ethics, on the other hand, attempt to clarify specific rules and principles (called ethical theories), which establishes what is right and wrong in certain circumstances (Crane & Matten, 2010:7; Perry, *et al.*, 2009:472). This relationship is set out in Figure 2.2.



**Figure 2.2: The relationship between morality, ethics and ethical theory (Crane & Matten, 2010:8)**

Ethics involves more than what one is permitted to do – it also involves what one should do and considering what the right thing to do is (Perry, *et al.*, 2009:472). It is about weighing up: (a) what is permitted by law; (b) what is permitted by the ethical code; and (c) what are the boundaries of one’s own moral values (Perry, *et al.*, 2009:472). Figure 2.2 indicates that ethics involves the study of morality in order to attempt to systematise the application and motivation thereof (Crane & Matten, 2010:7). Law faculties tend to overlook the importance of educating on morality and rather place emphasis on rules and conduct within the profession. However, if law students are taught to apply their moral compasses more accurately it would lead to less disciplinary action in practise (Van Zyl & Visser, 2016:1).

In the eyes of attorneys, legal ethics is conceptualised merely by the rules and disciplinary codes of each region or jurisdiction but in fact, it also refers to the behaviour required in order not be struck off the role and to remain a “fit and proper” person (Perry, *et al.*, 2009:472). Rules and codes of conduct will never offer

solutions to every moral and/or ethical dilemma that attorneys will encounter and attorneys must also rely on their moral compass (Van Zyl & Visser, 2016:6-7). It is evident in a study done by Daicoff (1996:227), that attorneys don't only depend on rules and regulations when it comes to ethical decision making. Instead, they also rely on different kinds of outlines peculiar to a specific scenario (Perry, *et al.*, 2009:462;470).

### **2.2.2 The importance of ethical behaviour within the legal profession**

Former Chief Justice Earl Warren said: "the law floats on a sea of ethics" (as cited in MacFarlane, 2002). Attorneys form part of a professional community where ethics is of utmost importance and therefore the responsibility and duty to act ethical cannot be separated from the legal profession. The profession's reputation is without a doubt it's most valuable asset (MacFarlane, 2002), yet the legal profession is regarded as one of the least reputed professions as attorneys are regarded as being obsessed by proceeds and self-interest (Baer, 2016:2). Attorneys play an integral part when it comes to upholding the law and the Rule of Law which is founded on standards and morals of integrity, justice and impartiality which will fall into disrepute ending up in public disorder if attorneys don't encourage and hold on to these ethical moralities (Calvert, 2014:VII; MacFarlane, 2002).

The responsibilities of the law profession to the court and to clients are encapsulated in a Code of Ethics or Rules of Practise. Still, even though the legal profession is found on ethical objectives, it faces an ethical climate of lawlessness (Slabbert, 2011:223). More than 50% of attorneys practising in legal fields of criminal, labour, communication, civil, antitrust and discrimination law did not agree with a statement that attorneys, beside those in their own firm, were highly ethical (Levin & Mather, 2012:4-5). Attorneys also have a reputation to control the system and the truth by using certain strategies which are both unethical and sometimes illegitimate (Baer, 2016:2). If ethical behaviour by attorneys is not upheld, the nation can lose its life blood as remarked by the Constitutional Court Judge Mahomed (cited by Slabbert, 2011:224). According to Justice Yacoob (cited by Manyathi-Jele, 2014:9) there will never be good rulings if attorneys cannot identify the

difference between fairness and injustice and more importantly dealing with people appropriately and correctly.

Ethical rules might tell an attorney what kind of person he or she should be, but it gives no indication on how to respond or act when facing an ethical dilemma (Brown, 2013:7). An “ethical dilemma” can be conceptualised as a situation in which a choice must be made between conflicting ethical/moral decisions and in which the outcome of all the choices would be undesirable to either one/more of the parties involved (Gunz & Gunz, 2002:253). It is a situation in which there is no perfect route as any action taken would be to the detriment of either the ethical code of the profession, the client or the attorney (Gunz & Gunz, 2002:253). Ethical dilemmas are inevitable when entering the legal profession. This may result in new entrants having to weigh up contradictory systems of principle against ideas on what ethical behaviour demand (Van Zyl & Visser, 2016:1).

According to Aristotle (cited by Brown, 2013:8), ethics is indefinite and therefore rules which are rigid, will never be able to capture the diversity and multiplicity of ethics. Society rely too much on rules itself which is merely a guide on how to behave (Brown, 2013:8). To merely rely on professional rules in attempting to uphold proper conduct, especially within the legal line of work, is a severe mistake (Levin & Mather, 2012:3-4). Still the profession persists to place its main focus on sets of rules and/or codes of conduct when it comes to legal ethics while informal norms and shared morals persuades attorneys to act ethical in certain fields of practice (Levin & Mather, 2012:3-4;10-11).

Ethical predicaments are not resolved by rules (Levin & Mather, 2012:11). Instead, the rules merely confirm these predicaments in puzzling words and consequently attorneys do not turn to the rules when an ethical decision has to be made. Formal rules and codes of ethical behaviour play a very small part when it comes to the actual decision on whether an attorney will act ethical or not (Van Zyl & Visser, 2016:2). Ethical decision making can be broadly defined as “the ways in which the rules and norms of lawyering, individual values, and considerations of justice, clients, and practice organizations, shape individual conduct” (Levin & Mather, 2012:6-7).

There are numerous philosophies on ethical decision making which researchers endeavoured to encapsulate in multidimensional ethics scale (Hansen, 1992:523). Without even realising it, one develops and/or accepts some sort of rule to follow when confronted with ethical dilemmas which tends to be either one of the following two philosophies: (a) deontology or (b) utilitarianism (Hansen, 1992:523). Deontology is not focused on the consequences of the one's choice of behaviour but, it rather focuses on the intention and nature behind the choice of action. It outlines a rule that anyone confronted with a certain dilemma should act in a certain manner (Hansen, 1992:524). Utilitarianism on the other hand, is focused on the consequences of one's behaviour and outlines a rule that one's behaviour will be acceptable if the outcome is to the benefit of the majority; alternatively, to the detriment of the least possible people (Hansen, 1992:524).

Levin and Mather (2012:6-7) attempt to redefine and explain what legal ethics is by including David Luban's four branches of what legal ethics is: The hard law of ethics (conduct allowed or not allowed in terms of the rules and codes of conduct); ethics of role (the role of morality); ethics of professionalism (bearing in mind what conduct is expected from a professional attorney to serve the client and to make a living); and ethics of honesty (being truthful).

Despite legal education on ethical behaviour, attorneys define to themselves what suitable ethical conduct is in their offices, in the negotiation and litigation process; in the contracting with clients and agencies; appearing in court together with the foundation that profession rules and disciplinary boards provide (Levin & Mather, 2012:4;15). It is suggested that the longer attorneys stay in practice, the more likely they are to perceive other attorneys' conduct as more ethical than unethical (Levin & Mather, 2012:17). Therefore, there seems to be a correlation between the time period spent in practice and the sensitivity towards ethical behaviour (Levin & Mather, 2012:17).

Ethical conduct makes one feel good but, in reality this is not always the truth – it is about the obligation that rests upon one to act in the correct manner despite the outcome being objected to and/or being difficult without reward (Rogerson, *et al.*,

2011:622). This then implies that unethical behaviour is based on a selfish desire being met despite of the conceptual responsibility (Rogerson, *et al.*, 2011:622).

It is suggested that when a person must deal with an ethical problem, he or she undergoes a four-step process of self-awareness and behaviour (Krishnakumar & Rymph, 2012:322), namely:

- Step 1: Moral consciousness – being alert to the ethical problem.
- Step 2: Making a decision, based on internal factors (own principles and morals) and external factor (rewards and social standing), about the ethical problem.
- Step 3: Forming an objective to make a judgment – intensity of the vow to act ethically.
- Step 4: Making the actual judgment by
  - (a) an intentional and systematic decision; or
  - (b) a spontaneous, instinctive and automatic decision which is the more likely choice.

An individual must look into his or her own morals and considerations of what is right and wrong in order to behave ethically when confronted with a problem or situation, as well as review the yardstick of ethical rules of the society we live in (Agarwal & Chaudhary, 2013a:28). When people make a good judgment to an attorney they look beyond his or her intellectual intelligence (IQ) and knowledge (Brown, 2013:9). They rather look to find composure in his or her negotiations and sympathy towards diverse concerns they are faced with (Brown, 2013:9). In other words, qualities of emotions and thoughts play a vital role when it comes to good judgment (Brown, 2013:9).

Ethical behaviour also includes personal principles and practical reflection apart from mere knowledge (Rogerson, *et al.*, 2011:616). Acting ethical also involves one's ability to judge right from wrong and to act in terms of that judgment by relying on this moral compass (Van Zyl & Visser, 2016:2). From the aforementioned, it is imperative that legal practitioners be trained to develop a skill, over and beyond formal rules and codes on ethics, which would assist and guide them when being

confronted with an ethical dilemma instead of just teaching them what is acceptable and what is not ethical behaviour (Van Zyl & Visser, 2016:5).

There are however, several contingencies such as culture, religion and gender which could play a part when it comes to ethical decision-making (Krishnakumar & Rymph, 2012:323) but, which falls outside the scope of this study. The hypotheses in this study relates to the same kind of contingencies but within the sphere of EI.

Krishnakumar and Rymph (2012:328), found that ethical decisions are based on both knowledge and emotions. The decision to behave ethically can be very demanding especially when emotions compel persons to act unethical (Krishnakumar & Rymph, 2012:322). Their study also placed emphasis on the fact that there is a gap in literature with regards to what effect emotions have on ethical decision making. Ethical decisions are also difficult to make when strong emotions are present in a given situation (Rogerson, *et al.*, 2011:614). The correlation between the reason and making a certain ethical decision does not automatically entail that the reason that led to the choice of decision but, instead moral reasoning only follows thereafter to validate the decision taken and moral reasoning will only be present if emotions and sentiment exists (Rogerson, *et al.*, 2011:615).

Gaudene and Thorne (2001:175) found that it is not clear from research whether different emotions lead to ethical and/or unethical judgments in the workplace. This is supported by Krishnakumar and Rymph (2012:324). They noted that there appears to be a definite gap in literature on how negative emotions affect ethical decision making. This leads to the next construct of EI being discussed.

## **2.3 EMOTIONAL INTELLIGENCE**

### **2.3.1 Emotional Intelligence defined**

Being regarded as “smart” might be redefined by one’s level of EI (Kelton, 2015:462). EI however remains hard to pin down (Zeidner, Roberts, & Matthews, 2008:64). Emotional sensitivity or being emotionally intelligent does not mean being nice or giving free control to feelings, it is not predetermined and it does not allow

one's emotions to get the better of one's judgments (Pathak, *et al.*, 2013:109). EI focuses on a person's skill and not on the personality traits of a person (Kelton, 2015:469). Being wrongly defined many times (Kelton, 2015:469-470), EI should not be mistaken for merely having various positive personality traits because, in fact it is about discovering and applying one's own and other's emotional condition to unravel a dilemma and to control behaviour. A considerate, confident, composed, motivated and cheerful person does not imply that such a person is intelligent or that these characteristics have anything to do with EI (Kelton, 2015:469). EI is rather a yardstick used to summarise a person and therefore one should apply both his or her mind together with emotions (Pathak, *et al.*, 2013:109). EI can therefore be regarded as having two elements: the cognitive element and the empathy element (Pathak, *et al.*, 2013:110).

EI is differently defined in literature as indicated in Table 2.2.

**Table 2.2**  
***Definitions of Emotional Intelligence***

Salovey and Mayer (1989:188-191)	EI is defined as the individual abilities to 1) perceive emotions; 2) to thoughtfully use emotions; 3) to understand emotions; and 4) to manage emotions in order to accomplish a productive end.
Goleman (1995:34)	EI is defined as the ability to motivate yourself in the face of obstructions, to control impulse and delay indulgence, to control your moods and keep distress from flooding the ability to think.
Mayer, Salovey and Caruso (2008:503)	EI is the ability to connect in difficult information processing of the emotions of others and one's own and to apply this information as a steering wheel to think and subsequently act.
Agarwal and Chaudhary (2013b:151)	"Emotional Intelligence is the ability to choose the right feeling appropriate to given solution and the skill to communicate these feelings effectively, it is the emotional competency which includes awareness of our own emotions ability to identify and empathise with other's feelings."

**Table 2.2 (continue)**

**Definitions of Emotional Intelligence**

Pathak, et al. (2013:109)	“Emotional intelligence is not being nice; it does not mean giving free reign to feelings; nor is it fixed genetically; nor allowing one’s emotional and prejudices to get the better of one’s judgments. Instead emotional intelligence is the new yardstick, which is increasingly applied to judge a person, to find out how far one excels in one’s life. Therefore, it calls for harmonisation of head and heart”.
Sharma and Sharma (2014:20)	Emotional Intelligence is about how one behaves in accordance with the emotions one experience. It is about conveying, recognising, understanding and controlling your emotions.

According to Martin (2014:421), people educated on EI have a distinct ability to be ambitious and at the same time humble, as well as the ability to rather be concerned for something bigger than their own progress. He further opined that EI, as defined by Daniel Goleman, is essential to the modern-day law practise and a soft skill which is extremely valuable to attorneys (Martin, 2014:420, 422).

To be a good attorney one must have specific skills. However, attorneys should also have EI as EI is important, if not more important, than all the other skills they need to comprise to be regarded as a good attorney (Kelton, 2015:484). Kelton (2015:484) defines an attorney displaying high levels of EI as an attorney who can identify the emotions present in a certain situation and understand why these emotions are present. Muir (2007:60) defines such a person as the one who everyone can talk to, the one who listens, deals with criticism and responds in a sensible manner. Goleman (2006:45) further identifies EI as consisting out of five domains: self-awareness; social-awareness; self-motivation; self-regulation; and social skill.

All the different theories on EI underline the importance that IQ might not be the key element when explaining the cognitive ability of a person (Pathak, et al., 2013:110). This study will follow the definition by Goleman (1995:34) as the most comprehensive definition.

### **2.3.2 EI and the impact thereof on ethical behaviour and decision making**

People are often encouraged to make decisions that would reduce a regretful outcome and at the same time to avoid making any decision that might be vague or result into conflict. This avoidance of conflicting or complex decisions might result into unethical behaviour if they are left without an alternative (Rogerson, *et al.*, 2011:618). Undesirable decisions and unethical considerations can be avoided if one is aware of non-rational influences like emotions, which might be the indicator of contradictory principles or it might lead to the reflection of certain decisions which might have been ignored (Rogerson, *et al.*, 2011:620). Educating on ethics should include cognitive process, emotional sensitivity as a personal motivation as well as moral values and the law.

Emotions manipulate cognitive course of action which is consistent with the conclusion that when an ethical decision is made, personal loyalty might play a more significant role than that of ethical principles (Rogerson, *et al.*, 2011:618). Loyalty towards clients is one of the positive qualities of attorneys which the public associates with, however, this can also be the motive to act unethical to obtain the best possible outcome for the client even if it requires disregarding the law (Slabbert, 2011:221). Clients will however benefit when his or her representative attorney has a high level of EI (Kelton, 2015:460). A person scoring low on EI might be able to resolve disputes based on factual findings but, will not be able to resolve the core conflicts based on emotions. It is therefore imperative that a person who is required to resolve conflict resolution should acquire high EI (Baer, 2016:3). According to Muir (2007:63) partners in law firms, who score high on EI, have the interpersonal ability to make unpopular but needed decisions. Through this ability and behaviour, they are setting an example for inexperienced entrants in the legal sector on how to behave correctly (Muir, 2007:63).

Traditional law curriculum is intended to teach students how to “think like an attorney” but the focus should be on teaching students how to “think like a mindful attorney” (Martin, 2014:450). Despite attorneys being trained to think like an attorney, they are not equipped to productively practice as mindful attorneys (Kelton, 2015:481). Students who show an interest to law school tend to be rule-

oriented thinkers and their scores on EI levels are not high (Baer, 2016:2;4). It is not uncommon for very intelligent people to show a lack of EI (Wilson, 2015). In an interview with Norma Formanek (cited in Wilson, 2015), she informed that top-tier, brand-name attorneys' career prospects have been restricted due to their lack of EI. They did not have the ability to deal with clients in an emotionally mature and positive way. Studies conducted at Harvard University found that employees with a high level of IQ will not necessarily be the employees who accomplish desired results or work productively but rather the employee who has people skills and who gets along with his/her colleagues (Muir, 2007:60).

The reasonable basis of ethical behaviour was for too long the focus point in ethical studies while non-rational influences was regarded as destructive to the ethical decision making process which in the present day is regarded as a flaw that must be overcome (Rogerson, *et al.*, 2011:620). Attorneys are indoctrinated that EI is not important and that IQ is all that matters despite Goleman's viewpoint that EI carries more weight in certain matters than IQ (Kelton, 2015:462). De Muniz (cited in Baer, 2016:4), a former Chief Justice of the Oregon Supreme Court, opined that law schools are not educating law students on how to serve the public in order to meet their needs like they should. Complaints on unprofessional conduct of attorneys are ascribed to low levels of EI (Richards, 2016).

An ethical dilemma will frequently involve the challenge between emotions and conflicting instincts of what is rationally right to do but, by ignoring emotions it will lead to the true nature of the ethical predicament being ignored and which will leave no guarantee for ethical behaviour. Both emotions and intuitions manipulate ethical decisions and instead of paying no attention to the role of emotions it should be developed (Rogerson, *et al.*, 2011:622). Any organisation who is confronted by ethical challenges, must consider its employees' awareness of emotions and their emotional responses in an attempt to develop this specific skill (Gaudine & Thorne, 2011:175). This may lead to employees recognising an ethical problem in the workplace and subsequently to the choice of acting ethically in the given situation (Gaudine & Thorne, 2011:175).

Assuming it is common cause that self-awareness, empathy, kindness and interpersonal skills are character traits sought-after in attorneys, EI can be a great benefit for both attorneys and their clients (Martin, 2014:423). It may lead to a competitive advantage over other attorneys lacking EI. People with higher EI tend to deal more sufficiently in stressful situations, show higher levels of loyalty to their organisation and perform better (Sharma & Sharma, 2014:20-21) which is self-evident as a competitive advantage to any organisation. EI gives attorneys that added edge and advantage (Leonard, 2009). EI in people is also suggested to equip people with the necessary skills to control their emotions for focused behaviour (Deshpande & Joseph, 2009:404). Such individuals also appear to acquire skills that enable them to deal more successfully with the challenges they come across which leads to more positive outcomes (Sharma & Sharma, 2014:21). Emotional intelligent people tend to be more honest when it comes to their motives and they think about diverse viewpoints before acting and to prevent harming any good relationship as a result of their actions (Baer, 2016:4). The contrary of being unaware of one's emotions can lead to reactive behaviour instead of contemplative behaviour (Wells, 2016).

In an empirical study done by Shultz and Zedeck (2009:24-27), twenty-six useful factors were developed for legal practitioners to perform efficiently which is categorised under eight umbrella-headings (Kelton, 2015:481-482):

- **Intellectual and cognitive:**(1) to analyse and reason; (2) to be innovative; (3) to be a problem solver; and (4) to make practical judgment
- **Research and information gathering:** (5) do research on law; (6) find the facts; (7) ask questions and conduct interviews
- **Communication:**(8) influencing and advocating; (9) writing; (10) speaking; and (11) listening
- **Planning and organising:** (12) to plan strategically; (13) to manage and organise one's own work; and (14) to manage and organise colleagues
- **Conflict resolution:** (15) negotiation skills; (16) seeing the world through the eyes of others

- **Client and business relations-entrepreneurship:** (17) networking and business development; (18) providing advice and counsel to clients and building relationships with them
- **Working with others:** (19) developing relationships within the legal profession; (20) evaluation, development and mentoring
- **Character:** (21) passion and engagement; (22) diligence; (23) integrity; (24) stress management; (25) community involvement and service and (26) self-development.

The above-mentioned factors fall within the four branches of emotional intelligence developed by Mayer, *et al.* (2008:506) including: (a) perceiving emotions; (b) using emotions to facilitate thinking; (c) understanding emotions and (d) managing emotions. Based on these twenty-six factors, an attorney who is not emotionally intelligent will not be as successful as the attorney who develops, identifies and applies EI in practise (Kelton, 2015:481-482). In a study done by Deshpande and Joseph (2009:407) it was noted that individuals were more likely to make ethical decisions when they had characteristics such as self-management, self-assurance, integrity, compassionate and being aware of their strengths and weaknesses.

The question arises as to whether EI can be developed and how? Bradberry and Greaves (2014) opine that EI can be improved by:

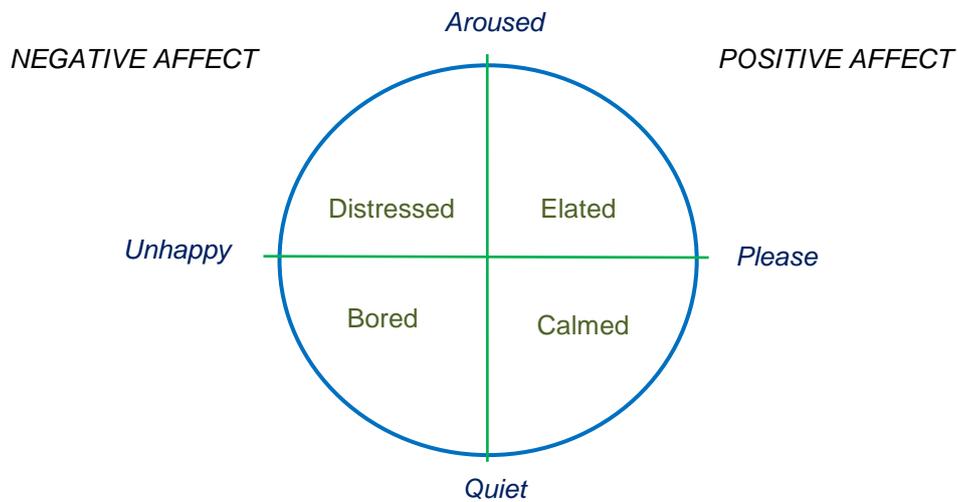
- Recognising your own emotions and the impact these emotions have on your views and behaviour. Once you recognise these emotions you must recognise your strong points and weak points and develop self-assurance in the areas where you fall short.
- To regulate and control spontaneous opinions and behaviours by controlling your emotions and keeping to your vows by familiarising yourself with the situation you find yourself to be in.
- To make sure you are socially aware of the feelings, emotions and needs of other people you are surrounded with and to make yourself at ease in such shared circumstances by also acknowledging the power dynamics in a group.

- By communicating thoroughly and at the same time motivating and convincing those around you by being a good team-player and managing conflict within a group.

A person's personality cannot be developed or strengthened and should be distinguished from EI which on the other hand can be developed and strengthened. This implies that character traits such as integrity, kindness or being positive can be obtained over a period of time or through experience (Wells, 2016).

When confronted with an ethical decision that must be made, emotions are opined not to be antithetical but instead inherent to the process leading to better ethical decisions being made (Gaudine & Thorne, 2011:175). Although previous research has depicted that ethical decision-making is linked to emotions, the acknowledgement of the fundamental weight of emotions to ethical decision-making must still be proved (Gaudine & Thorne, 2011:176). Despite many ethical decision-making models arguing that cognitive-development is the main influencer when it comes to ethical decision-making by implying that these decisions are solely made on observation, understanding and knowing, there are other models moving away from the viewpoint of traditional models and indicate that a person will act, observe and act again. These latter models also imply that analytical thought might be the foundation of these actions. However, it is very probable that they are direct reactions to emotions (Gaudine & Thorne, 2011:176).

Emotions include two elements provoked by one's specific situation: (a) Arousal level (intensity of the feeling state) and (b) State of mood/feeling, demonstrated by figure 2.3 below. Emotions such as anger; panic; hopelessness and irritation will fall under negative affects while happiness and confidence will fall under positive affects (Gaudine & Thorne, 2011:177).



**Figure 2.3: Dimensions of emotions: affect and arousal (adapted from the affect circumplex, Watson and Tellegen, 1985 (cited in Gaudine & Thorne, 2001:179))**

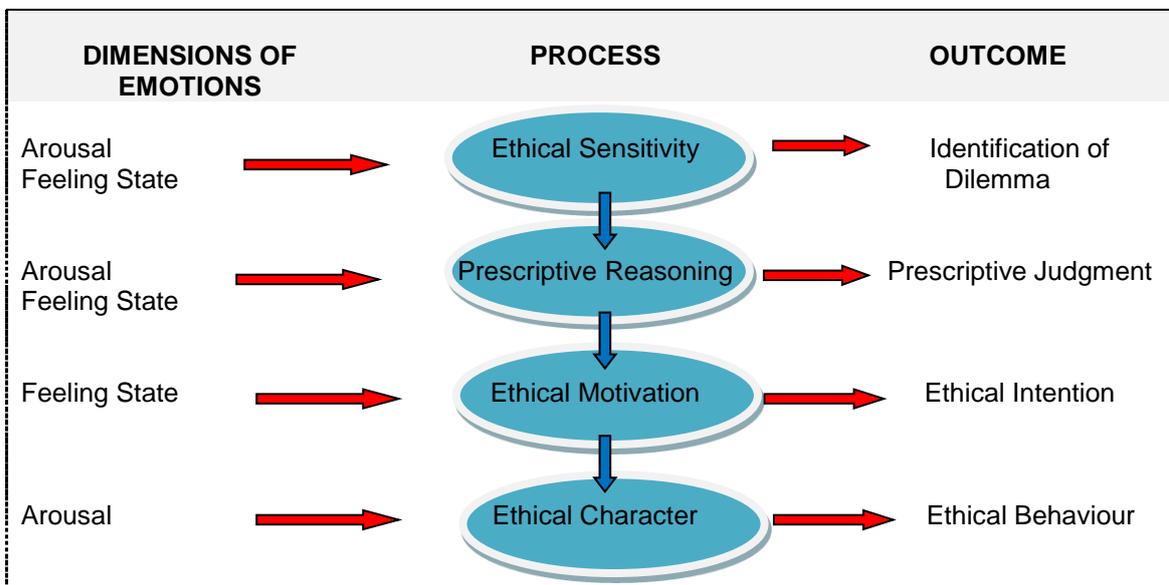
A person's moral sophistication will only reach maturity once moving through different stages and a person's idea of morality, depending on the level of moral maturity, will affect the choices a person makes when facing an ethical problem according to the traditional cognitive-development point of view (Gaudine & Thorne, 2011:177). As explained previously in this mini-dissertation, morality involves one's beliefs, values and norms which are part of a social course of action which allows differentiating between right or wrong (Crane & Matten, 2010:7) while the development of morality involves external rewards and/or consequences together with internal beliefs about what is fair (Gaudine & Thorne, 2011:177).

Figure 2.4 describes how emotions manipulate the ethical decision process of people in the workplace based on diverse cognitive compositions (Gaudine & Thorne, 2011:178). It sets out four different elements including:

- Ethical sensitivity – the recognition that there is an ethical problem.
- Prescriptive reasoning – leading to the judgment of the ideal answer to the dilemma.
- Ethical motivation – leading to one's intention to act in accordance with what one believes are ethical and to make the actual decision.

- Ethical character – leading to the execution of the answering to the problem one faces.

If one's arousal level is weak it might imply that one does not possess over enough energy in order to identify an ethical dilemma; to formulate a prescriptive judgment in relation to the level of moral maturity or to make a choice and act in accordance with one's ethical intention. It also indicates that one's feeling state in the positive quadrant are more likely to identify an ethical problem, to formulate a better prescriptive judgment in relation to the level of moral maturity and to make a better choice and act in accordance with one's ethical intention (Gaudine & Thorne, 2011:179-182).



**Figure 2.4: Components of Ethical Decision: The role of emotion in the ethical decision process (adapted from Rest, 1994) (cited in Gaudine & Thorne, 2001:179)**

Gaudine and Thorne (2011:183) suggests that further studies have to be done in order to establish the theory of emotion and ethical decision making despite their conclusion that emotion is integral to the process of making ethical decisions.

During the last fifteen years, literature on managerial behaviour and empirical studies focused a lot on EI as a construct (Pathak, *et al.*, 2013:109). Research done by Agarwal and Chaudhary (2013a:28) also found that EI plays an important

role when it comes to ethical choices and they indicated that without EI a manager is not likely to act ethical. They further investigated the role of EI on Ethical Decision Making of managerial and non-managerial employees at a university and found that there was indeed a significant difference between ethical decision-making between employees showing high EI in comparison to employees who scored low in EI (2013:153). Brovedani (2016:4) also argues that EI is crucial for an ethical leader when having to make a decision while finding oneself in an ethical predicament by being able to manage one's own emotions and those of others for the most desirable ethical outcome.

The lack of EI leads to ethical failures (O'Brien, 2010:1). People who are not self-aware of their own emotions, who cannot regulate their emotions, who lack drive and who struggle to have empathy towards other people's emotions, will most likely not have social skills and are described as having a low EI (O'Brien, 2010:1). O'Brien (2010:1) further argues that EI has a direct impact on the reputation of a company due to certain behaviour of leaders and CEO's in the industry lacking the skill to show empathy leading to the difficulty of trusting and/or supporting them. This statement is supported by the argument of Agarwal and Chaudhary (2013a:29) that employees with EI are more likely to aim at an end result which does not only promote them but also others.

Despite some previous research done by Agarwal and Chaudhary (2013a:28; 2013b:151); Deshpande and Joseph (2009:408) and Mesmer-Magnus, *et al.* (2008:226) on EI having an impact on ethical decision-making, a study done by Pathak, *et al.* (2013:113) indicated the contrary to their specific study. Bay and McKeage (as cited by Pathak, *et al.*, 2013:111) explicitly declared that "the link between emotional intelligence and ethics is not verified by the (so far) hypothesised link between these constructs and emotions".

In a study done by Krishnakumar and Rymph (2012:329,332) in investigating the role of negative emotions on the ethical decision-making process, it was found that this relationship is moderated by sadness. They also found that EI plays a vital role when making ethical decisions and that a manager who scores high in EI will make more ethical decisions.

Kelton (2015:493) opined that an attorney who has the intelligent skill to control his or her emotions will also be able to make the correct decision on whether to tap into or cut off from emotions instead of allowing his/her emotions to control him or her. EI in attorneys will lead to better decision-making in all areas including ethical behaviour (Leonard, 2009).

## **2.4 CONCLUSION**

Attorneys tend to rely on “rights orientation” rather than relying on “ethic of care” as a point of reference (Kelton, 2015:483), which explains why they score lower on EI than the public (Muir, 2016:4). Being considered as “smart” based on one’s IQ does not necessarily imply that one will score high on EI (Muir, 2016:3). With EI noted as an important predictor of a person’s ethicality and his or her view of ethicality of those around them, there is a possibility that attorneys with high EI may be more proficient at reading the ethicality of others’ actions, leading to more ethical behaviour (Mesmer-Magnus, *et al.*, 2008:225). Man’s decisions on how to act in problematic situations are mostly based on an inner emotion and not on authority, legal principles, reality or legislation (Cicero, as cited in Kelton, 2015:460). An emotional intelligent attorney will be likely to satisfy the needs of clients and the community over that of an attorney who scores low on EI (Kelton, 2015:460).

Emotions add to one’s cognitive course of action and a person cannot decide without emotions (Kelton, 2015:493). Most attorneys tend to be emotional unintelligent based on the fact that they are educated to think analytically by identifying, scrutinising and articulating legal problems and they do not impart emotions with their cognitive ability (Kelton, 2015:481;483). It is inevitable that emotions will always have an effect on one’s cognitive function and moral judgment (Kelton, 2015:483). Attorneys scoring high on EI will be more likely to recognise an ethical problem in the workplace and subsequently leading to the choice of acting ethically in the given situation (Gaudine & Thorne, 2011:175) and EI is a skill that all attorneys should incorporate into their thinking process (Kelton, 2015: 493).

The following chapter sets out the research methodology applied and the statistical analysis utilised.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 INTRODUCTION**

In this chapter the research methodology applied for investigating the relationship between emotional intelligence and ethical behaviour among a sample of attorneys, is described. The description includes the measuring instruments, the sample, the method employed to gather data and the statistical analysis utilised.

#### **3.2 RESEARCH APPROACH**

A quantitative research approach was followed when conducting the research. This approach can be conceptualised as describing the phenomena by a study of the human behaviour which is observable and of the general laws of relationships and/or causality applicable to people at any given time (Welman, *et al.* 2005:6-7).

#### **3.3 RESEARCH DESIGN**

The research design can be described as the map we follow to obtain research participants and to gather relevant information from these participants. It also explains what the intention with the participants is in order to reach a conclusion concerning the research problem (Welman, *et al.* 2005:52).

A cross-sectional survey was used to collect the data and to attain the research objectives. Cross-sectional survey designs are used to examine groups of subjects in various stages of development simultaneously (Burns & Grove, 1993) in a short period of time, which can vary from one day to a few weeks (Du Plooy, 2001). The survey is a data-collection technique in which questionnaires are used to gather data about an identified population. This design is also used to assess interrelationship among variables within a population (Shaughnessy & Zechmeister, 1997). The cross-sectional survey design is best suited to address the descriptive

and predictive functions associated with the correlation design, whereby relationships between variables are examined.

### **3.4 PARTICIPANTS**

A research population can be described as the group from which the researcher aims to make generalisations. The sample can be described as the group selected within the population, who will partake in the research study.

Consent to participate the study at the various law firms was requested and confirmed. The population size was 100 participants from both male and female attorneys in various specialities. The nature and requirement of the survey participation was on a voluntary basis and all information provided was kept private and confidential.

Simple random sampling method was applied to collect the data. The setting for data collection was in the various law firms in the Gauteng region. The Questionnaire was sent per electronic mail to 25 different law firms in which a total of 100 practising attorneys were asked to partake, however a response rate of 41% was received. Data was drawn from those attorneys who responded. Due to the circumstances and time limit under which this study was done, the sampling approach was the most feasible and appropriate option.

The sample size was particularly chosen to be able to generalise the results to the larger population as the variance of the variable plays a crucial part. The bigger the sample the more confidence the researcher can have in the collected figures (Welman, *et al.* 2005:70).

It was envisaged to obtain a participant size of approximately 100, however participation was voluntary and there was therefore no element of control over the number of responses.

### 3.5 MEASURING BATTERY

A survey questionnaire was formulated to measure ethical behaviour and a separate questionnaire to measure EI. Biographical information was also drawn from the questionnaires for future research purposes on correlations.

Petrides' (2009) **Trait Emotional Intelligence Questionnaire – Short Form (TEIQue-SF)** was used to measure the participants' emotional intelligence. It consisted out of 30-items which had to be answered by way of a 7 point Likert scale based on sensitivity, reliability and validity as properties. The Short Form is mainly used in research designs with limited experimental time and tends to have somewhat lower internal consistencies than in the full form of the questionnaire. This instrument proves to be sufficiently reliable and shows temporal steadiness at the global, factor and facet levels. TEIQue's clear factor structure includes four different dimensions, but which is interrelated: Emotionality, Self-control, Sociability and Wellbeing (Petrides, 2009). He also noted that a one-factor structure, i.e. Global Trait EI, is suitable. In a review study done by Banerji and Tate (2013), TEIQue proved to be reliable with a score of 0,92.

Ethical Behaviour was measured by the **Virtue Ethics Importance Scale (VEIS)** (Swaim, 2004). This scale was designed for the exploration of the ways in which people think about ethical constructs called virtue ethics. It focuses on *who the person shall be* rather than on *what the person shall do* (Swaim, 2004). It consisted out of 25-items which had to be answered by way of a 7 point Likert scale ranging from 0 = thinking your behaviour does not matter to 6 = thinking you should act in that manner all the time. The reliability of this scale was proved to be sufficient with Cronbach's Alpha 0,73 (Swaim, 2004:18).

A second scale called the **Consequential Scale** was also used. The Consequential Scale is often used as a reliable measuring instrument (Tanner, Medin, & Iliev, 2007). The Consequential Scale was designed to measure the degree to which the participants tend to deontological thoughts (for example: some rules should never be broken, despite of the consequences) and/or utilitarian thoughts (for example:

the only morally relevant dimension to judge an action is whether or not it resulted in a net positive outcome) (Robinson, 2012). It consisted out of 15-items which had to be answered by way of a 5 point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree.

**Five ethical scenarios** were also formulated based on ethical confrontations attorneys often find themselves in/or might find themselves in based on the ethical code of attorneys within South Africa. This 9-item scale had to be answered on a 5 point Likert scale ranging from 1 = Never acceptable to 5 = Always acceptable.

A questionnaire was also developed to gather biographical information concerning the demographical characteristics of the participants which included age, gender, ethnic group, work experience, educational level and employment level. The measuring instruments used were founded on systematic observation, implying that another observer will be able to make the same observation due to it being replicable (Welman, *et al.* 2005:135).

### **3.6 STATISTICAL ANALYSIS**

The statistical analysis was carried with the help of the SPSS-programme (SPSS Inc., 2009). Exploratory factor analysis was conducted by means of an oblique rotation using direct Oblimen (an Oblique method rotation) on the main constructs of the study. This technique presumes a nominal correlation between factors and is utilised to determine the possible dimensions of the constructs. The purpose of factor analysis is to reduce the initial number of variables into a smaller and therefore more manageable (easier to analyse and interpret) set of underlying dimensions (Yong & Pearce, 2013:79), called factors.

The adequateness of the sample was determined by means of the Kaiser-Meyer-Olkin (KMO) correlation matrix and the diagonal element of the Anti-Image Correlation. The Bartlett's test of sphericity was also calculated. This test allows for the examining of the relationship between variables and signifies if the data is suitable to continue with a factor analysis (Field, 2009:647). The KMO values are

interpreted as indicated in the table below (Hair, Anderson, Thatham, & Black, 1998:99).

**Table 3.1**

***Interpretation of KMO values***

<b>KMO Value</b>	<b>Interpretation</b>
≥ 0.80	Commendable
0.70	Average
0.60	Mediocre
0.50	Miserable
< 0.50	Undesirable

The Anti-image correlation matrix contains the negative partial co variances and correlations. Diagonals are used as a measure of sampling adequacy. The Anti-image correlation matrix has a cut-off above 0,50. If this required is not met, this means that distinct and reliable factors cannot be produced. Items causing diffused correlation patterns as indicated by the diagonal value in the Anti-Image Correlation matrix, is removed (Yong & Pearce, 2013:88).

Descriptive statistics (e.g. means, standard deviations, skewness and kurtosis) were used to analyse the data. Cronbach's alpha coefficients were used to determine the internal consistency, homogeneity and un-dimensionality of the measuring instruments (Clark & Watson, 1995). Coefficient alpha contains important information regarding the proportion of variance of the items of a scale in terms of the total variance explained by that particular scale.

Pearson product-moment correlation coefficients were used to specify the relationships between the variables. In terms of statistical significance, it is decided to set the value at a 95% confidence interval level ( $p \leq 0, 05$ ). Effect sizes (Steyn, 1999) were used to determine the practical significance of the findings. A cut-off point of 0, 30 (medium effect, Cohen, 1988) was set for the practical significance of correlation coefficients.

Owing to the size of the sample of participants, T-test were used to determine the differences of demographic groups. Effect size (Cohen, 1988; Steyn, 1999) was used in addition to statistical significance to determine the significance of relationships. Effect sizes served to indicate whether the results obtained were practically significant. Steyn (2000) indicated that the following cut off points for effect sizes as indicated by Cohen (1988) was set for the practical significance of differences between means:

- $|\Delta| = 0,2$ : small effect
- $|\Delta| = 0,5$ : medium effect
- $|\Delta| = 0,8$ : large effect

### **3.7 RESEARCH OBJECTIVES**

The research objectives were divided into general and specific objectives.

#### **3.7.1 General Objective**

The primary objective of this study was to explore the relationship between emotional intelligence and ethical behaviour of attorneys.

#### **3.7.2 Secondary Objectives**

- To conceptualise ethical behaviour from the literature.
- To describe ethical behaviour within the legal profession from literature.
- To define emotional intelligence from the literature.
- To determine the importance of EI within the legal profession.
- To determine the relationship between the EI of attorneys and their ethical behavioural conduct.
- To make recommendations for future research and practice.
- To determine the significance of differences between the levels of EI and ethical behaviour of demographic groups.

### **3.8 CHAPTER SUMMARY**

This chapter dealt with the methodology utilised, as it pertained to the research study. The selection of the participants was explained, and the instruments integrated in the questionnaire were outlined. The preferred statistical methods for the analysis of the data were furnished together with a discussion around each method chosen.

In Chapter 4, the empirical results of the study will be discussed.

## **CHAPTER FOUR**

### **EMPIRICAL STUDY**

#### **4.1 INTRODUCTION**

Chapter 3 provided an outline of the research methodology and the research techniques applied. Chapter 4 details the results of the empirical study.

#### **4.2 PARTICIPANTS**

The envisaged population size for the study was 100 participants from both males and females practicing as attorneys in various specialities. The setting for data collection was in the various law firms in the Gauteng region. The Questionnaire was sent per electronic mail to 25 different law firms in which a total of 100 practising attorneys were asked to partake in the survey of 86 questions. Only 41 attorneys partook in the survey, representing a 41% response rate. All 41 questionnaires were analysed. A copy of the questionnaire is attached hereto as Annexure A.

Table 4.1 presents the descriptive information of the sample.

**Table 4.1**  
***Characteristics of the participants***

<b>Item</b>	<b>Category</b>	<b>Frequency</b>	<b>Percentage</b>
Gender	Male	20	48,80
	Female	21	51,20
Age Group	21 – 30	22	53,70
	31 – 40	11	23,80
	41 – 50	3	7,30
	51 – 60	3	7,30
	61 years and older	2	4,90
Ethnic Group	White	27	65,90
	Black	9	22,00
	Coloured	2	4,90
	Indian	2	4,90
	Other	1	2,40
Work Experience	0 – 5 years	14	34,10
	5 – 10 years	13	31,70
	10 - 15 years	7	17,10
	15 - 20 years	1	2,40
	20 years and more	6	14,60
Employment level	Sole Proprietor	4	9,80
	Director	9	22,00
	Partner in a partnership	2	4,90
	Associate	15	36,60
	Practising attorney	5	12,20
	Other	5	12,20
Educational Level	Degree	22	53,70
	Honours Degree	14	34,10
	Masters Degree	3	7,30
	Doctorate	1	2,40

The study population consisted mainly of white (65,90%), females (51,20%), working as associate attorneys (36,60%), between the ages of 21 and 30 (53,7%). The majority of the participants had less than 10 years' work experience and 53,70% had a degree.

### **4.3 RESULTS**

A principal component factor analysis was performed on the TEIQue-SF on the sample of attorneys. Results indicated that an acceptable KMO correlation matrix of 0,54 ( $p < 0,05$ ) was obtained. An investigation in the Anti-image correlation matrix noted no problematic items.

Analysis of the Eigen values (larger than 1) and the Scree plot indicated that one factor could be extracted, explaining 31,75% of the total variance. This factor was labelled Trait EI. In research done by Petrides, Vernon, Schermer, Lighthart, Boonsma, and Veselka (2010:907) and Sevdalis, Petrides, and Harvey (2007:1351) a one-factor analysis were found with reliabilities ranging from 0,83 to 0,87.

A principal component factor analysis was performed on the VEIS on the sample of attorneys. Results indicated that an unacceptable KMO correlation matrix of 0,22 ( $p < 0,05$ ) was obtained which is described in Table 3.1 as undesirable. The VEIS was therefore excluded in further statistical analysis.

A principal component factor analysis was performed on the Consequential Scale on the sample of attorneys. Results indicated that an acceptable KMO correlation matrix of 0,66 ( $p < 0,05$ ) was obtained. An investigation in the Anti-image correlation matrix noted no problematic items.

Analysis of the Eigen values (larger than 1) and the Scree plot indicated that two factors could be extracted, explaining 51,85% of the total variance. Next a simple principle axis factor analysis was performed on the items of the Consequential Scale.

The results of the factor analysis on the Consequential Scale are set out in Table 4.2. Also indicated in Table 4.2, are the loading of variables on factors, as well as communalities and the percentage of variance. Variables are ordered and grouped by size of loading to facilitate interpretation, while the labels for each factor are suggested in a footnote.

**Table 4.2**

***Factor Loadings, Communalities ( $h^2$ ), Percentage Variance for Principal Factors Extraction and Direct Oblimin Rotation on Consequential Scale Items***

<b>Item</b>	<b>F<sub>1</sub></b>	<b>F<sub>2</sub></b>	<b><math>h^2</math></b>
Q8. Rules and laws are irrelevant; whether an action produces happiness is all that matters when deciding how to act.	0,84	0,00	0,71
Q9. Rules and laws should only be followed when they maximise happiness.	0,83	0,00	0,69
Q13. The only moral principle that needs to be followed is that one must maximise happiness.	0,73	0,00	0,58
Q10. If rules and laws do not maximise happiness for people they should be ignored.	0,72	0,00	0,52
Q12. Whether one has maximised happiness is the only standard by which one should measure the success of one's life.	0,65	0,00	0,48
Q7. When deciding what action to take, the only relevant factor to consider is the outcome of the action.	0,60	0,00	0,38
Q15. The result of one's actions is all that matters when deciding if they have acted morally.	0,56	0,00	0,52
Q4. Some aspects of humanity are sacred and should never be violated no matter the possible gain.	0,00	0,79	0,65
Q2. It is never morally justified to cause someone harm.	0,00	0,71	0,51
Q1. Some rules should never be broken.	0,00	0,65	0,43
Q5. Killing is never justified.	0,00	0,65	0,46
Q6. Some rules and laws are universal and binding no matter the circumstances.	0,00	0,64	0,46
Q11. No rule or law is sacred; they can be broken in order to serve some greater good.	0,00	0,64	0,47
Q3. If an action is a violation of society's most basic rules, it should not be committed; even if it will result in a large amount of good.	0,00	0,63	0,54
Q14. People that fail to maximise happiness are doing something morally wrong.	0,00	0,44	0,40

***Factor labels: F<sub>1</sub>: Utilitarian Beliefs F<sub>2</sub>: Deontological Beliefs***

Table 4.2 indicates that the principal analysis resulted in a two-factor structure. The factors were labelled as follows as per the items-loading on these factors:

- Factor 1 was related to Utilitarian Beliefs. The philosophical position of utilitarianism was popularised by Mill (1861) (cited in Robinson, 2012:1) as *“Actions are right only insofar as they tend to produce the greatest balance of pleasure over pain for the largest number of people”*. Utilitarianism belief that the end justifies the means.
- Factor 2 was related to Deontological Beliefs. The philosophical position of deontology was popularised by Kan (1785) (cited in Robinson, 2012:1) as *“Act only on the maxim through which you can at the same time will that it should become universal law”*. Within deontology the belief is that if action is not moral in character or nature then the outcome too cannot be moral or ethical.

The descriptive statistics and alpha coefficients of the Trait EI, Utilitarian Beliefs and Deontological Beliefs are indicated in Table 4.3.

**Table 4.3**  
***Descriptive Statistics and Alpha Coefficients***

Item	Mean	SD	Skewness	Kurtosis	$\alpha$
<b>TEIQue-SF</b>					
Trait EI	5,19	0,75	-2,59	11,72	0,79
<b>Consequential Scale</b>					
Deontological Beliefs	3,76	0,87	-0,79	-0,09	0,82
Utilitarian Beliefs	2,05	0,61	-0,39	-1,04	0,81

Table 4.3 indicates that acceptable Cronbach’s alpha coefficients of 0,79 for Trait EI, 0,81 for Deontological Beliefs and 0,82 for Utilitarian Beliefs were obtained. These alpha coefficients compare well with the guideline of 0,70 (0,55 in basic research). This demonstrates that the dimensions (internal consistency of the dimensions) explain a large part of the variance (Nunnally & Bernstein, 1994). It is evident from Table 4.3 that the scales of the measuring instruments have relatively normal distributions, with low skewness and kurtosis, except for Trait EI where the data was negatively skew and peak.

Within the research, various ethical dilemmas, which may be faced by a practicing attorney, were included. These dilemmas were compared to the trait EI and

displayed ethics of the sample. The participants were asked to indicate their perceptions regarding a specific dilemma in terms of whether such a situation will be acceptable versus unacceptable. The following dilemmas were included:

**Table 4.4**

***Ethical Dilemmas***

<b>Scenario</b>	<b>Dilemma</b>
<p><b>Scenario 1:</b> Brad is a male attorney specialising in civil litigation and family law. One of Brad's corporate clients is a bank on whose behalf he collects outstanding debts. One of the debtors against whom Brad issued summons against, approached Brad and requested him to assist her in a divorce matter.</p>	<p><b>Dilemma 1:</b> Brad accepted her instruction based on the fact that a divorce is a total different field in the law setting it apart from collections.</p>
<p><b>Scenario 2:</b> Minkie is a female attorney specialising in third party claims. She forwarded an affidavit to her client, Mr X for urgent signature as the due date for service and filing was the following day. Unfortunately, Mr. X only signed the affidavit and had it dropped off at Minkie's office because he was on his way to America for a business trip. The affidavit was not commissioned.</p>	<p><b>Dilemma 2:</b> Brad did not respond to her written request based on the fact that the bank enjoys preference as his current client.</p> <p><b>Dilemma 3:</b> Minkie's learned colleague next door commissioned the affidavit after Minkie explained the unfortunate circumstances of Mr X not being able to sign in front of a commissioner of oath.</p>
<p><b>Scenario 3:</b> Mr White is a practising attorney (PA) at a medium law firm specialising in general litigation. He must reach a certain target every month in order to receive his commission. He is the only breadwinner in his family and has three children to look after.</p>	<p><b>Dilemma 4:</b> Minkie believes it is okay to find a way around established procedure in order to be more efficient or effective at work being in the best interest of the client.</p> <p><b>Dilemma 5:</b> The law Society referred a Pro Bono file to Mr White, but this file is his last priority as he needs to reach his target.</p>
<p><b>Scenario 4:</b> Mrs Jones and Mr Crew are both practising attorneys in a small town with offices in the same building. Mr Crew specialises in criminal law whilst Mrs Jones is an expert with commercial evictions. They know each other very well.</p>	<p><b>Dilemma 6:</b> Mr. White referred an elderly man (who had a strong case) to a different attorney after calculating that the contingency he would collect from the potential recovery is not enough to take the case.</p> <p><b>Dilemma 7:</b> One of Mrs Jones commercial property clients requested her assistance in a criminal matter. She referred the matter to Mr Crew requesting a 30% referral fee.</p>
<p><b>Scenario 5:</b> Mr Green is a well-known conveyancer in his town for many years. During the last couple of years, the number of attorneys specialising in conveyance increased.</p>	<p><b>Dilemma 8:</b> Since the entire building's tenants advertise their services on the outside of the building, Mr Crew decided to put up a board as well reading: "<i>For Affordable Bail Applications contact .....</i>"</p> <p><b>Dilemma 9:</b> Mr Green now thought it good to also invite the spouses of the estate agents, who refer clients to him, for supper once a month as a sign of appreciation for the referrals.</p>

The product-moment correlation coefficients between the indicated Ethical Dilemmas, Trait EI, Deontological Beliefs and Utilitarian Beliefs are given in Table 4.5.

**Table 4.5**

***Product-Moment Correlation Coefficients between the Ethical Dilemmas, EI, Deontological and Utilitarian beliefs factors***

Item	1	2	3	4	5	6	7	8	9	10	11
1. Dilemma 1	.	.	.	.	.	.	.	.	.	.	.
2. Dilemma 2	-0,03	.	.	.	.	.	.	.	.	.	.
3. Dilemma 3	0,54 <sup>++</sup>	0,09	.	.	.	.	.	.	.	.	.
4. Dilemma 4	0,39 <sup>+</sup>	0,27	0,50 <sup>++</sup>	.	.	.	.	.	.	.	.
5. Dilemma 5	0,11	0,01	0,02	0,07	.	.	.	.	.	.	.
6. Dilemma 6	-0,03	0,18	0,18	-0,07	0,33 <sup>+</sup>	.	.	.	.	.	.
7. Dilemma 7	0,45 <sup>+</sup>	0,26	0,27	0,16	0,19	0,04	.	.	.	.	.
8. Dilemma 8	0,00	0,01	0,45 <sup>+</sup>	0,22	0,01	0,32 <sup>+</sup>	0,15	.	.	.	.
9. Dilemma 9	0,18	0,20	0,26	0,36 <sup>+</sup>	-0,07	-0,13	0,23	0,06	.	.	.
10. Trait EI	0,11	0,01	-0,03	0,10	0,23	0,15	0,08	-0,17	-0,01	.	.
11. Deontological Beliefs	-0,20	0,10	-0,23	-0,05	-0,11	-0,06	0,05	0,04	0,15	0,01	.
12. Utilitarian Beliefs	0,39 <sup>+</sup>	0,10	0,37 <sup>+</sup>	0,45 <sup>+</sup>	-0,21	-0,23	0,16	0,17	0,40 <sup>++</sup>	0,13	0,07

\*  $p \leq 0,05$  – statistically significant

+  $r > 0,30$  – practically significant (medium effect)

++  $r > 0,50$  – practically significant (large effect)

Table 4.5 shows that there was no correlation between Trait EI, Deontological Beliefs and Utilitarian Beliefs. This finding is in line with the findings by Pathak, *et al.* (2013:113), indicating that they could not find in their research that EI will have an impact on ethical decision-making.

Table 4.5 depicted however correlations between utilitarian beliefs and some of the noted ethical dilemmas. It was noted that statistical and practical significant (medium effect) correlations were found between utilitarian beliefs and the following ethical dilemmas:

- Dilemma 1 – Brad accepted her instruction based on the fact that a divorce is a total different field in the law setting it apart from collections.

- Dilemma 3 – Minkie’s learned colleague next door commissioned the affidavit after Minkie explained the unfortunate circumstances of Mr X not being able to sign in front of a commissioner of oath.
- Dilemma 4 – Minkie believes it is okay to find a way around established procedure in order to be more efficient or effective at work being in the best interest of the client.
- Dilemma 9 – Mr Green now thought it good to also invite the spouses of the estate agents, who refer client to him, for supper once a month as a sign of appreciation for the referrals.

This is indicative that the higher an attorney’s Utilitarian beliefs, i.e. believing that the end justifies the means, the more likely he or she may be to engage in behaviours that may not be perceived as ethical.

T-tests were conducted to determine the differences between the demographic groups on the Ethical Dilemmas, Trait EI, Deontological Beliefs and Utilitarian Beliefs. These results are reported in Table 4.6 to Table 4.10. In Table 4.6 the differences based on Gender Groups are reported.

**Table 4.6**  
***Differences between Gender Groups***

Item	Female (n=21)		Male (n=20)		p	d
	Mean	SD	Mean	SD		
Dilemma 1	1,76	1,22	2,40	1,39	0,07	0,46
Dilemma 2	2,10	1,34	2,25	1,33	0,84	0,12
Dilemma 3	1,48	0,81	1,75	1,29	0,05	0,21
Dilemma 4	1,90	0,89	2,30	1,34	0,01*	0,29
Dilemma 5	2,14	1,15	2,05	1,19	0,67	0,08
Dilemma 6	2,52	1,21	2,25	1,12	0,55	0,23
Dilemma 7	2,90	1,34	3,45	1,28	0,93	0,41
Dilemma 8	2,71	1,15	2,40	1,35	0,23	0,23
Dilemma 9	2,76	1,18	2,65	1,35	0,17	0,08
Trait EI	5,27	0,48	5,10	0,96	0,32	0,18
Deontological Beliefs	3,94	0,77	3,57	0,94	0,09	0,39
Utilitarian Beliefs	1,95	0,66	2,16	0,54	0,04*	0,33

\*  $p < 0,05$

As can be seen in Table 4.6, there are statistically ( $p < 0,05$ ) and practically significant ( $d > 0,20$ , small effect) differences between gender groups in terms of Ethical Dilemma 4 and Utilitarian Beliefs. It seems that male participants are more likely to display utilitarian beliefs than female participants. They were also more likely to believe that it is acceptable to find ways around established procedures to be more efficient or effective at work (Ethical Dilemma 4).

In Table 4.7 the differences based on ethnic groups are reported. Only the differences between Black and White participants are reported owing to the small sample in the other ethnic groups.

**Table 4.7**  
***Differences between Ethnic Groups***

Item	Black (n=9)		White (n=27)		<i>p</i>	<i>d</i>
	Mean	SD	Mean	SD		
Dilemma 1	1,58	1,09	2,33	1,39	0,03*	0,55
Dilemma 2	2,29	1,38	2,11	1,31	0,74	0,13
Dilemma 3	1,43	0,94	1,70	1,14	0,20	0,24
Dilemma 4	1,71	0,99	2,30	1,17	0,23	0,50
Dilemma 5	2,21	1,12	2,04	1,19	0,71	0,15
Dilemma 6	2,50	1,29	2,33	1,11	0,29	0,13
Dilemma 7	2,79	1,42	3,37	1,25	0,35	0,41
Dilemma 8	2,50	1,16	2,59	1,31	0,37	0,07
Dilemma 9	2,57	1,28	2,78	1,25	0,68	0,16
Trait EI	5,09	1,13	5,24	0,46	0,05	0,13
Deontological Beliefs	3,60	0,88	3,85	0,87	0,61	0,28
Utilitarian Beliefs	1,96	0,72	2,10	0,55	0,11	0,20

\*  $p < 0,05$

As can be seen in Table 4.7, there are statistically ( $p < 0,05$ ) and practically significant ( $d > 0,50$ , medium effect) differences between ethnic groups in terms of Ethical Dilemma 1. It seems that white participants were more likely to find it acceptable to accept instructions that may be perceived as a conflict in interest (Ethical Dilemma 1).

In Table 4.8 the differences based on age groups are reported. Owing to the small sample size, some age groups were clustered together.

**Table 4.8**

***Differences between Age Groups***

Item	30 years and younger (n=22)		Older than 30 years (n=19)		<i>p</i>	<i>d</i>
	Mean	SD	Mean	SD		
Dilemma 1	2,00	1,23	2,16	1,46	0,81	0,11
Dilemma 2	1,91	1,15	2,47	1,47	0,70	0,38
Dilemma 3	1,68	1,09	1,53	1,07	0,86	0,14
Dilemma 4	2,18	1,10	2,00	1,20	0,46	0,15
Dilemma 5	2,14	1,17	2,05	1,18	1,00	0,07
Dilemma 6	2,55	1,01	2,21	1,32	0,04*	0,25
Dilemma 7	3,00	1,41	3,37	1,21	0,37	0,26
Dilemma 8	2,77	1,2	2,32	1,20	0,92	0,36
Dilemma 9	2,50	1,01	2,95	1,47	0,01*	0,30
Trait EI	5,32	0,49	5,03	0,96	0,35	0,30
Deontological Beliefs	3,79	0,73	3,73	1,02	0,20	0,05
Utilitarian Beliefs	1,99	0,59	2,12	0,64	0,88	0,19

\*  $p < 0,05$

As can be seen in Table 4.8, there are statistically ( $p < 0,05$ ) and practically significant ( $d > 0,20$ , small effect) differences between age groups in terms of Ethical Dilemma 6 and Ethical Dilemma 9. It seems that younger participants (30 years and younger) may be more likely to refer matters if they believe that the contingency to be collected is not sufficient (Ethical Dilemma 6). Older participants (older than 30 years) are more likely to see no wrong in entertaining individuals referring clients to them as a way of appreciation and ensuring that the relationship is maintained (Ethical Dilemma 9).

In Table 4.9 the differences based on years' experience are reported. Owing to the small sample size, some groups were clustered together.

**Table 4.9*****Differences based on years of experience***

Item	Less than 5 years' experience(n=14)		More than 5 years' experience (n=27)		<i>p</i>	<i>d</i>
	Mean	<i>SD</i>	Mean	<i>SD</i>		
Dilemma 1	2,00	1,24	2,11	1,40	0,22	0,08
Dilemma 2	1,64	1,08	2,44	1,37	0,08	0,59
Dilemma 3	1,64	1,22	1,59	1,01	0,68	0,04
Dilemma 4	2,4	1,23	2,07	1,11	0,81	0,06
Dilemma 5	2,57	1,22	1,85	1,06	0,41	0,59
Dilemma 6	2,64	1,01	2,26	1,23	0,11	0,31
Dilemma 7	3,29	1,27	3,11	1,37	0,52	0,13
Dilemma 8	2,86	1,29	2,41	1,22	0,80	0,35
Dilemma 9	2,21	1,05	2,96	1,29	0,26	0,58
Trait EI	5,21	0,58	5,17	0,83	0,88	0,04
Deontological Beliefs	3,88	0,56	3,70	1,00	0,01*	0,18
Utilitarian Beliefs	2,03	0,62	2,07	0,62	0,99	0,06

\*  $p < 0,05$

As can be seen in Table 4.9, there are statistically significant difference ( $p < 0,05$ ) based on years of experience in terms of Deontological Beliefs. This difference was however not practical significant. No other statistical and practical significant differences were noted based on years of experience.

In Table 4.10 the differences based on educational levels are reported. Owing to the small sample size, some groups were clustered together.

**Table 4.10*****Differences based on educational level***

Item	Degree(n=22)		Post-degree (n=18)		<i>p</i>	<i>d</i>
	Mean	SD	Mean	SD		
Dilemma 1	1,82	1,14	2,28	1,49	0,04*	0,31
Dilemma 2	1,91	1,27	2,39	1,34	0,91	0,36
Dilemma 3	1,64	1,18	1,61	0,98	0,58	0,02
Dilemma 4	1,95	1,21	2,22	1,06	0,46	0,22
Dilemma 5	2,27	1,12	1,94	1,21	0,68	0,27
Dilemma 6	2,68	1,13	2,11	1,13	0,85	0,50
Dilemma 7	3,36	1,33	2,89	1,32	0,84	0,36
Dilemma 8	2,64	1,26	2,44	1,29	0,61	0,15
Dilemma 9	2,68	1,25	2,28	1,31	0,75	0,07
Trait EI	5,25	0,52	5,08	0,98	0,28	0,17
Deontological Beliefs	4,10	0,57	3,29	0,96	0,01*	0,85
Utilitarian Beliefs	1,98	0,58	2,12	0,65	0,56	0,22

\*  $p < 0,05$

As can be seen in Table 4.10, there are statistically ( $p < 0,05$ ) and practically significant ( $d > 0,20$ , small effect) differences based on educational levels and Ethical Dilemma 1. It seems that participants with a post-degree educational level were more likely to find it acceptable to accept instructions that may be perceived as a being a conflict in interest (Ethical Dilemma 1).

There are also statistically ( $p < 0,05$ ) and practically significant ( $d > 0,80$ , large effect) differences based on educational levels and Deontological Beliefs. Participants with only a degree are more likely to display Deontological Beliefs, doing things morally right, than participants with a post-degree qualification.

#### **4.4. CHAPTER SUMMARY**

This chapter reported on the results of the empirical research and discussed the quantitative results. Three questionnaires were administered, namely the Trait Emotional Intelligence Questionnaire – Short Form (TEIQue-SF) (Petrides, 2009), Virtue-Ethics Importance Scale (VAIS) (Swaim, 2004) and Consequential Scale

(Tanner, *et al.*, 2007). Ethical dilemmas were also included in the survey and participants had to indicate their acceptance or rejection of the noted dilemma.

Principal component factor analysis was performed on the three measurements. Acceptable KMO correlation matrix was found for the TEIQue-SF and the Consequential scale. The KMO correlation matrix of the VAIS was found to be undesirable. The VEIS was therefore excluded in further statistical analysis.

One factor was extracted from the TEIQue-SF, accounting 31,75% of the total variance. This factor was labelled Trait EI. Two factors were extracted from the Consequential Scale, explaining 51,85% of the total variance. These factors were labelled Deontological Beliefs and Utilitarian Beliefs.

Acceptable Cronbach alpha coefficients of 0,79 for Trait EI, 0,81 for Deontological Beliefs and 0,82 for Utilitarian Beliefs were obtained. These alpha coefficients compare well with the guideline of 0,70 (0,55 in basic research). This demonstrates that the dimensions (internal consistency of the dimensions) explain a large part of the variance (Nunnally & Bernstein, 1994). The scales of the measuring instruments had relatively normal distributions, with low skewness and kurtosis, except for Trait EI where the data was negatively skew and peak.

No correlation between Trait EI, Deontological Beliefs and Utilitarian Beliefs were found in a sample of attorneys. This finding is in line with the findings by Pathak, *et al.* (2013:113), who noted that EI do not have an impact on ethical decision-making. However, it was noted that statistical and practical significant (medium effect) correlations were found between utilitarian beliefs and some of the ethical dilemmas. This is indicative that the higher an attorney's Utilitarian beliefs, i.e. believing that the end justifies the means, the more likely he or she may be to engage in behaviours that may not be perceived as ethical practices.

T-tests were conducted to determine the differences between the demographic groups on the Ethical Dilemmas, Trait EI, Deontological Beliefs and Utilitarian Beliefs. Statistical and practical significant differences were found in terms of gender, ethnicity, age groups, and educational levels.

The results depicted that male participants are more likely to display utilitarian beliefs than female participants. They were also more likely to believe that it is acceptable to find ways around established procedures in order to be more efficient or effective at work (Ethical Dilemma 4). White participants were more likely to find it acceptable to accept instructions that may be perceived as a conflict in interest (Ethical Dilemma 1). Younger participants (30 years and younger) may be more likely to refer matters if they believe that the contingency to be collected is not sufficient (Ethical Dilemma 6). Older participants (older than 30 years) are more likely to see no wrong in entertaining individuals referring clients to them as a way of appreciation and ensuring that the relationship is maintained (Ethical Dilemma 9). Participants with a post-degree educational level were more likely to find it acceptable to accept instructions that may be perceived as a matter of conflict in interest (Ethical Dilemma 1). Participants with only a degree are more likely to display Deontological Beliefs, doing things morally right, than participants with a post-degree qualification.

In Chapter 5 the conclusions pertaining to the research questions, the limitations of the research and recommendations regarding future research, specifically with regards to the legal profession, are discussed.

## **CHAPTER 5**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 INTRODUCTION**

This concluding chapter provides the interpretations on the results presented in Chapter 4. From the interpreted results, conclusions are drawn against the primary and secondary objectives that were set for this research study. In addition to this, the various limitations identified during the progression of the study are revealed and discussed. Finally, recommendations are presented for both the legal profession and for future research opportunities as it stemmed from this research study.

#### **5.2 CONCLUSIONS**

The general objective of this research was to explore the relationship between emotional intelligence and ethical behaviour in a sample of attorneys. The following conclusions can be drawn, based on the research objectives posed in the research.

The first objective was to determine how ethical behaviour is conceptualised from the literature. The future of the constitutional democracy of South Africa is argued to be in the hands of attorneys, who are responsible to defend and implement the rights of South African people (Manyathi-Jele, 2014:9). The profession is however often accused of unethical behaviour which is evident from newspaper articles, case law and various complaints received by the Law Society of South Africa (LSSA) (Broughton & Jansen, 2015:1; Slabbert, 2011:219).

Krish Govender (cited by Manyathi-Jele, 2014:8), Chairperson of the LSSA ethics committee, indicated that the acknowledgment and understanding of what ethics is about and the functionality thereof has always been a foremost difficulty. He argues that ethics stretches further than honesty and being clean in your conduct by

describing it as “something that is above that, much higher than that. It is about fairness and transparency”.

Several definitions for ethics and business ethics were quoted and for purposes of this study, the definition of Crane and Matten (2010:8) was followed, defining ethics as being “... concerned with the study of morality and the application of reason to elucidate specific rules and principles that determine right and wrong for a given situation.”

The second and third secondary objectives were to describe ethical behaviour within the legal profession and the importance thereof. Attorneys stand in a profession and therefore the responsibility and duty to act ethical cannot be separated from the legal profession. If ethical behaviour is not upheld by attorneys, the nation can lose its life blood as remarked by the Constitutional Court’s Judge Mohamed (cited by Slabbert, 2011:224). The responsibilities of the law profession to the court and to clients are encapsulated in a Code of Ethics or Rules of Practise.

Ethical predicaments are however not resolved by rules (Levin & Mather, 2012:11). Instead, the rules merely confirm these predicaments in puzzling words and consequently attorneys do not turn to the rules when an ethical decision must be made. Formal rules and codes of ethical behaviour play a very small part when it comes to the actual decision on whether an attorney will act ethical or not (Van Zyl & Visser, 2016:2). Ethical decision making can be broadly defined as “the ways in which the rules and norms of lawyering, individual values, and considerations of justice, clients, and practice organizations, shape individual conduct” (Levin & Mather, 2012:6-7).

There are numerous philosophies on ethical decision making which researches endeavoured to encapsulate in multidimensional ethics scale (Hansen, 1992:523). Without even realising it, one develops and/or accepts some sort of rule to follow when confronted with ethical dilemmas which tends to be either one of the following two philosophies: (a) deontology or (b) utilitarianism (Hansen, 1992:523). Deontology is not focused on the consequences of the one’s choice of behaviour but, it rather focuses on the intention and nature behind the choice of action. It outlines a rule that anyone confronted with a certain dilemma should act in a certain

manner (Hansen, 1992:524). Utilitarianism on the other hand, is focused on the consequences of one's behaviour and outlines a rule that one's behaviour will be acceptable if the outcome is to the benefit of the majority; alternatively, to the detriment of the least possible people (Hansen, 1992:524).

Despite legal education on ethical behaviour, attorneys define to themselves what suitable ethical conduct is in their offices, in the negotiation and litigation process; in the contracting with clients and agencies; appearing in court together with the foundation that profession rules and disciplinary boards provide (Levin & Mather, 2012:4;15). It is suggested that the longer attorneys stay in practice, the more likely they are to perceive other attorneys' conduct as more ethical than unethical (Levin & Mather, 2012:17). Therefore, there seems to be a correlation between the time period spent in practice and the sensitivity towards ethical behaviour (Levin & Mather, 2012:17).

The fourth objective was to determine how emotional intelligence is conceptualised from the literature. Emotional sensitivity or being emotionally intelligent does not mean being nice or giving free control to feelings, it is not predetermined and it does not allow one's emotions to get the better of one's judgments (Pathak, *et al.*, 2013:109). EI focuses on a person's skill and not on the personality traits of a person (Kelton, 2015:469). Several definitions for EI were quoted and for purposes of this study, the definition of Goleman (1995:34) was followed, defining EI as the ability to motivate yourself in the face of obstructions, to control impulse and delay indulgence, to control your moods and keep distress from flooding the ability to think.

The fifth objective was to determine the importance of EI within the legal profession. It was found from the literature review that clients will benefit when his/her representative attorney has a high level of EI (Kelton, 2015:460). A person scoring low on EI might be able to resolve disputes based on factual findings but, will not be able to resolve the core conflicts based on emotions. It is therefore imperative that a person who is required to resolve conflict resolution should acquire high EI (Baer, 2016:3). According to Muir (2007:63) partners in law firms, who score high on EI, have the interpersonal ability to make unpopular but needed decisions.

Through this ability and behaviour, they are setting an example for inexperienced entrants in the legal sector on how to behave correctly (Muir, 2007:63).

When EI is however evident, difficult decisions can be eased (O'Brien, 2010:2). According to Krishnakumar and Rymph (2012:322), a Justice will be able to make improved decisions when he/she acquires the skill to deal effectively with his or her emotions. However, as noted earlier, emotions are often not considered as a fundamental part to ethical decision making, resulting in it being either ignored or forced (Gaudine & Thorne, 2001:175).

The sixth objective of this study was to determine the relationship between the EI of attorneys and their ethical behavioural conduct in a sample of attorneys. If attorneys fail to uphold the ethical morality, it may result in disrepute ending up in public disorder (Calvert, 2014:VII; MacFarlane, 2002). It is evident from literature that attorneys cannot merely depend on rules and codes of conduct to ensure that they will make the right decision when confronted with an ethical question (Van Zyl & Visser, 2016:13).

During the last number of years, literature on managerial behaviour and empirical studies placed high emphasis on EI as a construct to ensure both personal and professional success (Pathak, *et al.*, 2013:109). Two-thirds of professional top performers' main characteristics comprise of EI (Richards, 2016). The general public tend to feel prejudiced by the lack of EI in attorneys and their unethical behaviour (Baer, 2016:4; Broughton & Jansen, 2015:1; & Slabbert, 2011:219). Agarwal and Chaudhary (2013a:28) also found that EI plays an important role when it comes to ethical choices and opined that without EI, a manager is not likely to act ethical. In a study done by Krishnakumar and Rymph (2012:329,332) it was noted that EI plays a vital role when making ethical decisions and that a manager who scores high in EI will make more ethical decisions.

Within the current study, the relation between EI and ethics could not be confirmed. These results were consistent with the findings of Pathak, *et al.* (2013:113), who noted that they could not find that EI had an impact on ethical decision-making. From the results obtained, it is evident that attorneys rely on all different kinds of outlines peculiar to a specific scenario (Perry, *et al.*, 2009:462;470). Emotional

Intelligence alone, therefore may not play a role in making ethical decisions and/or conduct in ethical behaviour.

Assuming it is common cause that self-awareness, empathy, kindness and interpersonal skills are character traits sought-after in attorneys, EI can be a great benefit for both attorneys and their clients (Martin, 2014:423). It may lead to a competitive advantage over other attorneys lacking EI. Further research regarding the relationship between EI and ethical behaviour may therefore be of value.

It was however noted that statistical and practical significant (medium effect) correlations were found between utilitarian beliefs and some of the ethical dilemmas. This is indicative that the higher an attorney's Utilitarian beliefs, i.e. believing that the end justifies the means, the more likely he or she may be to engage in behaviours that may not be perceived as ethical. This finding is in line with the findings by Parker and Ruschena (2011:1), in that attorneys may be more inclined to act unethical when they are convinced that: (a) it is needed to meet targets; (b) fellow co-employees are acting unethical; and (c) there is no alternative to be successful within the firm.

Statistical and practical significant differences were however found in terms of gender, ethnicity, age groups, and educational levels on the Ethical Dilemmas, Trait EI, Deontological Beliefs and Utilitarian Beliefs. These findings confirm the research findings of Krishnakumar and Rymph (2012:323), that several contingencies such as culture, religion and gender could play a part when it comes to ethical decision-making.

Younger participants (30 years and younger) may be more likely to refer matters if they believe that the contingency to be collected is not sufficient in terms of Ethical Dilemma 6. Older participants (older than 30 years) are more likely to see no wrong in entertaining individuals referring clients to them as a way of appreciation and ensuring that the relationship is maintained in terms of Ethical Dilemma 9. The latter finding correlates with the finding in the literature review that the longer attorneys stay in practice, the more likely they are to perceive other attorneys' conduct as more ethical than unethical, implying that there is a correlation between

the time period spent in practice and the sensitivity towards ethical behaviour (Levin & Mather, 2012:17).

### **5.3 LIMITATIONS**

Several limitations were identified in this study. These limitations might have influenced the results of this study and the final generalisation of conclusions.

The ethical environment of the legal industry in which attorneys operate are unique and therefore the findings of the study may not be valid to organisations other than law firms. The study might perhaps have been bias on the fact that simple random sampling within selected law firms were utilised. People, in general, do not admit acting unethical or having a low level of EI which might have resulted in them answering the questionnaires in a manner which is generally desirable (Deshpande & Joseph, 2009:408).

The sample size is a further limitation due to time and financial resources and further studies with a bigger sample size must confirm these findings. Measuring ethical behaviour is complicated and very unlikely. The study was also limited to a sample in the Gauteng area only and further studies in other provinces must confirm these findings. The omission of important variables such as culture, religion, temperament etc. is a further limitation to the study.

Although the confidentiality of the survey was guaranteed, it is likely that the respondents were not convinced and consequently not disclosing complete honest answers in the questionnaire.

### **5.4 RECOMMENDATIONS**

This section provides recommendations for both the legal profession, in which the study was conducted, as well as for potential future research.

#### **5.4.1 Recommendations for the Legal Profession**

The findings of the study can serve as a motivation and a guideline for the legal profession with regards to ethical behaviour within the legal sphere. This study can also provide insight into the importance of EI for the profession. Ethical behaviour as a requirement in the workplace is inevitable and managers; legal practitioners; and law schools must strive to educate or equip themselves with knowledge gained from literature that will enable them to manage ethical behaviour more effectively.

The recommendations for the legal profession are to ensure that the law students and attorneys are educated on what ethics is about; the importance thereof and how to think more deontological instead of allowing utilitarian beliefs by attending workshops or courses on ethics. It is also recommended that EI be developed as a competitive advantage to any organisation.

#### **5.4.2 Recommendations for Future Research**

Despite the limitations identified in this research study, the findings do propose valued recommendations for future research. It is recommended to conduct a study on a greater sample size and to include co-variables such as culture and religion. The findings also propose the recommendation to conduct a study on various facets/ branches of EI on ethical behaviour for future research.

### **5.5 CHAPTER SUMMARY**

Chapter 5 provided conclusions concerning the objectives of the research study. Limitations were identified and discussed and recommendations were made for the legal profession as well as for possible future research.

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## ANNEXURE A

# PSYCHOLOGICAL ORIENTATION

**CONFIDENTIAL**

**NWU**  
**POTCHEFSTROOM**  
*Business School*



NORTH-WEST UNIVERSITY<sup>®</sup>  
YUNIBESITI YA BOKONE-BOPHIRIMA  
NOORDWES-UNIVERSITEIT  
**POTCHEFSTROOM CAMPUS**

Note: All responses are confidential and neither the individual nor the organisation would be identified in any report or release.

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## PSYCHOLOGICAL ORIENTATION

### **The relationship between emotional intelligence and ethical behaviour of attorneys**

**André Pretorius**

Dissertation in partial fulfilment of the requirements for the degree

### **MASTER OF BUSINESS ADMINISTRATION**

At the North-West University, Potchefstroom Campus

Dear Respondent

Ethical behaviour is a significant topic of interest in the literature of business ethics and many authors have proposed many hypothetical models in an attempt to clarify and forecast the process by which ethical decisions are made.

Previous research found that emotions are omnipresent in ethical decision-making and that the ability of a person to deal with emotions in a skilled manner (also referred to as emotional intelligence) will lead to that person making more ethical judgments. The theory of emotion effecting ethical decision-making has still to be established. The purpose of this research is to investigate this relationship between emotional intelligence and ethical behaviour among a sample of attorneys.

The survey will not take more than 15-20 minutes and your voluntary participation will be highly appreciated. All responses are confidential and neither the individual nor the firm/organisation would be identified in any report or release.

For any further queries on the feedback of the results, you can contact me at [andr.pretorius@gmail.com](mailto:andr.pretorius@gmail.com). Completion date: 5 September 2016.

André Pretorius

# GENERAL INSTRUCTIONS

Please answer the below statements by encircling the figure that best reveal your level of agreement or disagreement with the particular statement. Do not over think what the exact meaning of the statements is. Answer quickly and most accurately as possible. There is no right or wrong answer.

In the example below the respondent agreed to the statement listed:

<b>Completely Disagree</b>	1.....2.....3.....4.....5.....6.....7	<b>Completely Agree</b>
--------------------------------	---------------------------------------	-----------------------------

1. Expressing my emotions with words is not a problem for me.	1	2	3	4	<del>5</del>	6	7
---	---	---	---	---	--------------	---	---

## SECTION A

Please answer the below statements by encircling the figure that best reveal your level of agreement or disagreement with the particular statement. There are seven possible responses to each statement ranging from 'Completely Disagree' (number 1) to 'Completely Agree' (number 7).

	1.....2.....3.....4.....5.....6.....7	
<b>Completely Disagree</b>		<b>Completely Agree</b>

1. Expressing my emotions with words is not a problem for me.	1	2	3	4	5	6	7
2. I often find it difficult to see things from another person's viewpoint.	1	2	3	4	5	6	7
3. On the whole, I'm a highly motivated person.	1	2	3	4	5	6	7
4. I usually find it difficult to regulate my emotions.	1	2	3	4	5	6	7
5. I generally don't find life enjoyable.	1	2	3	4	5	6	7
6. I can deal effectively with people.	1	2	3	4	5	6	7
7. I tend to change my mind frequently.	1	2	3	4	5	6	7
8. Many times, I can't figure out what emotion I'm feeling.	1	2	3	4	5	6	7
9. I feel that I have a number of good qualities.	1	2	3	4	5	6	7
10. I often find it difficult to stand up for my rights.	1	2	3	4	5	6	7
11. I'm usually able to influence the way other people feel.	1	2	3	4	5	6	7
12. On the whole, I have a gloomy perspective on most things.	1	2	3	4	5	6	7
13. Those close to me often complain that I don't treat them right.	1	2	3	4	5	6	7
14. I often find it difficult to adjust my life according to circumstances.	1	2	3	4	5	6	7
15. On the whole, I'm able to deal with stress.	1	2	3	4	5	6	7
16. I often find it difficult to show my affection to those close to me.	1	2	3	4	5	6	7
17. I'm normally able to "get into someone's shoes" and experience their emotions.	1	2	3	4	5	6	7
18. I normally find it difficult to keep myself motivated.	1	2	3	4	5	6	7
19. I'm usually able to find ways to control my emotions when I want to.	1	2	3	4	5	6	7
20. On the whole, I'm pleased with my life.	1	2	3	4	5	6	7

21. I would describe myself as a good negotiator.	1	2	3	4	5	6	7
22. I tend to get involved in things I later wish I could get out of.	1	2	3	4	5	6	7
23. I often pause and think about my feelings.	1	2	3	4	5	6	7
24. I believe I'm full of personal strengths.	1	2	3	4	5	6	7
25. I tend to "back down" even if I know I'm right.	1	2	3	4	5	6	7
26. I don't seem to have any power at all over other people's feelings.	1	2	3	4	5	6	7
27. I generally believe that things will work out fine in my life.	1	2	3	4	5	6	7
28. I find it difficult to bond well even with those close to me.	1	2	3	4	5	6	7
29. Generally, I'm able to adapt to new environments.	1	2	3	4	5	6	7
30. Others admire me for being relaxed.	1	2	3	4	5	6	7

## SECTION B

Please answer the below statements by encircling the figure that best reveal your level of agreement or disagreement with the particular statement. There are five possible responses to each statement ranging from number 1 (“Never Acceptable”) to number 5 (“Always Acceptable”).

1.....	2.....	3.....	4.....	5
<b>Never Acceptable</b>		<b>Sometimes Acceptable</b>		<b>Always Acceptable</b>

**Scenario 1:** Brad is a male attorney specialising in civil litigation and family law. One of Brad’s corporate clients is a bank on whose behalf he collects outstanding debts. One of the debtors against whom Brad issued summons against, approached Brad and requested him to assist her in a divorce matter.

1. Brad accepted her instruction based on the fact that a divorce is a total different field in the law setting it apart from collections.	1	2	3	4	5
2. Brad did not respond to her written request based on the fact that the bank enjoys preference as his current client.	1	2	3	4	5

**Scenario 2:** Minkie is a female attorney specialising in third party claims. She forwarded an affidavit to her client, Mr X for urgent signature as the due date for service and filing was the following day. Unfortunately Mr. X only signed the affidavit and had it dropped off at Minkie’s office because he was on his way to America for a business trip. The affidavit was not commissioned.

3. Minkie’s learned colleague next door commissioned the affidavit after Minkie explained the unfortunate circumstances of Mr X not being able to sign in front of a commissioner of oath.	1	2	3	4	5
4. Minkie believes it is okay to find a way around established procedure in order to be more efficient or effective at work being in the best interest of the client.	1	2	3	4	5

**Scenario 3:** Mr White is a practising attorney (PA) at a medium law firm specialising in general litigation. He must reach a certain target every month in order to receive his commission. He is the only breadwinner in his family and has three children to look after.

5. The law Society referred a Pro Bono file to Mr White, but this file is his last priority as he needs to reach his target.	1	2	3	4	5
6. Mr. White referred an elderly man (who had a strong case) to a different attorney after calculating that the contingency he would collect from the potential recovery is not enough to take the case.	1	2	3	4	5

**Scenario 4:** Mrs Jones and Mr Crew are both practising attorneys in a small town with offices in the same building. Mr Crew specialises in criminal law whilst Mrs Jones is an expert with commercial evictions. They know each other very well.

7. One of Mrs Jones commercial property client's requested her assistance in a criminal matter. She referred the matter to Mr Crew requesting a 30% referral fee.	1	2	3	4	5
8. Since the entire building's tenants advertise their services on the outside of the building, Mr Crew decided to put up board as well reading: " <i>For Affordable Bail Applications contact .....</i> "	1	2	3	4	5

**Scenario 5:** Mr Green is a well-known conveyancer in his town for many years. During the last couple of years the amount of attorneys specialising in conveyance increased.

9. Mr Green now thought it good to also invite the spouses of the estate agents, who refer clients to him, for supper once a month as a sign of appreciation for the referrals.	1	2	3	4	5
---	---	---	---	---	---

## SECTION C

**Please answer the below statements by encircling the figure that best reveal how important you think it is for you to act in a given situation. Please consider your answer carefully as the options might differ slightly, and try to consider whether or not the behaviour described is genuinely important to you or not.**

Please use the following scale with seven possible responses to each statement:

0 =	I <b>don't think my behaviour</b> in this type of situation <b>matter to me at all</b>
1 =	I think it is <b>very important</b> for me <b>to never act in this way</b>
2 =	I think it is <b>important to refrain from acting</b> this way <b>most of the time</b>
3 =	I think it is <b>important</b> for me <b>to not act</b> in this way <b>some of the time</b>
4 =	I think it is <b>important</b> for me <b>to act</b> in this way <b>sometimes</b>
5 =	I think it is <b>important</b> for me <b>to act</b> this way <b>more often</b> than not
6 =	I think it is <b>very important</b> for me <b>to act</b> in this way <b>all the time</b>

1. Carefully consider the needs of others.	0	1	2	3	4	5	6
2. Strictly uphold all aspects of academic integrity.	0	1	2	3	4	5	6
3. Make decisions only after gathering information from different sources.	0	1	2	3	4	5	6
4. Observe basic courtesies (like saying please and thank you) where appropriate	0	1	2	3	4	5	6
5. Hold to the commitments that you make	0	1	2	3	4	5	6
6. Always tell the truth	0	1	2	3	4	5	6
7. Create a budget to manage your money	0	1	2	3	4	5	6
8. Refrain from talking during a seminar	0	1	2	3	4	5	6
9. Treat others as you would like to be treated	0	1	2	3	4	5	6
10. Returning (or making the best effort to do so) a found wallet	0	1	2	3	4	5	6
11. Working more for long terms satisfaction than for immediate gratification	0	1	2	3	4	5	6
12. Never litter	0	1	2	3	4	5	6
13. When things go wrong take it out on those around you	0	1	2	3	4	5	6
14. Hold to the commitments that you make	0	1	2	3	4	5	6
15. Making a decision without complete information	0	1	2	3	4	5	6

16. Try hard to be punctual	0	1	2	3	4	5	6
17. Only volunteer for someone who can also help you	0	1	2	3	4	5	6
18. Gain unfair advantage from someone else's mistake	0	1	2	3	4	5	6
19. Act quickly and decisively without too much concern for long term consequences.	0	1	2	3	4	5	6
20. Push your way through a crowd when you are in a hurry	0	1	2	3	4	5	6
21. Help others without expecting anything in return	0	1	2	3	4	5	6
22. Agree to do something you know you aren't going to do	0	1	2	3	4	5	6
23. If you have something to say, interrupting during a presentation	0	1	2	3	4	5	6
24. Manipulate people to get things done when you need to	0	1	2	3	4	5	6
25. Allow others to clean up after you	0	1	2	3	4	5	6

## SECTION D

Please answer the below statements by encircling the figure that best reveal your level of agreement or disagreement with the particular statement. There are five possible responses to each statement ranging from number 1 (“Strongly Disagree”) to number 5 (“Strongly Agree”).

1.....	2.....	3.....	4.....	5
<b>Strongly Disagree</b>		<b>Sometimes Agree</b>		<b>Strongly Agree</b>

1. Some rules should never be broken.	1	2	3	4	5
2. It is never morally justified to cause someone harm.	1	2	3	4	5
3. If an action is a violation of society’s most basic rules, it should not be committed; even if it will result in a large amount of good.	1	2	3	4	5
4. Some aspects of humanity are sacred and should never be violated no matter the possible gain.	1	2	3	4	5
5. Killing is never justified.	1	2	3	4	5
6. Some rules & laws are universal and binding no matter the circumstances.	1	2	3	4	5
7. When deciding what action to take, the only relevant factor to consider is the outcome of the action.	1	2	3	4	5
8. Rules and laws are irrelevant; whether an action produces happiness is all that matters when deciding how to act.	1	2	3	4	5
9. Rules and laws should only be followed when they maximize happiness.	1	2	3	4	5
10. If rules and laws do not maximize happiness for people they should be ignored.	1	2	3	4	5
11. No rule or law is sacred; they can be broken in order to serve some greater good.	1	2	3	4	5
12. Whether one has maximized happiness is the only standard by which one should measure the success of one's life.	1	2	3	4	5
13. The only moral principle that needs to be followed is that one must maximize happiness.	1	2	3	4	5
14. People that fail to maximize happiness are doing something morally wrong.	1	2	3	4	5
15. The result of one's actions is all that matters when deciding if they have acted morally.	1	2	3	4	5

## SECTION E

Please make a cross (“X”) in the appropriate open box which best meets your answer.

Section C consisted out of questions to determine each respondent’s gender (1 = female, 0 = male); age group (years); ethnic group ( 0 = white; 1 = black; 2 = Coloured; 3 = Indian; 4 = other); work experience (years); employment and educational level; and field of expertise.

**1. Your Gender:**

MALE	0	
FEMALE	1	

**2. Your Age Group:**

<20	0	
21-30	1	
31 - 40	2	
41 - 50	3	
51 - 60	4	
61 - older	5	

**3. Ethnic Group:**

White	0	
Black	1	
Coloured	2	
Indian	3	
Other	4	

**4. Your work experience.**

0 – 5 years	0	
5 – 10 years	1	
10 – 15 years	2	
15 – 20 years	3	
20 years and more	4	

**5. Employment level:**

Sole Proprietor	0	
Director	1	
Partner in a partnership	2	
Associate	3	
Practising attorney	4	
Other	5	

**6. Highest Educational Level**

Degree	0	
Honours Degree	1	
Masters Degree	2	
Doctorate	3	

**7. Field of Expertise:** \_\_\_\_\_