Proposing a Contemporary Legal Professional Moral Framework and an Analysis of such issues found in the Novel 'Exile'

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Introduction:

The objective of this essay is two-fold. Three questions are divided into two parts. Part I argues that the proper contemporary moral framework of legal practitioners should be a duality of the Standard Conception Model ran concurrently with that of the Virtue Ethics model. Part II describes and analyses a set of fictitious professional and personal moral conduct issues as presented in the novel '*Exile*'. Part I's focus is the philosophical perspective of legal-moral ethics while part II is an exercise in analysis and application of moral issues in the practice of law. Throughout this essay, I refer to the *2011 Barristers' Rules* (Qld) noting here that between solicitors and barristers in Queensland and the other states, the conduct rules bear a remarkable similarity. However, given the trial advocacy that dominates part II of this essay I refer only to the *2011 Barristers' Rules* (Qld).

Part I – Proposing a Contemporary Legal Professional Moral Framework

Question 1: Combining the Standard Conception model with the Virtue Ethics model of moral frameworks in contemporary legal practice

1.1 Viewing the problem properly

I submit that there is supreme importance in the purpose of the legal system as *within* the three branches of government in the common-law world. For brevity, I simplify the legal system to its functional purpose, to that of the judiciary. Solicitors and barristers are officers of the court and as such are part of that pillar in the separation of powers known as the judiciary.[2] The judiciary together with the executive and the legislative, combine to create the trinity of how the social contract delivers governance to the citizens. To view the moral obligations of a lawyer as if its operating context is in a vacuum of merely local clients, judges, and interlocutors, without considering the purpose of the judiciary, is to do a disservice to

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[2] E.W. Timberlake JR, 'The Lawyers as Officers of the Court', (1925) 11 *Virginia Law Review* 4, 263–270.

the discussion of legal-moral obligations. I propose the idea that the judiciary is not, nor should not, be an avenue for social, or moral change, as pursuit of those avenues is the purpose of the elected legislature and the responsible executive government. Once one views the moral framework of lawyers in the broader context of the judiciary as a part of the social contract, there becomes a space for the duality of the Standard Conception Model at law, and of virtue ethics in person.

1.2 The Standard Conception Model

Professor Tim Dare describes the Standard Conception Model (SCM) as consisting of three principles: partisanship, neutrality, and non-accountability.[3] Partisanship is the unwavering and absolute pursuit of the interests of the client by the lawyer with the only exception being to stay within the bounds of the law.[4] Neutrality is the principle that demands the personal moral beliefs of the lawyer must not be allowed to cloud or affect the representation of the client's interests.[5] Lastly, non-accountability places the lawyer's obligations and actions in the lawful representation of their client into a strictly amoral light meaning lawyers are not to be personally judged for the actions and obligations they lawfully pursue for their client's interests.[6]

The principle of partisanship is sometimes called the principle of zealousness, where a lawyer must act with all their ability to the benefit of the interests of their client, tirelessly and without exception barring illegality.[7] Some legislatures and legal associations have enshrined legal zealousness in their conduct practices.[8] Other jurisdictions have gone toward tempering unabashed zealousness, in Queensland for instance, the *2011 Barristers' Rules* explicitly require of barristers that their overriding duty is to the court first, relegating the duties of the client's interest below that.[9] I argue this tempering while appearing to be a subversion of the SCM is merely the codification of the long-held common law tradition of the court's need for complete candour in order to do justice. Secondly, the SCM holds that zealousness is to operate within the bounds of the law and so the legislating of power to legal associations to accomplish this tempering is not contradictory of the SCM.[10]

The principle of neutrality is arguably the most important of the three principles of professor Dare's model of the SCM. Neutrality demands that a lawyer cannot refuse to act for a client on the grounds of their own moral misgivings, beliefs, or interests.[11] The concern of which neutrality is designed to protect is the idea that a person may be denied effective legal protection by holding views objectionable to one, or more seriously, the grand majority of persons and lawyers. By obviating a lawyer's normal private right of

[3] Tim Dare, *The Counsel of Rogues? A Defence of the Standard Conception of the Lawyer's Role* (Ashgate Publishing, 2009) 5–12. ('*Counsel of Rogues*')
[4] Ibid 8.
[5] Ibid 9.
[6] Ibid 10–11.
[7] Ibid 4.
[8] American Bar Association, *Model Rules of Professional Conduct: Preamble & Scope*, (at 15 August 2018) Preface rr 2,8,9.
[9] Bar Association of Queensland, *Barristers' Conduct Rules*, (at 23 February 2018) rr 5(a), 25. ('*Barristers' Rules*')
[10] *Legal Profession Act 2007* (Qld) s 53.
[11] *Counsel of Rogues*, 8–9.

moral conscious decision making, the principle is designed to protect vulnerable and despised minority classes and persons. One need only look back a handful of decades toward aboriginals, women, slaves, or other marginalized peoples to find a time where a typical person would view such very human desires for enfranchisement, as morally reprehensible for that time and place. For instance, in the 19th century, positive conceptions of suffrage, equality, and reform for persons of aboriginal, female, and homosexual experiences were not widespread.[12] While the legal system is nominally accessible to a layperson the practical effect is that those unable to access the expertise of a lawyer are at a severe disadvantage.[13] As such, the principle of neutrality strips the lawyer from having a moral conscious when acting professionally so as not to foreclose persons with socially undesirable values their right to have the full and proper ability to represent themselves before the courts. The importance of the principle of neutrality is articulately put in an article by Richard Wasserstrom who warns that allowing lawyers to apply their personal moral convictions when deciding whether and how to represent a client risks turning the system from essentially democratic to one of a moral elitist oligarchy.[14] In our Queensland example, the *2011 Barristers' Rules* restate the principle of neutrality, for barristers are not to allow their own interests to impact their representation.[15] Barristers are also usually required to accept briefs from solicitors.[16]

Finally, the principle of non-accountability is a safeguard to protect those lawyers who represent a client and the doing of which may invite outside condemnation of their personal character.[17] The purpose of the principle of non-accountability is twofold. The first is that for a lawyer to properly pursue a client's interests without abandon, that lawyer should not be afraid that their own image or public worth will be degraded in their representation of the client's interests. The second goal is one more personal but like the first goal, that the lawyer, as a person, ought not to be defined or to define themselves based on the actions or obligations they undertake. Both goals of non-accountability are aimed at protecting the lawyer from personal public pressure so that the lawyer may execute a broad and competent but lawful representation of their client without fear for damage to their professional and personal worth. For conceptual difficulty the principle of non-accountability is not reflected in the *2011 Barristers' Rules* as it goes not to what is expected of the lawyer, but rather is a normative reflection of what lawyers should expect from those adjudging their professional role. However, it is important to note that the same rules still expect actions by a lawyer to be done to high levels of professionalism.[18]

1.3 The Virtue Ethics Model

Virtue Ethics has its origin from the Greek philosophers Plato and Aristotle.[19] Of the two philosophers, it is Aristotle, Plato's protégé, that set the foundation of Virtue Ethics by the writing of three works: the

[12] G.J. Barker-Benfield, *The Horrors of the Half-Known Life* (Routeledge Publishing, 2000) 3–35.
[13] The Senate Legal and Constitutional References Committee, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (2004) [10.12] ('*Senate Committee*'); Australia Productivity Commission, *Access to justice arrangements: Productivity Commission Inquiry Report* (2014) [10.66],[10.74].
[14] Richard Wasserstrom, 'Lawyers as Professionals: Some Moral Issues', (1975) 5 *Human Rights* 1–25, 6.
[15] *Barristers' Rule*, r 4(d).
[16] Ibid r 21.
[17] *Counsel of Rogues*, 10.
[18] *Barristers' Rule*, r 5(b).
[19] Stanford Encyclopedia of Philosophy, *Virtue Ethics* (8 December 2016) < https://plato.stanford.edu/entries/ethics-virtue/>.

Nicomachean Ethic, Eudemian Ethic, and the *Magna Moralia*.[20] Virtue ethics is concerned with the intention of an ethical actor to try to act right and from right actions will goodness arise by function.[21] The discussion of virtue ethics in its general context is beyond the scope of this essay, and it is the fifth book of the *Nicomachean Ethic* that Aristotle speaks of Virtue Ethics as justice.[22] Aristotle remarks:

> Now the worst man is he who exercises his wickedness both towards himself and towards his friends, and the best man is not he who exercises his virtue towards himself but he who exercises it towards another; for this is a difficult task.[23]

For Aristotle, of which this theory influenced Saint Aquinas and Natural Law theory,[24] there is an expectation that justice may only be done where it is done for others. The question raised is what then must be done where a lawyer finds herself in a position where an action for another—and not their client—will most likely generate the highest good? For example, what is a lawyer to do where the context implies it is more virtuous to disclose a piece of defence evidence to the crown in a criminal case, rather than to sit on it in the interests of the client? It is in this application of Virtue Ethics that I break with professor Dare who takes exception with the idea that Virtue Ethics meddles too directly with the principle of neutrality and thus invites private discrimination of clients by lawyers with their own personal virtues.[25] I sympathise with the perspective of professor Dare, not only in the article cited above but his concerns, adroitly made, in which professor Dare critiques the dangers of Virtue Ethics as illustrated in the novel *To Kill a Mockingbird*.[26] Professor Dare demonstrates that the virtue ethics clung to by protagonist lawyer Atticus Finch results in two very different practises of law wherein between the cases of Tom and Boo, Virtue Ethics empowers the sidestepping of the word of law for the former and condemns such sidestepping for the latter.[27] Professor Dare is correct that the subjectivity of a personal view of 'rightness' may draw jeopardise where it is used not only to disregard the law but to produce legal representation of differing competence among differing clients. While professor Dare's concern is noteworthy, it suffers the same myopia that opponents of Dare's own SCM manifest.[28] This myopia is again the failure to consider the purpose and place of the judicial branch within the separation of powers.

To illustrate this myopia, we must define Virtue Ethics away from local relationships and toward the purpose of the judiciary within the larger trinitarian system of governance. While such a shift may appear novel, I argue it is not different from the functional basis of Aristotle's ethical framework. Aristotle has at the foundation of Virtue Ethics the very idea that an entity's proper functioning is a good in and of itself.[29] For Aristotle, mankind is the thinking animal, and in the purpose of mankind, there is the function to pursue goodness.[30] However, so too does the judiciary act with a function itself, the function I argue is the

[20] James John Guy, *People, Politics, and Government* (Pearson, Toronto, 2009) 2,18,41,200.
[21] Aristotle, '*Nicomachean Ethics*' Bk 1, Ch 7.
[22] Aristotle, '*Nicomachean Ethics*' Bk 5, Ch 1–2.
[23] Ibid.
[24] Saint Thomas Aquinas, '*Summa Theologica: Prima Secundae*' 114 QQ, 619 Art.
[25] Tim Dare, 'Virtue Ethics and Legal Ethics', (1998) 28 *Wellington Law Review* 141, 141.
[26] *Counsel of Rogues*, 110–114.
[27] Ibid.
[28] *Counsel of Rogues*¸ 118–125.
[29] Aristotle, '*Nicomachean Ethics*' Bk 1, Ch 7.
[30] Ibid.

procedural safeguarding and access to air and answer grievances before consequences. The traditional myopic view instead has Virtue Ethics merely locally as between how a lawyer acts with her singular client, judges, interlocutors. Contrastingly, my comprehensive view requires acknowledging the purpose of the system. If accepted that the system is meant to provide a forum for everyone, then where the judiciary fails to function then so too does it fail in virtue. What I propose, therefore, is that the social contract has set above the individual lawyer an agreed judiciary with a function to offer an open forum and when local virtue ethics frustrate that—as professor Dare is rightly concerned—then such local virtue ethics by say, rejecting to represent an undesirable in the courts, contributes to frustrate the grander ethic of the judiciary as within the social contract. Succinctly, were a lawyer to use virtue ethics to skirt the law of the land, or to deny representation, that very act would be to subvert the functional virtue ethic of the system of the judiciary itself, instead it is virtuous to disregard the personal concerns of the lawyer so as not to frustrate the grander concerns of a fair, comprehensive judicial system.

1.4 Criticisms and Responses

The SCM has its critics. Foremost is the criticism that the SCM empowers lawyers to act immorally even if not acting illegally.[31] What that criticism invites, however, is not a critique of an ethical framework but rather an invitation of a moral or metaethical framework. Whether a lawyer acts immorally is a question of normativity and not a guiding framework. The criticism of the SCM from a position that it enables immoral actions starts with the preconceived notion of what actions are moral and immoral and is instead not a critique of the method, but of the result. Such a critique is a genuine critique, but it requires the invitation of moral foundations such as natural law, utilitarianism, or deontic ethics which necessitates a whole separate logical basis for ethical criticism than can be afforded here. Instead, I turn to a more practical criticism as offered by Justin Oakley in *Justice, Post-Retirement Shame, and the Failure of the Standard Conception of Lawyers' Role*.[32] Mr Oakley's criticism is clear and swift, the SCM's principle of zealousness creates lawyers who, despite the principle of non-accountability, become professionally or psychologically hurt.[33] Justin Oakley argues that the principle of neutrality creates a profession that requires a lawyer to represent, say a sex offender, giving them no personal moral right to decline.[34] Then, having taken on the client, the same lawyer has a duty to act zealously in pursuit of the client's interests, in this case avoiding conviction. The lynchpin for Mr Oakley is that these two principles can conspire together in a way that, although the principle of non-accountability is designed to pre-empt this, the lawyer will take public or personal damage for their zealous application of tactics in pursuit of the client's interests which eat at their internal self-worth.[35] While compelling, and a human psychological interest, this is not a critique of an ethical system. Mr Oakley's passionate grounds are merely emotive in nature, they speak of certain lawyers and certain circumstances that invite distaste or troubles on the professional. When taken out of its emotive context, the question left unanswered is: why be a lawyer if you don't want to deal with inevitable evils and quandaries that arbitrating the law brings? This argument, in the same state, could be applied to doctors or surgeons who might feel the same kind of regret or anguish when forced to make life or death decisions or perform dangerous operations. In fact Justin Oakley mentions a normative grading

[31] *Counsel of Rogues*, 15.
[32] Justin Oakley, 'Justice, Post-Retirement Shame, and the Failure of the Standard Conception of Lawyers' Role', (2011) 36 *Australian Journal of Legal Philosophy* 177.
[33] Ibid 180.
[34] Ibid.
[35] Ibid.

saying that horrible Nazi medical experiments were immoral, but even worse when done by doctors.[36] Law, just as in medicine, is a profession intimately concerned with the serious, the disgusting, and the dangerous. The normative rightness of individual actions is a matter of metaethics rather than an ethical framework and such criticisms miss the dartboard completely. The fact that some might not be up to the task, or may be immoral people in themselves, speaks to their level of competence or willingness and not toward whether the job as a profession is practised ethically.

When critiquing Virtue Ethics similar problems arise as they have in the paragraph above. I have previously intimated some criticisms of Virtue Ethics as Professor Dare has mentioned, being that individuals may view virtues differently. Why this criticism is similar in failure as that above is because professor Dare is raising an epistemological claim rather than an ethical one. That individuals may have different local ideas of virtue is one regarding their knowledge rather than the correctness of their ideas. This doesn't dampen the criticism of professor Dare per se, but I repeat my responses in that it loses its sharpness when viewed as the judiciary system, rather than the local minds of lawyers. The question of Virtue Ethics should not be merely local but viewed on its impact to the judiciary as a whole.

1.5 Duality: Operating under both the Standard Conception and Virtue Ethics Models

Lastly, it comes to how the two models, the Standard Conception and Virtue Ethics, can be operated in a duality. The SCM is vital to the judiciary pillar of the separation of powers. The social contract of the people in a common-law state is that the changing of the law, the outlawing or legalising of actions and beliefs, are to be the job of the elected legislature. The execution and application then become the job of the responsible executive. What then the judiciary, as the third branch functions as, is to be a neutral forum for all to safely air their grievances *before* being punished, muzzled, or rewarded by the precepts of the moralised bodies of the legislature and the executive. The SCM has been adopted to bring life to the function of the judiciary. Self-represented litigants are disadvantaged when representing themselves in the courts.[37] The SCM then functions, to prevent the moralising of the judiciary, and the enforcement of these rules allows one to attain strong and effective representation regardless of social worth. At the heart of the common-law system is an epistemic scepticism of the finiteness of mankind, it is a scepticism that says we cannot pass rules and judgment on our fellows without hearing them, for we are frail and wrong, and history shows that mankind is not all-knowing. I invite at this point to think back to the 19th century, and the strong but archaic beliefs of the people who lived at that time. The common-law system invokes the SCM so that people cannot invoke their beliefs to block the representation of undesirable peoples and ideas. At its heart, the SCM's neutrality is born out of a great recognition of the fallaciousness of all human beings, in the past, in the present and in the future.

Where Virtue Ethics comes alongside the SCM was intimated in my earlier illustration of the judiciary's function of having an overarching higher-level purpose. In the duality, I propose the SCM should be the model invoked at law, in the legislation and conduct rules of legal practitioners, to ensure the

[36] Ibid 181.
[37] *Above n 13*.

amoral function of the judiciary system. Virtue Ethics, on the other hand, then comes in to guide the individual lawyer as to how they should act to maintain this system. Instead of viewing the ethical bounds of their profession locally as between their client and others, the lawyer should seek to do right, whatever it is to do right according to them, based on how it will continue the robust function of the judicial system to give everyone their neutral and fair place. Where a defence counsel might receive a piece of evidence against their client the virtue ethic should be: 'How should I use this evidence in furtherance of a fair hearing system?' And not 'is it right or wrong to use this evidence in and of itself?'. In short, the duality is one where individual lawyers personally act toward the virtuous ethic of the system as a whole, while at the comprehensive level the maintenance of this sceptical amoral system at law is best enshrined with the SCM. Let the legislators legislate the SCM, and the lawyers uphold the virtues.

Part II – An Analysis of the Legal Ethical Issues from the Novel 'Exile'

Introduction to Part II

Robert North Patterson's novel '*Exile*' is the story of a criminal defence lawyer named David Wolfe whose life is derailed due to the suicide bombing and assassination of the visiting Israeli Prime Minister. Wolfe, a secular Jewish lawyer, is revealed to have had a short but passionate affair thirteen years prior with a fiery anti-Israeli Palestinian woman while attending Harvard. This woman, Hana Arif, is soon indicted in the plot and reaches out to Wolfe to be her counsel. The novel struggles with the professional and relationship issues between Wolfe and Hana, sees Wolfe's comfortable life fall apart, including his fiancé leaving him, and some action-packed adventures in Israel. Written by an attorney, there are some liberties with evidence, and plot devices, however, in the end, Hana's case is dismissed after her husband appears to have framed her having learned that their 13-year-old daughter was really Wolfe's.

Question 2: The moral framework of the character David Wolfe

David Wolfe's moral framework develops throughout the novel. Wolfe starts the novel in action and description as a pragmatic lawyer, one not afraid to be zealous but loose with his morals in order to accomplish his zealous representation.[38] However, Wolfe appears to nominally follow the SCM as evinced by thoughts of his that post-hoc justify his actions as protecting his client's interests, by 'just doing his job'.[39] Wolfe expresses deep concern and disquiet when first being approached by Hana for representation, including mentioning that 'every instinct he possessed, personal and professional, filed him with unease'.[40]

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[38] Richard North Patterson, '*Exile*' (Henry Hold and Company, New York, 2009) Pt I, 4. ('*Exile*') *- note, copy of novel used was an html ebook, page number references are made per the page references given by the particular copy and the numbers restart with each new Part in the novel and contain far more content than typical leaf pages.*
[39] Ibid Pt I, 5.
[40] Ibid Pt II, 1.

This represents an awareness of the SCM, and such conduct rules regarding interests,[41] while demonstrating Wolfe appreciates and practices such an approach. Wolfe appears torn regarding the SCM, wanting to abide by it and yet realising he is often breaching it through his representation of Hana and her husband. In one instance, Wolfe explicitly mentions his inability to be objective based on being a prior lover, seeing the Prime Minister die, and having a hateful prosecutor on his hands.[42] However, Wolfe's commitment to the SCM, even if emotionally driven, shines through tense moments between himself and Carole, his later ex-fiancé, as he tries to find a replacement lawyer remarking: 'I'm not defending her dammit. But if I wanted to, I wouldn't take a poll to find out if I should… or seek anyone else's approval.'.[43] With such a retort to Carole, Wolfe evinces the principle of neutrality and non-accountability wherein he knows he ought to find someone who does not have his emotional attachment, but also that he will not stand for moral condemnation based on social distaste. David has his doubts throughout, including a moment where he doubts the 'tribunes of law' take enough notice of amorality's effects.[44] While Wolfe may not be particularly good at adhering to the SCM, and the novel unrealistically puts Hana in a place where she can't get any good representation except him, he professes statements and acts mostly in an SCM framework.

Wolfe's alignment to the SCM, while not abandoned in the slightest, does evolve to at least take some recognition of other concerns. Midway through the novel, Wolfe gives a passionate response that it is his job '…to make sure Hana Arif isn't swallowed by anyone else's priorities – geopolitical or less grandly, mere political.'.[45] By the end of the novel, Wolfe's ethical perspective includes, despite the above quote, appreciation of the geo-political sphere operating behind the legal scene. In part III of the book, Wolfe is given a first-hand account of the troubles of the Israelis and Palestinians in a harrowing and somehow murderous trip throughout Israel and the West Bank. It is in the final part of the book where Wolfe's actions become sufficiently decoupled from his nominal SCM allegiance to warrant some doubt. Having found out that Hana's child is his and not her husband's, and definitively empowered with the ability to get a mistrial, Wolfe, valuing his own interests in a way that *may or may not* be inline with Hana's, does not go for the responsible mistrial route but instead plays geo-politics with Israel to make a deal.[46] This goes directly contrary to the usual rules of conduct and is contrary to the principal of neutrality.[47]

Wolfe's moral framework takes a rollercoaster ride throughout the novel. The first part of the book appears to show a lawyer with a political ambition who uses the SCM as a shield for pragmatic tactics and not some grander plan. As the novel evolves, however, and Wolfe is faced with the rancour of people who want to condemn Hana before any trial or even representation, Wolfe is forced to put his words into actions. By the end of the book, Wolfe's emotions may be said to be so strong as to make him fail his SCM ethic, but David Wolfe professes and part actualises the Standard Conceptual model more so than other ethical frameworks, albeit incompetently.

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[41] *Barristers' Rules*, r 4(d).
[42] *Exile*, Pt II, 6.
[43] Ibid Pt, 9.
[44] Ibid Pt II, 15.
[45] Ibid Pt II, 21.
[46] Ibid Pt IV 11–16.
[47] *Barristers' Rules*, r 4(d).

Question 3: Ethical issues surrounding the representation of character Hana Arif by character David Wolfe

3.1: Ethical professional and relationship issues

Starting merely with professional ethical issues, the sometimes discrete and often obvious issues that follow Wolfe through the novel are a few. Haphazard discussions and thoughts of Wolfe representing a client he finds as a 'patently guilty' bank robber show up mere pages into the book.[48] From the start, Wolfe is not the only one who clearly manifests legal professional conduct issues. Throughout the novel, one of the main antagonists, Marnie Sharpe, the local district attorney and prosecutor, repeatedly treats David with hostility and demeaning words, including directly calling Wolfe a 'fool'.[49] The fair treatment and collegiality between legal practitioners, clients, court staff and the public is readily found in conduct rules, but appears beyond the care of Marnie Sharpe.[50] Indeed Marnie Sharpe seems to envision the very issues of the vagueness and impotence of the 'seek justice' concept of prosecutorial offices as so deftly put by professor Alice Woolley in *Reconceiving the Standard Conception of The Prosecutor's Role'*.[51] Moving from reaction to actions, is Wolfe's ready admission in the first part of the book of having leaked the existence of an FBI investigation when he could not have known one was going on.[52] This leak is made all the worse when it is regarding a client he viewed as 'patently guilty'.[53] Such unethical behaviour seems the kind deserving severe disciplinary action. Wolfe's trip to Israel also highlights professional ethical issues especially considering the trip was given official court recognition.[54] While in Israel, Wolfe operates in ways that violate the privacy of foreign nationals, utilising retired spy agents including to gain medical records in ways that would be patently unprofessional and illegal in his home jurisdiction of California.[55] This is made worse given that such records were later admitted into evidence and proved to be invaluable.[56]

On the pure relationship side, the issues literally drive the plot. Wolfe, as discussed in the introduction, had an emotional sexual affair with his client 13 years prior who was engaged to her current husband.[57] This affair manifests incessantly throughout the novel, clouding Wolfe's judgment as he begins to fall in love with his client.[58] Outside of his professional relationship, the emotional conflict with his client begins to destroy Wolfe's personal life. Prior to taking on Hana Wolfe is engaged to an activist pro-Israeli daughter of a Holocaust survivor.[59] As the novel wears on the emotional and political strains of Wolfe's decision to represent Hana eventually causes Wolfe to lose his potential political career, and his fiancé and father-in-law.[60] Wolfe's relationship history with Hana alone is enough to infer that Wolfe could not

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[48] Ibid.
[49] Ibid Pt II, 1.
[50] *Barristers' Rule*, r 5(d).
[51] Alice Woolley 'Reconceiving the Standard Conception of The prosecutor's Role' (2017) 95 *Canadian Bar Revue* 795, 830.
[52] *Exile*, Pt I, 6.
[53] Ibid Pt I, 4.
[54] Ibid Pt II, 24.
[55] Ibid Pt III, 20.
[56] Ibid Pt IV, 16.
[57] Ibid Pt I, 7.
[58] Ibid Pt IV, 20.
[59] Ibid Pt I, 1.
[60] Ibid Pt II, 22.

operate in a way neutral to his own interests. But, it is not only the professional impact that should be considered because the psychological and emotional damage Wolfe suffers in his personal life is not only important to him but would likely bleed over and cloud the interests of other clients Wolfe represents. Curiously, with one minor exception,[61] Wolfe appears completely capable of offering his undivided attention to the Arif case. At the heart of the issues is, as Wolfe lets slip, the concern that his prior relationship clouds his ability to be objective, and does so to an unacceptable degree.[62]

3.2: Evaluating the conduct of David Wolfe

Wolfe's conduct is unbelievably unrealistic, if not plainly inappropriate. While according to the USA Bar Association there is full and frank disclosure and consent for Wolfe to represent Hana Arif[63] the very action seems repeatedly unwise and unethical. Wolfe recognises his own failure of objectivity and later becomes even more directly conflicted when his client's daughter turns out also to be his. Wolfe's prior alignment, regardless of the ABA rules, shows he views his duties through an SCM lens. However, Wolfe does this extremely poorly. Even if under the ABA rules Wolfe is not in breach, he still fails the principle of neutrality per professor Dare's conception of the SCM. Most damagingly, is Wolfe's actions in the final pages of part IV where, faced with the prospect of a mistrial which would remove him as too interested and empower Hana with stronger defensive evidence, Wolfe continues with a circuitous plan to get the charges dropped.[64] If David Wolfe were to take his responsibility seriously, he would have sought the mistrial, been removed from counsel, and handed the exonerating evidence to a new unconflicted and empowered defence counsel. David Wolfe's conduct falls thoroughly below the threshold expected of prudent and proper counsel, both under an SCM lens and at law.

3.3 Policy considerations on the representation of persons with a past romantic history

The policy considerations that surround representation of persons with past romantic histories are subsumed in a lawyer's duty not to allow their interests to conflict with the client's.[65] Interest appears to be a broadly implied term and prior romantic relationships would surely fall under the circumstances demanding the refusal of a brief by a barrister.[66] The novel *Exile* demonstrates the objective pitfalls of representing a prior romantic interest and that appears inline with the operation of the SCM principle of neutrality. Where the SCM is applied I cannot envision an instance where the only proper representation one can get is through a romantically entangled lawyer and so I am at odds to consider other policy considerations. Between the conduct rules, the SCM, and realistic application of legal representation, there shouldn't nor is any room for anything but the most trivial representation of prior romantically entangled clients. Even then, it would be highly inadvisable.

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[61] Ibid Pt II, 16.
[62] Ibid Pt II, 6.
[63] American Bar Association, *Model Rules of Professional Conduct: Preamble & Scope*, (at 15 August 2018) r 1.18.
[64] *Exile*, Pt IV 13–18.
[65] *Barristers' Rules*, r 4(d).
[66] Ibid, r 95(b).

Concluding Remarks:

In this essay, I have sought to put forward the idea that the ethical models of the Standard Conception and Virtue Ethics models should be adopted in contemporary legal practice. Highlighting how this can be achieved is by first acknowledging the unique and important place of the judiciary considering the other two branches of government. Where desired morals and rules need changing the SCM makes room for that by allowing the legislator to do so, however, the heart of the ethic is the providing of a forum free from moral foreclosure. Virtue Ethics can then be brought alongside the SCM not in contrast but in compliment. Lawyer's should view their obligations to the function of the system and in that light operate virtuously to empower such a function. In part II was discussed the fictional exploits of a confused SCM frame worked David Wolfe and essentially 240 pages of how letting your own interests affect your professional life leads to injustice, risk, and damage… even if you're lucky enough to make a deal with an Israeli agent on a boat by Alcatraz.

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