

Choosing the Right Lawyer

The three BIG mistakes people make when choosing a lawyer (that ends up costing them thousands)

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A bit about me and why I wrote this eBook.

I run a commercial legal practice representing predominantly business owners and directors of companies. I have worked in three of the biggest law firms in Sydney, two of the smallest (two sole practitioners who have employed me as their only solicitor) and two medium sized firms. In that time I have observed the inner workings of different practices, and I like to think that I use the best of what I have learned in my own practice.

I have also met and represented many clients. I keep hearing recurring stories from those clients who were not happy with their former lawyers before coming to me. My ears always pricked up on hearing this as I was keen not to repeat the mistakes of my colleagues.

I recently had lunch with a friend of mine who had been running a successful real estate agency. She wanted to see me urgently about a personal matter so I moved my appointments around to squeeze her in for lunch that day. Over lunch she informed me that she had split with her business partner of 5 years in the real estate agency. Not only that, but that this had happened some time ago and she had actually hired a lawyer who had brokered a settlement for her and made it all formal in a deed of settlement.

She showed me the deed, and wanted me to read it and tell her whether she had got a good deal or not. She wanted my opinion she said, because she was losing trust in her own lawyer, and thought that some of his advice did not make sense.

On reading the deed I was pleased to be able to tell her that she had reached a good agreement with her former business partner. She probably got the best deal she could squeeze out of the situation based on what she told me. I did remark to her that the deed was OK in principle, but it lacked 'teeth' – it did not have enough clauses in it to make sure it was enforceable. Its one thing to be able to draft a good deed that puts into writing the agreement you have reached. Most law school graduates can do that. Its another thing to put into place the necessary legal instruments to make sure you get paid.

Getting paid is what its all about in business. If you think I'm wrong, see how long you can run a business *without* getting paid.

So my advice to her was that her lawyer had done an admirable job in drafting the deed. When she told me what he had advised her to do next, I was amazed. After telling me what he had advised her to do she said she thought the advice did not make sense to her. After thinking it over carefully for a couple of minutes, I told her it did not make sense to me either.

The lawyer had told her to resign as employee and director of her own company before she had been paid for her share by her partner. It did not make sense to her that she should surrender this last remaining bit of leverage she had in her company before she had received her bank cheque for her share of the goodwill in the business. It did not make sense to me either. She explained that her lawyer had warned her she risked prosecution from creditors or the tax office if her remaining fellow director mismanaged the company. I told her that 'in theory' this was correct, but was highly unlikely to occur within the next six months to a year that it would take to get paid. Whilst this is the type of advice new lawyers are taught to give in law school (because its low-risk for the *lawyer*), it does not reflect how things work in the real world. I told her that her lawyers advice was the safest course in terms of not making her former business partner angry and likely to sue. It also meant she would be minimizing her chances of getting paid.

The relationship had broken down with her former business partner to the point that he had almost assaulted her on the last occasion they met and the police were called. He had announced to her there and then that he had no intention of honouring the deed he had signed a few months earlier, and vowed never to pay her a cent.

Having dealt with this type of situation many times before, I was able to give my friend detailed advice on what to do to maximize her chances of getting paid. Much of this was the exact opposite of what her previous lawyer had advised her to do. I advised her to stick with her current lawyer for a while as the best person to clean up her mess was the one who created it in the first place. At the time of writing she is still waiting to be paid, but her position is a lot stronger for having taken my advice.

Walking back to my office from lunch I was turning over in my mind what would have led this lawyer to give such bad advice. After all, he had done an admirable job in drafting the deed of settlement, so he appeared to competently trained. Then I recall my friend had mentioned this fellow normally only does wills and estates, some property and never litigation. It all made sense! This fellow's working life consisted of sifting through the affairs of the recently departed, winding up bank accounts, paying debts and selling real estate. The closest this fellow had come to an all out dispute was perhaps some differences of opinion with the clerk in the probate registry.

She had picked the wrong lawyer! What my friend needed was a commercial lawyer with litigation skills. Someone who knows the ways of the world in business, and can hold their own in the courtroom.

Choosing the wrong lawyer can cost you thousands.

It never ceases to amaze me what trouble people find themselves in when they have chosen the wrong lawyer. The amazing part to me is that it is so simple to choose the right one.

Wrong lawyers & Bad lawyers

A wrong lawyer is an otherwise good lawyer but wrong for what you need. A bit like a choosing shoes that don't fit properly or wearing sneakers when you really need hiking boots. You will probably get to where you are going in the end, but with plenty of pain along the way.

Bad lawyers

There are lots of BAD lawyers out there earning a good living at it. Most of the bad ones get by because the people that come to them have not applied the tips contained in this book, or fallen into one of the three common traps.

A word on 'bad' lawyers. I do not, nor will I, denigrate other members of my profession or the profession as a whole. Nor would anyone seriously disagree that there is a variance of talent out there in the legal profession. In other words some lawyers are better at what they do than others. This is true of every profession or occupation. It is not my role to identify who the bad lawyers are or to remove them from the profession. The purpose of this book is to help you avoid them and save money in the process. Bad lawyers have a right to be. Whether they have a right to earn a living practicing bad law is up to you.

Wrong lawyers

People also make the mistake of choosing the WRONG lawyer. Some lawyers are quite good at what they do, but make a bad fit for a particular client. Choosing the wrong lawyer for a particular job can be as costly as choosing a bad one. Choosing the right lawyer is simple when you know what to look for.

Do I really need a lawyer?

Yes, that's right! Ask yourself whether or not the result you want can be achieved by a non-lawyer or layperson. This is not the same as asking 'can I do the legal work myself'. "Doing it yourself" can be a productive and satisfying hobby if you want to build a pergola or pave around your swimming pool. Not if you require legal advice or representation.

A favourite saying of mine is that 'do it yourself legal work is about as smart as do it yourself dentistry...' The inference being that everybody is free to have a go at it, but getting it wrong can mean catastrophic consequences, and much pain!

What I mean can perhaps best be illustrated by the example of the woman who came into my office complaining that her next door neighbour had threatened her with legal action. To cut a long story short (and it was a *long* story) her neighbour was an 85year old man living alone, in poor health who spent a lot of time in the garden. Much of this time was spent observing the leaves that fell from my client's tree, which happened to overhang the fence onto his side of the property. The rest of the time was spent carefully scooping up these leaves, throwing them

over the fence to my clients' side and going into his kitchen, penning nasty, threatening letters to leave in her letterbox to find when she got home from work. I do not say that this client should not have come to me for advice. She was right in doing that. My point is that apart from advising her, there was nothing for me to do in this instance.

I suggested that she first try to speak to her neighbour and ask him to stop to stop throwing leaves over your fence and leaving nasty notes in your letterbox. She had not previously tried this.

The question to ask yourself is: What would my lawyer suggest I do first? If the answer is something like: ask your neighbour to stop throwing leaves over your fence and leaving nasty notes in your letterbox – then you have your answer.

If the answer does not come immediately then pick up the phone.

Ways that people choose lawyers

Price

Choosing a lawyer based on price, either a low price or high price is not a good idea. To understand why both these strategies will lead to choosing the wrong lawyer, you need to understand a bit about how lawyers charge. What other products or services would you buy based on price considerations alone? Even when purchasing toilet paper, some issues concerning quality are relevant.

Low priced lawyers

It is easy to understand people wanting to save money by choosing a lawyer based on the cheapest rates. I have noticed this especially in relation to conveyancing. There is a widely held sentiment in the community that conveyancing is '...paper shuffling...an unnecessary evil complication that adds cost to an otherwise simple transaction.' It is true that a conveyance is a relatively straightforward transaction (when compared to say, a sale of business). But it is not the *transaction* itself that you need a lawyer for. You need a lawyer to look after:

1. The the contractual aspects of the deal itself and;
2. The vendor or purchaser (the person(s) from whom you are buying (or to whom you are selling the property).
3. Checking the asset you are buying. Are you getting what you paid for?

Both these issues can be carefully examined and any problems resolved during the transaction of buying a property. After you become the owner it is too late. You have bought the property with "...all defects latent and patent." During the

process of buying a house, land or any other piece of real estate the valuable, indispensable service your lawyer provides is:

1. Making sure the property you buy is the property you agreed to buy in all respects and;
2. Making sure you do not pay the Vendor too much.

In recent years we have seen the emergence of the “Licenced Conveyancer”. These are non-lawyers who have been issued with a special licence to carry out conveyancing work (but no other legal work). They came into existence by legislation, following a lot of noisy lobbying by certain groups claiming to represent the interests of ‘consumers’. The argument was that lawyers were charging ‘too much’ for conveyancing work that was considered to be merely ‘paper shuffling’. At the time, lawyers and groups representing lawyers howled in protest at the prospect of a ‘lucrative and substantial’ area of legal work being lost from the profession.

Over the years we have found that after a brief period of popularity, people are turning away from licenced conveyancers and back to lawyers. Why? Because people realize that the cost of legal services is not the most important consideration when buying real estate.

Lawyers are taught competency in property law, contract law, business law and all other laws relating to real estate and commerce before they are allowed to practice. Contract law is relevant to real estate transactions because every single piece of real estate that is sold in Australia is done using a contract that stretches to some 30 – 50 pages long!

To purchase real estate in Sydney these days you need to spend upwards of say \$350,000.00 to pull a figure out of the air. Legal costs in the order of \$2,000.00 - represent a tiny fraction of this transaction.

Most of you have heard the expression “... if you pay peanuts, you get monkeys....”

That pretty much says it all.

High priced Lawyers

Some people will choose a lawyer precisely because they charge high fees, thinking that because the service costs more, it must be better. The opposite is more often true, due to the principle of ‘leveraging’ applied in many law firms.

I will explain further how leveraging works to ensure the client pays a higher fee for less experienced lawyers working on their files.

Billable hours and fixed fees

Most legal work is charged by the hour. This is because it is very difficult to predict with any accuracy how much work will be required until the work is actually done. There are some exceptions to this principle. Some types of work have a typical procedure, and each matter is quite similar. Conveyancing is a good example. Most residential purchases have a certain number of steps that must be completed. Because most matters are similar in nature, it is possible to predict with some degree of accuracy how much work is involved and how much it should cost. This explains why you see many firms offering 'flat fee' or 'fixed rate' conveyancing. You pay the same fixed rate depending on whether your matter takes more or less work than an average conveyance, because the fee is agreed in advance.

At this firm we give you an estimate and try to stick to that. We do this because quality of service is the paramount consideration. If the work becomes complex, we want to be able to give it the proper attention, rather than feel pressured to rush it through because we have agreed to a fixed price which turns out to be too low for the work involved.

Hourly rate

Most other work is charged by the hour apart from a few other exceptions. Accident compensation work is heavily regulated and fixed fees apply. The same situation exists in some types of Family Law and various Probate matters.

No win, no fee

Before we discuss billable hours in detail a word on 'no win no fee' matters. This type of charging usually only applies to accident compensation work. It works like this: The client signs a fee agreement that says should the lawyer lose the client's case, then no fee is payable whatsoever. On the other hand, should the lawyer win the case (a 'win' in this case has nothing to do with how much compensation the client receives. You 'win' if you get 'some' compensation.) then you pay a *higher fee* called a 'premium'. In this situation a lawyer will only agree to represent you if they are pretty sure you will have a guaranteed win from the first time they meet you. If a lawyer declines to represent you on a no win no fee basis that is a pretty good indication that your case is a loser. Accident compensation is really the only basis on which a sane lawyer would agree to do 'no win, no fee', because he or she knows they will be paid by an insurer before the money goes to the client. In almost all other matters the money must come from the client.

Billable hours

Every lawyer you may hire is required to give you two things prior to doing legal work for you;

A costs disclosure – detailing how the firm charges for everything from the solicitor's time to photocopying and disbursement and;
A fee agreement (also called a costs agreement, or retainer) – detailing how those billing principles will apply to the work you have requested – will your work be handled by a senior lawyer and therefore charged at a higher hourly rate, or predominantly looked after by a more junior lawyer, with a commensurate discount in the hourly fee? The fee agreement sets out these variables.
Bearing this in mind, it is common for a range of hourly rates to be quoted in the fee agreement.

Big firms and 'leveraging'

I always laugh when I have a litigation matter and my client's opponent has hired a 'big name' law firm. Usually for the following reasons:

1. I know my client's opponent is paying more. This means that unless they have really deep pockets, there will be increased pressure of mounting legal costs being felt by that client much sooner than mine.
2. My client will be represented by a junior solicitor. Partners in big law firms, these are the solicitors with the experience and expertise as well as the equity in the firm, have teams of lawyers under their supervision. With the same amount of time as everyone else, a substantial part of their working time is made up of supervising the junior solicitors under their command. This leaves them with a lot less time to spend on doing legal work, including yours.

The result for the firm is that each partner's time is 'leveraged'. That is, by having say 4 solicitors working under them, they make four times as much as one solicitor working a full day. You would think there has to be a trade-off. There is. Quality suffers.

Many clients of our firm are former clients of big firms. The common experience shared by these clients of the big firms was to have a meeting with a knowledgeable partner in big impressive offices. After the client has signed a retainer, that is the last he sees of the partner concerned. His matter is then usually assigned to a junior lawyer who may well be very talented, but lacking in the experience and know-how of his or her boss. What would you do if you visited a dentist and after the initial consultation and diagnosis, were told that the work would be carried out by the dentist's assistant! I would run a mile.

Whilst the legal work is meant to be 'supervised' in practice this roughly translates in practice as 'making sure disasters do not happen too frequently'. Consider a partner with two junior solicitors under his or her command. Each junior has about 40-50 current matters they are currently working on. That means the supervising solicitor must overlook the work being done on 80-100 legal files. No matter how good a time manager a person is, I do not think that anyone in that position is able to give each and every one of those files proper consideration. The danger is that it is your file that could miss out. This risk increases if you are not an institutional or 'big' client. Big law firms naturally take

better care of those clients who give them lots of repeat work and incur big fees. Unless you are one of these, expect to be at the back of the queue.

The author has worked in several large, medium and small Sydney practices prior to founding his own, and has found the above to be true in all large and even some medium sized practices. I am not naming names!

A final word on large firms. Do not interpret the advice above to mean that large firms amount to bad customer service. Many of the large firms I have worked in have provided exceedingly good customer service *to their large clients*. Anyone else gets whatever's left.

Advertisements

Not all lawyers have satisfied clients. Not all lawyers have their former clients saying nice things about them and referring new clients. Those lawyers still need to pay the rent on their offices, pay their staff wages and earn money to live on. To do this they need to keep finding new clients. One way to do this without having people refer clients to you is to advertise.

That's not to say that a lawyer who advertises is a bad lawyer and cannot get clients any other way. That is not the case at all. Advertising has a place in letting people know where you are and how to contact you. Even the author has shelled out money to be listed in various popular telephone directories. My listing is for clients who know our name but have lost our contact details over the years, or people who have been referred to us and want to get into contact. You don't need a big ad to do that. People are already looking for us by name, and can find it alphabetically. The details just need to be in there somewhere.

Also due to the nature of particular types of legal work, there are some areas that simply do not generate lots of repeat business. Personal injury compensation, criminal law, deceased estates and family law are all areas in which clients have a particular 'one off' problem that once it gets sorted out, the client is never seen again. People have industrial accidents, criminal charges, a death in the family or a divorce only once every so often (there are obviously exceptions to this rule, but you get the idea).

Just be careful in picking a lawyer based on a big and impressive advertisement. There is a possibility the advertisement is making up for deficiencies elsewhere.

Qualifications

I've met some lawyers with more degrees than a thermometer. Does it make them well educated? You bet. Does it make them better lawyers? No. A highly educated lawyer is of little use to a client if he or she cannot get the best possible result for that client. Academic qualifications do not guarantee a better result for a client.

This does not mean that all overqualified lawyers are boffins in ivory towers out of touch with the real world (although there are plenty who are). There are a great many highly qualified lawyers out there that have managed to apply the skills they have learned in college to situations in the real world to get great results for their clients. There are also plenty who don't. It is a mistake to choose a lawyer because they have spent lots of time at university. They may well have learnt more by practicing law in the real world rather than lecture theatres and the dusty halls of academia.

A person needs only ONE qualification to practice as a lawyer. That qualification is called a 'practising certificate'. Practising certificates are issued each year by the Law Society of NSW. The Society also prosecutes people pretending to be solicitors without a practicing certificate. How do you tell if your solicitor has a practicing certificate? Check with the Law Society. The website of the Law Society of NSW has a search function that allows you to find all solicitors in NSW by name.

How bad can it be? What happens if I pick the wrong lawyer?

You can lose your real estate, lose your court proceedings, lose your business and still have a big legal bill to pay. (Remember my comment earlier about there being plenty of bad lawyers making a good living at it). Is that disastrous enough for you?

OK – tell me how do I choose a lawyer?

Its one thing to know how not to choose a lawyer. How then do you choose one? If there are wrong ways there must also be right ways.

Can anyone I know recommend a lawyer?

The best indication that a lawyer does a good job for clients is a satisfied client. If you know someone who can recommend a lawyer based on the fact that they themselves have received great service from that particular lawyer then that is one of the best indications you can get that you too will get good service. Not everyone knows someone like this so the next step is to cast a wider net. Ask another professional you already know.

A word on referrals. Referrals are not the same as a layperson advising you on how to choose a lawyer! I recently had a client withdraw their instructions after taking advice from their dentist who told them they would be better off with a suburban lawyer (he did not recommend any particular lawyer mind, presumably because he did not know any) and save on fees to boot! Whilst people giving free advice is nothing new, it surprised me this client actually acted on the advice! The client ended up with a lawyer without the necessary expertise, the job took

twice as long (the client ended up paying more in fees because he was paying by the hour) and the result was pretty ordinary. The client actually called me up to check whether he had got a good result. Unfortunately the answer was 'no'.

Can any professional I am currently using recommend a lawyer?

It makes sense that if your accountant, financial planner, real estate agent know a few good lawyers. Ask them to recommend a specific lawyer, and you are well on the way to finding a good one. Certain professions interact regularly with lawyers, some on a daily basis. Accountants, financial planners and real estate agents are some of these.

Most people have an accountant who does their tax, or a finance broker who helped them get their last mortgage. These professions regularly interact with lawyers, and usually not just one either! An accountant will often have cause to speak to their client's lawyer in the process of preparing their annual tax return. Similarly a finance broker will deal with a client's commercial lawyer when organizing a mortgage loan. It works the other way too - when doing a will for someone I would often place a call to that person's accountant to get a detailed rundown on their asset or tax picture.

Maybe the guy who wrote the book on choosing a lawyer can tell me?

Obvious as it may sound, yes. I make no secret of the fact that part of my purpose in writing this eBook is to bring in new clients. But not just any clients. It does not serve this firm nor the client to begin acting for someone for whom we cannot achieve a good result. And we will tell you up front. We will be able to tell you within a short conversation whether or not we are the right lawyers for you. If we are not, we will tell you upfront before charging you a cent, and if possible, refer you to someone who we think *is* right for you. What do you have to lose?

The Three Big Mistakes People Make

You have probably worked out by now the three big mistakes people make when choosing a lawyer.

They are: Choosing a lawyer based solely on:

1. price
2. qualifications
3. advertising

Get a proper referral instead. Or pick up the phone and call us.

I trust you have enjoyed reading this eBook, and gained some benefit from it.

Visit our website to find other free publications at www.kalde.com.au

Also, you may wish to sign up for our free newsletter and stay well informed.

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