

LEGAL ETHICS IN THE PRACTICE OF LAW  
Spring 2016 Professional Responsibility  
Monday and Wednesday 11:20 a.m. -12:35 p.m.  
Wednesday 5:25 pm

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*I am regularly on campus Monday through Thursday and, unless I have a writing deadline or am otherwise working off campus, am on campus on Fridays as well. I am easiest to find in my office in the afternoons and early evenings. You are always welcome to come look for me, but you may find it is easiest to make an appointment – by email is most efficient.*

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## Syllabus

The legal profession in the United States is, by tradition and practice, self-regulating. Although you are students now, for the rest of your professional lives you will be the lawyers who interpret and enforce existing rules and draft and adopt new ones. Our primary focus this semester is the ethical norms prior generations of American lawyers developed over time, now codified in each state as the rules of professional conduct. During the semester you will become familiar with - through reading, discussion, and application, using problems drawn from practice - the ABA's Model Rules and the rules specific to a jurisdiction you select. Using those rules as a starting point, you will begin to develop the skills and competencies needed for ethical lawyering, as well as evaluate whether the rules we have inherited are adequate and appropriate for today's practice. When you believe they are not, we will address what you, the next generation, might prefer in their place.

Students who successfully complete this class will be able to:

- Recognize ethical dilemmas when they occur in a practice setting
- Identify Model Rules (MR) that should be considered in resolving each ethical dilemma
- Identify the rules used in a jurisdiction of your choosing that must be considered in resolving each ethical dilemma
- Consider other law that must be taken into account in resolving each dilemma
- Find and apply case law applicable to the problematic behavior under review
- Find and apply ethics opinions (formal and informal) applicable to the problematic behavior under review
- Resolve the dilemma to this standard – you will be able to:
  - Advise a lawyer regarding the possible consequences of an action they are considering
  - Outline the defense a lawyer who has been brought before a professional conduct board might make regarding an action taken
- Understand how your own sense of self/professional formation might affect how you would resolve the dilemma, should you face it personally

You need two books for this class. Our text is Legal Ethics in the Practice of Law, Zitrin Langford, and Cole, 4<sup>th</sup> edition. You may purchase this in hardcover or in the less expensive loose-leaf or electronic formats. You must, in addition, **have available to you in class** both a copy of the Model Rules of Professional Conduct AND the rules that apply in at least one real jurisdiction. For the real jurisdiction,

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please select a jurisdiction that will be most helpful to you. This might be a place you have already worked or perhaps the state where you hope to practice after graduation.

With regard to the Model Rules, there are many books that contain the Model Rules with comments.

- Students often find Legal Ethics: Rules, Statutes and Comparisons, Zitrin and Mohr 2014, very valuable, especially if they think they will ever practice in California.
- Though it is expensive, I myself use the ABA's Annotated Model Rules of Professional Conduct, Eighth Edition). The Annotated Rules may be purchased from the ABA's Center for Professional Responsibility (and I would be happy to use my discounted membership price if you wanted to order it through me – the discounted price is still steep at \$141.95). The Eighth Edition incorporates all of the amendments the ABA has made to the Model Rules of Professional Conduct through February 2015 – including the 2012 and 2013 amendments, which adopted the recommendations of the ABA Commission on Ethics 20/20 relating to advances in technology, global legal practice, outsourcing, and confidentiality in the context of conflicts checks when lawyers change firms. The VLS library has a few copies of the Annotated Rules (and the relatively recent 7<sup>th</sup> and even the 6<sup>th</sup> edition of the ABA Annotated Rules can be very helpful). At least one earlier version of the ABA's annotated rules is available on line.
- Actual rules you download from your selected state's website are a fine resource for your selected jurisdiction and they are free.

**Sharing a rules book is very acceptable to me so long as you can look up rules while in class and out (if you are sharing a rules book it may be easier if you are assigned to the same small discussion group. Let me know.)**

You will be confronted with countless ethical dilemmas during your lives in practice. When you resolve a dilemma correctly in a non-controversial context, or resolve it incorrectly but no one complains, you will not be called upon to understand what the rules mean and how to apply them. When, however, your action(s) must be explained and defended, then your understanding of why you did what you did will be essential. Throughout the semester I will ask you to explain your reasoning and defend your choices. By the end of this class I expect you will be sufficiently familiar with the language of the Model Rules, your state's rules and with ethical problem analysis that you will be able to identify and resolve ethical dilemmas as you encounter them. I also hope you will become enthusiastic about the self-regulating aspects of the practice of law.

In order to prepare yourselves to be able to successfully identify and solve ethical problems in practice, we spend our class time resolving ethical problems presented through our readings. Classes consist of discussion, often based on small group work, with help and guidance from me and from invited guests. All the problems in the book are based on real experiences from practice, some of our experience and some of friends and colleagues. In our class work I encourage you to include your own observations and conclusions, whether drawn from videotapes, movies, fiction, invited speakers, or your own life experience, particularly if you have had legal experience or are now enrolled in a clinic or other practicum.

In addition to the assigned readings, I recommend (these are not required) a number of movies that raise ethical dilemmas. As you watch movies for pleasure this semester, consider the following: *Anatomy of a Murder*, *Presumed Innocent*, *Reversal of Fortune*, *Philadelphia*, *The Verdict*, *True Believer*, *Primal Fear*, *Class Action*, *A Civil Action* and *The Music Box*. If you have enjoyed any lawyer/ethics

movies not on this list, please recommend them to me. Please note also the excellent supplemental readings listed at the end of each problem in our course book.

One part of class participation is the opportunity for each student to serve as “TA for the Day” two times during the semester. You will, as part of a small group, take the lead in helping to guide the class discussion of an assigned problem. A memo about the TA for the day aspect of class is posted on the TWEN site. We review that memo and the TA for a day process in our first class.

**The MPRE** - Before you are admitted to practice you must pass at least one state based bar examination, a two or three daylong series of questions ordinarily taken in July after graduation. The only part of the bar offered during law school is the Multi State Professional Responsibility Examination (MPRE). Students ordinarily take this exam in their second or third year of law school. To prepare for the MPRE and for your selected states’ bar examination you will in all likelihood (and I strongly recommend) take an MPRE preparation course. Neither in this Legal Profession Class, nor in other core classes like Torts or Criminal Law tested on the bar, do we “teach to the test”. In law school you are learning a new language - developing fluency in the language of the law is a life long endeavor. We are preparing you to use what we cover in classes in multiple ways after graduation, not just to pass the bar. That is not to say that what you learn in class is not helpful for these bar examinations; simply that this is not a class whose sole goal to prepare you to pass the MPRE. Having said that, I do encourage you to consider taking the MPRE in March. I include on our TWEN site a memo about taking the MPRE and we do incorporate some multiple choice ethics questions and discuss the MPRE in class.

**Classes, Preparation and Attendance** – Students at all ABA accredited schools are required to attend classes regularly. A traditional three-credit course in law school has 28 class meetings, each lasting one hour and fifteen minutes. As, however, there are multiple ways for students to learn and multiple ways to demonstrate what you have learned, rather than holding 28 classroom based classes, we meet only 22 times in regularly scheduled meeting times on campus and in addition have six alternative classes. These six alternative classes are completed either on your own schedule (CALI lessons), completing a mid-term, one “distance” based class, and a double professional formation class over a meal at my home in Thetford, VT). Instructions for CALI lessons, and the Professional Formation book and dinner discussion are posted on TWEN and we will discuss them in class.

Because this is not a lecture-based class, but instead one in which we grapple with dilemmas, missing classes means missing engagement and the opportunity to learn. Sometimes, however a student has to miss a class, either due to conflicts with other classes, illness, or some other issue. Each student may miss **two class units** without need to complete a make-up. (*Do let me know in advance that you won’t be in class, if at all possible*). Whether your absence is excused or un-excused is not the question. You are adults and will use your own best judgment. If, however, you have to miss a third or even a fourth class, you must make an agreement with me about what will constitute your make-up assignment(s). This requirement guarantees that you have the opportunity to engage and learn in spite of missing class. **NB There are two sections of this class. One meets on Mondays and Wednesdays at 11:20. The second meets on Wednesdays at 5:25. If you are ill or have a conflict and must miss your regularly scheduled class, it is sometimes possible simply to attend the other sections discussion of the same problem.** The reading list reflects both day session and evening class assignments.

I designed this course to allow you to show me what you are learning, not just in a final, but over the course of the semester. There are multiple ways to engage in this class. One is class participation. I

expect students to complete the assigned reading and be ready to participate in class. The amount of assigned reading should take, on average, no more than 2.5 hours per class unit. Sometimes, however, life intervenes and you may not have had the opportunity to do more than skim the assigned problem(s). If you are unprepared to participate in class let me know **in advance of class** (you may speak to me at the beginning of class or send me an email, but do NOT expect me to read email sent 30 minutes before class as I am ordinarily not on line immediately before class). Remember that 50% of your grade is based on some form of class participation, so if it is clear to me that you are not doing the reading, that will be reflected in your final grade.

If you have an assignment that is due, and you are concerned you may not be able to submit it in a timely way, ask for an extension. ASK BEFORE the assignment is due. There is no penalty for any reasonable request for an extension. If, however, you submit an assignment late without having received an extension, you will lose a third of a mark (e.g. from B to B-) for each day your assignment is late.

**Grading:** One half of your grade is based on class participation.

- Class participation is divided between your individual comments in class (25%) and your small group work including the MPRE sample problems you submit (25%).

The other half of your grade is based on how you express what you have learned.

- One eighth of the total grade is based on your grade on the mid-term. The mid-term is one ethics problem (episode analysis and individual problem resolution)
- One eighth is based on a book you read, reflect upon and then discuss in our professional formation over a meal class in Thetford.
- One quarter of your grade is based on the final. The final is one ethics problem (episode analysis and individual problem resolution)

Each student must complete five CALI lessons (unless you have already taken and passed the MPRE in which case I have an alternative assignment for you). This does not affect your numerical grade; it is simply a requirement that you complete these lessons and you will get an incomplete until you finish all five CALI lessons. The other ungraded requirement is a personal reflection written AFTER you complete your final. This reflection is submitted via TWEN and I don't see it until after your grades are submitted.

You may improve your own learning and your final grade by submitting optional journals. (See "Journal Memo" for more information about optional journals). Note that if you elect the journal option, journals must be submitted over the course of the semester (not all in December).

Note that once each class member has joined the TWEN aspect of the class I will "lock" the class and provide a password. I look forward to working with you.

I post a summary of all your assigned readings and tasks in a document titled: "Readings, Materials and Tasks for Professional Responsibility/Legal Ethics in the Practice of Law".

s/ liz

Professor Liz Ryan Cole