

Tentative Syllabus

Professional Responsibility—Online Distance Education Version Fall 2018

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Organization of the Course

Course Description. Welcome to one of the most important classes in the law school curriculum. More than any other class you will take during your time in law school, this course is about you and your future. The course is designed to acquaint you with the lawyer's obligations—both individual and as a member of the legal profession—to the world in which he/she lives. In addition to a discussion of ethical concerns inherent in the practice of law, we will cover lawyer regulation including the Model Rules of Professional Conduct. We also will consider what it means for you to become a member of the legal profession at a time of economic pressure, technological advancement and international competition. A lawyer's work largely turns upon relationships, namely between the lawyer and client, but also in the connections made with fellow lawyers, other professionals and society in general. This course is your opportunity to reflect upon the lawyer you will become as you build these relationships over the coming years. I consider it my professional responsibility to do all that I can in this course to ensure that you will be well-equipped for a rewarding and meaningful career in the law. I will demand excellence from you in every class; you should expect the same from me.

Syllabus. *Please take the time to read this syllabus carefully. It contains important information about the organization of the course, the requirements and your grade.*

Required Materials. Required: (1) PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH by Pearce, et al. (Third Edition West 2017)—**you MUST have this edition because there have been significant content revisions from the first and second editions**; (2) LEGAL ETHICS FOR THE REAL WORLD: BUILDING SKILLS THROUGH CASE STUDY by Knake & Murphy (Foundation Press 2018); and (3) AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT. There is no need to purchase a rules supplement; you may access the Model Rules of Professional Conduct on Westlaw/Lexis or at the [ABA website](#). ***Please note that when the ABA Model Rules of Professional Conduct are referenced in the casebook, you are responsible for looking up and reading the entire Rule as well as the corresponding Comments.***

You are also required to register for TWEN; I will regularly use TWEN to communicate with you.

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Our Asynchronous Classroom. This course will be taught in a fully asynchronous format. We will not meet in person during the semester, unless you would like to set up a time to meet during my office hours.

- Each Monday, you will receive a series of original recorded lectures of me teaching the week's new concepts; I will share these with you via TWEN. These lectures will be based upon mandatory reading from the Pearce casebook. Often a quiz will accompany the lecture.
- In addition, you will receive instructions for your weekly assignment. Seven of these assignments will be based upon case studies from the Knake & Murphy casebook, some of which may involve partner-based activities (which may be conducted in-person with your assigned partner or via Skype or phone). Other weekly exercises will include CALI lessons, issue-spotting role play videos, etc. **All assignments will be due by 5 pm ET the following Sunday;** there will be no exceptions. No credit will be given for late work.

Assessment. Assessment in this class is based upon participation quizzes and weekly exercises (50%) and a final exam (50%).

Contact Information. I am (essentially) always online. Email is the best way to schedule an in-person meeting: rknake@uh.edu My office hours are Wednesdays from 11AM to 1PM.

The MPRE. For admission to the bar of most states (including Texas), you must pass the Multistate Professional Responsibility Exam (MPRE). The MPRE is a multiple-choice exam covering the ABA Model Rules of Professional Conduct and Code of Judicial Conduct as well as generally accepted principles established in federal and state cases regarding the conduct of lawyers. This class will cover a number of subjects included on the exam and will provide a useful background; however, this is not an MPRE review course. Before you take the MPRE, I STRONGLY encourage you to take a review course in addition to this class. More information can be found at <http://www.ncbex.org/about-ncbe-exams/mpre/test-dates-deadlines-and-fees/>

ADA Accommodations: The Law Center is committed to meeting the needs of students with physical, learning and other disabilities and provides appropriate accommodations and services tailored to each person's specific requirements. Please do not inform me about your disability as it may compromise the integrity of anonymous grading. Please contact the Center For Students With Disabilities at (713) 743-5400 for more information.

Counseling and Psychological Services (CAPS): CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Tentative Syllabus

Topics

This is a syllabus, not a contract. Set forth below is an overview of topics we will cover. More detail will be provided during our first recorded lecture which will be posted Monday, August 20, 2018.

Unit One: Introduction + Lawyer Regulation and the Disciplinary System

Learning Outcomes

At the end of this unit, students will be able to:

- Differentiate the rules governing lawyers
- Evaluate what constitutes the unauthorized practice of law
- Understand how the lawyer disciplinary system works
- Consider the necessity of attorney licensing, including the character and fitness requirements for admission to practice
- Articulate how they would respond to an ethical dilemma

Topic 1

The Ethics and Regulations Governing the Practice of Law in the 21st Century

Topic 2

The Basic Elements of Law Practice

Model Rules 5.4 & 5.5

Topic 3

Attorney Licensing and the Character/Fitness Process

Unit Two: Lawyer-Client Relationship

Learning Outcomes

At the end of this unit, students will be able to:

- Analyze what actions may create a lawyer-client relationship
- Evaluate when a lawyer and client may end a lawyer-client relationship
- Assess the scope of the lawyer-client relationship
- Understand the allocation of authority between a lawyer and client and the duty to communicate
- Recognize the lawyer's obligations to a client with diminished capacity

Topic 4

Creating & Ending the Lawyer-Client Relationship; Allocating Decision-Making Authority

Model Rules 1.2, 1.16

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Topic 5

Allocating Decision-Making Between Lawyer and Client; Communication; Clients with Diminished Capacity

Model Rules 1.4, 1.14

Unit Three: Competence

Learning Outcomes

At the end of this unit, students will be able to:

- Analyze what constitutes competent legal representation under the Model Rules
- Evaluate the supervisory roles of practicing lawyers under the Model Rules
- Distinguish what actions subject a lawyer to disciplinary actions and civil malpractice actions
- Understand what constitutes ineffective assistance of counsel in criminal matters
- Identify the elements of lawyer malpractice actions
- Recognize whether mandatory arbitration provisions are permitted in lawyer retainer agreements
- Determine whether or not a criminal defendant has received ineffective assistance of counsel
- Articulate skills important for practicing lawyers to master

Topic 6

The Duties of Competence, Diligence and Supervision; Malpractice

Model Rules 1.1, 1.3, 5.1, 5.3

Topic 7

Limiting Liability; Ineffective Assistance of Counsel; Torture Memos as (In)competent Legal Work

Unit Four—The Business, Technology, and Marketing of Legal Services

Learning Outcomes

At the end of this unit, students will be able to:

- Distinguish the types of fees a lawyer may charge
- Analyze whether a lawyer's fee is reasonable under the Model Rules
- Analyze what funds or property a lawyer must maintain separately from the lawyer's property, including in a trust account
- Distinguish solicitation from advertising
- Understand the States' interest in regulating lawyer ads as commercial speech
- Recognize the ways in which lawyers are advertising with new media and technologies that may not be governed directly by the Model Rules
- Determine whether a lawyer solicitation or advertisement complies with the Model Rules

Topic 8

The Business, Technology and Marketing of Legal Services

Model Rules 1.5, 7.1, 7.2, 7.3

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Unit Five—Confidentiality

Learning Outcomes

At the end of this unit, students will be able to:

- Distinguish duty of confidentiality under Rule 1.6 from the attorney-client privilege
- Evaluate the scope of information covered by Rule 1.6 and the attorney-client privilege
- Determine whether the exceptions to the duty of confidentiality apply to fact patterns

Topic 9

Attorney-Client Privilege

Topic 10

The Lawyer's Duty of Confidentiality

Model Rule 1.6

Unit Six Conflicts of Interest—An Introduction

Learning Outcomes

At the end of this unit, students will be able to:

- Analyze whether a concurrent conflict of interest exists
- Evaluate when representation is permitted where a concurrent conflict of interest exists
- Recognize when a positional conflict of interest exists
- Evaluate whether representation is permitted when a positional conflict of interest exists
- Evaluate the enforceability of a prospective conflict of interest waiver
- Determine whether a conflict exists between a client's interests and a lawyer's interest
- Evaluate when representation is permitted where a conflict exists between a client's interests and a lawyer's interest

Topic 11

Conflicts of Interest – conflicts between current clients

Model Rule 1.7

Topic 12

Conflicts of Interest – conflicts between current clients; conflicts between lawyers and clients

Model Rule 1.8

Unit Seven—Unique Conflicts of Interest

Learning Outcomes

At the end of this unit, students will be able to:

- Analyze whether a former conflict of interest exists
- Evaluate when representation is permitted where a former conflict of interest exists
- Assess former client conflicts of interest and when they are imputed to the lawyer's firm
- Identify former government attorney and former judge/arbitrator conflicts of interests

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- Understand conflicts of interest in criminal cases and the impact on ineffective assistance of counsel claims, including when a defendant may waive the right to conflict-free representation in criminal cases

Topic 13

Conflicts of Interest – former client conflicts, former government lawyers

Model Rules 1.9, 1.11

Topic 14

Conflicts of Interest – imputed conflicts, former judges/arbitrators, criminal representations

Model Rules 1.10, 1.12

Unit Eight—Lawyer Duties to Third Parties

Learning Outcomes

At the end of this unit, students will be able to:

- Analyze whether a lawyer has fulfilled duties to the court under the Model Rules
- Understand what a lawyer must do when confronted with the perjury trilemma
- Analyze what a lawyer must do in the case of inadvertent disclosure of confidential client information
- Analyze whether a lawyer must report misconduct by other lawyers under Rule 8.3

Topic 15

The Lawyer’s Duties to the Legal System, the Profession, and Nonclients

Model Rules 3.1, 3.3, 3.4, 3.5, 3.6, 3.9, 4.1, 4.2, 4.3, 4.4, 5.6, 8.3

Unit Nine—Unique Responsibilities of Prosecutors and Judges

Learning Outcomes

At the end of this unit, students will be able to:

- Recognize the unique responsibilities and obligations of prosecutors/judges
- Analyze a prosecutor’s decision to charge under Rule 3.8
- Evaluate whether a prosecutor has satisfied the duties to the accused
- Understand judicial recusal standards and the process for seeking recusal

Topic 16

Prosecutor Ethics

Model Rule 3.8

Topic 17

Judicial Ethics

Unit Ten—Special Topics in Professional Responsibility

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Learning Outcomes

At the end of this unit, students will be able to:

- Reflect upon competing visions of professionalism and morality
- Articulate considerations for developing a personally satisfying career in the law
- Discuss special obligations of lawyers to the public, including pro bono service
- Describe emerging issues in the regulation of legal services
- Identify first amendment/free speech arguments related to lawyer/judge regulation

Topic 18

Red State, Blue State; Competing Visions of Professionalism and Morality

Topic 19

The First Amendment and Lawyer/Judge Speech

Topic 20

Cultivating a Rewarding and Meaningful Life as a Lawyer