

***Professional Responsibility—Online Distance Education Version
Tentative Syllabus Fall 2019***

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Introductory Note: With an online course it is very important that you read every document and e-mail/TWEN posting closely, beginning with this syllabus, to ensure that you understand all of the course assignments, procedures, and due dates. Additionally, from time to time there may be changes, reminders, and additional content sent to organize and supplement the course. You are responsible for knowing all such information. This syllabus contains important information about the organization of the course, the requirements and your grade. This is a syllabus, not a contract, and it is subject to change. Please refer to TWEN for the most up-to-date course information.

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.

Learning Outcomes. During your time in this course, you will develop competence in the following:

- Knowledge and understanding of substantive and procedural law regulating lawyers' conduct;
- Legal analysis and reasoning, legal research, problem-solving, and written and oral communication related to legal ethics and professional responsibility;
- Exercise of proper professional and ethical responsibilities to clients and the legal system;
- Reflection upon how to integrate conceptions of professionalism and the lawyer's role into your career;
- Recognition of the trends that will influence the future of lawyers' work; and
- Other professional skills needed for competent and ethical participation as a member of the legal profession.

Required Materials.

(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*—available here for a 10% discount and free shipping:

http://store.westacademic.com/Pearce_Professional_Responsibility_A_Contemporary_Approach_3d_9781634600163.html

(2) LEGAL ETHICS FOR THE REAL WORLD: BUILDING SKILLS THROUGH CASE STUDY by Knake & Murphy (Foundation Press 2018)—available here for a 10% discount and free shipping:

http://store.westacademic.com/Knake_and_Murphys_Legal_Ethics_for_the_Real_World_Building_Skills_Through_Case_Study_9781640208919.html

**** Both of these books are available at a discounted price if you purchase the E-version. It is completely up to you what version you purchase. Both books contain hyperlinks to material, so you may find it helpful to have the E-version for that reason, but it is not necessary.**

(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 about the course and to post your weekly assignments and lectures.

Optional Materials. If you purchased a new copy of the Pearce, et al. casebook, you will find a code inside the front cover for access to a downloadable e-version of the book along with three study aid books and a series of quizzes to test yourself throughout the semester. If you purchased a used copy or are renting a copy, you can still access these resources at a reduced fee by visiting store.westacademic.com. *You are not required to use any of these materials*, but students often want additional materials to aid in their mastery of the course and so I mention these here since they are free with your book or available at a very low cost.

Our Asynchronous Classroom. This course will be taught in a fully asynchronous format. We will not meet in person, 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 of multiple choice, short answer and/or essay questions will accompany the lecture. You are required to complete all assigned reading and to view all lectures, in addition to completing any quizzes. General feedback about quiz performance will be provided in the weekly lecture series.
- In addition, you will receive instructions for your weekly assignment on Monday. Some of these assignments will be based upon case studies from the Knake & Murphy casebook. Other weekly exercises will include CALI lessons, issue-spotting role play videos, etc. Some of these exercises may involve partner-based activities (which may

be conducted in-person with your assigned partner or via Skype, Zoom, or phone). **All assignments will be due by 5 pm central time the following Sunday**; there will be no exceptions. No credit will be given for late work.

- The weekly assignments have been designed to provide opportunity for regular and substantive interaction between the faculty member and student and among students as required by ABA Standard 306 for distance learning. I will regularly monitor your effort in the course and you are welcome to communicate with me at any time about your effort, in addition to the feedback you will receive directly from some of the activities. That said, you are responsible for keeping track of completed assignments, quizzes, etc.
- ***Please note that students are limited regarding the number of credit hours of an online course in any term or taken overall toward the JD degree per American Bar Association requirements. Students are responsible for ensuring individual compliance with this requirement.***

Assessment. Assessment in this class is based upon participation quizzes and weekly exercises (50%) and a final exam (50%). ***Thoughtful, well-reasoned and well-edited, professional school level work is required and is a component of your grade, including on the final exam. This includes proper citation to rules, cases, laws, ethics opinions, etc.***

Participation. The points for participation will be based upon:

1. Timely completion of all assignments and quizzes
2. Thoroughness of responses to the case studies from the Knake & Murphy book
3. Participation in role plays/small group activities/other weekly activities

Please note that participation points are not based upon a curve and it is my hope every class participant will receive all of the allotted points. I reserve the right to raise a grade by one grade increment (ex: B to B+) for significant and consistent work that exceeds the normal expectation of the class, as determined in my sole discretion. In particular, weight will be given to thorough and thoughtful responses to the case study assignments. I also reserve the right to lower a grade by one grade increment (ex: B to B-) for significant and consistent work that does not meet the normal expectation of the class. This reduction may be in addition to loss of participation and effort points, discussed above.

Final Exam. The final exam will be an open-book, take-home exam that I will make available for you to take during the exam period. Please note that due to the online nature of the course, the exam will not be anonymous. You will access the exam via TWEN at a time convenient for you, and you will be required to complete it in three hours unless you have an official accommodation.

Contact Information. I am (essentially) always online. Email is the best way to communicate: rknake@uh.edu My office hours are Thursdays from 3PM-5PM and by appointment.

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/>

Attendance. In an online course there is, obviously, no physical “attendance.” However, you are required to keep up with the assignment schedules as set forth in the syllabus. Falling behind that schedule may result in your forced withdrawal from the course. All units must be completed, and the standards met for credit, to receive credit for the course and to be cleared to take the final. Failure to do so will result in an incomplete. You are also required to watch all course videos/lectures. **NO CREDIT WILL BE GIVEN FOR LATE QUIZZES OR WEEKLY ACTIVITIES, SO PLEASE PLAN ACCORDINGLY FACTORING IN TIME FOR EMERGENCIES AND UNEXPECTED LIFE EVENTS.**

Time Commitment. Students often ask about the time commitment for a distance course. The ABA requires 2,250 minutes of direct instruction and 5,400 minutes of out-of-class work (*i.e.* reading and studying) for a three-credit course. Our course is designed to satisfy the ABA requirements, and due to the distance learning nature of the course some minutes of what “counts” as direct instruction must be divided in half. Please note that this means you should plan to spend at least 9 ½ hours each week on this class.

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 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

Assignments

This syllabus is subject to change. Set forth below is an overview of topics we will cover along with required reading and weekly assignments. More detail will be provided during our first recorded lecture which will be posted Monday, August 19, 2019. Be sure to check TWEN for the most up-to-date information.

Note: I receive automatic notification when you complete a CALI exercise, a Google form survey, or TWEN quiz. There is no need to contact me to confirm. You will hear from me if I do not receive a required submission by the deadline.

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

Week of August 19—See TWEN for more information.

- ☐ Read pages 1-40 of Pearce et al. and the Syllabus
- ☐ Watch recorded lecture
- ☐ Watch “Revitalizing the Lawyer Poet – What Lawyers Can Learn from Rock n Roll”
<https://www.casa.uh.edu/s/WmIu4GZ>
- ☐ Complete Quiz #1
- ☐ Weekly Activity: Chapter 1 Case Study “Finding a Lawyer, Finding a Client” in Knake & Murphy (detailed instructions on TWEN)

Week of August 26—See TWEN for more information.

- ☐ Read pages 50-99, 842-45, of Pearce et al. plus Model Rules 5.3, 5.4, 5.5 5.7 and 8.5
- ☐ Watch recorded lecture
- ☐ Complete Quiz #2
- ☐ Weekly Activity: Chapter 7 Case Study “Substance Abuse and Lawyer Discipline” in Knake & Murphy (detailed instructions on TWEN)

Unit Two: Lawyer-Client Relationship

Learning Outcomes

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

- Analyze what actions may create and end a 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
- 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

Week of September 4—See TWEN for more information.

- ☐ Read pages 72 to 129 of Pearce et al. plus Model Rule 1.1
- ☐ Watch recorded lecture
- ☐ Complete Quiz #3
- ☐ Weekly Activity Part 1: Sources Regulating the Practice of Law CALI Exercise

<https://www.cali.org/lessonlink/655/PR09/6025/jq>

- You will need the following password for CALI registration: HOUSTUstu90 Keep track of this for all future CALI exercises.

- ☐ Weekly Activity Part 2: Law Governing Admission to Practice CALI Exercise:

<https://www.cali.org/lessonlink/656/PR10/6025/jq>

Week of September 9—See TWEN for more information.

- ☐ Read pages 129 to 138, 150 to 158, 160 to 178 of Pearce et al. plus Model Rules 1.2, 1.14 and 1.16
- ☐ Watch recorded lecture
- ☐ Complete Quiz #4
- ☐ Weekly Activity: Chapter 2 Case Study “Ethics in Elder Law Representation” in Knake & Murphy (detailed instructions on TWEN)

Unit Three—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

Week of September 16—See TWEN for more information.

Model Rules 1.5, 7.1, 7.2, 7.3

- ☐ Read pages 179-191 and 241-72 of Pearce et al. plus Model Rules 1.5, 7.1, 7.2, and 7.3
- ☐ Watch recorded lecture
- ☐ Complete Quiz #5
- ☐ Weekly Activity: Fees CALI Exercise
<https://www.cali.org/lessonlink/659/PR13/6025/jq>

Unit Four—Attorney-Client Privilege and 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

Week of September 23—See TWEN for more information.

- ☐ Read pages 289-324, 330-346 of Pearce et al. plus Model Rule 1.6
- ☐ Watch recorded lecture
- ☐ Complete Quiz #6
- ☐ Weekly Activity: Chapter 3 Case Study “Keeping Confidences: At What Cost?” in Knake & Murphy (detailed instructions on TWEN)

Week of September 30—See TWEN for more information.

- ☐ Read pages 350-353, 353-384 of Pearce et al.
- ☐ Watch recorded lecture
- ☐ Complete Quiz #7
- ☐ Weekly Activity Part 1: The Attorney’s Duty of Confidentiality and the Attorney Client Privilege CALI Exercise
<https://www.cali.org/lessonlink/1202/PR16/6025/jq>
- ☐ Weekly Activity Part 2: Exceptions to the Ethical Duty of Confidentiality Designed to Protect Third Persons from Harm CALI Exercise
<https://www.cali.org/lessonlink/1280/PR17/6025/jq>

Unit Five Conflicts of Interest

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

Week of October 7—See TWEN for more information.

- ☐ Read pages 384-402 and 408-428 of Pearce et al. plus Model Rule 1.7
- ☐ Watch recorded lecture
- ☐ Complete Quiz #8
- ☐ Weekly Activity Part 1: Client or Not? CALI Exercise
<https://www.cali.org/lessonlink/660/PR14/6025/jq>
- ☐ Weekly Activity Part 2: Conflicts Hypos
Watch <https://www.casa.uh.edu/s/8TZwL95> and complete Google Form
<https://goo.gl/forms/XnSI38asvUij3Oe72>

Week of October 14—See TWEN for more information.

- ☐ Read pages 429-440, 445-75 of Pearce et al. plus Model Rules 1.8, 1.9, 1.10, 1.11 and 1.12
- ☐ Watch recorded lecture
- ☐ Complete Quiz #9
- ☐ Weekly Activity: Chapter 4 Case Study “Waiving a Conflict of Interests Before it Arises” in Knake & Murphy (detailed instructions on TWEN)

Unit Six—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

Week of October 21—See TWEN for more information.

- ☐ Read pages 477-524 of Pearce et al. plus Model Rules 3.1, 3.2, 3.3, 3.4 3.5, 3.6, 8.4
- ☐ Watch recorded lecture
- ☐ Complete Quiz #10
- ☐ Weekly Activity: Watch *Gentile v. Nevada State Bar* Exercise
<https://www.casa.uh.edu/s/eSdA5O6> and complete Google form
<https://goo.gl/forms/4q1JCKJEdPk0s6B22>

Week of October 28—See TWEN for more information.

- ☐ Read pages 524-536, 544-568 of Pearce et al. plus Model Rules 4.1, 4.2, 4.3, 4.4, 8.3
- ☐ Watch recorded lecture
- ☐ Complete Quiz #11
- ☐ Weekly Activity: Review—Model Rules of Professional Conduct Drills I and II
<https://www.cali.org/lessonlink/648/PR02/6025/jq>
and <https://www.cali.org/lessonlink/652/PR06/6025/jq>

Unit Seven—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

Week of November 4—See TWEN for more information.

- ☐ Read pages 589-597, 615, 622-632, 639-648, 660-661 of Pearce et al. plus Model Rule 3.8
- ☐ Watch recorded lecture
- ☐ Complete Quiz #12
- ☐ Weekly Activity: Chapter 5 Case Study "A Prosecutor's Fall from Grace" in Knake & Murphy (detailed instructions on TWEN)

MPRE November 9

Week of November 11—See TWEN for more information.

- ☐ Read pages 662-678 of Pearce et al. plus review the ABA Judicial Code of Conduct
- ☐ Watch recorded lecture
- ☐ Complete Quiz #13
- ☐ Weekly Activity: Chapter 6 Case Study "The Facebooking Judge" in Knake & Murphy (detailed instructions on TWEN)

Unit Ten—Special Topics in Professional Responsibility

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

Week of November 18—See TWEN for more information.

Red State, Blue State; Competing Visions of Professionalism and Morality; Special Responsibilities and Emerging Issues in Legal Ethics

- ☐ Read pages 704-731 of Pearce et al., Model Rule 6.5. Skim pages 735-41, 743-44, 773-84, 790-96, 876-913 of Pearce et al.
- ☐ Watch recorded lecture
- ☐ Complete Quiz #14
- ☐ Weekly Activity: Red State, Blue State: Lawyers, Politics, and Moral Counseling Exercise: <https://vimeo.com/6166878> View video and complete Google form: <https://goo.gl/forms/FuVAWywJO9zm4P9g1>

Exam Review

- ☐ Watch recorded review lecture if you haven't already done so.
- ☐ **Submit questions about the exam by midnight November 22 via email at rksnake@uh.edu**