



LAWYERING III: THE LEGAL PROFESSION
SPRING 2019

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I. General.

- A. *Course Number and Credit.* LAW L770; 3.0 hours.
- B. *Course Description.* This course concerns the professional and ethical activities and duties of the lawyer. The course includes a study of the history and traditions of the legal profession, including the concept of discipline and the model rules of professional conduct. It also examines the impact of ethics and tradition on the practice of law. Finally, it considers the professional formation and development of the lawyer.
- C. *Required Materials.* We will use the following book during this course: LISA G. LERMAN & PHILIP G. SCHRAG, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW: CONCISE FOURTH EDITION* (2018) (ISBN: 978-1-4548-9128-4).
- D. *Statutory Supplement.* There is no “statutory supplement” or “rules supplement”; all rules and statutes are in the principal text. However, many students find it helpful to have a small booklet containing the ABA Model Rules of Professional Conduct.



II. Class Attendance and Preparation.

- A. *Generally.* You are expected to attend each class, and to attend each class prepared. In order to prepare fully, you must (1) read all assigned pages in the casebook, (2) be prepared to discuss and to resolve the problems set forth in the casebook.

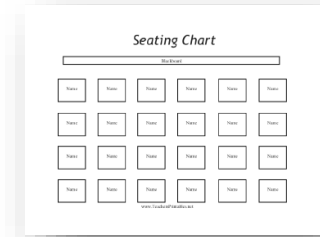
- B. *Problem Preparation.* This is a problem-driven course. As a result, you must independently work through any problems assigned before each class. To adequately do so, you must identify and apply the relevant rule(s) set forth in the American Bar Association Model Rules of Professional Conduct. Most of the assigned problems put you in the shoes of a lawyer who has to deal with a situation involving legal ethics issues and legal, practical and strategic issues. Most of the problems are more complex than on-the-spot classroom hypotheticals; they require analysis before the class in which the problem will be discussed. For each assigned problem, study the facts carefully, identify the applicable rules and outline the arguments you can find about what they permit, require, or prohibit. Then try to decide what you would do if you were in the shoes of the lawyer. Come to class prepared to discuss and to defend the action (if any) that you would take.
- C. *Penalties for Excessive Absences or Unpreparedness.* You are permitted to be absent from, late for or unprepared for a total of four (4) classes. (If you are called on in class and you are unprepared, this will count as an absence.) Each absence or late attendance or unprepared attendance thereafter will automatically result in the lowering of your final course grade by one-half letter grade. For example, if you write a “B” exam but you are absent, late or unprepared for a total of five (5) classes, your course grade will be lowered from a “B” to a “C+”.
- D. *Learning Outcomes.* The mission statement of the College of Law strives to prepare “a diverse community of students to be thoughtful counselors, skilled advocates, compassionate leaders in the Jesuit tradition of academic rigor, pursuit of justice, and service to others.” To this end, this course will focus on and evaluate the following learning outcomes.
1. *Knowledge of Substantive Law and Processes.* Students should learn the substantive and procedural law governing lawyers and the practice of law, the processes through which the “law of lawyering,” is created, and the policies underlying that law.
 2. *Analysis and Reasoning.* Students should learn to identify legal issues faced by practicing lawyers, such as conflicts of interest, confidentiality dilemmas, and related issues. Students should learn to apply the standards regulating the practice of law, and the policies underlying those standards, when representing and advising clients and when appearing before tribunals. Students should learn to understand the nature and importance of exercising practical judgment in the practice of law.

3. *Research and Information Gathering.* Students should learn to perform comprehensive legal research into the regulatory standards and case law governing lawyers.
4. *Communication.* Students should learn to articulate the legal issues faced by practicing lawyers, to actively listen to clients, to react to changing facts and expectations of clients, and to communicate orally and in writing with other actors in the legal system, including clients, colleagues, and decision-makers.
5. *Professional and Ethical Identity.* Students should begin to develop their professional and ethical identities by learning: to recognize and resolve ethical dilemmas; to conduct themselves in accordance with the norms and standards of professional conduct; to establish a reputation and understand the value of competence, diligence, honesty, and integrity; to understand the skill and value of professional self-reflection, and to participate in activities designed to further professional goals and professional competencies.
6. *Commitment to Public Service.* Students should learn to recognize the need for—and their professional responsibility to provide—pro bono legal services to vulnerable populations in society.
7. *Organization and Working with Others.* Students should learn to organize and manage individual work and deadlines; to network within the profession; to understand the importance of cross-cultural competence as a factor in communication and working with others; to evaluate the work of others; and, to work in a collaborative environment.

III. Evaluation.

- A. *Final Exam (80%).* Eighty percent of your course grade will be based on your performance on the Multistate Professional Responsibility Examination (“MPRE”). **You must register for this examination on or before January 24, 2019, and you must sit for this examination on Saturday, March 23, 2019.** For more information, and to register, visit the website of the National Conference of Bar Examiners: <http://www.ncbex.org/exams/mpre/>.
- B. *Research Projects (20%).* Twenty percent of your course grade will be based on a short essay paper and on a research project involving legal ethics. You will be assigned one or more rules of professional conduct, and you will conduct research on your assigned rules.

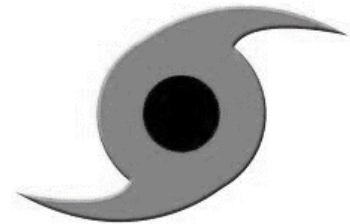
IV. *Seating Chart.* Please choose a “permanent” seat by the second class meeting. At that time, I will distribute a seating chart.



V. *Blackboard.* I will use the Loyola Blackboard system to post the class syllabus, to distribute supplementary class materials, and to notify the class about scheduling changes. The Loyola Blackboard site is located at <http://loyno.blackboard.com/>.

VI. *Special Needs.* Loyola is committed to offering classes that are inclusive in their design. If you encounter disability related barriers in a course, please let the Office for Accessible Education (OAE) know immediately. OAE welcomes your feedback, which will assist us in improving the usability and experience for all students. To find out more about the accommodations process or if you need to discuss the accommodations you may be eligible for, please see our contact information below. Office for Accessible Education: Monroe Library, Second Floor; (504) 865-2990 (front office) Email: oea@loyno.edu; Website: <http://www.loyno.edu/success/disability-services> Law students should contact Carol Magendie, Law Building room 345; Phone: (504) 861-5494. Email: magendie@loyno.edu.

VII. *In Case of Emergency University Closure.* At times, ordinary University operations are interrupted by tropical storms, hurricanes, or other emergencies that require evacuation or suspension of on-campus activities. To prepare for such emergencies, review the instructions at this link: <http://academicaffairs.loyno.edu/students-emergency-responsibilities>. Please note that students who are not living on campus need not file an evacuation plan with student affairs.



VIII. *University Counseling Center.* The University Counseling Center, located on the second floor of the Danna Center, provides mental healthcare for all currently enrolled Loyola students. Office hours are Monday-Friday, 8:30 a.m. to 4:45 p.m., and services are free. Counseling is available 24/7 by contacting the UCC counselor-on-call. During business hours, call (504) 865-3835 to schedule an appointment and/or to request to speak with the counselor on-call. After hours and on weekends, call (504) 865-3835 and press 1 at the voicemail prompt to be immediately connected to a trained and licensed mental health professional. Please visit our website at <http://studentaffairs.loyno.edu/counseling> for more information.

IX. *Information Technology.* Information Technology provides on-campus computer systems assistance and technical support to students, faculty, and staff, through the support units of client services, computer services, distributed systems, telecommunications, and information management. Visit us on the second floor of the Monroe Library, online at <http://academicaffairs.loyno.edu/infotech/student-computing>, or by phone at (504) 865-2255.

X. *Office Hours.* My office is on the fourth floor of the law building in Room 439. My office hours are set forth below. I am normally in my offices at these hours unless I am off campus.



A. *Tuesdays.* 4:50 p.m. to 7:15 p.m.

B. *Other Times.* I maintain an “open-door” policy. Also, I am happy to set up appointments at your convenience. Finally, please do not hesitate to send me an email message at any time; I will usually respond immediately if you include your mobile telephone number.

XI. *Assignments.* Class assignments are set forth in the following table. I will not announce assignments in class.

Class	Description	Reading
1.	INTRODUCTION TO COURSE AND TO THE LEGAL PROFESSION.	1-18
2.	THE REGULATION OF LAWYERS. Institutions that regulate lawyers. State ethics codes. Admission to practice.	19-58
3.	LAWYER LIABILITY. Professional discipline. Civil liability of lawyers. Criminal liability of lawyers.	59-100
4.	THE DUTY TO PROTECT CLIENT CONFIDENCES. The basic principle of confidentiality. Exceptions to the duty to protect confidences.	101-151
5.	THE DUTY TO PROTECT CLIENT CONFIDENCES. Use or disclosure of confidential information for personal gain or to benefit another client. Talking to clients about confidentiality.	152-154
	THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE. Confidentiality and attorney-client privilege compared. The elements of attorney-client privilege. Waiver. The crime-fraud exception.	155-176

Class	Description	Reading
	The death of the client. The work product doctrine. The attorney-client privilege for corporations. The attorney-client privilege for government officials.	
6.	RELATIONSHIPS BETWEEN LAWYERS AND CLIENTS. Formation of the lawyer-client relationship. Lawyers' responsibilities as agents. Lawyers' duties of competence, honesty, communication, and diligence.	177-225
7.	RELATIONSHIPS BETWEEN LAWYERS AND CLIENTS. Who calls the shots? Terminating a lawyer-client relationship.	225-248
8.	CONFLICTS OF INTEREST: CURRENT CLIENTS. An introduction to conflicts of interest. General principles in evaluating concurrent conflicts. Conflicts between current clients in litigation. Conflicts involving prospective clients.	249-284
9.	CURRENT CLIENT CONFLICTS IN PARTICULAR PRACTICE SETTINGS. Representing both parties to a transaction. Representing organizations. Representing co-defendants in criminal cases. Representing family members. Representing insurance companies and insured persons.	285-320
10.	CONFLICTS INVOLVING FORMER CLIENTS. Nature of conflicts between present and former clients. Duties to former clients. Distinguishing present and former clients. Evaluating successive conflicts.	321-343
11.	CONFLICTS INVOLVING FORMER CLIENTS. Addressing former client conflicts in practice. Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm. Imputation of former client conflicts to affiliated lawyers.	343-366
12.	CONFLICTS BETWEEN LAWYERS AND CLIENTS. Legal fees. Lawyer as custodian of client property and documents.	367-423
13.	CONFLICTS BETWEEN LAWYERS AND CLIENTS. Conflicts with lawyers' personal or business interests.	423-434
14.	CONFLICTS ISSUES FOR GOVERNMENT LAWYERS AND JUDGES. Regulation of government lawyers and those who lobby them. Successive conflicts of former and present government lawyers. Conflicts involving judges, arbitrators, and mediators.	435-470

Class	Description	Reading
15.	LAWYERS' DUTIES TO COURTS. Being a good person in an adversary system. Investigation before filing a complaint.	471-483
16.	LAWYERS' DUTIES TO COURTS. Truth and falsity in litigation. Concealment of physical evidence and documents. The duty to disclose adverse legal authority.	483-520
17.	LAWYERS' DUTIES TO COURTS. Disclosures in ex parte proceedings. Improper influences on judges and juries. Lawyers' duties in nonadjudicative proceedings.	520-538
18.	LAWYERS' DUTIES TO ADVERSARIES AND THIRD PERSONS. Communications with lawyers and third persons. Duties of prosecutors. Conduct prejudicial to the administration of justice. Are lawyers really to zealous?	539-590
19.	THE PROVISION OF LEGAL SERVICES. The unmet need for legal services. Sources of free legal services for those who cannot afford legal fees.	591-612
20.	THE EVOLVING BUSINESS OF LAW PRACTICE. Developments in the regulation of law practice. UPL. Advertising and solicitation. MJP.	613-633
21.	THE EVOLVING BUSINESS OF LAW PRACTICE. Changes in private law practice. Economic and technological changes. Globalization. Temporary and contract lawyers. Lawyers in retail stores. Outsourcing, offshoring, and onshoring. New methods of financing legal work.	634-648
22.	MPRE REVIEW.	Mindmaps and Videos
23.	MPRE REVIEW.	Mindmaps and Videos
	Take MPRE on Saturday, MARCH 23, 2019	
24.	PROFESSIONAL CONDUCT STANDARDS: A COMPARATIVE PERSPECTIVE.	TBA
25.	DEVELOPING PROFESSIONAL COMPETENCIES.	TBA
26.	PROFESSIONALISM.	TBA

Class	Description	Reading
27.	LAWYERS' ASSISTANCE PROGRAMS.	TBA
28.	MARKETING AND REPUTATION BUILDING.	TBA