

LEGAL ETHICS AND SOCIAL JUSTICE
Law 537.001
3 Credit Hours
Spring 2020 *UPDATED* – Thursdays 9:50-11:50 AM, Room 3080

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I. COURSE TOPIC & LEARNING OUTCOMES

This course explores the relationship between social justice and lawyers' ethics. We will examine theoretical and practical questions related to the core duties of the profession. Our focus will be how these duties work in tandem or in tension with social justice commitments.

The Law School has adopted a defined set of learning outcomes. Of these, the learning outcomes most relevant for this course are the following:

- Students shall be able to identify and think critically about professional and ethical responsibilities that arise in practice including crucial issues facing the legal profession, such as ensuring dedicated and effective representation for different groups and cultures.
- Students shall be able to exercise other professional skills needed for well-rounded, competent, and ethical participation as members of the legal profession, including, but not limited to, applying legal and other scholarship to understand and affect legal policy.

II. COURSE MATERIALS & CREDIT

All required reading materials and links to online sources will be available on the Sakai website. No casebook or course pack is required. Supplemental books are on reserve in the library as optional resources for your seminar paper.

Each student may choose to earn rigorous writing experience (“RWE”) credit or professional responsibility (“PR”) credit. Every student will be required to write a paper that complies with the Law School’s RWE requirements.

III. CLASS PREPARATION AND PARTICIPATION

In this small seminar, preparation and participation are not only mandatory but also essential to creating a rich experience for everyone. Preparation requires careful reading of the material. I generally recommend taking notes on the reading to help you synthesize and evaluate the texts

and the ideas presented. The course meets for only two hours per week but awards three credits, because students are expected to do more reading, research, and writing than in other classes.

Reading Responses. For weeks 2 through 11 of the course, as part of your preparation, you will complete a short Reading Response of 1-2 pages. Unless otherwise indicated, each Reading Response should:

- Summarize in your own words the main points of each reading. You should include one or two paragraphs for each article or excerpt. (You are not required to include a summary of assigned ABA Model Rules, but you should come to class prepared to discuss them.)
- Identify 3 questions for discussion.

Reading Responses are **due via e-mail to me by 9:00 AM on the Wednesday morning the day before the Thursday class** in which we will be discussing the readings.

Paper Workshops. During the final two classes, we will conduct workshops of your own research papers. In preparation, in place of the traditional reading responses, you will read your colleagues' first drafts and will send them individualized feedback. Details on the workshops and feedback are provided in a separate document *Guidelines for Papers, Peer Feedback & Workshops* (posted on Sakai).

Electronic Devices and Other Distractions. Laptops are generally permitted in this course, but I may sometimes require all students to put them away to facilitate discussion. When laptop use is permitted, it is to be for coursework only. If I find laptops are inhibiting discussion or causing a distraction, I reserve the right to restrict their use for individuals or the whole class. Electronic communications and side conversations are prohibited. All cell phones and comparable electronic devices must be put away. If you are expecting an urgent call or text message (related to childcare, medical issues, etc.), please talk to me before class. Violation of this policy may result in adjusting a student's final grade downward.

Preparation and participation will be taken into account in determining final grades. In evaluating preparation and participation, I look for close reading of the assigned texts, thoughtful engagement with the ideas presented, and nuanced responses to the ideas of other participants. If you are not as comfortable speaking in class as you would like, please come talk with me, so I can help you develop this skill.

IV. PAPER DEVELOPMENT SCHEDULE

Each student enrolled in this course must complete an original research paper of approximately 25-30 pages (including footnotes). You will choose the topic for your paper, in consultation with me. Here are the deadlines for the components of the seminar paper:

- February 6 - Abstract Due (one-page summary of proposed topic)
- February 7-17 - Meet with me regarding your topic. (This meeting is mandatory, but I am

also happy to meet on additional occasions.)

- February 28 - Detailed Outline Due
- March 20 - First Drafts Due for half of the class (via Sakai to the class)
- March 27 - First Drafts Due for the other half of the class (via Sakai to the class)
- April 2 - Paper Workshops for half of the class
- April 9 - Paper Workshops for the other half of the class
- May 1 - Final Paper Due (via email to me)

V. GRADING

Your course grade will be based on preparation, participation, and the seminar paper, weighted using the following general rubric:

ITEM	PERCENT
Class Preparation and Participation	25
Class Participation	10
Reading Responses	15
Seminar Paper	75
Outline	5
First Draft	10
Final Draft	60

VI. ATTENDANCE AND HONOR CODE

Attendance. You are expected to attend all class sessions and to arrive on time. Each class, I will send a sign-in sheet around the room. Please sign in or you will be marked absent. If you are late, you may sign in, but please indicate the time when you arrived. I reserve the right to adjust any student's final grade downward for unexcused absence or lateness. In addition to my attendance policy, the Law School has an attendance policy that requires students to attend 80% of class sessions to receive any credit for the course.

The Honor Code is in effect in this course and all others at the University. I am committed to treating Honor Code violations seriously and encourage all students to become familiar with the Code's terms set out at <http://instrument.unc.edu>. If you have any questions, it is your responsibility to ask me about the Code's application. All written work must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects.

VII. DISCRIMINATION, HARASSMENT & ACCOMMODATION POLICIES

Acts of discrimination, harassment, interpersonal (relationship) violence, sexual violence, sexual exploitation, stalking, and related retaliation are prohibited at UNC-Chapel Hill. If you experience or have experienced any of the prohibited behavior listed above, you are encouraged by the University, but not required, to report the incident or incidents and to seek out campus and/or community

resources. Confidential resources include Counseling and Psychological Services (CAPs) in Campus Health Services at (919) 966-3658, or the Gender Violence Services Coordinator (Holly Lovern, holly.lovern@unc.edu). You may also contact the Director of Title IX Compliance / Title IX Coordinator (Adrienne Allison, adrienne.allison@unc.edu), Report and Response Coordinators (Ew Quimbaya-Winship, eqw@unc.edu; Rebecca Gibson, rmgibson@unc.edu; Kathryn Winn kmwinn@unc.edu) to discuss your needs. Additional resources and other information can be found at safe.unc.edu.

The University of North Carolina at Chapel Hill facilitates the implementation of reasonable accommodations, including resources and services, for students with disabilities, chronic medical conditions, a temporary disability or pregnancy complications resulting in difficulties with accessing learning opportunities. All accommodations are coordinated through the Accessibility Resources and Service Office. Please see the ARS Website for contact information: <https://ars.unc.edu> or email ars@unc.edu. Relevant policy documents as they relation to registration and accommodations determinations and the student registration form are available on the ARS website under the About ARS tab.

SEMINAR SCHEDULE

1. January 9: Professional Ethics
2. January 16: Neutral Partisanship
3. January 23: Confidentiality
4. January 30: Counseling
5. February 6: Conflicts of Interest
6. February 13: Solicitation and Advertising
7. February 20: Fees
8. February 27: Access to Justice
9. March 5: Rationing Lawyers
10. March 19: Special Problems in Criminal Law
11. March 26: Special Problems in Organizational Settings
12. April 2: Student Paper Workshops
13. April 9: Student Paper Workshops

For deadlines on the Reading Responses and the components of your seminar paper, please refer back to Sections III and IV above. If you have any questions about the requirements or any other aspect of the course, please do not hesitate to come talk with me.

READING ASSIGNMENTS – LESJ 2020

Reading Assignment for First Class: Professional Ethics

1. Deborah Rhode, David Luban & Scott Cummings, *The Concept of a Profession*, excerpt from LEGAL ETHICS (6th edition), pp. 35-36 (on Sakai)
2. Rick Abel, *Why Does the ABA Promulgate Ethical Rules?* excerpt from SUSAN CARLE, LAWYERS' ETHICS AND SOCIAL JUSTICE: A CRITICAL READER, pp. 18-24 (on Sakai)
3. Terrence Halliday, *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment* excerpt, pp. 25-26 (on Sakai in same PDF as Abel reading)
4. ABA Model Rules of Professional Conduct: Preamble: A Lawyer's Responsibilities (The ABA Model Rules are available on the [ABA website](#).)
5. ABA Model Rules of Professional Conduct: Table of Contents - Review the headings and titles of the rules to develop familiarity with the topics covered. You are not expected to read the text of the rules for today's assignment.

Reading Assignment for Second Class: Neutral Partisanship

1. David Luban & Brad Wendell, *Philosophical Legal Ethics: An Affectionate History*, pp. 338-361
2. David Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility* excerpts, pp. 1502-25
3. ABA Model Rule 1.2 and accompanying comments

Reading Response (due Jan. 15th at 9 AM)

- For the Luban & Wendell reading, focus your response on the concept of neutral partisanship. Your response should:
 - Explain in your own words what “role morality” means;
 - Explain in your own words what the “neutral partisanship” model is;
 - Identify the primary critique of the neutral partisanship model; and
 - Articulate the key defenses of that model that the authors provide.
- For the Wilkins reading, your response should:
 - Explain in your own words the ideal of “bleached out professionalism”; and
 - Explain in your own words the “representing race” model of lawyering.
- You are not expected to address the Model Rule in your reading responses, but please come to class prepared to discuss it.

Reading Assignment for Third Class: Confidentiality

1. ABA Model Rule 1.6 and accompanying comments
2. Lisa Lerman & Philip Schrag, *Enron and the Sarbanes-Oxley Act*, excerpt from ETHICAL PROBLEMS IN THE PRACTICE OF LAW (4th edition), pp 178-182
3. Monroe Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, excerpt pp. 1469-1484
4. Kathryn Sabbeth, *Towards an Understanding of Litigation as Expression: Lessons from Guantánamo*, excerpt pp. 1512-1521

Please note your reading responses do NOT need to summarize the Model Rule, only the secondary literature. In general, reading responses do not need to summarize assigned rules unless indicated. As a reminder, please include 3 discussion questions in your responses.

Reading Assignment for Fourth Class: Counseling

1. ABA Model Rule 1.2(a) – We read the Rule earlier so just review this subpart.
2. ABA Model Rule 2.1 and accompanying comments
3. William Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*
4. Abbe Smith, *The Lawyer's "Conscience" and the Limits of Persuasion*

Reading Assignment for Fifth Class: Conflicts

1. ABA Model Rules
 - Rule 1.7: Current Clients. Please read the text of the rule and the subheadings of the comments so you can see the topics that the comments cover.
 - Rule 1.8: Current Clients: Specific Rules. Please skim most of the rule and the subheadings of the comments, but read the text of 1.8(e) and Comment 10.
 - Rule 1.9: Former Clients. Please skim the rule.
 - Rule 1.10: Imputation of Conflicts. Please read 1.10(a) and skim the rest.
 - Rule 6.5: Non-Profit and Court-Annexed Limited Legal Services Programs. Please skim the rule.
2. Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in Desegregation Litigation*, excerpt pp. 470-482, 489-493
3. Scott Cummings, *The Politics of Pro Bono*, excerpt pp. 116-123

Reading Assignment for Sixth Class: Advertising and Solicitation

1. ABA Model Rules
 - Rule 7.1: Please read this rule.
 - Rule 7.2: Please skim the rule.
 - Rule 7.3: Please read this rule.
2. Jerold Auerbach, *A Stratified Profession*, pp. 79-84
3. *Bates v. Bar of Arizona*, 433 U.S. 350 (1977). Please read the selected excerpt on Sakai.
4. *In re Primus*, 436 U.S. 412 (1978). Please read the full decision (from Sakai or Westlaw).

Reading Response

- Identify the main points of the Auerbach reading.
- For the *Bates* case, summarize just the facts.
- For the *Primus* case, provide a brief summary of the fact, the holding, and the reasons given for the holding.

Reading Assignment for Seventh Class: Fees

Last week, we explored whether the presence of a fee means the work is not in the public interest and whether the absence of a fee means the work necessarily *is* in the public interest. This week we will consider whether and how public interest lawyers *can* earn a living in the market for services.

1. ABA Model Rule 1.5 & Comments 3, 5, and 6
2. ABA Model Rule 6.1 & all comments
3. Kathryn Sabbeth, *What's Money Got to Do With It?: Public Interest Lawyering and Profit*, excerpt pp. 442-443, 480-482, 466-468, 488-92
4. Catherine Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, excerpt pp. 1, 13-17, 30-35; *optional*: pp. 35-45

Reading Assignment for Eighth Class: Access to Justice

1. *Turner v. Rogers*, 564 U.S. 431 (2011), excerpt of majority opinion on Sakai
2. Kathryn Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J. L. & GENDER 55 (2018), as excerpted in JULIET BRODIE, CLARE PASTORE, EZRA ROSSER, & JEFFREY SELBIN, *POVERTY LAW, POLICY, AND PRACTICE* 679-689 (2nd ed. 2020)
3. Gary Blasi, *How Much Access? How Much Justice?*, 73 FORDHAM L. REV. 865 (2004)
4. *Optional*: ABA Model Rules
 - a. Rule 1.16 (Declining or Terminating Representation)
 - b. Rule 4.3 (Dealing with Unrepresented Person) & Comments
 - c. Rule 5.5 (Unauthorized Practice of Law)
 - d. Rule 6.2 (Accepting Appointments) & Comments

Reading Response

- For the *Turner* case, identify the Court's ruling and the key factors it highlighted as determinative of that ruling. (Please be aware that Westlaw's summary of the holding is of limited value.)
- For the Blasi reading, focus on the concepts of substantive justice and objective justice, explaining in your own words what the author means by each.

Reading Assignment for Ninth Class: Rationing Lawyers

1. Paul Tremblay, *"Acting a Very Moral God": Triage Among Poor Clients*, selected pages
2. Darryl Brown, *Rationing Criminal Defense Entitlements: An Argument from Design*, excerpt pp. 816-826
3. Stephen Wizner, *Rationing Justice*, excerpt pp. 1022-1026
4. ABA Model Rules
 - a. Rule 1.16 & Comments (Declining or Terminating Representation)
 - b. Rule 6.2 & Comments 1, 7, 8 (Accepting Appointments)

Reading Assignment for Tenth Class: Special Problems in Criminal Law

1. David Luban, *A Good Prosecutor Throws a Case*, pp. 1-4
2. Paul Butler, *How Can You Prosecute Those People?*, excerpt from ABBE SMITH & MONROE FREEDMAN, *HOW CAN YOU REPRESENT THOSE PEOPLE?*, pp. 15-26
3. Angela Davis, *Prosecution and Race: The Power and Privilege of Discretion*, pp. 245-257.
4. ABA Model Rules
 - Rule 3.1 (Meritorious Claims and Contentions) - Please read the text of the rule.
 - Rule 3.8 (Special Responsibilities of a Prosecutor) - Please read the text of the rule and the first two sentences of Comment 1.
 - Rule 5.1 (Responsibilities of a Partner or Supervisory Lawyer) – Please skim this rule.
 - Rule 5.2 (Responsibilities of a Subordinate Lawyer) – Please read the text of the rule and read the accompanying comments.
5. *Optional*: Jessica Pishko, *Prosecutors Across US Call for Action to Mitigate Spread of Coronavirus in Jails and Prisons*, THE APPEAL (March 17, 2020)

Reading Assignment for Eleventh Class: Special Problems in Organizational Settings

1. ABA Model Rule 1.13 (Organizational Clients) – Please skim this rule.
2. David Luban, *Making Sense of Moral Meltdowns*, pp. 355-370

Assignment for Twelfth & Thirteenth Classes: Student Paper Workshops

- See Paper and Workshop Guidelines for authors' and readers' responsibilities