

Legal Ethics and Malpractice
CRN 94847 – Room 202
Maurice Deane School of Law at Hofstra University

Fall 2014
Tuesday/Thursday 2:10 – 3:30 p.m.
Room 118 in the Law Library

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Office hours: I have an “open door policy.” You are welcome to come by the office anytime. In addition, I will normally be present from 9:30 a.m. to 12:00 p.m. on Tuesdays and Thursdays. Please feel free to make an appointment at a time that works for you.

I. Course Description

The course explores the ethical responsibilities of attorneys, as well as and disciplinary concerns related to the delivery of legal services. Students will be exposed to the basic conceptual and ethical precepts of law as a regulated profession. In addition to studying the basis for civil and disciplinary liability, the course will cover approaches to avoiding disciplinary complaints and malpractice claims.

The first portion of the class will focus on the study of admission to practice, lawyer discipline and the Model Rules of Professional Conduct. The balance of the course will be devoted to studying legal malpractice. The legal malpractice problems will give students an opportunity to discuss ethics rules and applicable principles in context.

In considering legal malpractice problems, students will determine the basis for the malpractice claims and how the claim(s) could have been avoided.

II. Course Objectives

A. The course is designed to do the following:

1. To provide a basic foundation for dealing with ethical problems that confront attorneys;
2. To study and apply the ABA Model Rules of Professional Conduct;

3. To enable students to learn the law and policy related to professional liability of lawyers;
4. To expose students to ethics and legal malpractice issues encountered by practicing attorneys and malpractice experts; and
5. To enable students to identify and prevent common problems that result in disciplinary complaints or malpractice claims.

B. Learning outcomes

1. Students will learn how to identify legal ethics and malpractice concerns that arise in representing clients, dealing with non-clients, and serving as an officer of the tribunal.
2. Students will learn to apply ethics rules, legal principles, and policies reflected in the law governing lawyers, including lawyers' duties as fiduciaries of clients and officers of the court.
3. Students will learn substantive legal principles that apply to legal malpractice claims and defenses.
4. Students will learn procedural aspects of prosecuting and defending legal malpractice claims.
5. Students will learn how to avoid legal ethics problems, disciplinary complaints, and malpractice traps.
6. Students will learn the importance of lawyers conducting themselves in accordance with professional standards.
7. Students will obtain experience in collaborating with others in preparing and presenting practical malpractice problems that practitioners encounter.
8. Students will obtain experience in conducting field research on legal ethics and malpractice issues faced by lawyers in a particular practice area.

III. Course Format

The class will combine lecture and discussion. Interactive questions will enable students to apply the Model Rules and applicable law. Class discussion will focus on the problems presented in the Text and in class. Problems (many of which are based on actual cases and controversies) will give students an opportunity to apply legal principles and recommendations included in the reading.

IV. Reading and Resources

A. Required Readings

Susan Saab Fortney and Vincent R. Johnson, *LEGAL MALPRACTICE LAW: PROBLEMS AND PREVENTION* (Thomson West 2014) (Text)

American Law Institute, *A CONCISE RESTATEMENT OF THE LAW GOVERNING LAWYERS* (2007) (compiled by Susan Saab Fortney and Vincent R. Johnson) (Restatement)

Note: Rather than buying the *CONCISE RESTATEMENT*, you can read the assigned Restatement provisions on WESTLAW or LEXIS.

ABA Model Rules of Professional Conduct (any professional responsibility supplement dated 2013 or later). PLEASE BRING YOUR RULES TO EACH CLASS.

Note: Rather than purchasing a book, you can access the assigned rules on-line or through WESTLAW OR LEXIS.

B. Supplemental Resources

LEGAL MALPRACTICE LAW (West Nutshell Series) by Vincent R. Johnson

LEGAL MALPRACTICE (2014 ed.) by Ronald Mallen and Jeffrey Smith (5 volumes on reserve)

THE LAW OF LAWYERING by Hazard and Hodes

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS (American Law Institute)

For additional sources, see *Basic Guide for Researching Legal Malpractice* and the *Hofstra Law Library Guide for Research Legal Ethics and Professional Responsibility for Lawyers* posted on TWEN.

V. Class schedule and assigned readings

For a list of readings, please see the Course Schedule distributed and posted on TWEN.

When the reading assignment refers to a section from the Restatement or a Model Rules, please read the black letter provision and the comments.

VI. Course Requirements and Evaluation

A. Class Participation (25%)

Attendance and class participation are required. Five absences are permitted. If you miss six classes, your grade will be lowered one step. If you miss seven classes, you must withdraw from the course.

Class participation will include students' presentation of one or more problem in the text. The students will elect the manner in which they will present the problem, such as arguing motions or debating issues.

Attendance is taken at the beginning of class. Promptness is required. If you are late, you are encouraged to join the class, but will be counted absent for the day.

Once you are in class, the expectation is that you stay in class unless there is an emergency. Students are asked not to disrupt the class by coming and going out of the classroom.

Cell phones and other electronic devices (other than lap tops) are prohibited during class. If you use such a device during class you will earn no points for class participation and are subject to other available discipline.

Lap top use is discouraged, but allowed ONLY for class-related purposes. If you use a lap top for checking email, surfing the web or other non-classroom purposes, you will receive no credit for class participation and are subject to other available discipline.

In many classes, students will use responder units to answer questions. Because individual units are assigned to students, the answers to questions can be monitored.

Although you are encouraged to volunteer, you are subject to being called on during class. Failure to be prepared will affect your class participation grade. If you prefer not to be called on for a particular class, you should advise Professor Fortney in

writing, before class commences, that you would like to take a “pass.” You are allowed two passes during the semester.

B. Closed Book Examination (60%)

The final examination will be a combination of multiple choice questions and essay questions. The multiple choice portion of the examination will largely be based on the Model Rules and the law of lawyering studied in class. The essay portion of the examination will focus on legal malpractice issues. Before the final examination, students will take a practice examination.

C. Lawyer Interview Paper (15%)

Fifteen percent (15%) of the final grade will be based on a paper on an interview of a practicing lawyer.

The interview gives a student an opportunity to connect with a lawyer who practices in an area of interest to the student. The interview also gives students a chance to explore ethics and malpractice concerns that lawyers deal with on a daily basis.

You should interview an attorney who practices in the private sector on a full-time basis. Although you have flexibility in how you conduct the interview (in person or by telephone), you should collect information related to:

1. What they like most and least about their work?
2. What they consider to be the most frustrating aspect of their law practice, as well as the most rewarding?
3. What legal malpractice problems do they commonly encounter in their practice area?
4. What legal malpractice problems do they consider the most difficult to handle?
5. What recommendations do they have for a new lawyer who wants to limit malpractice exposure?
6. How the lawyer handles ethical dilemmas when applicable ethics codes don't address the matter?

The paper based on the interview should not exceed three pages (double-spaced). The paper is due at 4:00 p.m. on November 1st.

Below is a list of many practice areas. Please consult Professor Fortney if you do not know of a lawyer in a practice area of interest to you. She can identify lawyers to interview.

Bankruptcy
Commercial litigation
Corporate/business
Criminal defense work
Domestic relations
Environmental
Estate planning and probate
Financial institutions
Health
Immigration
Intellectual property
International
Labor
Personal injury defense including insurance defense
Personal injury plaintiffs'
Real estate
Securities
Sports/entertainment
Tax