

Spring 2018 Syllabus

Welcome to Lawyers' Ethics. This syllabus provides you with an overview of the course and other important information. There may be times when I make changes to this syllabus, but for the most part what you see here is what you'll get.

Contact Information

My office is room 125 in Joan Axinn Hall (the one-story brick building directly across California Avenue from the Law School). Due to my obligations as Attorney-in-Charge of the Youth Advocacy Clinic, I will often have unexpected court dates or client meetings, so please talk to me after class, or contact me via email or phone, to schedule an appointment. My email address is theo.liebmann@hofstra.edu, and my phone number is 463-4736.

Class Schedule

Our class meets on Mondays from 2:10 to 4:00 in room 230. I will begin promptly at 2:10 and will usually give you a break about halfway through each class.

Materials

We have three sources of materials:

1. Richard Zitrin, Carol M. Langford, and Nina W. Tarr, LEGAL ETHICS IN THE PRACTICE OF LAW (4th Edition, LexisNexis 2013).
2. The 2017 Model Rules of Professional Conduct, which are available for purchase at: <https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=272591004>.
3. Occasional supplemental readings that I will either hand out in class or post on our TWEN site.

TWEN

I have set up a course page on TWEN, which is available at www.lawschool.westlaw.com. The TWEN page serves three purposes. First, I will post all class assignments, special announcements, syllabus changes, handouts, interesting web links, etc. on TWEN. Second, the TWEN course page allows for class discussion to extend beyond the classroom. Please use the page to share ideas and ask questions of each other. While I will monitor the discussions, I will very rarely add comments; the purpose of the TWEN discussions is for you to converse with each other. Finally, I will give all quizzes using the TWEN page. Please register for TWEN before the first week of classes.

Course Goals

You will develop three main competencies over the course of our semester together:

- You will become familiar with and understand the ethical rules that guide lawyers' conduct.
- You will understand and be able to critically analyze the rationales behind the ethical rules.
- You will develop the ability to efficiently identify ethical issues and dilemmas in realistic scenarios, and to propose well-reasoned and articulate resolutions to those issues and dilemmas.

We will develop these competencies through the use of assigned readings; in-class discussion of the rules and the policies behind them; weekly simulations and discussion of common and/or difficult ethical scenarios; and quizzes.

Grading

I will base your grade on your performance on the 2.5 hour final exam. The exam will consist of a series of multiple choice and short essay questions. It is closed book. You will be responsible for all material covered during the semester.

I will also occasionally give quizzes on the topics we cover. The quizzes will typically be one multiple choice question. Your performance on the quizzes and your class participation can impact your final grade in that particularly excellent quiz performance and class participation can result in my raising your final grade.

Attendance

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly scheduled classes. A student enrolled in a two-credit course who misses more than two class sessions will not pass the course.

My role regarding attendance is very limited. I pass out an attendance sheet at the beginning of each class, collect it at the end of each class, and hand it to my secretary, who keeps a record of absences for each student. When my secretary sees that a student has two absences, she notifies the student with an email warning. If the student then is absent a third time, my secretary sends an email to the Dean of Students reporting that fact. Each student is responsible for signing in for himself or herself. Falsification of a signature on the attendance sheet is a violation of the Code of Academic Conduct.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations can be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

Assignments

For class each week you should be ready to analyze any assigned problems, discuss the assigned readings, and refer intelligently to the Model Rules and their applicability to the problems and readings. In order to guide your preparation for class, I will post an assignment memo on TWEN by the end of the day on the Wednesday preceding each class. The assignment memo will typically include any additional readings, as well as questions for you to consider as you do the readings. Note that assignments may change throughout the course of the semester if there is a need to slow down, speed up, or skip readings. I will give you advance notice of any changes.

Assignment 1

Topics:

The Fiduciary Duty

Introduction to Sources for the Ethical Rules Governing Lawyers and Their Conduct

Consequences of Unethical Conduct

Rules:

Model Rules: Preamble, 1.0, 1.1, 1.3, 1.6

Zitrin:

Belge case (p. 118-123)

Assignment 2

Topics:

Creating the Lawyer/Client Relationship

Scope of Representation

Fees (an introduction)

Rules:

Model Rules: Preamble, 1.2, 1.4, 1.5, 1.8, 1.18, 3.1

Zitrin:

Problem Three & Questions (p. 87-89)

Assignment 3

Topics:

Decision-making and Client Autonomy

Rules:

Model Rules: 1.2, 1.3, 1.4, 1.14, 1.16, 2.1, 3.3

Zitrin:

Problem Thirteen & Questions (p. 361-362)

Two Extremes, Balanced Decision-Making, Three Client Circumstances, A Fight to the Death (p. 362-368)

Assignment 4

Topics:

Confidentiality

Client Counseling

Rules:

Model Rules: 1.2, 1.4, 1.6, 1.9, 2.1, 3.3, 3.4, 4.1

Restatement of Law Governing Lawyers §§68 through 72

Zitrin:

Problem Four & Questions (p. 117-118)

Re-read the *Belge* case (p. 118-123)

Ryder and *Meredith* Cases (p. 124-131)

Zacharias hypos (p. 132-134)

Assignment 5

Topics:

Advising a Client Ethically

Rules:

Model Rules: Preamble, 1.2, 1.4, 2.1

Zitrin:

Problem Twenty-Six & Questions (p. 707-709)

The Audit Lottery (p. 709-712)

Advising on Torture (p. 713-715)

Assignment 6

Topics:

Conflicts of Interest: An Overview

Conflicts of Interest: Current Clients

Conflicts of Interest: Organizational Clients

Rules:

Model Rules: 1.4, 1.7, 1.8, 1.13, 1.15, 2.4

Zitrin:

Problem Seven & Questions (p. 201-204)

Problem Eight & Questions (p. 227-228)

Assignment 7

Topics:

Conflicts of Interest: Former Clients

Conflicts of Interest: Imputation

Rules:

Model Rules: 1.2, 1.9, 1.10, 1.11, 1.12

Zitrin:

Problem Ten & Questions (p. 283-285)

Krutzfeldt Ranch case (p. 288-292)

Assignment 8

Topics:

The Duty of Candor

Rules:

Model Rules: 1.2, 1.6, 1.16, 3.3, 3.4, 3.5, 8.4

Zitrin:

How Far Should One Go with a Guilty Client? (p. 428-433)

Cross Examining the Truthful Witness (p. 434-438)

Problem Sixteen & Questions (p. 439-440)

The Perjury Trilemma (p. 441-452)

Problem Seventeen Parts II and III, & Questions (p. 464-465)

Assignment 9

Topics:

Presenting a Claim Ethically
Ethics in Negotiation, Investigation, and Discovery

Rules:

Model Rules: 3.1, 3.2, 3.4, 3.7, 3.8, 4.1, 4.2, 4.3, 5.3, 8.4
Federal Rules of Civil Procedure Rule 11

Zitrin:

Problem Seventeen Part I & Questions (p. 463-464)
Problem Nineteen & Questions (p. 519-520)
Judge Alvin Rubin's "Causerie" (p. 523-525)
Larry Lempert's "Situations" (p. 525-530)

Assignment 10

Topics:

Ethical Challenges for the Government Lawyer

Rules:

Model Rules: 1.13, 3.6, 3.8

Zitrin:

Problem Twenty-Three & Questions (p. 625-627)
ABA Standards Relating to the Administration of Criminal Justice (p. 628-629)
The Duty of the Prosecutor (p. 539-541)

Assignment 11

Topics:

Fees
Advertising

Rules:

Model Rules: 1.4, 1.5, 7.1, 7.2, 7.3, 7.4, 7.5

Zitrin:

Problem Twenty-Eight & Questions (p. 761-762)
Problem Thirty-One & Questions (p. 839-841)
Overbilling (p. 763-765)
Bates case (p. 841-849)
Ohrlik case and progeny (p. 856-861)

Assignment 12

Topics:

Technology's Impact on Ethical Behavior

Rules:

Model Rules: 1.6, 4.4
Federal Rule of Evidence 502

Zitrin:

Problem Six & Questions (p. 171-173)

Assignment 13

Topics:

Ethical Conduct in a Diverse Society

Rules:

Model Rules: Preamble: A Lawyer's Responsibilities; 8.4

Zitrin:

Problem Fourteen & Questions (p. 387-388)

Assignment 14

Topics:

Staying Ethical Under Pressure

Rules:

Model Rules: 5.1, 5.2, 5.3, 8.3, 8.4

Zitrin:

Problem Twenty-Seven & Questions (p. 733-735)

Peter Kelly's Stand (p. 735-739)