



MASSACHUSETTS SCHOOL OF LAW at ANDOVER

Syllabus for  
PROFESSIONAL RESPONSIBILITY  
Spring Semester 2012

Professor Kurt Olson  
Tuesday/Thursday 7:30-8:45 p.m.

REQUIRED BOOK

Lisa G. Lerman & Philip G. Schrag, *Ethical Problems in the Practice of Law* (2<sup>nd</sup> Ed., Aspen 2008).

Office hours will be Tuesdays/Thursdays, 9:00 a.m.-7:00 p.m. or by appointment at other times. You can also reach me by e-mail at [kolson@msslw.edu](mailto:kolson@msslw.edu) or phone at 978-681-0800 (ext. 131).

All students are also required to obtain copies of the Model Rules of Professional Conduct and the Model Code of Judicial Conduct. You can either purchase copies (they could be pricey), or you can obtain copies on the web site of the American Bar Association. By the way, there is an underscore \_ between "mprc" and "toc.html".

[http://www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html)

<http://www.abanet.org/cpr/mcjc/home.html>

All students are also required to register at my TWEN site on Westlaw. You can access the site here:

<http://lawschool.westlaw.com/manage/homepage.aspx?courseid=87993>

Please let me know if you have any trouble with this, or call Westlaw tech support directly.

**THIS IS IMPORTANT**: Any time you see a Model Rule or a section from the Code of Judicial Conduct or Restatement listed in the reading, **READ IT!** The only way to pass the MPRE is to become familiar with the rules and the comments to the rules. Even though I can't force you to read and learn to apply the rules, you have to pass the MPRE before

you can be admitted to practice. Thus, self-interest (if not interest in the subject matter) should compel you to want to read and understand the rules.

Date	Topics and Problems and Cases to be discussed in class	Pages of textbook assigned, rules, and Restatement sections
<b>Introduction and Chapter 1: Regulation of Lawyers</b>		
January 17	Introduction to the course Institutions that regulate lawyers Admission to practice The Character and Fitness inquiry <b>1-1 Pot</b>	Text: Forward, Preface, and pp. 1-38; 45-59 Model Rules: Introduction, Preamble & Scope note. Rule 8.1; Restatement §§ 1 & 2
January 19	The law governing lawyers Admission to practice, continued Mental health of applicants Misconduct during law school <i>In re Mustafa</i> "Missing moot court money" <b>1-2 The Doctored Résumé</b>	Text: pp. 38-44; 59-71
<b>Chapter 2: Lawyer Liability</b>		
January 24	Professional Discipline Grounds for Discipline <i>In Re Peters</i> "The tactile dean" Reporting misconduct by other lawyers <b>2-1 The Little Hearing</b>	Text: pp. 73-110 Model Rules: 5.1-5.3, 8.3 Restatement §§ 5, 11, & 12
January 26	Professional Discipline, cont. Legal protection for subordinate lawyers <i>Kelly v. Hunton &amp; Williams</i> "The whistleblowing associate" <b>2-2 The Photographer</b> Civil liability of lawyers Criminal liability of lawyers Client protection funds	Text: pp. 110-149 Restatement §§ 48-57
<b>Chapter 3: The Duty to Protect Client Confidences</b>		
January 31	The basic principle of confidentiality <b>3-1 &amp; 3-2 Your Dinner with Anna, Scenes 1 &amp; 2</b> Exceptions to the duty to protect confidences Revelation of past criminal conduct <b>3-3 The Missing Persons, Scene 1</b>	Text: pp. 151-169 Model Rule 1.6 Restatement §§ 59 & 60

February 2	Confidentiality, cont. 3.4 & 3.5 The Missing Persons, Scenes 2 & 3 <i>In re Belge</i> Risk of future injury or death <i>Spaulding v. Zimmerman</i> "The undisclosed aneurysm"	Text: 169-187 Model Rule 1.6(b) Model Code DR 4-101 Restatement §§ 63, 64, & 66
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Registration deadline for the next MPRE is January 31, 2012. For more info., go to [www.ncbex.org/multistate-tests/mpre/guidelines/dates/](http://www.ncbex.org/multistate-tests/mpre/guidelines/dates/)

February 7	Confidentiality, cont. 3-6 <i>Your Dinner with Anna, Scene 3</i> Client frauds and crimes that cause financial harm 3-7 <i>Reese's Leases</i> Other exceptions to the duty to protect confidences	Text: pp. 187-213 Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, & 8.4(c) Restatement §§ 62, 65, & 67
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**Chapter 4: The Attorney-Client Privilege and the Work Product Doctrine**

February 9	Confidentiality and attorney- client privilege compared The elements of attorney-client privilege Client identity Waiver 4-1 <i>Murder for Hire</i> The crime-fraud exception 4-2 <i>The Fatal Bus Crash</i> The death of the client <i>Swidler &amp; Berlin v. U.S.</i> The privilege for corporations <i>Upjohn v. U.S.</i> 4-4 <i>Worldwide Bribery</i> The work product doctrine	Text: pp 215-263 Restatement §§ 68-80, 82 & 83, 86-93
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**Chapter 5: Relationships Between Lawyers and Clients**

February 14	Formation of the lawyer-client relationship <i>Togstad v. Vesely, Otto, Miller &amp; Keefe</i> "You have no case." Lawyers' responsibilities as agents Lawyer's duties of competence, honesty, communication, & diligence	Text: pp. 265-284 Model Rules 1.1, 1.3, 1.4, & 6.2 Restatement §§ 14, 16, 26, & 27
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<p><b>February 16</b></p>	<p><b>5-1 The Washing Machine</b>          Lawyer's duties of competence, honesty, communication, &amp; diligence, cont.          Competence in criminal cases  <b>Strickland v. Washington, "Capital case, lazy lawyer"</b>          Candor and communication  <b>5-2 Lying to clients</b>          Candor in counseling  <b>5-3 Torture</b>          Who calls the shots?  <b>Jones v. Barnes "Who chooses what to argue on appeal?"</b></p>	<p>Text: pp. 284-320          Model Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, &amp; 8.4(c)          Restatement §§ 20-23</p>
<p><b>February 21</b></p>	<p>Who calls the shots? Continued          The competent adult client  <b>5-4 The Package Bomber</b>          Clients with diminished capacity  <b>5-5 Vinyl Windows</b>  <b>5-6 Tightening the Knot</b>          Terminating a lawyer-client relationship</p>	<p>Text: pp. 321-350          Model Rules 1.2, 1.4, 1.14, &amp; 1.16          Restatement §§ 24, 31-33, &amp; 46</p>
<p><b>Chapter 6: Concurrent Conflicts of Interest: General Principles</b></p>		
<p><b>February 23</b></p>	<p>An Introduction to conflicts of interest          General principles in evaluating concurrent conflicts  <b>6-1 The Injured Passengers, Scene 1</b>          Conflicts between current clients in civil litigation  <b>6-2 I Thought you were my Lawyer!</b></p>	<p>Text: pp. 351-377          Model Rules 1.7, 1.10          Restatement §§ 121-123</p>
<p><b>February 28</b></p>	<p>Conflicts between current clients in civil litigation, cont.:          Cross-examining a current client          Representation of co-plaintiffs or co-defendants in civil litigation  <b>6-3 The Injured Passengers, Scene 2</b>          Representing economic competitors in unrelated matters          Taking inconsistent positions in litigation  <b>6-5 Top Gun</b></p>	<p>Text: pp. 378-389          Model Rules 1.7, 1.10          Restatement §§ 128 &amp; 130</p>

	Conflicts involving prospective clients	
March 1	<p><b>6-6 The Secret Affair</b></p> <p>Representing both parties to a transaction</p> <p>Representing organizations</p> <p><b>7-1 My Client's Subsidiary</b></p> <p>Representing criminal co-defendants</p> <p><b>7-2, 7-3, &amp; 7-4 Police Brutality, Scenes 1, 2, &amp; 3</b></p>	Text: pp. 391-416 Model Rules 1.7, 1.13
March 6	<p>Representing family members</p> <p><b>Florida Bar Opinion 95-4</b></p> <p><b>7-5 Representing the McCarthys</b></p> <p>Representing insurance companies and insured persons</p> <p><b>7-6 Two Masters</b></p> <p>Representing plaintiffs in class actions</p> <p>Representing parties to aggregate settlements of individual cases</p>	Text: pp. 416-433 Model Rules 1.7, 1.8(f)
<b>Chapter 8: Conflicts Involving Former Clients</b>		
March 8	<p>The nature of conflicts between present and former clients</p> <p>Duties to former clients</p> <p><b>8-1 Keeping in Touch</b></p> <p>Distinguishing present and former clients</p> <p>Evaluating successive conflicts</p> <p>Addressing former client conflicts in practice</p> <p><b>8-2 The District Attorney</b></p>	Text: pp. 435-459 Model Rules 1.7 & 1.9 Restatement §§ 30(2) & 132
<b><u>Spring Break - No Classes on 3/13 or 3/15</u></b>		
March 20	<p>Representing the competitor of a former client</p> <p><b>Maritrans GP, Inc. v. Pepper Hamilton &amp; Scheetz "Our lawyer took on business competitors as clients"</b></p> <p>Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm</p> <p><b>8-3 A Dysfunctional Family Business</b></p>	Text: pp. 459-481 Model Rules 1.7, 1.9, & 1.10 Restatement § 132

Imputation of former client conflicts to affiliated lawyers

**8-4 The Fatal Shot**

**Chapter 9: Conflicts Between Lawyers and Clients**

March 22	Legal fees Lawyer-client fee contracts <b>Brobeck, Phleger, &amp; Harrison v. Telex Corp. "The Hidden million-dollar minimum fee"</b> <b>In the Matter of Fordham "Too many hours"</b> <b>9-1 An Unreasonable Fee?</b> <b>9-2 Rising Prices</b>	Text: pp. 483-506 Model Rules 1.4, 1.5, 7.1, & 8.4 Restatement §§ 34 & 38
March 27	Legal fees, cont. Regulation of hourly billing and billing for expenses <b>Scenes from a Law Firm</b> Contingent fees Forbidden and restricted fee and expense arrangements <b>9-3 An Impoverished Client</b>	Text: pp. 506-536 Model Rules 1.4, 1.5, 1.8(d), (e), & (i), 1.16(d), 5.2, 7.1, 8.3, 8.4 Restatement § 35
March 29	Legal fees, cont. Fee disputes Dividing fees with other firms or with nonlawyers Payment of fees by a third party Lawyer as custodian of client property and documents Client trust accounts Responsibility for client property Administering estates and trusts Conflicts with lawyers' personal or business interests Business transactions between lawyer and client <b>9-4 Starting a Business</b> Gifts from clients Sexual relationships with clients Intimate or family relationships with adverse lawyers Imputation of lawyer-client conflicts to other lawyers in a firm	Text: pp. 537-561 Model Rules 1.5, 1.7, 1.8(a), (c), (f), (h), 1.10, 1.15, 5.2, 5.4, & 8.3 Restatement §§ 10, 35, 36, & 41-47

**Chapter 10: Conflicts Issues for Government Lawyers and Judges**

April 3	Successive conflicts of present and former government lawyers <b>10-1 A Lawyer for Libya</b>	Text: pp. 563-591 Model Rules 1.9-1.12 Restatement §§ 15,
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Conflicts involving judges, 133  
 arbitrators, and mediators  
**10-2 A Trip to Monte Carlo**  
**10-3 The Judge's Former Professor**  
 ABA Model Code of  
 Judicial Conduct  
 (especially canons 2  
 & 3)

**Chapter 11: Lawyers' Duties to Courts**

**April 5** Being a good person in an adversary system  
 Investigation before filing a complaint  
**11-1 Your Visit from Paula Jones**  
 Truth and falsity in litigation  
 The rules on candor to tribunals  
 Which rule applies when?  
 A lawyer's duties if a client or witness intends to give false testimony  
**Nix v. Whiteside "He said he saw something metallic"**  
**11-2 & 11-3 Flight from Sudan, Scenes 1 & 2**  
 Text: pp. 593-624  
 Model Rules 1.2, 1.16, 3.1, 3.1, 3.8, 4.4, & 8.4(c)  
 Restatement §§ 97, 110, 111, & 120

**April 10** Truth and falsity in litigation, cont.  
 False impressions created by lawyers during litigation  
**11-4 The Drug Test**  
**11-5 The Body Double**  
 Lawyers' duties of truthfulness in preparing witnesses to testify  
**11-6 Refreshing Recollection**  
 Concealment of physical evidence and documents  
 Duties of criminal defense lawyers with respect to evidence of crimes  
**11-7 Child Pornography**  
 Text: pp. 624-643  
 Model Rules 3.3, 3.4, 4.1, 7.1, & 8.4  
 Restatement §§ 116, 118, & 120  
 D.C. Rule 3.3

**April 12** Concealment of documents and evidence in civil cases  
**11-8 The Damaging Documents**  
 The duty to disclose adverse legal authority  
 Disclosures in ex parte proceedings  
 Improper influences on judges and juries  
**11-9 A Letter to the Editor**  
 Lawyers' duties in non-adjudicative proceedings  
 Text: pp. 643-689  
 Model Rules 3.3-3.9, 4.1, 4.4, & 8.4(c)  
 Restatement §§ 104, 106, 107-112, 118, & 119

## Chapter 12: Lawyers' Duties to Adversaries and Third Persons

April 17	Communications with lawyers and third parties <b>12-1 Emergency Food Stamps</b> <b><i>In re Gatti</i></b> "The lawyer posed as a doctor" Restrictions on contact with represented persons <b><i>Messing, Rudavsky, &amp; Weliky, P.C. v. President &amp; Fellows of Harvard College</i></b> "The plaintiff's lawyer interviewed the defendant's employees" Restrictions on contact with unrepresented persons <b>12-2 The complaining witness</b> Duties of prosecutors <b>12-4 The Prosecutor's Masquerade</b> Conduct prejudicial to the administration of justice Are lawyers really too zealous?	Text: pp. 689-730 Model Rules 3.8, 4.1-4.4, & 8.4 Restatement §§ 98-103
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## Chapter 13: The Legal Profession

April 19	Origins and development of the U.S. legal profession A short history of American legal education Race, sex, and class in the legal profession The legal profession today Large firms <b>13-1 The Reforming Partner</b> Small firms Government and nonprofit Organizations Temporary and contract lawyers Overseas outsourcing The ethical climate of the legal profession Mass production <b>13-3 Small claims</b> Pressure to pad bills Pressure from clients to help them commit fraud Ethics and substance abuse <b>13-4 "I'm not driving"</b> Public perceptions of lawyers How to find an employer that has high ethical standards and humane working	Text: pp. 731-790
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**Chapters 14 & 15: Regulatory Restrictions on Law Practice  
and The Provision of Legal Services**

<b>April 24</b>	Advertising <b><i>Bates v. State Bar of Arizona</i></b> Solicitation <b>14-1 <i>Do you need a lawyer?</i></b> Interstate law practice (also called multi-jurisdictional law practice or MJP) Affiliation with nonlawyers Ownership of law firms Multidisciplinary practice A prediction from overseas <b>Chapter 15: The Provision of Legal Services</b> The unmet need for legal services Sources of free legal services for those who cannot afford legal fees The right to counsel for indigent litigants <b>15-1 <i>An Indigent Prisoner</i></b>	Text: pp. 791-836 Model Rules 5.4, 5.5, & 7.1-7.5
<b>April 26</b>	Civil legal aid <b>15-2 <i>Restrictions on Legal Services</i></b> Fee-shifting statutes Pro bono representation <b>15-3 <i>Mandatory Pro Bono Service</i></b> Loan forgiveness and scholarships for public service lawyers Restricting legal services: limiting the role of lay advocates <b>15-4 <i>Special Education</i></b> <b>15-5 <i>Service to the Poor and the Middle Class</i></b>	Text: 836-872 Model Rules 5.3, 6.1, & 6.2