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\textsuperscript{nd} 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@mslaw.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/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.
<table>
<thead>
<tr>
<th>Date</th>
<th>Topics and Problems and Cases to be discussed in class</th>
<th>Pages of textbook assigned, relevant rules, and Restatement sections</th>
</tr>
</thead>
</table>
| January 17 | Introduction to the course  
Institutions that regulate lawyers  
Admission to practice  
The Character and Fitness inquiry  
1-1 Pot  
The law governing lawyers  
Admission to practice, continued  
Mental health of applicants  
Misconduct during law school  
*In re Mustafa “Missing moot court money”*  
1-2 The Doctored Résumé | Text: Forward, Preface, and pp. 1-38; 45-59  
Model Rules: Introduction, Preamble & Scope note. Rule 8.1; Restatement §§ 1 & 2  
Text: pp. 38-44; 59-71 |
| January 19 |  
Institutions that regulate lawyers  
Admission to practice  
The Character and Fitness inquiry  
1-1 Pot  
The law governing lawyers  
Admission to practice, continued  
Mental health of applicants  
Misconduct during law school  
*In re Mustafa “Missing moot court money”*  
1-2 The Doctored Résumé |  |
| January 24 | Professional Discipline  
Grounds for Discipline  
*In Re Peters “The tactile dean”*  
Reporting misconduct by other lawyers  
2-1 The Little Hearing  
Professional Discipline, cont.  
Legal protection for subordinate lawyers  
*Kelly v. Hunton & Williams “The whistleblowing associate”*  
2-2 The Photographer  
Civil liability of lawyers  
Criminal liability of lawyers  
Client protection funds | Text: pp. 73-110  
Model Rules: 5.1-5.3, 8.3  
Restatement §§ 5, 11, & 12  
Text: pp. 110-149  
Restatement §§ 48-57 |
| January 26 |  
Professional Discipline, cont.  
Legal protection for subordinate lawyers  
*Kelly v. Hunton & Williams “The whistleblowing associate”*  
2-2 The Photographer  
Civil liability of lawyers  
Criminal liability of lawyers  
Client protection funds |  |
| January 31 | The basic principle of confidentiality  
3-1 & 3-2 Your Dinner with Anna, Scenes 1 & 2  
Exceptions to the duty to protect confidences  
Revelation of past criminal conduct  
3-3 The Missing Persons, Scene 1 | 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  
| In re Belge  
| Risk of future injury or death  
| Spaulding v. Zimmerman "The undisclosed aneurysm"  
| Registration deadline for the next MPRE is January 31, 2012. For more info., go to www.ncbex.org/multistate-tests/mpre/guidelines/dates/  
| Text: 169-187  
| Model Rule 1.6(b)  
| Model Code DR 4-101  
| Restatement §§ 63, 64, & 66  
|February 7 | Confidentiality, cont.  
| 3-6 Your Dinner with Anna, Scene 3  
| Client frauds and crimes that cause financial harm  
| 3-7 Reese’s Leases  
| 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  
|February 9 | Confidentiality and attorney-client privilege compared  
| The elements of attorney-client privilege  
| Client identity  
| Waiver  
| 4-1 Murder for Hire  
| The crime-fraud exception  
| 4-2 The Fatal Bus Crash  
| The death of the client  
| Swidler & Berlin v. U.S.  
| The privilege for corporations  
| Upjohn v. U.S.  
| 4-4 Worldwide Bribery  
| The work product doctrine  
| Text: pp 215-263  
| Restatement §§ 68-80, 82 & 83, 86-93  
| Chapter 4: The Attorney-Client Privilege and the Work Product Doctrine  
| Chapter 5: Relationships Between Lawyers and Clients  
| February 14 | Formation of the lawyer-client relationship  
| Togstad v. Vesely, Otto, Miller & Keefe “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  
| 4 |
### 5-1 The Washing Machine
Lawyer’s duties of competence, honesty, communication, & diligence, cont.  
**Competence in criminal cases**  
**Strickland v. Washington**, “Capital case, lazy lawyer”

### 5-2 Lying to clients
Candor and communication

### 5-3 Torture
Who calls the shots?  
**Jones v. Barnes** “Who chooses what to argue on appeal?”

Who calls the shots? Continued  
The competent adult client

### 5-4 The Package Bomber
Clients with diminished capacity

### 5-5 Vinyl Windows

### 5-6 Tightening the Knot
Terminating a lawyer-client relationship

### Chapter 6: Concurrent Conflicts of Interest: General Principles

<table>
<thead>
<tr>
<th>February 23</th>
<th>An Introduction to conflicts of interest</th>
<th>Text: pp. 351-377</th>
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<tbody>
<tr>
<td></td>
<td>General principles in evaluating concurrent conflicts</td>
<td>Model Rules 1.7, 1.10, Restatement §§ 121-123</td>
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<tr>
<td></td>
<td><strong>6-1 The Injured Passengers,</strong> Scene 1</td>
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<td>Conflicts between current clients in civil litigation</td>
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<td><strong>6-2 I Thought you were my Lawyer!</strong></td>
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</tbody>
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<thead>
<tr>
<th>February 28</th>
<th>Conflicts between current clients in civil litigation, cont.: Cross-examining a current client</th>
<th>Text: pp. 378-389</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Representation of co-plaintiffs or co-defendants in civil litigation</td>
<td>Model Rules 1.7, 1.10, Restatement §§ 128 &amp; 130</td>
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<tr>
<td></td>
<td><strong>6-3 The Injured Passengers,</strong> Scene 2</td>
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<td>Representing economic competitors in unrelated matters</td>
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<td>Taking inconsistent positions in litigation</td>
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<td><strong>6-5 Top Gun</strong></td>
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</tbody>
</table>
Conflicts involving prospective clients

March 1

6-6 The Secret Affair
Representing both parties to a transaction

Representing organizations

7-1 My Client’s Subsidiary
Representing criminal co-defendants

7-2, 7-3, & 7-4 Police Brutality, Scenes 1, 2, & 3
Representing family members

March 6

Florida Bar Opinion 95-4

7-5 Representing the McCarrhys
Representing insurance companies and insured persons

7-6 Two Masters
Representing plaintiffs in class actions
Representing parties to aggregate settlements of individual cases

Chapter 8: Conflicts Involving Former Clients

March 8

The nature of conflicts between present and former clients

Duties to former clients

8-1 Keeping in Touch

Distinguishing present and former clients

Evaluating successive conflicts

Addressing former client conflicts in practice

8-2 The District Attorney

Spring Break – No Classes on 3/13 or 3/15

March 20

Representing the competitor of a former client

Maritrans GP, Inc. v. Pepper

Hamilton & Scheetz “Our lawyer took on business competitors as clients”

Conflicts between the interests of a present client and a client who was represented by a lawyer’s former firm

8-3 A Dysfunctional Family Business
### Chapter 9: Conflicts Between Lawyers and Clients

**March 22**

- **Legal fees**
- Lawyer-client fee contracts
  - *Brobeck, Phleger, & Harrison v. Telex Corp.* “The Hidden million-dollar minimum fee”
  - *In the Matter of Fordham* “Too many hours”
- **9-1 An Unreasonable Fee?**
- **9-2 Rising Prices**

**March 27**

- Legal fees, cont.
  - Regulation of hourly billing and billing for expenses
  - Scenes from a Law Firm
  - Contingent fees
  - Forbidden and restricted fee and expense arrangements
- **9-3 An Impoverished Client**

**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
- **9-4 Starting a Business**
  - 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

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

**April 3**

- Successive conflicts of present and former government lawyers
- **10-1 A Lawyer for Libya**
Conflicts involving judges, arbitrators, and mediators  

10-2 *A Trip to Monte Carlo*  
10-3 *The Judge's Former Professor*  

### Chapter 11: Lawyers' Duties to Courts

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
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</table>
| 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* |
| 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* |
| 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. 593-624  
Model Rules 1.2, 1.6, 3.1, 3.1, 3.8, 4.4, & 8.4(c)  
Restatement §§ 97, 110, 111, & 120  

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  

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

12-1 *Emergency Food Stamps*
*In re Gatti* “The lawyer posed as a doctor”

Restrictions on contact with represented persons

Messing, Rudavsky, & Weliky, P.C. v. President & Fellows of Harvard College
“The plaintiff’s lawyer interviewed the defendant’s employees”

Restrictions on contact with unrepresented persons

12-2 *The complaining witness*

Duties of prosecutors

12-4 *The Prosecutor’s Masquerade*

Conduct prejudicial to the administration of justice

Are lawyers really too zealous?

### 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

13-1 *The Reforming Partner*

Small firms

Government and nonprofit Organizations

Temporary and contract lawyers

Overseas outsourcing

The ethical climate of the legal profession

Mass production

13-3 *Small claims*

Pressure to pad bills

Pressure from clients to help them commit fraud

Ethics and substance abuse

13-4 “I’m not driving”

Public perceptions of lawyers

How to find an employer that has high ethical standards and humane working conditions

Text: pp. 689-730

Model Rules 3.8, 4.1-4.4, & 8.4

Restatement §§ 98-103

Text: pp. 731-790
<table>
<thead>
<tr>
<th>April 24</th>
<th>Advertising</th>
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<tbody>
<tr>
<td><strong>Bates v. State Bar of Arizona</strong></td>
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<tr>
<td>Solicitation</td>
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<tr>
<td><strong>14-1 Do you need a lawyer?</strong></td>
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<tr>
<td>Interstate law practice (also called multi-jurisdictional law practice or MJP)</td>
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<td>Affiliation with nonlawyers</td>
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<td>Ownership of law firms</td>
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<td>Multidisciplinary practice</td>
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<td>A prediction from overseas</td>
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</table>

**Chapter 15: The Provision of Legal Services**

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

**15-1 An Indigent Prisoner**  
Civil legal aid

**15-2 Restrictions on Legal Services**  
Fee-shifting statutes

Pro bono representation

**15-3 Mandatory Pro Bono Service**  
Loan forgiveness and scholarships for public service lawyers

Restricting legal services: limiting the role of lay advocates

**15-4 Special Education**  
**15-5 Service to the Poor and the Middle Class**

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April 26

**Text:** pp. 791-836

**Model Rules 5.4, 5.5, & 7.1-7.5**

**Text:** 836-872

**Model Rules 5.3, 6.1, & 6.2**