

University of Washington School of Law

Problems in Professional Responsibility

Law B 510 ABC

Winter 2021 Syllabus

Monday (pre recorded) & Wednesday

10:30 am to 12:20 pm

Affiliate Professor Riddhi Mukhopadhyay

Office Hours: By appointment

Course Description and Objectives:

This course explores the ethical problems lawyers face daily in our legal system. Through a detailed study of the ABA's Model Rules of Professional Conduct and their state counterparts (particularly Washington's RPCs), we will examine professionalism and ethics issues that lawyers deal with in any practice, and particular issues that arise within specific types of practice, with a focus on public interest law. This course also addresses the larger philosophical and ethical dimensions of the lawyer's role in our society.

In this course, I hope you will:

- Enhance your sensitivity to ethical dilemmas regularly encountered by attorneys;
- Understand the sources of law that set and influence the standards of professional legal practice;
- Learn to identify and evaluate the legal profession's fundamental values and the resulting duties and challenges they raise;
- Consider some of the current debates in the field of legal ethics;
- Prepare to pass the professional responsibility portion of the bar exam (particularly the MPRE); and
- Critically evaluate the legal profession and your role in it.

This course is required for all J.D. candidates. The fact that it is the only required course beyond the first year underscores its importance. This course is also required for others (including LL.M. students) who desire to take the bar exam in certain states, such as Washington, California, and New York.

SYLLABUS ALERT: The syllabus will be occasionally updated. Check back prior to upcoming assignments.

Required Text (Links to an external site.) and Other Course Materials:

- Lisa G. Lerman & Philip G. Schrag, *Ethical Problems in the Practice of Law* (both 4th and 5th editions are acceptable)
- Susan R. Martyn, Lawrence J. Fox & W. Bradley Wendel, *The Law Governing Lawyers: National Rules, Standards, Statutes and State Lawyer Codes, 2020-2021 Edition*
 - This rules book includes the ABA Model Rules and Comments together with the Restatement (3d), the Model Code of Judicial Conduct and other useful items. It also includes a CD containing all the state codes. (By the way, the table of contents to the Restatement (3d) is better organized than the RPCs and gives you a nice overview of the entire field.) *You may use another rules book, one other than Martyn, but make sure it is up to date.* There have been several changes to the rules by the ABA in recent years. If you choose *not* to purchase the rules book but instead to use free online resources, you must print out copies of the rules (and committee comments) and keep them in a folder/binder so you can easily refer to them in class.

A Note About This Course:

This course focuses on professional responsibility questions that typically arise in public interest practice, and examines the extent to which the application of ethical principles varies by public interest practice context. The course is designed for students who are interested in exploring ethical issues in the public interest practice context, regardless of where they intend to work after graduation.

Model Rules to Consider for Each Class: At the beginning of most class segments in this syllabus, I have indicated the Model Rules that you should review for that segment. It is very important that you take the time to read those specific rules and the associated comments.

Course Grading:

This class is graded based on a weekly quizzes, short essays, the final exam and class participation. Your final grade will be based on the total number of points you accumulate in the following categories:

Class Participation (up to 45 points possible). Class participation includes attendance, participation in online class discussions, and timely responses to weekly problem sets. Recognizing the limitations with remote learning, I have made most materials and lectures available online for you to review with more flexibility. However, you are expected to attend any zoom sessions of the class identified as mandatory and to have completed all readings and assignments. Missing more than three weekly assignments

will have an impact on your grade. It is your job to manage your time in terms of illness, professional obligations, and family obligations. Only contact me if you have a significant, serious issue that you know will result in missing several deadlines (such as caring for a seriously ill family member, ongoing medical issues, etc.). **Please do not contact me about your attendance otherwise.**

Short Essays (up to 30 points possible). You will be expected to upload two short essays reflecting on different aspects of the rules of professional responsibility. Further details will be posted on Canvas under Assignments.

Final Exam (up to 25 points possible). The date and time of the exam will be posted on the general exam schedule for the quarter. ([Please check the official schedule. \(Links to an external site.\)](#)) If you need to reschedule, contact Academic Services. This exam will be graded anonymously, and you will receive grading numbers from Academic Services.

Prerecorded Materials:

Except for the first week, most Monday lectures will be prerecorded and made available. Wednesday class time will be used to review and answer any questions about reading materials.

Zoom Information:

Wednesday classes will be conducted via prescheduled Zoom session. I have no objection to your use of a preferred background and name for your video image on Zoom. I also expect to use the Chat feature in Zoom, but excluding inter-personal chat. I expect all class participants to exercise courtesy toward one another in their use of chat, Zoom features, cell phones, and other external devices, during class time. To enhance Zoom's security precautions the zoom reoccurring schedule and meeting ID can be found "[here](#)".

Attendance Policy: ([Links to an external site.](#))

The American Bar Association's Accreditation Standard 304 requires "regular and punctual class attendance." UW Law has adopted this policy. This is particularly important in a required course like this one. Due to the remote nature of the class, attendance will be determined by weekly quiz participation and scheduled zoom attendance.

Access and Accommodations:

Your experience in this class is important to me. The UW is committed to ensuring that students with physical, mental, or sensory disabilities have equal access to its facilities and programs. To request academic accommodations due to a disability, please contact Disability Resources for Students (DRS), 448 Schmitz Hall, 206.543.8924 (V), 206.543.8925 (TTY) or uwdrs@uw.edu or disability.uw.edu[Links to an external site.](#) If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest

convenience so we can discuss your needs in this course. Work with Academic Services to obtain accommodations on the exam.

I am happy to meet with students to discuss ways of expanding access in the classroom that are not only mandated by law. It is never too late to request accommodations – our bodies and circumstances are continuously changing. Please feel free to make an appointment with me to discuss.

Religious Accommodations:

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy \(https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/\)](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) [disability.uw.edu](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) (Links to an external site.) (Links to an external site.) Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form (<https://registrar.washington.edu/students/religious-accommodations-request/>) (Links to an external site.)

Research Services Librarians:

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page \(Links to an external site.\)](#) [Links to an external site. \(Links to an external site.\)](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at lawref@uw.edu. You are also welcome to visit the Reference Office on L1 to speak with the Research Services librarian on duty. If you have a detailed research question or would prefer to meet privately with a librarian, you may set up an appointment.

Educational Resources & Course Materials:

The Gallagher Law Library subscribes to a variety of e-resources that provide great (and FREE) educational resources. You may want to consider using these materials to keep costs low.

Student Learning Technologies (UW-IT) Support:

Contact help@uw.edu or 206-221-5000 for UW NetID and general networking support. UW-IT maintains a help desk at the Odegaard Undergraduate Library.

Schedule of Topics, Readings, and Assignments:

WEEK 1

Class 1 - Mon, Jan 4th

Topic: Introduction

Reading Assignments:

- [Lerman & Schrag 1 - 45](#)

Actions

- Review the ABA Model Rules of Professional Conduct to become familiar with their structure and various sections. You do not have to read the comments, but please read the rules themselves.

Participation: Please take the [Class Introduction](#) survey by Jan 5

Class 2 -Wed, Jan 6th

Topic: Admission to Practice

Reading Assignments:

Rule 8.1 (Bar admission and disciplinary matters)

- Lerman (4th ed): 42-63 ([Chapter 1 Part C](#)

Actions

)

- Lerman (5th ed): 46-64 ([Chapter 1 Part C](#)

Actions

)

- Skim Washington Admission to Practice Rules, available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=apr&ruleid=gaapr03 (Links to an external site.) (Links to an external site.).
- Skim Washington Application for Bar Examination, available at <https://www.wsba.org/docs/default-source/licensing/admissions/wsba-bar->

[exam-application---final---clean.pdf?sfvrsn=34743af1_2](#) (Links to an external site.) (Links to an external site.)

- http://www.abajournal.com/news/article/law_student_with_felony_record_and_skadden_fellowship_denied_character and (Links to an external site.) (Links to an external site.)
- http://www.defender.org/sites/default/files/Open%20letter%20to%20the%20Washington%20State%20Bar%20Association%20Board%20of%20Governors_0.pdf (Links to an external site.) (Links to an external site.)

WEEK 2

Class 3 - Mon, Jan 11th

Topic: Duty of Competence

Reading Assignments:

Rules 1.1, 1.3, 1.4, 5.1, 5.2, 5.3, 8.3, 8.4

- Lerman (4th ed): 65-105, 139-140
- Lerman (5th ed): 81-130, 149-150
- **Optional:** [ABA Standing Comm. on Ethics and Prof. Resp.: Formal Opinion 06-441 – Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation](#)
- **Optional:** “When the Defenders Are the Plaintiffs: Miami-Dade’s Overburdened PD’s Office May Decline New Clients, Florida Court Says,” available at http://www.abajournal.com/magazine/article/miami-dades_overburdened_pds_office_may_decline_new_clients_florida_court_s (Links to an external site.) (Links to an external site.) (Links to an external site.) (Links to an external site.)
- **Optional:** [National Legal Aid and Defender's Association, Five Problems Facing Public Defense on the 40th Anniversary of Gideon v. Wainwright](#)

Class 4 - Wed, Jan 13th

Topic: Formation of Attorney-Client Relationship and Accompanying Duties

Reading Assignments:

Rules 1.2, 1.16, 1.18, 6.1, 6.2, 6.5

- Lerman (4th ed): 239-292 (especially [Togstad](#)), 320-328
- Lerman (5th ed): 151-179 (especially [Togstad](#)), 183-202, 229-237
- Restatement 3rd of the Law Governing Lawyers §14

WEEK 3

Mon, Jan 18th Martin Luther King Jr. Holiday - No Class

Class 5 - Wed, Jan 20th

Topic: Conception of Lawyer Role, Ethical Issues Implicated by Career Choice

Reading Assignments:

- Simon, [Ethical Discretion in Lawyering](#)

Actions

, pages 1083-1084, 1090-1096

- Pepper, [The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities](#)

Actions

pages 613-624

- Postema, [Moral Responsibility in Professional Ethics](#)

Actions

pages , 63-64, 81 - 89

- Perlman, [A Career Choice Critique of Legal Ethics Theory,](#)

Actions

pages 830 - 845, 868 - 876

WEEK 4

Class 6 & 7 - Mon, Jan 25th & Wed, Jan 27th

Topics: Ethical Duty of Confidentiality, Privilege and Attorney Work Product

Reading Assignments:

Rule 1.6

- Lerman (4th ed): 141-178, 188-193, 195-196 (Section D, Talking to Clients About Confidentiality)
- Lerman (5th ed): 240-271, 281-286, 302 (Section D, Talking to Clients About Confidentiality)
- William H. Simon, [The Confidentiality Fetish](#)

Actions

- “ [Confidentiality Agreements: Immoral?](#)

Actions

”

Weekly Quiz

WEEK 5

Class 8 - Mon, Feb 1st

Topic: Loyalties and Conflicts of Interest

Reading Assignments:

Rules 1.7, 1.8, 1.9, 1.10, 1.13, 1.15, 1.18, 6.3, 6.4, 6.5

- Lerman (4th ed): 329-375, 405-413
- Lerman (5th ed): 347-391

Class 9 - Wed, Feb 3rd

Topic: Conflicts, continued.

Reading Assignments:

- Lerman (4th ed): 427-453, 460-470
- Lerman (5th ed): 393-433

[Weekly Quiz](#)

WEEK 6

Class 10, Mon, Feb 8th

Topic: Attorney Client Privilege

Reading Assignments:

Rule 4.4

- Lerman (4th ed): 197-238
- Lerman (5th ed): 303-345
- Restatement 3rd of the Law Governing Lawyers, §§ 68-75, 77-80, 82-83, 86-89 (you do not have to read the comments)
- [Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 \(1984\)](#)

Actions

)

Class 11, Wed, Feb 10th

Topic: Diminished Capacity and Other Issues (Guest Speaker - Michelle Lucas)

Reading Assignments:

Rules 1.2, 1.14

- Lerman (4th ed): 293-320
- Lerman (5th ed): 206-229
- [When the Client's Approach is Deadly](#)

Actions

Weekly Quiz

Feb 12 - ESSAY 1 DUE

WEEK 7

Mon, Feb 15th President's Day - No Class

Class 12 - Wed, Feb 17th

Topic: Legal Fees; Trust Accounts

Reading Assignments:

Rules 1.4, 1.5, 1.8(a), 1.8(d), 1.8(e), 1.8(f), 1.8(h), 1.8(i), 1.16(d), 5.4

- Lerman (4th ed): 477-498, 514-542
- Lerman (5th ed): 489-509, 526-553
- **Optional:** Lerman (4th ed): 498-514
- **Optional:** Lerman (5th ed): 509-526

Weekly Quiz

WEEK 8

Class 13 - Mon, Feb 22nd

Topic: Who is the Client? – Representation of Entities, Classes, and Multiple Parties

Reading Assignments:

- Lerman (4th ed): 382-390, 405-426
- Lerman (5th ed): 444-453, 468-488
- Derick Bell, [Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Literature](#)

Actions

Class 14 - Wed, Feb 24th

Topic: Communication with Represented Persons, Communications with Unrepresented Persons, Duties of a Prosecutor (**Guest Speaker - Yvonne Chin**)

Reading Assignments:

Rules 4.2, 4.3

- Lerman (4th ed): 702-738
- Lerman (5th ed): 717-759
- ABA Standing Comm. on Ethics and Prof. Resp., [Formal Opinion 11-461](#)
- [In re Lawrence](#)

Actions

, (Oregon Sup. Ct.) (excerpt)

- Engler, [Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons](#)

Actions

(excerpt)

- **Optional:** ABA Standing Comm. on Ethics and Prof. Resp., [97-408](#)

Actions

Weekly Quiz

WEEK 9

Class 15 - Mon, Mar 1st

Topic: Truth, Justice and Autonomy, Part I (Guest Speaker - Justice Mary Yu)

Reading Assignments:

Rules §§1.0, 1.6, 2.1, 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.4, 8.3, 8.4

- Lerman (4th ed): 573-585, 597-638
- Lerman (5th ed): 585-601, 613-649

Class 16 - Wed, Mar 3rd

Topic: Truth, Justice, and Autonomy, Part II

Reading Assignments:

Rules §§1.0, 1.6, 2.1, 3.1, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.4, 8.3, 8.4

- Lerman (4th ed): 661-685, 687-702
- Lerman (5th ed): 675-717
- **Optional:** "[How Social Media Is Pushing the Limits of Legal Ethics](#)"
- **Optional:** "[When the Truth Can Wait](#)"

Weekly Quiz

WEEK 10

Class 17 - Mon, Mar 8th

Topic: Provision of Legal Services and Unauthorized Practice of Law

Reading Assignments:

Rule 5.5

- Lerman (4th ed): 746-753, 761-793, 795-802
- Lerman (5th ed): 840-846, 853-880, 767-772
- Richard Abel, [Why does the ABA Promulgate Ethical Rules?](#)
- **Optional:** Supreme Court of Washington, Order (June 2012), [Limited Practice Rule for Limited License Legal Technicians](#)

Class 18, Wed, March 10th (Last Day of Class)

Topic: Review Session

Weekly Quiz

March 21 - ESSAY 2 DUE

FIRST ESSAY ASSIGNMENT (Due Feb 12)

Instructions:

You were assigned reading on three different views of the lawyer's role (Postema, Pepper and Simon), and on the ethics of career choice (Perlman). Please write a short essay of 4 - 5 pages, (**double-spaced, 12 point font, 1-inch margins**) in response to these readings.

The first part of your essay should identify the view on the lawyer's role (Simon's Pepper's or Postema's) you find most compelling and explain why you find it compelling. It should also identify which view you are most likely to follow in your own practice.

The second part of your essay should be informed by the Perlman reading and include answers to the following questions:

- What work do you intend to do in the future?
- What's most important/appealing to you about your choice, and why?
- What do you see as the most common and most challenging potential ethical issues in the work you will be entering?
- What is the source of these challenges? i.e. Why do they arise in this type of work? How much of this is unique to this type of work? Typical of legal practice generally?
- What are your suggested strategies for dealing with these challenges?

SECOND ESSAY ASSIGNMENT (Due March 21)

Instructions:

This assignment is due on the last day of finals in the following format: typed, double-spaced, 12-point Times New Roman font, with one-inch margins, and include page numbers. Your answer should be **NO MORE** than 1250 words long. Please **include a word count** at the end of your essay. I **will not read** past 1250 words.

Please write a short essay responding to the following prompt:

In this course, you might have come to believe that some rules are problematic from a moral or public policy standpoint. Often, there are tensions between what a lawyer thinks is the right thing to do, and what the Model Rules require. If you could recommend that the American Bar Association revise or improve one rule (or set of related rules) in the Model Code of Professional Conduct, which rule(s) would you nominate for revision or improvement – and why?