IMPORTANT NOTICE: In Alabama, you cannot take the Multistate Professional Responsibility Exam (MPRE) more than 12 months preceding the Bar Exam. Unless you will take the February or July 2016 Bar Exam (or will join a state bar that lacks this rule), don’t take the MPRE this semester.

Purpose Of The Course

Every law student at an ABA-accredited law school must take a course like this one, whether it is called Legal Profession, Professional Responsibility, or Legal Ethics. The idea of the course is to prepare you to practice law in compliance with the rules of professional conduct, as well as to help you learn how to make principled choices and steer your career to satisfying places. This course attempts to provide you with enough professional responsibility to meet your needs as a new lawyer, while also encouraging you to think about the kind of lawyer you want to be, given the person that you are.

This course also helps you check a few boxes. It satisfies the law school’s and the ABA’s requirement for a professional responsibility course, and it will help you prepare for the MPRE (this course alone is not sufficient for that purpose, but any MPRE material we do not cover can be picked up through materials and courses provided by the commercial bar-preparation companies and/or through independent study).

Required Texts and Reading Assignments

The primary texts for the course are LERMAN & SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW (3rd ed. 2012) and LERMAN ET AL., ETHICAL PROBLEMS IN THE PRACTICE OF LAW: MODEL RULES, STATE VARIATIONS, AND PRACTICE QUESTIONS (2015-16). You cannot access e-books during the final: purchase or rent a paper copy. Updates can be found at http://www.aspenlawschool.com/books/lerman_ethicalproblems

The reading assignments are attached to this syllabus; if I adjust the assignments, I will give you ample advance notice. Always be prepared to discuss the material assigned for the current date, even if we carry over discussion from the previous day. While the reading assignments largely march straight through the book, there are some exceptions; please pay attention to the assignment list. I may provide handouts at various points. Discussion will be driven by an “on-deck” sign-up sheet (see below).

Additional Resources. Each state in the United States and the District of Columbia has its own body of law in the professional responsibility area. The leading collection of judicial authority is the ABA/BNA Lawyers’ Manual on Professional Conduct. In researching professional responsibility issues, you might also find it useful to visit some of the following websites:

The ABA Center for Professional Responsibility includes draft proposals from ABA committees, ABA ethics opinions, and links to other resources. Some of their web materials are accessible only if you are a member of the ABA Section on Professional Responsibility; I am a member if you need something.

www.law.cornell.edu links to the American Legal Ethics Library, complete up until March 1, 2013 (when they stopped maintaining it). It has links to ethics resources from every jurisdiction in the United States; it is a good starting point, but you must seek the most up-to-date version of any source it provides.

The blog Legal Ethics Forum (legalethicsforum.com) is maintained by leading legal ethics professors and professionals. It has links to many sources as well as posts on newsworthy events.
Grading

Your grade will be based on a final examination (with the possibility of a half-step down based on failure to meet class participation requirements; see below). The exam will be a multiple-choice and essay examination given at the time scheduled by the Registrar’s Office for this class (currently Tuesday, December 8, at 9 a.m.). The examination is open-book.* You may hand-write (Bluebooks mandatory) or use a computer (ExamSoft mandatory) to take your exam.

The multiple-choice questions on the final will be graded simply for correctness. The essay portion will include both traditional fact-pattern questions and policy questions. I will grade your answer to the essay questions using several criteria:

- your ability to see the legal issues raised by the fact pattern or policy question;
- your provision of the legal rules relevant to the issues;
- your use of the rules and the facts to analyze the issues as you show me how you reach a particular conclusion to each issue;
- your use of policy considerations when the law fails to resolve the issue or provides what you think is an inadequate resolution;
- your recognition and analysis of potential flaws in your argument (because the facts cut both ways, the law is uncertain on this issue, or the like); and
- the persuasiveness with which you state your argument.

The better your answer is organized, the better I can see how you satisfy these criteria. I do not take off points for misspellings or grammatical mistakes, but such flaws may make it more difficult for me to understand your reasoning and thus may indirectly affect your grade.

I will explain what I expect from you on the examination throughout the semester and will hold a final question-and-answer session (I have tentatively scheduled the review session for Saturday, December 5, at 3 p.m.). That final session will consist only of your questions and our answers to them; I will not provide any kind of general review of the course. I will continue to accept questions via email after the review session until noon on the day before the final exam. Because the final exam is on Tuesday, December 8, at 9 a.m., all questions must be sent to my email address, helliott@law.ua.edu, by 12 p.m. (noon) on Monday, December 7.

Class participation

Good class participation reveals that you have read the assignments thoughtfully and related the content of the assignment to the broader themes and ideas presented throughout the course. Such participation also involves listening attentively to the other members of the class and engaging their comments with respect and candor. If I realize that someone is not participating or is participating too much, I will contact that person individually.

* You may use any paper resources, including your textbooks, any notes you have taken and outlines you have prepared, anyone else’s notes or outlines (so long as you have the author’s permission), and any commercial materials (such as Gilbert’s or Emanuel’s). You may not talk to anyone about the exam while you are taking it (other than to ask a question of the proctor or the registrar’s office), and you may not use any electronic resources (for example, you cannot use the Internet or refer to the electronic version of your notes or the electronic version of the casebook while taking the exam). Print out anything you wish to use during the exam.
All of you are responsible for the reading for each class. However, to make class discussion more productive, I will establish an “on-deck” roster rather than cold-calling. You will sign up for several class days throughout the semester and (along with others on-deck) will be responsible for discussing the material for those days. You will submit a list of preferred dates to me at the beginning of class on Thursday, August 20; I will combine all students’ requests to determine a roster that best accommodates all members of the class and then post a copy on the TWEN site by the end of the day Friday, August 21. Please choose your dates carefully, taking into consideration other commitments you have throughout the semester (including travel for moot court competitions or trial teams, deadlines for drafts of essays or briefs in other classes or for competitions, your sister’s wedding, etc.). You may not change the dates for which you sign up without consulting me at least two weeks in advance.

On any day for which you are on-deck, if you are (1) absent for any reason other than a death in your family, a severe illness supported by a doctor’s note, a judicial clerkship interview, or the equivalent, or (2) present but unable to respond to my questions, your final grade will lowered by a half-step for failure to meet the class participation standard. It is your responsibility to ensure that you are in class for your on-call dates.

Course Policies and Other Information

Course webpage. A TWEN page has been created at http://lawschool.westlaw.com/. There you will find this syllabus and (as of the end of August 21) the on-deck roster. As we go through the semester I may post handouts, announcements, and links to supplemental material from time to time. I will also use the email function of the website to contact the members of the class periodically; in particular, I will email you if an emergency requires me to cancel (or delay the beginning of) class. It is very important that you sign up on TWEN and that you use an email address you check regularly when you sign up. Do not use your UA email address if you do not check it daily.

Office hours. My office hours are Mondays, Tuesdays, and Thursdays from 1:00 to 1:50. If you know you plan to stop by, please email me so that I may schedule my time accordingly. If you have not planned in advance to attend office hours, you are still more than welcome to come by. I am also available at other times by appointment; please send an email to find an appropriate time.

Also, please note that I am a SafeZone Ally, one of many resource people on campus who provide an open door for individuals seeking information or assistance regarding sexual orientation, gender identity, harassment, and/or discrimination. Feel free to talk to me at any time if you or someone you know has questions or concerns.

Disability policy. If you have a disability which requires accommodation (for classes, exams, or both), please contact the Associate Dean for Academic Affairs to plan your disability accommodations.

Electronic devices. Laptops are permitted in class only for taking notes and for viewing web pages or other documents that I have asked you to pull up. You may not use your laptop for any other purpose during class. Someone whose laptop use interferes with the class may be asked to leave class and will be considered absent that day. Laptops must be set up before class starts. Cellphones, tablets, and similar devices must be turned off before class. You may not send or receive calls, text messages, instant messages, or the like during class. If you are expecting a particularly important call (e.g., a family member will imminently give birth, or a judge is expected to call to invite you to an interview), you must ask my permission at the beginning of class to keep your phone on and receive messages.

Recording devices. The use of recording devices in class, other than required to accommodate a disability under a plan established with the Associate Dean for Academic Affairs, is prohibited without my written prior permission.
**Attendance.** Class attendance is mandatory. A roll sheet will be circulated each day. If you do not sign it, you are absent, regardless of the reason for your absence. The law school's attendance policy provides that “A student who is absent for any reason from more than three class hours per semester credit hour in a course may be dropped from the roll or not allowed to sit for the exam and receive an ‘F’ for the course. If a student’s absences exceed three class hours per semester credit, the Dean, after consulting with the professor, will determine whether the student will be withdrawn without a penalty or not be allowed to sit for the exam and receive an ‘F’ for the course” (emphasis added). For this 3-credit class, that means no more than 9 absences.

You need not email me to explain any particular absence (really, please don’t, unless you need advice about whatever is making you absent). However, if the total number of classes you miss approaches the maximum, you must contact me. Should something occur that you believe will cause you to miss an inordinate number of classes, please contact the Associate Dean for Academic Affairs to discuss your options. The Honor Code provides that “Knowing failure to report having missed more than a certain number of classes to an Instructor who specifically requires all Students to do so constitutes an Honor Code violation.”

**Nondiscrimination Policy.** The University of Alabama is committed to providing an inclusive environment that is free from harassment or discrimination based on race, genetic information, color, religion, ethnicity, national origin, socioeconomic status, political beliefs, sex, sexual orientation, gender expression, gender identity, age, ability, size, or veteran status. The University of Alabama prohibits any verbal or physical conduct that threatens or endangers the health or safety of any individual or group, including physical abuse, verbal abuse, threats, stalking, intimidation, harassment, sexual misconduct, coercion, and/or other communication or conduct that creates a hostile living or learning environment. Harassment or other illegal discrimination against individuals or groups not only is a violation of University Policy and subject to disciplinary action, but also is inconsistent with the values and ideals of the University.

**The Honor Code:** The Honor Code governs your conduct in this class, as it does any other activity in which you participate at the Law School. “The goal of the Honor Code is to ensure that no Student gains an unfair advantage in Law School over another Student and to promote those ideals of honor and integrity that are germane to the practice of law. Pursuant to this goal, all students while enrolled at the University of Alabama School of Law shall refrain from intentionally lying, cheating, stealing, or tolerating such action by another and shall refrain from other reprehensible acts.”

**N. B. This syllabus is available on the TWEN site for this course, should you misplace it.**
# READING ASSIGNMENTS

Text refers to Lerman & Schrag, Ethical Problems in the Practice of Law (3d ed. 2012). Page assignments extend from and to the most prominent section break on the page unless otherwise indicated. Supp. refers to Lerman/Schrag/Gupta, Ethical Problems in the Practice of Law: Model Rules, State Variations, and Practice Questions 2015-16. Assignments to Supp. are by Rule number unless otherwise noted. When assigned to read a Rule, always read the Comment in addition to the text of the Rule, and read any state variations provided at pp. 127-144.

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<tr>
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<tr>
<td>1 Aug. 18</td>
<td>Introduction to the course; institutions that regulate lawyers; the regulation of lawyers; admission to the Bar</td>
<td>1-2 <em>Weed</em> 1-3 <em>Doctored Resume</em></td>
<td>Text 52-78 Supp. Preamble, Rules 1.0-1.1 (Read Text 1-51 for background)</td>
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<td>2 Aug. 20</td>
<td>Ways in which lawyers can become liable; reporting misconduct by other lawyers</td>
<td>2-1 “I’m Not Driving” 2-2 <em>Exculpatory Evidence</em></td>
<td>Text 79-111 Supp. Rules 8.3, 8.4</td>
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<tr>
<td>3 Aug. 25</td>
<td>Ways in which lawyers can become liable, continued</td>
<td>2-3 <em>The Little Hearing</em></td>
<td>Text 111-148, 154-155 Supp. Rules 3.8(d), 5.1, 5.2, 5.3, 8.3, 8.5</td>
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| 4 Aug. 27     | Confidentiality  
- Basic principle  
- Prohibition on revealing your client’s past criminal conduct | 3-1 & 3-2 *Your Dinner with Anna 1 & 2* 3-3 *The Missing Persons 1* | Text 159-179 (top) (stop there; do not read further until after this class) Supp. Rule 1.6 |
| 5 Sept. 1     | Confidentiality, continued  
- Revealing information to prevent injury or death | 3-4 & 3-5 *The Missing Persons 2 & 3 Case: Spaulding* | Text 179-198 (middle) Supp. Rule 1.6(b) |
| 6 Sept. 3     | Confidentiality, continued  
- Revealing confidences to prevent client frauds and crimes that cause financial harm  
- Other exceptions to the duty to protect confidences | 3-9 *Reese’s Leases 3-10 An Investment Project* | Text 201-228 Supp. Rules 1.0(f), 1.2(d), 1.6(b), 1.16 (a) & (b), 3.3, 4.1, 8.4(c) |
| 7 Sept. 8     | Relationships between lawyers and clients  
- Formation of the relationship  
- Lawyers as agents  
- Lawyers’ duties of competence, honesty, and communication  
| 8 Sept. 10    | GUEST SPEAKER | | |

Elliott Legal Profession Syllabus - 5
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<tr>
<td><strong>9 Sept. 15</strong></td>
<td>Relationships between lawyers and clients, continued</td>
<td>5-2 <em>Lying to Clients</em></td>
<td>Text 312-346</td>
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<td>• Diligence</td>
<td>5-3 <em>Torture</em></td>
<td>Supp. Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c)</td>
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<td>• Candor and communication</td>
<td>Case: <em>Jones</em></td>
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<td>• Who calls the shots?</td>
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<td>• Legally competent clients</td>
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<td><strong>10 Sept. 17</strong></td>
<td><strong>GUEST SPEAKER</strong></td>
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<td>• Clients with diminished capacity</td>
<td>5-5 <em>Vinyl Windows</em></td>
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<td>• Terminating a lawyer-client relationship</td>
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<td><strong>12 Sept. 24</strong></td>
<td>Conflicts of interest: current clients</td>
<td>6-1 <em>The Injured Passengers, Scene 1</em></td>
<td>Text 379-407 Supp. Rules 1.0, 1.7, 1.10</td>
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<td>• Introduction</td>
<td>6-2 <em>I Thought You Were My Lawyer!</em></td>
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<td>• General principles</td>
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<td>• Civil litigation</td>
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<td>• Suing a current client</td>
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<td><strong>13 Sept. 29</strong></td>
<td>Conflicts/current clients, continued</td>
<td>6-3 <em>The Injured Passengers, Scene 2</em> Text 407-420, 423-439 (skip Problems 6-4, 6-6, and 7-1) Supp. Rules 1.7, 1.10, 1.13</td>
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<td>• Cross-examining current clients</td>
<td>6-5 <em>Top Gun</em></td>
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<td>• Representing co-plaintiffs or co-defendants in civil litigation</td>
<td>7-2 <em>My Client's Subsidiary</em></td>
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<td>• Positional conflicts</td>
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<td>• Prospective clients</td>
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<td>• Representing both parties to a transaction</td>
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<td>• Representing organizations</td>
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<td><strong>14 Oct. 1</strong></td>
<td>Conflicts/current clients, continued</td>
<td>7-3 &amp; 4 &amp; 5 <em>Police Brutality, Scenes 1-3</em> Text 439-469 (skip Problem 7-1) Supp. Rule 1.7 Note: replace Problems 7-4 and 7-5 with revised versions, given on TWEN Supp. 1.6, 1.7, 1.8(f), 1.9, 1.10</td>
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<td>• Joint representation of criminal co-defendants</td>
<td>7-6 <em>Representing the McCarthys</em></td>
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<td>• Joint representation of family members</td>
<td>7-7 <em>Two Masters</em></td>
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<td>• Joint representation of insurance companies and insured persons; plaintiffs in class actions/aggregated cases</td>
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<td>15 Oct. 6</td>
<td>Conflicts of interest: former clients&lt;br&gt;• Duties to former clients&lt;br&gt;• Who is a current client? Who is a former client?&lt;br&gt;• Evaluating successive conflicts</td>
<td>8-1 <em>Keeping in Touch</em></td>
<td>Text 471-498 (skip Problem 8-2)</td>
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<td>16 Oct. 8</td>
<td>Conflicts/former clients, continued&lt;br&gt;• Conflicts when a lawyer has changed firms</td>
<td>8-3 <em>A Dysfunctional Family Business</em>&lt;br&gt;8-4 <em>The Firm’s New Partner</em></td>
<td>Text 502-505 (Problem 8-3 only); 515-517 (Problem 8-4 only); Handout on Rules 1.9 and 1.10&lt;br&gt;Supp. Rules 1.7, 1.9, 1.10, 1.0(k)</td>
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<tr>
<td>17 Oct. 13</td>
<td>Conflicts of interest: client v. lawyer&lt;br&gt;• Fees&lt;br&gt;• Billing for expenses</td>
<td>Cases: <em>Brobeck, Fordham</em>&lt;br&gt;9-1 <em>An Unreasonable Fee?</em></td>
<td>Text 521-566 (skip Problem 9-2)&lt;br&gt;Supp. Rules 1.4, 1.5, 7.1, 8.3, 8.4, 5.2, 5.3</td>
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<td>18 Oct. 15</td>
<td>Conflicts/lawyer v. client, continued&lt;br&gt;• Contingent fees&lt;br&gt;• Forbidden/restricted fees&lt;br&gt;• Lawyers as custodians of client property and documents&lt;br&gt;• Conflicts with lawyers’ personal or business interests: business, gifts, sex, family</td>
<td>9-3 <em>An Impoverished Client</em>&lt;br&gt;9-4 <em>Starting a Business</em></td>
<td>Text 566-605&lt;br&gt;Supp. Rules 1.4, 1.5, 1.8, 1.15, 1.16(d), 5.2, 5.4, 8.3, 8.4</td>
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<td>19 Oct. 20</td>
<td>Conflicts issues for government lawyers and judges&lt;br&gt;• Successive conflicts of present and former government lawyers&lt;br&gt;• Conflicts involving judges, arbitrators, and mediators</td>
<td>8-2 <em>The District Attorney</em>&lt;br&gt;10-2 <em>A Trip to Monte Carlo</em>&lt;br&gt;10-3 <em>The Judge’s Former Professor</em></td>
<td>Text 496, 607-615, 620-642 (Skip Problem 10-1)&lt;br&gt;Supp. Rules 1.9, 1.10, 1.11, 1.12; ABA Model Code of Judicial Conduct, Canon 2‡ (esp.Rules 2.4, 2.9 and 2.11)</td>
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<td>20 Oct. 22</td>
<td>Lawyers’ duties to courts&lt;br&gt;• Investigation before filing&lt;br&gt;• Truth and falsity in litigation&lt;br&gt;• Candor to tribunals&lt;br&gt;• Duties if a client or witness intends to testify falsely</td>
<td>11-1 <em>Your Visit From Paula Jones</em>&lt;br&gt;11-2 <em>Flight from Sudan, Scene 1</em></td>
<td>Text 643-671&lt;br&gt;Supp. Rules 1.0(d), 1.2, 1.16, 3.1, 3.3, 3.8, 8.4(c)</td>
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† For the last sentence (the actual question) in this problem, please substitute this question: May you represent the state in the prosecution of Brick?  
‡ This course does not cover the Model Code of Judicial Conduct in depth, but the Multistate Professional Responsibility Examination does include questions about it. Before taking the MPRE, you can read through that (relatively short) Model Code, which is available at [http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html)
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| 21 Oct. 27   | Duties to courts, continued  
- Truth/falsity, continued  
  - Duties if a client intends to misleading, not lie, to the court  
  - Duty to avoid creating false impressions  
  - Preparing witnesses to testify | 11-3 *Flight from Sudan, Scene 2*  
11-4 *The Drug Test*  
11-5 *The Body Double* | Text 671-683 (skip Problem 11-6)  
Supp. Rules 3.3, 3.4, 4.1, 7.1, 8.4 |
| 22 Oct. 29   | FALL BREAK – NO CLASS | | |
| 23 Nov. 3    | Duties to courts, continued  
- Prohibition on concealing physical evidence/documents  
- Evidence of crimes  
- The duty to disclose adverse legal authority  
- Ex parte proceedings  
- Improper influences on judges and juries | 11-7 *Child Pornography*  
11-9 *A Letter to the Editor* | Text 684-700, 703-727 (skip Problem 11-8)  
Supp. Rules 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 4.1, 4.4, 8.4(c) |
| 24 Nov. 5    | Duties to adversaries/third persons  
- Communications with lawyers and third parties  
- Prohibition on deceiving third persons  
- Restrictions on contact with represented persons | 12-1 *Emergency Food Stamps* | Text 729-757  
Supp. Rules 4.1, 4.2, 4.4, 8.4 |
| 25 Nov. 10   | Duties to adversaries/third persons, continued  
- Restrictions on contact with unrepresented persons  
- Duties of prosecutors  
- Conduct prejudicial to the administration of justice | 12-3 *The Break-In*  
12-4 *The Prosecutor’s Masquerade* | Text 758-762, 764-787 (skip Problems 12-2 and 12-5)  
Supp. Rules 3.8, 4.1, 4.3, 4.4, 8.4 |
### Class #, Date  | Topics (incl. topics you will read but we will not discuss in class) | Problems and other material for class | Textbook assignment (Text), and relevant rules/other material (Supp.)
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26 Nov. 12 | Service to the poor and middle class  
- Unmet legal needs  
- Sources of legal assistance  
- The right to counsel  
- Civil legal aid  
- Conflicts issues  
- Fee-shifting statutes | 6-4 *The Prisoners’ Dilemma*§ | Text 413-414, 789-824 (skip Problem 13-1; read Problem 13-2 for its information, and think about the questions it raises)  
Supp. Rules 6.1, 6.2

27 Nov. 17 | Service to the poor and middle class, continued  
- Pro bono representation  
- Pro bono requirements for bar membership  
- Loan forgiveness  
- Restricting legal services: limiting the role of lay advocates | 13-3 *Mandatory Pro Bono Service* | Text 824-846**  
Supp. Rules 6.1, 6.2

28 Nov. 19 | The Changing Legal Profession  
- Diversity and discrimination  
- Advertising and solicitation  
- Geographic and interdisciplinary expansion | 15-1 *The Job Interview* | Text 889-931 (skip Problem 15-2)  
Supp. Rules 5.4, 5.5, 7.1-7.3

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§ Assume that the LAP is funded entirely through charities, not through the federal government, so the restrictions listed on pp. 816-17 do not apply. Also assume that the state is small and mainly rural, so no outside private sector lawyer could be persuaded to accept a substantial class action as a pro bono case.

** An update on loan forgiveness for law graduates who do public service appears on the companion website for the textbook. Click on “Author updates” to see current benefits under the Public Service Loan Forgiveness Program.