IMPORTANT NOTICE: MPRE – *The Multistate Professional Responsibility Examination (MPRE)* is the legal ethics exam required of every bar applicant in almost every state and territory (Maryland, Wisconsin, and Puerto Rico are the only exceptions). It is given on Saturday, March 28. The regular registration deadline is February 5 (fee $80). The late registration deadline is February 12 (fee $160).

**Purpose Of The Course**

A course of this nature is required for every law student at an ABA-accredited law school. The course titles vary – Legal Profession, Professional Responsibility, Legal Ethics – but the general purpose is the same: to prepare you to practice law within the boundaries imposed by the profession’s ethical rules. Many professors, including me, also believe this course should teach you more than merely how to comply with the rules: it should also help you learn how to make principled choices and guide your career to satisfying places.

Thus, while “professional responsibility” can be merely the study of the rules, regulations, statutes, and cases governing the conduct of lawyers, “legal ethics” is really a subset of the more general topic of ethics, which asks what rules and principles should guide our lives. Professional responsibility, without ethics, is too narrow; ethics, without knowledge of the concrete rules that govern practice, is unhelpful. This course attempts to provide you with enough professional responsibility to meet your needs as a new lawyer, while providing you with enough ethics to help you connect your career to your life more generally.

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 reading assignments are attached; 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 syllabus. 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 interpreting the ABA Model Rules, and links to other ethics resources.

www.law.cornell.edu contains the American Legal Ethics Library at the Legal Information Institute at Cornell Law School, complete up until March 1, 2013 (at which point 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 Friday, May 1, at 1:30 p.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 the essays using several criteria, including your ability to see the issue(s) raised by the fact pattern or policy question; your ability to provide the legal rule(s) relevant to the issue(s); your ability to apply the rule(s) to the facts; your ability to apply policy considerations when the law fails to resolve the issue, or provides what you think is an inadequate resolution; your recognition of potential flaws in your argument; 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, though such flaws may make it more difficult for me to see your reasoning and thus may indirectly affect your grade.

I will explain what I expect from you on the examination throughout the semester and hold a final question-and-answer session on the last day of our class (Thursday, April 16). 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 exam (so all questions must be sent to my email address, helliot@law.ua.edu, by noon on Thursday, April 30).

**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.

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, January 8; 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, January 9. Please choose your dates carefully, taking into consideration other commitments you have throughout the semester. 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, 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.

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 January 9) 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 Tuesdays and Thursdays from 10 to noon. 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.

Electronic devices. Cellphones, PDAs, 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), you must ask my permission at the beginning of class to keep your phone on and receive messages.

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.

Recording devices. The use of recording devices in class, other than required to accommodate a disability, 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).

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 Dean of Students/Academic Services 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.”

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

**Nondiscrimination Policy.** The University of Alabama does not discriminate on the basis of genetic information, race, color, religion, national origin, sex, sexual orientation, age, disability or veteran status in admission or access to, or treatment of employment in, its programs and services. As an academic community, our educational mission is enhanced by the robust exchange of ideas that occurs within a diverse and inclusive learning environment, with a diverse student body, faculty and senior level administrative staff. We are dedicated to the pursuit of personal and academic excellence, to advancing the ideals of individual worth and human dignity, and to maintaining a nurturing and respectful learning environment. Individuals who live, work, teach, and study within this community are expected to contribute positively to the environment and to refrain from behaviors which threaten the freedom or respect that every member of our community deserves.

**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.**
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<thead>
<tr>
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<tbody>
<tr>
<td>1 Jan. 6</td>
<td>Introduction to the course; institutions that regulate lawyers</td>
<td>Details of syllabus</td>
<td>Syllabus Text 1-48</td>
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<td>2 Jan. 8</td>
<td>The regulation of lawyers; admission to the Bar</td>
<td>The bar applications on pp. 60-63. 1-2 Weed 1-3 Doctored Resume</td>
<td>Text 48-78 Supp. Preamble, Rules 1.0, 1.1</td>
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<td>3 Jan 13</td>
<td>Law practice in the U.S.; history of the U.S. legal profession; legal education in the U.S.; types of legal practice; the effects of economic recession</td>
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<td>Text 851-863, 873-905 (start after Problem 14-1, read to end of 905), 931-48</td>
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<tr>
<td>4 Jan. 15</td>
<td>Ways in which lawyers can become liable; reporting misconduct by other lawyers</td>
<td>2-1 “I’m Not Driving” 2-2 Exculpatory Evidence</td>
<td>Text 79-111 Supp. Rule 8.3</td>
</tr>
<tr>
<td>5 Jan. 20</td>
<td>Ways in which lawyers can become liable, continued; client protection funds</td>
<td>2-3 The Little Hearing</td>
<td>Text 111-155 Supp. 3.8(d), 5.1, 5.2, 5.3, 8.3, 8.5</td>
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</table>
| 6 Jan. 22    | Confidentiality  
  - The basic principle  
  - Revelation of 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 do the reading for the next class until after this class) Supp. Rule 1.6 |
| 7 Jan. 27    | Confidentiality, continued  
  - Risk of future injury or death | 3-4 & 3-5 The Missing Persons 2 & 3 Case: Spaulding | Text 179-198 (middle) Supp. 1.6(b) |
| 8 Jan 29     | Confidentiality, concluded  
  - Client frauds and crimes that cause financial harm  
  - Other exceptions to the duty to protect confidences | 3-6 Rat Poison 3-9 Reese’s Leases | Text 198-228 Supp. 1.0(f), 1.2(d), 1.6(b), 1.16 (a) & (b), 3.3, 4.1, 8.4(c) |

† The assignments of pages 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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| 9 Feb. 3     | The attorney-client privilege and the work product doctrine  
Attorney-client privilege  
Confidentiality and attorney-client privilege, compared  
The elements of attorney-client privilege  
Client identity  
Waiver  
The crime-fraud exception  
The death of the client  
The work product doctrine  
The privilege for corporations | Case: *Upjohn*  
4-4 *Worldwide Bribery* | Text 229-247, 249-253, 255 256, 258-277 (skip Problems 4-1, 4-2, and 4-3) |
| 10 Feb. 5    | Relationships between lawyers and clients  
Formation of the lawyer-client relationship  
Lawyers’ responsibilities as agents  
Lawyers’ duties of competence, honesty, communication and diligence  
Competence in criminal cases | Case: *Togstad*  
5-1 *The Washing Machine*  
Case: *Strickland* | Text 279-312  
Supp. 1.1, 1.3, 1.4, 6.2 |
| 11 Feb. 10   | Relationships between lawyers and clients, continued  
Candor and communication  
Candor in counseling  
Who calls the shots?  
The competent adult client | 5-3 *Torture*  
Case: *Jones* | Text 312-320, 322-346 (skip Problem 5-2)  
Supp. 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c) |
| 12 Feb. 12   | Relationships between lawyers and clients, continued  
Clients with diminished capacity  
Terminating a lawyer-client relationship | 5-4 *The Package Bomber*  
5-5 *Vinyl Windows* | Text 346-359, 370-372, 374-377 (skip Problems 5-6, 5-7 and 5-8)  
Supp. 1.2, 1.4, 1.14, 1.16 |
| 13 Feb. 17   | Conflicts of interest  
Introduction  
General principles  
Civil litigation  
Suing a current client | 6-1 *The Injured Passengers, Scene 1*  
6-2 *I Thought You Were My Lawyer!* | Text 379-407  
Supp. 1.0, 1.7, 1.10 |
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| 14 Feb. 19   | Conflicts of interest, continued  
  - Cross-examining a current client  
  - Representing co-plaintiffs or co-defendants in civil litigation  
  - Positional conflicts | 6-3 *The Injured Passengers, Scene 2*  
  6-5 *Top Gun* | Text 407-412, 414-419 (stop before first full paragraph on 419)  
 Supp. 1.7, 1.10 |
| 15 Feb. 24   | Conflicts of interest, continued  
  - Conflicts involving prospective clients  
  - Representing both parties to a transaction  
  - Representing organizations  
  - Representing criminal co-defendants | 7-2 *My Client’s Subsidiary*  
  7-3 *Police Brutality, Scene 1* | Text 423-448 (middle) (skip Problem 7-1)  
 Supp. 1.18, 1.7, 1.13 |
| 16 Feb. 26   | Conflicts of interest, continued  
  - Representing criminal co-defendants, continued  
  - Representing family members | 7-4 *Police Brutality, Scene 2 (revised version)*  
  7-5 *Police Brutality, Scene 3 (revised version)*  
  The Florida Bar Opinion | Revised versions of Problems 7-4 and 7-5, on TWEN, instead of the versions in the book  
 Text 450-454.  
 Supp. 1.7, 1.8(f), 1.10 |
| 17 Mar. 3    | Conflicts of interest, continued  
  - Representing family members  
  - Other conflicts in the representation of more than one current client: e.g., insurance companies and insured persons, and plaintiffs in class actions and aggregated cases  
  - Conflicts between present and former clients | 7-6 *Representing the McCarrhys*  
  8-1 *Keeping in Touch* | Text 454-460, 461-494 (skip Problem 7-7)  
 Supp. 1.6, 1.7, 1.10, 1.9 |
| 18 Mar. 5    | Conflicts of interest, continued  
  - Duties to former clients  
  - Distinguishing present and former clients  
  - Evaluating successive conflicts  
  - Conflicts when a lawyers has changed firms | 8-3 *A Dysfunctional Family Business*  
  8-4 *The Firm’s New Partner* | Text 494-517 (skip Problem 8-2 on 496), 519 (skip Problem 8-5)  
 Supp. 1.7, 1.9, 1.10, 1.0(k) |
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| 19 Mar. 10   | Conflicts between lawyers and clients  
  - Fees  
  - Lawyer-client fee contracts  
  - Hourly billing  
  - Billing for expenses  
  - Contingent fees  
  - Forbidden and restricted fee and expense arrangements | Cases: *Brobeck, Fordham*  
 9-1 *An Unreasonable Fee? Scenes from a Law Firm, Questions 1, 2, and 5* | Text 521-566 (skip Problem 9-2)  
Supp. 1.4, 1.5, 7.1, 8.3, 8.4, 5.2, 5.3 |
| 20 Mar. 12   | Conflicts between lawyers and clients, continued  
  - Fees, continued  
  - Lawyers as custodians of client property and documents  
  - Conflicts with lawyers’ personal or business interests  
  - Business transactions between lawyer and client  
  - Gifts from clients  
  - Sexual relationships with clients and adverse lawyers  
  - Imputation of lawyer-client conflicts to other lawyers in a firm | (You can use problems 9-3 and 9-4 to test your understanding, but this class will be essentially a cram session on a large number of particularistic rules, some of which may be relevant to MPRE questions—the MPRE is given on March 28.) | Text 566-605  
Supp. 1.4, 1.5, 1.8, 1.15, 1.16(d), 5.2, 5.4, 8.3, 8.4 |

**NO CLASS MARCH 16-20 – SPRING BREAK; MPRE IS SATURDAY, MARCH 28.**

| 21 Mar. 24   | Conflicts issues for government lawyers and judges  
  - Successive conflicts of present and former government lawyers  
  - Conflicts involving judges, arbitrators, and mediators | 8-2 *The District Attorney*§  
10-2 *A Trip to Monte Carlo*  
10-3 *The Judge’s Former Professor* | Text 496, 607-615, 620-642  
(Skip Problem 10-1)  
Supp. 1.9, 1.10, 1.11, 1.12; ABA Model Code of Judicial Conduct, Canon 2” (focus on Rules 2.4, 2.9 and 2.11, their comments, and the examples for 2.11) |

§ 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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<tr>
<td>22 Mar. 26</td>
<td>Lawyers’ duties to courts  ⋅ Investigation before filing a complaint ⋅ Truth and falsity in litigation ⋅ The rules on candor to tribunals ⋅ A lawyer’s duties if a client or witness intends to give false testimony ⋅ A lawyer’s “knowledge” of a client’s intent to give false testimony</td>
<td>11-1 <em>Your Visit From Paula Jones</em> 11-2 <em>Flight from Sudan, Scene 1</em></td>
<td>Text 643-671 Supp. 1.0(d), 1.2, 1.16, 3.1, 3.3, 3.8, 8.4(c)</td>
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<td>MPRE, SATURDAY, MARCH 28</td>
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<tr>
<td>23 Mar. 31</td>
<td>Lawyers’ duties to courts, continued  ⋅ Truth and falsity in litigation, continued ⋅ A lawyer’s duties if a client intends to mislead the court without lying ⋅ False impressions created by lawyers during litigation ⋅ Lawyers’ duties of truthfulness in preparing witnesses to testify</td>
<td>11-3 <em>Flight from Sudan, Scene 2</em> 11-4 <em>The Drug Test</em> 11-5 <em>The Body Double</em></td>
<td>Text 671-683 (skip Problem 11-6) Supp. 3.3, 3.4, 4.1, 7.1, 8.4</td>
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<tr>
<td>24 Apr. 1</td>
<td>Lawyers’ duties to courts, concluded  ⋅ Concealment of physical evidence and documents ⋅ Duties of criminal defense lawyers with respect to evidence of crimes ⋅ Concealment of documents and evidence in civil cases ⋅ The duty to disclose adverse legal authority ⋅ Disclosures in ex parte proceedings ⋅ Improper influences on judges and juries ⋅ Lawyers’ duties in non-adjudicative proceeding</td>
<td>11-7 <em>Child Pornography</em> 11-9 <em>A Letter to the Editor</em></td>
<td>Text 684-700, 703-727 (skip Problem 11-8) Supp. 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 4.1, 4.4, 8.4(c)</td>
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<td><strong>25 Apr. 7</strong></td>
<td>Lawyers’ duties to adversaries and third persons</td>
<td>12-1 <em>Emergency Food Stamps</em></td>
<td>Text 729-751, 756-762, 764-783 (skip Problems 12-2 and 12-5)</td>
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<td>Communications with lawyers and third parties</td>
<td>12-3 <em>The Break-In</em></td>
<td>Supp. 3.8, 4.1-4.4, 8.4</td>
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<td>Deception of third persons</td>
<td>12-4 <em>The Prosecutor’s Masquerade</em></td>
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<td>Restrictions on contact with represented/unrepresented persons</td>
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<td>Duties of prosecutors</td>
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<td>Conduct prejudicial to the administration of justice</td>
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<td><strong>26 Apr. 9</strong></td>
<td>Service to the poor and middle class</td>
<td>6-4 <em>The Prisoners’ Dilemma</em>††</td>
<td>Text 413-414, 789-824 (skip Problem 13-1; read Problem 13-2 for its information, and think about the questions it raises) Supp. 6.1, 6.2</td>
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<td>The unmet need for legal services</td>
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<td>Sources of free legal services</td>
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<td>The right to counsel for indigent litigants</td>
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<td>Conflicts of interest in public interest representation</td>
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<td>Fee-shifting statutes</td>
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<td><strong>27 Apr. 14</strong></td>
<td>Service to the poor and middle class, continued</td>
<td>13-3 <em>Mandatory Pro Bono Service</em></td>
<td>Text 824-846;§§ 906-931 Supp. 5.4, 5.5, 6.1, 6.2, 7.1-7.3</td>
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<td>Pro bono representation</td>
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<td>Pro bono requirements for bar admission</td>
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<td>Restricting legal services: limiting the role of lay advocates</td>
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<td>The Changing Legal Profession</td>
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<td>Advertising and solicitation</td>
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<td>Geographic and interdisciplinary expansion</td>
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<tr>
<td><strong>28 Apr. 16</strong></td>
<td>Last Day of Class: Review Session</td>
<td>Come with your own questions</td>
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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.