

Law 580: Legal Profession

Summer 2024

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Course Overview

In the aftermath of the Watergate scandal in the 1970's, the American Bar Association began requiring law schools to teach courses in legal ethics as an accreditation requirement. The requirement continues today in Standard 303 of the ABA Standards and Rules of Procedure for Approval of Law Schools, which mandates that all law students "satisfactorily complete" at least "one course . . . in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members." Most states also require candidates to pass the Multistate Professional Responsibility Examination (MPRE) before obtaining a law license.

This course is designed to satisfy ABA Standard 303. Throughout the term, we will study the sources of law that govern lawyers: the ABA Model Rules of Professional Conduct, the Restatement (Third) of the Law Governing Lawyers, and case law from state and federal courts construing the rules. The law of lawyering includes several important topics: character and fitness requirements to become a lawyer, attorney disciplinary codes and procedures, prohibitions against the unauthorized practice of law, forming the attorney-client relationship, attorney-client privilege, conflicts of interest, attorney fees, civility in practice, candor to the tribunal, the ethics of legal practice, malpractice, attorney liability to third parties, and other related topics.

Ethical standards and rules of professional conduct are important for you to understand not only at the beginning of your career, but throughout it. Not all the rules are intuitive, and some of them are complex and highly technical in nature. Lawyers who understand and live by the rules of professional conduct thrive in their practices and build positive reputations for themselves. In contrast, lawyers who either don't understand or fail to live by the rules can face disciplinary sanctions, tort liability for malpractice, or even criminal charges—not to mention the infamy of a bad reputation.

Important Note: This is **not** an MPRE prep course. You'll learn most of the rules and standards that are tested on the MPRE (but not all—for instance, we likely will not have time to cover the code of judicial ethics), but the course does not focus on the tips and tricks required to take the MPRE. You have access to BARBRI's MPRE test preparation materials, and I encourage you to use those to prepare for the MPRE.

Learning Objectives

By the end of this course, students will:

- Know the ABA Model Rules of Professional Conduct and how to use the Comments and Restatement to aid in interpreting them.
- Become familiar with how to research ethics opinions from bar disciplinary organizations, as well as state and federal case law pertaining to legal ethics.

- Correctly identify, explain, and apply professional conduct rules and interpretive standards to real and hypothetical problems in class discussions.
- Identify and critically reflect upon the ethics and professional responsibility aspects of their persona and identity as law students and lawyers.
- Develop the ability to critique the development of professional conduct rules and attorney disciplinary systems.
- Engage and consider non-dominant perspectives on professional codes of conduct with respect and empathy.

Course Materials and Necessary Equipment

Required Books

- Thomas D. Morgan, John S. Dzienkowski, and Mitt Regan, *Professional Responsibility: Problems and Materials* (14th edition, Foundation Press), ISBN 978-1-63659-246-6.
- Thomas D. Morgan, *Selected Standards: Professional Responsibility* (2023 or 2024 Edition, Foundation Press), ISBN 978-1-63659-965-6. **Note: we will use this book EVERY DAY in class.**

Course Software

- Desire to Learn (D2L). All course materials, assignments, quizzes, and examinations will be posted on D2L. When you registered for this course, you were automatically enrolled in the D2L course page.
- Microsoft Teams. All synchronous sessions will use Microsoft Teams. The link to the Teams sessions will be posted on the D2L page.

Other Requirements for Synchronous Online Sessions

- A computer with a working video camera and microphone. **Note:** you will also need this for the final examination.
- High-speed internet connection. **Note:** you will also need this for the final examination.
- A distraction-free place to participate in synchronous class sessions. **Note:** for the live synchronous sessions, accessing class from a phone or car while driving or otherwise attempting to multitask will result in an assessed absence.

University Policies

Supplemental syllabus information from the University is contained in a separate document, which is posted under the Syllabus content folder on D2L and incorporated herein by reference.

Instructor Availability

No Office Hours

Because this is an online summer course, I am not keeping regular office hours at the School of Law. Instead, I will remain online after each class to answer questions. If you need to speak with me privately, please email or text me to schedule a time of mutual convenience for our meeting.

Contact Information

You can contact me via email at cbehan@siu.edu or through the D2L email portal. My cell number is 618-521-1849. You can message me on this phone number.

Communicate to Resolve Issues and Clear Up Misunderstandings

Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please let me know so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems of which I had not previously been aware.

Course Rhythm, Workload, and Attendance & Participation

Course Rhythm

This course covers all the substance and material of a standard 14-week course in 7 weeks. Thus, each week is divided into two parts and four sessions. Each part includes two sessions: (1) an asynchronous session that you do on your own, and (2) a live synchronous session online in which you join with the rest of the class.

- **Part One: Monday and Tuesday.**
 - Asynchronous Session. The asynchronous session consists of a podcast lecture with built-in quiz questions and learning activities. Generally speaking, it covers the rules (including comments and restatement) pertaining to the cases and problems that will be covered in the live synchronous session. On some days, the asynchronous session will cover cases and problems. To ensure that you stay current with the class (and to receive attendance credit for the asynchronous session), you must complete the asynchronous materials before we meet as a class for the synchronous session. **To get attendance credit for the asynchronous sessions, you must complete the attendance quizzes for the day and receive 100% on them. Asynchronous sessions must be completed by midnight on the assigned day. They will not be available for completion after that.**
 - Synchronous Session. This is a live session on Microsoft Teams that all of us attend at the same time. This session includes traditional classroom analysis of assigned cases and problems, group work, and in-class reflective writing assignments.
- **Part Two: Wednesday and Thursday.** Repeat the same cycle as Part One, except with new rules, a new podcast, and new reading assignments.
- **Exceptions.** As noted in the reading and assignment schedule at the end of this memorandum, there are a couple of exceptions to the normal weekly rhythm.

Workload

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour”

is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class. The amount of assigned reading and out of class preparation should take you about 6 hours for each half of the week and 12 hours total for the week. In addition, you’ll spend an hour on the asynchronous podcasts and four hours in class each week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 17-18 hours per week on course-related work. The reading assignments and workload in this class are designed to satisfy ABA Standard 310.

Attendance and Participation

Attendance

As with all law school courses, attendance is required. You may miss up to four class sessions without penalty. If you exceed four (4) absences, you are subject to the penalties of School of Law Rule III.5(g), which could include withdrawal from the course or a failing grade.

For purposes of the attendance policy, class sessions include both the asynchronous and synchronous sessions. To get attendance for an asynchronous session, you must complete it prior to the associated synchronous session for that part of the week. For the synchronous sessions, MS Teams automatically tracks attendance.

Participation

I expect students to show up prepared to class and ready to participate. To ensure a high level of participation, I cold-call on multiple students each session. Because of the compressed timeline for this class, I will divide the class into two halves (Group A and Group B) after the first class meeting. The reading schedule will indicate which group is “on call” for each set of problems for the day.

At the end of the term, I’ll grade your performance using the following standards. You’ll submit your own self-assessment of your performance, and I’ll compare it to mine and assign a grade per the following scale:

- **8-10 points.** Highest level of preparation and anticipation of follow-up questions. **Student’s performance enhances the understanding of the overall class and demonstrates the highest standards of preparation, engagement, and performance.**
- **5-7 points.** Acceptable level of preparation. Student understands the basic facts and holding of the cases. Student is adequately prepared for problems and follow-up questions but may require extra guidance and direction from professor to meaningfully contribute to the class discussion. Student demonstrates some difficulty answering questions accurately or concisely. **Student’s preparation and performance makes a positive contribution to overall class discussion and the understanding of classmates. NOTE: Most students will receive a grade in this range; it is the typical level of student performance.**
- **0-5 points.** Manifestly inadequate preparation. Student cannot answer basic questions about the case. Student wastes classroom time searching for information that a prepared student would have readily at hand. Student is unfamiliar with notes cases, discussion materials, and problems. **Student’s lack of performance and preparation**

detracts from the classroom experience for others and falls short of minimum standards of classroom professionalism.

- **The signal for a 0 is when I announce I will move on to another student. Note: a student receiving a 0 will also be assessed as absent for that day.**

In addition to cold-calling on students, I will also occasionally assign in-class reflective writing assignments, to be completed on D2L. These assignments are graded using the same rubric as above and count towards your overall class participation grade. The entire class must participate in these writing assignments. If you miss class on a day when there is a reflective writing assignment, you cannot make it up.

On-Line Class Protocol

I expect the following from anyone attending online classes:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is streaming movies or video during class. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your connection will be much better than simply using wifi.
- Attempting to attend class while driving somewhere else does not count as class attendance. Should it become apparent that is what you're doing, I'll assess an absence for the day.
- Turn off all programs on your computer except MS Teams, D2L, and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.
- Do not use your cellphone during this class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- If you are speaking, your video camera must be on. When your camera is on, please ensure the area around you is free from distractions, including pets and people. Remember, your online presence is intended to substitute for your personal presence in the classroom as much as possible.
- To help with bandwidth issues, you are permitted to turn your camera off when you are not speaking.
- When your camera is off, you are still part of the class. This means you are required to listen and to participate when called on, without me having to repeat the question or summarize the classroom discussion up to that point because you were not listening. If I call on you and you are not available to respond, ask me to repeat the question, or indicate in any way that you were checked out of class with your camera off, you'll be assessed an absence for the day.
- A few things to consider when your camera is on.
 - You are free to use a virtual background if you'd like, provided it is not overly distracting.

- If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.
 - The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
 - The light source in the room should be in front of you, not behind you.
 - Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear as a primary outfit.
 - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function to indicate this.
 - If something happens to your internet connection during class, log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).
 - Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold conversations with others during class.

Policy on Recording Class

Classes are automatically recorded. Your participation in class constitutes permission to be recorded. You are not, however, authorized to record class yourself. If you need access to a class recording, please contact me.

Grading and Assessment

Your grade for the course consists of the following components.

Preparation and Participation. 5%.

As discussed above, the preparation and participation grade includes your performance when being cold-called in class and your in-class writing assignments. These grades will be averaged and scaled to be worth 5% of your final grade.

Perp of the Day Assignment. 10%.

There will be a sign-up sheet on D2L for this assignment. By noon on the day your post is due, you'll post a written discussion board piece about someone who has violated one of the rules we are discussing in class that week. It can include a state or federal reported case, or an opinion from a bar disciplinary

organization, or even an example from a movie or television show. **If you want to use an example from a movie or television show, you must first obtain permission from me.** I will provide you with a research guide, prepared by our law librarians, that will assist you in your research.

Your written post will summarize the case, provide a hyperlink to the written opinion (or video clip if from a movie or television show), and identify two insightful discussion questions that arise from the case. The Perp of the Day discussion board postings are part of the assigned reading for the course. To encourage engagement and participation in the Perp of the Day discussions, at least five of the questions on the final examination multiple choice will be based on Perp of the Day postings and in-class discussions.

The Perp of the Day assignments will begin Week Two of the class. I will provide you with a rubric, a research guide, and an example Perp of the Day post during Week One.

Perp of the Day Discussion Board Responses. 5%.

You are expected to respond and participate in an online discussion and dialogue with your classmates on the Perp of the Day Discussion Board postings. Each group (A and B) will alternate responsibility for comments on the Perp of the Day postings by week. The Reading Schedule lists which group is responsible for responding each week. You must comment on at least one posting each of the weeks your group is assigned. Your comments should be insightful, engaging, and respectful. You can comment on as many Perp of the Day Discussion Board postings as you would like, but you will not get full credit unless you post during your assigned weeks.

Final Examination. 80%.

The final examination will be a combination of multiple choice and essay. It will take place on D2L using Respondus Lockdown Browser and video proctoring. Everyone will take it at the same date and time. More details about the examination, including format and the date and time of the examination, will be provided to you later in the term.

Writing Across Curriculum and Bar Assessments

The Perp of the Day assignments satisfy the School of Law Writing Across the Curriculum requirement. The MPRE-style multiple-choice questions in the podcasts satisfy the bar assessment requirement.

Reading and Assignment Schedule

Morgan refers to the textbook.

- The assigned pages include all materials: cases, notes, and problems. You are expected to be prepared with problem solutions to discuss in class when called on. “I don’t know” or “I haven’t thought about it” are not acceptable answers.
- On SYNC days, each group is on call for all materials in the pages listed next to the group name.

MRPC refers to the ABA Model Rules of Professional Conduct. All MRPC reading assignments *include* the comments. These rules and comments are contained in the statutory supplement.

Restatement refers to the Restatement (Third): The Law Governing Lawyers. The Restatement is contained in the statutory supplement.

This reading schedule is subject to change based on my assessment of how class is going and whether we need to spend additional time on any of the topics covered in the course.

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
1	1	10 June	ASync	--Background and fundamental Issues --Regulation of the Legal Profession; Authority to Practice Law	--Skim pages 1-23. --MRPC RULE 5.5(a); 8.1; 8.4 & Comments --RESTATEMENT: § 4
	2	11 June	Sync	Problem 1: Getting the authority to Practice Law	-- Morgan , pages 23-40 --Problem 1 and all associated questions
	3	12 June	ASync	Lawyer Discipline: Conduct that Subjects a Lawyer to It	MRPC 1.1, 1.3, 1.4, 1.8(h), 8.3, 8.4, 8.5 and comments Restatement § 6, 37, 51, 53, Model Code of Judicial Conduct Rule 2.15(D)
	4	13 June	Sync	Problems 2-3	-- Morgan , pages 42-81 --Problem 2: Group A --Problem 3: Group B
2	5	17 June	ASync	Preview for Problems 4 and 5 --(4) Undertaking to Represent a Client --(5) Billing for Legal Services	MRPC: 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.18, 3.1, 3.2, 6.2 & 6.5 Restatement: §§ 14, 15, 18
				PERP OF DAY RESPONSE: Group A	

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
	6	18 June	Sync	Problems 4 and 5	Morgan , Pages 81-115 Problem 4: Group B Problem 5: Group A
	7	19 June Note: This is the Juneteenth holiday, but the ASync materials will still be available that day	ASync	Preview for Problems 6 and 7 --(6) Handling Client Property and Withdrawing from Representation --(7) The Duty of Confidentiality	MRPC: 1.15, 1.16, 1.5, 1.6, 1.8(i), 4.4(b), 5.3. Restatement: §§ 43, 44, 60, 63, 65, 77, 79, 87
	8	20 June	Sync	Problems 6 and 7	Morgan , Pages 116-151 Problem 6: Group A Problem 7: Group B
3 PERP Response: Group B	9	24 June	ASync	Preview for Problems 9 and 10 --(9) Representing Multiple Parties Dealing with Each Other --(10) The Duty of Loyalty	MRPC: 1.0(e) and (n), 1.7, 1.9, 1.10, 1.13, 6.3, 6.4, Restatement: §§ 122,
	10	25 June	Sync	Problems 9 and 10	Morgan , 171-203 Problem 9: Group B Problem 10: Group A

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
	11	26 June	ASync	Preview Problems 11 and 12 --(11) Conflicts Between Client's Interest and Lawyer's Personal Interests --(12) Representing Insured and Insurer	MRPC: 1.1, 1.2(a), 1.4, 1.5(a), 1.6, 1.7, 1.8(a)(b)(c)(f)(h)(j), 5.4(c), Restatement: § 134,
	12	27 June	Sync	Problems 11 and 12	Morgan, pages 204-233 Problem 11: Group B Problem 12: Group A
4 PERP Response: Group A	13	1 July	ASync	Preview of Problems 13 and 14 --(13) Lawyer and Former Client --(14) Imputed Disqualification	MRPC: 1.7, 1.9, Restatement: none
	14	2 July	Sync	Problems 13 and 14	Morgan, pages 234-262 Problem 13: Group B Problem 14: Group A

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
	15	3 July	ASync	Problem 15: Preview and Problem	<p>Morgan, pages 263-280</p> <p>MRPC 1.0(k), 1.11, 1.12, 1.13, 8.4</p> <p>Model Code of Judicial Conduct 2.9, 2.11</p> <p>Note: All coverage for Problem 15 is ASync. There <u>will</u> be a quiz covering the problem as well as the rules, for which you must receive 100% to get attendance credit.</p>
	16	4 July	Sync	<p>No class this day because of holiday. Make-up for class is two parts:</p> <p>--The ASync materials for 3 July; and</p> <p>--The time you will spend on your Perp of the Day writing assignment.</p>	
5	17	8 July	ASync	<p>Preview Problems 16 and 17</p> <p>--(16) Lawyer for an Individual Client</p> <p>--(17) Advising the Business Corporation</p>	<p>MRPC: 1.2, 1.13, 1.14, 1.16, 1.4(b), 1.6(b), 1.7(b), 2.1 and 4.3.</p> <p>Restatement: § 66(3)</p>
	18	9 July	Sync	Problems 16 and 17	<p>Morgan, pages 281-315</p> <p>Problem 16: Group A</p> <p>Problem 17: Group B</p>

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
	19	10 July	ASync	Preview Problems 18 and 19 --(18) Contact with Represented and Unrepresented Persons --(19) The Ethics of Negotiation	MRPC: 1.13(f), 1.2, 1.4, 1.8(g), 3.4(e)(f), 3.8(d), 4.1, 4.2, 4.3, 4.4, 5.6(b), 8.4 Restatement: §§ 20-22, 101, 103, 128
	20	11 July	Sync	Problems 18 and 19	Morgan , pages 315-351 Problem 18: Group B Problem 19: Group A
6 PERP Response: Group A	21	15 July	ASync	Preview Problems 20 and 21 --(20) The Lawyer as Evaluator --(21) Obligations When Client May Be Involved in Fraud	MRPC 1.2(d), 1.6, 1.13(b), 2.1, 2.3, 3.4(b), 3.9, and 4.1 Restatement: None
	22	16 July	Sync	Problems 20 and 21	Morgan , pages 351-390 Problem 20: Group A Problem 21: Group B
	23	17 July	ASync	Preview Problems 22-23 --(22) Decision to File a Civil Suit --(23) Disclosure of Facts and Law Favorable to Other Side	MRPC: 3.1, 3.2, 3.3, 1.6(b), 3.4, 3.7 & 2.4 Restatement:

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
	24	18 July	Sync	Problems 22-23	Morgan , pages 391-428 Problem 22: Group A Problem 23: Group B
7 PERP Response: Group B	25	22 July	ASync	Preview Problems 24-25 --(24) Tension Between Facts and Advocacy --(25) Special Issues Representing a Criminal Defendant	MRPC: 1.2, 1.6, 1.7, 2.1, 3.3, 3.4(e), 3.5(a), 4.1(a), 4.4(a), 8.4(c)
	26	23 July	Sync	Problems 24-25	Morgan , pages 429-469 Problem 24: Group B Problem 25: Group A
	27	24 July	ASync	Preview Problems 26-27 --(26) Special Obligations of a Prosecutor --(27) Duties to the Court and the litigation process	MRPC: 3.8(a), 3.3, 3.4, 3.4, 3.5, 3.6, 3.8(f), 4.4(b), 5.3, 8.4,
	28	25 July	Sync	Problems 26-27	Morgan , pages 470-511

Week	Class	Date	ASync/ Sync	Topic	Reading and Assignments
8	29	29 July	ASync	Preview Problems 29-30 --(29) Marketing Profession Services --(30) Ethics of Lawyer Referrals	MRPC: 1.1, 1.5(e), 7.1, 7.2, 7.3, 7.6,
	30	30 July	Sync	Problems 29-30	Morgan, 527-562
		31 July	Reading Day		
		1-2 August	Final Examinations. Schedule not yet published. Examination will take place on D2L at the date and time published. Everyone must take it at that time. More information to be provided.		