

**PROFESSIONAL RESPONSIBILITY**  
**Spring 2020**  
**Monday/Wednesday 3:00-4:15**  
**Law Center 603**

Professor Robert Rubinson  
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**OFFICE HOURS:** Wednesdays, 1:30-2:45. I prefer, however, to arrange meetings in advance. My office is located in Room 420 in the Clinical Law Offices in the Angelos Law Center. I will accommodate any student's schedule in order to arrange a meeting.

**GOALS FOR THE COURSE:**

- Learn to identify ethical issues as they arise in practice.
- Gain familiarity with the ABA Model Rules of Professional Conduct and, when relevant, how state rules differ from the Model Rules.
- Engage in a critical analysis of the Model Rules, including the policies underlying them.
- Explore crucial issues facing the legal profession and its societal role, with a particular emphasis on providing access to justice.
- Reflect on the personal and professional choices available to law students and lawyers.

**REQUIRED TEXTS:** Lisa Lerman & Phillip Schrag, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* (4th ed.)

*ETHICAL PROBLEMS IN THE PRACTICE OF LAW: MODEL RULES, STATE VARIATIONS, AND PRACTICE QUESTIONS* (Lisa G. Lerman, Philip G. Schrag & Anjum Gupta, eds.) (2019-2020) ("Statutory Supplement")

**Note:** All students must obtain the most recent editions of these texts. Printouts or copies of the ethical rules are not permitted.

**ASSIGNMENTS:** Assigned readings are set forth below. Readings will be supplemented with materials on the course TWEN site. Unless noted otherwise, assignments in the *MODEL RULES* book refer to the Rule number of the current version of the American Bar Association's Model Rules of Professional Conduct. When assigned a Rule to read, you should review *both* the assigned Rule *and* skim the "Comments" associated with the assigned Rule. Sometimes the syllabus lists specific Comments to read. For the Lerman/Schrag text, you need not read the "Problems" in the text unless noted in this syllabus. Please be sure to bring both assigned texts to each class.

**GRADES:** 80% of your grade will be based on a final in-class examination. The exam may include matters covered in class or in the assigned readings whether or not we discuss the readings in class. You may bring the *STATUTORY SUPPLEMENT* text with you to the exam, but the text cannot contain full outlines. Highlighting, underlining, tabbing, and cross-referencing are permissible. You may not bring any other materials to the exam. Please consult with me if you have questions regarding what notations in the text are permissible.

20% of your grade will be based on an in-class, 45 minute multiple choice midterm examination. The examination will cover secrecy and conflicts of interest. You may bring the STATUTORY SUPPLEMENT text to the examination.

Additional grading adjustments:

Preparation and participation: These are essential to your success in the course as well as key components of professionalism. I retain discretion to reward strong class participation by raising your grade one-half step if your point total is approaching the next highest grade. The most important factor in assessing class participation is quality, not quantity.

Attendance and timeliness: I strictly adhere to the law school attendance policy set forth below. In addition, I retain discretion to reduce your grade by one-half step due to excessive absences and/or excessive tardiness.

Laptops: You retain discretion to use laptops in class. If you choose to do so, they are to be used solely for note taking or access to class materials that are being discussed. Use of laptops for other purposes is unprofessional, disrespectful, and distracting to other students. A violation of this rule may result in prohibiting the use of the laptop and/or a reduction of your grade by one-half step.

## ATTENDANCE

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2 absences
2	2	5 absences
3	2	5 absences
4	--	5 absences

I will distribute an attendance sheet each class. ONLY THE LISTED STUDENT MAY SIGN THE ATTENDANCE SHEET.

## COURSE WEBSITE

This course has a TWEN page that links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling in the TWEN page and for checking it for course information.

## **CLASS CANCELLATION**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

## **ACADEMIC INTEGRITY**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

## **TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY**

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

## **Disability Policy**

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or [kschulz@ubalt.edu](mailto:kschulz@ubalt.edu).

## ASSIGNMENTS

### I. INTRODUCTION TO THE REGULATION OF LAWYERS

- 1/13 Sources of Law; Reporting Misconduct; Malpractice  
Lerman: pp. 19-44; 90-108; 139-140; Problem 2-4 (on p. 102)  
Rules 5.1, 5.2, 5.3, 8.3, 8.4

### II. ELEMENTS OF THE ATTORNEY-CLIENT RELATIONSHIP

- 1/15 Competence/A Timeline of Representation/Introduction to Secrecy  
Lerman: pp. 240-251; 320-328  
Rules 1.1, 1.2(c), 1.3, 1.4, 1.16

### III. CONFIDENTIALITY

- 1/22 Introduction to Confidentiality  
Lerman: pp. 141-155, Problem 3-1  
Rule 1.6

- 1/27 Confidentiality: Physical Harm  
Lerman: pp. 158-174; Problems 3-2, 3-3, 3-4, 3-5  
Rule 1.6(b)(1) and Comment [6]

- 1/29 Confidentiality: Physical Harm/Financial Harm  
*Spaulding v. Zimmerman* (TWEN)  
Rule 1.6(b)(1), (b)(2), and (b)(3) and Comments [7] and [8]

- 2/3 Confidentiality: Financial Harm  
Lerman: pp. 175-188  
Rules 1.2(d) and Comments [9] and [10]; 1.6(b)(2) and (b)(3) and Comments [7] and [8]; Rule 1.13(a), (b), and (c); Problem 3-6

- 2/5 Attorney-Client Privilege  
Lerman: pp. 198-229; 233-236

- 2/10 Secrecy Review/ Introduction to Conflicts of Interest  
Lerman, pp. 195-196; 330-337  
Lerman, Problem 3-6 (p. 185)  
Secrecy – In Class Review Problem (TWEN)  
Rule 1.7

### IV. CONFLICTS OF INTEREST

- 2/12 Concurrent Conflicts of Interest  
Lerman: pp. 337-351; Problems 6-1, 6-4  
Rules 1.7, 1.8, 1.9(a), 1.10(a)

- 2/17 Concurrent Conflicts of Interest (Continued)  
Lerman: pp. 378-382; 393-402; 408-426  
Rule 1.7 and Comments [6], [7], and [8]; Rule 1.8  
In Class Problem – Concurrent Conflicts (TWEN)
- 2/19 Concurrent Conflicts/Conflicts in Representing Organizations/Successive Conflicts  
Lerman: pp. 382-390  
Rules 1.7, 1.9(a), 1.10(a), 1.13(f) and (g), 1.16(a)(1)  
In Class Review Problem: Organizations (TWEN)
- 2/24 Successive Conflicts/Midterm Review  
Lerman: pp. 427-451; 455-475  
Rules 1.9(a) and (c); 1.10(a)(2); 1.8
- 2/26 Conflicts Review  
Problem 3-6 (on p. 185)  
In Class Conflicts Review Problem (TWEN)
- 3/2 **Midterm**
- 3/4 The Disciplinary Process  
Guest Speaker: Lydia Lawless, Bar Counsel of Maryland

## V. COUNSELING CLIENTS

- 3/9 Counseling and Allocation of Authority/Diminished Capacity  
Lerman: pp. 293-303; 308-317 (including Problem 5-5 on p. 310)  
Rule 1.2(a), 1.4, 1.14, 2.1  
Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*  
(TWEN)

## VI. THE ADVERSARY SYSTEM

- 3/11 The Adversary System/Communicating with Represented and Unrepresented Persons  
Cronin v. Eighth Judicial District (TWEN)  
Lerman: pp. 598-608; 675-683, 702-707; 710-715  
Rules 1.3 Comment [1], 3.1, 3.2, 3.8, 4.1, 4.2, 4.3  
A Tragic Fire – A Great Cross-Examination (TWEN)

## SPRING BREAK

- 3/23 Candor to the Tribunal  
Lerman: pp. 609-620; 622-626  
Rules 3.3 and Rule 8.4(c)
- 3/25 Mental Health and Professionalism  
Guest Speakers: Judge Charles H. Dorsey, Circuit Court of Baltimore City  
Lisa Caplan, Assistant Director, Maryland Legal Assistance Program

- 3/30** Alternatives to the Adversary System  
Rules 2.1 Comment [5]; 2.4  
Rubinson, *Client Counseling, Mediation, and Alternative Narratives of Dispute Resolution* (TWEN)  
Excerpt from Lerman (5<sup>th</sup> Ed.) (TWEN)

## **VII. THE BUSINESS OF LAW**

- 4/1** Witness Preparation/Negotiation Ethics  
Lerman: pp. 635-640; 697-699  
Rules 3.4; 4.1 Comment [2]
- 4/6** Trust Accounts/Hourly Fees  
Lerman: pp. 479-514; 539-542  
Rule 1.5; Rule 1.15
- 4/8** Contingent Fees/Fee Splitting/Multidisciplinary Practice/Lawyer's Personal Interests  
Lerman: pp. 514-522; 805-813; 543-552  
Rules 1.5(c) and (d) and Comment [3] and [6]; 5.4; 1.8(a);  
*Disciplinary Counsel v. Smith* (TWEN)
- 4/13** Advertising and Solicitation  
Lerman: pp. 822-834  
Rules 7.1-7.5  
Practice Problem (TWEN)
- 4/15** Unauthorized Practice of Law/Multijurisdictional Practice/Distribution of Legal Resources  
Lerman: pp. 795-802; 888-895; 746-765  
Rule 5.5  
Rubinson, *A Theory of Access to Justice* (TWEN)  
ABA Model Rule on Practice Pending Admission and Admission by Motion (TWEN)  
Supreme Court of Washington Order (TWEN)

## **VIII. THE ADVERSARY SYSTEM**

- 4/20** Pro Bono; Admissions to the Bar/Review for Final  
Lerman: pp. 781-792; 46-61; Problem 1-2  
Rules 6.1, 8.1
- 4/22** Summing Up  
Question 14-4 (from Lerman, 5<sup>th</sup> Ed.) (TWEN)
- 4/27** Review for Final  
In Class Review Problems on TWEN