

PROFESSIONAL RESPONSIBILITY

LAW-206-00

Professor Matthew Reid Krell

Fall 2024

Contact Information

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(make sure to identify yourself with the first message)

I will communicate with the class via Canvas. Communication directed to less than the entire class will be sent to your Willamette email address.

Course Description: We like to tell you that you are training to join a learned profession with long and honorable traditions of self-regulation. This is true! Here's the bad news that is implied by that statement: for professions to *remain* self-regulating, they either have to acculturate new entrants or cartelize to gatekeep entry. Law, of course, has chosen to do both. The purpose of this class is two-fold: to prepare you to utter the shibboleths that will allow you to convince the gatekeepers to let you in the club, *and* to equip you with the tools that will allow you to participate in the culture of the profession (and hopefully, to advance it).

However, at the end of the day the person we are answerable to every day of our professional lives is of course the person on the other side of the mirror. Thus, this class is *also* intended to help you to identify your *personal* values that inform the things that you may be *permitted but unwilling* to do. At every point in this class, we will be asking ourselves: is this something that we're willing to quit our jobs rather than do? Why or why not?

When we discuss questions that relate to the first paragraph of this class, you can often (but not always) expect there to be correct answers based on the application of critical thinking to the rules governing lawyer conduct. When we discuss questions related to the second paragraph, you can expect us to be far more concerned with *how you reach your conclusion*.

Learning Objectives:

In this course, the learning outcomes include:

1. **Recognize conduct obligated or forbidden by the Rules of Professional Conduct.**
2. **Explain why a given course of action is obligatory, permitted, or forbidden under the Rules of Professional Conduct.**
3. **Employ the Rules of Professional Conduct and personal values to determine the boundaries of ethical legal practice.**
4. **Critique or defend the Rules of Professional Conduct on the basis of personal and social values.**
5. **Judge whether a given fact pattern should give rise to attorney discipline.**
6. **Compose an argument for the appropriate level of discipline for misconduct.**

Accommodations for Students with Disabilities, Pregnant & Parenting Students, and Religious Observances: The College of Law is committed to providing accessible, inclusive programs. We encourage students to pursue accommodations that allow them to fully participate inside and outside of the classroom. Accessible Education Services (AES) determines student

eligibility for accommodations, provides holistic support to students, and coordinates with the Office of Student Affairs to facilitate accommodations at the College of Law. Students can begin the accommodations process online through the AES website, or by contacting AES at accessible-info@willamette.edu. If you have questions about this process, please contact Director Jeff Larson or Associate Dean Zirschky. Do not contact faculty directly regarding the accommodations process.

Pregnant & parenting students who need support or accommodations should contact the Gender Resource Advocacy Center, Title IX Coordinator Ann James, or Deputy Title IX Coordinator Associate Dean Zirschky to explore supportive measures that may be available.

The College of Law welcomes and supports students of all spiritual and religious backgrounds. Under the University Policy on Religious Holidays, a student anticipating the need to miss a class for religious reasons should alert their faculty members within the first two weeks of the semester to determine an appropriate course of action. Students with questions about this policy, as well as students seeking support in this process or other religious accommodations, should contact Associate Dean Zirschky.

Resources for Support: The College of Law provides extensive resources to our students to support their emotional, physical, spiritual, financial, professional, and social wellbeing. A non-exhaustive list of some of the most frequently utilized resources is provided below. Students in need of any additional resources or support are encouraged to make an [appointment](#) with Associate Dean Zirschky.

Bishop Wellness Center
503-370-6062

Provides free confidential counseling services and basic healthcare services to WUCL students.

Accessible Education Services
accessible-info@willamette.edu

Determines eligibility for accommodations and provides holistic student support.

Student Emergency Fund
See student affairs website for application

Provides emergency funding to students experiencing a short-term financial crisis.

Oregon Attorney Assistance Program
oaap.org

Provides free, confidential, 24/7 counseling and support to law students via attorney counselors.

Office of Career and Professional Development
law-career@willamette.edu

Provides individualized career counseling, mentorship, and guidance to students.

Title IX Support
Ann James, Title IX Coordinator
ajames2@willamette.edu
Lexie Zirschky, Deputy Title IX Coordinator
lnzirschky@willamette.edu

Provides resources for students who are pregnant or parenting, as well as students who have experienced sexual harassment, sexual assault/misconduct, stalking, or gender-based discrimination.

**Gender Resource Advocacy
Center**

grac-info@willamette.edu

Provides confidential support for victims/survivors of gender-based violence and supportive resources for the LGBTQIA+ campus community.

Required Materials: The following materials are required for this course. They are available through the University bookstore, but you are not required to purchase them there.

1. Lisa G. Lerman, Philip G. Schrag, and Robert Robinson. *Ethical Problems in the Practice of Law* 6th ed. (Aspen 2022).
2. American Bar Association. *Model Rules of Professional Conduct 2024*.
3. Leah Christensen. *The MPRE in a Weekend* 3d ed.

The 6th edition of the casebook is the one that this syllabus is keyed to; you may purchase the 5th edition and will have access to around 85% of the course content. The rulebook is for reference only; no readings from it will be assigned. Finally, the supplement is intended to support your self-study for the MPRE and will not be assigned.

Attendance: The Academic Handbook provides that all students must attend at least 75% of regularly scheduled classes to receive course credit, unless a faculty member imposes a stricter attendance policy for their course. Attendance will be taken daily. It is each student's responsibility to independently track their attendance and remain in compliance with the attendance policy. Students shall not solely rely on attendance information in SAGE. Attendance tracking begins on the first day of classes. If a student chooses to add a course during the Add/Drop period but after the first meeting date, any classes missed will count as an absence. Any student who does not satisfy the attendance minimum will be administratively withdrawn from the course and receive an X on their transcript. The Student Honor Code applies to all attendance records and representations. **N.B.: If you are in danger of failing due to attendance issues, you are urged to contact me and the Associate Dean for Academic Affairs so that a mutually agreeable solution can be devised.** Some classes may be recorded and posted on Canvas for the benefit of students who plan absences. Recordings which may be made for other purposes will not be posted in a student-viewable space. If you know that you will be absent, you may request a recording of the class by emailing me. Watching a recording of a class does not count as attending it.

Attendance credit requires that students arrive on-time to class and remain for the entire class session. Arriving late disrupts the classroom experience and detracts from the educational experience of other students. Students who arrive to class late or leave class early may be marked absent from the class session, at the discretion of the faculty member.

In the event of inclement weather, the University will communicate with students regarding campus closures and delays. Course instructors may provide additional guidance regarding remote attendance and rescheduling, if necessary.

Student Honor Code: The College of Law maintains the highest standards of academic integrity, with the goal of preparing students for the professional responsibilities of practice and shaping their professional identities as ethical, collegial, and trustworthy practitioners. The Student Honor Code applies to all students, both inside and outside of the classroom. Students are expected to remain familiar and compliant with the code at all times and to report violations of the code immediately. During the course of this class, if you have any questions about whether specific conduct, research practices, drafting techniques, assistive technology, or collaboration poses a potential honor code issue, please contact me to discuss the issue in advance.

Grades: You may regard the Law School's Uniform Grading Standards, as announced on the law school's website, to represent the benchmark of expected performance in this class. However, I reserve the right to vary the class' grade distribution if warranted by class performance as a whole. This policy is subject to being overruled by the Associate Dean for Academic Affairs. I reserve the right to award one or more A+'s, Top Papers, both, or neither. Scores will be assigned according to the following weights:

1. NCBE Character and Fitness Application – 10%
2. Completion of DRQs – 10%
3. Participation in Class Discussion – 5%
4. Professional Identity Formation (Coffeeshop Assignment) – 20%
5. Practice MPRE – 15%
6. Final Exam – 40%

Graded Components:

NCBE Character and Fitness Application: While Oregon, California, and Idaho all do not use the NCBE Character and Fitness Investigation System for their C&F determinations, the information sought is very similar. In addition, Washington *does* use the NCBE system. By completing the NCBE application, you will be well prepared for your bar application when the time comes, no matter where you apply, and will not be scrambling to get all of that information put together and supporting documents all in one place. Because character and fitness applications require disclosure of a great deal of sensitive information, an assignment memo explains how to answer these questions in such a way that you are not *required* to disclose it to *me*. **This assignment is due by 11:59 PM on October 18.**

Completion of Directed Reading Questions: Instead of the discussion questions in a traditional casebook which (speaking only to my own experience as a law student) were never examined or considered, I have prepared questions intended to encourage you to think critically about the cases, rules, and statutes we will be considering. These questions will be provided to you on Canvas for each class day. Every class where DRQs are given, you will be expected to prepare responses to directed reading questions that we will discuss that day (some classes will be structured differently). Every class day you will upload your answers no later than 8 AM the day of class. You are permitted to skip uploading **five times** without penalty (see the next section). However, if you skip uploading, this will be treated as a pass for the day, so even if you do not intend to attend class, you need to upload your DRQ answers.¹ I don't intend to adjudicate reasons for not uploading and say "this is acceptable and this is not," so there will be no additions to the five passes for any reason. **However, if you are experiencing outside pressures that are making it difficult for you to meet these expectations, you should come to me, the Associate Dean for Academic Affairs, or the Associate Dean for Student Affairs, to begin a conversation about how best to support you.**

Participation in Class Discussion: while the DRQs will always be the starting point of our class discussions, they will not be the end of it. My suspicion is that there will be approximately zero days where for each and every DRQ, the first student called upon will provide a complete and full answer to the DRQ. In the unlikely event that that does happen, we will release class early. When it does not, you can expect additional students to be called upon to answer questions to supplement the missing parts from the first response. Let me be clear: **you should not be surprised if I seek additional information from your classmates after calling on you.** This is not a reflection on you; instead it is a reflection of the fact that learning is communal, and where you

¹ Absences are not treated as passes, they are absences.

may have figured out something, another student who missed what you got noticed what you missed.

Because you are given the DRQs each day, all students are on call every day. If you have appropriately prepared, we should be able to avoid the awkward silences where the student called on is reading the material for the first time in class. If you are not prepared to give an answer, even a wrong one, when called upon, we'll treat it as a pass and move on. Because you should have already uploaded answers to Canvas for the DRQs, you should be able to immediately answer the DRQ. You are entitled to pass being called on for any reason or no reason five times per semester, with days where you do not upload DRQ responses being treated as passes. After you have passed five times, further passes will be honored but you can expect an appropriate penalty in this portion of your grade.

A note about "pass" and "I don't know:" sometimes students answer questions by saying "I don't know." The problem is that the meaning of "I don't know" varies depending on the context. It can mean "I am struggling to grasp the question;" "I need some more guidance to answer;" or "leave me alone." Because I want to respect the choice of students who have decided that some other activity is a higher priority for them than our class for that day, I would rather that you were unambiguous about telling me to "leave [you] alone." Thus, I have developed this code: if you can't answer the question I have posed you but you think that more conversation might help you answer it, you should say "I don't know." If you want me to leave you alone, your response should be "pass."

Professional Identity Formation (Coffeeshop Assignment): The ABA's accreditation standard 303(b)(3) requires that you be given a "substantial opportunity for . . . the development of a professional identity." (Remember what I said about how a self-regulated profession has to acculturate new entrants?) While I may be a bit gimlet-eyed about the phrasing, I agree that it is important to help you become, not just law-spouting machines, but **good people who are also good lawyers**. To that end, you will be assigned between one and three 1Ls enrolled in my torts class whom you will be expected to meet with during the month of September. While this is called the "coffeeshop assignment," you are not required to meet for coffee nor to spend money at all. Some of you may share 1L(s) if necessary for coverage. While your group is free to discuss anything you want for as long as you want, you are required to discuss "what did I wish someone had told me during my first semester of law school." Upon completing this meeting, you should do the following:

- Write and submit a reflection that discusses the advice you gave your 1L(s). It's okay if this reflection is a set of bullet points rather than a fully-organized essay or memo. It is not required that you do the trauma dance of reliving your mistakes to explain *why* you gave your advice. **This reflection is due by 11:59 PM on September 30.**

Practice MPRE: You *must* pass the MPRE to be admitted to practice in almost every state (and definitely in all of the states where the vast majority of Willamette grads will practice). Thus, we will spend some time in this class working through practice MPRE questions. In order to do this, we will be using a tool called Socrative. It is web-based (and sometimes glitchy) so please familiarize yourself with it at [socrative.com](https://www.socrative.com) before class begins. **In addition, on Friday, October 18, you will take a practice MPRE at the law school.** The Office of Student Affairs will advise you as to the time and place of this practice MPRE. If you take the practice MPRE and correctly answer half of the questions, you will receive full credit for this portion of your grade. If you take the practice MPRE and do not correctly answer half of the questions, you will receive one-half of the credit for

this portion of your grade. If you do not take the practice MPRE, you will receive no credit for this portion of your grade.

Final Exam: The final will be essay-based, open-book, open-note.

Exam Administration: The midterm and final examination will be administered securely through ExamSoft by the Office of Student Affairs (OSA). Please contact OSA for dates, times, locations, exam numbers, and rescheduling requests. Do not contact faculty members directly.

Course Schedule:

Date	Topic	Reading
Aug. 26	Introduction to the Class.	Syllabus; Lerman 18-39; Tannen, “Don’t Just Sit There—Interrupt!: Pacing and Pausing in Conversational Style,” <i>American Speech</i> 75(4): 393-395 (available on Canvas).
Aug. 28	Discipline Overview.	Lerman 84-105.
Sep. 2	NO CLASS	LABOR DAY HOLIDAY
Sep. 4	Reporting Misconduct; Malpractice and Prison.	Lerman 105-134.
Sep. 9	Forming the attorney-client relationship.	Lerman 138-150; “When Does the Attorney-Client Relationship Begin?” (available on Canvas)
Sep. 11	Competence	Lerman 150-167.
Sep. 16	Diligence, Candor (to Clients), and Communication.	Lerman 167-179.
Sep. 18	Agency, Authority, and Allocation of Decision-Making.	Lerman 185-207; <i>New York v. Trump</i> , Docket No. 452564/2022 (email correspondence (available on Canvas)); Docket No. 256-2 (excerpt of closing argument) (available on Canvas)
Sep. 23	Terminating the Relationship.	Lerman 207-213.
Sep. 25	Confidentiality, the Basics.	Lerman 216-230.
Sep. 30	Exceptions to Confidentiality; Physical harm.	Lerman 230-258.
Sep. 30	COFFEESHOP REFLECTION DUE	
Oct. 2	Exceptions to Confidentiality; Fraud and Self-Protection.	Lerman 258-277.
Oct. 7	Attorney-Client Privilege.	Lerman 279-321.
Oct. 11	NCBE C&F APPLICATION DUE	

Oct. 14	Conflicts: Only The Beginning.	Lerman 324-346.
Oct. 16	Imputation and concurrent conflicts.	Lerman 347-363.
Oct. 18	PRACTICE MPRE	
Oct. 21	Successive Conflicts - Principles.	Lerman 366-417 (skim all problems and 376-389).
Oct. 23	Fighting With Your Client: Reasonable Fees.	Lerman 464-513 (skim "Scenes From a Law Firm").
Oct. 28	Fighting with Your Client: Custodial Issues and Self-Dealing.	Lerman 523-538; 760-772.
Oct. 30	Officer of the Court.	Lerman 588-621.
Nov. 4	Duties of Prosecutors	Lerman 705-735; <i>Accountability NY</i> (available through Canvas)
Nov. 6	Heightened Duties of Candor and When Not to Speak. (no attendance taken)	Lerman 646-671.
Nov. 11	Duties to Third Parties; Deception and Non-Lawyers.	Lerman 674-704.
Nov. 13	Disclosure to Opponents.	Lerman 621-645.
Nov. 18	"Diversity Day."	Lerman 46-62; 839-846.
Nov. 20	Access to Justice.	Lerman 793-834.
Nov. 25	The Future	Lerman 734-792.
Nov. 27	NO CLASS – THANKSGIVING BREAK	
Dec. 2	FINAL EXAM REVIEW SESSION	Attendance optional

Any alterations to the above schedule will be provided in writing as early as practicable.