



Preface to the Sixth Edition for Teachers and Students

This book is an introduction to the law that governs lawyers. It includes two chapters on the history, structure, and future of the legal profession.

Our goals

Our principal goals in writing this book are to offer an overview of the law governing lawyers and to provide materials through which law students may explore some of the ethical problems that lawyers encounter in practice. Also, we seek to provide opportunities for law students to consider the various professional roles that lawyers occupy and some of the moral quandaries that they may struggle with when they begin to practice law. For example, in negotiating a settlement for a client, a lawyer might say that his client would refuse to accept less than \$100,000, even though the client has told the lawyer that she would be delighted to receive \$50,000. This is deceptive, but lawyers commonly use this tactic to obtain favorable outcomes for their clients. Does the pervasiveness of this type of deception make it acceptable? Is a lawyer's only duty to get the best result for his client, or does he also owe his opposing counsel a duty of honesty?

This book introduces students to many aspects of the law that governs lawyers. The book does not include an encyclopedic analysis of every ethical rule, much less of the entire body of law governing the legal profession. What the book does address are many problems that arise in everyday practice, including those that lawyers are most likely to encounter during their first years in the legal profession. For example, the book explores what you should do when a more senior lawyer asks you to pad your time sheets. Or what if your supervisor asks you to appear in court for a hearing on a matter that involves complex issues of law that you know nothing about? With these and many other issues, we have sought to present problems and examples with respect to which a student can understand the facts and the ethical issues regardless of whether the student has taken advanced courses in law school.



The problem-based approach

This book offers opportunities to explore ethical dilemmas that have arisen in practice. Some of them have resulted in published judicial decisions. While we excerpt or summarize some judicial opinions in the book, we transform a larger number of cases into problems for class discussion. We present the essential facts of these cases as one of the lawyers saw them, walking the cases backward in time to the moment at which the lawyer had to make a difficult choice based on ethical and strategic considerations. Rather than building the book around predigested legal analyses by appellate judges, we invite students to put themselves in the shoes of lawyers who faced difficult choices.

Evaluating ethical dilemmas in class will help students to handle similar quandaries when they encounter them in practice. A student who has worked through the problems assigned in this course will know how to find the law that addresses the particular issue, how to analyze the relevant rules, and what questions to ask. Grappling with these problems also will increase students' awareness of ethical issues that otherwise might have gone unnoticed.¹

1. See Steven Hartwell, Promoting Moral Development Through Experiential Teaching, 1 Clin. L. Rev. 505, 527 (1995) (reporting on his empirical research, which shows that professional responsibility students' moral reasoning skills made significant advances during a course in which students discussed simulated ethical dilemmas); and Lisa G. Lerman, Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals, 39 Wm. & Mary L. Rev. 457, 459 (1998) (explaining the reasons to use experiential methodology in professional responsibility classes).

We set out to provide an overview of the law governing lawyers that students would enjoy reading. Studies show that by the third year of law school, the class attendance rate is only about 60 percent and that a majority of those students who do attend class read the assignments for half or fewer than half of the classes they attend.² Increasingly, some law students who use computers during class are only half present; they chat with friends, do other work, play games, and so on.³ Law schools have a hard time retaining students' interest and attention after their first year. This is a book whose content and methodology will capture and sustain the reader's interest. This aspiration is reflected in our choice of topics and materials, our concise summaries of the law, our challenging problems, and our use of graphic materials.

Defining features of this book

We built a number of unique features into this book based on our experience teaching professional responsibility classes:

- Almost every section of the book begins by summarizing the relevant doctrine to provide the legal background that students need to analyze the problems that follow.
- Most of the text is presented in question-and-answer format. This structure provides an ongoing roadmap, anticipating readers' questions and forecasting the content of the next subtopic.
- Concrete examples, set off from the text, illustrate the general doctrinal principles.
- This book has very few judicial opinions. Law students read so many opinions in other courses. Professional responsibility is best taught using a problem-based approach. The few opinions in the text are edited carefully to present only the most relevant sections. Some are summarized rather than reprinted so that students can move quickly to the problems.
- The book's many rich problems focus class discussion and engage students by describing real-life ethical dilemmas.
- The problems present facts from real cases in narrative form to allow students to analyze the issues as though they were the lawyers facing those dilemmas. This structure produces livelier discussion than does the autopsy method used in many law classes, in which teachers invite post hoc dissection of court opinions.
- Pertinent rules of professional conduct are included in the book so that students do not need to flip constantly back and forth between this text and a statutory supplement. When studying a particular rule, however, students should review the entire rule and comments. Every student should study with a printed version of the rules beside the textbook for ease of reference. You may wish to consult *Ethical Problems in the Practice of Law: Model Rules, State Variations, and Practice Questions* (Aspen Publishing) (Lerman, Schrag, and Gupta), which includes the ABA's Model Rules of Professional Conduct, some interesting changes that certain states made when they adopted their own versions of the Model Rules, and more than 130 practice questions that students can use to prepare for the Multistate Professional Responsibility Examination.
- The book's many bulleted lists and tables clarify legal doctrines and other conceptual material in easily reviewable sections.

2. Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. Legal Educ. 235, 244-245 (2001).

3. Ian Ayres, *Lectures vs. Laptops*, N.Y. Times, Mar. 20, 2001, at A25; David Cole, *Laptops vs. Learning*, Wash. Post, Apr. 7, 2007, at A13.

- Photographs, diagrams, and cartoons break up the text. Some of these, like the photographs of some of the lawyers, parties, judges, and scholars, add context. Others, like the cartoons, offer a change of pace from the textual narrative.
- The book has an associated website on which we provide some supplemental material. If the Model Rules of Professional Conduct are amended, important cases decided, or other major developments occur, information will be posted to the website. The URL for the website is www.ethicalproblems.com.

What's new in the sixth edition

Teachers who have used the fifth edition of this book will discover much that is familiar, along with numerous changes.

- Many law school texts become longer, heavier, and more expensive with succeeding editions as more material is added. We have worked to keep the book a manageable length. We have added new material but have shortened or omitted material that is dated or less important.
- The book reflects changes in ethics codes and other lawyer law since the publication of the fifth edition. We have added new examples and updated countless empirical statements about the law and the legal profession. The book discusses recent cases, bar opinions, institutional changes, and scholarship.
- Recent events continue to provide students with a wealth of opportunities to grapple with ethical issues. We have included:
 - discussion of discipline and sanctions for lawyers who made unfounded claims about the 2020 presidential election;
 - discussion of the amendments to Model Rule 1.8 regarding gifts to clients;
 - a new ABA ethics opinion on what constitutes material adversity under Rule 1.9;
 - developments on whether nonlawyers can provide some legal services;
 - changes in rules on nonlawyer ownership of firms;
 - expanded coverage of ethical issues arising from use of the Internet and social media, such as an ABA opinion on how lawyers may respond to online critiques of their services.
- The book has 40 *New Yorker* cartoons. We continue to believe that there is much to learn about lawyers and the legal profession from the jokes made about both, even though the lawyer cartoons published in the *New Yorker* as of 2022 depict a profession that is male and not diverse.

We hope that you enjoy this book. We welcome your reactions and suggestions, small or large, for the next edition. Please send any suggestions, comments, or questions to lerman@law.edu.

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