

WESTERN STATE COLLEGE OF LAW (“WSCL”)


Business Law Ethics—Course Syllabus, Fall 2016

Class day/time: Every other Monday from 4:00 p.m. – 6:00 p.m.


Professor: Stephen M. Moran, Esq.

**Professor contact
outside of class:**

The best method of contact is via e-mail to the address listed below. Please type “**BLEthics**” in the subject line of any e-mail that you send me. If you do not receive a response within 24 hours, then your e-mail was likely blocked by my spam or other e-mail security system. It is your responsibility to follow up with me to ensure that any and all of your questions are addressed.

 smoran@calamp.com

If absolutely necessary, you may contact me at my office at:

 (949) 600-5635

A. Course overview and learning objectives.

1. This course will merge the substantive principles, rules, and standards of legal ethics that you studied in the course on *Professional Responsibility*, with the real world ethical dilemmas, tensions, and pressures that business attorneys necessarily confront in advising and counseling their business clients.
2. Given the tension between the black and white rules of *Professional Responsibility* on the one hand, and the very grey and foggy factual scenarios that the practicing business attorney will encounter in her or his practice on the other hand, this course will not only require deliberative and thoughtful class preparation and elicit lively in-class discussion and debate, but will also equip you with the analytical framework to confidently fulfill your ethical obligations in those situations where there will be no “bright-line” test available that will readily yield the perfect resolution to your pressing ethical dilemma. With over a quarter century of practicing business law, I can assure you that the intersection of legal ethics and business law suffuses nearly every action you will take in advising your clients; and, when that intersection is arrived at by way of a collision, it will pervade both your professional and personal lives. Furthermore, as a required course for the *Business Law*

Certificate, this course will complement and synthesize your other course work.

3. The course learning outcomes are as follows¹:

General Learning Outcomes	Specific Course Learning Outcomes
<p>I. Legal Analysis; Analytical Reasoning:</p>	<ul style="list-style-type: none"> • In each of the casebook’s 12 Scenarios (and other assigned course work), students must demonstrate the ability to: <ul style="list-style-type: none"> ○ Issue Identification. Identify the ethical issues arising from the specific fact pattern set forth in: (a) each casebook Scenario; and (b) the assigned supplemental readings and/or the performance test project(s); <ul style="list-style-type: none"> ▪ Students must also demonstrate the ability to critically analyze, identify, and evaluate the public policies of a precedent case and related ethics rule; and, be able to evaluate how that public policy can impact: (a) the application of the ethics rule to the underlying ethical dilemma, and (b) the attorney’s personal ethical obligations and her or his law license; and ○ Application of the Law to Facts. Appropriately use: <ul style="list-style-type: none"> ▪ cases (including identifying the salient features of the precedent case, identifying legally significant similarities or differences between the precedent case and a specific fact pattern, and then explaining why those similarities and differences are legally significant), and ▪ ethics rules (including the ability to connect legally significant facts in a fact pattern to the underlying ethics rules) to predict how a state bar ethics committee, an arbitrator, or a court would decide the issue, or how a client, an adverse party, or an adverse party’s attorney might respond.
<p>II. Doctrinal Knowledge; Information Competency:</p>	<ul style="list-style-type: none"> • In each of the 12 Scenarios, and the related assigned course work, students must demonstrate substantive knowledge in the related core curriculum subjects of Contracts, Business Associations, and Professional Responsibility. • This interdisciplinary approach will require students to evaluate, and use information from a variety of relevant resources to render opinions and recommend sound and ethical courses of action.

¹ The preparatory work and class discussion is specifically designed to comport with; (A) the six Argosy University *Institutional Learning Outcomes* (Analytical Reasoning; Effective Communication; Information Competency; Interpersonal Effectiveness; Personal and Professional Integrity and Ethical Behavior; and Professional Competence), set forth at EXHIBIT A; (B) the eight WSCL *Programmatic Learning Objectives* (Doctrinal Knowledge; Practice Skills; Legal Analysis; Legal Research; Communication; Advocacy of Legal Argument; Client Sensitivity and Cultural Competency; and Legal Ethics), set forth at EXHIBIT B; and (C) ABA Standard 310.

- III. Effective Communication; Advocacy of Legal Argument; Interpersonal Effectiveness:**

 - The real-world Scenarios, and related assigned coursework, will give rise to robust class debate on how best to avoid and confront the ethical dilemmas in representing the business client. To that end, students must demonstrate the ability to communicate both orally (*in class*) and in writing (*in the performance test projects and the final exam*), to effectively convey, argue, and advocate her or his legal and ethical analysis, conclusions, and recommendations.
 - In demonstrating advocacy skills, students must show an ability, in both oral and written formats, to evaluate the legal and ethical strengths and weaknesses of a fact pattern and then employ the full panoply of case law, ethics rules, statutes, and public policy to persuade the target audience to accept the correctness of the position being argued and advocated by the student.
 - Subsumed under these advocacy communication skills will be an assessment of the student's:
 - Target audience sensitivity in written and oral communication (i.e., the ability to adopt a tone, style, and level of detail appropriate to the needs, knowledge, and expertise of the target audience (client; adverse party and attorney therefor; state bar ethics committee, judge, arbitrator, etc.); and
 - written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the student's analysis and conclusions).
- IV. Legal Research:**

 - From the casebook and other assigned course work, students will demonstrate the ability to identify relevant legal authority, and to properly cite to such legal authority in advocating the student's legal opinion and recommendations.
- V. Legal Ethics: Personal and Professional Integrity and Ethical Behavior:**

 - As the quintessence of this course is the inextricably linked dilemmas that lurk in serving as legal counsel to a business, students must demonstrate the ability to identify the nuanced ethical issues inherent in advising and counselling a business; and, to make well-reasoned and ethical decisions in recommending the resolution of such issues.
 - Moreover, the student must manifest an awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society underpinning the practice of business law.
- VI. Practice Skills; Professional Competence:**

 - Given the fact that ethical questions and challenges spring from the very nature of advising and counselling the business client, students must demonstrate the development of other practical legal skills.
 - In that regard, the student's outcomes may include, without limitation:
 - oral presentation and advocacy;
 - counseling;

- applied legal writing such as drafting engagement letters, contracts, other legal instruments;
- business strategy and behavior;
- interviewing and fact investigation; and
- professional civility and applied ethics.
- The supplementary performance test course work that will be assigned is designed to test the student's ability to understand and apply a select number of legal authorities in the context of a factual problem and assess the student's ability to analyze ethical issues by:
 - sifting through factual material and separating relevant from irrelevant facts; assessing the consistency and reliability of facts; and determining the need for and source of additional facts;
 - analyzing the ethical rules and principles applicable to a problem and formulating legal theories from facts that may be only partly known and are being developed;
 - recognizing and resolving ethical issues arising in practical situations;
 - applying problem solving skills to diagnose a problem, generate alternative solutions, and develop a plan of action; and,
 - communicating effectively, whether advocating, advising a client, eliciting information, or effectuating a legal transaction.

VII Client Sensitivity and Cultural Competency:

- In parsing through the real-world ethical challenges presented in this course, students will demonstrate an awareness of the attorney's and her of his clients' needs and goals, including a sensitivity to the client's background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and an awareness that cultural issues may affect the relevance of facts and application of the ethics rules.

B. Reading materials.

1. **Required materials:** The required text and all applicable required supplementary materials must be brought to each class:
 - a. Marc I. Steinberg, Lawyering and Ethics for the Business Attorney, (Fourth Edition, West Academic Publishing, 2016) (the "Casebook"); and
 - b. Supplemental reading materials and/or performance test projects distributed prior to class.

2. **Recommended text:** This text is optional:
 - a. Ben W. Heineman, Jr., High Performance with High Integrity, (Harvard Business Review Press, 2008).
3. Class readings must be completed prior to the class in which those readings will be discussed.

C. Class preparation; grades; attendance and decorum; and course governance.

1. **Preparatory work.** This course requires 2 hours of outside preparation time required for each 1 hour of class. Therefore, since this class meets for 2 hours every other week, the casebook assignments, supplemented by other readings and/or performance test projects I will assign, will require that you devote 4 hours preparing for each class session.
2. **Grades.**
 - a. **Final examination.** The final exam will constitute **75% of your final grade**; of that 75%:
 - 60% will be essay, and
 - 40% will be multiple-choice.
 - b. **Classroom participation:** Legal education is a cooperative venture and oral communication skills will be important throughout your career as a practicing attorney. Therefore, you must be prepared to participate in class on a regular basis and **25% of your final grade** will be based on your class participation.
3. **Attendance and decorum.** I will take attendance at the beginning of each class by asking you to sign-in for the class on a roll sheet. If you are not signed in, you are absent. It should go without saying but I do not expect that cell phones will be heard or used during class. You may use your laptops but they should be open for note-taking and access to course-related materials and not to your email, Facebook®, etc. No text messaging is permitted while class is in session.
4. **Course governance.** The course schedule below is subject to change at my discretion as may be announced in class or through electronic or print media. Pacing of the class will naturally ebb and flow during the semester. For example, I may schedule guest speakers throughout the semester.

D. Course Schedule:

Week	Date	Assignment	Topics
1-2	Monday, August 29, 2016	<ul style="list-style-type: none"> • Casebook: Scenario I and Scenario II • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. Who's the Client? 2. Confidentiality Owed to Existing and Former Clients
3-4	Monday, September 19, 2016	<ul style="list-style-type: none"> • Casebook: Scenario III and Scenario IV • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. The Lawyer as Intermediary 2. Corporate Internal Investigations: What About Confidentiality?
5-6	Monday, October 3, 2016	<ul style="list-style-type: none"> • Casebook: Scenario V and Scenario VI • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. Parent-Subsidiary Related Party Transactions 2. The Corporate Opportunity Doctrine and the Lawyer's Role
7-8	Monday, October 17, 2016	<ul style="list-style-type: none"> • Casebook: Scenario VII and Scenario VIII • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. The Multiple Representation Dilemma for the Business Attorney 2. Screening and the Personally Disqualified Attorney
9-10	Monday, October 31, 2016	<ul style="list-style-type: none"> • Casebook: Scenario IX and Scenario X • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. Business Attorney as Litigator in Corporate Settings 2. Lawyers Taking Equity Interests in Their Clients
11-12	Monday, November 14, 2016	<ul style="list-style-type: none"> • Casebook: Scenario XI • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. Inside Counsel
13-14	Monday, November 28, 2016	<ul style="list-style-type: none"> • Casebook: Scenario XII • Supplementary readings/project: as assigned 	<ol style="list-style-type: none"> 1. Counsel as Director
Final Exam	December 2016		

E. Disability Services Statement: Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law. To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

EXHIBIT A

Argosy University

Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

EXHIBIT B
Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

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(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.