

WESTERN STATE UNIVERSITY COLLEGE OF LAW
At Westcliff University

Professional Responsibility, Section 240 B
SYLLABUS AND COURSE POLICIES – Fall 2023

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A. **LEARNING OUTCOMES**

Program Level (JD Program):

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.

(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.

Course Level Learning Outcomes:

This three (3) credit, semester-long course is a required course that covers a topic heavily tested on the CA bar exam and exclusively tested on the MPRE. During the fourteen weeks of this course, you will:

1. Review the various rules and standards of legal ethics that will permeate all aspects of your professional life, including both ABA and CA specific professional responsibility rules;
2. Review a variety of factual scenarios that lawyers often face during practice that present ethics issues and provide a basis for understanding how you might ethically resolve such problems;
3. Prepare you for the Multistate Professional Responsibility Exam (MPRE) which all prospective lawyers must take (this course is NOT designed to replace an MPRE course that bar companies offer for free - you should also take one of those in addition to this course before taking the MPRE);
4. Prepare you write a passing CA bar exam essay on professional responsibility, which is tested on every CA bar exam (again you will further review more PR essays during your intensive bar preparation program in addition to what is covered in this class).

B. 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. 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 Dean Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

C. REQUIRED TEXTS AND PROGRAMS

1. Thomas D. Morgan, John S. Dzienkowski & Mitt Regan, Professional Responsibility: Problems and Materials, 14th ed. Foundation Press, 2022 (NOTE: earlier editions are out of date as the PR rules have recently changed) ("**Textbook**")
2. Richard Zitrin & Kevin E. Mohr, Legal Ethics: Rules, Statutes, and Comparisons, 2023 ed. Carolina Academic Press, 2023 – available in August so may arrive around when classes start (NOTE: earlier editions are out of date as the PR rules have recently changed) ("**Rules Supp.**")

D. BACKGROUND TO PROFESSIONAL RESPONSIBILITY

The California Rules of Professional Conduct. Unlike other states that had adopted some version of the *ABA Model Rules of Professional Conduct* (“Model Rules”), since 1928 California traditionally had its own set of rules: *The California Rules of Professional Conduct* (“California Rules”). However, California has significantly changed its rules in the last couple of years (making older books out of date). This new set of rules has the same *numbering, format and style* as the Model Rules (which actually makes writing an essay easier for bar exam testing purposes). However, these rules are in many instances substantially different in *substance* from the Model Rules, carrying forward the language and approach of its prior California Rules counterpart. We will spend a substantial amount of time studying these rules because they are the rules that will provide the primary basis for regulating your eventual practice of law and they are tested on the CA bar exam essay portion and sometimes the performance test portion. These rules (along with the changes to compare old and new rules) are set forth in the required Rules and Statutes book.

The California State Bar Act and Other Statutes Governing Lawyer Conduct. It is important to note that California is unique in having more than one source of lawyer regulation. In addition to the Rules of Professional Conduct, California through its legislature has set out ethical duties for lawyers in the *Business & Professions Code*, specifically the State Bar Act, Bus. & Prof. C. §§ 6000 et seq. In addition, provisions of other California Codes, including the *Civil Procedure Code*, *Corporations Code*, *Evidence Code*, *Insurance Code*, *Penal Code* and *Probate Code*, directly govern lawyer conduct. Many of these authorities are set out in the required Rules and Statutes book.

ABA Model Rules. You must also be familiar with the Model Rules as well as both sets of California regulations (rules & statutes), for a number of reasons. *First*, although most of you will remain in California to practice and be subject to California’s rules and statutes, most California rules have analogous sections in the Model Rules. When construing a California ethical rule or statutory section, the California courts and California Bar will often consider cases applying analogous sections in the Model Rules. *Second*, when a lawyer’s misconduct occurs in relation to a matter before a tribunal in another jurisdiction, or the principal adverse effect of the lawyer’s misconduct is in another jurisdiction, that jurisdiction’s rules (which will necessarily be based on the Model Rules) will govern. *Third*, most jurisdictions now permit lawyers in limited circumstances to practice in jurisdictions in which they are not admitted (“multijurisdictional practice” or “MJP”). If you are authorized to practice in another jurisdiction under one of these MJP provisions, that jurisdiction’s rules will generally control, even if you are not fully licensed in that jurisdiction. *Fourth*, the MPRE is based primarily on the Model Rules and the CA bar examiners require you to know both ABA and CA rules.

ABA Code. Until a decade or so ago, there were still several jurisdictions that had rules based on the *ABA Model Code of Professional Responsibility* (“ABA Code”), available at this [link](#). Now, however, no jurisdiction has ABA Code-based rules. The last state to dispense with a set of rules based on the ABA Code was New York, which adopted a set of rules patterned on the Model Rules effective April 1, 2009. However, both the MPRE and the CA bar exam still test some of these rules which is why we will see some of these rules throughout the semester.

E. **EXPECTATIONS FOR OUTSIDE OF CLASS**

While the amount of time you need to set aside for class preparation will vary with the degree of

difficulty of the materials we will be discussing, per the ABA rules, you should be devoting a **minimum of six hours of outside of class study time for each three-hours of weekly class sessions**, and often more than that. “Study time” may include reading the assigned materials, working through the problems in the book, creating an outline, completing any assigned MPRE questions, reviewing supplemental materials, completing and reviewing practice essays, etc.

Prepare for class by following the below approach BEFORE each class:

1. First, read the assigned textbook problems/pages and any rules, statutes, or standards. The assigned readings will be from the two required books.
2. Since the course textbook is primarily based on problems and not cases, you **MUST** answer each problem and come to class prepared to provide the answer if called on in class. **You should have your problems IRACed and ready to submit (by hand or electronically) if asked.**
3. If you do not understand the rules that are covered in the assigned reading, then use a supplemental resource to help you further understand the rule (a list of supplemental resources will be provided in class one).

DURING class approach:

1. Do NOT try to write down every word on the slides. Your completed reading and answers to the problems should allow you to make notes and add commentary without needing to write down everything discussed in class since you should have most important rules and answers already written if you adequately prepared for class.
2. Highlight or make a note of key rules and discussion rather than every word.
3. Pay attention to examples and hypos as those often form the basis of future exams.
4. Always try to answer the questions being asked in class in your head even if a classmate is the one being called on.
5. Focus on class and don't allow yourself to get distracted by your phone or the internet or any other distractions in class.

POST-class approach:

1. Review your notes from class while they are fresh in your head. Make a note of any areas of confusion now so you can ask the professor in office hours or after class. Do not be afraid to ask a question if you are confused.
2. Write out (essay style) any problems you struggled with as well as hypos and examples discussed in class; use supplements to help here too (see list provided in class one).
3. Complete any post-class assignments if applicable and write out practice essays.
4. Create and regularly update an organization tool (flashcards, outlines, approaches, visual charts, etc.) that will help you memorize and synthesize your rules to prepare for exams.
5. Go to office hours if you need help with anything.

F. PRACTICE QUESTIONS, EXAMS, AND GRADING

Throughout the semester, I will be happy to review with students answers to practice exams and practice questions that I will distribute from time to time. *Do not wait until the end of the semester to begin taking practice exams and answering practice questions.*

There will be a graded midterm exam and a final exam. The midterm exam will consist of at least one essay question and perhaps several short-answer and/or multiple-choice questions. The final exam will likely contain one or two essay questions, and some multiple-choice and/or short-answer questions. The final course grade will consist of: 10% for good faith completion of all assignments (includes all post-class assignments such as the MPRE questions, practice tests, and any other assignments assigned throughout the semester), a 20% weighting of the midterm exam, and a 70% weighting of the final examination. ALL exams will be closed book (just like the MPRE and the CA bar exam).

G. CLASS PARTICIPATION

Legal education is a cooperative venture and oral communication skills will be important throughout your professional life. Each of you must be prepared to participate in class on a regular basis. If you have not read the materials, you are unprepared. I will periodically call on students in class at random to describe rules and to answer problems that were in the textbook. Even though some students find this method unattractive or intimidating, overcoming intimidating circumstances is an important and time-tested part of the legal education process. And the single most effective way to overcome the intimidation is to be prepared. Also, it is fairly inconsiderate of the time and efforts of your fellow students to come to class unprepared.

Please note, however, that there is a significant difference between being unprepared and being unable to correctly answer a question. No one knows the answer to every law-related question. An important part of the learning experience is testing your own opinions and conclusions. You will not be penalized for venturing an incorrect answer as long as it is a thoughtful answer based on preparation. An important part of the learning process involves thinking out loud and making mistakes.

H. ATTENDANCE, DECORUM, AND NOTETAKING IN CLASS

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. In accordance with the school rules, **if you miss more than four 1.5-hour classes, you will be academically dismissed from the course.** You are responsible for tracking your own attendance to ensure you are not dismissed for missing too many classes.

You should be in your seat at the commencement of class to be counted as present for the class. Similarly, you should not leave until the end of class. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Registrar or the Academic Dean.

Smart phones and the like should not be heard or used in the classroom. You may use your laptop computer, but it should be open only to course related materials. I know that many students use their laptops to take notes in class. I want to make you aware that studies have shown that students do better on exams when they take notes by hand (the old-fashioned way). Remember that technology is a tool. It cannot replace the wonderful learning tool that is your

mind. Do everything you can to make sure that your mind is fully engaged during class, and that even when you are not directly participating in class discussion that you are actively listening and thinking.

I. **SEATING CHART**

A seating chart will be distributed during one of the beginning classes. Please print your preferred name legibly in the seat you choose for your permanent seat. If you wish to change your seat later, please notify me so that I can make the appropriate change on the chart.

J. **OFFICE HOURS**

I am delighted to talk with students almost any time. Since the pandemic many students have found Zoom online office hours to be helpful and time efficient. I am happy to have office hours both in person and/or online via Zoom. Since many students are taking different classes and many students have internships, jobs, and other responsibilities, individual appointments provide more flexibility to meet everyone's schedules. Further, I am happy to meet on weeknights or weekends too. Since your schedules all vary, please email me directly to set up an office hour appointment and I will be sure to meet with you at a time convenient for you.

All zoom office hour meetings will use the following zoom link:

<https://us06web.zoom.us/j/82522592912?pwd=OWthS0R2UmFEWHBXd3JtV3lMZHAvQT09>

Meeting ID: 825 2259 2912

Passcode: 143826

K. **WEB COURSE**

Sometime before the first day of class I will set up a Lexis Web Course for this class. You will need to enroll in the web course for my class and will be able to access any posted course materials. During the semester I will use this web course to send you emails, make class announcements and post course documents such as this syllabus, charts, questions, outlines, and other documents that pertain to the topics we will study. I will also use the web course to post practice exams. Please make sure you **have access to the site BEFORE the first day of class** and that you **sign up for course notifications**.

L. **READING ASSIGNMENTS (subject to modification)**

You should **read the entire week's assignment before the first class in that week**. This gives us flexibility with moving through various topics within a given week. Where it says **ABA & CA** Rules followed by a number(s), this indicates that the number is the same for both sets of rules, but this does not mean the rule itself is the same. So, pay close attention to the wording in the **ABA v. CA** rules and note any distinctions. Keep in mind that the MPRE only tests ABA rules and not CA rules, but the CA bar exam tests both.

Class/Date	Topic	Required Reading PRIOR to Class	Post-class assignments
Class 1 8/23 (Wed.)	<ul style="list-style-type: none"> • Introduction • Unauthorized Practice of Law • Admission to the Bar 	⇒ Textbook pp. 21-22; Problem 1 (pp. 23-42) ⇒ Rules Supp. ABA Model Rule & CA Rule 5.5, 8.1, 8.3	
Classes 2 & 3 8/28 (Mon.) & 8/30 (Wed.)	<ul style="list-style-type: none"> • Lawyer Discipline • Legal Malpractice • Duty of Competence • Duty of Diligence 	⇒ Textbook Problem 2-3 (pp. 42-79) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.1, 1.3, 8.1, 8.3, 8.4, 8.5; and CA Rule 1.42	Set #1 MPRE Practice Questions (see Lexis course page) – due 9/6
Monday 9/4/23 – No Class (Labor Day Holiday)			
Class 4 9/6 (Wed.)	<ul style="list-style-type: none"> • Lawyer-Client Relationship Formation • Scope of Relationship • Duty to Communicate 	⇒ Textbook Problem 4 (pp. 81-98) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.18, 6.5, 1.2, 1.4	IRAC two issues from bar exam fact patterns (see Lexis course page) – due 9/11
Classes 5 & 6 9/11 (Mon.) & 9/13 (Wed.)	<ul style="list-style-type: none"> • Billing/Fees for Legal Services • Handling Client Property • Withdrawal 	⇒ Textbook Problems 5-6 (pp. 99-131) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.5, 1.15, 1.16; and CA Rule 1.51; CA Bus. & Prof. Code §§6148, 6200	Set #2 MPRE Practice Questions (see Lexis course page) – due 9/18
Classes 7 & 8 9/18 (Mon.) & 9/20 (Wed.)	<ul style="list-style-type: none"> • Duty of Confidentiality • Attorney-Client Privilege • Work Product Doctrine 	⇒ Textbook Problems 7-8 (pp. 131-170) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.6, 4.4, 4.1; and FRCP 26 (flashback to Civ. Pro.!)	IRAC two issues from bar exam fact patterns (see Lexis course page) – due 9/25
Classes 9 & 10 9/25 (Mon.) & 9/27 (Wed.)	<ul style="list-style-type: none"> • Duty of Loyalty – Conflicts of Interest (we will spend a few weeks on conflicts) 	⇒ Textbook Problems 9-10 (pp. 171-204) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.7-	

		1.13 (we will cover these over the next two weeks; note the ABA & CA rules have some different rules within this range)	
Classes 11 & 12 10/2 (Mon.) & 10/4 (Wed.)	<ul style="list-style-type: none"> Duty of Loyalty – Conflicts of Interest (continued) 	⇒ Textbook Problems 11-13 (pp. 204-246) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.7-1.13 (continued)	Write out bar exam practice essay (see Lexis course page) – due 10/9
Classes 13 & 14 10/9 (Mon.) & 10/11 (Wed.)	<ul style="list-style-type: none"> Review homework essay Duty of Loyalty – Conflicts of Interest (continued) 	⇒ Textbook Problems 14-15 (pp. 246-280) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.7-1.13 (continued)	Study for midterm
Classes 15 & 16 10/16 (Mon.) & 10/18 (Wed.)	<ul style="list-style-type: none"> Midterm Review (Mon.) Midterm (Wed.) 	⇒ Make sure your Examsoft is working BEFORE coming to the midterm	
Classes 17 & 18 10/23 (Mon.) & 10/25 (Wed.)	<ul style="list-style-type: none"> Advising Clients Representing an Organization Communicating with Represented and Unrepresented Persons 	⇒ Textbook Problems 16-18 (pp. 281-333) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.2, 2.1, 4.2, 4.3; and ABA Model Rule 1.14	Set #3 MPRE Practice Questions (see Lexis course page) – due 10/30
Classes 19 & 20 10/30 (Mon.) & 11/1 (Wed.)	<ul style="list-style-type: none"> Lawyer as Negotiator Lawyer as Evaluator 	⇒ Textbook Problems 19-20 (pp. 333-367)- skip problem 21 ⇒ Rules Supp. ABA Model Rules & CA Rules 1.2, 2.1, 3.4, 4.1; and ABA Model Rule 2.3	Set #4 MPRE Practice Questions (see Lexis course page) – due 11/6
Classes 21 & 22 11/6 (Mon.) & 11/8 (Wed.)	<ul style="list-style-type: none"> Decision to File Suit Disclosure of Facts to the Other Side Advocacy in Litigation 	⇒ Textbook Problems 22-24 (pp. 391-448) ⇒ Rules Supp. ABA Model Rules & CA Rules 3.1, 3.2, 3.3, 3.4, 3.7; and FRCP 11 (another	Set #5 MPRE Practice Questions (see Lexis course page) – due 11/13

		flashback to Civ. Pro.!)	
Classes 23 & 24 11/13 (Mon.) & 11/15 (Wed.)	<ul style="list-style-type: none"> • Representing a Criminal Defendant • Prosecutor Obligations 	⇒ Textbook Problems 25-26 (pp. 448-490) ⇒ Rules Supp. ABA Model Rules & CA Rules 1.6, 3.3, 1.2, 1.4, 3.8	Set #6 MPRE Practice Questions (see Lexis course page) – due 11/20
Class 25 11/20 (Mon.)	<ul style="list-style-type: none"> • Duties to the Court and Public 	⇒ Textbook Problems 27 (pp. 491-512)- skip problem 28 ⇒ Rules Supp. ABA Model Rules & CA Rules 3.4, 3.5, 3.6, 8.4	
Wednesday 11/22/23 – No Class (Legislative Day – Friday classes meet today)			
Classes 26 & 27 11/27 (Mon.) & 11/29 (Wed.)	<ul style="list-style-type: none"> • Advertising and Solicitation of Legal Services • Ethical Conduct of Judges 	⇒ Textbook Problems 29-30; 36 (pp. 527-563; 665-684) ⇒ Rules Supp. ABA Model Rules & CA Rules 7.1, 7.2, 7.3, 1.1, 1.5, 8.2; and CA Rules 7.4, 7.5	Write out bar exam practice essay (see Lexis course page) – due 12/4
Class 28 12/4 (Mon.)	<ul style="list-style-type: none"> • Review homework essay • Final Exam Review 	Update your outlines, flashcards, study tools, etc.	Study for the final exam!
FINAL EXAM TBD – CHECK FINAL EXAM SCHEDULE			