

JUDGE NEIL M. GORSUCH
SENATE JUDICIARY COMMITTEE
QUESTIONNAIRE

APPENDIX 19
Teaching Syllabi

Advanced Appellate Advocacy
Judge Neil Gorsuch
Fall 2010
Wolf 421, Tuesdays 4:15-5:55 pm

Assigned Reading

Ruggero Aldisert, *Winning on Appeal: Better Briefs and Oral Arguments*

David Frederick, *Supreme Court and Appellate Advocacy*

Antonin Scalia and Bryan Garner, *Making Your Case*

Course Supplement (CS)

Students will also be given a “record” in *Colfax v. Consolidated Properties Corp.* that will serve as the basis of our written and oral advocacy projects.

Grades

Grades will be based on the following, weighted approximately as shown: final written brief (40%), interim draft brief (20%), oral argument (20%), and class participation (20%).

Office Hours

I’m happy to meet by appointment anytime, as well as after class. If you’d like to schedule an appointment, please call my judicial assistant, Holly Cody, at (303) 335-2800.

Tentative Syllabus
(subject to modification)

1. Introduction

The appellate function in the U.S. tradition; a judge’s perspective on the appellate process; students will pair into teams for briefing and oral advocacy projects; initial brainstorming about *Colfax v. Consolidated Properties Corp.*

Reading: Aldisert chs. 1-2
Scalia - Introduction
CS - All decisions in *Colfax v. Consolidated Properties Corp.*

2. Perfecting an Appeal, Standards of Review, and Developing Your Theory of the Appeal

Appellate jurisdiction; identifying what (not) to appeal; standards of review; some “waiver” traps; preparing a good table of contents and statement of the issues presented; further brainstorming on *Colfax v. Consolidated Properties Corp.*

Reading: Aldisert chs. 5, 8
Scalia pp. 1-23, 83-90
CS - Skim these cases: *Headrick v. Rockwell Int’l Corp.*, 24 F.3d 1272 (10th Cir. 1994); *In re C and M Properties, LLC*, 563 F.3d 1156 (10th Cir. 2009); *United States v. Zubia-Torres*, 550 F.3d 1202 (10th Cir. 2008)
CS - Skim sample tables of contents and sample statement of issues presented

3. The Challenges of Statutory Interpretation

How to approach your statutory interpretation case; competing schools of statutory interpretation; structuring a statutory interpretation argument to appeal to your “audience.”

Bring to class a draft outline of your table of contents and statement of the issues presented, building on what we read this and last week.

Reading: Scalia pp. 39-55
CS - Breyer, *Active Liberty* pp. 85-101
CS - Scalia, *A Matter of Interpretation* pp. 14-37
CS - *Smith v. United States*, 508 U.S. 223 (1993)

4. Attend an *En Banc* session of the Tenth Circuit

We will meet before argument in my chambers at 12:30 pm, September 21, 2010. Byron White Courthouse, 1823 Stout Street, Denver. Argument will take place at 2 pm in Courtroom 1.

Reading: CS - Skim briefs in *Forest Guardians en banc*

5. The Heart of a Brief: The Argument Section

Organizing the argument section of an appellate brief; persuasive argument structures; summary of the argument section

Exchange in advance your draft argument section and draft summary of the argument section; bring your drafts to class.

Reading: Aldisert chs. 10-12
Scalia pp. 23-38, 97-100
CS - Skim sample argument & summary of the argument sections

6. Just the Facts

Writing an effective statement of the case

Exchange in advance your draft fact section; bring your draft to class

Reading: Aldisert ch. 9
Scalia pp. 93-96

FIRST DRAFT OF BRIEFS ARE DUE AT THIS CLASS MEETING

7. Replies and What To Do When you Lose

The reply brief; certiorari; amicus filings

Reading: Aldisert ch. 13.05
Scalia pp. 201-206
CS - Timothy Bishop et al., *Tips on Petitioning for and Opposing Certiorari*

8. Revising and Editing a Good Brief

Reading: Aldisert chs. 11, 13 (except 13.05), 17.01
Scalia pp. 57-81, 107-136

9. No class: individual team meetings for feedback on your initial drafts

10. Effective Oral Argument

Reading: Frederick chs. 1-5
Scalia pp. 137-165

11. Common Oral Argument Mistakes - and How to Avoid Them

Reading: Frederick chs. 6-8
Scalia pp. 166-200

12. Ethics on Appeal: Candor with the Court and Your Client

Reading: CS - James Carr, *A Judge's Guide to Protecting Your Reputation*

13. Oral Arguments

Students will argue *Colfax*; non-arguing students will be expected to offer comments and critiques.

FINAL BRIEFS DUE WEEK 13. BE SURE TO HAND IN BOTH THE FINAL AND THE INITIAL DRAFT OF YOUR BRIEF.

14. Oral Arguments, cont'd.

Advanced Appellate Advocacy
Judge Neil M. Gorsuch
Fall 2008

Assigned Reading

Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument*

David C. Frederick, *The Art of Oral Advocacy* (2003)

Students will be given a slightly modified record from a Tenth Circuit case, *United States v. Kaufman*, that will serve as the primary basis of our briefing and oral advocacy projects, as well as other handouts along the way.

Grades

Grades will be based on the following, weighted approximately as shown: final written brief (40%), interim draft brief (20%), oral argument (20%), and class participation (20%)

Office Hours
Teaching Assistant

If you wish to meet with me, please speak with me or contact my assistant, Holly Cody, at (303) 335-2800 to schedule a mutually convenient time. Mondays before class will work particularly well.

Jennifer Rosenthal is the teaching assistant for this course. She is a good resource for questions you may have, and for comments on drafts and mock arguments.

Tentative Syllabus
(subject to modification)

1. Introduction

The appellate function in the U.S. tradition; a judge's perspective on the appellate process; students will pair into teams for briefing and oral advocacy projects; initial brainstorming about *United States v. Kaufman*

Reading: Aldisert chs. 1, 2
Coffin chs. 1, 2
Record in *United States v. Kaufman*

2. Perfecting an Appeal and Standards of Review

Appellate jurisdiction; identifying issues for appeal; standards of review; waiver traps; Further brainstorming on briefing issues for *United States v. Kaufman*

Reading: Aldisert chs. 4-5
Coffin chs. 5.I(A) & (B); 5.III(B) & (C)

3. Developing Your Theory of the Appeal

Selecting and narrowing your arguments; drafting a table of contents

Bring to class a draft outline of your brief (all sections in detail) and a draft table of contents

Reading: Aldisert chs. 6, 7, 8
Handout: sample tables of contents

4. Attend session of Tenth Circuit in Denver and meeting afterwards in chambers to discuss.

Reading: Briefs from argument session

5. The Heart of a Brief: The Argument Section

Organizing the argument section of an appellate brief; persuasive and non-persuasive arguments and writing on appeal; the summary of argument section

Exchange in advance your draft argument section; bring your draft to class

Reading: Aldisert chs. 12, 13 (except 13.05)
Handout: sample argument sections

6. Just the Facts

Writing an effective statement of the case

Exchange in advance your draft fact section; bring your draft to class

Reading: Aldisert chs. 9, 10

7. Replies and What You Do When You Lose

The reply brief; rehearing; certiorari; amicus filings; using and misusing legal authority

Reading: Aldisert ch. 13.05
Handout: sample filings

FIRST DRAFT OF BRIEFS ARE DUE NO LATER THAN THIS
CLASS MEETING

8. Effective Oral Argument

Reading: Frederick chs. 1-5

9. No class: individual team meetings for feedback on your initial drafts.
10. Revising and Editing a Good Brief
- Reading: Aldisert chs. 11, 17.01
Coffin ch. 6.1
11. Common Oral Argument Mistakes - And How to Avoid Them; Ethics on Appeal: candor with the court and your client
- Reading: Frederick chs. 6-8
Handouts
- 12- Oral arguments
14

Students to argue *Kaufman*; non-arguing students will be expected to offer comments and critiques

Reading for week 12: Coffin chs. 12-14

FINAL BRIEFS DUE WEEK 13. BE SURE TO HAND IN FINAL AND INITIAL DRAFT OF YOUR BRIEF.

Antitrust Law
Judge Gorsuch
Spring 2017

Course Description

We will examine the role of antitrust law in regulating the nation's economy. We will focus particularly on federal antitrust law and even more particularly on the Sherman Act (Sections 1 & 2) and Clayton Act (particularly Section 7). Because the relevant statutes are both old and brief much of federal antitrust law today (and so much of what we will study) is found in case law, case law that has been influenced by evolving and sometimes competing schools of economic learning over some 120 years. To appreciate the fabric of the law in this area, then, requires careful attention to the case law, tracing its evolution over decades. Some background in economics helps too, though it's not essential. Expect lots of reading.

Course Materials

We will be using Robert Pitofsky et al., *TRADE REGULATION: CASES AND MATERIALS* (6th ed. 2010) and the most recent Supplement. Additional assigned cases, briefs, and articles are noted below.

Class Times and Meetings

The class will meet Tuesday and Thursday from 4:40 to 5:55 pm, subject to the need to reschedule class sessions. I am happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please chat with me or call my assistant, Holly Cody, at (303) 335-2800. **Our first class will start on Thursday, January 19, because I will be hearing an en banc case the afternoon of Tuesday, January 17, and will be unable to make class that evening.**

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working collaboratively through the sort of problems you will encounter in practice, much as you might with law firm colleagues and clients. For this to work, it is essential that you complete the reading assignments before each session, attend class, and come prepared to participate actively. To facilitate discussion and to mimic the sort of collaborative working environment you will often encounter in practice, laptops and other electronic devices are not permitted.

You will be assigned to prepare and present occasional essays on our reading assignments. In addition, we will be performing certain in-class exercises. I will describe both at our initial meeting. These essays and exercises will account for 20% of your grade. There will be a three hour final exam accounting for 80% of your grade. Attendance and participation can also affect your final grade by plus or minus three points.

Preliminary Schedule

Objectives and structure of antitrust law

1. Background history and economics
1-51, 1327-37
2. Further background on institutional framework and economics
54-111; 1337-47

The law of monopolization: section 2 and single firm conduct

3. Monopoly and the problem of market definition
112-52
4. Monopoly and the problem of market definition, contd.
152-75
5. Attempts to monopolize
810-23, 681-88
6. Monopoly conduct - the early view
721-39
7. Monopoly conduct - more recent developments
739-67; *Making a Market out of a Molehill: Geographic Market Definition in Aspen Skiing*, Journal of Competition Law & Policy; *Christy Sports v. Deer Valley Resort Co.*, 555 F.3d 1188 (10th Cir. 2009)
8. Monopoly and IP
767-810
9. Specific forms of monopoly conduct - predatory pricing
823-59
10. Specific forms of monopoly conduct - tying
859-919
11. Exclusive dealing and a finale on section 2
919-64; *Conwood v. UST*, 290 F.3d 768 (6th Cir. 2002); *DOJ report* (<http://www.justice.gov/atr/public/reports/236681.pdf>); *FTC reply* (<http://www.ftc.gov/os/2008/09/080908section2stmt.pdf>)

The law of coordinated conduct: section 1 and multiple firm conduct

12. Price fixing
177-209
13. Joint ventures
209-274
14. Market allocation
275-305; *FTC v. Actavis*, 133 S.Ct. 2223 (2013)
15. Group refusals to deal
307-60
16. Joint ventures revisited
361-90
17. Government action
390-430
18. Government action, contd.
431-67; *FTC v. Phoebe Putney*, 133 S.Ct. 1003 (2013); *Kay v. City of Newkirk*,
647 F.3d 1039 (10th Cir. 2011); *North Carolina State Board of Dental Examiners*
v. FTC, 135 S.Ct. 1101 (2015).
19. Vertical restraints
606-653
20. Vertical restraints, contd.
653-81, 688-720
21. A finale on section 1 - pleading issues, trade associations, intra-corporate
conspiracy
496-506; 572-603

Today's Debate

22. Rational Choice and Behavioral Economics
Behavioral Antitrust, 86 Ind. L. J. 1527; Empty Promise of Behavioral Antitrust,
37 Harv. J. Law & Pub. Policy 1010

Mergers

23. Introduction
965-1010

24. Horizontal mergers
1010-57 and review 2011 supplement or online the 2010 Horizontal Merger Guidelines issued jointly by DOJ and FTC
25. Horizontal mergers, contd.
1057-1089
26. Joint ventures and conglomerate mergers
1089-1131
27. A finale on mergers (and a final reconsideration of the purposes of antitrust) through the lens of vertical mergers
1131-1170
28. TBA

Antitrust Law
Judge Gorsuch
Fall 2015

Course Description

We will examine the role of antitrust law in regulating the nation's economy. We will focus particularly on federal antitrust law and even more particularly on the Sherman Act (Sections 1 & 2) and Clayton Act (particularly Section 7). Because the relevant statutes are both old and brief much of federal antitrust law today (and so much of what we will study) is found in case law, case law that has been influenced by evolving and sometimes competing schools of economic learning over some 120 years. To appreciate the fabric of the law in this area, then, requires careful attention to the case law, tracing its evolution over decades. Some background in economics helps too, though it's not essential. Expect lots of reading.

Course Materials

We will be using Robert Pitofsky et al., *TRADE REGULATION: CASES AND MATERIALS* (6th ed. 2010). Additional assigned cases, briefs, and articles are noted below.

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Class Attendance, Participation, Laptops, Grades

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You will be assigned to prepare and present occasional essays on our reading assignments. In addition, we will be performing certain in-class exercises. I will describe both at our initial meeting. These essays and exercises will account for 20% of your grade. There will be a three hour final exam accounting for 80% of your grade. Attendance and participation can also affect your final grade by plus or minus three points.

Preliminary Schedule

Objectives and structure of antitrust law

1. Background history and economics
1-51, 1327-37
2. Further background on institutional framework and economics
54-111; 1337-47

The law of monopolization: section 2 and single firm conduct

3. Monopoly and the problem of market definition
112-52
4. Monopoly and the problem of market definition, contd.
152-75
5. Attempts to monopolize
810-23, 681-88
6. Monopoly conduct - the early view
721-39
7. Monopoly conduct - more recent developments
739-67; *Making a Market out of a Molehill: Geographic Market Definition in Aspen Skiing*, Journal of Competition Law & Policy; *Christy Sports v. Deer Valley Resort Co.*, 555 F.3d 1188 (10th Cir. 2009)
8. Monopoly and IP
767-810
9. Specific forms of monopoly conduct - predatory pricing
823-59
10. Specific forms of monopoly conduct - tying
859-919
11. Exclusive dealing and a finale on section 2
919-64; *Conwood v. UST*, 290 F.3d 768 (6th Cir. 2002); *DOJ report* (<http://www.justice.gov/atr/public/reports/236681.pdf>); *FTC reply* (<http://www.ftc.gov/os/2008/09/080908section2stmt.pdf>)

The law of coordinated conduct: section 1 and multiple firm conduct

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177-209
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209-274
14. Market allocation
275-305; *FTC v. Actavis*, 133 S.Ct. 2223 (2013)
15. Group refusals to deal
307-60
16. Joint ventures revisited
361-90
17. Government action
390-430
18. Government action, contd.
431-67; *FTC v. Phoebe Putney*, 133 S.Ct. 1003 (2013); *Kay v. City of Newkirk*,
647 F.3d 1039 (10th Cir. 2011); *North Carolina State Board of Dental Examiners*
v. FTC, 135 S.Ct. 1101 (2015).
19. Vertical restraints
606-653
20. Vertical restraints, contd.
653-81, 688-720
21. A finale on section 1 - pleading issues, trade associations, intra-corporate
conspiracy
496-506; 572-603

Today's Debate

22. Rational Choice and Behavioral Economics
Behavioral Antitrust, 86 Ind. L. J. 1527; Empty Promise of Behavioral Antitrust,
37 Harv. J. Law & Pub. Policy 1010

Mergers

23. Introduction
965-1010

24. Horizontal mergers
1010-57 and review 2011 supplement or online the 2010 Horizontal Merger Guidelines issued jointly by DOJ and FTC
25. Horizontal mergers, contd.
1057-1089
26. Joint ventures and conglomerate mergers
1089-1131
27. A finale on mergers (and a final reconsideration of the purposes of antitrust) through the lens of vertical mergers
1131-1170
28. TBA

Antitrust Law
Judge Gorsuch
Fall 2014

Course Description

We will examine the role of antitrust law in regulating the nation's economy. We will focus particularly on federal antitrust law and even more particularly on the Sherman Act (Sections 1 & 2) and Clayton Act (particularly Section 7). Because the relevant statutes are both old and brief much of federal antitrust law today (and so much of what we will study) is found in case law, case law that has been influenced by evolving and sometimes competing schools of economic learning over some 120 years. To appreciate the fabric of the law in this area, then, requires careful attention to the case law, tracing its evolution over decades. Expect lots of reading. Some background in economics is helpful too.

Course Materials

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Class Times and Meetings

The class will meet Tuesday and Thursday from 4:40 to 5:55 pm in Wolf 301, subject to the need to reschedule class sessions. I am very happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

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1-51, 1327-37
2. Further background on institutional framework and economics
54-111; 1337-47

The law of monopolization: section 2 and single firm conduct

3. Monopoly and the problem of market definition
112-52
4. Monopoly and the problem of market definition, contd.
152-75
5. Attempts to monopolize
810-23, 681-88
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721-39
7. Monopoly conduct - more recent developments
739-67; *Making a Market out of a Molehill: Geographic Market Definition in Aspen Skiing*, Journal of Competition Law & Policy; *Christy Sports v. Deer Valley Resort Co.*, 555 F.3d 1188 (10th Cir. 2009)
8. Monopoly and IP
767-810
9. Specific forms of monopoly conduct - predatory pricing
823-59
10. Specific forms of monopoly conduct - tying
859-919
11. Exclusive dealing and a finale on section 2
919-64; *Conwood v. UST*, 290 F.3d 768 (6th Cir. 2002); *DOJ report* (<http://www.justice.gov/atr/public/reports/236681.pdf>); *FTC reply* (<http://www.ftc.gov/os/2008/09/080908section2stmt.pdf>)

The law of coordinated conduct: section 1 and multiple firm conduct

12. Price fixing
177-209
13. Joint ventures
209-274
14. Market allocation
275-305; *FTC v. Actavis*, 133 S.Ct. 2223 (2013)
15. Group refusals to deal
307-60
16. Joint ventures revisited
361-90
17. Government action
390-430
18. Government action, contd.
431-67; *FTC v. Phoebe Putney*, 133 S.Ct. 1003 (2013); *Kay v. City of Newkirk*,
647 F.3d 1039 (10th Cir. 2011)
19. Vertical restraints
606-653
20. Vertical restraints, contd.
653-81, 688-720
21. A finale on section 1 - pleading issues, trade associations, intra-corporate
conspiracy
469-506; 572-603

Today's Debate

22. Rational Choice and Behavioral Economics
Behavioral Antitrust, 86 Ind. L. J. 1527; Empty Promise of Behavioral Antitrust,
37 Harv. J. Law & Pub. Policy 1010

Mergers

23. Introduction
965-1010

- 24. Horizontal mergers
1010-57 and see 2011 supplement materials
- 25. Horizontal mergers, contd.
1057-1089
- 26. Joint ventures and conglomerate mergers
1089-1131
- 27. A finale on mergers (and a final reconsideration of the purposes of antitrust)
through the lens of vertical mergers
1131-1170
- 28. TBA

**Antitrust Law
Judge Gorsuch
Spring 2014**

Course Description

As the course name suggests, our focus will be on the role of antitrust law in regulating the nation's economy. We will focus particularly on federal antitrust law and even more particularly on the Sherman Act (Sections 1 & 2) and Clayton Act (particularly Section 7). But while the course is putatively centered on statutory edicts, because the relevant statutes are both old and brief much of federal antitrust law today (and so much of what we will study) is found in case law, case law that has been influenced by evolving and sometimes competing schools of economic learning over some now 120 years. To appreciate the fabric of the law in this area, then, requires a careful study of the case law, tracing its evolution over the decades. Expect lots of reading. Some background in economics is helpful too.

Course Materials

We will be using Robert Pitofsky et al., *TRADE REGULATION: CASES AND MATERIALS* (6th ed. 2010), as well as the Supplement. Additional assigned cases, briefs, and articles are noted below.

Class Times and Meetings

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Class Attendance, Participation, Laptops, Grades

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You will be assigned to prepare and present occasional essays on our reading assignments. In addition, we will be performing certain in-class exercises. I will describe both at our initial meeting. These essays and exercises will account for 20% of your grade. There will be a three hour final exam accounting for 80% of your grade. Attendance and participation can also affect your final grade by plus or minus three points.

Preliminary Schedule (1/6/14)

This schedule is subject to revision depending on the speed with which our class discussions proceed.

Objectives and structure of antitrust law

1. Background history and economics
1-51, 1327-37
2. Further background on institutional framework and economics
54-111; 1337-47

The law of monopolization: section 2 and single firm conduct

3. Monopoly and the problem of market definition
112-52
4. Monopoly and the problem of market definition, contd.
152-75
5. Attempts to monopolize
810-23, 681-88
6. Monopoly conduct - the early view
721-39
7. Applying what we've learned so far
In-class exercise TBA
8. Monopoly conduct - more recent developments
739-67; *Making a Market out of a Molehill: Geographic Market Definition in Aspen Skiing*, Journal of Competition Law & Policy; *Christy Sports v. Deer Valley Resort Co.*, 555 F.3d 1188 (10th Cir. 2009)
9. Monopoly conduct - additional recent developments
767-810
10. Specific forms of monopoly conduct - predatory pricing
823-59
11. Specific forms of monopoly conduct - tying
859-919

12. A finale on section 2 and a consideration of the purposes and future of section 2 through the lens of competing reports by DOJ and FTC and a case 919-64; *Conwood v. UST*, 290 F.3d 768 (6th Cir. 2002); *DOJ report* (<http://www.justice.gov/atr/public/reports/236681.pdf>); *FTC reply* (<http://www.ftc.gov/os/2008/09/080908section2stmt.pdf>)

The law of coordinated conduct: section 1 and multiple firm conduct

13. Introduction
177-209
14. Characterization questions and joint ventures
209-274
15. Horizontal restraints and market allocation
275-305; *FTC v. Actavis*, 133 S.Ct. 2223 (2013)
16. Group refusals to deal
307-60
17. Joint ventures revisited
361-90
18. Government action
390-430
19. Government action, contd.
431-67; *FTC v. Phoebe Putney*, 133 S.Ct. 1003 (2013); *Kay v. City of Newkirk*, 647 F.3d 1039 (10th Cir. 2011)
20. Vertical restraints
606-653
21. Vertical restraints, contd.
653-81, 688-720
22. A finale on section 1 - pleading issues, trade associations, intercorporate conspiracy and a consideration of the purposes and future of the Sherman Act through the lens of theory
469-506; 572-84; 598-603; excerpts from Bork and Pitofsky

Mergers

23. Introduction
965-1010

- 24. Proscribed effect in horizontal mergers
1010-57 and see 2011 supplement materials
- 25. Proscribed effect in horizontal mergers, contd
1057-1089
- 26. Joint ventures and conglomerate mergers
1089-1131
- 27. A finale on mergers (and a final reconsideration of the purposes of antitrust)
through the lens of vertical mergers
1131-1170
- 28. TBA

Antitrust Law
Judge Gorsuch
Spring 2013
(Revised 1/11/13)

Course Description

As the course name suggests, our focus is on the role of antitrust law in regulating the nation's economy. We will focus particularly on federal antitrust law and, even more particularly, on the Sherman Act (Sections 1 & 2) and Clayton Act (particularly Section 7). But while the course is putatively centered on statutory edicts, because the relevant statutes are both old and short much of federal antitrust law today (and much of what we will study) is found in case law, case law that has been influenced by evolving and sometimes competing schools of economic learning over some now 120 years.

Course Materials

We will be using Robert Pitofsky et al., *TRADE REGULATION: CASES AND MATERIALS* (6th ed. 2010), as well as the 2011 Supplement. Additional assigned cases, briefs, and articles are noted below. Periodically, I may post additional materials on TWEN.

Class Times and Meetings

The class meets Tuesday and Thursday from 4:40 to 5:55 pm in Wolf 206, subject to the need to reschedule class sessions. I am very happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working collaboratively through problems of the sort you will encounter in antitrust practice, much as you might with law firm colleagues and clients. For this to work, it is essential that you complete the reading assignments before each session, attend class, and come prepared to participate actively. To facilitate discussion and again to mimic the sort of collaborative working environment you will often encounter in practice, laptops and other electronic devices are not permitted.

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Preliminary Schedule

This schedule is subject to revision depending on the speed with which our class discussions proceed.

Objectives and structure of antitrust law

1. Historical background
1-51
2. Institutional framework of antitrust policy
54-111

The law of monopolization: section 2 and single firm conduct

3. Monopoly and the problem of market definition
112-52
4. Monopoly and the problem of market definition, contd.
152-75
5. Attempts to monopolize
810-23, 681-88
6. Applying what we've learned so far
In-class exercise TBA
7. Monopoly conduct - the early view
721-39
8. Monopoly conduct - a contrary trend
739-67; Making a Market out of a Molehill: Geographic Market Definition in Aspen Skiing, Journal of Competition Law & Policy; *Christy Sports v. Deer Valley Resort Co.*, 555 F.3d 1188 (10th Cir. 2009)
9. Monopoly conduct - additional recent developments
767-810
10. Specific forms of monopoly conduct - predatory pricing
823-59
11. Specific forms of monopoly conduct - tying
859-919
12. A finale on section 2 and a consideration of the purposes and future of section 2 through the lens of competing reports by DOJ and FTC and a case

919-64; *Conwood v. UST*, 290 F.3d 768 (6th Cir. 2002); *DOJ report* (<http://www.justice.gov/atr/public/reports/236681.pdf>); *FTC reply* (<http://www.ftc.gov/os/2008/09/080908section2stmt.pdf>)

The law of coordinated conduct: section 1 and multiple firm conduct

13. Introduction
177-209
14. Characterization questions and joint ventures
210-274
15. Horizontal restraints and market allocation
275-305
16. Group refusals to deal
307-60
17. Joint ventures revisited
361-90
18. Government action
390-430
19. Government action, contd.
431-67
20. Today's debate
In-class exercise TBA based on Supreme Court merits briefs in *FTC v. Phoebe Putney Health Systems, Inc.*, docket 11-1160; *Kay v. City of Newkirk*, 647 F.3d 1039 (10th Cir. 2011)
21. Vertical restraints
606-653
22. Vertical restraints, contd.
653-81, 688-720
23. A finale on section 1 - pleading issues, trade associations, intercorporate conspiracy and a consideration of the purposes and future of the Sherman Act through the lens of Dodd-Frank
469-506; 572-84; 598-603; *The Antitrust/Consumer Protection Paradox: Two Policies at War with Each Other*, Yale Law Journal (forthcoming)

Mergers

- 24. Introduction
965-1010
- 25. Proscribed effect in horizontal mergers
1010-57 and see 2011 supplement materials
- 26. Proscribed effect in horizontal mergers, contd
1057-1089
- 27. Joint ventures and conglomerate mergers
1089-1131
- 28. A finale on mergers (and a final reconsideration of the purposes of antitrust)
through the lens of vertical mergers
1131-1170

Bioethics and the Law
Preliminary Syllabus - Spring 2010
Judge Neil Gorsuch

Required Texts

Beauchamp, Contemporary Issues in Bioethics (Seventh Edition)
Gorsuch, The Future of Assisted Suicide and Euthanasia
Course Supplement Materials ("CS")

The materials will be available on reserve in the Law School library.

Schedule and How to Reach Me

We will meet on Mondays from 4 to 6 p.m., subject to the need to reschedule class sessions. I am happy to meet with you before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Grades, Class Attendance, and Class Participation

For this class to work well, it is important that everyone completes the reading assignments prior to class, attends class (*see* Law School Rule 3-3-1), and participates consistently in discussions. Toward those ends, no laptops, please.

Each student is required to sign up to serve as a discussion leader for two classes. Each discussion leader will post a short paper (no more than 250 words) on TWEN by Sunday at noon, before our Monday class. All class members are expected to read those papers in addition to the assigned class readings detailed below. Discussion leaders are responsible for presenting their short papers during class, and helping to lead the discussion of that week's other assigned materials. Discussion papers should not repeat the readings, but seek to offer new insights or questions based on them. (Your short papers may also prove a useful starting point for thinking about your final paper.)

A final paper is required of each student related to an issue involving bioethics and the law. The paper should be approximately 5,000 words in length (no more than 5,250). It should present a thesis (argument), an outline of your argument, an organized exposition of that argument, and a conclusion (think of the organization of a law review article or essay). Your paper should be double-

spaced and include a bibliography and word count.

Two-thirds of your grade will be based on your final paper; one-third of your grade will be based on class participation, including your short discussion papers and oral presentations.

Preliminary Schedule (subject to revision during the course of the semester)

In the first week, we will examine various leading schools of thought in, or approaches to, bioethics. In the following five weeks, we will use one particular legal problem (the question whether to “legalize” assisted suicide and euthanasia) to examine these various schools of thought, and their applicability to legal analysis, in greater depth. Finally, we will spend the balance of the semester examining a number of other areas where bioethical theories and the law intersect.

January 11 - Introduction to Ethical Theory

Beauchamp ch. 1

CS - Beauchamp's Principles of Bioethics and the Law ch. 8

January 25 - The Law of Assisted Suicide and Euthanasia

Beauchamp pp. 397-424

Gorsuch pp. 1-33, 219-220

February 1 - Arguments from Consequentialism

CS - Posner and Old Age pp. 235-61

Beauchamp pp. 437-453

Gorsuch, chs. 7, 8, pp. 222-226

February 8 - Arguments from Autonomy

CS - Dworkin, Life's Dominion pp. 179-257

CS- Richards, Sex, Drugs, Death, and the Law pp. 247-254

Gorsuch ch. 6

February 15 - Arguments from Fairness

Beauchamp pp. 425-437, 457-465
Gorsuch ch. 4

February 22 - Arguments from Categorical Imperatives

Beauchamp pp. 428-429 (review), 466-472
Gorsuch pp. 53-62 (review), 155-172, 176-180

March 1 - How to Treat the Incompetent Patient?

Beauchamp pp. 205-20
Gorsuch pp. 33-43, 106-107, 172-176, 191-215, 224
CS - Tooley, In Defense of Infanticide
CS - Hentoff, A Newborn Is Not a Person

March 8 - Genetics

Beauchamp 199-204, 221-294
Gorsuch pp. 33-43 (review)

March 15 - Research on Humans and Animals

Beauchamp ch. 2
CS - Singer, Rethinking Life and Death pp. 172-183
CS - Hans Jonas, Experimenting with Human Subjects

March 29 - Organ Transplantation

Beauchamp ch. 7

April 5 - Biotechnology and Bioscience

Beauchamp ch. 10

April 12 - Justice and Health: Allocation of Resources

Beauchamp ch. 8
CS - Hentoff - Duty to Die?
CS- Singer, Why We Must Ration Health Care

April 19 - Challenges in Public Health

Beauchamp ch. 9

REVISED January 25, 2012

**Federal Courts
Spring 2012
Judge Gorsuch**

Course Description

This course focuses on the allocation of authority between the federal judiciary and its coordinate branches as well as the states. You might think of it as a cross between advanced civil procedure and those aspects of constitutional law related to the separation of powers and federalism. The course focuses primarily on process — when and under what circumstances may federal courts intervene and what deference the federal courts owe to other institutions in our constitutional order. The subject matter is demanding — both technically and intellectually. It takes us into sometimes very minute questions of procedure and yet it also forces us to confront fundamental and challenging questions about federalism and the separation of powers.

Required Reading

Hart & Wechsler, *The Federal Courts and the Federal System*, Sixth Edition together with the 2011 Supplement. You will also need regular access to Title 28 of the United States Code. Having your own copy will help.

Important: Be sure to consult corresponding sections of the 2011 Hart & Wechsler Supplement for each reading assignment listed below.

Schedule and How to Reach Me

We will meet on Mondays and Wednesdays at 4:40 p.m. in Wolf 301, subject to the need to reschedule class sessions. I am happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through problems you will encounter in federal courts practice. Toward this end, our class size is limited and I will follow a loose Socratic approach. It is essential that you complete the reading assignments before each session, attend class, and come prepared to be an active participant. To facilitate discussion laptops and other electronic devices are not permitted. You will be assigned to write periodic essays on our reading assignments, which I will describe at our first meeting. These essays will account for 25% of your grade. There will be a three hour final exam accounting for 75% of your grade. Attendance and participation can also affect your final grade by plus or minus three points.

Preliminary Schedule

This schedule is subject to revision, as we may proceed faster or slower, depending on class discussion.

Cases and Controversies

1. Nature of the Judicial Function
cviii-ix (Article III and Article VI, cl. 2 only); 1-80
2. Parties, Finality, Collusive Suits
80-100
3. Standing
100-153
4. Standing, Cont'd
153-83
5. Mootness
183-198
6. Ripeness
198-222
7. Political Question
222-248

Congressional Control of Judicial Power

- 8. Power to Restrict
275-324
- 9. Legislative Courts
324-383
- 10. Federal Authority and the State Courts
383-429

Federal Review of State Court Decisions

- 11. Historical and General
431-458
- 12. Independent and Adequate State Grounds
458-496
- 13. State Procedural Requirements
496-518

Federal Common Law

- 14. Introduction
607-633
- 15. Federally Created Interests
633-684
- 16. Enforcing Primary Obligations
685-742

Suits Challenging Official Action

- 17. Federal Officials
841-869
- 18. State Officials
947-986; 942-47

19. Immunities
869-941; 986-1011

Judicial Federalism

20. Statutory Limits
1012-1049
21. Exhaustion & Abstention
1049-1075
22. Abstention, Cont'd. & Equitable Restraints
1076-1128
23. Parallel Proceedings
1128-1151

Habeas

- 24-25. Executive Detention
1153-1213
- 26-27. Collateral Attack on State & Federal Convictions
1213-1311

Legal Ethics and Professionalism
Preliminary Syllabus
Fall 2016
Judge Gorsuch

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means more generally to be a “good” lawyer. We will spend most of our time in class discussing ethical and professional challenges that lawyers often confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical and professional quandaries that will – unavoidably – face you in your career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Fourth Edition 2016).

Gillers, Regulation of Lawyers: Statutes and Standards (most recent “concise” edition)

Additional materials noted below will be posted on TWEN.

Schedule and How to Reach Me

Class will generally meet on Tuesdays and Thursdays at 4:40 p.m., subject to the need to reschedule class sessions usually due to commitments associated with my day job. I am very happy to meet with you individually before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through the sort of ethical problems you are likely to confront in practice, mimicking the sort of reasoning and approach you are likely to follow in practice. Toward that end, I follow a loose Socratic approach and for this to work it’s essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. You will be “on call” at various

points during the semester but expected to participate regularly even when you're not "on call." To facilitate discussion, laptops and other electronic devices are not permitted. There will be a three hour exam on which your grade will be primarily based, but attendance and participation can affect your final grade by half a grade level, up or down (e.g., from B+ to A- or vice versa). During the examination, you may consult the Lerman and Schrag and Gillers textbooks, but no other materials (e.g., outlines).

Preliminary Schedule (subject to revision)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry

Reading: 1-35, 47-59; skim Model Rules of Professional Conduct and its table of contents

2. The law governing lawyers, admission to practice, continued

Reading: 35-47, 59-79

3. Professional discipline, reporting misconduct by others

Reading: 79-105; Model Rules 5.1-5.3, 8.3; *Qualcomm Lawyers Taken to the Woodshed*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 105-140; *The Fall of America's Meanest Law Firm*

Confidentiality, Privileges, and Exceptions

5. The duty to protect client confidences

Reading: 141-164; Model Rule 1.6, 3.3

6. The duty, continued; some exceptions too

Reading: 164-174; Model Rule 1.6

7. Exceptions, continued

Reading: 175-196; Model Rules 1.0(f), 1.2(d), 1.6(b),
1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Attorney-client and work product privileges

Reading: 197-238

Duties to the Client

9. When do they begin and what do they include?

Reading: 239-274; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4,
1.16(b), 2.1, 6.2, 8.4(c)

10. Diligence, candor, communication

Reading: 274-301

11. Who calls the shots? And when does the attorney-client relationship end?

Reading: 301-328; Model Rules 1.2, 1.4, 1.14, 1.16;
Bribery Case Brings Down Legal Legend; 60
Minutes Reports Legal Ethics Head-Scratcher

Conflicts

12. General principles in evaluating conflicts

Reading: 329-359; Model Rule 1.7, 1.10

13. Conflicts between current clients and positions

Reading: 359-375; Model Rule 1.7, 1.10

14. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 377-426; Model Rule 1.7. 1.10, 18(f)

15. Conflicts: duties to former clients

Reading: 427-453; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

16. Conflicts: wrap up

Reading: 454-475; Model Rules 1.7, 1.9, 1.10

A Changing Profession

17. Advertising, Solicitation, Globalization, Competition and Barriers to Entry

Reading: 822-833; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

18. Fees: conflicts between lawyers and their clients

Reading: 477-493; Model Rules 1.4, 1.5, 7.1, 8.4

19. Fees: forbidden and restricted arrangements

Reading: 493-527; Model Rules 1.4, 1.5, 1.8. 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*; *Boies Office Sent Clients to Third Firm with Family Ties* (Oct. 11, 2005 *Wall Street Journal*)

20. Fee Disputes

Reading: 527-554; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3; *Law Firm Sued Over Forgery by*

Attorney

Duties to Your Good Name, Your Adversary, and the Court

21. Disagreeing or disagreeable?

Reading: 597-631; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c)

22. Truth and falsity in litigation

Reading: 631-650; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

23. The duty to disclose in civil litigation

Reading: 650-697; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c)

24. Communications with lawyers and third parties

Reading: 697-743; Model Rules 3.8, 4.1-4.4, 8.4

25. What kind of lawyer do you want to be? A debate

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

26. Pressures of modern practice: how will you handle them?

Reading: 815-821, 834-900; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

27. The provision of legal services and its challenges

Reading: 745-813; Model Rules 5.3, 6.1, 6.2; *Access to Affordable Justice*

28. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus
Spring 2016
Judge Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means more generally to be a “good” lawyer. We will spend most of our time in class discussing ethical and professional challenges that lawyers have confronted and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the quandaries that will – unavoidably – face you in your own career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Third Edition 2012).

Gillers, Regulation of Lawyers: Statutes and Standards (most recent “concise” edition)

Additional materials noted below will be posted on TWEN.

Schedule and How to Reach Me

Class will generally meet on Tuesdays and Thursdays at 4:40 p.m., subject to the need to reschedule class sessions. I am very happy to meet with you individually before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through the sort of ethical problems you are likely to confront in practice, mimicking the sort of reasoning and approach you are likely to follow in practice. Toward that end, I follow a loose Socratic approach and it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. You will be “on call” at various points during the semester but expected to participate regularly even when you’re not “on call.”

To facilitate discussion laptops are not permitted. There will be a three hour exam on which your grade will be primarily based, but attendance and participation can affect your final grade by half a grade level, up or down (e.g., from B+ to A- or vice versa). During the examination, you may consult the Lerman and Schrag and Gillers textbooks, but no other materials (e.g., your outlines).

Preliminary Schedule (subject to revision)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-45, 56-68; skim Model Rules of Professional Conduct

2. The law governing lawyers, admission to practice, continued

Reading: 45-56, 68-78

3. Professional discipline, reporting misconduct by others

Reading: 78-118; Model Rules 5.1-5.3, 8.3; *Qualcomm Lawyers Taken to the Woodshed*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 118-155; *The Fall of America's Meanest Law Firm*

Confidentiality, Privileges, and Exceptions

5. The duty to protect client confidences

Reading: 159-179; Model Rule 1.6, 3.3

6. The duty, continued; some exceptions too

Reading: 179-200; Model Rule 1.6

7. Exceptions, continued

Reading: 201-228; Model Rules 1.0(f), 1.2(d), 1.6(b),
1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Attorney-client and work product privileges

Reading: 229-277

Duties to the Client

9 When do they begin and what do they include?

Reading: 279-334 Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4,
1.16(b), 2.1, 6.2, 8.4(c)

10. Who calls the shots? And when does the attorney-client relationship end?

Reading: 334-377; Model Rules 1.2, 1.4, 1.14, 1.16;
Bribery Case Brings Down Legal Legend; 60
Minutes Reports Legal Ethics Head-Scratcher

Conflicts Involving Current Clients

11. General principles in evaluating conflicts

Reading: 379-407; Model Rule 1.7, 1.10

12. Conflicts between clients and positions

Reading: 407-421; Model Rule 1.7, 1.10

13. Conflicts: representing organizations, co-defendants, family

members, insured and insurers, and other scenarios

Reading: 423-469; Model Rule 1.7. 1.10, 18(f)

Conflicts Involving Former Clients

14. Conflicts: duties to present and former clients

Reading: 471-496; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

15. Conflicts wrap up

Reading: 497-519; Model Rules 1.7, 1.9, 1.10

A Changing Profession

16. Advertising, Solicitation, Globalization, Competition and Barriers to Entry

Reading: 906-948; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 521-543; Model Rules 1.4, 1.5, 7.1, 8.4

18. Fees, continued

Reading: 543-578; Model Rules 1.4, 1.5, 1.8. 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased; A Disputed Fee; Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings; Boies Office Sent Clients to Third Firm with Family Ties* (Oct. 11, 2005 *Wall Street Journal*)

19. Fee Disputes

Reading: 578-605; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3; *Law Firm Sued Over Forgery by Attorney*

Duties to Your Good Name, Your Adversary, and the Court

20. Disagreeing or being disagreeable?

Reading: 643-675; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c)

21. Truth and falsity in litigation

Reading: 675-692; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

22. The duty to disclose

Reading: 692-741; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c)

23. Communications with lawyers and third parties

Reading: 741-787; Model Rules 3.8, 4.1-4.4, 8.4

24. What kind of lawyer do you want to be? A debate

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

25. Pressures of modern practice: how will you handle them?

Reading: 851-905; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mytbusters*

26. The provision of legal services and its challenges

Reading: 789-848; Model Rules 5.3, 6.1, 6.2

27. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus
Spring 2015
Judge Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means more generally to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the concepts embodied in the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing actual problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will – unavoidably – face you in your own career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Third Edition 2012).

Gillers, Regulation of Lawyers: Statutes and Standards (most recent “concise” edition)

Additional materials noted below will be posted on TWEN.

Schedule and How to Reach Me

Class will generally meet on Mondays and Wednesdays at 4:40 p.m., subject to the need to reschedule class sessions. I am very happy to meet with you individually before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through the sort of ethical problems you are likely to confront in practice, mimicking the sort of reasoning and approach you are likely to follow in practice. Toward that end, I follow a loose Socratic approach and it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the

readings as an active participant. You will be “on call” at various points during the semester but expected to participate regularly even when you’re not “on call.” To facilitate discussion laptops are not permitted. There will be a three hour exam on which your grade will be primarily based, but attendance and participation can affect your final grade by half a grade level, up or down (e.g., from B+ to A- or vice versa). During the examination, you may consult the Lerman and Schrag and Gillers textbooks, but no other materials (e.g., your outlines).

Preliminary Schedule (subject to revision)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-45, 56-68; skim Model Rules of Professional Conduct

2. The law governing lawyers, admission to practice, continued

Reading: 45-56, 68-78

3. Professional discipline, reporting misconduct by others

Reading: 78-118; Model Rules 5.1-5.3, 8.3; *Qualcomm Lawyers Taken to the Woodshed*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 118-155; *The Fall of America’s Meanest Law Firm*

Confidentiality, Privileges, and Exceptions

5. The duty to protect client confidences

Reading: 159-179; Model Rule 1.6, 3.3

6. The duty, continued; some exceptions too

Reading: 179-200; Model Rule 1.6

7. Exceptions, continued

Reading: 201-228; Model Rules 1.0(f), 1.2(d), 1.6(b),
1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Attorney-client and work product privileges

Reading: 229-277

Duties to the Client

- 9 When do they begin and what do they include? The duties of honesty, communication, and diligence

Reading: 279-334 Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4,
1.16(b), 2.1, 6.2, 8.4(c)

10. Who calls the shots? And when does the attorney-client relationship end?

Reading: 334-377; Model Rules 1.2, 1.4, 1.14, 1.16;
Bribery Case Brings Down Legal Legend; 60
Minutes Reports Legal Ethics Head-Scratcher

Conflicts Involving Current Clients

11. General principles in evaluating conflicts

Reading: 379-407; Model Rule 1.7, 1.10

12. Conflicts between clients and positions

Reading: 407-421; Model Rule 1.7, 1.10

13. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 423-469; Model Rule 1.7. 1.10, 18(f)

Conflicts Involving Former Clients

14. Conflicts: duties to present and former clients

Reading: 471-496; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

15. Conflicts wrap up

Reading: 497-519; Model Rules 1.7, 1.9, 1.10

A Changing Profession

16. Advertising, Solicitation, Globalization, Competition and Barriers to Entry

Reading: 906-948; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 521-543; Model Rules 1.4, 1.5, 7.1, 8.4

18. Fees, continued

Reading: 543-578; Model Rules 1.4, 1.5, 1.8. 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

19. Fee Disputes

Reading: 578-605; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

Duties to Your Good Name, Your Adversary, and the Court

20. Disagreements v. being disagreeable

Reading: 643-675; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

21. Truth and falsity in litigation

Reading: 675-692; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

22. The duty to disclose

Reading: 692-741; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c)

23. Communications with lawyers and third parties

Reading: 741-787; Model Rules 3.8, 4.1-4.4, 8.4

24. What kind of lawyer do you want to be? A debate

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

25. Pressures of modern practice: how will you handle them?

Reading: 851-905; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

26. The provision of legal services and its challenges

Reading: 789-848; Model Rules 5.3, 6.1, 6.2

27. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus - Autumn 2013
Judge Neil Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means more generally to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the concepts embodied in the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing actual problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will – unavoidably – face you in your own career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Third Edition 2012).

Gillers, Regulation of Lawyers: Statutes and Standards (Concise Edition 2013)

Additional materials will be handed out in class or posted on TWEN.

Schedule and How to Reach Me

Class meets on Tuesdays and Thursdays at 4:40 p.m. in Wolf 205, subject to the need to reschedule class sessions. I am very happy to meet with you individually before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through the sort of ethical problems you are likely to confront in practice, mimicking the sort of reasoning and approach you are likely to follow in practice. Toward this end, I follow a loose Socratic approach and it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. You will be “on call” at various points during

the semester but expected to participate regularly even when you're not "on call." To facilitate discussion laptops are not permitted. There will be a three hour final exam on which your grade will be primarily based, but attendance and participation can affect your final grade by half a grade level, up or down (e.g., from B+ to A- or vice versa). During the examination, you may consult the Lerman and Schrag and Gillers textbooks, but no other materials (e.g., class outlines).

Preliminary Schedule (subject to revision during the course of the semester)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-45, 56-68; skim Model Rules of Professional Conduct

2. The law governing lawyers, admission to practice, continued

Reading: 45-56, 68-78

Lawyer Liability

3. Professional discipline, reporting misconduct by others

Reading: 78-118; Model Rules 5.1-5.3, 8.3; *The Fall of America's Meanest Law Firm*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 118-155

The Rule of Confidentiality

5. The duty to protect client confidences

Reading: 159-179; Model Rule 1.6, 3.3

6. Exceptions to the rule

Reading: 179-200; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

From Confidentiality to Privilege

7. Confidentiality and its exceptions, continued

Reading: 201-228; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 229-277

Duties to the Client

9. When does the attorney-client relationship start? And the duty of competence

Reading: 279-312 Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

10. The duties of honesty, communication, and diligence

Reading: 312-334; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

11. Who calls the shots? And when does the attorney-client relationship end?

Reading: 334-377; Model Rules 1.2, 1.4, 1.14, 1.16; *Bribery Case Brings Down Legal Legend*; 60 *Minutes Reports Legal Ethics Head-Scratcher*

Conflicts Involving Current Clients

12. General principles in evaluating conflicts

Reading: 379-407; Model Rule 1.7, 1.10

13. Conflicts between clients and positions

Reading: 407-421; Model Rule 1.7, 1.10

14. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 423-469; Model Rule 1.7, 1.10, 18(f)

Conflicts Involving Former Clients

15. Conflicts: duties to present and former clients

Reading: 471-496; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

16. Conflicts wrap up

Reading: 497-519; Model Rules 1.7, 1.9, 1.10

A Changing Profession

17. Advertising, Solicitation, Globalization, Competition and Barriers to Entry

Reading: 906-948; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

18. Fees: conflicts between lawyers and their clients

Reading: 521-543; Model Rules 1.4, 1.5, 7.1, 8.4

19. Fees, continued

Reading: 543-578; Model Rules 1.4, 1.5, 1.8, 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased; A Disputed Fee; Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

20. Fee Disputes

Reading: 578-605; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

Duties to Your Good Name, Your Adversary, and the Court

21. Being an adversary without being adversarial

Reading: 643-675; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

22. Truth and Falsity in Litigation

Reading: 675-692; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

23. The duty to disclose

Reading: 692-741; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Lawyers Taken to the Woodshed Over Discovery Conduct; Bogus Claim of Privilege in Qualcomm Case*

24. Communications with lawyers and third parties

Reading: 741-787; Model Rules 3.8, 4.1-4.4, 8.4

25. What kind of lawyer do you want to be? A debate

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

26. Pressures of modern practice: how will you handle them?

Reading: 851-905; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

27. The provision of legal services and its challenges

Reading: 789-848; Model Rules 5.3, 6.1, 6.2

28. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus - Autumn 2012
Judge Neil Gorsuch**

Course Description

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the semester but expected to participate regularly even when you're not "on call." To facilitate discussion laptops are not permitted. There will be a three hour final exam on which your grade will be primarily based, but attendance and participation can affect your final grade by plus or minus three points.

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Reading: 118-155

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5. The duty to protect client confidences

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Reading: 179-200; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

From Confidentiality to Privilege

7. Confidentiality and its exceptions, continued

Reading: 201-228; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 229-277

Duties to the Client

9. Duties of competency, honesty, communication, and diligence

Reading: 279-346; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

10. Who Calls the Shots?

Reading: 346-377; Model Rules 1.2, 1.4, 1.14, 1.16;
Bribery Case Brings Down Legal Legend; 60
Minutes Reports Legal Ethics Head-Scratcher

Conflicts Involving Current Clients

11. General principles in evaluating conflicts

Reading: 379-407; Model Rule 1.7, 1.10

12. Conflicts between clients and positions

Reading: 407-421; Model Rule 1.7, 1.10

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Conflicts Involving Former Clients

14. Conflicts: duties to present and former clients

Reading: 471-496; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

15. Conflicts wrap up

Reading: 497-519; Model Rules 1.7, 1.9, 1.10

A Changing Profession

16. Advertising, Solicitation, Globalization

Reading: 906-948; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 521-543; Model Rules 1.4, 1.5, 7.1, 8.4

18. Fees, continued

Reading: 543-578; Model Rules 1.4, 1.5, 1.8, 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

19. Fee Disputes

Reading: 578-605; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

Duties to Your Good Name, Your Adversary, and the Court

20. Being an adversary without being adversarial

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21. Truth and Falsity in Litigation

Reading: 675-692; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

22. The duty to disclose

Reading: 692-741; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Lawyers Taken to the Woodshed Over Discovery Conduct*; *Bogus Claim of Privilege in Qualcomm Case*

23. Communications with lawyers and third parties

Reading: 741-787; Model Rules 3.8, 4.1-4.4, 8.4

24. What kind of lawyer do you want to be? A debate

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

25. Pressures of modern practice

Reading: 851-905; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

26. Provision of legal services

Reading: 789-848; Model Rules 5.3, 6.1, 6.2

27. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus - Autumn 2011
Judge Neil Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means, more generally, to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the concepts embodied in the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing actual problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will – unavoidably – face you in your own career.

Required Reading

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Gillers, Regulation of Lawyers: Statutes and Standards 2009

Additional materials will be handed out in class or posted on TWEN.

Schedule and How to Reach Me

Class will meet on Mondays and Wednesdays at 4:40 p.m. in Wolf 305, subject to the need to reschedule class sessions. I am happy to meet with you individually either before class, after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Class Attendance, Participation, Laptops, Grades

Most of our class time will be spent working through ethical quandaries in a way that seeks to mimic how you might work through with colleagues the ethical questions you will inevitably face in practice. Toward this end, I follow a loose Socratic approach and it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. You will be “on call” at various points during the semester but expected to participate regularly even when you’re not on call.

To facilitate discussion laptops are not permitted. There will be a three hour final exam on which your grade will be primarily based, but attendance and participation can affect your final grade by plus or minus three points.

Preliminary Schedule (subject to revision during the course of the semester)

The Regulation of Lawyers: An Overview

1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-38, 45-59; skim Model Rules of Professional Conduct

2. The law governing lawyers, admission to practice, continued

Reading: 38-45, 59-71

Lawyer Liability

3. Professional discipline, reporting misconduct by others

Reading: 73-110; Model Rules 5.1-5.3, 8.3; *The Fall of America's Meanest Law Firm*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 110-149

The Rule of Confidentiality

5. The duty to protect client confidences

Reading: 151-169; Model Rule 1.6, 3.3

6. Exceptions to the rule

Reading: 169-187; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

From Confidentiality to Privilege

7. Confidentiality and its exceptions, continued

Reading: 187-213; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 215-261

Duties to the Client

9. Duties of competency, honesty, communication, and diligence

Reading: 265-320; Model Rules 1.0(d) 1.1., 1.2, 1.3, 1.4, 1.16(b), 2.1, 6.2, 8.4(c)

10. Who Calls the Shots?

Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16;
Bribery Case Brings Down Legal Legend; 60
Minutes Reports Legal Ethics Head-Scratcher

Conflicts Involving Current Clients

11. General principles in evaluating conflicts

Reading: 351-377; Model Rule 1.7, 1.10

12. Conflicts between clients and positions

Reading: 378-389; Model Rule 1.7, 1.10

13. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 391-433; Model Rule 1.7, 1.10, 1.8(f)

Conflicts Involving Former Clients

14. Conflicts: duties to present and former clients

Reading: 435-459; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

15. Conflicts wrap up

Reading: 459-481; Model Rules 1.7, 1.9, 1.10

Lawyer Advertising

16. Advertising

Reading: 791-818; Model Rules 5.4, 5.5, 7.1-7.5

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 483-506; Model Rules 1.4, 1.5, 7.1, 8.4

18. Fees, continued

Reading: 506-536; Model Rules 1.4, 1.5, 1.8, 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

19. Fee Disputes

Reading: 537-561; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

Duties to Your Good Name, Your Adversary, and the Court

20. Being an adversary without being adversarial

Reading: 593-624; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

21. Truth and Falsity in Litigation

Reading: 624-643; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

22. The duty to disclose

Reading: 643-689; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Lawyers Taken to the Woodshed Over Discovery Conduct*; *Bogus Claim of Privilege in Qualcomm Case*

23. Communications with lawyers and third parties

Reading: 689-730; Model Rules 3.8, 4.1-4.4, 8.4

24. What kind of lawyer do you want to be?

Reading: *The Lawyer As Hired Gun* and *The Lawyer as Friend*

The Practice of Law Today

25. Pressures of modern practice

Reading: 731-790; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

26. Provision of legal services

Reading: 819-872; Model Rules 5.3, 6.1, 6.2

27. TBD

**Legal Ethics and Professionalism
Preliminary Syllabus - Spring 2011
Judge Neil Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means, more generally, to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the concepts embodied in the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing actual problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will – unavoidably – face you in your own career.

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Grades, Class Attendance, and Class Participation

Your grade will be calculated as follows: final exam 80% (approximately); class participation and attendance 20% (approximately). Most of our class time will be spent discussing problems, cases, and hypotheticals. For this class to work well, it is essential that you complete the reading assignments before each session, attend class, and come prepared to discuss the readings as an active participant. Participation is obviously a significant grading factor and welcome at any time. In addition, you will be “on call” at various points during the semester.

Preliminary Schedule (subject to revision during the course of the semester)

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1. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

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Reading: 38-45, 59-71

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3. Professional discipline, reporting misconduct by others

Reading: 73-110; Model Rules 5.1-5.3, 8.3; *The Fall of America's Meanest Law Firm*

4. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 110-149

The Rule of Confidentiality

5. The duty to protect client confidences

Reading: 151-169; Model Rule 1.6

6. Exceptions to the rule

Reading: 169-187; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

From Confidentiality to Privilege

7. Confidentiality and its exceptions, continued

Reading: 187-213; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 215-261

Duties to the Client

9. Formation of the attorney-client relationship

Reading: 265-284; *60 Minutes Reports Legal Ethics Head-Scratcher*; Model Rules 1.1., 1.3, 1.4, 6.2

10. Duties of competency, honesty, communication, and diligence

Reading: 284-320; Model Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c); *Bribery Case Brings Down Legal Legend*

From Duties to the Client to Conflicts with the Client

11. Who Calls the Shots?

Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16

12. General principles in evaluating conflicts

Reading: 351-377; Model Rule 1.7, 1.10

Conflicts: Specific Applications

13. Conflicts between clients and positions

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Conflicts Involving Former Clients

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**Legal Ethics and Professionalism
Preliminary Syllabus - Fall 2009
Judge Neil Gorsuch**

Course Description

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3. Professional discipline, reporting misconduct by others

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8. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 215-263; *60 Minutes Reports Legal Ethics Head-Scratcher*

Duties to the Client

9. Formation of the attorney-client relationship

Reading: 265-284; Model Rules 1.1., 1.3, 1.4, 6.2

10. Duties of competency, honesty, communication, and diligence

Reading: 284-320; Model Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c); *Bribery Case Brings Down Legal Legend*

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Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16

12. General principles in evaluating conflicts

Reading: 351-377; Model Rule 1.7, 1.10

Conflicts: Specific Applications

13. Conflicts between clients and positions

Reading: 378-389; Model Rule 1.7, 1.10

14. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 391-433; Model Rule 1.7. 1.10, 18(f)

Conflicts Involving Former Clients

15. Conflicts: duties to present and former clients

Reading: 435-459; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

16. Conflicts wrap up

Reading: 459-481; Model Rules 1.7, 1.9, 1.10

Legal Fees: Conflict in Another Sphere?

17. Fees: conflicts between lawyers and their clients

Reading: 483-506; Model Rules 1.4, 1.5, 7.1, 8.4; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

18. Legal Fees, continued

Reading: 506-536; Model Rules 1.4, 1.5, 1.8. 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*

Fee Disputes and Advertising

19. Fee Disputes

Reading: 537-561; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

20. Advertising

Reading: 791-836; Model Rules 5.4, 5.5, 7.1-7.5

Duties to Your Good Name, Your Adversary, and the Court

21. Being an adversary without being adversarial

Reading: 593-624; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

22. Truth and Falsity in Litigation

Reading: 624-643; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

Duties to Your Good Name, Your Adversary, and the Court, continued

23. The duty to disclose

Reading: 643-689; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Lawyers Taken to the Woodshed Over Discovery Conduct*; *Bogus Claim of Privilege in Qualcomm Case*

24. Communications with lawyers and third parties

Reading: 689-730; Model Rules 3.8, 4.1-4.4, 8.4

The Practice of Law Today

25. Pressures of modern practice

Reading: 731-790; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

26. Provision of Legal Services

Reading: 819-872; Model Rules 5.3, 6.1, 6.2

Our Profession Revisited

27. TBA

28. Wrap-up/review

**Legal Ethics and Professionalism
Preliminary Syllabus - Spring 2009
Judge Neil Gorsuch**

Course Description

As the course name suggests, we will discuss both legal ethics – in particular, the rules that govern lawyers’ conduct – and professionalism – what it means, more generally, to be a “good” lawyer. This is not an MPRE preparation course, but we will focus on the Model Rules of Professional Conduct, on what they require, permit, and exclude. We will spend most of our time in class discussing real problems that lawyers have and will continue to confront in the practice of law. The hope is to give you the chance to think through and prepare for how you will approach the ethical quandaries that will unavoidably face you in your own career.

Required Reading

Lerman and Schrag, Ethical Problems in the Practice of Law (Second Edition 2008).

ABA, Model Rules of Professional Conduct. Where Rules are assigned reading, you should read both the black letter rules and the accompanying comments. If the comments are voluminous, focus on those that are relevant to the topic under discussion. Often there are references in the text to the relevant material or headings within the comments.

Additional materials will be handed out in class or posted on TWEN.

Schedule and How to Reach Me

We will generally meet on Tuesdays and Thursdays from 4:30 to 5:45 in Wolf 306, subject to the need to reschedule class sessions. I am happy to meet with you after class, or by appointment. To schedule an appointment, please call my assistant, Holly Cody, at (303) 335-2800.

Grades, Class Attendance, and Class Participation

Your grade will be calculated as follows: final exam 80% (approximately); class participation and attendance 20% (approximately). Most of our class time will be spent discussing problems, cases, and hypotheticals. For this to work, it is essential that you complete the reading assignments before each class and attend prepared to discuss them. This class will work best if everyone is an active participant. In addition, you will be “on call” at various points during the semester. On the days you are on call, you will be expected to answer questions and participate actively in class discussions.

Preliminary Schedule (subject to revision during the course of the semester)

I. The Regulation of Lawyers: An Overview

- A. Introduction, institutions that regulate lawyers, admission to practice, the character and fitness inquiry; on-call assignments determined

Reading: 1-38, 45-59; skim Model Rules of Professional Conduct

- B. The law governing lawyers, admission to practice, continued

Reading: 34-44, 59-71

II. Lawyer Liability

- A. Professional discipline, reporting misconduct by others

Reading: 73-110; Model Rules 5.1-5.3, 8.3; *The Fall of America's Meanest Law Firm*

- B. Professional discipline, protection for subordinate lawyers, civil and criminal liability, client funds

Reading: 110-149

III. The Rule of Confidentiality

A. The duty to protect client confidences

Reading: 151-169; Model Rule 1.6

B. Exceptions to the rule

Reading: 169-187; Model Rule 1.6; *Rhode Island S.Ct. Ethics Advisory Panel Op. No. 2007-06*, Request No. 934

IV. From Confidentiality to Privilege

A. Confidentiality and its exceptions, continued

Reading: 187-213; Model Rules 1.0(f), 1.2(d), 1.6(b), 1.16(a) & (b), 3.3, 4.1, 8.4(c)

B. Confidentiality and privilege compared; the elements of the attorney-client and work product privileges

Reading: 215-263; *60 Minutes Reports Legal Ethics Head-Scratcher*

V. Duties to the Client

A. Formation of the attorney-client relationship

Reading: 265-284; Model Rules 1.1., 1.3, 1.4, 6.2

B. Duties of competency, honesty, communication, and diligence

Reading: 284-320; Model Rules 1.0(d), 1.2, 1.4, 1.16(b), 2.1, 8.4(c); *Bribery Case Brings Down Legal Legend*

VI. From Duties to the Client to Conflicts with the Client

A. Who Calls the Shots?

Reading: 321-350; Model Rules 1.2, 1.4, 1.14, 1.16

B. General principles in evaluating conflicts

Reading: 351-377; Model Rule 1.7, 1.10

VII. Conflicts: Specific Applications

A. Conflicts between clients and positions

Reading: 378-389; Model Rule 1.7, 1.10

B. Conflicts: representing organizations, co-defendants, family members, insured and insurers, and other scenarios

Reading: 391-433; Model Rule 1.7, 1.10, 18(f)

VIII. Conflicts Involving Former Clients

A. Conflicts: duties to present and former clients

Reading: 435-459; Model Rules 1.7, 1.9, 1.10; *Analytica v. NPD Research*; *Chong v Kallins*

B. Conflicts wrap up

Reading: 459-481; Model Rules 1.7, 1.9, 1.10

IX. Legal Fees: Conflict in Another Sphere?

A. Fees: conflicts between lawyers and their clients

Reading: 483-506; Model Rules 1.4, 1.5, 7.1, 8.4; *A Disputed Fee*; *Free: Ex-Sullivan Partner Resigns Over \$500,000 in False Billings*

B. Legal Fees, continued

Reading: 506-536; Model Rules 1.4, 1.5, 1.8, 1.16(d), 5.2, 7.1, 8.3, 8.4; *Beat the Clock: A Boston Firm Says No to Billing by the Hour, and its Clients Say They Are Pleased*

X. Fee Disputes and Advertising

A. Fee Disputes

Reading: 537-561; Model Rules 1.5, 1.7, 1.8, 1.10, 1.15, 5.2, 5.4, 8.3

B. Advertising

Reading: 791-836; Model Rules 5.4, 5.5, 7.1-7.5

XI. Duties to Your Good Name, Your Adversary, and the Court

A. Being an adversary without being adversarial

Reading: 593-624; Model Rules 1.2, 1.16, 3.1, 3.3, 3.8, 4.4, 8.4(c); *Law Firm Sued Over Forgery by Attorney*

B. Truth and Falsity in Litigation

Reading: 624-643; Model Rules 3.3, 3.4, 4.1, 7.1, 8.4

XII. Duties to Your Good Name, Your Adversary, and the Court, continued

A. The duty to disclose

Reading: 643-689; Model Rules 3.3-3.9, 4.1, 4.4, 8.4(c); *Qualcomm Layers Taken to the Woodshed Over Discovery Conduct; Bogus Claim of Privilege in Qualcomm Case*

B. Communications with lawyers and third parties

Reading: 689-730; Model Rules 3.8, 4.1-4.4, 8.4

XIII. The Practice of Law Today

A. Pressures of modern practice

Reading: 731-790; *The Clifford Chance Memorandum from its Associates to its Partners*; *Par's Mythbusters*

B. Provision of Legal Services

Reading: 836-872; Model Rules 5.3, 6.1, 6.2

XIV. Our Profession Revisited

A. TBA

B. Wrap-up/review