

LAWYERS AND THE LEGAL
PROFESSION: CASES AND
MATERIALS

Fourth Edition

LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS

Fourth Edition

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DEDICATION

This book is dedicated to the memory of my father:

Roy D. Simon

1910-1984

He taught ethics by example throughout his life, —R.D.S.

This book is dedicated to my husband Tom Timmermann
and our daughter Genevieve Emily Needham Timmermann, —C.A.N.

This book is dedicated to Professor James E. Jones, Jr., Professor of Law Emeritus
and Professor of Industrial Relations Emeritus at the University of Wisconsin,
whose ethic of candor has made honesty a necessity and rationality an obligation
for all around him, —B.V.P.

PREFACE TO THE FOURTH EDITION

Woody Allen once said that he had very bad interpersonal relationships with machines. Many law students seem to have bad interpersonal relationships with textbooks. We want to change that. We want this book to be easy to get along with, so we have employed several features to make this book user friendly. For example:

We give you the black letter law. Learning the law ought to be the easiest part of law school, so we start many chapters by telling you the law in plain English. For key topics like confidentiality, conflicts of interest, and communicating with adverse parties, we have created outlines that summarize the law as clearly and concisely as possible. For other topics, we have written short introductory essays about the law. This way, you can quickly grasp the basic concepts and be ready to spend class time discussing more sophisticated and more interesting issues. After all, you ought to spend most of your class time debating what the law *ought* to be, not what the law is.

We put you on the cutting edge. This book thrusts you into the middle of the debate over issues that have not been uniformly decided — the ones that lawyers and the legal profession are struggling with right now. Some of the chapters in this fourth edition are entirely new, including those on the unauthorized practice of law and multijurisdictional practice; every chapter has been revised and updated. We include some classic cases to provide historical perspective or to illustrate timeless concepts, but our main effort is to involve you in the debate over the issues that trouble lawyers today, and that will still be engaging lawyers when you begin practicing law in the next year or two.

We read the book with you. We wish we could sit next to you when you read this book so that we could tap you on the shoulder every so often and say, “Wait a second — try to form your own opinion of the issue before you read what the court says,” or “Can what the court just said be right?” or “Stay awake — here comes the important part of the case.” We can’t do that in person, but we do the next best thing — we interrupt cases and articles with “Authors’ Comments” that prod you to think out issues for yourself before you read on, or that highlight important parts of a case, or that summarize the relevant law before the court applies it. The key to being a good lawyer isn’t just understanding what you read — most lawyers can do that pretty well. Rather, the key is being able to think out issues independently and creatively on your own. Our Authors’ Comments will help you do that. Please read them carefully and give them some real thought.

We involve you as a participant, not just an observer. If this book were a video game, you could participate in the reading by clicking a mouse or using the game controller. For this book, your controller is your pen. We often ask you to pause and write down your thoughts about an issue before you read the rest of an opinion, or to circle “yes” or “no” in response to our questions, or to list a few arguments of your own. We give you space to do that right in the book so you can have your answers in front of you during class discussion. You also have a chance to choose options for subjects such as mandatory pro bono. Use your pen as often as you can in this book — we want you to be an active creator, not just a passive sponge.

We put you in a lawyer’s role. Thinking about lawyers when you’re at home with your feet up on the desk is pretty easy, but acting like a lawyer in the face of a challenging opponent, judge, client, or bar committee is hard. In other words, practicing law is a lot harder than talking about law. There are times in a career in the law in which *The Emperor’s New Clothes* may come to mind as you courageously stand your ground, even though others are pushing

PREFACE TO THE FOURTH EDITION

hard to get you to bend your professional judgment. With this book you have a chance to get into a lawyer's role now, particularly in deciding what you'd do as a member of a law firm's conflicts committee or when you encounter a situation like one of the secrecy scenarios. So far in law school, you've been learning to "think like a lawyer" about cases, statutes, and legal problems. In this course, we want you to learn to think like a lawyer about your law practice, your clients, and your profession.

We make cases easy to read. We edit cases tightly so that they focus on the precise issues we are discussing. We often summarize the facts, and we typically edit out discussions about procedure and peripheral issues. We eliminate most citations so that opinions flow more smoothly. We include citations only if a case is integral to the court's opinion, or if the court includes an explanatory parenthetical, or if a cited case is reprinted elsewhere in this book. We delete footnotes unless they say something important or amusing. Finally, we've tried to choose cases that tell interesting stories.

We don't overload you with note cases. Our notes and questions are designed to get you to think about what you've read and to stimulate interesting class discussions, not to give you new information, so we seldom brief cases in the notes. This book is designed to provoke debate, not to serve as a treatise or research source.

We don't take ourselves too seriously. Law school (and law school textbooks) ought to be fun. You're spending three years in law school, so you may as well enjoy it as much as you can. To help you enjoy this book we use a conversational style and we use some humor here and there. Our observations might not make you roll on the floor in hysterics — I mean, we're not exactly Letterman, Stewart, and O'Brien — but you might find yourself smiling once in a while, even when you are studying serious topics.

We've spent a lot of time working on this book so that it is as clear, provocative, and fun as we could make it. We hope you enjoy reading it, and we'd love to hear your reactions. If you want to comment on the book, please e-mail us at Roy.Simon@Hofstra.edu, Needhamc@slu.edu, powellbv@law.sc.edu, or call Carol at (314) 977-7104 or drop Roy a line at Hofstra Law School, California Avenue, Hempstead, NY 11550. We look forward to hearing from you. Thanks!

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November 2008

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Professor Murray L. Schwartz of UCLA School of Law was a pioneer in the field of modern legal ethics. He wrote the First and Second Editions of this book. His excellent materials provided a solid base for this new edition. We are grateful that we have the opportunity to carry on his work for another generation of law students.

Literally hundreds of law students at Hofstra University, Saint Louis University, and the University of South Carolina tested drafts of this textbook in our classes on legal ethics. Our students showed us what worked in the classroom and what did not. We appreciate their patience and their thoughtful comments as this book evolved. In addition, Nancy Rapoport of the University of Nevada, Las Vegas, Lisa Lerman of Catholic University in Washington, D.C. and Lance Tibbles of Capital University in Columbus, Ohio tested earlier drafts of these materials in their professional responsibility courses and gave us useful feedback. Their insights and suggestions have been most helpful.

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Our families have our appreciation for their magnificent support and encouragement without which no book is possible. We are delighted to salute them here: Carol's husband Tom Timmermann and daughter Genevieve Emily Needham Timmermann; Roy's wife Karen and children Joshua, Nicole, Daniel, and Rebecca and Rebecca's husband Sam; Burnele's wife and daughter, Brenda and Berkeley, all are owed a great debt for their patience. We thank them from the bottom of our hearts for giving us the time to write this book.

The many copyright holders who gave permission to use their work in this book are generally acknowledged where their work appears. We are delighted to have the opportunity to include their work in this book. We particularly appreciate permission from Lawrence J. Fox, partner at Drinker Biddle & Reath LLP and one of the most creative minds in professional responsibility, to use his stories in this edition of the book. Finally, we thank in advance all of you who will be kind enough to call, write, or e-mail us to comment on this book.

TABLE OF CONTENTS

Chapter 1	CREATING AND MAINTAINING A PROFESSION	1
	Notes and Questions	3
	Notes and Questions	4
Chapter 2	THE GATES TO THE PROFESSION — THE KEYS TO THE OFFICE	9
A.	BECOMING AND BEING A LAWYER	9
1.	The Gates: Bar Examinations, The Multistate, and The MPRE	9
	Notes and Questions	12
2.	Practicing Law Professionally	14
B.	THE RULES GOVERNING COMPETENCE	14
Chapter 3	ADMISSION TO THE BAR	19
A.	LAW SCHOOL GRADUATION AND SPECIFIC CURRICULUM REQUIREMENTS	19
B.	THE BAR EXAMINATION AND THE MPRE	20
C.	CHARACTER AND FITNESS: MISCONDUCT BEFORE LAW SCHOOL	21
D.	CHARACTER AND FITNESS: MISCONDUCT DURING LAW SCHOOL	22
	<i>In Re Mustafa</i>	22
	Notes and Questions	24
E.	CHARACTER AND FITNESS: LYING ON THE BAR APPLICATION	24
	<i>Florida Board of Bar Examiners v. M.B.S.</i>	25
	Notes and Questions	32
	<i>Julia E. Vaughan, Addressing Law Student Dishonesty: The View of One Bar Admissions Official</i>	33
F.	SHOULD LAWYERS EDUCATED OUTSIDE THE U.S. BE ADMITTED IN THE UNITED STATES?	34
	<i>Osakwe v. Board of Bar Examiners</i>	34
	Notes and Questions	36
Chapter 4	THE UNAUTHORIZED PRACTICE OF LAW BY NON-LAWYERS	39
A.	THE DEBATE OVER RESTRICTIONS ON THE PRACTICE OF LAW	39
B.	DEFINING “THE PRACTICE OF LAW”	41
1.	Judicially Recognized Tests	41
	Notes and Questions	42
2.	Tests in Statutes and Rules	43
	Notes and Questions	44
C.	JUDICIAL APPLICATION OF UPL STANDARDS	44

TABLE OF CONTENTS

	<i>The Florida Bar v. Miravalle</i>	44
	Notes and Questions	47
	<i>Marks v. Estate of Marks</i>	49
	Notes and Questions	52
Chapter 5	THE UNAUTHORIZED PRACTICE OF LAW BY LAWYERS	53
A.	THE TRADITIONAL APPROACH TO OUT-OF-STATE LAWYERS	53
	Notes and Questions	54
B.	THE TRADITIONAL APPROACH IS ENFORCED AND EXPANDED	55
	<i>Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court</i>	56
	Notes and Questions	64
C.	BROADER PERMISSION TO ENGAGE IN MULTIJURISDICTIONAL PRACTICE	65
	Notes and Questions	67
D.	THE BIG PICTURE REGARDING MULTIJURISDICTIONAL PRACTICE .	68
Chapter 6	INTRODUCTION TO SECRECY	71
A.	AN OUTLINE ON SECRECY	71
1.	The Duty of Confidentiality	72
2.	The Attorney-Client Privilege	72
3.	Work-Product Protection	72
4.	Quick Summary	73
5.	Who is a “Client”?	73
B.	THE DUTY OF CONFIDENTIALITY	74
1.	ABA Model Rule 1.6	75
2.	State Variations	75
C.	THE RULES OF EVIDENCE: THE ATTORNEY-CLIENT PRIVILEGE	75
D.	THE RULES OF PROCEDURE: THE WORK-PRODUCT DOCTRINE	77
E.	PHYSICAL EVIDENCE: DOCUMENTS AND THINGS	79
F.	A SECRECY SCENARIO	81
Chapter 7	THE ATTORNEY-CLIENT PRIVILEGE	87
A.	A QUICK LOOK AT THE FUNDAMENTALS	87
B.	A TEST ON THE ATTORNEY-CLIENT PRIVILEGE	89

TABLE OF CONTENTS

Chapter 8	CLIENT IDENTITY AND THE ATTORNEY-CLIENT PRIVILEGE	91
<hr/>		
A.	INTRODUCTION	91
B.	CLIENT IDENTITY	91
	<i>Dean v. Dean</i>	91
	Notes and Questions	96
	<i>D'Alessio v. Gilberg</i>	97
	Notes and Questions	98
	Monroe Freedman, <i>When Keeping Secrets Becomes a Crime</i>	99
	Notes and Questions	100
Chapter 9	THE ATTORNEY-CLIENT PRIVILEGE AND PHYSICAL EVIDENCE	101
<hr/>		
A.	THE CATEGORIES OF PHYSICAL EVIDENCE	101
B.	HANDLING PHYSICAL EVIDENCE	102
	<i>People v. Meredith</i>	102
	Notes and Questions	107
C.	THE CONSEQUENCES OF DESTROYING EVIDENCE	109
1.	The Tort of Spoliation	109
2.	Litigation Sanctions for Destroying Evidence	111
	<i>Mosaid Technologies Inc. v. Samsung Electronics Co.</i>	111
	Notes and Questions	116
D.	STANDARDS FOR CRIMINAL JUSTICE	117
	Notes and Questions	117
E.	THE GRISLY CASE OF THE BURIED BODIES	118
	Notes and Questions	119
F.	THREE PROBLEMS TO CONSIDER	121
Chapter 10	EXCEPTIONS TO THE ETHICAL DUTY OF CONFIDENTIALITY	123
<hr/>		
A.	EXCEPTIONS TO THE DUTY OF CONFIDENTIALITY	123
B.	ANOTHER SECRECY SCENARIO: "IS IT IN THE GENES"?	130
Chapter 11	EXCEPTIONS TO THE ATTORNEY-CLIENT PRIVILEGE	135
<hr/>		
A.	COMPARISON WITH EXCEPTIONS TO CONFIDENTIALITY	135
B.	A BRIEF CATALOGUE OF WAIVERS AND EXCEPTIONS TO THE ATTORNEY-CLIENT PRIVILEGE	136

TABLE OF CONTENTS

Chapter 12	DEAD MAN TALKING: THE ATTORNEY-CLIENT PRIVILEGE AFTER A CLIENT DIES	139
A.	ATTORNEYS AS VOLUNTARY WITNESSES	139
	<i>State v. Macumber</i>	139
	Notes and Questions	141
B.	IS THE ATTORNEY-CLIENT PRIVILEGE SUBJECT TO A BALANCING TEST?	141
	<i>Swidler & Berlin v. United States</i>	141
	Notes and Questions	149
C.	A BALANCING TEST FOR DISCLOSING PRIVILEGED COMMUNICATIONS?	149
	<i>In Re Investigation of the Death of Miller</i>	150
	Notes and Questions	159
Chapter 13	CORPORATIONS, CORRUPTION, AND CONFIDENTIALITY	161
A.	THE ATTORNEY-CLIENT PRIVILEGE FOR ORGANIZATIONS	161
B.	A SECRECY SCENARIO: LET THERE BE LUX?	162
C.	THE ATTORNEY-CLIENT PRIVILEGE FOR CORPORATIONS IN THE COURTS	164
1.	The Attorney-Client Privilege in Federal Courts	164
	<i>Upjohn Co. v. United States</i>	164
	Notes and Questions	167
2.	The Attorney-Client Privilege in State Courts	169
	<i>Samaritan Foundation v. Goodfarb</i>	169
	Notes and Questions	174
D.	DISCLOSURE OF A CORPORATION'S CONFIDENTIAL INFORMATION	174
1.	Who is Your Client?	175
2.	Objecting Within the Organizational Client ("Reporting Up")	176
3.	Types of Legal Practice	178
4.	When Is a Lawyer Permitted to Disclose Outside the Entity ("Reporting Out")?	178
5.	"Noisy Withdrawal"	179
E.	ANOTHER SECRECY SCENARIO: THE COMPUTER GLITCH	179
Chapter 14	PRINCIPLES OF THE ADVERSARY SYSTEM	183
A.	DEFENDING THE GUILTY	183
	Notes and Questions	186
B.	THE LAWYER'S PROFESSIONAL ROLE	187

TABLE OF CONTENTS

1.	Serve the Client	187
2.	Serve the State	188
3.	Serve All Parties Equally	188
4.	Serve the Public Interest	188
C.	THE LAWYER'S CONSCIENCE	189
	Notes and Questions	190
D.	SHOULD WE REFORM THE ADVERSARY SYSTEM?	194
	Marvin E. Frankel, <i>The Search for Truth: An Umpireal View</i>	194
	Notes and Questions	194
	Monroe H. Freedman, <i>Judge Frankel's Search for Truth</i>	195
	Notes and Questions	196
E.	IS THE ADVERSARY SYSTEM A BATTLE BETWEEN EQUALS?	196
1.	Resources Available to a Poor Defendant	196
2.	Resources Available to a Wealthy Defendant	197
	Notes and Questions	197
Chapter 15		201
CIVIL MATTERS AND THE ADVERSARY SYSTEM		201
A.	DISCLOSURE OF ADVERSE EVIDENCE IN LITIGATION	201
	<i>New York County Lawyer's Association Committee on Professional Ethics</i>	202
	Notes and Questions	202
B.	FAIRNESS IN NEGOTIATIONS	204
	Alvin B. Rubin, <i>A Causerie on Lawyers' Ethics in Negotiation</i>	205
	Notes and Questions	207
	James J. White, <i>Machiavelli and the Bar: Ethical Limitations on Lying in Negotiations</i>	208
	Notes and Questions	209
C.	NEGOTIATION TO END LITIGATION	210
	Notes and Questions	211
	<i>Association of the Bar of the City of New York, Committee on Professional Ethics</i>	213
	Notes and Questions	214
	<i>ABA Standing Committee on Ethics and Professional Responsibility, Informal Opinion 86-1518 (Feb. 9, 1986)</i>	215
	Notes and Questions	216
	Carrie Menkel-Meadow, <i>Toward Another View of Legal Negotiation: The Structure of Problem Solving</i>	217
	Notes and Questions	218

TABLE OF CONTENTS

Chapter 16	THE NO-CONTACT RULE: COMMUNICATING WITH REPRESENTED PARTIES	219
<hr/>		
A.	OUTLINE ON COMMUNICATING WITH REPRESENTED PARTIES . . .	219
1.	The Key Rule	219
2.	An Outline on Communicating with Represented Individuals	219
3.	Communicating with Represented Corporations	220
4.	Policies Behind the Rule	221
B.	COMMUNICATING WITH A REPRESENTED ADVERSE PARTY	222
	<i>In The Matter of Disciplinary Proceedings Against Brey</i>	222
	Notes and Questions	224
C.	THINGS THAT ARE <i>NOT</i> EXCEPTIONS TO RULE 4.2	224
D.	THE “AUTHORIZED BY LAW” EXCEPTION	226
	<i>United States v. Hammad</i>	226
	Notes and Questions	228
E.	A SPECIAL PROBLEM: COMMUNICATING WITH CORPORATE EMPLOYEES	228
	<i>Niesig v. Team I</i>	229
	Notes and Questions	233
	<i>Patriarca v. Center for Living & Working, Inc.</i>	233
	Notes and Questions	236
<hr/>		
Chapter 17	THE CLIENT’S ROLE IN THE ADVERSARY SYSTEM . . .	239
<hr/>		
A.	ALLOCATING POWER BETWEEN ATTORNEY AND CLIENT	239
	<i>Jones v. Barnes</i>	240
	Notes and Questions	242
B.	THE LAWYER’S INFORMAL CONTROL	245
	Notes and Questions	245
<hr/>		
Chapter 18	THE PERPLEXING PROBLEM OF PERJURY	249
<hr/>		
A.	WHAT IF YOUR CLIENT PLANS TO LIE — OR LIES — AT TRIAL? . . .	249
B.	<i>NIX v. WHITESIDE</i>	249
	<i>Nix v. Whiteside</i>	250
	Notes and Questions	261
<hr/>		
Chapter 19	CANDOR AND DECEPTION IN OFFERING TESTIMONY	271
<hr/>		
A.	MAY YOU ETHICALLY MAKE THE FALSE LOOK TRUE?	271
	<i>State Bar of Michigan, Informal Ethics Opinion CI-1164 (1987)</i>	271
	Notes and Questions	273

TABLE OF CONTENTS

B.	WHEN (AND WHAT) CAN YOU TELL THE COURT?	273
	<i>United States v. Long</i>	273
	Notes and Questions	277
C.	PERJURY IN CIVIL CASES	278
	<i>ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 93-376 — The Lawyer’s Obligation Where a Client Lies in Response to Discovery Requests (1993)</i>	279
	Notes and Questions	282
Chapter 20		INTRODUCTION TO CONFLICTS OF INTEREST 283
A.	AN OUTLINE ON CONFLICTS OF INTEREST	285
1.	Concurrent vs. Successive Conflicts	285
2.	Direct Adversity Conflicts vs. Materially Limiting Conflicts	286
3.	Actual vs. Potential Conflicts	288
4.	Three Levels of Conflicts	288
5.	Personal vs. Vicarious Conflicts	289
6.	Eight Events That Can Trigger Conflicts	289
7.	Negative Consequences of Conflicts	290
8.	When Are Conflicts of Interest Consentable?	291
9.	Obtaining Consent to a Conflict	293
10.	How Courts Decide Motions to Disqualify	295
11.	Obstacles to Appealing Rulings on Motions To Disqualify	295
B.	A MEETING OF THE LAW FIRM’S CONFLICTS COMMITTEE	296
C.	ANOTHER MEETING OF THE CONFLICTS COMMITTEE	301
Chapter 21		WHO IS A “CLIENT”? 303
A.	CLIENTS VS. NON-CLIENTS	303
	<i>Westinghouse Electric Corp. v. Kerr-Mcgee Corp.</i>	304
	Notes and Questions	308
B.	CURRENT CLIENTS VS. FORMER CLIENTS	309
	<i>SWS Financial Fund A v. Salomon Brothers Inc.</i>	309
	Notes and Questions	319
	A Scenario on “Who is a Client?”	320
C.	AMBIGUITY IN ENTITY REPRESENTATION	321
	<i>Perez v. Kirk & Carrigan</i>	321
	Notes and Questions	324
Chapter 22		CONFLICTS OF INTEREST WITH CURRENT CLIENTS . 327
A.	AN OUTLINE OF CONCURRENT CONFLICTS	327
1.	Basics of Concurrent Conflicts	327
2.	Who is a “Client”?	328

TABLE OF CONTENTS

3.	Conflicts Between Two Current Clients	331
4.	Conflicts Between a Client and a Third Person	337
5.	Conflicts with the Lawyer’s Own Interests	338
	<i>Lewis v. National Football League</i>	339
	Notes and Questions	341
B.	THE FIRM’S CONFLICTS COMMITTEE MEETS AGAIN	343

Chapter 23 CONFLICTS OF INTEREST WITH FORMER CLIENTS .. 349

A.	AN OUTLINE ON CONFLICTS WITH FORMER CLIENTS	349
1.	Concurrent and Successive Conflicts Compared	349
2.	Grounds for Personal Disqualification Under Rule 1.9	350
3.	The “Substantially Related” Test	351
4.	Imputed Disqualification and Conflict Checking Under Rule 1.9	353
B.	THE SUBSTANTIAL RELATIONSHIP TEST	355
	<i>Kaselaan & D’Angelo Associates, Inc. v. D’Angelo</i>	355
	Notes and Questions	359
C.	INFORMALLY ACQUIRED CONFIDENTIAL INFORMATION	360
	<i>Lansing-Delaware Water District v. Oak Lane Park, Inc.</i>	361
	Notes and Questions	363
D.	PERILS OF PRELIMINARY INTERVIEWS	363
	Notes and Questions	364
E.	A DISQUALIFICATION SCHEME	366
	<i>Crabb & Sons v. Rogers Plumbing</i> (Draft Opinion #1)	366
	<i>Crabb & Sons v. Rogers Plumbing</i> (Draft Opinion #2)	368
F.	CAN YOU DROP A CLIENT LIKE A “HOT POTATO”?	369
	<i>Stratagem Development Corp. v. Heron International N.V.</i>	370
	Notes and Questions	373

Chapter 24 IMPUTED CONFLICTS AND FIREWALLS 375

A.	THE ABA’S CURRENT APPROACH TO IMPUTED DISQUALIFICATION	375
B.	OTHER APPROACHES TO IMPUTED CONFLICTS OF INTEREST	384
1.	The ABA’s Pre-2002 Approach to Imputed Conflicts	384
2.	The Restatement Approach to Imputed Conflicts	385
3.	The Pro-Screening Approach Taken by Some States	385
C.	APPLYING VARIOUS APPROACHES TO CONFLICTS WITH FORMER CLIENTS	386
	Lawrence J. Fox, <i>My Lawyer Switched Sides; Don’t Worry, There’s a Screen</i>	387
	Notes and Questions	389
	<i>Cromley v. Board of Education</i>	392

TABLE OF CONTENTS

Notes and Questions	397
Chapter 25	BUSINESS TRANSACTION WITH CLIENTS 403
A.	THE RULES ON BUSINESS TRANSACTIONS WITH CLIENTS 403
B.	WHAT IF YOU DON'T FOLLOW THE RULES? 404
	<i>In the Matter of Breen</i> 405
	Notes and Questions 408
	<i>The Florida Bar v. Black</i> 408
	Notes and Questions 409
C.	THE FIRM'S CONFLICTS COMMITTEE MEETS AGAIN 410
Chapter 26	INTRODUCTION TO LEGAL FEES: LEGAL SERVICES FOR CLIENTS WHO CAN PAY 413
A.	THE FIVE BASIC TYPES OF LEGAL FEES: FLAT, HOURLY, CONTINGENT, VALUE, AND HYBRID 414
B.	HOW MUCH IS TOO MUCH? 418
C.	IMPROPER TERMS IN FEE AGREEMENTS: NON-REFUNDABLE FEES 422
	<i>In the Matter of Cooperman</i> 422
	Notes and Questions 425
D.	MAKING LEGAL FEES MORE AFFORDABLE FOR THE MIDDLE CLASS 426
Chapter 27	LEGAL SERVICES FOR CLIENTS WHO CANNOT PAY 429
A.	PROVIDING LEGAL SERVICES FOR THOSE IN NEED 429
B.	FEE-SHIFTING STATUTES 431
	<i>City of Riverside v. Rivera</i> 433
	Notes and Questions 438
C.	PRO BONO WORK 439
	<i>Amendments to Rules Regulating the Florida Bar</i> 442
	Notes and Questions 446
Chapter 28	CONTINGENT FEES: PROMISE AND PROBLEMS 451
A.	THE PROMISE OF CONTINGENT FEES 451
B.	SOME PROBLEMS WITH CONTINGENT FEES 453
C.	SHOULD CONTINGENT FEES BE ALLOWED IN CRIMINAL CASES? 457
D.	PAYING A CLIENT'S LIVING EXPENSES 458
E.	WHAT IF CONTINGENT FEES WERE PROHIBITED? 459

TABLE OF CONTENTS

Chapter 29	HOW DO LAWYERS GET CLIENTS?	461
A.	A BRIEF HISTORY OF LAWYER ADVERTISING: 1800 TO 1977	461
	Notes and Questions	462
B.	THE SUPREME COURT’S ODYSSEY THROUGH LAWYER ADVERTISING	463
1.	The Revolution of 1977: Lawyers Win the Right to Advertise Prices	463
	<i>Bates v. State Bar of Arizona</i>	465
2.	The Dividing Line: In-Person Solicitation Can Be Prohibited	469
3.	Lawyers for Non-Profit Groups May Solicit Cases by Mail	469
4.	Petty State Restrictions Are Unanimously Struck Down	469
5.	Illustrations and Truthful Legal Advice Win Approval	470
6.	Targeted Mail: Like In-Person Solicitation or Like a Newspaper Ad?	472
7.	Claims of Specialization Get Limited Protection	474
8.	Truthful Information Gets Another Endorsement	475
9.	Targeted Mail Revisited: Solicitation After an Accident	475
	Notes and Questions	477
C.	ARE SOME LAWYERS “SUPER LAWYERS” OR THE “BEST LAWYERS IN AMERICA”?	483
	<i>Opinion 39, Advertisements Touting Designation as “Super Lawyer” or “Best Lawyer in America”</i>	483
	Notes and Questions	485
Chapter 30	HOW DO LAWYERS GET IN TROUBLE?	487
A.	MISCONDUCT IN THE PRACTICE OF LAW	487
	<i>2006 Annual Report of the ARDC Illinois Supreme Court</i>	487
	Notes and Questions	490
B.	SEXUAL MISCONDUCT WITH CLIENTS	490
	<i>State of Oklahoma Ex Rel. Oklahoma Bar Association v. Sopher</i>	491
	Notes and Questions	494
C.	CRIMINAL PROSECUTIONS OF DISHONEST LAWYERS	494
	<i>United States v. Eisen</i>	495
	Notes and Questions	495
D.	MISCONDUCT OUTSIDE THE PRACTICE OF LAW	496
1.	Illegal Conduct	496
	<i>Segretti v. State Bar</i>	496
	Notes and Questions	500
2.	Sexual Misconduct Outside of Law Practice	501
	<i>The People of the State of Colorado v. Wallace</i>	501
	Notes and Questions	503
	<i>In the Matter of Max K. Walker, Jr.</i>	504

TABLE OF CONTENTS

	Notes and Questions	505
Chapter 31	ARE YOU YOUR BROTHER’S KEEPER?	507
A.	THE OBLIGATION TO REPORT ANOTHER LAWYER	507
	<i>Wieder v. Skala</i>	509
	Notes and Questions	512
	<i>In Re Riehlmann</i>	512
	Notes and Questions	518
B.	DO YOU EVER HAVE TO REPORT YOUR BOSS?	519
C.	VICARIOUS LIABILITY: RESPONSIBILITY FOR YOUR PARTNERS AND ASSOCIATES	520
	<i>Whelan’s Case</i>	521
	Notes and Questions	522
Chapter 32	LEGAL MALPRACTICE AND OTHER SUITS AGAINST LAWYERS	525
A.	INTRODUCTION	525
B.	THE ELEMENTS OF A LEGAL MALPRACTICE CLAIM	527
C.	OTHER COMMON CLAIMS AGAINST LAWYERS	530
1.	Breach of Fiduciary Duty	530
2.	Breach of Contract	531
3.	Liability to Third Parties	531
D.	THE STANDARD OF CARE	533
	<i>Mirabito v. Liccardo</i>	534
	Notes and Questions	536
	<i>Neel v. Magana</i>	538
	Notes and Questions	538
E.	MALPRACTICE AND INEFFECTIVE ASSISTANCE IN CRIMINAL CASES	539
1.	Claims of Ineffective Assistance of Counsel	539
	<i>United States v. Day</i>	540
	Notes and Questions	543
2.	Traditional Legal Malpractice Claims	544
	<i>Trobaugh v. Sondag</i>	544
	Notes and Questions	546
Chapter 33	IMPROVING LEGAL EDUCATION	549
A.	INTRODUCTION	549
B.	THE MACCRATE REPORT	550
C.	YET ANOTHER LOOK AT THE LEGAL CONTINUUM	551
	Notes and Questions	555
	Notes and Questions	557

TABLE OF CONTENTS

Chapter 34	WHO ARE THE LAWYERS?	559
A.	THE GROWTH OF THE LEGAL PROFESSION	559
	Notes and Questions	560
B.	LET’S TAKE A SECOND LOOK!	560
	Burnele Venable Powell, <i>Somewhere Farther Down the Line: Maccrate on Multiculturalism and the Information Age</i>	562
	Notes and Questions	563
	Marc Galanter, “ <i>News from Nowhere: The Debased Debate on Civil Justice</i> ”	564
	Notes and Questions	570
Chapter 35	THE DIVERSITY OF THE LEGAL PROFESSION	571
A.	INCREASED DIVERSITY IN THE LEGAL PROFESSION	571
	Notes and Questions	572
	Paul Freeman, <i>Gaining and Retaining Diversity: How Well Do Law Firms Keep Their Promise of a Diverse Environment?</i>	573
B.	WOMEN IN THE LEGAL PROFESSION	576
	Deborah L. Rhode, <i>Gender and the Profession: The No Problem Problem</i>	576
	Notes and Questions	579
C.	WHY DO WE DIVERSIFY?	579
	Notes and Questions	580
D.	ASIAN-AMERICAN LAWYERS	581
	Chris Klein, <i>Asian-Americans Find Place in the Profession: Pacific Rim and Tech Booms Create Major Firms’ Biggest Minority</i>	582
	Notes and Questions	586
E.	GAY AND LESBIAN LAWYERS	586
	Edward Adams, <i>Firms Report Totals of Gay Attorneys, Lobbying by Activists Prompts Data Collection</i>	587
	Notes and Questions	588
F.	WORK / LIFE BALANCE	589
	ABA Commission on Women, <i>Balanced Lives: Changing the Culture of Legal Practice</i>	589
	Notes and Questions	590
Chapter 36	FIGHTING DISCRIMINATION IN THE LEGAL PROFESSION: HOW SHOULD THE LEGAL PROFESSION FIGHT DISCRIMINATION?	591
A.	OPTIONS FOR ELIMINATING DISCRIMINATION	591
	Notes and Questions	593
B.	EMPOWERING MINORITY PARTNERS WITHIN A LAW FIRM	596

TABLE OF CONTENTS

Philip L. Harris, *A Candid Discussion: Enhancing the Status
of Black Partners* 597
Notes and Questions 602

TABLE OF CASES **TC-1**

INDEX **I-1**
