LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS

Fourth Edition
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Fourth Edition

Roy D. Simon
Howard Lichtenstein Distinguished Professor of Legal Ethics
Hofstra University School of Law

Carol A. Needham
Professor of Law
Saint Louis University School of Law

Burnele V. Powell
Miles and Ann Loadhold Professor of Law
University of South Carolina School of Law
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.
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!

Roy D. Simon
Carol A. Needham
Burnele V. Powell
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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.
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