



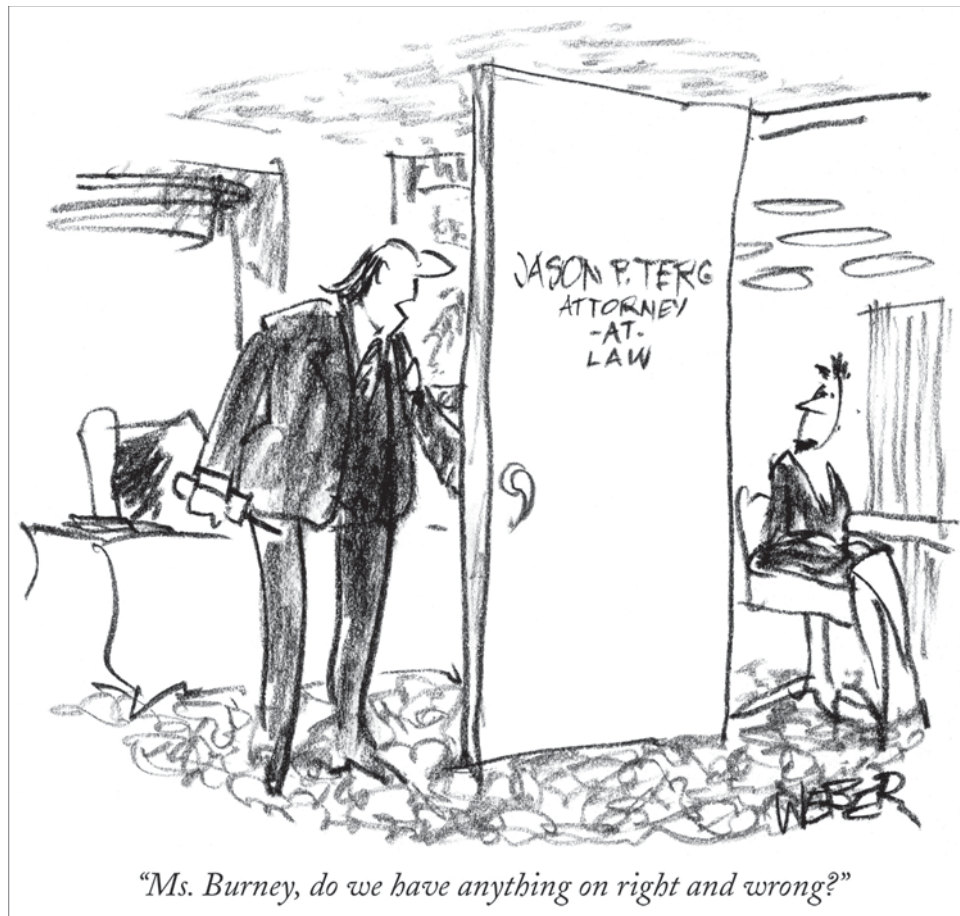
Preface for Teachers and Students

This book is an introduction to the law that governs lawyers. It includes two chapters on some important aspects of the legal profession.

Our goals

Our principal goals in writing this book were to offer an overview of the law governing lawyers and to provide materials through which law students may explore some of the ethical problems that lawyers encounter in practice. Also, we sought to provide opportunities for law students to consider the various professional roles that lawyers occupy and the moral quandaries that students will struggle with when they begin to practice law. For example, in negotiating a settlement for a client, a lawyer might say that his client would refuse to accept less than \$100,000, even though the client has told the lawyer that she would be delighted to receive \$50,000. This is deceptive, but lawyers commonly use this tactic to obtain favorable outcomes for their clients. Does the pervasiveness of this type of deception make it acceptable? Is a lawyer's only duty to get the best result for his client, or does he also owe his opposing counsel a duty of honesty?

This book introduces students to many aspects of the law that governs lawyers. The book does not include an encyclopedic analysis of every ethical rule, much less the entire body of law governing the legal profession. We focus primarily on the subjects that are most likely to arise during the first years of an individual's law practice. For example, many new lawyers become associates in law firms, so this book explores what an associate should do when a more senior associate or a partner asks the associate to do something that seems improper. Also, most new lawyers in private practice make frequent decisions about how to record their time for billing purposes. This book includes many problems that arise from everyday practice issues. Most of the examples and problems in this book involve lawyers who represent individuals or businesses in matters involving contracts, torts, criminal prosecution and defense, civil litigation, real



estate, and family law. We have sought to develop problems and to select cases in which a student can understand the facts and the ethical issues regardless of whether the student has taken advanced courses in law school.

The problem-based approach

This book offers opportunities to explore ethical dilemmas that have actually arisen in practice, some of which have resulted in published judicial decisions. While we have excerpted or summarized some important judicial opinions in the book, we have transformed a larger number of cases into problems for class discussion. Instead of reprinting the appellate opinions, we have presented the essential facts of these cases as one of the lawyers saw them, walking the cases backward in time to the moment at which the lawyer had to make a difficult choice based on both ethical and strategic considerations. Rather than building the book primarily around predigested legal analyses by appellate judges, we invite students to put themselves in the shoes of lawyers who face difficult

choices among possible actions. The dilemmas in most of our problems are based on tough situations that have confronted real lawyers.

Evaluating ethical dilemmas in class will help students to handle similar quandaries when they encounter them in practice. A student who has worked through the problems assigned in this course will know where in the law a particular issue might be addressed, how to begin to analyze the relevant rules, and what questions to ask. Grappling with these problems also will increase students' awareness of ethical issues that otherwise might have gone unnoticed.¹

We set out to write an introduction to the law governing lawyers that students would enjoy reading. Studies show that by the third year of law school, the class attendance rate is only about 60 percent and that a majority of those students who do attend class read the assignments for half or fewer than half of the classes they attend.² Increasingly, law students use their computers to play solitaire or write e-mail during class.³ Law schools seem to be failing in their efforts to retain the interest and attention of their students, particularly third-year law students. We have sought to write a book whose content and methodology capture and sustain the reader's interest. This aspiration is reflected in our choice of topics and materials, our concise summaries of the law, our challenging problems, and our use of graphic materials.

Defining features of this book

We built a number of unique features into this book based on our experience teaching professional responsibility classes:

- Almost every section of the book begins by summarizing the relevant doctrine that provides the legal background students need to analyze the problems that follow.
- Most summarized rules and doctrines appear in question-and-answer format. This structure provides an ongoing roadmap, anticipating readers' questions and forecasting the content of the next subtopic.
- Numerous concrete examples, set off from the text, further illustrate the general doctrinal principles.

1. See Steven Hartwell, Promoting Moral Development Through Experiential Teaching, 1 Clin. L. Rev. 505, 527 (1995) (reporting on his empirical research, which shows that professional responsibility students' moral reasoning skills made significant advances during a course in which students discussed simulated ethical dilemmas); and Lisa G. Lerman, Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals, 39 Wm. & Mary L. Rev. 457, 459 (1998) (explaining the reasons to use experiential methodology in professional responsibility classes).

2. Mitu Gulati, Richard Sander & Robert Sockloskie, The Happy Charade: An Empirical Examination of the Third Year of Law School, 51 J. Legal Educ. 235, 244-245 (2001).

3. Ian Ayres, Lectures vs. Laptops, N.Y. Times, Mar. 20, 2001, at A25; David Cole, Laptops vs. Learning, Wash. Post, Apr. 7, 2007, at A13.

- A few judicial opinions appear in the book. They have been edited carefully to present only the most relevant sections. Some opinions are summarized rather than reprinted so that students can move quickly to the book's challenging application problems.
- The more than 40 problems that appear in the book are designed to focus class discussion and immediately engage students by describing real-life ethical dilemmas.
- The problems present facts from real cases in narrative form to allow students to analyze the issues as if they were the lawyers facing those dilemmas. This structure tends to produce livelier discussion than does the autopsy method traditionally used in law classes, in which teachers invite post hoc dissection of court opinions.
- Pertinent rules of professional conduct are included in the book so that students do not need to flip constantly back and forth between this text and a statutory supplement. When studying a particular rule, however, students should review the entire rule and comments. Every student should study with a printed version of the rules beside the textbook for ease of reference. With our co-author, Professor Anjum Gupta, we wrote a concise supplement as a companion to this textbook. It is *Ethical Problems in the Practice of Law: Model Rules, State Variations, and Practice Questions* (Wolters Kluwer). That supplement includes more than 120 practice questions, in the format used on the Multistate Professional Responsibility Examination, organized into 14 sections corresponding to the chapters of this textbook.
- The book's many bulleted lists and tables clarify legal doctrines and other conceptual material in easily reviewable sections.
- Photographs, diagrams, and cartoons break up the text. Some of these, like the photographs of some of the lawyers, parties, judges, and scholars, add important context. Others, like the cartoons, offer a change of pace from the textual narrative.

What's new in the concise fourth edition

Teachers who have used the concise third edition of this book will discover much that is familiar, along with some new material. The book reflects all changes made in the ethics codes and other lawyer law since the third edition was published. We have updated countless empirical statements. The book discusses recent cases, bar opinions, institutional changes, and scholarship. It includes discussions of such new developments as the revised versions of Model Rules 1.6, 1.18, and 8.4(d), regulatory issues relating to lawyers' use of social

media, and the challenges to confidentiality and attorney-client privilege resulting from computer hacking and governmental spying.

We hope that you enjoy this book. We welcome your reactions and suggestions, small or large, for the next edition. Please send any comments or questions to lerman@law.edu.

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