

Lawyers & Ethics (530C - 001)

Sections 2 and 3

Syllabus

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Overview:

Welcome to Lawyers & Ethics! This is a broad topic, but I hope to help you instill a foundational understanding of legal ethics and lawyering. This is not your typical 1L common law course, and hopefully a welcome change from the day-to-day grind of appellate opinions in your common law classes.

You already know lawyers jokes and probably have heard snide comments about law school. Lawyers argue. They seem to play dirty pool whenever they can. They live and die on technical rules of procedure. They represent convicted killers. They go on TV and solicit clients who've been injured by pharmaceuticals. Lawyers look bad all the time. But always remember that television dramas involving lawyers are almost as top-rated as police procedurals and zombie melodramas, and well ahead of shows about TV comedy writers and advertising executives. Lawyers are exciting and the law is dramatic. Own it. "Better Call Saul!"¹

We're going to be reading a variety of material – a few court opinions, yes, but also a collection of non-legal writings, and a great deal of fiction. We're going to talk about morality, civility (or how to disagree properly), and different kinds of trouble you can get into without even thinking.

I'm serious about your input in the class. Take a look at the syllabus right away. Let me know if there's something you'd like to read in addition to (or to replace) an assigned reading. I've done it before, and I will take your input seriously.

In class, we're going to be doing a good bit of writing, probably at the beginning and the end of each class. I'll be able to tell if you've prepped for class and (maybe) if you were paying attention. Also, it's good practice for exam writing, which I hope will help you in all your

¹ *Breaking Bad: Better Call Saul* (AMC television broadcast, April 26, 2009).

classes. I won't be able to read all your writing in much depth, but I'll do my best. Typically, I will read the materials turned in from ten students a week (my TA might read a few more), and provide comments as I can.

You're also going to be practicing (fake) law in this class in something I call "The Game." You will be in on three fake cases, all from original primary documents in real disputes (well, one is a TV show character). You'll be assigned to a small law firm of four students (or so). You'll learn to work together, and probably fight with each other – just like a real law firm – and hopefully learn about professionalism. You'll write a few things, brief motions, oppose motions from the other side, and in one of the three cases you'll be in on, you'll be part of a panel of judges that generates an opinion to decide a case. To support the arguments in the pleadings, you can use any law you wish, whatsoever, from any court, any jurisdiction, or you can just make things up (so long as you're acknowledging the made-up stuff). Google and Google Scholar will be helpful, as will anything you find on Westlaw or Lexis or Versuslaw. I'm not interested in the hierarchy of the law (meaning I bet there's a great state trial court decision or law review article out there that could be more persuasive than a United States Supreme Court case). Argue what you think the law should be, and why. Through this process, we will all develop the common law of the class. This law will develop organically through the process of the class. Right now, you have no idea what I'm talking about. But you will.

Also, I want you to talk. It's a requirement of the class. You're all going to be talking for a living. Talking is part of your grade. You'll talk to me, you'll talk to each other, and you'll do it before a large group of your peers. This is a class about opening up your minds. I'm not going to give you all the malarkey about thinking like a lawyer. You're here to learn how to agree, and how to disagree. However, don't bother raising your hand unless I ask you to. I probably won't call on you just because you have your hand raised. I'll just call on you.

Finally, this isn't opinion class. Don't tell me your opinion. I don't really care about opinions. "Everyone has one" and so on.² Judges and juries don't care opinions either, unless the opinion comes from an expert witness. I care about thinking and analysis. Give me an argument, and support it with reasoning and/or materials from the readings.

IMPORTANT: Put your name(s) on the papers you turn them in, and use legible handwriting. Seriously.

² See HOME FOR THE HOLIDAYS (Paramount Pictures 1995).

Evaluation:

Your work in your law firm is 50 percent of your grade and your final exam grade is 50 percent. Your class participation might bump you up or down slightly.

Attendance:

I'll know if you missed class because of the writing assignments at the beginning and end of class periods. Duh. An unexcused absence will drop your grade (e.g., from an A to an A-minus). Excused absences are rare. Ask me in advance, if you can.

Required Book:

The Round House (2012) by Louise Erdrich ISBN: 978-0062065247

Other Class Materials are or will be available on the Turtle Talk blog:

<http://turtletalk.wordpress.com/matthew-lm-fletcher/fletcher-class-materials/lawyers-and-ethics-fall-2014-sections-2-and-3/>

Assignments:**Week 1 (Aug. 25, 2014)—Where Does Law Come From? Why Is It Legitimate?**

Read Shirley Jackson's short story *The Lottery*. Please read and review the additional materials as well, which constitute last year's final exam in the same class. I will provide a writing assignment for you to complete on the first day of class.

Also this week we will quickly discuss the four cases that will form the first part of the game we'll be playing this semester on fake law (*Joe, Martin, Goodman, and Hercules*). And you will meet your law firm, who are your teammates, so to speak.

Here are the teams:

Group A (Teams A1, A2, A3, A4, A5): Joe BAR; Martin RESPONDENT; Goodman JUDGE

Group B (Teams B1, B2, B3, B4, B5): Martin BAR; Goodman RESPONDENT; Hercules JUDGE

Group C (Teams C1, C2, C3, C4, C5): Goodman BAR; Hercules RESPONDENT; Joe JUDGE

Group D (Teams D1, D2, D3, D4, D5): Hercules BAR; Joe RESPONDENT; Martin JUDGE

Follow the instructions for each week's assignments related to The Game carefully.

Week 2 (Sept. 8, 2014)—What Is Law? What is Justice? (Part 1)

Read *The Round House*, chapters 1-6.

Recall *Oliphant* from Immersion week. What was the holding there? Hint – Indian tribes cannot criminally prosecute non-Indians. Consider the tribal court decisions in Chapter 3 of *The Round House*. Assuming *Oliphant* wasn't the law, this court could be the court with primary jurisdiction over the felonious actions in the book. What law would the court apply? Should non-Indians be concerned about being prosecuted by a tribal court? Conversely, if *Oliphant* is the law and Linden can only be prosecuted federally, should Indian people be concerned that criminal violators will be prosecuted far away in, say, Minneapolis or Detroit for crimes committed in Indian country? Who makes the law then?

Due by the beginning of class in hard copy – Three copies of a four-page (double spaced) complaint and brief by BAR against RESPONDENT, with recommendations for penalty. Include facts supporting the complaint, with an argument section supported by legal authority detailing why the facts justify a penalty against RESPONDENT. On separate page, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).

Label the team name clearly on the top of the front page. Immediately prior to the beginning of class, serve one copy on me, serve one copy to your adversary, and serve one copy on the judge. For example, Team A1, serving as the BAR in the Joe matter, will file a pleading the first week on the RESPONDENT in the Joe matter – Team D1 – and a pleading on the JUDGE in the Joe matter – Team C1. A2 will serve its pleadings on D2 and C2. A3 will serve its pleadings on D3 and C3. A4 will serve its pleadings on D4 and C4. And so on. We'll do this each week. Service by email is not acceptable.

Week 3 (Sept. 15, 2014)—What Is Law? What is Justice? (Part 2)

Read *The Round House*, chapters 7-end.

Now think of revenge, and the Anishinaabe justifications for revenge. What part of Anishinaabe justifications for revenge, if any, is law? Is this justice? Compare what I guess we'll call "windigo justice" with the modern death penalty.

Due at the beginning of class in hard copy – Three copies of a four-page response (double-spaced) by RESPONDENT to complaint. Attach a copy of the complaint filed against your client. On separate page, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals). Serve your professor, your adversary, and your judge in hard copy.

Week 4 (Sept. 22, 2014)—Lawyers and Morality

Read Wasserstrom's *Lawyers as Professionals: Some Moral Issues*. Read Part I of Chief Justice Roberts' opinion for the Court and Part I of Justice Alito's dissent in *Snyder v. Phelps*. Skim the rest of the opinion. Read the introductory material and Part I of Justice Thomas's opinion for the Court and Part I of Justice Ginsburg's dissent in *Connick v. Thompson*. Skim the rest of the opinion. Read all of *Tee-Hit-Ton Indians v. United States*.

I'm interested in the facts of these cases, and the arguments that had to be argued by either party's attorneys. In the three cases, think about the party you yourself would prefer to represent, and why. Are there any parties you think are so in the wrong under no circumstances would you agree to represent them? As for the outcomes, was "justice" done? Did the outcomes provide "justice" to the aggrieved parties? Were the defenses raised "just"? To whom or what do attorneys have ethical obligations? The court? The client? Opposing parties? Do a lawyer's personal beliefs matter? Why or why not?

Due at the beginning of class in hard copy – Two copies of a two-page (double-spaced) reply by BAR to RESPONDENT's responsive brief. Attach copy of complaint and responsive brief filed in the matter so far. On separate page, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).

Week 5 (Sept. 29, 2014)—Disobedience

Read the materials related to the incarceration of Eddie Ayau for contempt of court in *Na Lei Alii Kawanana v. Bishop Museum*, No. 05-540 (D. Haw.). Read entirely the Ayau Declaration, the Royal Hawaiian Academy Brief, and the Contempt Order. Skim the Settlement. Read Federal Rule of Civil Procedure 11(b). Read pages 1-8 (skim the rest) of *The Ethics of Pushing the Envelope*.

When is disobedience to a court order acceptable, if ever? Why should court orders be obeyed, especially in the context of religious beliefs? What other areas of law involve questions of disobedience (e.g., journalists and their sources)? What about law reform? To what extent may lawyers advocate for a change in the law?

Week 6 (Oct. 6, 2014)—Civility and Empathy

Read West's *The Anti-Empathic Turn*. Also read part II of Flynn's *The Fight for Information with the Obstructionist Lawyer*.

Civility and empathy are different concepts, to be sure, but by now you might have some experience with both, given the fake law cases you're working on. In the West excerpt, focus on the case, *Williams v. Walker-Thomas Furniture*. Think about contracts you've executed via point-and-click. Do you have more or less empathy for the plaintiff in *Williams*? You've also crafted a judicial opinion. Did you feel empathy for any of the parties? Did you act on your empathy in crafting your opinion? Finally, in your dealings with your law firm partners and your adversaries, were you civil? Did you experience any incivility?

Due at the beginning of class in hard copy – Written opinion by JUDGE in each case. Include a two-paragraph *per curiam* opinion authored by the entire team decision including judgment (whether RESPONDENT should be penalized), and if applicable what penalty should be assessed against RESPONDENT. Then include *seriatim* opinions by each judge concurring or dissenting in the judgment and penalty, with reasons. On separate page, detail hours worked on the project by each law firm member in one-tenths of an hour (six minute intervals).

Week 7 (Oct. 13, 2014)—Assignment TK

On this day, I will have processed the 63-odd judicial opinions generated by the class. I will deliver to you the common law of the class, which you will use on the final exam.

Final Exam (Oct. 20, 2014)