1. COURSE DESCRIPTION

This is a course about legal ethics and professional responsibility. As students are aware, the Federation of Law Societies of Canada (FLSC) has developed mandatory competencies for our common law degree that all law students must demonstrate upon graduation. One of those competencies is “Ethics and Professionalism.” Successful completion of this course will satisfy this competency. Another project of the FLSC has been to develop a model code of professional responsibility to be adopted by all provinces to ensure consistency in ethical standards for the delivery of legal services across the country. The Law Society of Upper Canada has recently amended its Rules of Professional Conduct to mirror the model code. It came into force in October, 2014. This course will use the new set of Ontario Rules.

Another mandatory and arguably related FLS common law degree competency is “legal and fiduciary concepts in commercial relationships.” This course does not satisfy that competency. Students must take Business Associations or speak to the Associate Dean to develop a course-plan or other arrangement to satisfy this competency.
2. **LEARNING OUTCOMES**

Following this course, the student should be able to demonstrate:

“… an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes,

1. Knowledge of,
   a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with,
      1. circumstances that give rise to ethical problems;
      2. the fiduciary nature of the lawyer's relationship with the client;
      3. conflicts of interest;
      4. the administration of justice;
      5. duties relating to confidentiality, lawyer-client privilege and disclosure;
      6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and the public; and
      7. the importance and value of serving and promoting the public interest in the administration of justice
   b. the nature and scope of a lawyer’s duties including to clients, the courts, other legal professionals, law societies, and the public;
   c. the range of legal responses to unethical conduct and professional incompetence; and
   d. the different models concerning the roles of lawyers, the legal profession, and the legal system, including their role in the securing access to justice.

2. Skills to,
   a. identify and make informed and reasoned decisions about ethical problems in practice; and
   b. identify and engage in critical thinking about ethical issues in legal practice.”

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1 This comes directly from the Federation of Law Societies of Canada, “Final Report” (Common Law Degree Implementation Committee) (2011) at 17 (Table B).
3. **CLASSES**

Tues  
1-4 pm  
Moot Court

4. **TEXTS**

**Required**


Law Society of Upper Canada, *Rules of Professional Conduct* (posted on CLEW) (2014) (We will be using the new Rules (in force on October 1, 2014) that have been amended to conform to the Model Code of the Federation of Law Societies of Canada

Other readings will be handed out a week prior to class or posted on our CLEW site

5. **EVALUATION**

(i) **Method**

1. **Exam (100%)**

April 21, 2015 (1:00 pm) – 2 hours

Format: Hypothetical/Short Answer Questions
(ii) **Numerical Grade Distribution**

All course work is to be marked and final grades submitted using the 100% scale. The average grade for this course will be B (73-76.9) and individual grades will be adjusted to conform to the B average.

(iii) **Student Evaluations**

Student evaluations of the course will take place in the class during the last week of term.

6. **OFFICE HOURS**

Office:
Room 2123
(519) 253-3000 (ext. 2966)
tanovich@uwindsor.ca (e-mail)
http://athena.uwindsor.ca/law/tanovich (website)
@dtanovich (twitter)

Hours: **Tuesdays 10-12 pm** (students may arrange an appointment by e-mail)
7. **CLASS TOPICS AND READINGS**

**January 6 [Week 1]**  
*Introduction to the Course*  
Readings  
No assigned readings 😊

**Questions To Ponder**
1. What are the top legal ethics stories in Canada for 2014? Please give some thought to this question before coming to class. Each student should be prepared to identify one top legal ethics story. You can do a Google search and find examples.
2. If someone asked you to fill in the blank to describe the professional work of a lawyer, what word(s) would you use? In other words, lawyer as ____.
3. What do you think are the core attributes of an ethical lawyer?

**January 13 [Week 2]**  
*Introduction to Legal Ethics* (This will be a full class)  
**Specific Topics**
*Distinguishing professionalism, legal ethics and professional responsibility*  
**Regulation**  
**Sources**
*Drawing from theory: essential elements of ethical lawyering*  
**Readings**
Chapter 1 (pp. 1-64)  

**Questions To Ponder**
1. What is the difference between professionalism, legal ethics and professional responsibility?
2. What is the nature of lawyer regulation?
3. What are the sources to guide ethical decision making?
4. How can legal theory assist ethical reflection?

**Scenarios**
We will take up #3 (page 29); #5 (page 51); and, #6 (page 63) – please review them before class.

We will also watch a video on Access to Justice and Mandatory Pro Bono requirements for lawyers and consider how the different theoretical frameworks might address this issue.
January 20 [Week 3]
The Lawyer-Client Relationship: Part I – Formation & Termination

Specific Topics
Advertising
Solicitation
Fees
Choosing Clients
Withdrawal

Readings
Chapter 3 (pp. 121-151; 189-205)
CLEW Reading: Craig, “Examining the Websites of Canada’s ‘Top Sex Crime Lawyers’: The Ethical Parameters of Online Commercial Expression by the Criminal Defence Bar” (forthcoming UBC Law Review)

Questions to Ponder
1. What standard should be used to assess ethical/professional advertising?
2. Is the current regulation of legal fees satisfactory?
3. What standards should guide the solicitation of clients?
4. Lawyers’ Oath – refuse no cause reasonably founded – should there be a discretion to refuse to accept a retainer?
5. Can a lawyer ever withdraw from a criminal case?

Scenarios
We will take up #1 (page 145); #4 (page 146); #6 (page 147); #10 (page 164); #19 (page 204)

January 27 [Week 4]
Guest Lecture: Dale Lastman (Chair, Goodmans)
http://www.goodmans.ca/People/Dale_Lastman

Specific Topics
Legal Professionalism and Ethics: A View from Practice
Building Blocks of Professionalism

Readings
Chapter 2 (pp. 67-117)

Questions to Ponder
1. Why is ethics and professionalism so fundamental to the work of lawyers?
2. What would you identify as the building blocks of legal professionalism?
February 3 [Week 5]
The Lawyer-Client Relationship: Part II - Competence
Specific Topics
   Competence
   Cultural Competence
Readings
Chapter 3 (pp. 151-189)
Questions to Ponder
   1. What are the elements of competence?
   2. What is the standard for determining incompetence in professional discipline?
   3. What is cultural competence? Why is it so important to ethical lawyering?
Scenarios
We will take up #11 (page 185); #13 (page 186)
We will also watch a video on Cultural Competence and work through questions on the conduct of the lawyer

February 10 [Week 6]
Confidentiality
Specific Topics
   Definition – Distinguishing Confidentiality and SC Privilege
   Explaining Confidentiality
   Exceptions – Crime-Fraud; Public Safety; Innocence at Stake; LSUC Investigations
   Confidentiality and Withdrawal
   Disclosing Evidence of a Crime
Readings
Chapter 4 (pp. 207-241; 256-271)
Questions to Ponder
   1. What are confidentiality/privilege so fundamental to the lawyer-client relationship?
   2. What information acquired by the lawyer is confidential? What is the difference between confidentiality and privilege?
   3. How should confidentiality be explained to the client?
   4. What general principles guide when a lawyer can breach confidentiality?
   5. How should we regulate evidence of a crime in a lawyer’s possession?
Scenarios
We will take up #18 (page 194); #1 (page 226); #3 (page 227)
We will also watch a video on Confidentiality and work through questions on the conduct of the lawyer
February 17
Reading Week – No Class

February 24 [Week 7]
Duty of Loyalty/Conflicts of Interest

Specific Topics
Former/current clients
Using client’s case for publicity/media
Intimate relationships with clients

Readings
Chapter 5 (pp. 275-290; 330-354)
CLEW Reading: CNR v McKercher 2013 SCC 39

Questions to Ponder
1. What are the relevant interests at stake in cases involving conflicts?
2. Has the Supreme Court achieved the right balance between the competing interests?
3. How does a lawyer resolve conflicts between the SCC jurisprudence and the rules where there are inconsistencies?
4. Have the rules governing conflicts become too complex?
5. What limits are there on the ability of a lawyer to use his or her client’s case for promotional purposes? Writing a book or movie script?

Scenarios
We will take up #1 (page 304); #2 (page 307); #3-4 (page 354)
We will also watch a video on Conflicts and work through questions on the conduct of the lawyer
March 3 [Week 8]
Ethics in Advocacy
Specific Topics
Pre-Trial Procedures
Negotiations
Trial
Advocacy and Civility
Readings
Chapter 6 (pp. 357-409)
Chapter 7 (pp. 411-431)
CLEW Reading: Bhasin v Hryniew 2014 SCC 71
Questions to Ponder
1. What ethical principles should guide a lawyer’s decision to send a “demand” or “libel” letter?
2. Is it ethical to lie or mislead during negotiations?
3. Where is the ethical line between witness preparation and coaching? Should it matter in criminal cases whether it is a Crown or defence witness?
4. What authority must be disclosed to the Court by lawyers?
5. Is there a legitimate concern that the “civility movement” will quell resolute advocacy?
Scenarios
We will take up #2(page 365); #3 (page 371); #4 (page 373); #(a)-(j) (page 376); #7 (page 408)
We will also watch a video on Conflicts and work through questions on the conduct of the lawyer
March 10 [Week 9]

**Ethics and Criminal Law Practice**

**Specific Topics**
- Crown Counsel
- Defence Counsel

**Readings**
Chapter 8 (pp. 435-482)

**Questions to Ponder**
1. What are the general ethical obligations owed by prosecutors?
2. Should there be a rule governing possession of evidence relevant to a crime?
   - How should it be drafted?
3. When do you know your client is guilty? What limitations are imposed?
4. How do you advise a client who tells you that he intends to lie in the stand in order to ensure he is acquitted?

**Scenarios**
I will post on CLEW a set of scenarios that we will take up in class.

March 17 [Week 10]

**Lawyers in Organizations**

**Specific Topics**
- Corporate Lawyers
- Government Lawyers

**Readings**
Chapter 9 (pp. 485-524); Chapter 10 (pp. 527-559)

**Questions to Ponder**
1. What are some of the unique challenges to lawyers working within organizations?
2. Who is the client?
3. Do government lawyers owed a heightened ethical duty?
4. What professional rules of responsibility apply?
5. Where should the regulation of lawyers within organizations take place?

**Scenarios**
We will take up #1 (page 495); #2 (page 513); #3 (page 519); #3 (page 535); #1 (page 552); #2 (page 557); #3 (page 558)
March 24 [Week 11]
Judges’ Ethics, Lawyers’ Dilemmas
Specific Topics
Judicial Ethics
Readings
Chapter 11 (pp. 561-567)
Questions to Ponder
1. Should there be an enforceable Code of Conduct for judges?
2. What are the basic ethical foundations of judging?
3. What are the ethical boundaries of talking about judges in public statements?
4. What guidelines exist (should exist) for judges who return to practice after retiring?
Scenarios
We will take up #1 (page 575); #4 (page 583); #5 (page 584); #9 (page 594); #3(d) (page 616); #3(f) (page 617)

March 31 [Week 12]
Issues in Regulation
Specific Topics
Good Character
Extra-Professional Misconduct
Sanctioning Lawyers
Readings
Chapter 13 (pp. 663-706)
Questions to Ponder
1. What is the nature of the good character requirement? Should it be abolished/reformed?
2. When should the LSUC care about extra-professional misconduct by lawyers?
   What standards are used for discipline?

April 7 [Week 13]
Catch-Up

END OF TERM
Excerpts: University of Windsor Human Rights Policy  (A full copy of the Human Rights Policy can be found at www.uwindsor.ca/hrights)

The University of Windsor is committed to providing an equitable working and learning environment that promotes and supports academic achievement. To this end, the University will strive to ensure the applicability of the rules of natural justice to achieve fair treatment of all members of the University community and will endeavour to create an environment free of harassment and all forms of prohibited discrimination.

By this Policy, the University declares that all members of the University community are obligated to interact on the basis of mutual respect and that the University will not tolerate any form of harassment, sexual harassment or discrimination in any University-related activity involving a member of the University community.

Behaviour constituting a violation of this Policy and/or the Ontario Human Rights Code is considered by the University to be a serious offense and is subject to a range of disciplinary measures up to and including dismissal or expulsion by the University.

The Ontario Human Rights Code prohibits harassment and discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences. It is understood that a person may experience discrimination and/or harassment on multiple grounds and that discrimination can be overt or systemic.

Every individual at the University is entitled to work/study in an environment free of discrimination and harassment and in particular to work/study in an environment free of discrimination and harassment including but not limited to discrimination and harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences.

**Discrimination** is defined as a distinction, whether intentional or not, based on grounds relating to personal characteristics of an individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.
Harassment is defined as vexatious comment or conduct in relation to a person or group of persons which has the effect or purpose of creating a hostile or intimidating working or educational environment when:

- such treatment has the effect or purpose of threatening or intimidating a person; or
- such treatment abuses the power that one person holds over another or misuses authority; or
- such treatment has the effect or purpose of offending or demeaning a person or group of persons on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance, or record of offences.

Harassment may occur during one incident, or over a series of incidents including incidents which, in isolation, would not necessarily constitute harassment. Harassment prevents or impairs the full and equal enjoyment of employment and educational services, benefits and/or opportunities and may occur between people of the same or different status within the University community, regardless of age or sex. Harassment may also be directed at a group as well as at an individual. Harassment may be psychological, verbal or physical or may be all of these.

Prohibited behaviours include but are not limited to:

- **Verbal Behaviour**
  Using stereotypes to describe a particular group; name calling; insults; threats; slurs; degrading or unwelcoming remarks; jokes or innuendos about a person/persons in relation to the prohibited grounds in the Ontario Human Rights Code.

- **Written Materials**
  Displaying or distributing racist/sexist derogatory or otherwise offensive materials or graffiti; displaying or distributing derogatory pictures or cartoons.

- **Physical Behaviour**
  Making threatening or rude gestures; using physical intimidation or assault; leering; unwanted touching, kissing, patting, pinching; insulting actions or practical jokes based on the prohibited grounds in the Ontario Human Rights Code.

- **Non-Verbal Behaviour**
  Avoidance, exclusion and inaction: refusing to talk or work with another
member of the University community because of personal, physical, racial or ethnic characteristics; condescension, paternalism or patronising behaviour; failure to provide accommodation for persons with disabilities or for persons engaged in religious observation unless the accommodation causes undue hardship.

"Sexual harassment" includes:

a) any unwanted sexual attention or behaviour by a person who knows or ought reasonably to know that such conduct is unwanted; or

b) any implied or expressed promise or reward for complying with a sexually oriented request; or

c) any implied or expressed threat of reprisal, in the form either of actual reprisal or the denial of opportunity for the refusal to comply with a sexually oriented request; or

d) any inappropriate verbal or physical conduct that has a focus on sexuality or sexual identity in what reasonably may be perceived as a hostile, intimidating or offensive manner; or

e) the communication or display of material with a focus on sexuality or sexual identity which has the effect or purpose of creating a hostile or intimidating working or educational environment.

Examples of sexual harassment:

- verbal abuse including but not limited to graphic commentaries on the victim's body and sexual remarks which demean a person and are known or ought to have been known to be unwanted;
- using sexually degrading words to describe a person;
- insulting and offensive gestures, innuendoes, language, jokes and or taunting about another person's body which causes awkwardness and or embarrassment;
- leering (suggestive staring) or other gestures;
- asking inappropriate questions about the person's sexuality or any sexual relationships past, present or future;
- unnecessary physical contact such as brushing up against a person's body, touching, patting, pinching and invasion of personal space for the purpose of sexually harassing a person;
- demanding sexual favours accompanied by implied or overt threats concerning a person(s)' employment (economic livelihood) grades (academic failure hence loss of future livelihood), reputation and/or letters of recommendation;
- sexual solicitation or advance made with implied reprisals if rejected;
- backlash or the threat of backlash, or retaliation or the threat of retaliation, for the lodging of a complaint or participation in an investigation;
- behaviour including but not limited to attention and/or conduct that is known or ought to be known to be unwanted after the end of a consensual relationship; and
- inappropriate display of sexually offensive material and/or pornography such as pin up posters (of any size), magazines etc.
UNIVERSITY OF WINDSOR
FACULTY OF LAW

POLICY STATEMENT ON STUDENT DISCIPLINE
PLAGIARISM

Plagiarism is defined by Black’s Law Dictionary (revised 4th edition):

The act of appropriating the literary composition of another of parts or passages of his writing, or the ideas or language of the same, and passing them off as the product of one’s own mind.

The Oxford English dictionary defines plagiarism:

the wrongful appropriation or purloining, and publication as one’s own, of the ideas or the expression of the ideas (literary, artistic, musical, mechanical, etc.) of another.

Comment: Merely taking the ideas or expression of another is not in itself plagiarism. The substance of plagiarism is that the plagiarist passes off the ideas or expression of another as his or her own. Thus, the application of the precepts and practices learned in legal writing, particularly the full acknowledgement of sources, is the best safeguard against plagiarism. When a student is in doubt as to the proper treatment and acknowledgement of the ideas or expressions of another, the best course of conduct is to consult the professor for whom the work is being prepared. Plagiarism will be presumed in any case of appropriating the expression or ideas of another without full acknowledgement of sources.

Examples:

(a) submitting as his or her own work an exam or other piece of academic work which has been authored or prepared either wholly or partly by someone else;
(b) submitting academic work containing passages taken either verbatim or with occasional word changes from the works of others where such passages are not properly acknowledged;
(c) submitting a paper or other academic work which adopts the ideas of other authors without giving appropriate acknowledgement.

The following examples of plagiarism have recently been the subject of disciplinary complaints:

1. Failure to use quotation marks or offset the paragraph when directly quoting a source even when the source is footnoted;
2. Failure to cite a source when the source is paraphrased;
3. Failure to attribute a directly quoted or paraphrased passage to the correct source (e.g. quoting directly from or paraphrasing material from a textbook, treatise, article, etc., and reproducing the footnotes appearing in this source rather than footnoting the source itself);

4. Reproduction of another student’s table of authorities, bibliography, footnotes, etc.;

5. Failure to cite a passage quoted or paraphrased from a website;

In addition, the Policy Statement on Student Discipline identifies as improper conduct a student submitting his or her own academic work in a course without disclosing to the professor that this academic work was authored or prepared, either wholly or partly, for another course or purpose.

The Policy Statement on Student Discipline also:
1. addresses improper conduct relating to exams (cheating),
2. provides the sanctions that can be imposed by the Discipline Committee for improper conduct.

Copies of the Policy are available in the General Office.
LEGAL PROFESSION (WINTER TERM) FINAL EXAM

April 15, 2014 - 1:00 pm – Moot Court – 2100-2012

INSTRUCTIONS

The exam consists of four hypothetical answer questions. Each question is worth 25 marks. The exam writing period is 2 hours in length. The time limit must be strictly observed. Those who continue to write or type after the end of the exam will be penalized according to Faculty regulations.

Please make sure that you carefully read the entire question. Please answer the question in complete sentences. Precise analysis, good judgment and clear presentation will be rewarded.

The exam is open book. However, only class materials (CLEW textbook, notes, PPT slides, hand-outs, outlines and CLEW postings) may be brought into the exam. Library books and photocopies of non-class materials even if one page are prohibited. Any class materials you wish to use must be brought into the exam. You will not be permitted to access any materials on your laptop except the virtual answer book.

All examinations in the Faculty of Law are written using a confidential examination number. Please only use your 2014 Winter number on all examination booklets (paper or electronic). Avoid providing any information on the exam that could identify you.

Computerized Exam Instructions

To write the computerized exam, you will have had to download the examination booklet before the date of the exam. You will be provided some time before the start of the exam to prepare your laptop – powering up and logging in. When I start the exam writing period, I will give out the Exam Soft Access Code which will enable you to start typing. The Exam Soft program backs up every 60 seconds. At the end of the exam, you are to hit "exit and save" on the top of your screen. You will then be prompted to close the examination. The exam will then automatically upload and you will see a large green check mark on your screen. Please remain seated until you see the large green check mark. If you encounter any problems, stay calm and I will endeavour to assist you.
Question #1

You are a criminal lawyer. You have two clients “X” and “Y”. They are charged with separate offences arising from two different incidents. The two clients do not know each other and have never met. During one of their meetings, Client X advised you that he discarded a prohibited firearm in a certain location. When you are reviewing Client Y’s disclosure, you realize that the police found the weapon and charged Client Y who lived nearby and who had a prior record for firearm offences. Client Y denies ownership and any knowledge about the weapon. Can you advise the police or Client Y that the weapon belongs to Client X? Will you? Can you continue to represent both clients? Please explain your answers with reference to the Rules, precedent and any other relevant material.

Question #2

You are a lawyer working for the Federal Government and you discover that a public official, who you have been working under, has been defrauding the government of millions of dollars. Can you publicly disclose this misconduct? Will you? Please explain your answers with reference to the Rules, precedent and any other relevant material.

Question #3

AH was admitted into Osgoode Hall Law School. He began on September 11, 2006. He was in his mid-20s. That day he was arrested and charged with forcible confinement and abduction. The charges related to his assisting a physician and his family (hereinafter GBD family) in kidnapping their adult daughter whom they believed was in danger. The family believed that the daughter was part of a religious cult and they were concerned about her committing suicide. AH agreed to assist the family. He stopped her on the street and asked for the time. This allowed her to be abducted. He also visited and brought her food in the cottage where she was held for 10 days. The purpose of the abduction was to try and “deprogram” her. It was not successful. She escaped and called the police. In 2009, AH pleaded guilty. He did not withdraw the plea when he learned that for some unknown reason, the charges against the GBD family were withdrawn by the Crown. AH was sentenced to a conditional sentence of 15 months. AH graduated from law school in 2009. He wrote his bar exams that summer. He completed his articles at Bergmanis Preyra in 2010. He advised his articling principal of his convictions and circumstances. He has been working at the firm as a clerk pending the issuance of his L1 licence. AH is remorseful for what he did and believed he was doing the right thing. He now knows that this was a poor decision. There are many including his wife, his criminal
lawyer, his articling principal and law school professors who believe that AH learned from this experience and would be a productive member of the profession. Does the Law Society have the ability to prevent AH from obtaining his licence? If it were your decision, would you grant him a licence? Please explain your answers with reference to relevant precedent.

Question #4

Your client, a young Black male in Toronto, is charged with possession of marijuana. The arresting officer alleges that your client threw the drugs when he was approached. Your Charter application is dismissed. The trial judge found that the search and detention were both lawful. As the trial approaches, your client admits that he was in possession of the drugs but that he never threw them. The officer found them in his pocket during a pat down search following a stop and the filling out of a contact “208” card. Your client feels that he was the victim of racial profiling even though the argument was rejected by the trial judge on the Charter application. Your client introduces you to a friend who was present during the search and who will testify that your client never threw the drugs as alleged by the arresting officer. Your client also wants to testify that he was not in possession of marijuana when stopped by the officer. You have also uncovered that the officer has two disciplinary convictions for falsifying a police report. Will you call your client’s friend? Will you cross-examine the officer on his discipline record? Will you call your client? Please explain your answers with reference to the relevant Rules, precedent and any other relevant material.