

YORK UNIVERSITY
OSGOODE HALL LAW SCHOOL

ETHICAL LAWYERING IN A GLOBAL COMMUNITY

COURSE SYLLABUS
PART 1
(31 AUGUST-3 SEPTEMBER 2010)

TERMS: Fall 2010-Winter 2011

DATES: Part I: 31 August-3 September 2010
Part II: 4-14 January 2011

COURSE INSTRUCTORS:

SECTION A: Chantal Morton
Sujith Xavier (Graduate Teaching Assistant)

SECTION B: Trevor Farrow (Course Director)
Claire Mumme (Graduate Teaching Assistant)

SECTION C: Patrick Monahan
Fenner Stewart (Graduate Teaching Assistant)

SECTION D: Allan Hutchinson
Maria Panezi (Graduate Teaching Assistant)

INTRODUCTION

Ethics, access to justice and professionalism – locally and globally – have increasingly become foundational topics of attention over the past several years at all levels of the justice community. This course is designed to look directly at those issues.

Specifically, this course provides an introduction to the legal profession, professional norms and values, and the ethical issues that lawyers grapple with not only in the context of their many and varied roles, but also as members of a profession with collective responsibilities in relation to the public interest and access to justice. The course situates these issues within their modern day context; that is, within a context characterized by local diverse communities, globalization, legal pluralism, transnationalism, and internationalization.

BACKGROUND

The changing nature of legal practice has resulted in the proliferation of practice contexts and roles for lawyers. This course introduces students to multiple visions of lawyering and professional roles and the many contexts in which those roles are performed. It asks whether and how context should matter in terms of how lawyers conceptualize their roles and their individual and collective professional and ethical obligations. It explores questions of how legal professionals working in different settings such as private practice, government, legal aid clinics, the legal academy, or beyond the formal practice of law, should conceptualize their roles, opportunities and obligations. It explores different lawyering visions; that is, visions of how one undertakes the task of lawyering: for instance, lawyer as collaborator, lawyer as deal-maker, lawyer as expert, lawyer as facilitator, lawyer as negotiator, lawyer as translator/storyteller, lawyer as friend and lawyer as hired gun. It questions the centrality of adversarialism and neutral partisanship (the “hired gun” vision) in depictions of lawyers’ roles. It emphasizes the importance of a self-conscious selection of lawyering visions. In the process, it draws students’ attention to the power dynamics in lawyer-client relationships, to the scope of conversations lawyers ought to have with clients, and to possible individual and collective duties beyond those owed to clients. In so doing, the course will put the concept of the public interest front and centre and ask students to engage in a critical and self-reflective conversation about what the public interest is and what it means in terms of lawyering, the profession and professionalism. Central to all of these discussions will be the underlying theme of access to justice.

Further, the communities served by lawyers, the practice contexts in which they work and the problems they encounter are increasingly diverse, complex, transnational and global in character, demanding new competencies and raising a host of new issues about ethics and professionalism. More and more lawyers engage in transnational practices, including, for example, corporate, family, labour and human rights practices. Knowledge of other legal systems and the norms of professional conduct in other jurisdictions are increasingly essential in such settings. Even beyond these self-consciously transnational contexts, few if any fields remain in which legal professionals can rely solely on knowledge of a single, domestic legal system. Local communities are microcosms of global diversity in which a multiplicity of official and unofficial legal orders and ethical systems overlap. The increasingly pluralistic nature of modern local communities demands that the vast majority of lawyers will be required to work in contexts that require cross-cultural competencies and sensitivities to diverse moral perspectives. Indeed, competent legal representation necessitates attention to the cross-cultural and international, comparative and transnational (ICT) dimensions of much legal work.

LEARNING OBJECTIVES

The overall objective of this course is to encourage students to engage in an expansive, moral conversation about lawyering that will lead to a reflective and critical approach to ethical lawyering in a global community.

By the end of the course, students should be able to:

- demonstrate an understanding of the history, structure and regulatory processes of the Canadian legal profession;
- demonstrate knowledge of the norms traditionally associated with the legal profession as reflected in rules of professional conduct and related enabling legislation;
- appreciate the legal profession as, itself, a normative system, wherein the norms are not given and static but contested and shifting;
- appreciate the breadth and diversity of visions or philosophies of lawyering;
- demonstrate the ability to think critically about the legal profession and professionalism;
- demonstrate an understanding of multiple conceptions of access to justice and the public interest, two of the central norms claimed by the legal profession;
- demonstrate knowledge of the multiplicity of legal and normative orders in which lawyering occurs and understand how this multiplicity of orders may impact both client representation and the collective responsibilities of the profession;
- appreciate some of the many and varied impacts of globalization and internationalization on the practice of law and the regulation of the profession;
- discern ethical frameworks that are appropriate to various lawyering roles and practice contexts;
- engage in ethical deliberations about legal problems in manners that are open to multiple viewpoints, moral perspectives and legal orders;
- demonstrate an understanding of some of the basic ICT (international, comparative and transnational) concepts;
- identify and apply connections between the knowledge, skills and contextual discussions raised in this course and other law and pre-law school courses and experiences; and
- work collaboratively with others to resolve concrete problems.

MATERIALS

The course materials will be primarily provided in two sets, one for each of Part I and Part II. The materials for Part I are available as a combination of on-line readings

(through links set out in this course syllabus) and print materials (available for purchase at MDC). To save cost and paper, print copies of the on-line readings will not be made. Materials for Part II will be available prior to Part II. Further materials may be provided from time to time for individual sessions and by individual instructors. The faculty course web sites of the instructors for each of the sections may also contain further notices and materials.

EVALUATION

Final course grades will be assigned following Part II of the course and will be released with other first year grades in June 2011. Evaluation for the course is based on the following five components.

- Part I Participation (value: 2%)
 - Students will be asked to write brief statements of his/her key learning points during the course. These short statements will be handed in during the section meetings. These statements will be summarized each day and the summary posted on the course instructor's website and/or discussed in class.
- Part I Written Assignment (value: 10%)
 - A short essay that briefly discusses one of the themes from Part I and that ties the discussion of the theme to three of the readings for Part I. The essay is limited to 3 double-spaced, type-written, 12 point font pages (excluding the cover page). It is based on the course materials, discussions and your own observations and experiences and should therefore include no outside research. This essay should be submitted through the Osgoode on-line drop box by 8:30 a.m. on Monday, 13 September 2010. The on-line drop box is available through the MyOsgoode website (follow the instructions provided in the Quicklinks section). Please make sure to include a separate cover sheet, which should provide: the name of the course; your confidential student assignment number; the name of your professor; the date and the name/title of the assignment. Assignments can be submitted in either .doc or .docx format. Hard copies will not be accepted. It is important to receive and record your confirmation of submission number. A late submission penalty of 1 mark per day (or partial day) will apply.
- Part II Case Studies (value: 30%)
 - Part II of the course will feature case study exercises that will form the bases of a number of lawyering activities. Much of this work will be done in small groups, and performance will be graded. A late submission penalty will apply.

- Part II Participation (value: 3%)
 - This element of the course evaluation will be based on attendance and participation in small group and other learning activities during Part II of the course. This participation grade will be focused on Part II learning activities other than the Part II case studies.

- Final Assignment (value: 55%)
 - The final element of course evaluation will be a written assignment. The question(s) for the assignment will be distributed during Part II. The final assignment will be limited to 10 double-spaced, type-written, 12 point font pages. It will be due by 8:30 a.m. on Monday, 17 January 2011. In this assignment, you will need to use a reflective and critical approach, and to integrate readings and other learning materials from both Parts I and II of the course. The assignment will emphasize course materials, course discussions and your own observations and experiences and therefore should include no outside research. Further instructions will be provided in the syllabus for Part II of the course. A late submission penalty will apply.

ACADEMIC INTEGRITY AND OTHER IMPORTANT POLICIES

ACADEMIC HONESTY AND INTEGRITY

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules.

The Senate Policy can be found at:

<<http://www.yorku.ca/secretariat/policies/document.php?document=69>>.

The York University academic integrity website can be found at:

<<http://www.yorku.ca/academicintegrity>>.

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available from the Office of Student Services and on the MyOsgoode website.

RELIGIOUS OBSERVANCE

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let us know as soon as possible.

STUDENTS WITH DISABILITIES

York University has a range of resources to assist students with physical, mental, psychiatric and learning disabilities in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to the Osgoode Office of Student Services as soon as possible. All requests for accommodation will be kept confidential.

OTHER YORK UNIVERSITY POLICIES

Further information concerning relevant York University academic policies is available on the Senate Committee on Curriculum & Academic Standards webpage (in the “Reports, Initiatives and Documents” section):

<http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm>.

COURSE STRUCTURE

The course emphasizes problem-oriented, active learning. It will be taught – in two main parts – using primarily section and small group settings. During small group sessions teaching tools such as simulations, problems, case-studies, role plays, fictional accounts, biographies, films, collaborations, etc., will be used to encourage students to immerse themselves actively into complex ethical, professional and ICT contexts.

COURSE SCHEDULE

PART I (31 AUGUST-3 SEPTEMBER 2010)

DAY 1 (31 AUGUST 2010): ETHICS, ACTORS AND BUTLERS: DOES ROLE MATTER?

Time: 1:30 – 3:20

Plenary: 1:30 – 2:30

All sections: Moot Courtroom

Introduction: Trevor Farrow

Film excerpt and discussion: Allan Hutchinson

Questions

- What is ethical conduct?
- How might we describe our processes of ethical deliberation; that is, how do we come to ethical judgment?

- What justifications might we offer for our choice(s) of conduct?
- Does one's role – actor, butler, maid, other – matter in our assessment of ethical conduct?

Section Meetings: 2:30 – 3:20

Section A – Room 106 (Morton)

Section B – Room 101 (Farrow)

Section C – Room 206 (Monahan)

Section D – Room 104 (Hutchinson)

Preparation for Day Two

Please read the following materials in preparation for Day 2. As you read, please consider the questions outlined for Day 2 below.

- Allan Hutchinson, *Legal Ethics and Professional Responsibility*, 2d ed. (Toronto: Irwin Law, 2006) at 8-17 (course materials)
- *Law Society Act*, R.S.O. 1990, c. L.8, ss. 1(5)-(8), 2, 4.1-4.2, 26.1, 26.2(1)-(2), and 27(2), online: CanLII
<<http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Ontario&path=/on/laws/sta/l-8/20080616/whole.html>>
- CBA, *Code of Professional Conduct*, adopted by Council, August 2004, rev. ed. 2009 (Ottawa: CBA, 2009) at p. v (“President’s Message”), para. 1, online: CBA
<<http://www.cba.org/CBA/activities/pdf/codeofconduct.pdf>>
- Resolution of the Canadian Bar Association (CBA), 06-09-A, “Statement of Core Principles of the Legal Profession” (12-13 August 2006), online: CBA
<<http://www.cba.org/cba/resolutions/pdf/06-09-AC.pdf>>
- United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR), “Basic Principles on the Role of Lawyers” (1990), online: UN
<<http://www2.ohchr.org/english/law/lawyers.htm>>
- David M. Tanovich, “Law’s Ambition and the Reconstruction of Role Morality in Canada” (2005) 28 Dal. L.J. 267 at 268-273 (excerpt from “Introduction”), 274-286 (pt. I (1)-(3)), online: Law Society of Upper Canada (LSUC)
<http://www.lsuc.on.ca/media/seventh_colloquium_tanovich.pdf>

DAY 2 (1 SEPTEMBER 2010): ETHICS AND THE ROLE(S) OF LAWYERS**Time: 10:30 – 12:20 Section Meetings**

Section A – Room 106 (Morton)

Section B – Room 204 (Farrow)

Section C – Room 107 (Monahan)

Section D – Room 101 (Hutchinson)

Questions

- What is a profession?
- What is meant by professionalism?
- What is the significance of being a member of the legal profession?
- Who regulates the profession and why?
- What roles do professional codes of conduct play?
- What roles do lawyers play? What does it mean to be a lawyer?
- What is “neutral partisanship” and what are the ethical justifications that accompany it?
- What is the link between the regulation of the profession and the rule of law?
- What may be the connection between neutral partisanship and the rule of law?
- Is the paradigm of “neutral partisanship” consistent with the Statement of Core Values of the Legal Profession and/or with the statutory mandate of the profession granted to it pursuant to the *Law Society Act*?
- Neutral partisanship presupposes a particular role for lawyers, but given that lawyers play many roles, can neutral partisanship be justified or sustained across all of these roles?
- Neutral partisanship assumes that it is only the positive law that defines the boundaries of what the lawyer ought to do for the client. Are there other considerations – personal ethics, common morality, justice, etc. – that might set additional boundaries?

Preparation for Day 3

Please read the following materials in preparation for Day 3. As you read, please consider the questions outlined for Day 3 below.

- Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism’: Historical Perspectives” at 2-3 - 2-13 (“Barriers to Entry: Something Less than a Warm Welcome?”), paper presented at the Chief Justice of Ontario’s Advisory Committee on Professionalism, First Colloquium on the Legal Profession (October 2003), online: LSUC <http://www.lsuc.on.ca/media/constance_backhouse_gender_and_race.pdf>
- Fiona M. Kay, “Integrity in a Changing Profession: Issues of Diversity and Inclusion” (28 November 2005) at 29-30 (“Conclusions and Consequences”), online: LSUC <<http://www.lsuc.on.ca/media/kaydiversityintegrity.pdf>>
- Rosemary Cairns Way, “Reconceptualizing Professional Responsibility: Incorporating Equality” (2002) 25 Dal. L.J. 27 (excerpts) (course materials)
- David B. Wilkins, “Identities and Roles: Race, Recognition, and Professional Responsibility” (1998) Md. L. Rev. 1502 (excerpts) (course materials)
- Paul Schiff Berman, “The New Legal Pluralism” (2009) 5 Annual Rev. L. & Soc’y Sc. 225, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1505926>

DAY 3 (2 SEPTEMBER 2010): PROFESSIONAL VALUES, DIVERSITY AND PLURALISM**8:30 – 10:20 Section Meetings**

Section B – Room 104 (Farrow)

Section D – Room 107 (Hutchinson)

12:30 – 2:20 Section Meetings

Section A – Room 106 (Morton)

Section C – Room 107 (Monahan)

Questions

- What might be the implications of the profession’s historical social composition and norms of “gentlemanly civility” for the present-day profession?
- What implications might pluralism and diversity have for lawyering? For the legal profession? For the identification and resolution of ethical dilemmas that arise in the context of client representation? For the paradigm of neutral partisanship?

- What implications might globalization and internationalization have for lawyering? For the legal profession?
- What does it mean for lawyers – individually and collectively – to have differing lawyering visions?

Preparation for Day 4

Please read the following materials in preparation for Day 4. As you read, please consider the questions outlined for Day 4 below.

- Roderick A. MacDonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Julia Bass, W. A. Bogart and Frederick H. Zemans, eds., *Access to Justice for a New Century: The Way Forward* (Toronto: The Law Society of Upper Canada, 2005) 19-31, 99-101 (course materials)
- Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008) at 1-2, 17-19, 229-235, 237 (course materials)

DAY 4 (3 SEPTEMBER 2010): ACCESS TO JUSTICE, THE PUBLIC INTEREST AND THE FUTURE OF LAWYERS

Time: 9:30 – 12:20 Section Meetings

Section A – Room 106 (Morton)

Section B – Room 206 (Farrow)

Section C – Room 104 (Monahan)

Section D – Room 107 (Hutchinson)

Questions

- What does it mean to claim that the legal profession exists in the public interest?
- If the legal profession’s self-regulated monopoly is justified by reference to the “public interest,” who is the “public” and what is the “public interest”? Are only some lawyers “public interest” lawyers or are all lawyers “public” lawyers in some sense? How might we think about the “public” given the diversity of geographic regions, social groups and individual citizens? Can the “public” be defined only in terms of the political borders of the Canadian state?
- What is the nature of the profession’s obligation to the public interest? Is it discharged by advancing clients’ interests? By performing a certain amount of *pro bono* work? By serving on volunteer boards? Etc.

- What is access to justice? Whose access? Whose justice? How might our thinking about access to justice be impacted by pluralism or globalization?
- What role should the profession play in advancing access to justice?
- How, if at all, might considerations of access to justice shape the ethical choices a lawyer makes in the course of representing a client?
- Are our current visions of lawyers and professionalism sustainable? Should they be?
- What connections can you look for throughout the coming year between the ideas developed in this course and the other courses in the first year?

Assignment

The Part I written assignment is due by 8:30 a.m. on Monday, 13 September 2010 (see instructions above).

- - - *End of Part I Course Syllabus* - - -