

TABLE OF CONTENTS

ACKNOWLEDGMENTS	V
TABLE OF CASES	XXV

PART I. AN INTRODUCTION TO THE AMERICAN LEGAL PROFESSION

Chapter 1. The Role of the Lawyer	3
A. Introduction to the Role of the Lawyer	3
B. Are Legal Ethics Different from Other Ethics?	3
Problem 1-1: The Case of Spaulding v. Zimmerman, 263 Minn. 346 (Minnesota Supreme Court 1962)	4
Notes on <i>Spaulding v. Zimmerman</i>	6
C. Justifications for a Distinct Form of Legal Ethics	8
Lawyers as Professionals: Some Moral Issues	9
Notes on Wasserstrom	17
D. Summary	18
Chapter 2. The American Legal Profession: An Overview	19
A. Introduction	19
B. What Is a Profession?	19
C. Historical Perspectives on the American Legal Profession	21
A History of American Law	21
The American Legal Profession, 1870–2000	22
Notes on the Profession’s History	27
D. Empirical Research on the Contemporary Bar	27
Chicago Lawyers: The Social Structure of the Bar	28
Notes on Heinz & Laumann’s Chicago Lawyers I	29
The Changing Character of Lawyers’ Work: Chicago in 1975 and 1995	30
Notes on Chicago Lawyers II	31
Notes on the After the JD Study	35
E. The Rules of Professional Responsibility and Other Sources of Lawyer Regulation	37
Notes on Sources of Lawyer Regulation	39
F. Globalization and the Legal Profession	39
G. What Is Professionalism?	41
Notes on Professionalism	44
H. Summary	45
Chapter 3. The Lawyer’s Role: The Amoral Conception and Its Critics	47
A. Introduction	47

B.	The Amoral Conception	47
	In the Shadow of the Law	48
	Notes on Roosevelt	49
	The Lawyer's Amoral Ethical Role: A Defense, a Problem, and Some Possibilities	49
	Notes on Pepper	54
C.	Critiques of the Amoral Conception	54
	The Lysistratian Prerogative: A Response to Stephen Pepper	55
	Notes on Luban's Critique of Pepper	59
D.	Alternatives to the Amoral Conception	59
	The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality	61
	Lawyers and Fidelity to Law	63
	Notes on Alternatives to Amoral Advocacy	65
E.	Is Criminal Defense Different?	66
	Notes on Criminal Defense as a Special Case	67
F.	The Choice of Clients and Causes	67
	Notes on the Choice of Clients and Causes	73
G.	Summary	74
Chapter 4. Diversity of the Legal Profession		75
A.	The Diversity of the Legal Profession	75
	1. Race and Ethnicity	75
	Notes on Racial and Ethnic Demographics of the Profession	77
	2. Gender	77
	Women in the Legal Profession	79
	Notes on Gender and the Profession	81
	3. Sexual Identity	82
	Notes on the Demographics of LGBTQ Lawyers	83
	4. Lawyers with Disabilities	83
	Notes on the Demographics of Lawyers with Disabilities	84
B.	Understanding the Reasons for the Demographics	84
	Experiencing Discrimination: Race and Retention in America's Largest Law Firms	85
	Notes on Payne-Pikus, Hagan, & Nelson	87
	The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender	88
	Notes on the Part-Time Paradox	90
	Notes on Understanding the Underrepresentation of Lawyers with Disabilities	92
C.	Evaluating the Arguments for Diversity	93
	Good Business: A Market-Based Argument for Law Firm Diversity	93
	Notes on the Arguments for Diversity	95
D.	Summary	96

Chapter 5. Expressions of Self in Lawyering 97

A. Introduction 97

B. Should Personal Identity Influence Professional Identity?..... 97
 Beyond “Bleached Out” Professionalism: Defining Professional
 Responsibility for Real Professionals 97
 Notes on Wilkins 101

C. How Does Personal Identity Influence Professional Role? 101
 Feminist Legal Methods 103
 Notes on Bartlett 104

D. Personal Identity as a Source of Inspiration in Professional Life..... 105
 Religious Lawyering in a Liberal Democracy: A Challenge and an
 Invitation 105
 Notes on Pearce & Uelmen 108
 Be Professional! 109
 From the Closet to the Courtroom 110
 Notes on Spade and Rubenstein..... 111

E. Summary..... 113

PART II. A SURVEY OF PRACTICE SETTINGS/TYPES

SUBPART A. CRIMINAL PRACTICE

Chapter 6. Criminal Defense Practice..... 119

A. Introduction 119

B. Understanding Indigent Criminal Defense 122
 Reinterpreting the Zealous Advocate: Multiple Intermediary Roles
 of the Criminal Defense Attorney 123
 The Public Defender: The Practice of Law in the Shadows of
 Repute 125
 Notes on the Role of the Public Defender 129

C. The Right to Effective Assistance of Counsel 130

1. The Constitutional Law Governing Appointed Criminal
 Defense Lawyers..... 130

2. The Challenges of Implementing *Gideon*..... 131
 The Right to Counsel in Criminal Cases, a National Crisis 134
 Poor People Lose: *Gideon* and the Critique of Rights 138
 Notes on the Constitutional Right to Counsel..... 139

3. Ineffective Assistance of Counsel 140

D. The Rewards and Challenges of Criminal Defense Practice 142
 Beyond Justifications: Seeking Motivations to Sustain Public
 Defenders 142
 Notes on the Rewards and Challenges of Indigent Criminal
 Defense 147

E. Summary..... 148

Chapter 7. Criminal Prosecution..... 149

A. Introduction 149

B. The Law Governing the Prosecutorial Role..... 151

C.	Wrongful Convictions.....	152
	Notes on Wrongful Convictions	157
D.	Prosecutorial Discretion in Charging	159
	Prosecutorial Discretion in the Post- <i>Booker</i> World.....	160
	1. The Tension Between Uniformity and Discretion.....	161
	2. Prosecutorial Discretion in Charging Decisions Based on Social Policy	163
E.	Prosecutors and Plea Bargaining.....	164
F.	Disclosure Obligations	165
	1. <i>Brady</i> Violations in Street Crime Cases: <i>Connick v. Thompson</i> ...	169
	Notes on <i>Connick v. Thompson</i>	170
	2. <i>Brady</i> Violations in High-Profile White Collar Cases: <i>United States v. Stevens</i>	171
	Notes on the <i>Stevens</i> Case	173
	3. The Duty to Do Justice.....	174
	Prosecutorial Discretion at the Core: The Good Prosecutor Meets <i>Brady</i>	174
G.	Summary.....	176

SUBPART B. LARGE ORGANIZATIONAL CLIENTS

Chapter 8. Large Law Firms	181	
A. Introduction	181	
B. The Large Law Firm: Origins, Structure, and Change	181	
	The Transformation of the Big Law Firm	182
	Notes on Galanter & Palay	184
	The Change Agenda: Tournament Without End.....	187
	Notes on Changes in Large Law Firms Since the Golden Age.....	188
	Notes on Changed Structure and Personnel Practices	189
C. The Experience of Large Firm Associates	190	
	Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love.....	190
	Notes on Garth & Sterling.....	197
D. Who Is the Client of a Corporate Lawyer?.....	198	
	Who Is the Client? The Corporate Lawyer's Dilemma	198
	Notes on Jonas.....	199
E. Large Firm Lawyers' Values and Relationships with Clients	200	
	Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm.....	200
	The Elastic Tournament: A Second Transformation of the Big Law Firm.....	202
	Notes on Nelson and Galanter & Henderson	205
F. Large Firms and Corporate Misconduct.....	206	
	Notes on the Case Studies	211
G. The Future of the Large Firm	212	
	Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy	213

Notes on Burk & McGowan	215
H. Summary.....	215
Chapter 9. Counseling	217
A. Introduction	217
B. Counseling Versus Advocacy	218
Professional Responsibility: Report of the Joint Conference.....	218
Notes on Fuller & Randall.....	218
C. Corporate Counseling.....	219
A New Role for Lawyers? The Corporate Counselor After Enron.....	219
Notes on Gordon	228
Corporate Governance and a Business Lawyer's Duty of Independence	229
Notes on Allen	231
Team of Rivals? Toward a New Model of the Corporate Attorney- Client Relationship.....	232
Notes on Wilkins	234
D. Counseling Government Clients	235
Government Lawyers in the Trump Administration.....	235
Notes on Advising Government Clients.....	236
E. Summary.....	238
Chapter 10. In-House Counsel.....	239
A. Introduction	239
B. What Do In-House Counsel Do?	240
Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations.....	240
Notes on Nelson & Nielsen.....	242
C. In-House Counsel and Professional Independence	244
Moral Mazes: The World of Corporate Managers	244
Note on Jackall.....	245
Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations.....	246
Notes on Nelson & Nielsen	249
D. Corporate Scandals and the Role of In-House Counsel	250
Saw No Evil	250
Notes on HP Pretexting Scandal.....	256
Notes on Backdating at Apple	258
Wal-Mart Bribery Case Raises Fundamental Governance Issues.....	262
Note on Walmart Bribery	263
Note on the Scandals.....	267
E. The Role of In-House Counsel Post-Enron	268
Notes on the Role of In-House Counsel Post-Enron.....	270
F. Summary.....	273

Chapter 11. Government Lawyers	275
A. Introduction	275
B. Who Is the Client of the Government Lawyer?	276
Notes on the Client of the Government Lawyer.....	277
C. The Government Lawyer as Counselor.....	278
1. A Case Study: The Torture Memos	278
Memorandum from Jay S. Bybee to Alberto Gonzalez	279
Notes on the Torture Memos	283
A “Torture” Memo and its Tortuous Critics.....	284
Legal Ethics and the Separation of Law and Morals	286
Notes on the Debate over the Torture Memos.....	290
2. A Case Study: The “Muslim Ban” Order and the Firing of Sally Yates.....	293
Quick Thoughts on Sally Yates’ Unpersuasive Statement.....	295
Government Lawyers in the Trump Administration	298
Notes on the Muslim Ban and Yates Firing	299
D. Summary.....	300
 SUBPART C. INDIVIDUAL AND SMALL BUSINESS CLIENTS	
Chapter 12. Solo and Small Firm Practice	303
A. Introduction	303
B. Portraits of Solo and Small Firm Practice.....	303
The Business of Practicing Law: The Work Lives of Solo and Small- Firm Attorneys	304
Notes on Seron.....	306
Specialty Bars as a Site of Professionalism: The Immigration Bar Example	307
Notes on Paths to Solo or Small Firm Practice	315
C. Ethical Issues in Solo and Small Firm Practice.....	315
The Ethical World of Solo and Small Law Firm Practitioners.....	316
Notes on Levin.....	322
D. Summary.....	323
Chapter 13. Plaintiffs’ Practice	325
A. Introduction	325
B. The Structure of the Plaintiffs’ Bar and Stratification Within It	325
Philip Corboy and the Construction of the Plaintiffs’ Personal Injury Bar	326
Notes on Parikh & Garth.....	332
Notes on the Communities of Plaintiffs’ Practice	337
C. Contingency Fees and Fee-Shifting Statutes	338
D. Summary.....	340
Chapter 14. Boutiques	341
A. Introduction	341
B. What Is a Boutique?.....	341

C.	The Formation and Survival of Boutiques	343
	The Law of Interest Versus the Interest of Law, Or On Lending to Law Firms	348
	Notes on Boutiques	351
D.	Summary.....	352

SUBPART D. LAWYERS AND THE PRACTICE OF DISPUTE RESOLUTION

Chapter 15. Lawyers as Third-Party Neutrals: Mediation and Arbitration.....	355	
A. Introduction	355	
B. What Roles Do Lawyers Play in ADR?	357	
C. How Is the Legal Practice of ADR Regulated?	359	
D. Mediation	360	
	Notes on Mediation	364
E. Arbitration	365	
F. Summary.....	370	

SUBPART E. PUBLIC INTEREST PRACTICE

Chapter 16. Legal Services.....	373	
A. Introduction	373	
B. Funding of Legal Services.....	375	
	Taking Out the Adversary: The Assault on Progressive Public- Interest Lawyers.....	376
C. The Work of Legal Services Lawyers	380	
	Notes on the Work of Legal Services Lawyers	383
	Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change.....	384
	Notes on Hung	386
D. The Impact of Legal Services Programs	387	
	Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes	388
	Notes on the Impact of Legal Assistance.....	392
E. Summary.....	392	
Chapter 17. Public Interest Law.....	393	
A. Introduction	393	
B. What Is Public Interest Law?	393	
	Defining Public Interest Lawyering.....	394
	Notes on Chen & Cummings	396
	Conservative Lawyers and the Contest Over the Meaning of “Public Interest Law”	398
	Notes on Southworth.....	399
C. What Is a Cause Lawyer?	401	
	Professional and Political Perspectives	401
	Notes on Scheingold & Sarat.....	406

D.	Issues of Accountability in Public Interest Practice	407
	Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation	409
	Notes on Bell.....	412
	Of Causes and Clients: Two Tales of <i>Roe v. Wade</i>	412
	Notes on McMunigal	418
E.	Summary.....	418

PART III. CHALLENGES AND OPPORTUNITIES FOR THE PROFESSION IN THE 21ST CENTURY

Chapter 18. The Market for Legal Services	421	
A. Introduction	421	
B. The Cost of Legal Services.....	422	
	The Price of Law: How the Market for Lawyers Distorts the Justice System.....	422
	Notes on the Price of Law	425
C. Other Influences on Ordinary Americans' Use of Legal Services	426	
	Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services.....	427
	Notes on Sandefur	432
D. Ex Ante Legal Services	432	
	Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans.....	433
	Notes on Ex Ante Legal Services.....	437
E. Summary.....	439	
Chapter 19. Unauthorized Practice and Non-Lawyer Involvement in the Provision of Legal Services.....	441	
A. Introduction	441	
B. What Is the Unauthorized Practice of Law?.....	441	
C. Do Unauthorized Practice Restrictions Protect the Public?	446	
	The Monopoly Myth and Other Tales About the Superiority of Lawyers	448
	How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering	450
	Notes on the Consumer Protection Rationale for Unauthorized Practice Restrictions.....	451
	First Thing We Do, Let's Deregulate All the Lawyers.....	452
	Notes on Deregulation	453
D. Innovations in the Provision of Legal Services to Individual Clients... 454		
	Legal Services for All: Is the Profession Ready?	454
	Notes on Charn.....	456
E. Outside Ownership of Legal Services Providers	457	
	Notes on Outside Ownership of Legal Services Providers	460
F. Summary.....	460	

Chapter 20. Pro Bono	463
A. Introduction	463
B. Pro Bono's Role in Providing Access to Legal Services	463
The Politics of Pro Bono	464
Notes on Cummings	468
Lawyers' Pro Bono Service and American-Style Civil Legal Assistance	468
Notes on Sandefur	471
C. Who Does Pro Bono, How Much, and Why?	472
Pro Bono as an Elite Strategy in Early Lawyer Careers	473
Notes on Dinovitzer & Garth	478
Pro Bono and Low Bono in the Solo and Small Firm Context	478
Note on Levin	481
D. Mandatory Pro Bono	481
Notes on Mandatory Pro Bono	482
E. Summary	483
Chapter 21. Practicing Across Borders and Boundaries	485
A. Introduction	485
B. Multijurisdictional Practice	486
Notes on Multijurisdictional Practice	488
C. Unbundling and Outsourcing	488
Outsourcing and the Globalizing Legal Profession	489
Supply Chains and Porous Boundaries: The Disaggregation of Legal Services	490
Notes on Unbundling and Outsourcing	493
D. Multidisciplinary Practice	495
The Rise, Transformation, and Potential Future of the Big 4: Accountancy Networks in the Global Legal Services Market	496
Notes on Multidisciplinary Practice	500
E. Transnational Practice	500
Notes on Transnational Practice	504
F. Summary	504
Chapter 22. Legal Education	507
A. Introduction	507
B. The History of Legal Education	507
1. Foundations of Contemporary Legal Education	508
Law School: Legal Education in America from the 1850s to the 1980s	508
Notes on Legal Education Before 1940	511
2. The History of Critiques of Legal Education	512
C. Content and Pedagogy	516
Notes on the Law School Curriculum	519

D.	The Globalization of Legal Education.....	519
	Sticky Floors, Springboards, Stairways & Slow Escalators: Mobility Pathways and Preferences of International Students in U.S. Law Schools	520
	Notes on the Globalization of Legal Education	522
E.	Contemporary Debates over Legal Education.....	522
1.	Rankings and Stratification.....	522
2.	Cost.....	523
	Failing Law Schools	525
	Notes on the Cost of Legal Education	527
3.	Should Law School Be Two Years or Three?	529
	Notes on Two Years Versus Three Years.....	531
4.	Too Many Lawyers? Too Many Law Schools?.....	532
	Doing Good Instead of Doing Well? What Lawyers Could Be Doing in a World of “Too Many” Lawyers	533
	Notes on the “Too Many Lawyers” Question	535
5.	Law School Admissions.....	536
	Notes on Law School Admissions	538
F.	Proposals for Reform.....	538
	Notes on Proposals for Reform	540
G.	Summary.....	541
Chapter 23. Bar Admission and Discipline		543
A.	Introduction	543
B.	Admission to the Bar.....	543
1.	Bar Examination	544
a.	Does the Bar Exam Measure Competence?	545
b.	Is the Bar Exam Sufficiently Job-Related to Justify Its Disparate Impact?	546
	Notes on Bar Examinations	548
2.	Moral Character and Fitness to Practice.....	549
3.	Rethinking Requirements for Bar Admission	552
C.	Discipline	553
	Notes on Bar Discipline	556
D.	Summary.....	556
Chapter 24. Lawyer Satisfaction and Well-Being.....		557
A.	Introduction	557
B.	Are Lawyers Unhappy?.....	557
	On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession	557
	Notes on Schiltz.....	562
C.	What Is Career Satisfaction; How Should We Measure It?; Comparative Perspectives	563
	Cross-Examining the Myth of Lawyers’ Misery.....	563
	Notes on Hull.....	566
	Thinking About the Business of Practicing Law.....	566

Notes on Kelly.....	568
Notes on Recent Research.....	571
D. Lawyer Well-Being.....	573
Notes on Lawyer Well-Being.....	575
E. Summary.....	577
Chapter 25. Reflections on the Future of the Legal Profession.....	579
A. Introduction.....	579
B. The Future of Legal Services.....	580
Notes on New Law Jobs and Employers.....	584
Notes on Artificial Intelligence.....	590
C. The Influence of Millennial Lawyers.....	591
The Elastic Tournament: A Second Transformation of the Big Law Firm.....	591
Notes on Galanter & Henderson.....	593
Deciphering the Millennial Lawyer.....	595
Notes on Furlong.....	596
D. Charting a Career.....	597
Tomorrow's Lawyers: An Introduction to Your Future.....	597
Notes on Susskind.....	598
Life on the Mississippi.....	598
Notes on Twain.....	601
E. Summary.....	602
INDEX.....	603