

# TABLE OF CONTENTS

---

ACKNOWLEDGMENTS .....	V
COPYRIGHT ACKNOWLEDGMENTS AND LICENSES .....	VII
<b>Chapter 1. Introduction to Behavioral Legal Ethics .....</b>	<b>1</b>
I. Introduction .....	1
II. Foundational Concepts .....	5
III. Introductory Exercises and Unconscious Cognition.....	6
<b>Chapter 2. Overview of Biased Reasoning.....</b>	<b>11</b>
I. Introductory Exercise.....	11
II. Motivated Reasoning.....	13
III. Impact on Ethical Behavior .....	15
IV. Cognitive Dissonance .....	17
V. Case Study and Questions for Further Reflection .....	17
<b>Chapter 3. Admission to Practice .....</b>	<b>21</b>
I. The Vague and Discretionary “Good Moral Character” Determination.....	21
II. Appreciating the Situation and the Fundamental Attribution Error .....	22
III. Case Study and Questions for Further Reflection .....	25
<b>Chapter 4. Confidentiality .....</b>	<b>31</b>
I. Exception to Prevent Physical Harm to Others .....	31
A. Motivated Reasoning.....	31
B. Social Norms .....	34
II. Other Exceptions to Confidentiality .....	35
III. Exercises and Questions for Further Reflection .....	36
<b>Chapter 5. Recurring Problems.....</b>	<b>43</b>
I. Managerial and Subordinate Responsibility for Unethical Behavior .....	43
A. Law’s Work Teams .....	43
B. Social Psychology Principles—Wrongful Obedience and Conformity .....	45
1. Obedience .....	45
2. Conformity.....	49
C. The Power of the Situation on Work Teams .....	51

D. Case Study and Questions for Further Reflection .....	51
II. Duty to Report Unethical Behavior.....	54
<b>Chapter 6. Practice Areas.....</b>	<b>61</b>
I. Lawyers for the Corporation.....	61
A. Overview of the Role of In-House Counsel.....	61
1. Distinguishing In-House Counsel and Private Practice Attorneys .....	61
2. Unique Responsibilities: Counseling to Dissuade and Disclosing Wrongdoing.....	62
B. Psychological Factors .....	63
1. Identity Theory—Alignment with the Organizational Client’s Executives or Agents .....	63
2. Obedience and Conformity Pressures .....	66
3. Motivated Reasoning and Motivated Blindness .....	67
C. Case Study and Questions for Further Reflection .....	69
II. Prosecutors.....	71
A. Case Study: Steven Avery .....	71
B. Components of Tunnel Vision.....	73
C. Exercise for Further Reflection .....	76
III. Criminal Defense Lawyers .....	77
A. Structural Impediments to Competent Representation ....	77
B. Ethical Blindness.....	79
1. Confirmation Bias and Motivated Reasoning .....	79
2. Other Cognitive Biases.....	81
3. Situational Factors .....	82
C. Case Study and Questions for Further Reflection .....	83
IV. Civil Government Lawyers .....	84
A. Case Study: The Torture Memos .....	85
B. Behavioral Analysis.....	86
C. Exercise and Questions for Further Reflection .....	89
<b>Chapter 7. Conflicts of Interest.....</b>	<b>97</b>
I. Assessing Conflicts of Interest .....	97
A. Motivated Reasoning.....	97
B. Overconfidence Bias .....	99
II. Waiver and Informed Consent.....	102
III. Responding to Alleged Conflicts.....	104
IV. Exercises and Questions for Further Reflection .....	106
<b>Chapter 8. Negotiation and Litigation Ethics.....</b>	<b>111</b>
I. Introduction .....	111
II. Behavioral Legal Ethics Implications for Negotiation and Litigation Ethics.....	112

A.	Acting for Another—Agency Factor, Responsibility Diffusion, Ethical Fading, and Role Differentiated Behavior .....	112
B.	Unrealistic Perceptions—Partisan Bias, Optimistic Forecasting, and Anchoring .....	114
C.	Adversarial and Situational Impacts .....	116
III.	Case Studies and Questions for Further Reflection.....	117
A.	Negotiation Ethics—Lying During Negotiations .....	117
B.	Litigation Ethics—Hiding Exculpatory Evidence .....	118
<b>Chapter 9. Legal Fees and the Billable Hours Model.....</b>		<b>123</b>
I.	Introduction to the Billable Hour and Other Legal Fee Models .....	123
II.	Law Firms and the Billable Hour .....	124
III.	Psychological Factors Facilitating Unethical Billing.....	129
A.	No Supervision.....	129
B.	Outcome Bias.....	129
C.	A Victimless Offense?.....	130
D.	The Slippery Slope and Rationalization.....	130
IV.	Case Study and Questions for Further Reflection .....	133
<b>Chapter 10. Attorney Mistake .....</b>		<b>137</b>
I.	Attorney Mistake.....	137
A.	Mistake Recognition—a Behavioral Analysis.....	138
1.	Motivated to Avoid the “Dread” .....	139
2.	Mistake Characteristics and the Situation .....	139
3.	Overconfidence and Belief Perseverance .....	141
B.	Mistake Acknowledgement .....	141
1.	Loss Aversion .....	142
2.	Mistake Characteristics and the Situation .....	142
C.	On a Positive Note—Learning from Mistake .....	143
II.	Case Study and Questions for Further Reflection .....	143
<b>Chapter 11. Potential Solutions.....</b>		<b>147</b>
I.	Individual Attorneys .....	147
A.	Awareness .....	148
B.	Self-Reflection.....	148
C.	Planning .....	150
D.	Reduce Situational Pressures.....	153
II.	Systemic Strategies .....	156
A.	Encouraging Ethical Considerations.....	157
1.	Firm Communication: Ethical Codes and Ethical Reminders .....	157
2.	Regular Ethics Education and Training .....	158

---

3.	Integrating Ethical Considerations into Performance Reviews, Promotion, and Compensation Decisions.....	159
4.	Consulting Opportunities—Providing a Safe Space for Work Review, Ethics Questions, Mistake Acknowledgement, and Uncomfortable Conversations.....	160
B.	Incorporate After-Action Reviews as a Routine Part of the Workplace .....	161
C.	Create an Environment That Values the “Win” but Not the “Win at All Costs”.....	162
D.	Control the Environment to Guard Against Wrongful Obedience .....	164
1.	Blur Hierarchies .....	165
2.	Train Attorney Supervisors .....	166
III.	Concluding Exercise and Questions for Reflection .....	167
	INDEX.....	175