

A Survey of Professional Responsibility Courses  
at American Law Schools in 2009

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In an effort to learn more about how professional responsibility is taught at American law schools, we developed an online survey at [www.surveymonkey.com](http://www.surveymonkey.com), which was directed at professional responsibility teachers nationwide. We received 105 responses from at least 77 different law schools over a three week period in May and June 2009. This article summarizes our findings.

I. Demographics of Survey Respondents

Question 1 asked respondents how they heard about the survey. The largest proportion of respondents (62.5%) heard about it from the Association of American Law Schools Professional Responsibility section listserv, which is sent to more than 600 people who are members of the AALS Section of Professional Responsibility. The second most significant source was the legeethics listserv, which is maintained at Washburn University School of Law and consists of full-time academics and adjuncts who teach professional responsibility as well as lawyers who practice in the area. 36.5% of the respondents learned about the survey through that list. Others learned about the survey through the AALS newsletter (8.7%), which was sent to the AALS PR listserv, the Legal Ethics Forum blog (11.5%), which is available on the Internet, or from someone they knew (1.9%). (Respondents were able to indicate that they heard about the survey from multiple sources.)

Question 2 asked respondents about their law school faculty status. The overwhelming majority of the respondents were members of the tenure track doctrinal faculty at their law schools (79.1%). 14.3% indicated that they were residential clinical faculty, rather than doctrinal tenure track faculty. Only a small percentage of respondents (6.6%) were adjunct faculty. The question inspired ten “other” responses, which included administrators, individuals with combined portfolios, legal writing faculty, and emeritus faculty.

Question 2	What status do you have at your school?
Tenure track doctrinal faculty	79.1%
Resident clinical faculty	14.3%
Adjunct faculty	6.6%

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Question 3 asked how frequently the respondents teach professional responsibility. Most (66.3%) taught the course at least once each academic year; a significant minority (11.5%) teach the course every semester. Others taught the course less frequently. 4.8% of the respondents used to teach the course but no longer do, while 5.8% do not teach the course but are interested in the subject matter. In sum, the vast majority of respondents regularly teach professional responsibility.

Question 12 asked respondents to identify where they teach. 92 out of 105 respondents answered this question, with 77 different schools identified. (Fifteen schools had two respondents, and no school had more than two respondents.) Because 13 respondents did not answer this question, it is likely that the survey was completed by professors from at least 80 different law schools (i.e., approximately 40% of all accredited law schools).<sup>1</sup> Accordingly, the respondents not only appear to teach professional responsibility regularly, but they come from a wide range of law schools.

## II. The Scope and Timing of Professional Responsibility Offerings at American Law Schools

Question 4 asked respondents how many credits students receive for taking the professional responsibility course at their school. The majority (57.7%) were three-credit courses; 22.1% indicated that the course was two credits, while a significant number (20.2%) indicated that the number of credits varied by professor. Accordingly, a majority of schools in the survey offer a three-credit professional responsibility course.

Question Four	How many credits do students receive for taking the professional responsibility course at your school?
2 credits	22.1%
3 credits	57.7%
Varies by professor	20.2%

Question 5 asked respondents to identify the year of law school when students take professional responsibility. The vast majority of schools (78.9%) permit students to take the class at any time after the first year of law school, with some of these schools (approximately 6% of all responding schools) offering students an opportunity to satisfy the requirement in a first year elective course during the second semester of law school. Most of the remaining schools (15.8%) require students to take the class in the second year of law school. One responding school requires professional responsibility to be taken in the first year of law school, and three schools in the survey (3%) require the course to be taken in the final year of law school.

Question 6 asked respondents whether their schools offer an advanced class in professional responsibility. A majority (52.0%) indicated that their schools do not offer such a class; 42.2% said that their schools do offer such a course; and the remainder were unsure. Among schools that do have an advanced class, the course titles that were

<sup>1</sup> Because we could not identify the school affiliations for all respondents, some of the questions (such as the number of credits offered at each school) may reflect duplicate responses from the same school.

offered varied considerably, including malpractice, philosophical treatments of legal ethics, and courses focusing on specific practice areas, such as corporate law and criminal law.

### III. Method of Student Assessment

Question 8 asked respondents: “Which of the following factors contribute to a student's grade in your class? (check all that apply).” Responses were as follows:

Question 8 (all respondents)	Which of the following factors contribute to a student's grade in your class? (check all that apply)
Exam with essay question	85.7%
Extent/quality of in-class participation	67.3%
Exam with multiple choice questions	57.1%
Written project (e.g., an essay or paper on a legal ethics issue)	29.6%
Quality of performance in simulations	18.4%

Three respondents (3%) indicated that they give some pass/fail assignments during the course. Three respondents (3%) indicated that students’ grades are determined, at least in part, through quizzes that are offered throughout the semester.

Clinicians were much more likely to identify simulations as a component of the grade and to assign a written project, and clinicians were less likely to administer an essay exam or a multiple choice exam. The low number of responses from clinicians (12) limits the reliability of these findings:

Question 8 (clinicians only –12 responding)	Which of the following factors contribute to a student's grade in your class? (check all that apply)
Exam with essay question	66.7%
Extent/quality of in-class participation	75.0%
Exam with multiple choice questions	41.7%
Written project (e.g., an essay or paper on a legal ethics issue)	50.0%
Quality of performance in simulations	41.7%

### IV. The Substance of Professional Responsibility Courses

Question 7 asked whether a respondent’s law school required professors to teach certain topics in their professional responsibility classes. A substantial majority of

respondents (91.3%) indicated that their schools do not impose any such requirements. Approximately 6% indicated that their schools do impose some requirements, with one school in California requiring coverage of the California ethics rules and two other responding schools indicating that they are asked to comply with the accreditation standards.

Question 9 asked respondents which book they currently assign to their students. Respondents had twenty-five options and an opportunity to write in the names of books that had been excluded from the list. There were two notable findings. First, professional responsibility teachers use a wide range of books. Only one book was identified by more than 10% of respondents (that book was identified by 30.9% of respondents). Six books were identified by between 5% and 10% of respondents, and seven books were identified by between 1% and 4% of respondents. The second remarkable finding was how many professors (13%) use their own materials, making self-prepared materials the second most common answer. (The responding clinicians were especially likely to use their own materials, with 33% (4 out of 12) so noting.)

Question 10 asked respondents which books they had used in the past. Respondents were offered the same list of books as in question 9. Although two books were identified by more than 30% of respondents, there was once again a wide range of answers.

Question 11 explored the coverage of the typical professional responsibility class by asking how much time respondents spend on a wide range of topics. The responses appear below.

<b>How much coverage do you offer of the following topics? (out of 105 respondents)</b>				
	<b>This topic is not covered.</b>	<b>Covered for fewer than 2 hours of class time</b>	<b>Covered for more than two hours of class time</b>	<b>Response Count</b>
Theoretical/philosophical issues concerning the lawyer's role and the adversarial system	6.2% (6)	47.4% (46)	46.4% (45)	97
Professionalism	6.3% (6)	48.4% (46)	45.3% (43)	95
Self-regulation of the bar	3.2% (3)	77.9% (74)	18.9% (18)	95
Competence	2.1% (2)	56.3% (54)	41.7% (40)	96
Malpractice	6.3% (6)	63.2% (60)	30.5% (29)	95
Ineffective assistance of counsel	13.7% (13)	69.5% (66)	16.8% (16)	95
Duty of Confidentiality	0.0% (0)	6.3% (6)	93.8% (90)	96
Attorney-client privilege/work product doctrine	2.1% (2)	44.3% (43)	53.6% (52)	97

<b>How much coverage do you offer of the following topics? (out of 105 respondents)</b>				
Sarbanes-Oxley/securities law	20.6% (20)	71.1% (69)	8.2% (8)	97
Forming the attorney-client relationship	2.1% (2)	54.2% (52)	43.8% (42)	96
Terminating the attorney-client relationship	2.1% (2)	74.7% (71)	23.2% (22)	95
Decision making authority in attorney-client relationship	0.0% (0)	49.0% (47)	51.0% (49)	96
1.14 and impaired clients	11.5% (11)	81.3% (78)	7.3% (7)	96
Obligations to entity clients	1.0% (1)	49.5% (48)	49.5% (48)	97
Conflicts of interest	0.0% (0)	1.0% (1)	99.0% (96)	97
Fees	0.0% (0)	54.6% (53)	45.4% (44)	97
Client perjury	1.0% (1)	64.9% (63)	34.0% (33)	97
Duty to the court (e.g., truthfulness)	2.1% (2)	37.9% (36)	60.0% (57)	95
Interactions with represented and unrepresented persons (including Rules 4.2, 4.3, and 4.4)	4.2% (4)	61.5% (59)	34.4% (33)	96
Ethics of negotiation	11.3% (11)	75.3% (73)	13.4% (13)	97
Structure of the legal profession (including issues of discrimination and realities of practice)	12.4% (12)	60.8% (59)	26.8% (26)	97
Multidisciplinary practice	33.3% (32)	66.7% (64)	0.0% (0)	96
Substance abuse and addiction	22.9% (22)	69.8% (67)	7.3% (7)	96
Unauthorized practice (non-lawyers)	24.2% (23)	72.6% (69)	3.2% (3)	95
Multijurisdictional practice	26.8% (26)	67.0% (65)	6.2% (6)	97
Pro bono	10.4% (10)	81.3% (78)	8.3% (8)	96
Admission to the bar	16.8% (16)	69.5% (66)	13.7% (13)	95
Regulation of advertising/solicitation	14.4% (14)	59.8% (58)	25.8% (25)	97
Disciplinary procedures	28.1% (27)	59.4% (57)	12.5% (12)	96
Obligation to report misconduct of other attorneys	4.2% (4)	82.3% (79)	13.5% (13)	96

<b>How much coverage do you offer of the following topics? (out of 105 respondents)</b>				
Choice of law	48.5% (47)	50.5% (49)	1.0% (1)	97
Reciprocal discipline	61.1% (58)	36.8% (35)	2.1% (2)	95
Special duties of prosecutors	12.5% (12)	77.1% (74)	10.4% (10)	96
Government lawyer ethics	25.0% (24)	62.5% (60)	12.5% (12)	96
Special duties of criminal defense lawyers	8.3% (8)	77.1% (74)	14.6% (14)	96
Judicial ethics	52.1% (50)	37.5% (36)	10.4% (10)	96
Legal education	53.2% (50)	42.6% (40)	4.3% (4)	94
MPRE prep work (i.e., do you offer specific instruction for the MPRE)	81.9% (77)	12.8% (12)	5.3% (5)	94

There are at least two noteworthy findings. First, the topics that appear to receive the most coverage (i.e., more than half of respondents devote more than two hours of class time to these subjects) are: conflicts of interest (99% devote more than two hours of class time); the duty of confidentiality (93.8%); duty to the court (truthfulness) (60%); attorney client privilege and work product doctrine (53.6%); decision making authority in the attorney-client relationship (51%); and obligations to entity clients (49.5%). A second noteworthy finding is that only 47.9% of professors offer any coverage of judicial ethics.

Clinicians emphasize similar material, but there was at least one notable difference. In what might be a surprise to some people given the perceived practical leanings of clinicians, clinicians who responded to the survey spend more time on theoretical issues than non-clinicians. Two-thirds of the clinicians spend two or more class hours on that topic, whereas only 46.4% of respondents overall spent that much time on theoretical/philosophical issues. Again, these findings are less reliable given the relatively small sample size of clinician respondents.

<b>How much coverage do you offer of the following topics? (out of 12 clinicians responding)</b>				
	<b>This topic is not covered.</b>	<b>Covered for fewer than 2 hours of class time</b>	<b>Covered for more than two hours of class time</b>	<b>Response Count</b>
Theoretical/philosophical issues concerning the lawyer's role and the adversarial system	0.0% (0)	33.3% (4)	66.7% (8)	12
Professionalism	0.0% (0)	75.0% (9)	25.0% (3)	12
Self-regulation of the bar	0.0% (0)	100.0% (11)	0.0% (0)	11

<b>How much coverage do you offer of the following topics? (out of 12 clinicians responding)</b>				
Competence	0.0% (0)	75.0% (9)	25.0% (3)	12
Malpractice	18.2% (2)	63.6% (7)	18.2% (2)	11
Ineffective assistance of counsel	33.3% (4)	66.7% (8)	0.0% (0)	12
Duty of Confidentiality	0.0% (0)	16.7% (2)	83.3% (10)	12
Attorney-client privilege/work product doctrine	8.3% (1)	66.7% (8)	25.0% (3)	12
Sarbanes-Oxley/securities law	33.3% (4)	66.7% (8)	0.0% (0)	12
Forming the attorney-client relationship	0.0% (0)	66.7% (8)	33.3% (4)	12
Terminating the attorney-client relationship	0.0% (0)	100.0% (12)	0.0% (0)	12
Decision making authority in attorney-client relationship	0.0% (0)	58.3% (7)	41.7% (5)	12
1.14 and impaired clients	16.7% (2)	83.3% (10)	0.0% (0)	12
Obligations to entity clients	8.3% (1)	75.0% (9)	16.7% (2)	12
Conflicts of interest	0.0% (0)	0.0% (0)	100.0% (12)	12
Fees	0.0% (0)	83.3% (10)	16.7% (2)	12
Client perjury	0.0% (0)	66.7% (8)	33.3% (4)	12
Duty to the court (e.g., truthfulness)	0.0% (0)	50.0% (6)	50.0% (6)	12
Interactions with represented and unrepresented persons (including Rules 4.2, 4.3, and 4.4)	0.0% (0)	75.0% (9)	25.0% (3)	12
Ethics of negotiation	0.0% (0)	83.3% (10)	16.7% (2)	12
Structure of the legal profession (including issues of discrimination and realities of practice)	25.0% (3)	58.3% (7)	16.7% (2)	12
Multidisciplinary practice	58.3% (7)	41.7% (5)	0.0% (0)	12
Substance abuse and addiction	41.7% (5)	58.3% (7)	0.0% (0)	12
Unauthorized practice (non-lawyers)	36.4% (4)	54.5% (6)	9.1% (1)	11
Multijurisdictional	41.7% (5)	58.3% (7)	0.0% (0)	12

<b>How much coverage do you offer of the following topics? (out of 12 clinicians responding)</b>				
practice				
Pro bono	0.0% (0)	91.7% (11)	8.3% (1)	12
Admission to the bar	33.3% (4)	66.7% (8)	0.0% (0)	12
Regulation of advertising/solicitation	8.3% (1)	91.7% (11)	0.0% (0)	12
Disciplinary procedures	16.7% (2)	83.3% (10)	0.0% (0)	12
Obligation to report misconduct of other attorneys	0.0% (0)	100.0% (12)	0.0% (0)	12
Choice of law	50.0% (6)	50.0% (6)	0.0% (0)	12
Reciprocal discipline	50.0% (6)	50.0% (6)	0.0% (0)	12
Special duties of prosecutors	16.7% (2)	75.0% (9)	8.3% (1)	12
Government lawyer ethics	33.3% (4)	50.0% (6)	16.7% (2)	12
Special duties of criminal defense lawyers	0.0% (0)	100.0% (12)	0.0% (0)	12
Judicial ethics	75.0% (9)	25.0% (3)	0.0% (0)	12
Legal education	75.0% (9)	25.0% (3)	0.0% (0)	12
MPRE prep work (i.e., do you offer specific instruction for the MPRE)	91.7% (11)	0.0% (0)	8.3% (1)	12

#### V. Advice for New Teachers

Finally, we asked for advice for new professional responsibility teachers: “One of the reasons that we are accumulating this information is to provide it to people who are teaching professional responsibility for the first time. Tell us below what you wish you had known when you first started teaching professional responsibility. Also indicate how the AALS PR section can help people (whether new teachers or long-time teachers) who teach professional responsibility. Thanks!”

We received a variety of useful responses, with many respondents emphasizing the use of problems and simulations in class and the value of seeking out external resources, including attending conferences, locating exam banks, and using web sites and listservs to stay up to date on the law. Several respondents also mentioned students’ resistance or passivity to ethics instruction. Here are all of the comments (unedited) that we received.

1.	Facilitating relationships within the section, particularly opportunities for sharing and discussing scholarship.
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2.	Not sure. It's been WAY too long ago.
3.	Conferences provide excellent opportunities for networking and learning about various teaching styles. I would recommend that every new PR prof attend academic roundtables at PR conferences.
4.	Based on written answers to our scenarios, students will try to do the "right thing" contrary to the ethics rules to a degree that may surprise you.
5.	Availability of book websites
6.	It is nearly impossible to do an effective job if you do not use simulation, video or some other technique to make the problems real. Students have no idea what it means to practice law. You must make it concrete for them.
7.	The problem is selecting a book, given the plethora of them. New teachers should be aware that the authors/editors of course books all fall along a continuum between "Rules oriented" and "Law oriented" books. New teachers must decide how much of each they wish to teach: more "hard law of lawyering" or more "ethics." Obviously, the deseratum would be somewhere in the middle, but new teachers must be aware that some books go more in one direction than the other. "Don't get stuck with a book you hate," is my advice: "Be very thorough in vetting the coursebooks. Nothing is worse than getting a third into the semester and finding out that you hate your book. Secondly, look at the teachers' manual. Does it actually answer the questions posed in the book. It will give you great comfort if your solution is the book authors' solution. Finally, understand that you are (in all probability) teaching one of the few required upper-level courses. Hence, a lot of students will be in the course against their will. This makes it a tough course to teach. And....Good luck!!
8.	How to find a way to convince students of the utility of the material and analysis
9.	I wish I had used Lerman Schrag the first time. The book is great, and the teachers' manual is great.
10.	Alert professors to new developments
11.	As to the first, the course covers many diverse subjects. Keeping up to date is hard. Also students tend to think that they will never do anything unethical. Sometimes it's hard to get them to understand that these are real challenges.
12.	I wish I had known how long it takes to develop competency in the field!
13.	I wish I had known the level of cynicism students have about the subject, particularly those who have worked in law firms.
14.	Would have loved to know about the listservs & websites I know now. Would have liked more access to others' sample exams and sample multiple choice questions. Would still appreciate more materials on ethical issues in govt/nonprofit practice.
15.	How to use case studies in class.
16.	I would like more help with simulations and other interactive methods--ways to get the students more involved. Also I would like guidance on movie and tv clips that are helpful.
17.	1. I wish I had known the location of resources.
18.	I wished I had more actual experience as a lawyer rather than more experience as a professor - now (after 30+ years) I have more of both!
19.	assistance with audiovisual materials
20.	That you can teach "to" the MPRE and also teach a very challenging philosophical

	and yet problem based course. Crstyal's book, with some additions, is great for that purpose. Everyone wins.
21.	I began teaching the course in 1998. I first taught 2d semester 3Ls, the worst teaching experience ever. The relative lack of interest of many students. I would have liked some help with overcoming recalcitrance.
22.	I had been teaching for many years before I started teaching PR, and there really isn't anything I wish I had known before I taught the course--except more about the subject matter itself. In terms of helping folks, updates re new cases or significant new bar ops are always helpful.
23.	We could use a multiple choice question exam bank. I have never figured out how to make the survey course "work," and I encourage first-time teachers to teach a course focused on particular practice areas they know.
24.	<p>1. Although some doctrinal law teachers may not be aware of it, a properly taught Professional Responsibility course contains as much doctrine and rigor as any other rule- or code-based subject such as the UCC or Criminal Law (using the Model Penal Code).</p> <p>2. In law school generally, and especially in Professional Responsibility courses, students tend to pass along course outlines from year to year, resulting in student passivity in class, and in perpetuation of stale (or incorrect) information. Teachers should warn against this and get students started early on creating their own portfolio of notes and materials.</p> <p>3. Many students will assume the Professional Responsibility course is really an MPRE preparation course. The teacher should work affirmatively to broaden the students' focus. Bringing carefully selected lawyers and judges into the classroom can be helpful in deepening student understanding of the broad scope and significance of the course, as well as in affirming the importance of certain topics -- such as professionalism, civility, pro bono service, and preventing bias in the justice system -- that some students may think are just "political" matters.</p>
25.	Not applicable
26.	"Teaching professional responsibility poses special challenges.... I can still recall a teaching workshop on legal ethics at which I and other battle-hardened veterans amused our audience with disasters we had aided and abetted. At one end of the spectrum were the death marches through moral philosophy - the functional equivalent of Cliffs Notes on Kant. At the other end were bar preparation courses for the Multistate Professional Responsibility Exam - legal ethics without the ethics. And in the middle were many valiant attempts to present real moral dilemmas and regulatory issues that bumped up against student resistance or constraints of classroom size and format. The impression created was that, like Tolstoy's unhappy families, all professional responsibility courses could be unhappy in their own way." --Deborah Rhode, "Teaching Legal Ethics," 51 St. Louis L.J. 1043 (2007)
27.	<p>I learned to use a problem-oriented method and supplement it with multiple-choice questions. I also bring in a lot of guest speakers and take my class on a field trip to the court.</p> <p>I'm a relatively new professor and I could always use access to problems, review problems, handouts, etc.</p>
28.	Wish I'd known about clickers. I've found them a great way to check on rule

	understanding quickly so we can move into application in class discussion without losing students in a large class.
29.	The assumption 20 years ago (and perhaps now) is that the course is undesirable to teach and widely disliked by the students. I don't think either of those are true and new teachers in the area shouldn't go in with any preconceptions, but should approach the course like any other. I've found the class to be very rewarding!
30.	Problem formats really work
31.	Ditch the appellate opinions! Use high-quality, non-fiction accounts of real lawyering.
32.	The ways different cultures respond to rules.
33.	Students need a mix of teaching methods to maintain their interest in the relatively "dry" rules.
34.	It was too long ago to really remember. I do remember that it seemed overwhelming at first and even to this day, I have trouble squeezing what I want to teach into the hours I have. It seems the longer I teach this course, the more there is to discuss. So, perhaps for a new teacher, it would be helpful to have some sense of priority of what is most essential to cover in the class, and what can be included if time allows.
35.	1. That it's better to teach a first-year PR course, when students are most highly-motivated, rather than upper division. 2. That it works the best the more you can build experiential learning (like brief role-plays) into the classroom hours
36.	That teaching a traditional course is ineffective in inculcating appropriate values.
37.	That you cannot cover everything in one semester. It is important to weave the concept of professionalism throughout the course.
38.	Many students' resistance to learning about legal ethics and their belief that it was not an important part of legal education or practice was a surprise, and the most difficult challenge I faced. Suggestions of teaching techniques and materials to overcome this resistance are the most important thing the P.R. section can provide.
39.	When I began teaching ethics, I was reluctant to use stories from my practice, and from my observation of the practice. I have since developed a series of stories, relevant to numerous broad and specific topics, and all based on experience. These seem to engage students in a way that not even the best of the casebooks can.
40.	I am still relatively new to law teaching, having a mentor in the area at the earliest stage would have been helpful. Information regarding resources such as video clips and other classroom resources have been very helpful which have recently come to my attention.
41.	Problem based method works much better than case study. Also, video/movies/TV clips are terrific for engaging students and generating very rich discussion! PS to section: we probably already have this, but it would be good to publicize and continue to build a list of good CLE videos, movies, and TV shows (with specific episode titles) along with the topics they illustrate.
42.	I didn't start teaching PR until I had been a lawprof for 15 years, so I hit the ground running. I'm pleased with the way I have taught the course from the get-go.

## VI. Conclusion

We hope this information is useful both to individual instructors planning to teach in the Professional Responsibility area and to law schools contemplating curricular changes or initiatives relating to professional responsibility. We appreciate very much the prompt and thorough responses from our colleagues in the field, which among other things suggest that there are several vehicles for obtaining useful survey data from this group. We may decide to replicate this survey in a few years, so if you have any suggestions about how to improve the survey, including suggestion for alternative questions, please feel free to contact us.