



# Contents

<i>Table of Problems</i> . . . . .	<i>xxv</i>
<i>Preface to the Sixth Edition for Teachers and Students</i> . . . . .	<i>xxix</i>
<i>Acknowledgments</i> . . . . .	<i>xxxiii</i>
<i>A Note to Students About Updates to This Book</i> . . . . .	<i>xxxix</i>

## **Introduction** **1**

A. Ethics, morals, and professionalism . . . . .	1
B. Some central themes in this book . . . . .	7
1. Conflicts of interest . . . . .	7
2. Truthfulness . . . . .	8
3. Lawyers' duties to clients versus their duties to the justice system . . . . .	8
4. Lawyers' personal and professional interests versus their ethical and fiduciary obligations . . . . .	9
5. Self-interest as a theme in regulation of lawyers . . . . .	10
6. Lawyers as employees: Institutional pressures on ethical judgments . . . . .	11
7. The changing legal profession . . . . .	12
C. The structure of this book . . . . .	12
D. The rules quoted in this book: A note on sources . . . . .	14
E. Stylistic decisions . . . . .	15

## **Chapter 1: The Legal Profession: Bar Admission, History, and Diversity** **17**

A. Admission to the bar . . . . .	18
1. Changes in bar admission requirements over time . . . . .	18
2. Contemporary bar admission requirements . . . . .	20
3. The bar examination . . . . .	21
4. The character and fitness inquiry . . . . .	23
a. Criteria for evaluation . . . . .	24
b. Filling out the character questionnaire . . . . .	30
<b>Problem 1-1: Adderall</b> . . . . .	33
c. Mental health questions about applicants . . . . .	35
d. Law school discipline: A preliminary screening process . . . . .	38
<b>Problem 1-2: The Doctored Resume</b> . . . . .	38
B. History and development of the U.S. legal profession . . . . .	40

- 1. Pre-revolutionary America . . . . . 40
- 2. The nineteenth and twentieth centuries . . . . . 41
- 3. History of American legal education . . . . . 43
- C. Diversity and discrimination in the legal profession . . . . . 46
  - 1. Women lawyers . . . . . 48
  - 2. Lawyers of color . . . . . 53
  - 3. Lesbian, gay, bisexual, transgender, and queer lawyers . . . . . 58
  - 4. Lawyers with disabilities . . . . . 59
  - 5. Lawyers from low-income families . . . . . 60
  - 6. Other bases of discrimination in the legal profession . . . . . 60

**Chapter 2: The Legal Profession: Regulation, Discipline, and Liability** **63**

- A. Institutions that regulate lawyers . . . . . 64
  - 1. The highest state courts . . . . . 67
  - 2. State and local bar associations . . . . . 69
  - 3. Lawyer disciplinary agencies . . . . . 70
  - 4. American Bar Association . . . . . 71
  - 5. American Law Institute . . . . . 72
  - 6. Federal and state courts . . . . . 73
  - 7. Legislatures . . . . . 74
  - 8. Administrative agencies . . . . . 75
  - 9. Prosecutors . . . . . 76
  - 10. Malpractice insurers . . . . . 77
  - 11. Law firms and other employers . . . . . 77
  - 12. Clients . . . . . 78
- B. State ethics codes . . . . . 78
- C. The disciplinary system . . . . . 84
  - 1. Grounds for discipline . . . . . 89
    - Problem 2-1: The Dying Mother** . . . . . 94
  - 2. Reporting misconduct by other lawyers . . . . . 105
    - a. The duty to report misconduct . . . . . 105
      - Problem 2-2: Exculpatory Evidence** . . . . . 109
    - b. Lawyers’ responsibility for ethical misconduct by others in a law office . . . . . 110
      - Problem 2-3: The Little Hearing** . . . . . 116
    - c. Legal protections for subordinate lawyers . . . . . 118
      - The *Wieder* case . . . . . 120
- D. Civil liability . . . . . 121
  - 1. Legal malpractice . . . . . 122
  - 2. Malpractice insurance . . . . . 127
  - 3. Other civil liability . . . . . 128
    - a. Liability for breach of contract . . . . . 129
    - b. Liability for violation of regulatory statutes . . . . . 129
  - 4. Disqualification for conflicts of interest . . . . . 129
- E. Criminal liability . . . . . 130
- F. Client protection funds . . . . . 134

## Chapter 3: Relationships Between Lawyers and Clients 137

A. Formation of the lawyer-client relationship . . . . .	138
1. Lawyer discretion in selection of clients . . . . .	138
2. Offering advice as the basis for a lawyer-client relationship . . . . .	143
Togstad v. Vesely, Otto, Miller & Keefe . . . . .	143
B. Lawyers' duties of competence, diligence, honesty, and communication . . . . .	150
1. Competence . . . . .	150
<b>Problem 3-1: The Washing Machine.</b> . . . . .	154
2. Competence in criminal cases . . . . .	155
a. Strickland v. Washington . . . . .	156
b. The aftermath of <i>Strickland</i> . . . . .	158
Missouri v. Frye . . . . .	164
Lafler v. Cooper . . . . .	166
<b>Problem 3-2: A Desire to Investigate</b> . . . . .	166
3. Diligence . . . . .	168
4. Candor and communication . . . . .	170
a. Is it ever okay to lie? . . . . .	170
b. Lying versus deception: Is there a moral distinction? . . . . .	170
c. Honest mistakes . . . . .	171
d. Honesty and communication under the ethics rules . . . . .	171
e. Civil liability for dishonesty to clients . . . . .	174
5. Candor in counseling . . . . .	175
<b>Problem 3-3: Torture.</b> . . . . .	176
6. Duties imposed by contract in addition to those imposed by the ethics codes . . . . .	179
7. Agreements to limit the scope of representation . . . . .	180
8. Contractual modification of a lawyer's duties: Collaborative law practice . . . . .	184
C. Lawyers' responsibilities as agents . . . . .	185
1. Express and implied authority . . . . .	186
2. Apparent authority . . . . .	186
3. Authority to settle litigation . . . . .	187
D. Who calls the shots? . . . . .	188
1. The competent adult client . . . . .	188
Jones v. Barnes . . . . .	193
2. Clients with diminished capacity . . . . .	197
a. Assessing diminished capacity . . . . .	198
b. Options available to attorneys when clients have diminished capacity . . . . .	198
<b>Problem 3-4: Vinyl Windows.</b> . . . . .	202
c. Juveniles . . . . .	204
E. Terminating a lawyer-client relationship . . . . .	207
1. Duties to the client at the end of the relationship . . . . .	207
2. Grounds for termination before the work is completed . . . . .	209
a. When continued representation would involve illegal or unethical conduct . . . . .	209
b. If the lawyer becomes impaired . . . . .	210
c. When the client fires the lawyer . . . . .	210
d. When the lawyer wants to terminate the relationship . . . . .	210
e. Matters in litigation . . . . .	211
f. When the client stops paying the fee . . . . .	212

- g. When the case imposes an unreasonable financial burden on the lawyer . . . . . 212
- h. When the client will not cooperate . . . . . 213
- 3. Collection of fees. . . . . 213

**Chapter 4: The Duty to Protect Client Confidences 215**

- A. The basic principle of confidentiality . . . . . 216
  - 1. What is confidential? . . . . . 216
    - Problem 4-1: Your Dinner with Anna** . . . . . 220
  - 2. Protection of information if there is a reasonable prospect of harm to a client’s interests . . . . . 223
  - 3. The bottom line on informal communications. . . . . 225
  - 4. Additional cautions about protecting client confidences . . . . . 226
  - 5. Confidentiality and technology . . . . . 227
- B. Exceptions to the duty to protect confidences . . . . . 230
  - 1. Informed consent and implied authorization. . . . . 232
  - 2. Revelation of past criminal conduct. . . . . 234
    - Case study: The defense of Robert Garrow. . . . . 234
    - Problem 4-2: The Buried Bodies, Scene 1** . . . . . 235
    - Problem 4-3: The Buried Bodies, Scene 2** . . . . . 239
    - What happened next . . . . . 240
    - The *Belge* case . . . . . 241
    - People v. *Belge*. . . . . 241
    - People v. *Belge* (appeal) . . . . . 243
    - Problem 4-4: The Buried Bodies, Scene 3** . . . . . 244
  - 3. The risk of future injury or death . . . . . 246
    - Spaulding v. Zimmerman . . . . . 248
    - Spaulding v. Zimmerman (appeal). . . . . 248
    - Problem 4-5: Rat Poison** . . . . . 257
  - 4. Client frauds and crimes that cause financial harm. . . . . 258
    - a. Ethics rules allowing revelation of client crimes or frauds to prevent, mitigate, or remedy harm to others . . . . . 258
    - b. Enron, the Sarbanes-Oxley Act, and Rules 1.6(b)(2) and (3). . . . . 261
    - c. Subsequent developments in the implementation of Sarbanes-Oxley . . . . . 264
    - Problem 4-6: Reese’s Leases** . . . . . 267
  - 5. Revealing confidences to obtain advice about legal ethics . . . . . 270
  - 6. Using a client’s confidential information to protect the lawyer’s interests . . . . . 270
  - 7. Revealing confidences to comply with a court order or other law. . . . . 274
  - 8. Revealing confidences to prevent certain conflicts of interest . . . . . 274
- C. Use or disclosure of confidential information for personal gain or to benefit another client . . . . . 275
  - Problem 4-7: An Investment Project.** . . . . . 276
- D. Talking to clients about confidentiality. . . . . 277

**Chapter 5: The Attorney-Client Privilege and the Work Product Doctrine 279**

- A. Confidentiality and attorney-client privilege compared. . . . . 280
  - 1. Source of the privilege . . . . . 281

- 2. Scope of the privilege . . . . . 281
- 3. Methods of enforcing the privilege . . . . . 282
- B. The elements of attorney-client privilege . . . . . 282
  - 1. Communication . . . . . 282
  - 2. Privileged persons. . . . . 283
  - 3. Communication in confidence . . . . . 284
  - 4. Communication for the purpose of seeking legal assistance . . . . . 287
- C. Asserting the privilege. . . . . 291
- D. Waiver of the privilege. . . . . 292
- E. Exceptions to the privilege . . . . . 296
  - 1. The Sixth Amendment . . . . . 296
  - 2. Lawyer self-defense. . . . . 297
  - 3. Other revelations permitted or required by the ethics codes . . . . . 297
    - Problem 5-1: Murder for Hire** . . . . . 298
  - 4. The crime-fraud exception . . . . . 300
    - Problem 5-2: The Payoff** . . . . . 304
- F. The death of the client . . . . . 306
  - 1. Introduction . . . . . 306
    - Problem 5-3: A Secret Confession.** . . . . . 307
  - 2. The suicide of Vincent Foster . . . . . 308
    - a. Factual background . . . . . 308
    - b. The Supreme Court evaluates the privilege claim . . . . . 309
      - Swidler & Berlin v. United States . . . . . 309
- G. The attorney-client privilege for corporations . . . . . 311
- H. The attorney-client privilege for government officials . . . . . 316
- I. The work product doctrine. . . . . 316
  - Problem 5-4: Worldwide Bribery** . . . . . 320

**Chapter 6: Conflicts of Interest: Current Clients** **323**

- A. An introduction to conflicts of interest. . . . . 324
  - 1. What makes the study of conflicts difficult. . . . . 327
  - 2. How the conflicts chapters are organized . . . . . 329
  - 3. How the conflicts rules are organized . . . . . 330
- B. General principles in evaluating concurrent conflicts . . . . . 331
  - 1. Direct adversity. . . . . 334
  - 2. Material limitation . . . . . 335
  - 3. Nonconsentable conflicts. . . . . 335
    - a. The lawyer’s reasonable belief. . . . . 336
    - b. Representation prohibited by law. . . . . 337
    - c. Suing one client on behalf of another client . . . . . 338
  - 4. Informed consent . . . . . 339
  - 5. Withdrawal and disqualification. . . . . 344
    - Problem 6-1: The Injured Passengers, Scene 1** . . . . . 346
  - 6. Imputation of concurrent conflicts . . . . . 347
    - Problem 6-2: Food Poisoning** . . . . . 348
- C. Conflicts between current clients in litigation. . . . . 351
  - 1. Suing a current client . . . . . 351
    - Problem 6-3: I Thought You Were My Lawyer!** . . . . . 353
  - 2. Cross-examining a current client . . . . . 354

3. Representation of co-plaintiffs or co-defendants in civil litigation . . . . .	355
<b>Problem 6-4: The Injured Passengers, Scene 2</b> . . . . .	358
4. Representing economic competitors in unrelated matters . . . . .	359
5. Positional conflicts: Taking inconsistent legal positions in litigation . . . . .	360
<b>Problem 6-5: Top Gun.</b> . . . . .	361

## Chapter 7: Conflicts Involving Former and Prospective Clients 365

A. Nature of conflicts between present and former clients . . . . .	366
B. Duties to former clients. . . . .	368
C. Distinguishing present and former clients . . . . .	370
<b>Problem 7-1: Keeping in Touch.</b> . . . . .	372
<b>Problem 7-2: A Better Client</b> . . . . .	375
D. Evaluating successive conflicts . . . . .	376
1. The same matter . . . . .	377
2. Substantial relationship . . . . .	378
3. Material adversity . . . . .	386
E. Addressing former client conflicts in practice . . . . .	387
F. Conflicts between the interests of a present client and a client who was represented by a lawyer's former firm . . . . .	389
1. Analyzing former firm conflicts . . . . .	391
2. Using or revealing a former client's confidences . . . . .	392
G. Imputation of former client conflicts to affiliated lawyers . . . . .	393
<b>Problem 7-3: The Bid Protest.</b> . . . . .	398
<b>Problem 7-4: A Brief Consultation</b> . . . . .	406
<b>Problem 7-5: The Fatal Shot.</b> . . . . .	409
H. Conflicts involving prospective clients . . . . .	412
<b>Problem 7-6: The Secret Affair.</b> . . . . .	416

## Chapter 8: Conflicts Issues in Particular Practice Settings 419

A. Representing multiple parties who are not in litigation . . . . .	420
B. Representing organizations. . . . .	425
1. Who is the client? . . . . .	428
<b>Problem 8-1: My Client's Subsidiary.</b> . . . . .	429
2. Representing the entity and employees . . . . .	430
3. Duty to protect confidences of employees. . . . .	432
4. Responding to unlawful conduct by corporate officers and other employees . . . . .	432
5. Entity lawyers on boards of directors. . . . .	433
<b>Problem 8-2: "Don't Rock the Boat"</b> . . . . .	434
C. Representing co-defendants in criminal cases. . . . .	435
1. Costs and benefits of joint representation of co-defendants. . . . .	435
2. Conflicts issues and Sixth Amendment concerns in criminal defense . . . . .	437
<b>Problem 8-3: Police Brutality, Scene 1</b> . . . . .	444
<b>Problem 8-4: Police Brutality, Scene 2</b> . . . . .	445
<b>Problem 8-5: Police Brutality, Scene 3</b> . . . . .	446
D. Representing co-defendants in civil cases. . . . .	448
E. Representing family members . . . . .	448
1. Representing both spouses in a divorce. . . . .	448
2. Representing family members in estate planning . . . . .	449

Florida Bar Opinion 95-4 (1997) . . . . .	450
<b>Problem 8-6: Representing the McCarthys</b> . . . . .	452
F. Representing insurance companies and insured persons . . . . .	454
G. Representing employers and immigrant employees . . . . .	458
H. Representing plaintiffs in class actions . . . . .	459
I. Representing parties to aggregate settlements of individual cases . . . . .	460

## **Chapter 9: Conflicts of Interest Between Lawyers and Clients**      **463**

A. Legal fees . . . . .	465
1. Lawyer-client fee contracts . . . . .	465
a. Types of fee agreements . . . . .	466
b. Reasonable fees . . . . .	467
<i>Matter of Fordham: When a fee may be considered excessive</i> . . . . .	471
c. Communication about fee arrangements . . . . .	474
<b>Problem 9-1: An Unreasonable Fee?</b> . . . . .	477
d. Modification of fee agreements . . . . .	478
<b>Problem 9-2: Rising Prices</b> . . . . .	478
2. Regulation of hourly billing and billing for expenses . . . . .	479
Patrick J. Schiltz, <i>On Being a Happy, Healthy, and Ethical</i> Member of an Unhappy, Unhealthy, and Unethical Profession . . . . .	481
Billing irregularities: A case study . . . . .	494
Lisa G. Lerman, <i>Scenes from a Law Firm</i> . . . . .	494
3. Contingent fees . . . . .	500
a. In general . . . . .	500
b. Criminal and domestic relations cases . . . . .	505
4. Forbidden and restricted fee and expense arrangements . . . . .	507
a. Buying legal claims . . . . .	507
b. Financial assistance to a client . . . . .	508
<b>Problem 9-3: An Impoverished Client</b> . . . . .	509
c. Publication rights . . . . .	510
d. Advance payment of fees and nonrefundable retainer fees . . . . .	511
5. Fee disputes . . . . .	514
a. Prospective limitations of lawyers' liability and settlement of claims against lawyers . . . . .	514
b. Fee arbitration . . . . .	515
c. Collection of fees . . . . .	516
d. Fees owed to a lawyer who withdraws or is fired before the matter is completed . . . . .	519
6. Dividing fees with other firms or with nonlawyers . . . . .	519
a. Division of fees between lawyers not in the same firm . . . . .	519
b. Sharing fees with nonlawyers . . . . .	522
7. Payment of fees by a third party . . . . .	523
B. Lawyer as custodian of client property and documents . . . . .	523
1. Client trust accounts . . . . .	523
2. Responsibility for client property . . . . .	525
a. Prompt delivery of funds or property . . . . .	525
b. Disputes about money or property in lawyer's possession . . . . .	525
c. Lawyers' responsibilities to clients' creditors . . . . .	526
3. Administering estates and trusts . . . . .	526

C. Conflicts with lawyers’ personal or business interests . . . . . 527

1. In general . . . . . 527
2. Business transactions between lawyer and client . . . . . 528
3. Gifts from clients . . . . . 533
4. Sexual relationships with clients . . . . . 534
5. Intimate or family relationships with adverse lawyers . . . . . 537
6. Imputation of lawyer-client conflicts to other lawyers in a firm . . . . . 537

**Chapter 10: Conflicts Issues for Government Lawyers and Judges 539**

A. Regulation of government lawyers and those who lobby them . . . . . 540

1. The law governing lobbying: An introduction . . . . . 540
2. Conflict of interest and “revolving door” statutes . . . . . 542

B. Successive conflicts of former and present government lawyers . . . . . 544

1. Conflicts of former government lawyers in private practice . . . . . 545
  - a. What is a “matter”? . . . . . 546
  - b. Personal and substantial participation . . . . . 547
  - c. Screening of former government lawyers . . . . . 549
  - d. Confidential government information . . . . . 550
2. Conflicts of government lawyers who formerly worked outside of government . . . . . 552
 

**Problem 10-1: The District Attorney** . . . . . 553
3. Conflicts of private lawyers who currently represent government agencies . . . . . 554

C. Conflicts involving judges, law clerks, arbitrators, and mediators . . . . . 555

1. History of judicial ethics codes in the United States . . . . . 556
2. Overview of the Model Code of Judicial Conduct . . . . . 558
3. Impartiality and fairness; avoidance of bias, prejudice, and harassment . . . . . 562
4. Ex parte communications and communications by a judge with third parties . . . . . 570
5. Disqualification of judges . . . . . 571
 

**Problem 10-2: The Judge’s Former Professor** . . . . . 581
6. Conflicts rules for former judges, law clerks, arbitrators, and mediators . . . . . 582
  - a. Personal and substantial participation . . . . . 583
  - b. Imputation . . . . . 583
  - c. Employment negotiation . . . . . 583
7. Conflicts rules for lawyers currently acting as third party neutrals . . . . . 584

**Chapter 11: Lawyers’ Duties to Courts 587**

A. Being a good person in an adversary system . . . . . 588

Stephen Gillers, Can a Good Lawyer Be a Bad Person? . . . . . 589

B. Investigation before filing a complaint . . . . . 590

**Problem 11-1: Your Visit from Paula Jones** . . . . . 596

C. Truth and falsity in litigation . . . . . 597

1. The rules on candor to tribunals . . . . . 597
2. Which rule applies when? A taxonomy of truth-telling problems in litigation . . . . . 599
3. A lawyer’s duties if a client or witness intends to give false or misleading testimony . . . . . 600



a.	When the lawyer knows that a criminal defendant intends to lie on the stand . . . . .	600
	<i>Nix v. Whiteside</i> : No Sixth Amendment right to testify falsely . . . . .	600
b.	The lawyer's obligations under Rule 3.3 in civil and criminal matters . . . . .	602
	<b>Problem 11-2</b> : Flight from Sudan, Scene 1 . . . . .	604
c.	A lawyer's duties if a client intends to mislead the court without lying . . . . .	608
	<b>Problem 11-3</b> : Flight from Sudan, Scene 2 . . . . .	610
d.	A lawyer's duties if he knows that a client has lied to a tribunal . . . . .	611
e.	Variations in state rules on candor to tribunals . . . . .	612
4.	False impressions created by lawyers during litigation . . . . .	613
	How Simpson Lawyers Bamboozled a Jury . . . . .	614
	<b>Problem 11-4</b> : The Drug Test . . . . .	615
	<b>Problem 11-5</b> : The Body Double . . . . .	616
5.	Lawyers' duties of truthfulness in preparing witnesses to provide evidence . . . . .	617
D.	Concealment of physical evidence and documents . . . . .	621
1.	Duties of criminal defense lawyers with respect to evidence of crimes . . . . .	622
	<b>Problem 11-6</b> : Child Pornography . . . . .	633
2.	Concealment of documents and other evidence in civil and criminal cases . . . . .	634
a.	A limited obligation to reveal . . . . .	634
b.	A lawyer's duties in responding to discovery requests . . . . .	636
	Ethics: Beyond the Rules . . . . .	638
	<b>Problem 11-7</b> : The Damaging Documents . . . . .	642
E.	The duty to disclose adverse legal authority . . . . .	646
F.	Disclosures in ex parte proceedings . . . . .	647
G.	Improper influences on judges and juries . . . . .	649
1.	Improper influences on judges . . . . .	650
a.	Ex parte communication with judges . . . . .	650
b.	Campaign contributions . . . . .	651
2.	Improper influences on juries . . . . .	652
a.	Lawyers' comments to the press . . . . .	652
	Narrowing restrictions on trial publicity: The <i>Gentile</i> case . . . . .	652
	Scott Brede, A Notable Case of Exceptionally Unsafe Sex . . . . .	659
b.	Impeachment of truthful witnesses . . . . .	660
	Harry I. Subin, The Criminal Defense Lawyer's "Different Mission": Reflections on the "Right" to Present a False Case . . . . .	661
c.	Statements by lawyers during jury trials . . . . .	662
H.	Agreements not to accept future cases . . . . .	669
I.	Lawyers' duties in nonadjudicative proceedings . . . . .	670

## Chapter 12: Lawyers' Duties to Adversaries and Third Persons 673

A.	Communications with lawyers and third persons . . . . .	674
1.	Deception of third persons . . . . .	674
a.	The duty to avoid material false statements . . . . .	674
	<b>Problem 12-1</b> : Emergency Food Stamps . . . . .	675
b.	Lawyers' duties of truthfulness in fact investigation . . . . .	678
	The Beatles Club case . . . . .	679
	<b>Problem 12-2</b> : Insurance Claims . . . . .	680
c.	Lawyers' duties of truthfulness in negotiation . . . . .	682

- d. Lawyers' duties upon receipt of inadvertently transmitted information, including metadata. . . . . 684
- 2. Restrictions on contact with represented persons . . . . . 688
  - a. Contacts in person or by telephone . . . . . 688
    - The *Messing* case . . . . . 692
    - The *Cronin* case. . . . . 694
  - b. The use of social media to investigate adverse persons and others . . . . . 695
- 3. Restrictions on contact with unrepresented persons. . . . . 697
  - Problem 12-3: The Complaining Witness** . . . . . 702
- 4. Respect for the rights of third persons. . . . . 704
  - Problem 12-4: The Break-In.** . . . . 705
  - Note: Stolen documents as evidence . . . . . 706
- B. Duties of prosecutors . . . . . 707
  - Ken Armstrong & Maurice Possley, *Trial and Error, Part 1: Verdict: Dishonor* . . . . . 708
  - 1. Undercover investigations . . . . . 710
    - Problem 12-5: The Prosecutor's Masquerade.** . . . . 716
  - 2. The basis for charging a suspect . . . . . 718
  - 3. A prosecutor's duty to reveal exculpatory evidence. . . . . 719
    - The Duke lacrosse case. . . . . 721
  - 4. A prosecutor's duty with respect to unreliable evidence. . . . . 723
  - 5. A prosecutor's duty to avoid improper pretrial publicity . . . . . 727
  - 6. Enforcement of ethical rules against prosecutors . . . . . 728
    - Ellen Yaroshefsky, *Wrongful Convictions: It Is Time to Take Prosecution Discipline Seriously.* . . . . 728
- C. Conduct prejudicial to the administration of justice . . . . . 731
  - Problem 12-6: A Letter of Commendation** . . . . . 734
- D. Are lawyers really too zealous? . . . . . 734
  - Ted Schneyer, *Moral Philosophy's Standard Misconception of Legal Ethics* . . . . . 735

**Chapter 13: The Changing Landscape of Law Practice 737**

- A. Unauthorized practice of law: Who can provide legal services . . . . . 738
  - 1. Prohibition of unauthorized practice of law by nonlawyers. . . . . 739
    - Problem 13-1: Special Education.** . . . . 744
  - 2. Restrictions on multistate practice by lawyers . . . . . 746
  - 3. Programs allowing nonlawyers to provide some legal assistance . . . . . 752
    - a. Limited license legal technicians . . . . . 754
    - b. Courthouse navigators. . . . . 755
    - c. Legal document assistants. . . . . 756
  - 4. New providers of legal services. . . . . 757
- B. Getting business: Advertising and solicitation. . . . . 760
  - 1. Advertising of legal services . . . . . 760
    - Bates v. State Bar of Arizona* . . . . . 760
  - 2. Solicitation of clients . . . . . 767
    - Problem 13-2: Traffic Crimes.** . . . . 770
- C. Multidisciplinary practice. . . . . 772
- D. Financing law practice. . . . . 777
  - 1. Litigation finance: Nonlawyer funding of lawsuits . . . . . 777

2. Nonlawyer ownership of and investment in law firms . . . . . 781  
 E. Temporary and contract lawyers . . . . . 784  
 F. Outsourcing legal work to cut labor costs: Offshoring and onshoring. . . . . 786  
 G. Globalization of law practice . . . . . 789

**Chapter 14: Access to Justice: The Lawyer’s Role** **793**

A. The unmet need for legal services . . . . . 794  
 B. Sources of free legal services for those who cannot afford legal fees . . . . . 800  
     1. Right to counsel for indigent litigants . . . . . 800  
         a. Criminal defendants. . . . . 800  
         b. Parties in civil and administrative proceedings . . . . . 805  
     2. Civil legal aid. . . . . 810  
         a. Legal Services Corporation. . . . . 810  
             **Problem 14-1: Restrictions on Legal Services** . . . . . 813  
         b. Other civil legal services . . . . . 814  
         c. Supporting legal services for indigent people with interest on trust  
             accounts . . . . . 814  
     3. Fee-shifting statutes . . . . . 816  
         a. Fee waiver as a term of a settlement: *Evans v. Jeff D* . . . . . 816  
         b. Who is a “prevailing party” entitled to attorneys’ fees? . . . . . 818  
     4. Conflicts in public interest litigation . . . . . 819  
         **Problem 14-2: The Prisoners’ Dilemma** . . . . . 820  
 C. Pro bono representation . . . . . 821  
     **Problem 14-3: Mandatory Pro Bono Service**. . . . . 829  
 D. Loan forgiveness and scholarships for public service lawyers . . . . . 829  
 E. A concluding problem. . . . . 833  
     **Problem 14-4: The Future of the Legal Profession** . . . . . 833

*About the Authors* . . . . . 835  
*Table of Cases*. . . . . 839  
*Table of Rules, Restatements, Statutes, Bar Opinions, and Other Standards* . . . . . 845  
*Index*. . . . . 857