

**LAW 7931 Sec. 154F –  
Professional Responsibility and Other Practice Issues for Tax  
Advisors**

**Spring 2018**

Class Meetings:	Monday & Tuesday, 10:30-11:45 PM
Location:	MLAC - 210
Instructor:	Professor Fred Murray
Office Hours:	
Phone:	352-273-0896
E-mail:	f.murray@law.ufl.edu

**COURSE DESCRIPTION**

The course surveys important ethical and practice concepts and rules that tax lawyers acting as corporate advisers on tax, financial, and securities matters need to know not only to do their job but to keep it: financial statements and their use and analysis by private users and the government and other entities that regulate them; accounting for income taxes and FIN 48 uncertain tax positions in the financial statements and tax return (including Form UTP in corporate returns); rules governing tax opinions, advice, and return filing positions; and attorney-client privileges. The course also surveys current regulatory and enforcement issues – e.g., reportable transactions and tax shelters, Foreign Corrupt Practice Act, document retention policies, internal controls and certifications, board of directors audit committees, financial and criminal law liability, and changes in corporate governance brought about by the Sarbanes-Oxley Act of 2002, the Dodd Frank Act, and other recent legislation.

Almost every course you take in law school makes you better able to help your clients fulfill their hopes and dreams. This course is designed to help fulfill your own professional obligations while also providing services to your clients consistent with their ethical entitlements and practical expectations. Through the use of hypothetical problems grounded in the real world, the class will explore many of the challenging dilemmas that confront the conscientious lawyer who wants to conform his or her conduct to the applicable rules of professional conduct and other law governing lawyers.

**LEARNING OBJECTIVES**

As a result of taking this course, students will be able to:

- Properly understand the implications of tax advice and how to prepare and render it to clients (including informal advice, formal opinions (and opinions in securities offerings), tax positions that are reported in tax returns, and other contexts), as well as the professional responsibility aspects of that activity

- Interpret the tax related concepts in the financial statements, including MD&A and footnotes, of a multinational company with regard to its worldwide tax position
- Understand ethical and regulatory issues in document retention policies, cybersecurity, confidentiality of client information and relevant evidentiary privileges, and other practice needs
- Understand corporate governance rules and related liabilities that arise in practice
- Recognize issues surrounding global tax compliance concerns, including Foreign Corrupt Practice Act practice concerns arising in client situations

**Course Approach:**

There is an ancient Chinese proverb attributed to Confucius (551–479 BCE) that is roughly translated: “Teachers open doors, but you must enter by yourself.” I will do my best to help you succeed, to provide you with knowledge, at least at an overarching level that is high enough that we may fit it in the time we have together but sufficient to give you the framework and principles that guide further scrutiny and action. But, as in any work setting, you must accept that knowledge and apply the necessary effort to fully comprehend it and then to apply it.

The final exam will test your grasp of what we do together in class. We will discuss that in the first class, and in a Review session in the last class.

**Class Preparation and Participation:** Come to class having completed the assignments to the best of your ability and prepared to discuss the assignment.

Students should expect to spend, on average, approximately two hours preparing for every hour of class. Reading assignments are posted on the “Modules” link on the Canvas site (located on the left side of the Canvas site). It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. (Course) has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. Accordingly, you will have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance written preparation, you should spend at least one hour on every 10-15 pages of reading.

Participation is important to you, your classmates, and your professor. Below-average participation means no contributions to class and/or comments that detract from the discussion; average participation includes comments that contribute positively to the discussion; above-average participation means comments that contribute positively to the discussion and display some insight, analysis, creativity, and/or synthesis; and excellent participation means comments that contribute positively to the discussion and display significant insight, analysis, creativity, and/or synthesis.

### **Course Structure:**

The course will be divided into modules of material, some of which may be discussed in more or less than one class.

### **Grades:**

There will be a 4-hour take home final exam that will be open to Limited Materials (materials used in class). We will discuss the permissible materials in class. The format of the exam will be essay and problems. Your grade will be based approximately 90% on the final exam and 10% on attendance and class participation.

The Exam instructions will state:

This is an OPEN book exam. Users are permitted to access other documents, outlines, notes, files, etc. on their hard drives, or other materials in their possession. iPads, e-readers and other electronic devices that store information may be used. Calculators may be used.

**Notwithstanding the foregoing, students may not access the Internet, except as necessary to use the Online Exam Management System, during the examination and to submit their examination. Doing so is a disciplinary violation of the Honor Code. Students may not consult one another or any other person by computer or other electronic device or otherwise, and may not consult any materials not specifically permitted.**

### **Required Course Materials:**

Materials (PowerPoint Decks, cases, rulings, and other interpretive material) will be supplied for particular topics by the professor. These readings (including current event course related items), lecture slides, cases, and other handouts are available from the course web page with postings announced via the class email list. All students must have access to the *Internal Revenue Code of 1986*, and *Income Tax Regulations*. (Note that this information also is available via the web using the RIA, CCH, or LEXIS Tax Research Services.)

Materials not marked as “Skim” or “Helpful Supplementary Reading” in the Reading Assignments set forth below are required reading.

### **Class Web Page:**

The course materials are in the UF Canvas E-Learning system. You will need your GATORLINK USERID and PASSWORD to access the course information. If you don't have a GatorLink account, create your GatorLink account at [gatorlink.ufl.edu](http://gatorlink.ufl.edu).

### **Web-based Information Resources:**

All students in the course have access to several electronic tax research libraries. These include Tax Analysts Tax Notes, CCH Tax Research Library, RIA Checkpoint Tax Research Service, LEXIS/NEXIS, and BNA Tax Management Portfolios. Although there

is substantial overlap across these services, all provide useful and unique research tools, including complete versions of tax research services (commentary and explanation), Code, regulations, court cases, rulings, tax treaties, etc. You may access these libraries from anywhere you can access the internet. Both LEXIS/NEXIS and CCH require no password as long as you access the database via a UF computer account. There are several methods (e.g., proxy server or VPN) for making your computer think it is linked to a UF sever via a few special commands; if you need this information, see “<http://web.uflib.ufl.edu/ufproxy.html>” or the class web site.

Proxy info: <https://www.law.ufl.edu/library/library-information/remote-access>

For Checkpoint: Register on campus at <http://www.checkpoint-registration.riag.com/schools> (need to register on campus; use off campus through VPN)

For Tax Analyst: Register at <http://www.taxnotes.com> (need to register on campus; use off campus through VPN)

For Bloomberg (BNA): Register at <https://essential.bna.com/login/signin?msg=deny&url=https%3A%2F%2Fwsauth.bna.com%2Fwsauth%2Fblawauth%3Ftarget%3Dhttps%3A%2F%2Fwww.bloomberglaw.com%2Fstart&lddy=-518&pcv=> (can use off campus without going through VPN)

Note that these accounts last approximately a year and you may already have a valid account from a prior signup. For problems, see Sarah Lewis in the library or at [slewis@law.ufl.edu](mailto:slewis@law.ufl.edu).

**Class Policies:**

All University of Florida and Levin College of Law rules apply. Particularly note University policies regarding software use and the honor code.

## READING ASSIGNMENTS

Class	Topic		Learning Outcomes	Assignment
January 8	<b><u>Class 1</u></b>	1. Course Overview 2. Professional Responsibility Concerns of Practice		
January 9, 16, 22, 23, 29, 30	<b><u>Class 2-7</u></b> Tax Positions in Tax Advice and Tax Returns	3. Tax Positions in Advice and Opinions and Returns a. Accuracy Related Penalties b. Tax Return Preparer Standard c. Signing and Non-signing Preparers d. Circular 230 e. The Reasonable Cause Exception	-Be able to understand how to respond to differing client needs for advice, the elements of client advice, and professional standards and penalty standards that apply to tax advice	IRC sections 6662, 6694, 6664 and related regulations; Handouts
February 5, 6, 12, 13	<b><u>Classes 8-11</u></b> Course Overview Overview of GAAP & IFRS, Financial Statements and Their Presentation (Including Footnotes), Securities Law Filings and Other Uses of Financial Data	4. Overview of Financial Statements, Bookkeeping 5. Overview and Development of GAAP & IAS  6. Financial Statements, Bookkeeping, and Accrual Accounting a. The Balance Sheet b. The Income Statement c. Accrual Accounting d. The Statement of Cash Flows e. Consolidated Statements f. Footnotes i. Summary of Significant Accounting Policies (1) Earnings Per Share (2) Accounting Changes ii. Taxes g. Contingencies  7. Using Financial Statements a. Financial Statement Analysis and Financial Ratios i. Where to Look ii. Management's Discussion and Analysis	-Be able to better understand the elements of generally provided financial statements and how the accounting standards and other rules applicable to them are promulgated -Gain a general understanding of how financial statements are used	Handouts given out in class

		<ul style="list-style-type: none"> <li>b. Loan Applications and Agreements, Bond Covenants, Stock Listings, Acquisitions and Divestitures and Other Private Uses</li> <li>c. U.S. Securities Filings <ul style="list-style-type: none"> <li>i. Form 10-K – Domestic Companies</li> <li>ii. Form 20-F and Form 40-F – Foreign Companies</li> <li>iii. Form 10-Q, Earnings Releases, and Other Interim Reports</li> </ul> </li> </ul>		
February 19, 20, 26, 27, March 12, 13, 19	<b>Classes 12-18</b> Financial Accounting for Taxes	<ul style="list-style-type: none"> <li>7. Concepts and Their Evolution</li> <li>8. FAS 109 Approach (ASC 740) <ul style="list-style-type: none"> <li>a. Book/Tax Differences: Temporary and Permanent</li> <li>b. Treatment of Carryforwards</li> <li>c. Measurement of Deferred Income Tax Assets and Liabilities</li> <li>d. Valuation Allowances</li> </ul> </li> <li>e. Accounting for Uncertain Tax Positions</li> <li>f. Intraproduct Income Tax Allocation and Other Rules Affecting Presentation in the Financial Statements</li> <li>g. Balance Sheet and Income Statement Disclosures</li> <li>h. Accounting for Income Taxes in Interim Periods <ul style="list-style-type: none"> <li>i. Effects of Tax Law Changes on Previously Recorded Deferred Income Tax Assets and Liabilities</li> <li>j. Other Changes and Error Corrections</li> <li>k. Business Combinations</li> </ul> </li> <li>9. Special Problems <ul style="list-style-type: none"> <li>i. International Issues <ul style="list-style-type: none"> <li>ii. Deferral and APB 23</li> <li>iii. Foreign Currency Translation and FAS 52</li> <li>iv. Stock Options and Related Compensation Issues – FAS 123R</li> </ul> </li> </ul> </li> </ul>	-Be able to recognize how tax issues are properly reflected in financial statements	FAS 109 / ASC 740 Handouts and TM 6845 (as directed in class) FIN 48 / ASC 740-10 Handouts Handouts APB 23 Handouts

		<b>10. Effects on the Books of the U.S. Tax Reform of 2017 under these rules</b>		
March 20, 26, 27, April 2, 3, 9, 10, 16, 17, 23	<b>Classes 19 - 28</b> Increased Transparency and Other Regulatory Changes Affecting Corporate Tax Practice, including SOX, Dodd Frank Act, Document Retention, and Other Regulatory and Enforcement Issues	<p>11. New Transparency and Practice Issues From Recent Financial Scandals</p> <ul style="list-style-type: none"> <li>a. Tax Shelter Rules <ul style="list-style-type: none"> <li>i. Listed Transactions and Transactions of Interest</li> <li>ii. Material Advisers <ul style="list-style-type: none"> <li>(1) List Maintenance and Information Returns</li> </ul> </li> <li>iii. Duties and Penalties for Noncompliance</li> <li>iv. What's Left in Tax Planning</li> </ul> </li> <li>b. FIN 48 and IRS Form UTP</li> <li>c. Schedule M-3 of IRS Form 1120</li> </ul> <p>12. Attorney-Client Privilege and Work Product Doctrine</p> <ul style="list-style-type: none"> <li>d. Inside Counsel v. Outside Counsel</li> <li>e. Internal Investigations</li> <li>f. Recent Amendments to FRCP 602 – Waiver and Selective Waiver</li> <li>g. Crime Fraud Exception</li> <li>h. AICPA AU section 9326 – Independent Auditor</li> <li>i. SEC Comment Letter Practices</li> <li>j. IRS and Tax Accrual Workpapers</li> <li>k. Accountant-Client Privilege (IRC section 7525)</li> </ul> <p>13. Corporate Responsibility for Financial Reports</p> <ul style="list-style-type: none"> <li>a. Public Company Audit Committees</li> <li>b. CEO and CFO Certifications Under SOX section 302</li> <li>c. Conflicts of Interest</li> </ul> <p>14. Auditor Independence and Tax Services</p> <p>15. Internal Controls and SOX section 404</p> <p>16. Corporate and Criminal Fraud Accountability</p> <ul style="list-style-type: none"> <li>a. Expanded Statutes and Penalties</li> <li>b. Whistleblowers</li> </ul>	-Be able to recognize various issues and processes in the regulation of the preparation of tax returns and financial filings containing tax issues, including both civil and criminal penalties that may apply to those involved in their preparation -Be able to recognize various issues affecting the confidentiality of client information – keeping it confidential and duties to inform others -Be able to recognize common ethical and regulatory problems of corporate tax advisors	Handouts

		c. Document Retention Policies – Alteration and Destruction of Documents d. Inside and Outside Attorneys e. Application to Non-Public Entities 17. A Brief Look at the Foreign Corrupt Practices Act and Other Foreign Related Reporting		



## Syllabus Addendum

**Attendance:** Although attendance may not be taken at every class, students are expected to attend and participate in every class. Students should prepare for all classes even if they miss and are responsible for material covered in their absence. Students may not attend a class unless they are officially registered for the course. The Levin College of Law does not approve requests to audit its courses. Students who do not attend at least one of the first two class meetings of a course or laboratory in which they are registered, and who have not contacted the School to indicate their intent, may be dropped from the course. The instructor adheres to all UF attendance policies.

**Honesty:** Academic dishonesty will not be tolerated. Students are required to know and comply with the university's policy on academic honesty. Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**Civility:** This course will be conducted in a courteous and professional manner. Inappropriate classroom behavior of any form will not be tolerated. At the instructor's discretion, students acting in an uncivil manner will receive a grade reduction commensurate with the infraction. Students can be withdrawn from the course for excessive unacceptable behavior.

**Disabilities:** The University of Florida is committed to providing academic accommodations for students with disabilities. Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, the Dean of Students Office will provide documentation to the student who must then provide this documentation to Dean Rachel Inman when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

If your accommodation regards special testing arrangements, you must then submit an Accommodated Test Request (ATR) online for each exam/quiz. Students with disabilities are encouraged to follow these procedures as early as possible within the semester. If you do not follow the Disability Resource Center procedures or meet the deadline for requesting accommodations or for submitting your ATRs, you will have to take the exam with your class without accommodations.

**Evaluation:** Students are expected to provide feedback on the quality of instruction in this course based on 10 criteria. These evaluations are conducted online at <https://evaluations.ufl.edu>. Students will be given specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.