

## Judicial Ethics, Judicial Process, and Judicial Legitimacy

### I. INTRODUCTION

In this seminar we will explore three fundamental, interconnected aspects of the *judicial* element of the American legal system: judicial ethics (the rules and norms that govern how judges should act), judicial process (how judges do their work), and, most important, judicial legitimacy – what makes judges, and the law they articulate, worthy of our respect and compliance. Positive public perception of the judiciary’s role in American political life is indispensable to the effectiveness of the judicial branch in our pluralistic democracy. Indeed, this shared confidence is the very source of judicial legitimacy, the *sine qua non* of our judge-centered common law system. We expect our judges to follow established processes and ethical rules in order to perform their ostensibly impartial role in our legal system, whether at the local, state, or federal level. We will draw on court opinions, the media (including social media as well as film and television depictions), and scholarly debate to examine how – historically and in our current, politically polarized moment – the judicial branch of our government seeks to achieve and maintain legitimacy.

### II. COURSE MATERIALS

- a. Susan R. Martyn, Lawrence J. Fox, and W. Bradley Wendel, *The Law Governing Lawyers: Model Rules, Standards, Statutes, and State Lawyer Rules of Professional Conduct*, 2019-2020 Edition.
- b. “Class Readings” – I will provide these in advance every week, in class and/or on Canvas. Beyond the Model Code of Judicial Conduct and the ABA Model Rules (both contained in *The Law Governing Lawyers*), these readings are the primary content for the course, so I expect you to read these carefully.

### III. COURSE OBJECTIVES AND LEARNING OUTCOMES

Through your reading, your involvement in classroom discussion, and your completion of a research paper, you should:

- a. Deepen and refine your knowledge and understanding of the basic structure, the fundamental work, and the political history of the American judicial system.
- b. Develop a greater understanding of the challenges that judges face in their role as “interpreters” of the law – including statutes, the common law, and federal and state constitutions.

- c. Develop a better sense of the various and sometimes irreconcilable roles that judges must play in American political society, including the role that judges play in determining the proper balance of the separation of powers among the executive, legislative, and judicial branches of federal and state governments.
- d. Develop a keen understanding of judicial ethics, particularly the norms and canons articulated in the ABA Model Code of Judicial Conduct. This entails understanding the special responsibilities and obligations that apply to judges beyond the responsibilities and obligations that apply to all lawyers as articulated in the ABA Model Rules of Professional Conduct.
- e. Develop a sophisticated understanding of the judicial process, especially the various rhetorical conventions and practices that judges rely on to express and justify their opinions in specific cases for purposes of establishing the law more broadly.
- f. Develop a coherent understanding of the complex notion of judicial legitimacy, broadly defined as the credibility with which the American public views judges and courts, which in turn sustains the rule of law in our nation.
- g. Develop a greater understanding of the crucial role that public perception of the law (of lawyers, judges, and the adversary system) generally plays in determining whether people obey the law and whether people believe that justice is achieved in the American legal system. This includes understanding how public perception of the law is shaped through representations of lawyers and judges in the political media, film, and television.
- h. Develop, through your research papers, greater skill in conducting independent research and in producing clear, well-organized, persuasive written legal analysis.

#### **IV. READING, ATTENDANCE, CLASS PARTICIPATION, AND OTHER CLASSROOM POLICIES**

- a. Discussion and Class Participation: This course is built on class lecture and discussion. I expect you to be here for every class. If you cannot attend, you are responsible for filling the gap. Similarly, I expect you to be prepared to participate in class by doing the assigned reading, by thinking carefully about how that reading fits within the structure of your growing understanding of the law, by listening to what others have to say, and by offering your own opinions when you feel they will enrich the discussion. (Quality is more important than quantity when it comes to what you say in class.) More than knowing any single topic, what really matters here is the process of reading, thinking hard about and discussing vigorously these materials. I will consider these factors when determining your class participation score (**10%** of your final grade).
- b. Attendance: I will take attendance every class. If you cannot attend, you must contact me before class to inform me. As mentioned above, when determining your final grade, I will consider your attendance as part of your "Class Participation." As advanced students, you are aware that any student who misses more than 20% of our class sessions will be prohibited from completing the course. This means that in this class, which meets just

once weekly during the semester, you may have a maximum of two (2) unexcused absences. On the third unexcused absence, you will become ineligible to complete the course. The law school's policy on attendance can be found at:

<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>

- c. Workload Expectations: Per ABA Standard 310, you are expected to spend, on average, two hours preparing outside of class for every hour that you spend in class. Thus for this seminar you should expect to spend approximately 4 hours of outside time per week in addition to the 2 hours you spend in class. The 4 hours will consist mainly of doing assigned reading, writing intellectual journals, and researching and drafting various parts of your final research paper.
- d. Electronic Devices Policy: You may not use laptop computers or any other digital or recording devices in class unless I give you authorization. Also, cell phones must be turned off while you are in class. If you must take or make a call during class, please leave the room discreetly to do so. This applies to restroom breaks as well.
- e. Canvas and Email: I will use Canvas to post all class materials. I will communicate with you, and will expect you to communicate with me, by email. Thus I will hold you responsible for checking the course Canvas site and your campus email once daily in order to stay abreast of class postings and any information I may send you.

## V. ASSIGNMENTS AND GRADES

Because this is a seminar, your tasks here will emphasize reading, thinking, discussing, and writing more than the conventional "Black Letter" skills of memorizing and outlining. Indeed, my greatest hope is that you emerge from this course with a more developed, examined, sophisticated understanding of your own beliefs about the virtues and limitations of our judicial system.

### Specific Course Requirements:

1. Class Participation (10%): Please see "Discussion and Class Participation" above.
2. Intellectual Journals (15%): This chronicle of your thinking throughout the course will consist of 5 informal entries of 2-3 pages each. I will provide you with a question to respond to for each journal. Each journal is due in my email inbox prior to class on the date listed below. If you exceed this deadline, I will deduct one point from the journal. If you are more than one week late, I will not accept the journal.
  - a. Rather than outline and memorize rules and cases, your intellectual work in this course is to read and respond to challenging materials (essays, articles, cases, films, etc.) that raise fundamental questions about the complex nature of the American judiciary. To help you engage as fully as possible with the reading, as well as to help you prepare for class discussion and to formulate questions and ideas for your final paper, I require that you maintain this informal academic journal. (While I require just five journal entries, you should consider making an entry for every class period; past students have remarked that writing regularly in this journal was the most helpful aspect of the course.)

- b. The point of these journals is to get you to express your thinking about the reading and other materials in coherent, original ways. So when responding to the question asked for a particular journal, instead of merely summarizing what you've read, or quoting extensively, try to engage with the material on your own terms – ask questions, suggest answers, dispute arguments, make connections to other ideas and concepts, ponder hypotheticals, and so on. Don't be afraid to take risks – this journal is the place to do it. I want this component of the course to help you generate ideas and arguments in your own "jurisprudential" voice, both to help you prepare for class discussion and to give you momentum and material as you formulate and research your final paper. When responding to the question asked for a specific journal, you may make reference to any materials discussed in class, to relevant things happening in the world, to your own life experience, or some combination thereof.

Sometimes I will use excerpts from your journals to shape class discussion. My reading of portions of your journal entries in class should give you a good idea of what constitutes an exemplary journal entry. When I read portions of your journal entries in class, I will never identify the author. If you want me to refrain from reading a particular journal at all, please indicate that on the journal entry.

- c. I will not provide written feedback on your journal entries, but you are welcome to ask my opinion of what you have submitted. If you do not hear from me that a journal entry is sub-par, you should assume that it is sufficient to receive 3 points. Because I will not formally grade your journal entries, I will not focus on grammar, spelling, or other technical matters. I will, however, keep notes on the quality of your effort to explore, in writing, the thinking you are doing for class. With this in mind, I will take an “all-or-nothing” approach to grading your journal entries: I will give each journal entry either a **3** (reflecting thoughtfulness and effort) or a **0** (reflecting weak or token effort, little engagement with the subject matter, etc.).
- d. The journal deadlines are:

- **Journal #1 – due in or before class on Thursday, January 23<sup>rd</sup>**
- **Journal #2 – due in or before class on Thursday, February 6<sup>th</sup>**
- **Journal #3 – due in or before class on Thursday, February 20<sup>th</sup>**
- **Journal #4 – due in or before class on Thursday, March 12<sup>th</sup>**
- **Journal #5 – due in or before class on Thursday, March 26<sup>th</sup>**

When submitting a journal to me, please remember to put your name, the date, and the journal number (i.e., Journal #4) at the top of the journal entry.

3. Oral Presentation of Final Paper Topic and Argument (10%):

- a. You will have 10 minutes to present orally to the class the basic idea and argument of your final research paper. I will provide more detail on this later in the semester, but the essential goal here is to get you to commit to, research, and substantially develop your topic by the time you give your oral presentation to the class. This will put you in a reasonable position to complete your paper by **the April 27<sup>th</sup> deadline**.
- b. Your classmates and I will ask questions and offer feedback that should help you further refine and develop your paper.
- c. You will give your oral presentation in class on **Thursday, April 2<sup>nd</sup>**.

4. Final Seminar Paper (65%):

- a. Deadline: **Your final seminar paper is due by 12:00 pm (noon) on Monday, April 27<sup>th</sup>**. You must submit a hard copy of your paper to my academic assistant (TBD), and you must also submit an electronic version (in Word format) to me by email. Unless you have an extraordinary, pre-approved reason for exceeding the deadline, I will mark your paper down one full letter grade (e.g., from A- to B-) for every 24 hours that it is late.
- b. Seminar Paper Parameters: Each of you is required to write a final research paper. The topic you choose should require some independent research. While the quality of your analysis is the most important criterion I will consider in determining your final grade, I will discuss in greater detail the specific criteria that will help you meet that standard.

If you are using this seminar paper to fulfill the Advanced Writing Requirement, your paper should be approximately 25 pages, double-spaced, with 12-point font. If you are not using this seminar paper to fulfill the AWR, your paper should be approximately 20 pages, double-spaced, with 12-point font. Either way, your paper should be of professional quality, with citations conforming to Bluebook format for law review articles. Please put footnotes at the bottom of the page rather than at the end of the paper.

- c. Specific Paper Deadlines:
  - i. **Thursday, February 13<sup>th</sup> in class:** One paragraph in which you (1) describe your paper topic, (2) briefly discuss how you plan to develop that topic, and (3) state what your basic argument will be.
  - ii. **Thursday, March 19<sup>th</sup> in class:** 2-4-page sentence outline and working bibliography.
  - iii. **Thursday, April 2<sup>nd</sup> in class:** Oral presentation of seminar paper topic and argument. (See above.)
  - iv. **Thursday, April 9<sup>th</sup> in class:** Rough draft of seminar paper. We will discuss the parameters of this in greater detail, but the bottom line is that the more you have at this point, the better I can help you move toward completion.
  - v. **Monday, April 27<sup>th</sup>, 12:00 noon:** Final seminar paper due to my faculty secretary in hard copy and to me via email.

**VI. SUMMARY OF FINAL GRADE COMPOSITION**

- a. **10%** = Attendance and class participation
- b. **15%** = 5 Intellectual journals (**3%** each)
- c. **10%** = Oral presentation of paper topic and argument
- d. **65%** = Final seminar paper

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**100%**

**VII. UF GRADING INFORMATION AND GRADING SCALE**

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website, and this class will adhere to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**VIII. THE CLASSROOM ETHOS**

This seminar will be intellectually and philosophically challenging. These challenges are perhaps the best reasons to take this course. Our subject matter may at times be troubling or controversial to you. I think that’s a good thing, because it will compel you to examine your own assumptions and values as you develop your knowledge and understanding of the American judiciary. To best engage with these materials and ideas, I encourage you to ask questions and challenge arguments, whether mine or those of your classmates, as long as you do so thoughtfully and respectfully.

Class time is precious, and one of the greatest legal skills is the capacity to interact efficiently with others, so please think before you speak. Finally, because this course is broad and necessarily touches many dimensions of the legal universe, I may not have the answers to all of your questions, and I will err on occasion. I promise you an honest response about what I think and about what I do or do not know. I believe such honesty is crucial to education, and, so that we can learn from each other, I expect the

same honesty from you. The law school classroom is one of the great learning spaces in the world, and I implore you to take advantage of the give-and-take that transpires here to develop yourself as a lawyer and a person.

#### **IX. 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>.

#### **X. DISABILITY ACCOMMODATIONS**

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

#### **XI. STUDENT COURSE EVALUATIONS**

You can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but you will receive notice of the specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.