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for  
Real Lawyers**

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# Real Ethics for Real Lawyers

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*To My Parents, Who Taught Real Ethics.*



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# Foreword

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*Real Ethics for Real Lawyers* is designed to teach professional responsibility by solving practical problems.<sup>1</sup> This approach is informed by my experience as a litigation partner in a major law firm, and my experience advising real law firms and lawyers about actual ethical dilemmas.

Too often “legal ethics” are taught in a vacuum, as if they were somehow technical subjects that stand apart from the moral values that you grew up with. This is dangerous. “Legal ethics” are, in the end, about fundamental responsibility. This book deliberately links issues of “legal ethics” directly to such fundamental values, i.e. “real ethics”. But the book does not overlook the economics of the profession, nor those topics of particular concern to new lawyers, such as how to start a law practice, bar admissions, bar discipline and malpractice liability.

There is a big emphasis here on preparing problems for oral argument, just as real lawyers would, and on solving difficult dilemmas by asking questions and debating options, again, just like real lawyers. Long experience in teaching professional responsibility in four law schools has taught me that class debate is the best way to learn the rules, and, more importantly, prepares you for what awaits in practice. It is also more fun.

This book can be used as a free-standing professional responsibility course, but can also be paired with my short book, *Lawyers and Fundamental Moral Responsibility* (Lexis Nexis, Anderson, Cincinnati, 1995) (Hereafter “*Fundamental Moral Responsibility*”). The two books together can be covered in a three-hour course. *Real Ethics for Real Lawyers* teaches the relevant rules and legal doctrines. *Fundamental Moral Responsibility* addresses practical problems from the perspective of ethical philosophy, and provides a philosophical “tool box” for resolving moral dilemmas. Taken together, the books provide the new lawyer with both a legal and an ethical framework for resolving the real problems of practice.

This book can also be paired with other special perspectives. For example, it could be combined with a new book by my distinguished colleague and friend, R. Michael Cassidy, *Prosecutorial Ethics* (Thompson/West, St. Paul, 2005). There are many other possibilities.

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1. For a leading philosophical basis of this approach, see John M. Rist, *Real Ethics: Reconsidering the Foundations of Morality* (Cambridge, 2002). “The major issues in moral philosophy, as Plato realized, are comparatively simple and cannot be fudged.” *Id.*, p. 8. This book also lends itself to another approach that derives from early Jesuit philosophy, and has been ably advocated by a most valued friend and colleague, Paul R. Tremblay. This is casuistry, “a form of ethical reasoning that involves the close analysis of particular cases, seeking ethical guidance in an inductive manner, rather than deductively through the application of theory.” See Paul R. Tremblay, “Shared Norms, Bad Lawyers, and the Virtues of Casuistry,” 36 *University of San Francisco L. Rev.* 659, 661 (2002).

Unlike many other texts, this book does include selected professional rules, including an appendix containing the *Massachusetts Rules of Professional Conduct*. Obviously, these rules change, and may have to be updated, but the convenience for students of an integrated book is very great. Occasional supplements, such as the latest ABA rule pamphlet, are easy to provide.

As with almost every teacher in this field, I am deeply indebted to my special friend and colleague, Andrew L. Kaufman. His original edition of *Problems in Professional Responsibility* (Boston, 1976) essentially invented this genre. I have borrowed many ideas from that great classic, and its subsequent editions, including the excellent new edition prepared with another most valued friend and colleague, David B. Wilkins.

Andrew Kaufman's example as a teacher, a scholar, a true friend, and a lawyer dedicated to the standards of his beloved profession, has been an inspiration to me for more than thirty years. His admirers are legion, and his influence for the good has been profound.

Another special friend has been my colleague Judith A. McMorrow, co-author with me of the *Federal Law of Attorney Conduct* (Lexis Nexis, San Francisco, 2001). She teaches responsibility, honesty and loyalty by example. Such teachers and friends are priceless, and I owe more to my colleagues at both Boston College and Harvard than I can ever say. It has been a great privilege to know them, and to learn from their wisdom and idealism.

Essential to this book has been the enthusiasm and invaluable insights of my Boston College research assistants, James-Ryan Fagan '06, Kristen A. Johnson '06, James E. Kruzer '07, and Michael E. Pastore '07, and the generous support of my Dean, John H. Garvey, and my good friend Charles D. Ferris '61. I would also like to specially thank Patricia Tarabelsi, Editorial Assistant to the Monan Professor, for her tireless efforts in preparing these materials. Her intelligence and hard work are evident on every page.

# Acknowledgments

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