

YORK UNIVERSITY
OSGOODE HALL LAW SCHOOL

ETHICAL LAWYERING IN A GLOBAL COMMUNITY

COURSE SYLLABUS – PART II
(2-11 JANUARY 2019)

TERMS: Fall 2018-Winter 2019

DATES: Part I: August 27-August 30, 2018
Part II: January 2 -11, 2019

COURSE INSTRUCTORS:

SECTION A: Heidi Matthews
Ian Stedman (Graduate Teaching Assistant)

SECTION B: Faisal Bhabha
Emanuel Tucsa (Graduate Teaching Assistant)

SECTION C: Fay Faraday (Course Director)
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SECTION D: Trevor Farrow
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INTRODUCTION

Ethics, access to justice and professionalism – locally and globally – have increasingly become foundational topics of attention at all levels of the justice community. This course is designed to look directly at those issues.

Specifically, this course provides an introduction to the legal profession, professional norms and values, and the ethical issues that lawyers grapple with not only in the context of their many and varied roles, but also as members of a profession with collective responsibilities in relation to the public interest and access to justice. The course situates these issues within their modern day context; that is, within a context characterized by local diverse communities, globalization, legal pluralism, transnationalism and internationalization.

BACKGROUND

The changing nature of legal practice has resulted in the proliferation of practice contexts and roles for lawyers. This course introduces students to multiple visions of lawyering and professional roles and the many contexts in which those roles are performed. It asks whether and how context should matter in terms of how lawyers conceptualize their roles and their individual and collective professional and ethical obligations. It explores questions of how legal professionals working in different settings such as private practice, government, legal aid clinics, the legal academy, or beyond the formal practice of law, should conceptualize their roles, obligations and opportunities. It explores different lawyering visions; that is, visions of how one undertakes the task of lawyering: for instance, lawyer as collaborator, lawyer as deal-maker, lawyer as expert, lawyer as facilitator, lawyer as negotiator, lawyer as translator/storyteller, lawyer as friend and lawyer as hired gun. It questions the centrality of adversarialism and neutral partisanship (the “hired gun” vision) in depictions of lawyers’ roles. It emphasizes the importance of a self-conscious selection of lawyering visions. In the process, it draws students’ attention to the power dynamics in lawyer-client relationships, to the scope of conversations lawyers ought to have with clients, and to possible individual and collective duties beyond those owed to clients. In so doing, the course will put the concept of the public interest front and centre and ask students to engage in a critical and self-reflective conversation about what the public interest is and what it means in terms of lawyering, the profession and professionalism. Central to all of these discussions will be the underlying theme of access to justice.

Further, the communities served by lawyers, the practice contexts in which they work and the problems they encounter are increasingly diverse, complex, transnational and global in character, demanding new competencies and raising a host of new issues about ethics and professionalism. More and more lawyers engage in transnational practices, including, for example, corporate, family, labour and human rights practices. Knowledge of other legal systems and the norms of professional conduct in other jurisdictions are increasingly essential in such settings. Even beyond these self-consciously transnational contexts, few if any fields remain in which legal professionals can rely solely on knowledge of a single, domestic legal system. Local communities are microcosms of global diversity in which a multiplicity of official and unofficial legal orders and ethical systems overlap. The increasingly pluralistic nature of modern local communities demands that the vast majority of lawyers will be required to work in contexts that require cross-cultural competencies and sensitivities to diverse moral perspectives. Indeed, competent legal representation necessitates attention to the cross-cultural and international, comparative and transnational (ICT) dimensions of much legal work.

COURSE STRUCTURE

Ethical Lawyering in a Global Community will be taught in two main Parts using primarily section and small group settings.

Part I of this course introduces students to some key concepts relevant to an appreciation of the ethical dimensions of lawyering including the profession, professionalism, access to justice, diversity and the public interest. Part I also examines lawyering through the lens of role morality, introducing the neutral partisan model and some alternatives.

In Part II, we will return to the themes introduced in Part I, but with the goal of broadening our sense of the complexity and challenges of ethical lawyering and to deepen our capacity to evaluate and address these challenges. We will develop our discussions on the topics of role morality, the public interest, pluralism, internationalism and transnationalism. Various specific topics will be raised as tools to illuminate some of these broader discussions, including a number of professional obligations (competence, candour, civility, confidentiality and conflicts), institutional lawyering, internationalism/transnationalism and future directions of the legal profession.

The course emphasizes problem-oriented, active learning. During small group sessions teaching tools such as simulations, problems, case studies, role plays, fictional accounts, biographies, films, collaborations, etc., will often be used to encourage students to immerse themselves actively into complex ethical, professional and ICT contexts.

As part of the experiential learning emphasized in the course, in Part II students will conduct a moot. They will work in lawyering groups to integrate the themes of the course and apply them to an ethical lawyering case study.

LEARNING OBJECTIVES

The overall objective of this course is to encourage students to engage in an expansive, moral conversation about lawyering that will lead to a reflective and critical approach to ethical lawyering in a global community. Central questions of the course examine who we are as lawyers; for whom, how and where we act; and on what basis do we act.

By the end of the course, students should be able to:

- demonstrate a basic understanding of the history, structure and regulatory processes of the Canadian legal profession;
- demonstrate knowledge of the norms traditionally associated with the legal profession as reflected in rules of professional conduct and related enabling legislation;
- appreciate the legal profession as, itself, a normative system, wherein the norms are not given and static but contested and shifting;
- appreciate the breadth and diversity of visions or philosophies of lawyering;
- discern some ethical frameworks that are appropriate to various lawyering roles and practice contexts;
- demonstrate the ability to think critically about the legal profession, professionalism and the administration of justice;
- demonstrate an understanding of some of the basic professional obligations and practice issues relating to the lawyering role, including the fiduciary nature of the lawyer-client

relationship, communication and civility, competence, confidentiality and disclosure, conflicts of interest, equality and diversity, etc.;

- demonstrate an understanding of multiple conceptions of access to justice and the public interest, two of the central norms claimed by the legal profession;
- demonstrate knowledge of the multiplicity of legal and normative orders in which lawyering occurs and understand how this multiplicity of orders may impact both client representation and the collective responsibilities of the profession;
- engage in ethical deliberations about legal problems in manners that are open to multiple viewpoints, moral perspectives and legal and social orders;
- appreciate some of the many and varied impacts of globalization on the practice of law and the regulation of the legal profession;
- demonstrate an understanding of some basic ICT (international, comparative and transnational) concepts that relate to the lawyering process;
- identify and apply connections between the knowledge, skills and contextual discussions raised in this course and other law and pre-law school courses and experiences as well as in the Osgoode Public Interest Requirement (OPIR) program; and
- work collaboratively with others to resolve concrete professional problems.

MATERIALS

The course materials will be primarily provided in two sets, one for each of Part I and Part II of the course.

The materials for Part I and Part II will be available via hyperlink in the Course Syllabus or online on the course Moodle site. Part I materials will be available in late August and Part II materials will be posted in late December/early January.

Further materials may be provided from time to time for individual sessions and by individual instructors. The Moodle course websites of the instructors for each section may also contain further notices and materials.

EVALUATION

Final course grades will be assigned following Part II of the course and will be released with other first year grades in the spring (typically in May). Evaluation for the course is based on the following components:

- **Participation (value: 15%)**
 - o This includes attendance and participation in classes and small groups and other learning activities throughout the course (e.g. Moodle discussion threads and/or reflections between September and January) as set out by each instructor.

- **Part I Written Assignment (value: 15%)**
 - o Limited to 900 words
 - o The assignment should be double-spaced using 12 point font
 - o The assignment must be submitted through the Osgoode on-line drop box by no later than **8:30 a.m. on Thursday 13 September 2018**. The on-line drop box is available through the MyOsgoode website (follow the instructions provided in the QuickLinks section).
 - o Please make sure to **include a separate cover sheet**, which should provide:
 - the name of the course;
 - your confidential student assignment number that **begins with the letter “A”** (and NOT your name or student number);
 - the name of your instructor;
 - your section;
 - the date;
 - the name/title of the assignment; and
 - the word count.
 - o Please also make sure to **include a bibliography**.
 - o Assignments should be submitted in PDF format. Hard copies will not be accepted. It is important to receive and record your confirmation of submission number.
 - o A **late submission penalty of 1 mark per day or partial day** will apply. (i.e. the assignment is graded out of a total of 15 marks; the late penalty is 1 mark out of 15 per day or partial day)

- **Part II Case Study (value: 20%)**
 - o Part II of the course will feature case study exercises that will form the basis of several lawyering activities. Much of this work will be done in small groups. **An in-class case study lawyering group presentation will take place in January and performance will be graded.**

- **Final Paper (value: 50%)**
 - o The final element of the course evaluation will be a written assignment. **The question(s) for the assignment will be distributed at the end of Part II of the course.**
 - o The assignment, which should be double-spaced using 12 point font, is limited to 3,000 words (including any footnotes).

- o The assignment must be submitted by way of the Osgoode on-line drop box by no later than **8:30 a.m. on Monday, 28 January 2019**. The on-line drop box is available through the MyOsgoode website (follow the instructions provided in the Quicklinks section).
- o Please make sure to **include a separate cover sheet**, which should provide:
 - the name of the course;
 - your confidential student assignment number **that begins with the letter “D”** (and NOT your name or student number);
 - the name of your instructor;
 - your section;
 - the date;
 - the name/title of the assignment; and
 - the word count.
- o Please also make sure to **include a bibliography**.
- o Assignments should be submitted in PDF format. Hard copies will not be accepted. It is important to receive and record your confirmation of submission number.
- o In this assignment, you will need to use a reflective and critical approach, and integrate readings and other learning materials from both Parts I and II of the course. The assignment will emphasize course materials, course discussions and your own observations and experiences and therefore should include no outside research.
- o **Late submission of papers:** Final papers must be submitted to the Osgoode on-line dropbox by no later than **Monday 28 January 2019 at 8:30 a.m.** Any requests for extensions must be made in writing to Mya Rimon, Assistant Dean (Students) using the Fall Deferral Request Form and must be received **BEFORE** 28 January 2018 at 8:30 a.m. Papers submitted after the due date will not be accepted without specific permission from the Assistant Dean’s (Students) office, in accordance with Osgoode’s normal Academic Rules. **Students submitting late papers who have not been granted an extension will receive a grade of 0 for the paper.**

ACADEMIC INTEGRITY AND OTHER IMPORTANT POLICIES

ACADEMIC HONESTY, INTEGRITY AND RESPECT FOR POSITIVE SPACE

a. Academic Honesty and Integrity

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules. The Senate Policy can be found at

<http://www.yorku.ca/secretariat/policies/document.php?document=69>

The York University academic integrity website can be found at

<http://www.yorku.ca/academicintegrity>

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available on the MyOsgoode website, under the Documents and Publications tab.

b. Religious Observance

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let Assistant Dean, Students, Mya Rimón, know within the first three weeks of class.

c. Students with Disabilities and Accommodation Needs

York University has a range of resources to assist students with physical, mental, and learning disabilities/challenges in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to York's Counselling & Disability Services office (N110, Bennett Centre for Student Services or 416-736-5297) or Osgoode's Office of Admissions & Student Services as soon as possible. Students seeking accommodation in experiential education settings are encouraged to read the *Accommodation Information for Clinical & Intensive Program* handout provided to them with their enrolment offer. All requests for accommodation will be kept confidential.

Requests for accommodation for in-term work must be made, in writing, to either the instructor or to the Assistant Dean, Students, Mya Rimón. Such requests must be made as soon as the need for accommodation arises and, barring exceptional circumstances, in advance of the deadline for the work.

Requests for accommodation for final examinations and final papers may only be made to and approved by the Assistant Dean, Students, Mya Rimón and must be made in advance of the examination date or final paper due date.

d. Other York University Policies, including Ethics Review Process

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available on the Senate Committee on Academic Standards, Curriculum and Pedagogy webpage (see Reports, Initiatives, Documents) –

<http://www.yorku.ca/secretariat/senate/committees/ascp/index-ascp.html>

PART II COURSE SCHEDULE

DAY 1 – WEDNESDAY 2 JANUARY 2019

INTRODUCTION TO PART II AND RECONNECTING WITH THEMES FROM PART I

Section Meetings: 9:30 a.m. – 12:30 p.m.

Section A – Rm. 1002

Section B – Rm. 1003

Section C – Rm. 1001

Section D – Rm. 1006

Readings:

Please read the following materials in preparation for Day 1.

- Law Society Act, R.S.O. 1990, c. L.8, s. 4.2 (“Principles to be applied by the Society”), online: Ontario Government <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l08_e.htm>
- Law Society of Ontario (LSO), *Rules of Professional Conduct*, r. 1.1 and 2.1 online: LSO <<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>>
 - 1.1 - Definitions
 - 2.1 - Integrity
- Katherine Kruse, “The Jurisprudential Turn in Legal Ethics” (2011) 53 Arizona Law Review 493 at 493-495 and 505-521
<<https://www-heinonline-org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/arz53&id=505&collection=journals&index=journals/arz>>

Questions for Day 1:

- Introduction.
- Part II logistics.
- Recall Part I themes and discussions.
- How is knowledge of substantive law, such as the subjects that you studied during the fall term, related to lawyering as an ethical practice?
- Revisit our first term discussion of why you came to law school in the first place, and whether your experiences in first term have affected those views.

- Discuss examples of ethical issues that arise from your first year fall term subjects. How would the practice of law connect to these issues?

*****REMEMBER: There are two classes on Thursday 3 January 2019.**

DAY 2, CLASS 1 – THURSDAY 3 JANUARY 2019
ETHICAL ISSUES IN DIFFERENT PRACTICE CONTEXTS

Section Meetings: 9:30 a.m. – 12:30 p.m.

Section A – Rm. 1001

Section B – Rm. 1006

Section C – Rm. 1003

Section D – Rm. 2001

Readings:

Please read the following materials in preparation for Day 2, Class 1.

- LSO, *Rules of Professional Conduct*, online: LSO < <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct> >
 - 3.2 - Quality of Service
 - 3.7 - Withdrawal From Representation
 - 5.1 - The Lawyer as Advocate
 - 5.2 - The Lawyer as Witness
 - 5.6-1 – Encouraging Respect for the Administration of Justice
- Robert K. Vischer, “Legal Advice as Moral Perspective” (2006) 19 *Geo. J. Legal Ethics* 1-35, 54-56, online: SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=771006>
- Adam M. Dodek, “Lawyering at the Intersection of Public Law and Legal Ethics: Government Lawyers as Custodians of the Rule of Law” (2010) 33 *Dalhousie LJ* 1 at 1-31, online: SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715172>
- Elaine Craig, “Sexual Assault and the Legal Profession” in *Putting Trials on Trials* (McGill-Queens University Press, 2018) at 3-15 and 21-23 (**on Moodle course website**)
- Leti Volpp, “Lawyering at the Margins: On Reason and Emotion” (2002) 11 *Journal of Gender, Social Policy & the Law*, 129-133, online: JGSP&L <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1351&context=jgspl>>

Questions for Day 2, Class 1:

- How does the moral relationship of the lawyer to the client connect with the relationship of the lawyer or client to other members of society or the broader public?
- What is the nature of the profession's obligation to ensure access to justice and act in the public interest? Is it discharged by advancing clients' interests?
- What are some of the various institutional and other contexts in which lawyers work?
 - Note: the discussion so far has primarily been on the domestic context of law and lawyering. As we move into Part II of the course, we will seek to deepen our understanding of other contexts of law, including inter/transnational contexts as well as local contexts that engage with a plurality of legal and other norms and contexts.
- Should the approach to the lawyering relationship depend on the nature of the client?
- Should the government lawyers in Vischer's article adopt a different approach than the corporate lawyers? Or private lawyers?
- Should regulators approach these different contexts differently?

DAY 2, CLASS 2 – THURSDAY 3 JANUARY 2019**C'S OF PRACTICE AND PROFESSIONALISM: CLIENTS, CODES, COMPETENCE, CANDOUR AND CONFIDENTIALITY**

Plenary: All Sections, Moot Courtroom (1005/1006/2006), 2:30 p.m. – 3:00 p.m.

Section Meetings: 3:00 p.m. – 5:30 p.m.

Section A – Rm. 1002

Section B – Rm. 1006

Section C – Rm. 2002

Section D – Rm. 1005

Readings:

Please read the following materials in preparation for Day 2, Class 2.

General

- LSO, *Rules of Professional Conduct*, r. 3, online: LSO
< <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct> >
 - 3.1 - Competence
 - 3.2 - Quality of Service
 - 3.3 – Confidentiality
 - 5.1-2A – Incriminating Physical Evidence
- M Lynne Jenkins, “Teaching Law Students: Lessening the effects of Vicarious Trauma” (2013) 37 *Manitoba Law Journal* 383-402, online: HeinOnline
<http://www.heinonline.org.ezproxy.library.yorku.ca/HOL/Page?handle=hein_journals/manitob37&div=30&start_page=383&collection=journals&set_as_cursor=0&men_tab=srchr esults>

Confidentiality

- *Smith v. Jones*, [1999] 1 S.C.R. 455 at paras. 1-28, 44-48, 51-52, 55-57, and 74-86, online: SCC <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1689/index.do>>
- *Lizotte v. Aviva Insurance Company of Canada* 2016 SCC 52 at paras. 1-4, 19-24, 41-45, and 64, online: SCC
<<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16250/index.do>>
- *R v. Butt*, 2012 ONSC 4326, paras. 1-5, online: CanLII
<<http://www.canlii.org/en/on/onsc/doc/2012/2012onsc4326/2012onsc4326.html>>
- International Criminal Tribunal for the former Yugoslavia, Florence Hartmann, Contempt of Court Proceedings, summary (2011)
<http://www.icty.org/x/cases/contempt_hartmann/cis/en/cis_hartmann_en.pdf>

Questions for Day 2, Class 2:

- Discuss general role of codes.
- Discuss some of the basics of practice and professionalism: clients, competence, etc.
- How do basic understandings of ethics and morality impact on the idea and practice of a lawyer’s role and practice context?
- What is confidentiality? Privilege? What are some exceptions?
- How can different understandings of the role of ethics be used to characterize the challenge of confidentiality in lawyering?
- What about candour?

DAY 3 – FRIDAY 4 JANUARY 2019
C’S OF PRACTICE AND PROFESSIONALISM CONTINUED:
CONFIDENTIALITY, CONFLICTS AND CIVILITY

Section Meetings: 9:30 a.m. – 12:30 p.m.

Section A – Rm. 1003
 Section B – Rm. 1001
 Section C – Rm. 1002
 Section D – Rm. 1006

Readings:

Please read the following materials in preparation for Day 3.

General

- LSO, *Rules of Professional Conduct*, r. 3, online: LSO
 < <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct> >
 - 3.4-1 - Duty to Avoid Conflicts of Interest
 - 3.4-17 to 3.4-26 - Conflicts from Transfer Between Law Firms
 - 3.4-27 to 3.4-41 – Transactions With Clients
 - 3.6 - Fees and Disbursements
 - 3.7 - Withdrawal From Representation

Confidentiality implications of technology

- Carrie A. Goldberg, “Rebooting the Small Law Practice: A Call for Increased Cybersecurity in the Age of Hacks and Digital Attacks” (2015) 38 *American Journal of Trial Advocacy* 518, **excerpts at pp. 519-533 and 539-548**
 <<http://www.heinonline.org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/amjtrad38&id=543&collection=journals&index=journals/amjtrad>>
- Federation of Law Societies of Canada, Model Code of Professional Conduct Consultation Report (31 January 2017) **pages 1-3 and Appendix A pages 1-4 only**
 <<https://flsc.ca/wp-content/uploads/2014/10/Consultation-Report-Draft-Model-Code-Amendments-for-web-Jan2017-FINAL.pdf>>

Civility

- Alice Woolley, “Does Civility Matter?”, online: Slaw.ca (5 September 2018)
 < <http://www.slaw.ca/2018/09/05/does-civility-matter/> >
- Supreme Court of Canada, Case in Brief: *Groia v Law Society of Upper Canada* (1-page factual summary of the decision), online: SCC
 < <https://www.scc-csc.ca/case-dossier/cb/37112-eng.pdf>>

- *Groia v. Law Society of Upper Canada*, 2018 SCC 27 at paras. 63-76, online: SCC <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17113/index.do>>

Conflicts of Interest

- *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, online: SCC <<http://scc-csc.lexum.com/decisia-scc-csc/scc-csc/scc-csc/en/item/13154/index.do>>
- Randal N.M. Graham, Legal Ethics: Theories, Cases and Professional Regulation (2d edition) (Toronto: Emond Montgomery Publications, 2011) **pages 289-297 (available on Moodle Course website)**

Practical Examples (as assigned by section instructors)

- Sample Joint Retainer Agreements:
 - online LSO <<https://lso.ca/getdoc/0fee9040-be22-4430-a78c-217040facb4f/sample-joint-retainer-acknowledgment-and-consent>>
 - online, Law Society of British Columbia <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/ltr-joint-retainer.pdf>>

Questions for Day 3:

- What are conflicts of interest?
- How can different understandings of the role of ethics be used to characterize the challenge of conflicts of interest?
- How do lawyers' fees play into this discussion?
- What is civility? Is the obligation of civility consistent with all views of lawyering? Should it be?
- Introduce case study.
 - **Case Study.** The case study will be circulated electronically after class on Thursday 3 January. The case study involves an appeal from a Law Society Tribunal decision. There are 4 parties on the appeal. Each party will be represented by a separate case study lawyering group.
 - **Case Study Lawyering Groups.** Students will be assigned to their case study lawyering groups by the end of today's section meeting. Each group will be made up of approximately 4 students. It is critical that students ensure that they know

who is in their case study lawyering group and determine a mechanism (e.g. e-mail list, telephone numbers, text, etc.) – **today** – for organizing their case study lawyering group meetings, which will start after Day 4. (Students may wish to start meeting with their case study lawyering groups today if they so choose).

- **Appeal.** Students will also be told on which of Day 7 or Day 8 their case study lawyering group will present, and at what time on those days. Students only attend and present on one of those two days and during one time slot.
- **Materials and Focus.** The case study materials include instructions, a factual record as well as references to other supporting materials. As you will see, the case study picks up on the principles that have been discussed so far, and provides a basis for launching into further discussions and considerations about international/transnational contexts.

DAY 4 – MONDAY 7 JANUARY 2019
PLURALISM IN THE GLOBAL CONTEXT

Note: Today, there will be both Section and Case Study Lawyering Group Meetings.

Section Meetings: 9:30 a.m. – 12:30 p.m

Section A – Rm. 1001
Section B – Rm. 1002
Section C – Rm. 1003
Section D – Rm. 2002

Readings:

Please read the following materials in preparation for Day 4.

General

- Yves Dezalay and Bryant Garth, “Lawyers, Law, and Society” in Yves Dezalay and Bryant Garth, *Lawyers and the Rule of Law in an Era of Globalization* (New York: Routledge, 2011), 1-14 (**available on Moodle Course Website and as an e-book in York University Libraries**)
- Brian Z. Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global” (2008), 30 *Sydney Law Review* 375 at 375-376 and 381-403
<<http://www.austlii.edu.au/au/journals/SydLawRw/2008/20.pdf>>
- Robert Knox, “Strategy and Tactics”, (2011), 21 *Finnish Yearbook of International Law* 193-229 at 193-215
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1921759>

Questions for Day 4:

- What is “pluralism” and how does it relate to ethical lawyering? Specifically, think about how notions of pluralism can and do influence the lawyering process. In what contexts?
- What are some ethical implications of globalization and ICT contexts of lawyering? Are the ethical frameworks discussed earlier in the course bounded by national societies?
- Has law been globalized? What kinds of regulations and norms of conduct do lawyers and clients face in a global community?
- What are some of the challenges for lawyers in the context of the legal (political, economic, historical) problems at the heart of the example in the case study?
- Discuss the case study.

Case Study Lawyering Group Meetings (2 hours):

- Location as arranged by individual groups (**no supervision by instructors**).
- Discuss approach to case study lawyering group’s retainer (see case study materials for issues, questions and materials).

DAY 5 – TUESDAY 8 JANUARY 2019
PLURALISM IN THE DOMESTIC CONTEXT

Note: Today, there will be both Section and Case Study Lawyering Group Meetings.

Section Meetings: 9:30 a.m. – 12:30 p.m.

Section A – Rm. 1001

Section B – Rm. 1006

Section C – Rm. 1003

Section D – Rm. 2001

Readings:

Please read the following materials in preparation for Day 5.

- Leroy P. Little Bear, “Dispute Settlement among the Nacirema”, (1975), 1 *J. Contemp. L.* 331
<http://www.heinonline.org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/jcontemplaw1&id=341&collection=journals&index=journals/jcontemplaw>

- Sue Bryant and Jean Koh Peters, “Five Habits for Cross-Cultural Lawyering” in Kimberly Barrett and William George, *Race, Culture, Psychology, and the Law* (Thousand Oaks: Sage, 2005), 47-62 (**available on Moodle Course Website**)
- Val Napoleon and Hadley Friedland, “Indigenous Legal Traditions: Roots to Renaissance” (2013) Ontario Law Foundation 1-20
<https://www.law.utoronto.ca/utfl_file/count/users/mdubber/CAL/13-14/Napoleon%20and%20Friedland,%20Roots%20to%20Renaissance,%20formatted.pdf>
- Shiri Pasternak, “Jurisdiction and Settler Colonialism: Where Do Laws Meet?” (2014) 29:2 *Canadian Journal of Law and Society* 145-161
<<http://www.heinonline.org.ezproxy.library.yorku.ca/HOL/Page?handle=hein.journals/cjls29&id=151&collection=journals&index=journals/cjls>>

Practical Examples (as assigned by section instructors)

- Paola Loriggio, “Court wrong to say charter doesn’t apply to brain-dead woman, family argues”, *Toronto Star* (11 December 2018), online: *Toronto Star*
< <https://www.thestar.com/news/canada/2018/12/11/court-wrong-to-say-charter-doesnt-apply-to-brain-dead-woman-family-argues.html> >
- *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 (**headnote only**)
- *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181 (**headnote only**)
- *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33 at para. 1-5, 11-15, 19-24, online: SCC
< <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17141/index.do>>

Questions for Day 5:

- What are some various normative frameworks potentially at play in your community or communities? What are various sources of law and rules potentially at play in domestic legal settings? How might they play out in the lawyering context?
- How might we think about the “public” given the diversity of geographic regions, social groups and individual citizens?
- How do we think about different normative frameworks co-existing in a single state, region or local community?

- What is cultural competence in the context of professionalism?
- Discuss case study advocacy approaches, presentations, etc.

Case Study Lawyering Group Meetings (2 hours):

- Location as arranged by individual groups (***no supervision by instructors***).
- Discuss approach to case study lawyering group's retainer (see case study materials for issues, questions and materials).

DAY 6 – WEDNESDAY 9 JANUARY 2019

CASE STUDY PRESENTATIONS BY CASE STUDY LAWYERING GROUPS

Note: Each Case Study Lawyering Group will present only once, on either Day 6 or Day 7; on the day and times that your group is not presenting, you do not need to attend class.

Small Group Meetings (2 hours each)

Section A – H. Matthews

Small Group 1 – 10:30 – 12:30 – Rm. 1002

Small Group 2 – 12:30 – 2:30 – Rm. 1002

Small Group 3 – 2:30 – 4:30 – Rm. 1002

Section B – F. Bhabha

Small Group 1 – 10:30 – 12:30 – Rm. 2002

Small Group 2 – 12:30 – 2:30 – Rm. 2002

Small Group 3 – 2:30 – 4:30 – Rm. 1005

Section C – F. Faraday

Small Group 1 – 8:30 – 10:30 – Rm. 1003

Small Group 2 – 10:30 – 12:30 – Rm. 1003

Small Group 3 – 2:30 – 4:30 – Rm. 1006

Section D – T. Farrow

Small Group 1 – 10:30 – 12:30 – Rm. 1001

Small Group 2 – 12:30 – 2:30 – Rm. 1001

Small Group 3 – 2:30 – 4:30 – Rm. 1001

Readings:

Please read the following materials in preparation for Day 6.

- Review course materials.
- Review case study materials.

Prepare case study with Case Study Lawyering Groups

Questions for Day 6:

- Present case.
- Comment /de-brief.

DAY 7 – THURSDAY 10 JANUARY 2019

CASE STUDY PRESENTATIONS BY CASE STUDY LAWYERING GROUPS

CONTINUED

Note: Each Case Study Lawyering Group will present only once, on either Day 6 or Day 7; on the day and times that your group is not presenting, you do not need to attend class.

Small Group Meetings (2 hours each)

Section A – H. Matthews

Small Group 4– 8:30 – 10:30 – Rm. 2001

Small Group 5 – 10:30 – 12:30 – Rm. 2001

Section B – F. Bhabha

Small Group 4 – 8:30 – 10:30 – Rm. 1001

Small Group 5 – 10:30 – 12:30 – Rm. 1001

Section C – F. Faraday

Small Group 4 – 8:30 – 10:30 – Rm. 1003

Small Group 5 – 10:30 – 12:30 – Rm. 1003

Section D – T. Farrow

Small Group 4 – 8:30 – 10:30 – Rm 1005

Small Group 5 – 10:30 – 12:30 – Rm. 1005

Readings:

Please read the following materials in preparation for Day 7.

- Review course materials for Part II.
- Review case study materials.

Prepare case study with Case Study Lawyering Groups

Questions for Day 7:

- Present case.

- Comment /de-brief

DAY 8 – FRIDAY 11 JANUARY 2019
CASE STUDY FINAL DE-BRIEF, NEW MODELS OF LAWYERING
AND LOOKING AHEAD

Section Meetings: 9:30 a.m. – 12:30 p.m.

Section A – Rm. 1005

Section B – Rm. 1003

Section C – Rm. 1002

Section D – Rm. 1001

Readings:

Please read the following materials in preparation for Day 8.

General

- Thomas King, “Afterwords: Private Stories” in Thomas King, *The Truth About Stories* (Toronto: House of Anansi, 2003), 153-167 (**available on Moodle Course Website or as an e-book through York University Libraries**)
- Julie MacFarlane, “Executive Summary: Identifying and Meeting the Needs of Self-Represented Litigants” (National Self-Represented Litigants Project: May 2013), pp. 8-14, online: National Self-Represented Litigants Project
<<https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf>>
- Joseph Brean, “Canadian heiress Clare Bronfman paying legal fees for accused in NXIVM sex cult: prosecutor”, *National Post* (4 December 2018), online: National Post
<<https://nationalpost.com/news/canada/canadian-heiress-clare-bronfman-paying-legal-fees-for-nxivm-sex-cult-defendants-prosecutor>>
- Benjamin Alarie, Anthony Niblett and Albert Yoon, “How Artificial Intelligence Will Affect the Practice of Law” (9 November 2017), online: SSRN
< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066816 >
- *Of Counsel* podcast, episode #30: Jordan Furlong: The Evolution of Law (4 October 2018), online: Robichaudlaw.ca
< <https://robichaudlaw.ca/podcast/jordan-furlong>/<https://robichaudlaw.ca/podcast/jordan-furlong/> >

Questions for Day 8:

- De-brief case study.

- Discuss OPIR and its connection with ELGC.
- What are some visions of new and alternative lawyering? Are they sustainable? Do they improve previous visions? How do they advance the causes of justice, access to justice and the public interest? Are there drawbacks?
- How does the development of legal technology relate to ethical lawyering?
- What are the future challenges for access to justice? Do innovations in service delivery or funding present ethical challenges for lawyers?
- Discuss final assignment and conclusion.

- END OF PART II COURSE OUTLINE -