

## RECOMMENDATIONS FOR THE FOUR-YEAR COURSE OF STUDY

The four-year law office study (LOS) program established in § 6 of the Rules of Admission to the Vermont Supreme Court does not set forth a specific course of study, other than to direct clerks to engage in a “systematic course of study that will prepare him or her for the general practice of law,” with particular reference to the subjects of the bar examination listed in § 10(a) of the rules.

These recommendations are intended to provide guidance to four-year clerks and their supervising attorneys in choosing an appropriate course of study. Core courses are recommended for the first three years of study, with electives recommended for the fourth year.

While it is not mandatory that all clerks study the subjects listed here, or in the order listed here, the Board believes that clerks who follow this or a substantially similar course of study will be well-prepared to take the Vermont bar examination.

The Board recommends that the clerk study only one subject at a time and master it before beginning another subject. The Board also recommends that the clerk spend at least eight weeks on each subject.

The recommended components of course are set forth below in the section entitled “Course Descriptions.”

**First year of study.** The Board recommends that clerks study the following subjects in the first year of study, with “Basic Legal Skills” first.

- Basic Legal Skills
- Civil Procedure
- Torts
- Contracts
- Wills and Estates
- Property

**Second year.** The Board recommends that clerks study the following subjects in the second year of study:

- Agency and Partnership
- Criminal Law
- Constitutional Law I
- Corporations
- Evidence
- Uniform Commercial Code

**Third year.** The Board recommends that clerks study the following subjects in the third year of study:

- Constitutional Law II
- Criminal Procedure
- Professional Responsibility
- Administrative Law
- Domestic Relations
- Personal Federal Income Tax

**Fourth year.** The fourth year of the program should be devoted to elective subjects tailored to the clerk's specific areas of interest from among the electives outlined below. These electives will broaden the clerk's legal background, perspective and skills.

- Antitrust Law
- Appellate Practice
- Business Income Taxation
- Conflict of laws
- Consumer Protection
- Creditor-Debtor Relations
- Employment Law
- Environmental Law
- Estate and Gift Taxation
- Insurance Law
- International Law
- Intellectual Property
- Labor Law
- Land Use
- Legal Accounting
- Municipal Law
- Remedies
- Securities Regulation
- Trial Practice

# Course Descriptions

## Core Courses

**Administrative law.** Study of the administrative process and its role in the legal system. Subjects include the powers and procedures of administrative agencies and the relationship of administrative agencies to the executive, judicial and legislative departments of government. Clinical projects should include attending an administrative hearing before a state or local governmental agency.

**Agency and partnership.** Legal principles of agency law, including definition of the agency relationship, authority and powers of agents, notice and knowledge, rights and duties between participants in the relationship, termination of the agency relationship, the master-servant relationship, and partnership law using the Uniform Partnership Act as a model code. Topics include formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's twofold ownership interests, co-ownership interests and liabilities, creditors' claims and remedies, dissolution events, winding up, distribution of asset rules, and study of the Uniform Limited Partnership Act and joint venture law. Clinical projects should include drafting a partnership agreement.

**Basic legal skills.** Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use, techniques of legal reasoning, analysis and synthesis, and legal writing styles. Familiarization with the structure of the federal and state court systems, the concept of case law in a common law jurisdiction, fundamental principles of stare decisis and precedent, the legislative process, principles of statutory construction and interpretation. Clerk should be assigned projects of increasing difficulty such as case abstracts, analysis of a trial record to identify issues, short quizzes to demonstrate ability to locate primary and secondary sources, office memoranda or a trial-oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority, and an appellate level brief.

**Civil procedure.** Fundamentals of pleading and procedure in civil litigation as structured by the Federal Rules of Civil Procedure and the Vermont Rules of Civil Procedure. Study shall include: jurisdiction over the person and subject matter, venue, time limits, commencement of actions, pleadings, parties, impleader, interpleader, motions, findings of fact and conclusions of law, judgment, interrogatories, and requests for admissions. Clinical projects should include drafting a complaint, drafting written discovery, and drafting discovery answers.

**Constitutional law I.** Course covers basic constitutional document, excluding the Bill of Rights. Topics include taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power, limitations on powers of state and national governments and the constitutional role of the courts.

**Constitutional law II.** Course examines the Bill of Rights. Topics include free speech, prior restraint, obscenity, defamation, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy, due process, equal protection development and analysis, fundamental rights and entitlements, religious clause, jury trial right in civil actions, constitutional protection, and interpretation under the Vermont state constitution as contrasted to the federal constitution.

**Contracts.** Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include offer and acceptance, consideration, issues of interpretation, conditions, performance, breach, damages or other remedies, discharge, the parol evidence rule, the statute of frauds, illegality, assignments and beneficiaries. Clinical projects should include drafting a contract.

**Corporations.** For-profit business entities (including corporations and limited liability companies) using the Model Business Corporations Act and state law provisions. Topics include promotion, formation and organization, theories of corporations and limited liability companies, corporate purposes and powers, common law and statutory duties and liabilities of shareholders, directors and officers, allocation of control, profit and risk, rights of shareholders or corporations and owners of limited liability companies, mergers and consolidations, sale of assets and other fundamental changes in corporate and LLC structure, corporate and LLC dissolution, SEC proxy rules and Rule 10(b)(5). Clinical projects should include drafting articles of incorporation and a shareholders' agreement.

**Criminal law.** Study of substantive criminal law, including concepts such as elements of criminal responsibility, principles of justification and excuse, parties, attempts, conspiracy, specific crimes, statutory interpretation, some introduction to sentencing philosophies and to juvenile offender law. Clinical projects should include attending a criminal arraignment, trial, guilty plea, and sentencing.

**Criminal procedure.** Constitutional doctrines governing criminal procedure. Topics include the Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of the Fourteenth Amendment, search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Vermont Rules of Criminal Procedure are examined as they relate to the procedural aspects of the constitutional issues. Clinical projects should include drafting a motion to suppress evidence or a response to such a motion.

**Domestic relations.** Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-married couples. Topics include jurisdiction, procedure (including the Rules of Family Procedure), maintenance, child support, property division, parental rights and responsibilities and parent-child contact, abuse prevention orders, the Uniform Child Custody Jurisdiction Act, Uniform Interstate Family Support Act, taxation and conflict of laws. Clinical projects should include attending a contested divorce hearing, an abuse prevention order hearing and a child support establishment hearing, and drafting a divorce complaint, a child support order and a divorce order.

**Evidence.** Rules of proof applicable to judicial trials, with particular reference to the Vermont Rules of Evidence. Topics include admission and exclusion of evidence, relevancy, the hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competence of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof and judicial notice. Clinical projects should include attending a jury trial in District or Superior Court.

**Personal federal income tax.** Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned, or capital gain income. Deductions and exemptions are also examined in detail. Clinical projects should include drafting a personal income tax return.

**Professional responsibility.** Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include the Code of Professional Conduct, professional corporations, pre-paid legal services arrangements, malpractice, and the Rules for Admission to Practice.

**Property.** Study of the ownership, use and transfer of real property in both historical and modern times. Topics include estates and interests in land, concurrent ownership, easements, equitable servitudes, conveyances, real estate contracts, nuisance, adverse possession, land use controls, landlord-tenant relations, the recording system and title insurance. Clinical projects should include preparing a deed and other documents necessary to make an effective conveyance and attending a real estate closing.

**Torts.** Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include conversion, trespass, nuisance, intentional tort, negligence, strict liability, products liability, concepts of duty, causation and damage, and limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity and comparative negligence. Clinical projects should include attending all or part of a tort trial in Superior or Federal Court.

**Uniform commercial code.** Course covers Articles I, II, III, IV, VI, VII and X of the UCC. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including warranty, risk of loss, acceptance and rejection, tender of delivery, revocation and remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on bulk sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection processes and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including types of security interest, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, and rights of parties after a debtor's default. Clinical projects should include performing a UCC lien search.

**Wills, estates, trusts, probate.** Study of the voluntary transmission of assets in contemplation of and at death. Topics include disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property, intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts. Clinical projects should include drafting a simple will and attending a will signing.

### ***Recommended Electives***

**Antitrust.** An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act, and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust laws.

**Appellate practice.** An examination of appellate procedure and law in the Vermont Supreme Court, including standards of review on appeal, and the Vermont Rules of Appellate Procedure. Clinical projects should include drafting a docketing statement, assisting in drafting an appellate brief, and attending an argument before the Supreme Court.

**Business income taxation.** An examination of the laws related to business taxation, including partnership taxation, at the federal and state levels.

**Conflict of laws.** Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include choice-of-law problems in torts, contracts, property, domestic relations, administration of estates and business associations.

**Consumer protection.** Selected laws for the protection of consumers, including federal and state laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn unfair practices. Emphasis on the theoretical justification for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.

**Creditor-debtor relations.** Rights and remedies of creditors and debtors under the federal Bankruptcy Code and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

**Employment law.** The law of the individual employer-employee relationship, employment at will, employment contracts, discrimination in employment, the Vermont Fair Employment Practices Act, Title VII, and the Americans with Disabilities Act. Clinical projects should include drafting an employment contract or employment policies.

**Environmental law.** Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of human-induced alteration to the natural environment, focusing on the National Environmental Policy Act, federal and state air and water pollution control legislation, and the like. Clinical projects should include attending an Act 250 hearing or Water Resources Board hearing.

**Estate and gift taxation.** The taxes imposed on testamentary and lifetime transfers, including introduction of the concepts of gross estate, the marital deduction, generation-skipping tax, joint ownership and the problems thereof, grantor trusts and valuation problems.

**Insurance.** Legal principles governing formal mechanisms for the distribution of the risk of loss, with emphasis on property, casualty and life insurance. Topics include marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, insurer's fiduciary obligations to insured, and identification of risks transferred by insurance.

**Intellectual property.** The law governing the protection of property rights in ideas and original works as they may be protected by patents, copyrights, trademarks, and common law

**International law.** Legal process by which interests are adjusted and authoritative decisions are made on the international level. Topics include the nature and source of international law, the law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.

**Labor law.** Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, the administration and enforcement of collective bargaining agreements, and relations between a union and its members.

**Land use.** Study of the legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include planning, zoning, variances, special use permits, subdivision controls, Act 250, Act 200 and other statewide land use legislation, nuisance, eminent domain, powers of public agencies, taking without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control. Clinical projects should include attending an Act 250 hearing.

**Legal accounting.** A remedial course for clerks with no accounting background. Topics include, bookkeeping, the use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and record-keeping obligations to his or her clients under the Rules of Professional Conduct or their successor.

**Municipal law.** Legal implications of the formation and conduct of the various units of local government, including an overview of the subjects of annexation, incorporation, municipal powers, governmental immunity, Section 1983, zoning, taxation and finance.

**Remedies.** Historical development and use of judicial remedies that provide relief for past or potential injuries to person or to interest in real or personal property. Topics include the history of equity, power of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.

**Securities regulation.** Study of legal control over the issuance and distribution of corporate securities. Topics include registration and distribution of corporate securities under the Federal Securities Act of 1933, including the definition of a security, basic structure, applicability and prohibitions of the Act, underwriting, preparation, processing and use of registration statement and prospectuses, exemptions from registration under the Act, including Registration A, private offerings and business reorganizations and recapitalizations, secondary distributions, broker's transactions, and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the Vermont Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the Vermont Securities Act. Regulation of national securities exchanges and broker-dealers, registration and listing of securities on national securities exchanges, periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges, and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.

**Trial practice.** Preparation for and conduct of civil and criminal cases in state and federal courts, including discovery, pretrial and post-trial motion practice, opening statements, direct and cross-examination of witnesses, summations and jury instructions. Clinical projects should include assisting in preparation for a trial, including drafting direct and/or cross examination of a witness, meeting with a witness to prepare him or her to testify, drafting an opening statement or closing argument, drafting jury instructions, and attending and assisting at trial.