

APPELLATE LITIGATION

LAW920 SECTION 3

SPRING 2018

TUESDAY AND THURSDAY 5:30-6:20 P.M.

ROOM 210

LANDAU

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THE PROFESSOR

NAME: S.B. Landau

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LOCATION: Room 237

OFFICE HOURS:
(By appointment only)

NOTE FROM THE PROFESSOR:

My goal is to give you insight into the appellate practice of law from the perspective of a practitioner. I am more focused on how things work in the real world than a formula. As a result, I use examples from actual practice and hold you to a high standard, as though you are a first-year associate rather than a law student. There will be times when you will be confused and frustrated. It is part of how being a lawyer works. Work through it and you will emerge ready to tackle the thinking and writing challenges that await you in the practice of law.

COURSE BOOKS & MATERIALS

The required textbooks for this course are:

The Bluebook, A Uniform System of Citation, 20th Edition
The Greenbook, Texas Rules of Form, 13th Edition
Beazley, A Practical Guide to Appellate Advocacy, 4th Edition
Guberman, Point Made, 2nd Edition

The highly recommended textbooks for this course are:

Garner, The Redbook: A Manual on Legal Style, 3rd Edition
Hacker, A Writer's Reference, 8th Edition
O'Connors Texas Civil Appeals (If you decide to purchase this book, contact Jones McClure publishing directly and state that you are a law student in order to receive the best price.)

Also, from time to time throughout the semester, I will hand out supplementary photocopied materials. I strongly suggest that you get a large three-ringed binder to keep all of your class materials organized.

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

I. Welcome

In this class, you will have the opportunity to refresh the skills you learned in Lawyering Process, strengthen your writing, learn how to write an appellate brief, and develop your oral argument skills.

After first refreshing your writing, research, and citation skills, we will work through a variety of writing assignments. In addition, we will review key grammar concepts. The reality of appellate litigation is that writing must be free of grammatical errors in order to be taken seriously. For that reason, we will continue to work on core grammar concepts through various in-class and online assignments.

II. Learning Through Daily Assignments, Writing, Feedback, and Rewriting

The main goal of this class is for your legal writing to be significantly better at the end of the semester. Unfortunately, there are no shortcuts in legal writing. To advance in legal writing, you and I must both engage in hard work. First, you must complete the daily reading and other daily assignments. These may include viewing Ten Minute Mentor videos on the Texas Young Lawyers Association website, www.tenminutementor.com. To reward your effort on these daily reading assignments, we will have a quiz almost every week. Because the quizzes will be numerous, I will drop the lowest grade that you receive if we have more than four quizzes.

In addition to these daily assignments, we will have a writing assignment with feedback before you complete your brief-writing assignment in this class.

OBJECTIVE:

Grammatically correct, thoughtful, and legally persuasive written appellate advocacy as well as organized and effective oral advocacy.

STUDENT LEARNING OUTCOMES

1) Briefwriting

- Understand procedural posture of an appeal
- Draft effective issue statements
- Draft persuasive headings to organize arguments
- Understand standards of review
- Assess legal authority: discern the most relevant and persuasive authorities; judge how much to discuss each authority
- Decide how to deal with negative authority or perhaps when to ask a court to overrule established precedent
- Structure arguments using CRRPAC
- Mastery of grammar and citation
- Present material creatively to reflect deeper understanding of factual setting and law
- Edit written work to achieve the most content with the fewest words (a/k/a brevity, concision, eliminating wordiness)

2) Oral Argument

- Understand the purpose of oral argument
- Master the mechanics of oral argument (dress, answering questions, how to prepare, what materials to bring up, what organization to use)
- Translate written arguments to oral argument setting
- Learn which arguments to highlight and prioritize
- Master facts and applicable law

3) Procedure

- Understand the setting of an appeal
- Master the appellate court's jurisdiction
- Become able to locate and apply court rules, judge's procedures, and other relevant information about the appellate process
- Understand role as advocate

GRADING

Attendance (including class participation and quizzes) 5%

Initial Writing Assignment 5%

Appellate Brief 60%

Oral Argument 20%

Final Exam 10%

The curve mandated by the school applies to this class. Please see the policy and procedures section for penalties for late assignments and other grading policies.

ACCOMMODATIONS

Please let me know if you require accommodations within the first two weeks of class. Please do not wait until the day of the final exam to notify me.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

In order to encourage learning and professionalism, our classroom is a place of mutual respect for the goals that each person has in the class. Questions are encouraged. If you do not wish to ask a question in class, by all means stop me after class. You may also email your questions. If a question's answer would be useful to other students, I will email the question and answer to the class, without attribution.

Classroom conduct is of course a matter of common sense. Sometimes students behave in distracting behavior because they do not realize the effect their actions have on other students. In the practice of law, however, lawyers frequently have to maintain their composure or appear to be interested, even when they feel like expressing negative emotions or are in fact not interested at all. The law school classroom is an excellent place to practice these skills. To that end, please do not engage in the following behaviors during class: coming in late, side conversations, texting, surfing the internet, leaving class and returning (unless going to the restroom), eating meals, or any engaging in other distracting behavior. For this reason, computer use is not normally permitted during class. Think of your instructor as the judge and the senior partner. Your classmates are your learned colleagues. If you arrive late, you will be counted as not having attended.

ACADEMIC CALENDAR

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
Last Day to ADD/DROP	Wednesday	January 10, 2018
M L K Holiday (No Classes)	Monday	January 15, 2018
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
Spring Break (University Closed)	Mon-Wed	March 12- 14, 2018
Good Friday (No Classes)	Friday	March 30, 2018
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period (No Classes)	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

Please note that the calendar events and /or dates are subject to change.

POLICIES & PROCEDURES

Office hours are available by appointment from 4:30 p.m. to 5:10 p.m. or after 6:20 p.m. Tuesdays and Thursdays.

No computer use in class unless directed.

To be considered complete, all assignments must be handed in via hard copy brought to class. Failure to bring a hard copy results in no credit for the assignment. Any re-writes must be accompanied by the original marked-up version for comparison.

Please turn assignments in on time in order to avoid serious damage to your grade. When planning out your writing schedule, consider following this rule of thumb used by some attorneys: Take the amount of time that you think a writing assignment will take, then double it. This guideline works, because writing invariably takes longer than we think. Please allow time for computer crashes, lost backpacks, traffic jams, and the like.

In practice, lateness has serious consequences. Similarly, lateness will have serious consequences in class. If an assignment is turned in less than one day late, 10% of the available points will be deducted before any other deductions. If an assignment is turned in more than one hour late but less than twenty-hour hours, a further 25 % will be deducted before any other deductions. The same rule will apply for subsequent days, until no points remain.

All writing assignments aside from rewrites are anonymous. Failure to use an exam number or to use a correct exam number will result in a 5% point reduction.

Part of your grade is based on your ability to follow instructions. Most problems can be avoided by carefully reading instructions.

**READING ASSIGNMENTS
(SUBJECT TO CHANGE)**

Wk	Class	Topic	Reading Due	Assignment Due
1	1/9 1/11	Introduction: Context of an Appeal Core Concept Review: Research/CRRPAC Structure/Citation	Beazley pp. 1-14; www.tenminutementor.com “Top Tips on Appellate Court Practice” Justice Bob Pemberton; Obtain exam number	
2	1/16 1/18	Lexis Research Presentation Room 212 Guest Speaker	Guberman pp. 1-26 Guberman pp. 27-38	
3	1/23 1/25	Core Concept Review: Research/CRRPAC Structure/Citation Review & Discuss Sample Briefs/Discuss Standards of Review	Beazley pp. 14-31 Read Sample Briefs	
4	1/30 2/1	Review & Discuss Sample Briefs/Discuss Standards of Review Research Strategies	Beazley pp. 33-59 Guberman pp. 39-76	WA1 cases due on TWEN by 4:00 p.m. on 1/30; also bring hard copy to class
5	2/6 2/8	Structuring Your Argument Argument	Listen to oral argument on Fifth Circuit website Beazley pp. 101-107 Guberman pp. 91-126	WA1 argument due on TWEN by 4:00 p.m. on 2/8; also bring hard copy to class

6	2/13	Dealing with Negative Authority and Using Parentheticals	Guberman pp. 162-174	
	2/15	Working with authority/Parts of the Brief	Guberman pp. 142-161 Beazley pp. 108-113	
7	2/20	Parts of the Brief	Guberman pp. 127-141	
	2/22	Parts of the Brief	Guberman pp. 58-72	
8	2/27	Legal Analysis	Beazley pp. 167-180	
	3/1	Legal Analysis	Beazley pp. 180-198	
9	3/6	Individual Student Consultations	Guberman pp. 175-186	
	3/8		Guberman pp. 187-210	
10	3/12	SPRING BREAK/ NO CLASS		
	3/14			
11	3/20	Individual Student Consultations	Beazley pp. 253-260	
	3/22		Beazley pp. 261-275	
12	3/27	Introduction to Oral Argument	Listen to another argument on the Fifth Circuit website	
	3/29			
13	4/3	Oral Arguments	Prepare for and attend your oral argument	
	4/5	Oral Arguments		

14	4/10	Oral Arguments	Prepare for and attend your oral argument	
	4/12	Interlocutory Appeals		
15	4/17	Final Exam Review		Brief due on TWEN Tuesday April 17, 2018, 4 p.m. ; bring hard copy to class
	4/20	FINAL EXAMINATION		

THE MAGIC WORD IS WATERMELON