

THURGOOD MARSHALL SCHOOL OF LAW

APPELLATE LITIGATION - FALL 2017

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Monday and Wednesday - 5:30p.m.

SYLLABUS

I. WELCOME

***Welcome to Appellate Litigation!*** Through this class, you will further develop and improve your advocacy skills, refreshing and building upon what you learned in Lawyering Process. In Appellate Litigation you will engage in assignments, readings and activities that will strengthen your research, writing, and oral argument skills; including the writing of an Appellate Brief and participation in Oral Arguments as part of your final grade.

This course, syllabus, pace and flow of lectures, assignments, quizzes, writing activities, etc., are all designed to efficiently, effectively and timely guide all students through to a culminating successful brief writing and oral advocacy experience. The work may appear hard or intense, but is structured to equip and empower you for a successful, proficient and gratifying appellate litigation outcome, as well as your future legal advocacy career.

We will begin the semester by refreshing your writing, research, and citation skills; further enhancing your development in these areas via various relevant assignments, both in and out of class. Another important goal is your continued improvement in the grasp of core or key grammatical concepts. In appellate practice, it is imperative that your writing be free of grammatical errors in order to maintain credibility and respect, and be taken seriously. Thus, continued work on core grammar concepts will be emphasized and required in this class, and will be another component of grading. Various assignments will help you progress in this way and assist in your writing and submission of a better graded Brief.

An appellate litigation course not only develops the skills of those who aim to practice in the appellate courts, but further enhances the skills and performance of those who anticipate only practicing in the lower courts by improving their detailed approach to building their case records, making key objections, filing imperative pleadings, strategic filing of pre- and post-judgment motions, etc.

Through Appellate Litigation, every student will emerge a better legal advocate than they were before the course. ***Enjoy! Learn! Improve! Perfect your skills!***

## II. **“Advocacy Academics”: Honing Your Appellate Litigation Skills**

A primary goal of this class is for your legal writing to be significantly better at the end of the semester. Such development requires effort and persistence, but it is well worth it. Thus, thorough review of skills learned in Lawyering Process, as well as daily readings, assignments, and oral presentations will be key components of your learning experience.

Writing assignments will lead up to and include the drafting and finalization of your Appellate Brief. The writing assignments and drafting/re-drafting of your Brief will greatly enhance your legal writing skills not only for appellate litigation, but all other aspects of legal practice as well.

Assignments and learning activities will include viewing various relevant videos, including the Texas Young Lawyers Association’s “Ten Minute Mentor” videos which may be accessed via TYLA’s website, [www.tenminutementor.com](http://www.tenminutementor.com). Assignments are not exclusive to those included in this syllabus, but will include others given periodically in class or via electronic medium as appropriate.

## III. **Professional Development, Demeanor and Mutual Respect**

Just as professionalism, decorum, and mutual respect are required in the courtroom environment, so it will be required in our classroom environment. Please feel free to ask questions, both in class and outside of class. My email address is provided herein so that you may contact me as needed. Additionally, in class participation and input are encouraged.

Prohibited in class are: surfing the internet, texting, using the phone, side conversations, eating, headphones, sleeping, any other distracting behaviors.

Professional development as demonstrated in your oral argument and other presentations that may be required in class will also impact your scores. These points should be an easy given for all students.

## IV. **Course Goals**

Goals for the students upon completion of this appellate litigation class include, but are not limited to, the following:

- A. **Goal I:** Demonstrate critical thinking skills at numerous decision-points over the course of an appeal by:
  - 1. Deciding whether to pursue an appeal;
  - 2. Knowing the applicable filings or pleadings to consider to initiate/support an appeal;
  - 3. Assessing legal authority, discerning the most relevant and persuasive authorities, judging how much to discuss each authority;

4. Deciding how to deal with negative authority or when to ask a court to overrule established precedent;
  5. Deciding which of the opponent's arguments, if any, should be responded to and in what way.
- B. **Goal II:** Develop the following specific skills over the course of this class:
1. Understand the "context" of an appeal;
  2. Understand and state the appellate court's jurisdiction;
  3. Learn how to locate rules and internal operating procedures of the applicable appellate court;
  4. Gain exposure to the concept of preservation of error—which issues in the record can and/or should be raised;
  5. Gain exposure to the appellate decision-making process from the court's perspective.
- C. **Goal III:** Recognize, understand, state, and apply the various standards of appellate review
- D. **Goal IV:** Prepare appellate arguments
1. Find and select relevant precedent;
  2. Distinguish between arguments of varying strength;
  3. Allocate brief space to issues that will be critical to the appellate panel;
  4. Understand appellate briefing schedules;
  5. Understand the differences between the appealing and responding parties/roles to an appeal;
  6. Recognize and plan for post-appeal proceedings such as petitions for reconsideration or rehearing en banc.
- E. **Goal V:** Write arguments effectively
1. Synthesize legal rules;
  2. Draft effective point headings;
  3. Describe precedent in a manner that is both accurate and pertinent to the arguments;
  4. Apply precedent to client facts;
  5. Cite when appropriate, using correct citation format;
  6. Use standard, formal legal writing.
- F. **Goal VI:** Plan and prepare for oral argument
- G. **Goal VII:** Understand the relative weights appellate courts place on written vs oral advocacy
- H. **Goal VIII:** Understand decorum and ethical conduct in the appellate context
1. View live oral arguments;
  2. Gain personal contact with judges and court staff so as to feel comfortable professionally confident when practicing in the various courts.
- I. **Goal IX:** Persistent, continuing development and learning to become a prolific writer.

- J. **Goal X:** Gain intricate understanding of your own writing and analysis strengths and weaknesses, benefitting from helpful suggestions on how to address and improve each.

V. **Course Communications**

Communication, sharing, peer-peer critiques and suggestions between the students are strongly encouraged. In addition to communicating with me before, during and after class, please feel free to contact me via email at [kerylldouglas@gmail.com](mailto:kerylldouglas@gmail.com). As an adjunct instructor teaching an evening class, I do not presently have office hours, but will make sure to address your questions and concerns, as well as provide you with additional input that will enhance your appellate litigation course performance, participation, and outcome.

VI. **Course Textbooks and Learning Aides**

**REQUIRED:**

*The Greenbook*, Texas Rules of Form, 13<sup>th</sup> Edition

*The Bluebook*, *A Uniform System of Citation*

*Just Briefs*, 3<sup>rd</sup> Edition, Laurel Currie Oates, Anne Enquist, Connie Krantz

*3-Ring Binder* (You are required to prepare a 3-ring binder in which you will place assignments, quizzes, handouts, brief components and drafts.

*Oral Argument Folder* (This will be further discussed during class later in the semester)

**RECOMMENDED:**

*O'Connors Texas Civil Appeals* (You may be able to get a student special price by contacting Jones McClure Publishing)

**ADDITIONAL:**

I may occasionally distribute supplemental reading and assignment materials to further enhance your learning experience and prepare you for successful brief and oral argument outcomes.

VII. Assignment Deadlines and Scoring

Timely submission of assignments, take home quizzes or exams, notebooks, oral argument folders, etc., by the deadlines given is strongly recommended in order to avoid adverse impact to your overall grade. Always allot more time than you think it will take you to complete and submit your work (it almost invariably takes longer than you thought).

As a lawyer, late submissions carry serious consequences. Thus, in preparing you for success in your practice, late submissions in this class, barring clear emergencies or contingencies, will carry serious consequences as well:

1 hour late: 10% deduction off of score before any other performance deductions  
1-24 hours late: 25% additional deduction  
25+ hours late: 25% additional deduction each additional day until zero points left

**VIII. Attendance: Only two absences are permitted without potential impact to grade. Please promptly convey all extenuating circumstances to Professor via email.**

**IX. Grading Scale**

Your final grade will be comprised of the following components:

Preliminary and Intermediate Writing Assignments	30% (300 points)
<ul style="list-style-type: none"><li>• Memorandum</li><li>• Notice of Appeal</li><li>• Request for Clerk and Court Reporter Record</li><li>• Motion for New Trial</li><li>• Request for Findings of Fact and Conclusions of Law</li></ul>	
Brief	35% (250 points)
Quizzes (Including Notebook Preparation)	10% (100 points total)
Oral Argument	5% (50 points)
Professionalism/Court Experience/Attendance	5% (50 points)
<ul style="list-style-type: none"><li>• Class Conduct, Participation, Attendance</li><li>• Oral Argument (Attire, Posture)</li></ul>	
Final Exam	15% (150 points)

Quizzes may not always be pre-announced.

**X. Oral Arguments**

Notice of Oral Arguments will be served on each student well in advance of Oral Arguments, at least 21 days prior (as with the courts) so that each student may arrange their calendars accordingly. Oral Arguments will take place on a Saturday prior to the end of the Semester (prior to Finals). **If calendar adjustments or other accommodations are needed to change your oral argument appearance day or time, you must submit a formal request that includes explanation and/or exigent circumstances for why such change is needed/sought.**

Week	Class Date	Topic	Readings/Assignments	Due @ Start of Class
1	Aug. 21	Introduction/Course Overview	Greenbook, pp 1-33; Appendices A-K (for 8/23)	
	Aug. 23	Citations Review Courts of Appeal Core Concepts	Greenbook, pp 34-50 (for 8/28) Prepare "Citations Abbreviations Chart" and place in Notebook (due 8/28) [QUIZ 1]	
2	Aug. 28	Review of Citations, Concepts	Greenbook, pp 51-66; Just Briefs, pp 97-102 (for 9/6); Prepare for Citations Abbreviations Quiz for 8/30	Notebook Assg. 1 Due at start of class-quiz grade 1
	Aug. 30	Citations, Core Concepts Intro to Appellate practice and Brief Writing; Pre-Appeal filings/strategies, e.g., Notice of Appeal; Appellate Deadline Extending, Post-Judgment Motions	Greenbook, pp 67-73; Just Briefs, pp 103-109 (for 9/6); Prepare Notice of Appeal due Sept. 6 Post-Judgment Motion due Sept. 11	QUIZ 2 – Citations Abbreviations
3	Sept. 4	Labor Day! No Class! Enjoy!	N/A	N/A
	Sept. 6	Citations, Core Concepts, Overview of Memoranda and Brief Components; Writing strategies; Record on Appeal; Request for Clerk and Reporter's Record	Greenbook, pp 74-91; Just Briefs, pp 3-4, 21-25 (for 9/11); Prepare Request for Clerk and Reporter's Record due Sept. 13	Notice of Appeal Due, also place in Notebook
4	Sept. 11	Citations, Core Concepts, Writing Legal Memoranda and Briefs; strategies and analyses for framing issues and arguments	Greenbook, pp 92-115; Just Briefs, pp 26-48 (for 9/13) Memoranda Assignment due Sept 18	Request for Clerk and Reporter's Record due, also place in Notebook
	Sept. 13	Citations, Core Concepts, Overview of Appellate Practice and Briefs; Legal Authorities: Hierarchy/Mandatory/Persuasive	Just Briefs, pp 110-120 (for 9/18); Prepare Brief template for Notebook due 9/20	N/A
5	Sept. 18	Review of sample Appellate Case; Error; Record on Appeal	Just Briefs, pp 121-133 (for 9/20)	Memoranda Assignment due
	Sept. 20	Strategies: Brief research, theory, development, issues, arguments, organization, Brief Components	Just Briefs, pp 134-140 (for 9/25); Cover, Tables of Contents, Authorities	Brief Template due, place in Notebook

			<b>Templates due 9/25</b>	
<b>6</b>	<b>Sept. 25</b>	<b>Drafting Issues Statements; Strong vs weak voice issues Persuasive issue statements</b>	<b>Just Briefs, pp 141-157 (for 9/27); Prepare brief issues using samples given, due 10/2</b>	<b>Templates for Brief Cover, Tables of Contents, Authorities (also put in notebook)</b>
	<b>Sept. 27</b>	<b>Drafting Statement of the Case in light most favorable to client; Significant Facts: Legal/Emotional/Background  Choosing of 2-member teams. Teams will draw to determine whether Appellate or Appellee</b>	<b>Just Briefs, pp 158-167 (for 10/2);</b>	
<b>7</b>	<b>Oct. 2</b>	<b>Shaping Your Brief, Telling Your Appellate Story; Guiding the Judges to Your Desired Decision  Distribution of Legal Brief Case</b>	<b>Just Briefs, pp 168-200 (for 10/4);</b>	<b>Sample Issues due</b>
	<b>Oct. 4</b>	<b>Drafting Appropriate and strong Arguments; Presenting Rules, Cases in support of arguments; Editing, Revising  Standards of Review; Jurisdiction</b>	<b>Just Briefs, pp 250-271 (for 10/11 and 13); Draft Arguments and sub-arguments headings based on issues you drafted (due 10/9)  Jurisdictional Statement, Standard of Review due 11/6</b>	
<b>8</b>	<b>Oct. 9</b>	<b>Overview and Enhancement of Oral Argument Skills</b>	<b>Review Video assigned in class for discussion on Oct. 11</b>	<b>Sample Arguments Headings due</b>
	<b>Oct. 11</b>	<b>Discussion of Oral Advocacy Video; Skills Practice</b>	<b>Just Briefs, pp 201-247 - Sample Briefs for further illustration to aide in writing your brief (for review/discussion on 10/16)</b>	
<b>9</b>	<b>Oct. 16</b>	<b>Discussion/Review of sample Briefs; Briefing Preparation, Strategies, Skills Improvement</b>	<b>Take Home Quiz due 10/18</b>	
	<b>Oct. 18</b>	<b>Brief Drafting Strategies/Skills</b>		<b>Quiz Due</b>

10	Oct. 23	Research and Analogizing Skills		
	Oct. 25	Revising Arguments and Issues pursuant to Research		
11	Oct. 30	Review/Practice of Legal Analysis  Standards of Review	In class Quiz (open Book)	
	Nov. 1	Appellate Briefing Rules Preparing Oral Arguments Folder (Draft Folder due 11/15)	Pull U.S. Supreme Court, Texas Court of Appeals, and Texas Court of Criminal Appeals Rules	Place Rules in Notebook by November 1
12	Nov. 6	Editing and Polishing Brief; Non-Substantive Brief Pages: Drafts/Templates Review	Take Home Quiz regarding relevant Briefing rules, due 11/8	SOR and Jurisdictional Statement Due
	Nov. 8	Perfecting Overall Brief Form	Prepare drafts of all non-substantive brief pages; due Nov. 13	Quiz Due  Non-Substantive Pages Drafts Due
13	Nov. 13	Perfecting Issues and Arguments; Requests for Oral Argument	Draft of Entire Brief due Nov. 15; <b>Final Brief Due Nov. 29</b>	
	Nov. 15	Non-Substantive Brief Pages: Drafts/Templates Review	Edit/Perfect Briefs; Prepare Oral Argument Folder (due 11/15)	Oral Arg. Folder due (will be given back to you)
	<b>Nov. 18 (Saturday)</b>	<b>ORAL ARGUMENTS</b>		
14	Nov. 20	Editing and Polishing Brief		
	Nov. 22	Editing and Polishing Brief NO CLASS - Take Home Quiz Due 11/27 <b>HAPPY THANKSGIVING!</b>	Edit/Perfect Briefs; Final Brief Due Nov. 29  Take Home Quiz Due 11/27	
15	Nov. 27	Editing and Polishing Brief		Quiz Due
	Nov. 29	<b>LAST DAY OF CLASS! Exam Review</b>	Edit/Perfect Briefs; Final Brief Due Nov. 29	<b>Final Brief Due!</b>