

APPELLATE LITIGATION
SECTION 3
FALL 2019

PROFESSOR BRENETTA ANTHONY SCOTT

“The will to win means nothing without the will to prepare.”

- Juma Ikangaa (winner of eight marathons; his NYC Marathon record time stood
for 12 years)

I. Welcome

Welcome to Appellate Litigation. 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 on an as-needed basis.

II. Learning Through Writing, Feedback, and Re-writing

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. You may be quizzed on these assignments.

III. Professionalism and Mutual Respect

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 or come by during office hours. 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 or address it in the next class, without attribution.

Classroom conduct is for the most part a matter of common sense. Sometimes students engage 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: side conversations, texting, surfing the internet, leaving class and returning (unless going to the bathroom), eating meals, or any engaging in other distracting behavior.

In addition, there are no oral extensions or excuses. Any excuse or exception to any rule must be handled in writing, by email.

IV. Specific Course Goals

The following are some of the goals for this class. Upon completion of the Appellate Litigation course, students should be able to:

A. Over-arching goal: Demonstrate critical thinking skills at numerous decision-points over the course of an appeal

- 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
 - Decide which of the opponent's arguments should be responded to and which should not
- B. Develop the following specific skill outcomes in sequence of the course
- Understand the context of an appeal
 - Understand the appellate court's jurisdiction
 - Learn how to locate rules and internal operating procedures of the applicable appellate court
 - Gain exposure to the concept of preservation of error--which issues in the record can be raised
 - Gain exposure to the appellate decision-making process from the court's perspective
- C. Understand that there are various standards of appellate review that affect the appeal
- D. Prepare arguments
- Find and select relevant precedent
 - Distinguish between arguments of varying strength
 - Allocate brief space to issues that will be critical to the appellate panel
 - Understand appellate briefing schedules
 - Understand the differences between appealing and responding to an appeal
 - Recognize and plan for post-appeal proceedings such as petitions for reconsideration or rehearing en banc
- E. Write arguments effectively
- Synthesize legal rules
 - Draft effective point headings
 - Describe precedent in a manner that is both accurate and pertinent to arguments that follow
 - Apply precedent to client facts
 - Cite when appropriate, using correct citation format
 - Use standard, formal legal writing
- F. Plan and prepare for oral argument
- Understand the relative weights placed by appellate courts on written versus oral advocacy
- G. Understand decorum and ethical conduct in the appellate context
- View live oral arguments
 - Gain personal contact with judges and court staff so as to feel comfortable at the court
- H. Understand how to continue to evolve as a writer
- Understand your own writing and analysis strengths and weaknesses and benefit from suggestions on how to address them going forward

V. General Information

A. Contact Information

Name: Professor Brendetta Anthony Scott
Office: Rm. 235
Office Phone: 713.444-1845
Email: brendettaanthonyscott@gmail.com
Office Hours: Wednesdays 4 p.m. – 5 p.m. and after class (all other times by appointment only)

You can contact me by email any time--I will respond to your email as soon as possible. If you email me during weekend or evening hours, my response may be delayed by up to one business day. You may arrange to meet with me outside office hours if office hours do not work for your schedule.

Class Meeting Times

This class meets on Wednesday from 5:00-6:50 p.m. in Room 212.

B. Textbooks

The required textbooks for this course are:

Berry and Ripple's Effective Appellate Advocacy: Brief Writing and Oral Argument, 5th Edition
ISBN: 9780314278395
The Bluebook, A Uniform System of Citation, 20th Edition
ISBN: 9788925598376

The recommended textbooks for this course are:

Guberman, *Point Made* (highly recommended)
Garner, *The Winning Brief*
Garner & Scalia, *Making Your Case*
Hacker, *A Writer's Reference*, 6th 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.)
Garner, *The Redbook: A Manual on Legal Style*, 2nd Edition
Legal Analysis: 100 Exercises for Mastery, Hill & Vukadin

You **need not** buy the recommended books unless you are looking for extra resources. If you have particular goals for your legal writing, I can recommend other books. 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.

If I hand out a paper in class, please hold on to the paper and bring it back to class until we are finished with it.

Please also be sure to sign up for the TWEN page, as additional course materials may be posted to the TWEN page throughout the semester.

VI. Late Assignments

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 hour 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 10 % will be deducted before any other deductions. The same rule will apply for subsequent days, until no points remain.

If you turn in multiple assignments, I will grade the one turned in last. If you turn in an assignment late, I will grade that assignment rather than an earlier one, and points are deducted for lateness.

VII. Grade Components

Please note that most people will do well on the quizzes and completion portions of the class, so the bigger brief will end up being the main determining factor in your grade. The following components make up your final grade in this class:

Quiz: What is an Appeal?	50 points or 5%
Baby Brief	200 points or 20%
Bigger Brief	500 points or 50%
Quiz/other assignment(s)	50 points or 5%
Oral Argument	150 points or 15%
Court Experience	50 points or 5%
TOTAL:	1000 points or 100%

Oral arguments will take place on a Saturday afternoon, and a time will be announced. If you cannot attend oral arguments that day, we may have oral arguments during class time. **You must, however, let me know your reason and your need for accommodation two weeks before oral arguments.**

The court visit will be explained further in class. This will either take place as a group or on an individual basis, depending on our schedules.

VIII. Accommodations

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you, as soon as it has been made aware of your situation.

Also, please contact Dean Mouton (Student Affairs) if you require any special accommodations regarding any of the assignments, including, but not limited to, extensions, note-takers, etc. You must contact Dean Mouton before the related assignment is due.

Scott

Appellate Litigation

Fall 2019

Please note that these dates and assignments might change, according to the pace of the class discussion and other considerations.

Wk.	Class	Topic	Reading (to be completed before class)	What's Due (at start of class)
1	Aug. 21	Introduction/Your Reader in the Appellate Court/What is an Appeal? <i>PLEASE OBTAIN FIRST EXAM NUMBER!</i>	Watch the following video in class: www.tenminutementor.org TOP TIPS ON APPELLATE COURT PRACTICE Speaker: Justice Pemberton No reading assignment!	
2	Aug. 28	Summary of the argument and standard of review QUIZ: What is an appeal?	Textbook: pp. 1 - 33	
3	Sept. 4	Core Concept Review: Research/Structure/Citation Citation Day: Please bring Bluebook to class	Textbook: pp. 35-63 Review Appellant's Brief in Appendix B Bring four cases to class that you could use to draft your argument. Be prepared to discuss why they are useful and make an argument orally using your cases.	

4	Sept. 11	Intro to briefs: Statement of Facts/ Issue Statement	Textbook pp. 65-97	
5	Sept. 18	Statement of the Case/Argument/Conclusion	Textbook pp. 97-124 Bring your polished argument draft to class. Turn in a hard copy to assure best effort (10 points)	Bring polished argument draft to class for peer edit
6	Sept. 25	Further discuss Arguments Appellee and Reply Briefs	Bring final copy of argument to turn in—must have hard copy to use in class. Textbook pp. 125-139	FINAL ARGUMENT DUE ON TWEN
7	Oct. 2	Preparation for Oral Arguments and Oral Argument Skills	Textbook pp. 141-172; Review Oral Arguments in Appendix E starting on pg. 393	
8	Oct. 9	Turn in Complete Baby Brief Research new problem/discuss research approaches	Continue research and Read sample Appellee's brief in book (Appendix C, starting at pg. 335)	COMPLETE BABY BRIEF DUE ON TWEN by 10:30 a.m.
9	Oct. 23	Presentation of the Argument Oral arguments in class as needed	Textbook pp. 173-216	
10	Oct. 30	Making effective arguments	TBA	
11	Nov. 6	Editing and polishing; QUIZ	TBA	

12	Nov. 13	Citation day; editing and polishing—self-edit and draft review	Review citations in your brief	
13	Nov. 20	BRIEF DUE/ Begin bar topics so do not miss class!! Post-Argument	Textbook pp. 217-225 Review Appellant's Reply Brief in Appendix D starting on pg. 371	TURN IN BRIEF ON TWEN BY 10:30 a.m.; ORAL ARGUMENTS
14	Nov. 23 or Dec. 4	Make-up oral arguments if needed		ORAL ARGUMENTS POSSIBLY ON A SATURDAY IF NOT COMPLETED or in DEC. 2019