

APPELLATE ADVOCACY
LAW 5793, Section 0118/2 Credit Hours
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SYLLABUS - SPRING 2018

REQUIRED TEXTS

Legal Writing by Design, Rambo, Pflaum (2d ed.) “Design”
The Bluebook (20th ed.)
Course Materials for Appellate Advocacy/Tomlinson “Yellow Book”
Available at the Law School Bookstore

ASSIGNMENTS AND CLASS MEETINGS

We will meet on Mondays and Wednesdays at 3:00 in Room 382. Class attendance is mandatory. Please contact me if you must be excused from a class. All written assignments must be handed in by the dates indicated on the Syllabus. Please remember to keep a copy of all of your completed and graded assignments. Be prepared to discuss the assigned readings and exercises in class. Some of the assignments are lengthy so be careful to allow yourself enough time to prepare.

Expect to spend, on average over the semester, approximately two hours for every class hour. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every classroom hour. Our class is a two hour course. Accordingly you will need at least four hours of preparation and will have about 60 pages of reading, including statutory reading, record on appeal, and case law. All reading requires careful attention.

Refer to the course calendar for the dates of all regular class meetings and other lectures, small group meetings, and events.

In addition to the assignments listed on the calendar, we will perform grammar and citation exercises. I will let you know at least a week in advance of due dates.

Our class time together is short and intensive before the first draft of your Brief is due. I will not spend too much time discussing policies, so be sure to read and follow all requirements listed and announced in class. Dates are subject to change but I will give you fair warning of any changes.

Reasonable accommodations will be made for students with disabilities. Requests for such accommodations should be directed to Student Affairs. First register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation

and you must then provide this documentation to Dean Rachel Inman. Submit these documents prior to submitting assignments or taking quizzes or exams. Accommodations are not retroactive so contact the office as soon as possible in the term you wish accommodations,

Electronic devices are PROHIBITED unless I announce otherwise. If you have an emergency that requires your availability, let me know and I will make exceptions in advance.

Written instructions for assignments and other handouts will be distributed in class and explained in lecture. Thus, your careful attention is necessary.

OBJECTIVES AND LEARNING OUTCOMES

The primary objective of this course is that you learn how to construct a thorough legal argument and express it persuasively in writing. Also, you will learn how to perform an effective oral argument in support of your client's legal position.

After successfully completing this course you should be able to -

Apply a lawyer's ethical and professional standards in the context of written and oral advocacy;

Understand appellate standards of review;

Use effective techniques of persuasion;

Develop a theme and integrate that theme into your argument;

Frame a legal issue to persuade a court to rule in your client's favor;

Present a compelling account of all relevant facts;

Write a persuasive, credible legal argument supported by logic, the law, and a compelling narrative;

Use effective organizational techniques;

Demonstrate an understanding of the importance of following appellate procedural rules and formatting requirements for appellate briefs;

Demonstrate an understanding of the basic appellate process and fundamental concepts, including the decision to appeal;

Edit and proofread a persuasive legal document;

Prepare and present an effective oral argument in support of your client's position.

PROFESSOR AVAILABLE

As always, I look forward to meeting with you individually and I encourage you to visit me in my office throughout the semester. Also, I will give you other contact numbers for support and Q & A sessions. Routine office hours will be announced in class. Otherwise, I have an open-door policy and invite you to come see me!

APPELLATE ADVOCACY

COURSE POLICIES

1. GRADES

Appellate Advocacy is your second 1L writing course. We will focus on persuasive legal writing, oral argument, and continue proper citation form. Your written Brief primarily will determine your final grade, when all other requirements of the course are satisfactorily completed. Your final letter grade will be weighted as follows:

Appellate Brief - 80%

All Other Course Requirements - 20%

An “A” final brief is excellent. The argument is persuasive, well-reasoned, and well-supported by authorities. The writing style is concise, clear, and free of format and citation errors.

Appellate Advocacy is graded by letter and is subject to the mandatory grade distribution and mandatory curve established by the Levin College of Law.

UF Law letter grades and point equivalents are:

	Points
A(Excellent)	4.0
A-	3.67
B+	3.33
B(Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
D+	1.33
D(Poor)	1.00
D-	.67
E(Failure)	0

2. PENALTY FOR EXCESSIVE ERRORS

Your work product must meet professional standards. It should be of a quality appropriate to submit to a supervising attorney or court. Any paper containing excessive typographical, grammatical, citation, quotation, or, other mechanical errors may receive a failing grade. Proofread all of your work very carefully.

3. CLASS ATTENDANCE - Mandatory

4. Course Failure and Repetition

Satisfactory completion of Appellate Advocacy (LAW 5793) is required for graduation. Any student who receives a U must repeat the course in the next semester the course is offered immediately following the course failure.

(This means the student must register and pay for the course again.) Students who retake Appellate Advocacy cannot count the two credits toward the regular semester hour minimum load requirement. Any student who fails Appellate Advocacy more than once must obtain permission to register for the course again.

5. Responsibilities to Other Classes

As attorneys you will be responsible for many clients at the same time. When you are engaged in a big project involving one client, you must still attend to the legal affairs of your other clients. Likewise, when you are engaged in preparing an assignment for Appellate Advocacy you are still responsible for attending your other classes and completing the work for those classes.

6. Honor Code

Students are required to adhere strictly to the Honor Code of this law school. The Honor Code requires your paper to represent your own work. The relationship between the Honor Code and the course requires further clarification. The three major Honor Code violations arising in this course are plagiarism, collaboration and improper use of library (including computer) materials. Violation of the course policies below will subject students to disciplinary action for academic dishonesty.

a. Plagiarism - Quoting and Paraphrasing

The gravamen of the offense of plagiarism is the taking of intellectual property of another and holding it out as one's own creation.

"Plagiarism," is defined in Black's Law Dictionary, revised fifth edition, page 1035, as:

The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind. . . .

Use of any ideas, borrowed from anyone else without acknowledgment and presented as your own in your writing, constitutes plagiarism. You do not need to intend to plagiarize in order to plagiarize. Thus, it is no defense for the plagiarizer to plead either ignorance of what constitutes plagiarism or lack of intent to plagiarize. So be careful -- if plagiarism becomes an issue for any student, it will likely be the result of inadvertence or ignorance, rather than an intent to misrepresent.

Avoid plagiarizing by properly using citation form. The following examples provide some guidelines.

i. Direct Quotes

This situation has the clearest rules. If you are using the exact language of the original, set the entire passage you have quoted inside quotation marks, with the citation following the closing quotation mark. If the quote is fifty words or longer it should be set off by being single-spaced and indented, without quotation marks.

Although you do not plagiarize if you clearly indicate quoted material, excessive use of direct quotation is frowned upon. By paraphrasing an idea, rather than using a direct quote, you show you understand the material well enough to put it in your own words. Your brief can thus be made more persuasive. Remember, however, that paraphrased ideas must also be cited.

When quoting directly, you must quote the original accurately. What is within the quotation marks should be identical to the original and any changes should be indicated by brackets ([]), and any omissions (except those occurring at the beginning of a sentence) denoted by ellipsis (. . .).

ii. Paraphrasing an Idea

When you are paraphrasing an idea, you must also cite to the original source. This not only avoids plagiarism, it also gives your position more credence by showing that someone else has supported your view.

iii. Paraphrasing Extensively

Occasionally, you may paraphrase not only an idea, but an entire line of argument. This means you are adopting the structure of the original reference, as well as some of the concepts. This situation can lead to charges of plagiarism unless you are very careful to cite to each source, thereby demonstrating how heavily you have borrowed from the original.

In the process of paraphrasing, you may allow small groups of words within the paraphrase to remain identical to the paraphrased material. Generally, it is not necessary to set off each group of words in quotations, but you must give credit to the source by proper citation. You should set off small groups of words in quotes when those words represent a precisely articulated legal doctrine, the pivotal part of the court's opinion, or the secondary source's analysis. Commonly used legal phrases need not be set in quotation marks.

iv. Using the lower court opinion from the Record on Appeal

Paraphrasing or quoting from the lower court's opinion from the Record on Appeal without giving proper attribution constitutes plagiarism for the purpose of this course. Any paper evidencing such plagiarism will

automatically be graded unsatisfactory.

b. Collaboration

i. Collaboration on Written Work is Prohibited

Written work must be done independently. Once you have begun writing an assignment, you must not collaborate about its contents. Do not read another student's work. Do not give your outline or draft of your brief to another student to read. Giving your work to another student violates the collaboration policy as much as taking work from another student does.

You may have a non-student (i.e., typist) read your work. However, that person may not edit or direct you to edit what you have written.

ii. Collaboration on Research is Prohibited

Collaboration on research in this course is prohibited.

7. Appellate Brief Format Requirements

Every jurisdiction (each state and the federal courts) has its own rules concerning the form and contents of an appellate brief. In practice, you will need to consult the rules of appellate practice before drafting a brief. For this course, the following rules govern the form of our briefs. These requirements will be strictly enforced.

The final draft of your brief must be typewritten with black ink, double-spaced (not space and one-half), on opaque (not glossy) white 8 ½ x 11 paper with one-inch (top, bottom, left, right) margins. Do not align or justify the right margin. The argument section must be no fewer than twelve full pages and no more than fifteen pages in length of pica (10 character per inch) typeface. The print must be legible (not too light); and bold typeface must not be used. If you are using a computer, use the same font and the same type-size throughout your brief. Your brief must be bound on the left with a

staple. Do not use special folders or binders. Any briefs failing to conform to these requirements will be receive a grade of U. Your brief must contain the following:

1. Cover Page -- includes the names and designations of the parties, your request for oral argument, the court hearing the case, the court which issued the verdict or ruling, your client's name at the bottom, your Appellate Advocacy section, your Teaching Assistant's and Lecturer's name, and your name.)
2. Table of Contents -- paginates each section of your brief including your argument headings. Main argument headings must be typed in all capital letters. Subheadings should be underlined.
3. Authorities Cited -- lists and paginates all authority used in the brief, in the following order:
 - a. Cases cited (arranged in alphabetical order)
 - b. Constitutional provisions (if relevant)
 - c. Statutes (if relevant)
 - d. Regulations (if relevant)
 - e. Secondary sources (law review articles, encyclopedias, treatises, etc.) (if relevant)

Your citation form must conform to the rules contained in the Bluebook.

4. Question(s) Presented -- must be typed in all capital letters.
5. Statement of the Facts
6. Summary of Argument
7. Argument -- conveys the text of your brief with argument headings appearing in the appropriate position in the exact format they appear in the Table of Contents. The argument section must be no shorter than 12 full pages and no longer than 15 pages.
8. Conclusion -- completes your brief. It should describe what you want the court to do and should not exceed one page.

EXAMPLES OF TYPE FACE

This is an example of 10 character-per-inch (cpi) text. It is also double spaced. There should be exactly 0.333" between each printed text baseline. Equivalently, there should be 3 printed lines per inch. Every printer sold in America has the capability to print this type of text.

This is not allowed. This is 12 cpi text, and is smaller than the above.

This is also not allowed. This is a proportional font, and the line spacing is slightly different. It allows the typist to put more information on each line. It may look better, but it gives the typist an unfair advantage in making a long document appear shorter.

A note about use of computers: You assume the risks of the technology you use in completing your brief. Therefore, you must make certain your computer, printer, etc. are in proper working order in advance of the deadline. If you are using a computer, you should print out a hard copy of your work-in-progress so that your work will not be lost if you lose the information on your disk. Computer failures, errors, and the like do not constitute a satisfactory excuse for handing in a late brief. Allow sufficient time to be prepared for the worst, i.e., computer failure and viruses.

Also, if you have any questions regarding the typeface or font you plan to use for your final brief, please discuss it with your Lecturer at least a week prior to the deadline.

9. Deadlines and Late Assignments

Deadlines in Appellate Advocacy are mandatory. An assignment is late if submitted five minutes past the time it is due. If your Initial Brief, Final Draft or Research Assignment are late and the lateness is not excused, you will receive a U in the course.

A late paper will be excused in the discretion of the Lecturer in the event of emergencies involving serious illness, trauma, or death. If more than one excused late submission is requested on the basis of illness, all requests after the first should be accompanied by a doctor's note. Requests for excused lateness should be submitted in writing before the time the assignment is due. In exceptional circumstances the "before" qualification may be waived by the Lecturer.

The following examples do not constitute an excuse for a late paper or assignment - so don't even ask:

- an interview
- car or other transportation trouble
- computer trouble
- printer trouble (WARNING -- The printers in the law school's media center are very busy, especially when major assignments are due. If you wait until the day a paper is due to use the media center's printers you may not be left with sufficient time to print your work and submit it timely.)
- typist trouble
- ran out of time
- left it at home

10. Conferences

During the semester you will be required to meet with your teaching assistant to discuss your work. I also encourage you to meet with me. If you wish to confer with me concerning your written work in the course, provide me with a copy of the work along with a list of questions you'd like to cover during the conference the day before we meet.

CALENDAR

WEEK ONE

1/08 **Introduction to the Appellate Process**

READ: **Design - Chs. 13 & 14**

1/10 **The Facts of our case: Statement of the Case and Facts and Citing to Record**
BRING BLUEBOOK to Class

READ: **Yellow Book - Record on Appeal**

Be prepared to present the Facts of our Case from the Record

WEEK TWO

1/15 **NO CLASSES. Martin Luther King Day**

1/17 **Parts of a Brief; Writing a Persuasive Statement of Facts**

READ: **Design - Chapter 15**

WEEK THREE

1/22 **The Law of Our Case: The Code and Case law.**

READ: **Yellow Book - statutory and case law as listed in Table of Authorities**

TO DO: **Begin Outlining the Issues and Cases you think may be on point to support your client's legal position, and Cases to distinguish.**

1/24 **The Arguments: Persuasive Legal Analysis: Rule Explanation, Rule Applications and the BaRAC paradigm.**

READ: **Design - Ch. 20**
Yellow Book - BaRAC paradigm examples

TO DO: **Become thoroughly familiar with the case law listed in your Table of Authorities. Decide which cases you will use in your Brief.**

WEEK FOUR

HAND IN: Writing Assignment, Statement of the Case and Facts, in Class on Monday 1/29

ATTEND MOOT COURT FINAL FOUR THIS WEEK

- 1/29** **Rule Explanation (Remember Umbrellas (BAs), TFIHRR and SYNTHESIZED RULES!)** -
- READ: Design - Ch. 16, Standards of Review**
- TO DO:** **Prepare for Class Discussion: The Rule that applies to our Hermie/Stymie Hypothetical!**
- 1/31** **Rule Application, Organizing your Brief by Argument, and Table of Authorities**

WEEK FIVE

- 2/05** **Writing Argument Headings and Questions Presented, Table of Contents**
- READ: Design - Chs. 17, 18, 21**
- 2/07** **Format, Questions Presented, Summary of the Argument**
- READ: Design - Ch. 19**

WEEK SIX

- 2/12** **Outline Plus, Discussion of Assignment and Argument presentation**
- 2/14** **Settlement Conference and Discussion of Topic**
TO DO: Be prepared to meet with your team and opposing counsel to present arguments and analysis of the law supporting your arguments

WEEK SEVEN

- HAND IN:** **Writing Assignment #2, Outline Plus, in Class on Monday, 2/19**
- 2/19** **Discussion of Topic, Finalizing Initial Brief**
 -
- 2/21** **Introduction to Oral Argument**

READ: Design -Ch. 22

WEEK EIGHT

2/26 Oral Argument Presentation

2/28 Preparing for mini-orals and practice orals

WEEK NINE

3/05 - 3/09 ***SPRING BREAK*******

WEEK TEN

ATTEND: Mini-Orals. Prepare and present mini-oral arguments. Time and Place TBA.

HAND IN: FIRST DRAFT OF FINAL BRIEF IN CLASS on Wed., 3/14

3/ 12 Guest Speaker

3/14 First Draft of Final Brief.

WEEK ELEVEN

PREPARE AND PRESENT: Practice Oral Argument/time and place TBA

3/19 Lexis Presentation

3/21 No Lecture; Prepare and present Practice Oral Arguments

WEEK TWELVE

PREPARE AND PRESENT: Practice Oral Argument/time and place TBA.

3/26 Westlaw Presentation

3/28 Q&A Final Brief

WEEK THIRTEEN

PREPARE AND PRESENT: Final Oral Argument/time and place TBA.

4/02 Guest Speaker - Meet in Room 359

4/04 No Lecture.

WEEK FOURTEEN

PREPARE AND PRESENT: Final Oral Argument/time and place TBA.

4/09 Wrapping Up.

4/11 No Lecture.

WEEK FIFTEEN

4/16 Final Brief Q&A

4/18 No Lecture

WEEK SIXTEEN

4/23 HAND IN: Writing Assignment #4, FINAL BRIEF in Class.

CLASSES END

GOOD LUCK ON EXAMS!

PROFESSOR CONTACT:

TA CONTACTS: