APPELLATE ADVOCACY
Stephen F. Austin State University
Department of Government
Fall 2018

INSTRUCTOR INFORMATION

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COURSE INFORMATION

Course Number: PSC 305
Section: 020
Prerequisites: PSC 141 | PSC 142
Semester Credit Hours: 3

Course Description: “Introduction to appellate courts and the appellate process with a focus on practical knowledge and skills such as persuasive writing and client advocacy. This course emphasizes appellate-level research, writing, oral advocacy, and the finer points of courtroom procedure and decorum. Students are required to participate in moot court activities. Prerequisites: PSC 141 and 142. May be repeated once for a total of six semester hour credits.” General Bulletin, 2017-18, p.323

Class Meeting Days & Times: M 4:00pm - 6:30pm
Room: T. E. Ferguson Liberal Arts 374

REQUIRED TEXTS


The 2018-19 ACMA Moot Court Problem. (Handout)
The Course

Nothing is so difficult to believe that oratory cannot make it acceptable, nothing so rough and uncultured as not to gain brilliance and refinement from eloquence.

- Marcus Tullius Cicero (106-43 B.C.), Roman orator, philosopher, statesman

I used to say that, as Solicitor General, I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night.


Course Objectives

Program Learning Outcomes:
The following program learning outcomes for a political science major are addressed in this course:

PLO #5 – “The student will create research papers, briefs, or reports.”

Student Learning Outcomes:

By the end of the course, students will

- Be familiar with a hypothetical appellate case and the appropriate precedents.
- Develop the capacity for oral argument in an appellate judicial setting
- Develop the capacity for analytical legal thinking

Students are expected to go beyond rhetoric and ideology to develop critical thinking about the American political system. As a result, students are encouraged to ask questions and to challenge assumptions of class discussions while respecting the logical and reasoned positions of others.

Course Overview

A common courtroom cliché has it that a trial is the search for truth and an appeal is the search for error. Appellate review differs from that of trials, popularized on shows like Law & Order, in several respects. First and foremost, appellate arguments are made to a panel of judges, not to a panel of peers. An argument presented to judges must be framed differently than those presented to juries. This has profound implications for the nature, style, and mechanics of competent persuasion in appellate review vis-à-vis the trial level. While certain rules of decorum and procedure apply across all levels of legal proceedings, appellate advocacy tests different skill-sets and involves different strategies than those required for trial litigation. A second difference between appellate and trial advocacy is that an appellate attorney must deal with the given record and the facts established at the trial level – no additional facts, evidence, testimony, etc. may be introduced at the appellate level. Counsel must live set facts and set testimony. Appellate advocacy is a skill. It rests on good legal research, good knowledge of the case and the case law, and developed oral persuasion skills. An appellate attorney must be proficient in all three to successfully make appellate arguments on behalf of their clients.

This course will prepare students to participate in moot court competitions, which simulate the experience of arguing a constitutional case before the Supreme Court. It acquaints students with existing case law and hones their oral communication and analytical skills. Each student will be assigned one of the two issues presented for appellate argument in the case problem. Each student will be responsible for reading the cases associated with his or her issue, developing case briefs of those precedents, and participating in class discussions of the legal precedents, principles, and arguments associated with their side of the issue. During the case analysis portion of the course, each week’s classes will be divided between Issue I and Issue II coverage. Issue I students are required to attend on the Issue I coverage class days, and Issue II students are required to attend on Issue II coverage class days. Students can attend coverage class days for the other Issue (i.e. an Issue I student attending an Issue II class day), but those will NOT substitute for attendance on for their issue coverage days. Attendance and participation are essential and required of every student.
1) *Exams.* There will be a Final Exam. Issue I students will take the Issue I final exam, while Issue II students will take the Issue II final exam. Students who compete in the AMCA brief writing competition may be exempted from the final exam at the discretion of the instructor.

2) *Attendance & Participation.* You are expected to attend class. Consistent class attendance, reading and preparation, and participation are essential. The reading material consists mainly of edited versions of United States Supreme Court opinions, many of which were written long ago. The language and logic are complicated, unfamiliar, and hard to follow sometimes. It takes effort to read and understand judicial opinions, and you will need to be prepared for class, listen to my explanations and those of your classmates, ask questions, and discuss the material. Cramming for the exams you will take is all but impossible. I will grade you on your participation and attendance. Furthermore, 3 or more unexcused absences will result in the docking of a letter grade from your final grade in the class. 5 or more unexcused absences will result in you being dropped from the course.

3) *Oral Arguments.* We will have three oral argument presentations in the second half of the semester. Students who participate in a TUMCA moot court competition may receive credit for two of the three required oral arguments. That grade will constitute an average of the scores earned at the competition. A student who competes in a TUMCA moot court competition may choose to decline to have their scores used for class oral argument grades and instead do all three class oral arguments. This simulated moot court setting will require you to present your oral argument before the court in an appellate hearing setting. You will be expected to wear formal attire and present your arguments and answer the questions of the court to the best of your ability and given your understanding of the case and the legal issues it presents.

4) *Quizzes & Case Briefs.* There will be eleven quizzes on the material we are covering in the course. Your Top Ten quiz scores will be used to calculate your quiz grade. These may be administered either in class or on D2L. I will periodically pick up your case briefs to be graded and returned throughout the semester (see briefing schedule on D2L). I expect you to finish the readings assigned for each day before you come to class and to be prepared to discuss the readings with your case briefs. *This is essential to getting a good grade in this course.*

5) *Appellate Brief.* This is a brief of your side of the case problem. You, along with your partner, will write a 20 page legal argument on the constitutional questions for each side of the case (10 pages for the appellant side, 10 pages for the appellee side). Additional details will be provided later in the semester. Students who decide to compete in the AMCA brief writing competition will write the brief according to the AMCA requirements, and will choose one side (petitioner or respondent) to write on. This brief will take the place of the class appellate brief and, with instructor approval students may count their brief score twice in place of the final exam grade.

**WEIGHTING SCALE**

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<td>Oral Arguments (3)</td>
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<tr>
<td>Quizzes &amp; Case Briefs</td>
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<tr>
<td>Appellate Brief</td>
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<tr>
<td>Attend &amp; Participation</td>
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**GRADING SCALE**

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<td>D</td>
<td>60% - 69%</td>
<td>480 – 559</td>
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<tr>
<td>F</td>
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Outline for Oral Argument

1. Jones v. State is no longer valid.
2. The All Writs Act requires dismissal.

*Note: re: Judge: Don’t call her “Sticky Mesticky Pants” again. Seemed annoyed last time."

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ACADEMIC HONESTY

The following is taken from SFASU’s Policy Manual (2011), section on “Academic Integrity” (A-9). Academic integrity is a responsibility of all university faculty and students. Faculty members promote academic integrity in multiple ways including instruction on the components of academic honesty, as well as abiding by university policy on penalties for cheating and plagiarism.

Definition of Academic Dishonesty: Academic dishonesty includes both cheating and plagiarism. Cheating includes but is not limited to (1) using or attempting to use unauthorized materials to aid in achieving a better grade on a component of a class; (2) the falsification or invention of any information, including citations, on an assigned exercise; and/or (3) helping or attempting to help another in an act of cheating or plagiarism. Plagiarism is presenting the words or ideas of another person as if they were your own. Examples of plagiarism are (1) submitting an assignment as if it were one's own work when, in fact, it is at least partly the work of another; (2) submitting a work that has been purchased or otherwise obtained from an Internet source or another source; and (3) incorporating the words or ideas of an author into one's paper without giving the author due credit.

Please read the complete policy at http://www.sfasu.edu/policies/academic_integrity.asp. All cases of academic dishonesty will be handled according to University policies and procedures (A-9.1). The consequences for academic dishonesty may range from a score of zero (0) on the assignment to an “F” for the course. For details, students should refer to the SFA Policy Manual (2011) or the University’s General Bulletin, 2012 – 2013 section entitled “Academic Integrity” and other sources of University policy.

WITHHELD GRADES

The following is taken from SFASU’s Policy Manual (2011), “Semester Grades Policy” (A-54). At the discretion of the instructor of record and with the approval of the academic chair/director, a grade of WH will be assigned only if the student cannot complete the course work because of unavoidable circumstances. Students must complete the work within one calendar year from the end of the semester in which they receive a WH, or the grade automatically becomes an F. If students register for the same course in future semesters, the WH will automatically become an F and will be counted as a repeated course for the purpose of computing the grade point average.

STUDENTS WITH DISABILITIES

To obtain disability related accommodations, alternate formats and/or auxiliary aids, students with disabilities must contact the Office of Disability Services (ODS), Human Services Building, and Room 325, 468-3004 / 468-1004 (TDD) as early as possible in the semester. Once verified, ODS will notify the course instructor and outline the accommodation and/or auxiliary aids to be provided. Failure to request services in a timely manner may delay your accommodations.

For additional information, go to http://www.sfasu.edu/disabilityservices/.

ACCEPTABLE STUDENT BEHAVIOR

Classroom behavior should not interfere with the instructor’s ability to conduct the class or the ability of other students to learn from the instructional program (see the Student Conduct Code, policy D-34.1). Unacceptable or disruptive behavior will not be tolerated. Students who disrupt the learning environment may be asked to leave class and may be subject to judicial, academic or other penalties. This prohibition applies to all instructional forums, including electronic, classroom, labs, discussion groups, field trips, etc. The instructor shall have full discretion over what behavior is appropriate/inappropriate in the classroom. Students who do not attend class regularly or who perform poorly on class projects/exams may be referred to the Early Alert Program. This program provides students with recommendations for resources or other assistance that is available to help SFA students succeed.
<table>
<thead>
<tr>
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<th>LECTURE TOPICS</th>
<th>READING ASSIGNMENTS &amp; EVALUATIONS</th>
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| SECTION 1 | WEEK 1 | 8/27 | o Introduction  
 o Assigning Teams and Issues  
 o How to Write Case Briefs | Orin Kerr’s “How to Read a Legal Opinion” |
| WEEK 2 | 9/03 | o Oral Argument and Appellate Advocacy  
 o Review Case Record, Legal Issues & Lower Court Opinion | Frederick, Chapter 1 p. 2-14  
 Case Briefs & Quiz 1 |
| WEEK 3 | 9/10 | o Oral Argument: Questions  
 o Review Precedents | Frederick, Chapter 4 p. 80-127  
 Case Briefs & Quiz 2 |
| WEEK 4 | 9/17 | o Oral Argument: Presentation  
 o Review Precedents | Frederick, Chapter 5.8 – 5.9 p. 143-147  
 Frederick, Chapter 6.1 – 6.3 p. 149-157  
 Frederick, Chapter 7 p. 170-201  
 Case Briefs & Quiz 3 |
| WEEK 5 | 9/24 | o Oral Argument: Presentation  
 o Review Precedents | Frederick, Chapter 8 p. 202-244  
 Frederick, Chapter 9 p. 245-283  
 Case Briefs & Quiz 4 |
| SECTION 2 | WEEK 6 | 10/01 | o Discuss Petitioner and Respondent Arguments  
 o Review Precedents | 2017-18 ACMA Moot Court Problem  
 Case Briefs & Quiz 5 |
| WEEK 7 | 10/08 | o Discuss Petitioner and Respondent Arguments | 2017-18 ACMA Moot Court Problem  
 Quiz 6 |
| WEEK 8 | 10/15 | o Discuss Petitioner and Respondent Arguments | 2017-18 ACMA Moot Court Problem  
 Quiz 7 |
| WEEK 9 | 10/22 | o Structuring Complete Oral Arguments  
 o Moot Court Rules & Procedures  
 o Writing the Appellate Brief | Frederick, Chapter 3 p. 54 – 79  
 Quiz 8 |
| SECTION 3 | WEEK 10 | 10/29 | o First Class Competition | Review Materials  
 Quiz 9  
 Oral Argument 1 |
| SECTION 4 | WEEK 11 | 11/05 | o First & Second Class Competition | Review Materials  
 Quiz 10  
 Oral Arguments 1 & 2 |
| WEEK 12 | 11/12 | o Second Class Competition | Review Materials  
 Quiz 11  
 Oral Argument 2 |
| WEEK 13 | 11/19 | o Second Class Competition | Review Materials  
 Oral Argument 3 |
| FALL BREAK | FALL BREAK | | FALL BREAK |
| WEEK 14 | 12/3 | o Third Class Competition | Review Materials  
 Oral Argument 3  
 Appellate Brief Due |
| FINAL EXAM | EXAM WEEK | o FINAL EXAM | Issue Based Comprehensive Exam |

THIS IS A PRELIMINARY SCHEDULE ONLY. THE INSTRUCTOR RESERVES THE RIGHT TO MAKE CHANGES TO THIS SCHEDULE AS NEEDED.