INDEPENDENT STUDY IN CONSTITUTIONAL LAW AND ADVOCACY
Stephen F. Austin State University
Department of Government
Fall 2018

INSTRUCTOR INFORMATION

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COURSE INFORMATION

Course Number: PSC 475
Section: 01
Prerequisites: PSC 141 | PSC 142
Semester Credit Hours: 3

Course Description: This course is an advanced study in Supreme Court precedents in constitutional law with a focus on advocacy skills in the courtroom.

Meeting Days & Times: TBD
Room: TBD

REQUIRED TEXTS

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 use a hypothetical Supreme Court case to focus the student’s study of constitutional law and to simulate the experience of arguing a constitutional case before the Supreme Court. It will acquaint students with existing case law and hones their oral communication and analytical skills. The student will develop specific issues to analyze and argue in an appellate court context. The student will be responsible for reading the Supreme Court cases associated with his or her issue, developing case briefs of those precedents, and discussing with the instructor the legal precedents, principles, and arguments associated with their side of the issue.
1) **Attendance & Participation.** You are expected to attend the scheduled meetings with the instructor. The student will be expected to read the material, which consists mainly of edited versions of United States Supreme Court opinions, prior to the required meetings with the instructor. Given that the language and logic are complicated, unfamiliar, and hard to follow sometimes, the student should devote a significant amount of time to that preparation. Furthermore, 3 or more unexcused missed meetings will result in the docking of a letter grade from your final grade in the course. 5 or more unexcused absences will result in the student being dropped from the course.

2) **Oral Argument.** The student will prepare three oral argument presentations to be made for the instructor. The student 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.

3) **Case Briefs.** The student will be expected to complete case briefs on the assigned Supreme Court cases.

4) **Appellate Brief.** The student will brief either the appellant or appellee side of the hypothetical case problem. The student will write a minimum 20 page legal argument on the constitutional questions presented as an advocate for either the appellant or the appellee. The brief must meet AMCA brief writing guidelines for length and format.

### Evaluation

<table>
<thead>
<tr>
<th>Weighting Scale</th>
<th>Points</th>
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<tbody>
<tr>
<td>Oral Arguments (3)</td>
<td>300</td>
</tr>
<tr>
<td>Appellate Brief</td>
<td>200</td>
</tr>
<tr>
<td>Attend &amp; Participation</td>
<td>100</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>600</strong></td>
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### Grading Scale

<table>
<thead>
<tr>
<th>Grade</th>
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<th>Maximum Score</th>
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<tbody>
<tr>
<td>A</td>
<td>90% and up</td>
<td>540 – 600</td>
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<tr>
<td>B</td>
<td>80% - 89%</td>
<td>480 – 539</td>
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<tr>
<td>C</td>
<td>70% - 79%</td>
<td>420 – 479</td>
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<tr>
<td>D</td>
<td>60% - 69%</td>
<td>360 – 419</td>
</tr>
<tr>
<td>F</td>
<td>59% and dwn</td>
<td>0 – 359</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 "Stinky McStinkypants" 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>
<th>SECTION</th>
<th>WEEK</th>
<th>MEETINGS</th>
<th>READING ASSIGNMENTS &amp; EVALUATIONS</th>
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</thead>
</table>
| SECTION 1  | WEEK 1 | ○ Introduction  
○ How to Write Case Briefs | Orin Kerr’s “How to Read a Legal Opinion”  
Hypothetical Case: The Facts  
Frederick, Chapter 1 p. 2-14  
Case Briefs on Supreme Court Precedents |
|            | WEEK 2 | ○ Oral Argument and Appellate Advocacy  
○ Review Case Record, Legal Issues & Lower Court Opinion | Frederick, Chapter 4 p. 80-127  
Case Briefs on Supreme Court Precedents  
Case Briefs on Supreme Court Precedents |
|            | WEEK 3 | ○ Oral Argument: Questions  
○ 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 on Supreme Court Precedents |
|            | WEEK 4 | ○ Oral Argument: Presentation  
○ Review Precedents | Frederick, Chapter 8 p. 202-244  
Frederick, Chapter 9 p. 245-283  
Case Briefs on Supreme Court Precedents |
|            | WEEK 5 | ○ Oral Argument: Presentation  
○ Review Precedents | Hypothetical Case: Lower Court Decision  
Frederick, Chapter 8 p. 202-244  
Frederick, Chapter 9 p. 245-283  
Case Briefs on Supreme Court Precedents |
| SECTION 2  | WEEK 6 | ○ Discuss Petitioner and Respondent Arguments  
○ Review Precedents | Case Briefs on Supreme Court Precedents  
Case Briefs on Supreme Court Precedents |
|            | WEEK 7 | ○ Discuss Petitioner and Respondent Arguments  
○ Review Precedents | 2017-18 ACMA Moot Court Problem  
Case Briefs on Supreme Court Precedents |
|            | WEEK 8 | ○ Discuss Petitioner and Respondent Arguments  
○ Review Precedents |  
Case Briefs on Supreme Court Precedents |
|            | WEEK 9 | ○ Structuring Complete Oral Arguments  
○ Appellate Court Rules & Procedures  
○ Writing the Appellate Brief | Frederick, Chapter 3 p. 54 – 79  
Case Briefs on Supreme Court Precedents |
| SECTION 3  | WEEK 10 | ○ First Oral Argument  
○ Review and Reflect on First Oral Argument  
○ Second Oral Argument  
○ Review and Reflect on Second Oral Argument  
○ Third Oral Argument | Oral Argument 1  
Review Materials  
Oral Argument 2  
Review Materials  
Oral Argument 3  
Appellate Brief Due |
| SECTION 4  | WEEK 11 | ○ Review and Reflect on First Oral Argument  
○ Second Oral Argument  
○ Review and Reflect on Second Oral Argument  
○ Third Oral Argument |  
Review Materials  
Oral Argument 2  
Review Materials  
Oral Argument 3  
Appellate Brief Due |
|            | WEEK 12 | ○ Second Oral Argument  
○ Review and Reflect on Second Oral Argument  
○ Third Oral Argument |  
Review Materials  
Oral Argument 2  
Review Materials  
Oral Argument 3  
Appellate Brief Due |
|            | WEEK 13 | ○ Review and Reflect on Second Oral Argument  
○ Third Oral Argument |  
Review Materials  
Oral Argument 2  
Review Materials  
Oral Argument 3  
Appellate Brief Due |
|            | FALL BREAK |  | FALL BREAK  
FALL BREAK  
FALL BREAK  
FALL BREAK  
FALL BREAK |
|            | WEEK 14 | ○ Third Oral Argument | Oral Argument 3  
Appellate Brief Due |
| FINAL EXAM | EXAM WEEK | ○ No Meeting |  
Appellate Brief Due  
Appellate Brief Due  
Appellate Brief Due  
Appellate Brief Due |