

APPELLATE ADVOCACY SECTIONS 5 & 6
FALL 2021: SYLLABUS
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INTRODUCTION AND OVERVIEW

The objective of Appellate Advocacy is to sharpen your analytic, research, writing, and oral advocacy skills. Vermont Law School has chosen the appellate process to achieve these objectives. Each Appellate Advocacy section focuses on one case currently before the United States Supreme Court. Although you will attend classes throughout the semester, most of your work will be done individually, researching and writing assignments pertaining to your case.

After drafting sections of a brief during the beginning of the semester, you will then write a first draft of an argument section in an appellate brief. I will provide written comments on your first draft argument section and conference with you about your work. Before your conference, you should read my comments and prepare any questions about your work or the case for discussion in our conference. After your conference, you will revise and edit your brief as needed and submit a full final draft of an appellate brief. Your final draft is due two weeks after your conference.

In addition to writing a brief, you will deliver an oral argument before a panel of practicing attorneys. To prepare, we will discuss oral argument as a class and then hold paired practice sessions. I will provide feedback on your practice argument. You will also have an opportunity to practice oral argument with the members of the Moot Court Advisory Board, a group of 3L students who have demonstrated excellence in oral advocacy. Details about practice sessions will be provided mid-semester.

The following are my goals for you this semester:

1. Learn how to read a case and interpret the same case for different arguments
2. Learn how to build and support a legal argument and convey it in writing
3. Practice synthesizing rules
4. Practice writing in a clear, advocacy style
5. Strengthen research and analytical skills
6. Increase familiarity with Bluebook citation format
7. Become familiar with the appellate brief format
8. Learn and practice oral presentation skills

COURSE MATERIALS

Required:

The Bluebook: A Uniform System of Citation (21st ed.)

Legal Writing in Plain English, Bryan A. Garner (2nd ed.)

All other course materials will be posted on the course TWEN page. This includes sample student briefs, which you should refer to as both examples of organization and formatting. Note that no sample is perfect. My instructions prevail if anything in the sample briefs conflict with in class instructions. Feel free to ask questions if anything in the samples is confusing.

ASSIGNMENTS

Students must turn in a statement of the case, research memo, argument first draft, and complete final draft of the brief. Students must also review their critiqued first draft prior to their conference and attend the conference to discuss the first draft. Finally, students must participate in practice and final oral arguments.

Written assignments must be double spaced and in 12-point Times New Roman or CG Times. Margins must be one inch on all sides. Page numbers must be centered at the bottom of each page. The text of all sections of the brief should be fully justified. Briefs not conforming to these rules will result in a lower grade.

Each written assignment will be evaluated by looking at the quality of the legal research and analysis, organization, written style, use of citation, compliance with formatting requirements, and other appropriate criteria. Oral argument will be evaluated by looking at the student's depth of knowledge about the law and case, responsiveness to questions, engagement with judges, time management, style, and other appropriate criteria.

Grades will be calculated as follows:

Final Draft of Brief:	50% of final grade
Final Oral Argument:	30% of final grade
Course Participation:	20% of final grade

Course participation includes attendance, timeliness, class contribution, written assignments other than the final brief, participation in conference, and preparation for and participation in practice oral arguments. Please notify me if you will not be in class on a certain day prior to the class time. However, prior notice does not mean your absence is excused. I will excuse an absence based on illness, religious holidays, or other compelling reason with prior notice.

Students are responsible for submitting assignments at the proper time and place. Any student who fails to submit an assignment at the proper time, and who has not received prior permission to do so, will lose one grade per day. Thus, an assignment that would have received

an A grade if submitted on time, would receive an A- grade if submitted up to 24 hours late, or a B+ grade if submitted up to 48 hours late. Any assignment that is more than five days late without prior permission will automatically receive a failing grade. Unless otherwise specified, all assignments are due on TWEN. When turning in assignments on TWEN, you should receive a confirmation email. If you have not received that email, your assignment has likely not uploaded correctly. Please keep the TWEN confirmation email until the class is over. As a backup for any problem with TWEN, you may email me the assignment before the deadline. Please note, computer malfunction is not an acceptable excuse for a late assignment unless you reach out to me as soon as possible about the computer malfunction and I approve an extension. Make sure you back up your work often.

APPLICATION OF THE VLS HONOR CODE

A. Honor Code Provisions Relevant to Appellate Advocacy

The following offenses shall qualify as Class One Violations under Article V:

1. A student shall not plagiarize. Plagiarism is knowingly appropriating another's words or ideas and representing them in writing as one's own. Whenever a student submits written work, including an examination, as his or her own, the student shall not use the words of another without acknowledging the source. If the words of another are used, there must be a clear attribution of the source.

...

4. In connection with an examination or an academic assignment, a student shall neither give, nor receive, nor obtain information or help in any form not authorized by the professor or the person administering the examination or assignment.

...

6. A student shall not submit any written work, or part thereof, prepared, submitted or used by [them] for any other purpose (such as work prepared for or submitted in another course, work prepared for a law journal, clinic, law firm, government agency, or other organization), or prepared by another, except upon specific disclosure of the facts and receipt of permission from the professor to whom the work is submitted.

7. A student shall not take or copy materials of an academic nature belonging to another student without the express consent of the latter.

...

The following offenses will qualify as Class Two Violations under Article V:

1. A student shall not make a false statement regarding an academic matter to a law school faculty member, administrator or to the Honor Committee.
2. With respect to the Law School Library, a student shall not knowingly (a) mark, mutilate or destroy library material; (b) hide, misshelve, or misfile library material; or (c) remove library material from the library without authorization.
3. A student shall not obstruct the Honor Code process.
4. A student shall not engage in any other conduct, which in the determination of the Deputy Vice Dean and the Honor Committee evidences dishonesty or a manifest lack of fitness to practice law.

Unless otherwise specified in the examples above, a student is guilty of a violation of the Honor Code if she or he acted purposely, knowingly or recklessly. A student acts purposely if it is the student's conscious object to engage in prohibited conduct or to cause a prohibited result. A student acts knowingly when that student knows that such conduct is prohibited or knows that his or her conduct will cause a prohibited result. A student acts recklessly when that student consciously disregards a substantial and unjustifiable risk that his or her conduct will fall within prohibited conduct or cause a harmful result.

It is not a defense to charges of violating this Honor Code for a student to claim [they have] not received, read or understood this Honor Code, or is otherwise ignorant of its provisions. A student is held to have notice of this Honor Code by enrolling in a Vermont Law School class.

Sanctions:

1. Class One Sanctions: If the Honor Committee members or the Deputy Vice Dean conclude that the student has committed a Class One violation of the Honor Code as defined in Article III, Section B, the recommended penalty shall be suspension, expulsion or withdrawal of an awarded degree, *unless* the Honor Committee members or Deputy Vice Dean find substantially mitigating circumstances warrant a lesser penalty as set out in the following paragraph. . . .
2. Class Two Sanctions: If the Honor Committee members or Vice Dean conclude that the student has committed a Class Two violation of the Honor Code as defined in Article III, Section B, the Honor Committee members or the Vice Dean shall recommend such lesser penalty as they deem appropriate, including, but not limited to: a warning; a fine; probation; reference to counseling; or notation in the student's

permanent file, *unless* the Honor Committee members or Vice Dean find substantially aggravating circumstances warrant a harsher penalty as set out in the preceding paragraph.

B. Specific Application of the Honor Code to Appellate Advocacy

The assignments students submit must be their own work product. Students must do their own research, but they are encouraged to discuss application of assigned cases and arguments with one another. A student must not write another student's brief. Students must not give an outline, a list of cases, or a completed assignment to another student. Both the student who loans the work product and the student who uses it are equally at fault. Students must not consult any attorney or judge on any question dealing with the substance of the Appellate Advocacy problem. Students must not discuss their brief with any faculty member other than me, without prior permission to do so from me. **Students must not obtain or review the briefs actually filed in the Supreme Court or any lower court on their Appellate Advocacy case, including amicus briefs and briefs related to the petition for certiorari, and any memoranda filed in the lower courts. Failure to follow this rule will be prosecuted as a Class One Honor Code Violation.**

C. Acknowledgement of Authority

Whenever using the words or ideas of another writer, students must acknowledge the original source. If using the exact words of another person, students must use quotation marks and cite the source in Bluebook form. Cite the original source even when paraphrasing another's ideas. Never copy directly from a law review, case, or other written or oral material without indicating the actual author.

WRITTEN ASSIGNMENTS

Statement of the Case

The first written assignment of the semester is focused on drafting the statement of the case. The statement of the case must succinctly and persuasively state the relevant facts and procedural history of the case. Any fact used in the argument section must be included in the statement of the case. The statement of the case must include record citations as appropriate. The statement of the case should be about three to five pages long, depending on the complexity of the case and length of the record.

Research Memo

The second written assignment of the semester is a memo in outline form summarizing the major issues in the case, and including the research students have completed at the time of the assignment. The outlined research memo should include the three strongest arguments in your favor; the three strongest arguments in your opponent's favor; authority you have found already and how you intend to use it, as well as sources you intend to consult; and your developing theory

of the case in paragraph form. For this assignment, students must use the Research Memo template posted on the course TWEN page.

Argument First Draft

The third written assignment of the semester is a draft of the argument section of your brief. The argument section contains the party's arguments with respect to the question(s) presented, with clear and detailed reasons for these positions. The argument should be persuasively organized. The argument must cite authority and should be about ten to fifteen pages long, depending on the complexity of the case and legal issues. The argument should be broken down into subheadings with a point heading for each subargument. The headings should be formatted according to the guide below:

I. MAJOR POINT HEADINGS, IDENTIFIED WITH A ROMAN NUMERAL, MUST CAPITALIZE EVERY LETTER OF EVERY WORD AND NOT BE UNDERLINED.

A. Minor point headings are identified with a capital letter and must be underlined.

1. Minor subheadings, identified with a numeral, must capitalize the initial letter of the first word and not be underlined.

Brief Final Draft

The final written assignment of the semester is a complete final draft of an appellate brief. The final draft from the inside caption to the conclusion may not exceed 6500 words. The word limit includes citations. The final draft must include each of the following sections:

1. Title Page: A draft title page with the correct information is available on the TWEN course page for your use
2. Question(s) Presented: The question(s) presented should state each issue clearly and succinctly without attempting to set out a full argument. Questions presented normally will not include names, dates, amounts, or similar particulars. The questions should not be worded identically to the questions set forth in the petition for the writ of certiorari. The questions presented must appear on a separate page numbered "i." They must be single-spaced and only the first letter of each sentence should be capitalized.
3. Table of Contents: The table of contents begins a new page numbered "ii." It must set forth each section of the brief, including all point headings in the order and form in which they appear in the brief, with the letter or number of the page of the brief on which each section begins.

4. Table of Authorities: The table of authorities begins a new page with the appropriate lower case Roman numeral. The table of authorities must list each authority cited in the argument section of the brief and the pages on which each authority is cited. The citation must be in Bluebook form, but without pincites. If an authority is cited on five or more pages of the brief, use “passim” instead of listing all pages. Divide the table of authorities into the following three sections, with a subheading centered on the page for each section:
 - a. Cases: The first part of the table of authorities lists the cases cited in the brief according to alphabetical order by the first party in the case.
 - b. Constitutional and Statutory Provisions: Following the list of cases, include a list of all constitutional provisions, statutes, code sections, and model code and act provisions cited in the brief. List sources in accord with Bluebook rule 1.4, order of authorities.
 - c. Other Authorities: Following the list of statutes and constitutional provisions, include a list of all other authorities cited, such as law review articles and treatises.
5. Inside Caption: A draft inside caption with the correct information is available on the TWEN course page for your use. Note that the inside caption begins a new page numbered “1” and is the first page for the recommended final brief word count given above.
6. Opinions Below: This section should give the citation (including the court) of the pertinent opinions and judgments delivered in the courts below. The opinions below statement should begin on the same page as the inside caption.
7. Statement of Jurisdiction: The jurisdictional statement must contain a precise citation to the statutory provision that supplies the Court with jurisdiction to review the case. This section must also include the dates of the opinions below, the petition for certiorari, and the grant of the petition.
8. Constitutional, Statutory, and Rules Provisions: This section should quote any constitutional provisions, statutes, and rules that are at issue. If the provisions involved are lengthy (a page or more), only provide the citation and indicate that the provision’s full text is included in an appendix to the brief.
9. Statement of the Case: See statement of the case assignment description above.
10. Summary of the Argument: The summary of the argument is a summary of all arguments made in the argument section of the brief. The SOA should strongly communicate your theory of the case. The SOA should be about two to three pages. This section should conclude with your specific request for relief. The SOA should not contain citations to authority, except if you are quoting authority.
11. Standard of Review: The standard of review is a short paragraph telling the Court how much deference to give the lower court’s decision. The standard of review must cite U.S.

Supreme Court authority as support for the applicability of the particular standard of review.

12. Argument: See argument first draft assignment description above.
13. Conclusion: The conclusion must specify the precise relief requested. The conclusion may also include a very brief (one paragraph maximum) summary of the argument. The conclusion may not include new arguments, new facts, or citations to authority.
14. Signature Block: The signature block must appear as follows and must include the student's electronic signature.

Respectfully submitted,

Student's Name
Attorney for (Party Designation)

15. Appendices: The appendices contain the quoted provisions from the Constitutional and Statutory Provisions Involved section. An appendix is only necessary if the pertinent provisions are lengthy (more than a page). Each appendix should be lettered, e.g., Appendix A, and should begin a new page.

Due Date of Final Draft

To be on time, you must follow the instructions below:

1. Upload a copy of your final brief in Microsoft Word to TWEN by midnight two weeks after your individual conference.
2. Upload a pdf of your final brief to the Appellate website (instructions to follow) by midnight two weeks after your individual conference.
3. Email a pdf of your final brief to your final oral argument opponent before your oral argument (more specific instructions to follow).
4. Email a pdf of your final brief to the appellate administrative support person by midnight two weeks after your individual conference.

ORAL ARGUMENTS

Practice Arguments

Mandatory practice arguments will occur before final arguments. I will ask questions during the practice argument and provide feedback after the practice argument. Students are encouraged to practice oral arguments with members of MCAB as well.

Final Arguments

Final arguments will take place at the end of November and in early December. Students will argue before a panel of practicing attorneys, who will ask questions during argument and provide general feedback after argument. A member of MCAB will observe final arguments. Volunteer judges and the MCAB member will score final arguments for purposes of placement in Advanced Appellate Advocacy. I will also provide a score for placement in Advanced Appellate Advocacy, and I will grade the final argument for purposes of a grade in this course.

Each student will be allotted twenty minutes for final argument. Counsel for petitioner may reserve one to three minutes for rebuttal. A party is not required to use any or all of the reserved rebuttal time. Judges can use their discretion enforcing time limits. Petitioner will open the argument. Respondent will argue after petitioner. Students are prohibited from arguing a legal point that is not raised in their brief or their opposing counsel's written or oral argument. Students may rely only on authority cited in either their brief or their opposing counsel's brief. Petitioner may not raise issues in rebuttal that were not raised by respondent during the oral argument, even if those issues were raised in respondent's brief.

CONCLUSION

Appellate Advocacy is a demanding course and one in which you must keep up and meet deadlines. If you fall behind or miss deadlines, it will be extremely difficult to catch up and produce a decent final brief. Appellate practice is my favorite kind of legal work, and I hope that you enjoy this class. I look forward to working with each of you and good luck!