

Death Penalty § 615 A

Fall Semester 2016 Course Syllabus

Professor David Macher
951-259-3789 [cellular]
951-955-5208 [office]
dmacher@wsulaw.edu
davidjmacher@gmail.com

Textbook: Capital Punishment and the Judicial Process (4th Ed. 2012) by Randall Coyne and Lyn Entzeroth.

The class covers all aspects of capital punishment in the United States, from limitations on the crimes for which capital punishment is an available penalty, the class of offenders eligible for the death penalty, the capital case trial, sentencing hearing, appellate review, habeas corpus, and clemency proceedings.

The class is concerned with legal issues; it is not a forum to debate whether or not capital punishment is a social good. All students are welcome, whether they favor the death penalty, oppose capital punishment, or have no position on the subject.

This course does not have either a midterm or a final examination. In place of exams, student grades are based upon class participation and a research paper on a current issue in capital punishment litigation. The paper must comply with the standards established for the Upper Level Writing Requirement [ULRW].¹ Students are encouraged to select a topic of personal interest.

Examples of present-day issues include lethal injection and other methods of execution given the general unavailability of recognized, effective lethal injection drugs, victim-impact evidence, its scope and the forms it can take in the sentencing phase, the legal significance, if any, of lengthy delays between imposition of judgment and execution, and whether “evolving standards of decency” have

¹ For further information on the ULWR, please see the Student Handbook, § IV(A)(8), page IV-12.

reached a point where the death penalty no longer comports with the Eighth Amendment.

The subject of the research project must be approved in advance. A draft of the written paper must be submitted for review and comment. The paper must include citations to legal authorities, such as published cases, and secondary authorities, such as law reviews and other scholarly writings. The written paper should be a minimum of 20 double-spaced pages in length. Additional requirements for the research paper will be detailed in a separate handout.

Students are expected to be prepared for each class meeting and ready to take part in discussion and analysis of the week's assigned reading. Class participation is essential to the learning experience, and accounts for 25% of each student's final grade.

Writing Requirements

Please review the Student Handbook. In my edition of the Handbook, the Upper Level Writing Requirement is located at IV(A)(8)(a).

The contents of the paper must be as follows:

(1) **Cover page.** The cover needs to have your name and student identification number, as well as the title of your paper.

(2) **Table of contents.** This table should list the various divisions of the paper.

(3) **Table of authorities.** This table should list all of the cases, statutes, law review articles, websites, and so forth cited in the paper. The table should be divided into categories.

(4) **Introduction.** The introduction tells the reader in summary fashion what he or she is about to read. It can be as brief as a few sentences, or as long as a page or two.

(5) **The body of the paper.** This section can be divided into as few or as many sections or headings as needed in order to provide an organized, logical order to the discussion.

(6) **Conclusion.** Briefly summarize the subject and conclusions of the research paper.

Law students train to become advocates. It is therefore important the paper present a point of view. A dry recitation of cases without a thesis is not acceptable. At the same time, do not ignore cases and other authorities contrary to the writer's perspective. Instead, describe them and show how they are inapplicable or should not be controlling.

Grading is based upon three overarching criteria: legal research, style and grammar, and legal reasoning. The most important of these benchmarks is legal reasoning. Students should demonstrate an understanding of the materials, ability to analyze the subject, and to write persuasively on the topic.

The authorities cited in the paper should be primary legal authorities, such as statutes, cases, constitutions, and secondary legal materials, such as law review articles, treatises, and websites. Non-legal authorities are acceptable, but should not be the principal sources for your presentation. Please note: **Wikipedia is not an acceptable authority. Do not cite Wikipedia.**

Weekly Reading Assignments

The reading assignments take into account the requirement each credit hour reflect two hours of out-of-class student work. In other words, the reading assignments should take approximately six hours to complete on a weekly basis.

Week 1. August 18, 2016.

Chapter 1: The Great Debate Over Capital Punishment

Week 2. August 25, 2016.

Chapter 2: Eighth Amendment Prohibition of Cruel and Unusual Punishment

Week 3. September 1, 2016.

Chapter 3: Constitutional Challenges to the Death Penalty

Week 4. September 8, 2016.

Chapter 4: Race, Gender, and Sexual Orientation

Week 5. September 15, 2016.

Chapter 5: Constitutional Limits on Death Eligibility

Week 6. September 22, 2016.

Chapter 6: Selecting the Capital Jury

Week 7. September 29, 2016.

Chapter 7: The Role of Aggravating Circumstances
Writing requirement research topics due.

Week 8. October 6, 2016.

Chapter 8: The Role of Mitigating Circumstances

Week 9. October 13, 2016.

Chapter 9: The Sentencing Phase of Capital Cases

Week 10. October 20, 2016.

Chapter 10: Use of Psychiatric Experts in Capital Cases

Chapter 11: Assistance of Counsel

§ A: Introduction

§ B: The Constitutional Standard of Effective Assistance of Counsel

Week 11. October 27, 2016.

Chapter 11: Assistance of Counsel

§C: Effective Assistance of Counsel in Capital Sentencing Proceedings

§D: Failure to Investigate

§E: Conflict of Interest

§F: Direct Appeal

§G: Fatal Consequences of Attorney Error

Draft papers due.

Week 12. November 3, 2016.

Chapter 12: Stays of Execution and State Post-Conviction Relief Proceedings

Week 13. November 10, 2016.

Chapter 13: Introduction to Federal Habeas Corpus Review

Week 14. November 17, 2016.

Chapter 18: International Law and the Death Penalty

December 1, 2016.

Completed writing requirement papers due.

Argosy University
Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent

case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

Disability Services Statement

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."