

WESTERN STATE COLLEGE OF LAW
Spring 2023
Legal Writing & Research II
Section C – Night Class

Professor Cara Elkin
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- **LEXIS CLASSROOM PAGE:** Before the first day of class, you must enroll in the Lexis Classroom Page titled “Legal Writing & Research II – Spring 2023– ELKIN.” I will use this web page to post material and to make class announcements throughout the semester. Please sign-up on the web page for automatic email alerts and check the web page regularly because you are responsible for all material and announcements posted on this web page.
- **OFFICE HOURS:** I will be available for in-person office hours generally on Wednesdays before class from 5:30 p.m. to 6:30 p.m. AND via Zoom or phone on Fridays via appointment. Please email me if you need an appointment other than these times.

COURSE MATERIALS

OVERVIEW

In Legal Writing & Research I, you were introduced to legal writing – a form of writing much different than most of you had encountered. Last semester, you learned how to research and write an *objective* legal document – the office memorandum. This semester we will reinforce those same research, writing, and citation skills but you will learn how to write *persuasive* legal documents – a settlement letter, an appellate brief, and professional email. This course will culminate in your preparation of an appellate brief based on a fictional moot court case dealing with current legal issues. For this final project, you will also present a 10-minute oral argument. Thus, by the end of this course, you will have the tools necessary to become skilled advocates, both oral and written.

OBJECTIVES

In this course, you will have an opportunity to learn, practice, and be assessed in each of the following learning outcomes:

- 1) Communication – oral and written.
- 2) Legal Analysis;
- 3) Legal Research;
- 4) Advocacy of Legal Argument;
- 5) Other Practical skills, including legal citation and oral presentation and advocacy.

REQUIRED TEXTS

- Teresa J. Reid Rambo & Leanne J Pflaum, Legal Writing by Design, 2d edition (Carolina Academic Press 2013)

- The Bluebook – A Uniform System of Citation, 20th edition, Harvard Law Review (2010)

RECOMMENDED TEXTS

For students who would like additional guidance, you may purchase the following texts. Copies are on reserve at the library as well:

- Richard Wydick, Plain English for Lawyers, 5th edition (Carolina Academic Press 2005)
- Mary Barnard Ray & Jill J. Ramsfield, Legal Writing: Getting it Right and Getting it Written, 5th edition (West 2010)

ASSIGNMENTS

In order to receive credit for this class, you must complete every graded and ungraded assignment in good faith. Failure to do will result in a final grade of “0” in this course. If you have any questions about the assignments, please ask your professor. You will not use a blind grading number for any assignments in LWR-II.

FORMAT REQUIREMENTS FOR WRITING ASSIGNMENTS, BOTH GRADED AND UNGRADED

Rules for all writing assignments:

- (1) Assignments must be typewritten in black ink, double-spaced, on white, 8 ½ x 11 inch paper.
- (2) Text must be in “Times New Roman,” 12-point font.
- (3) You must use one-inch margins for the top, bottom, left, and right margins. (Note that, if using Microsoft Word, you must set the margins to one-inch each, as the right and left margins are preset at 1.25 inches.)
- (4) Each page should be numbered, in the center, at the bottom of the page, using Times New Roman font. (Note that even if the text of your document is in Times New Roman, you must affirmatively change the font of your pagination.)
- (5) Pages must NOT be right-justified. They may be either left-justified or full justified. This is different than LWR I
- (6) You must print on only one side of the paper.
- (7) All papers must be bound in the upper-left hand corner with a staple.

Points will be deducted for assignments that do not conform to the Format Requirements. In addition, for consistent failure to conform to Format Requirements, points will be deducted at the end of the semester from the Professionalism grade for the course.

LATE PAPERS – GRADED ASSIGNMENTS

As a professional, you are responsible for handing in all assignments on time. A late paper is one handed in **any time after it is due**. Prior to the start of class, all graded writing assignments must (1) be uploaded to Turnitin **AND** (2) a hard copy must be submitted in class **AND** (3) emailed to caraelkin@gmail.com.

If either the assignment is uploaded late to Turnitin or the hard copy or emailed copy is submitted late, penalties are the following:

- If either the assignment is uploaded to Turnitin or the hard copy or emailed copy is submitted after the class period BEGINS, the grade on the assignment is reduced by 5 points, so long as the assignment is both uploaded to Turnitin and hard copy and emailed copy is submitted before the end of class.
- If either the assignment is uploaded late to Turnitin or the hard copy or emailed copy is submitted after the class period ENDS, the grade on the assignment is reduced by 10 points immediately upon the end of class, and an additional 3 points per hour thereafter (e.g., if class ends at 10:45 a.m., a paper submitted at 11:45 a.m. will receive a 13-point deduction, and a 16-point deduction at 12:45 p.m., etc.).

If you have an unforeseeable emergency involving a serious illness, an accident, or some other comparable emergency, contact your instructor as soon as possible. **Traffic, printing problems, or preparation for another class do not count as an unforeseeable emergency.** Your instructor, at her *sole discretion*, may extend your due date to provide you with enough time to deal with your emergency.

UNGRADED ASSIGNMENTS

In addition to the Graded Writing Assignments, in LWR-II, you must complete several Ungraded Assignments.

- Any assignment designated as an “Ungraded Assignment” on the Syllabus must be completed **prior to the designated class period**.
- For written Ungraded Assignments, you must have a hard/printed copy available **AND** emailed a copy to your professor **prior to the start of class**.
- Ungraded Assignments are due **prior to the start of the class period** designated on the Syllabus.
- If you are absent for the class in which a written Ungraded Assignment is due, you must email your Ungraded Assignment to your professor **prior to the start of class** to receive credit and avoid a grade deduction. A hard copy will not be necessary.

FINAL APPELLATE BRIEF

Your final project in this course will be to prepare a complete appellate brief. The following instructions apply to this final project:

- You will conduct your own research for the issue.

- After you have completed your research, you will have a few weeks to prepare the first draft of the “Argument” section, with “Argument Headings.”
- After you submit your draft, you will revise your brief and incorporate the additional required sections necessary to constitute a completed brief that could be filed in Federal Court. During this time, you will receive feedback from your instructor in class.

I. REQUIRED SECTIONS FOR FINAL APPELLATE BRIEF

The order of sections shall be as follows:

1. Appropriately Colored Front Cover (containing Caption)
2. Table of Contents (numbered as page “i, ii, iii,” etc.)
3. Table of Authorities (numbered as page “ii, iii, iv,” etc.)
4. Caption (begin numbering with page “1”)
5. Question(s) Presented
6. Statement of the Case and Facts
7. Summary of Argument
8. Argument
9. Conclusion
10. Certificate of Service
11. Appropriately Colored Back Cover

II. SUBMITTING FINAL APPELLATE BRIEF

For the final draft of the final brief, you must (1) upload the Final Appellate Brief to Turnitin; **AND** (2) submit a hard/printed copy to your professor in advance of the due date and time. For this assignment only, you do **not** need to email the final appellate brief to your professor.

ORAL ARGUMENTS

After you turn in your final appellate brief, you will be scheduled to argue your client’s position in class before a panel of “judges.” Each student will be graded separately on his or her final oral argument.

To help you prepare for the final oral argument, we will practice arguments in class throughout the semester. The in-class practice arguments are designated as “UNGRADED ASSIGNMENTS,” subject to the penalties set forth below.

PROFESSIONALISM

In addition to the assignments noted on the syllabus, **10% of your final grade is based on Professionalism**. This grade will be assigned in the sole discretion of the professor at the end of the semester based on the student’s overall professionalism demonstrated in all aspects of the course. Professionalism is distinct from compliance with the Honor Code. Professionalism includes, but is not limited to, the following:

- Timely and good faith completion of Ungraded Assignments
- Regular and punctual class attendance
- Assignments which reflect thoroughness, diligence, and attention to detail
- Preparedness and constructive participation in class
- Courteousness in class and in all communications
- Compliance with all Expectations for Students in Zoom Sessions (attached)

Conversely, points will be deducted for (but are not limited to) the following breaches of professionalism:

- Tardiness
- Absences
- Incomplete, late, or sloppy work, including failure to follow Course Materials Format Requirements
- Lack of preparation or participation in class
- Failure to show courtesy to the instructor and/or peers during class or in any communications
- Inappropriate attire, such as wearing hoods or sunglasses in class
- Inappropriate use of electronic devices, such as checking email, social networking sites, or the internet during class; or failing to turn off cell phone or utilizing cell phone during class

Note that any form of videotaping, recording, or taking photos of any material from class is inappropriate without the prior approval of your instructor.

ATTENDANCE REQUIREMENT

You should attend every class. WSCL written policy for students whose class regularly meets twice per week, is that upon your fifth absence, you will fail this course and receive a grade of 0.0 (on the 4.0 scale). See Student Handbook, § 5.13. **For students whose class meets once per week, if you are absent for an entire, or substantially all, of a three hour class period, you will have accumulated two official absences. If, however, you are absent for only half of a three-hour class period or a significant portion thereof, you will accumulate just one absence.**

All classes are intended to be in-person. However, in the event a class will be by Zoom per COVID protocols, then please see Expectations for Students in Zoom Class section below.

STUDENT SAMPLES

On occasion, we use anonymous samples of work from current or past students as examples. Please let your professor know in advance if you do not wish for your work to be considered as an example.

QUESTIONS?

If you have questions about the course, contact your LWR-II professor. If you have a conflict with your LWR-II professor, first try to resolve the conflict directly with your professor. If you are unable to resolve the problem, please contact the Director of Legal Writing & Research, Lori Roberts, at loroberts@wsulaw.edu, or the Associate Dean for Academic Affairs, Paul Arshagouni at parshagouni@wsulaw.edu.

HONOR CODE: Because this is a writing course, we would like to clarify some aspects of academic honesty that are important to this class:

- (1) In all aspects of this class – including research and writing, meetings with your instructor, and class attendance – you are strictly bound by the WSCL Honor Code. Please read the Honor Code carefully so you know what it prohibits.
- (2) Unless otherwise indicated by your instructor, all work in this course must be your own. This means that you must do your own research, writing, proofreading, and revising. For both the research and writing assignments, you may not discuss the problem or your research with another law student, a professor, a lawyer, or anyone else (unless your LWR-II professor specifically indicates otherwise). If you need help drafting or revising your writing assignments, please seek assistance from your LWR-II professor.
- (3) Be careful not to plagiarize. Paraphrasing or quoting from a case or any other source without properly acknowledging the source or without including quotation marks where such marks are necessary constitutes plagiarism.
- (4) Unless specifically instructed otherwise, you may not read another student's work (including a present or past student) and you may not allow another student

to read your work. You may not accept, read, or use any papers from students who have already taken this course.

- (5) Any violation of this Honor Code will result in the student receiving a “0” in the course as well as possible referral to the Honor Code Committee.
- (6) In preparing for your final oral arguments only, after April 12th, you may discuss oral arguments with other students, and you may practice arguing with other students.

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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

SYLLABUS

CLASS 1 - JANUARY 18, 2023

Class Topics:

- Introduction to Course;
- Shifting to Persuasion;
- Plan Research for Settlement Letter;
- Discuss Settlement Research Process (librarians);
- Writing a Settlement Letter

Read: (1) Sample Settlement Letter (posted on Lexis Course Web Page); (2) *Rambo* Ch. 27 & 29; (3) Instructions for Settlement Letter and Client Email (posted on the Lexis Course Web Page.)

CLASS 2 - JANUARY 25, 2023

Class Topics:

- Discuss Research Results;
- Developing and Emphasizing a Theme for Settlement;
- Persuasive Facts and Rules;
- Discuss Client Email;
- Researching Verdicts & Settlements

Read: *Rambo* §5.6; §15.3, §15.4

Due: Research Results: (1) case briefs of at least 2 relevant cases; (2) outline of any relevant statutes (UNGRADED ASSIGNMENT)

IN ADDITION TO CLASS, STUDENTS MUST ATTEND WESTLAW TRAINING THE WEEK OF JANUARY 23, 2023 – INFORMATION RE TIMES WESTLAW.COM

CLASS 3 – FEBRUARY 1, 2023

Class Topics:

- Citation Review;
- Finalizing the Settlement Letter and Client Email

Read: *Rambo* Ch. 27 & 29

IN ADDITION TO CLASS, STUDENTS MUST ATTEND LEXIS TRAINING THE WEEK OF JANUARY 30, 2023 – INFORMATION RE TIMES ON LEXIS.COM

CLASS 4 – FEBRUARY 8, 2023

Class Topics:

- Introduction to the Appellate Brief;
- Judge as Reader;
- Discuss Research Plan for Final Appellate Brief;
- Drafting a persuasive Rule and Statement of Facts for a brief;
- Argument Paradigm

Read: (1) Clyde H. Hamilton, Effective Appellate Brief Writing, 50 S.C. L. Rev. 581 (1999); (2) *Rambo* Ch. 13, 14, 15 & 20; (3) Material for Final Appellate Brief (posted on Lexis Web Page)

DUE: SETTLEMENT LETTER & CLIENT EMAIL (20% OF FINAL GRADE)

CLASS 5 – FEBRUARY 15, 2023

Class Topics:

- Drafting Questions Presented and Argument Headings;
- Introduction to Standards of Review;
- Introduction to Oral Argument

Read: *Rambo* Ch. 16, 17, & 18

CLASS 6 – FEBRUARY 22, 2023

Class Topics:

- Discuss Research Results;
- Using Cases Effectively in Brief Writing (Re/A)

Due: Summary of 6 most important authorities for use in Appellate Brief (UNGRADED ASSIGNMENT)

CLASS 7 – MARCH 1, 2023

Class Topics:

- Oral Argument (UNGRADED ASSIGNMENT);
- Large Scale Organization of the Brief;
- Addressing Adverse Authority and Opposing Arguments;
- Summary of Argument;

Read: *Rambo* Ch 22

Due: Outline of Argument Section (UNGRADED ASSIGNMENT)

CLASS 8 – MARCH 8, 2023

Class Topics:

- Peer Review of Draft Statement of Facts and Question Presented;
- Citation Review;
- Oral Argument (UNGRADED ASSIGNMENT)

Due: Draft Statement of Facts and QP (UNGRADED ASSIGNMENT)

CLASS 9 – MARCH 13, 2023

NO CLASS – Spring Break – Party hardy!

CLASS 10 – MARCH 22, 2023

Class Topics:

- Mandatory Small Group Conferences

Due: Students Must Bring Revised Outline of Argument Section to Conference (UNGRADED ASSIGNMENT)

CLASS 11 – MARCH 29, 2023

Class Topics:

- Finalizing the Appellate Brief - Editing & Revising;
- All of the other parts of the brief (Table of Contents, Certificate of Service, Conclusion, etc.);
- Perfecting Citations

Read: *Rambo* Ch. 33

Due: First Draft of Argument section of Final Appellate Brief (with Argument headings) (UNGRADED ASSIGNMENT)

CLASS 12 – APRIL 5, 2023

Class Topics:

- Guest Speaker;
- Oral Argument (UNGRADED ASSIGNMENT)

Read: *Rambo* Ch. 19

CLASS 13 – APRIL 12, 2023

Class Topics:

- Moot Court Members Panel;
- Oral Argument (UNGRADED ASSIGNMENT)

DUE: FINAL DRAFT OF APPELLATE BRIEF (50% OF FINAL GRADE)

CLASS 14 – APRIL 19, 2023

Class Topics:

- Oral Argument (UNGRADED ASSIGNMENT)

Due: In addition to the in-class oral argument practice this week, students must practice their oral argument with a group of up to 3 other students for at least 2-hours (may practice with other 1L students or moot court team members.)

CLASS 15 – APRIL 26, 2023 (to be individually scheduled)

Class Topics:

- 1L Moot Court Competition Oral Arguments

DUE: IN LIEU OF FORMAL CLASS THIS WEEK, EACH STUDENT WILL BE SCHEDULED TO PRESENT THEIR FINAL ORAL ARGUMENT (20% OF FINAL GRADE)

MAY 3, 2023, 9:00 A.M.

OPTIONAL: 1L Moot Court Competition Final Oral Arguments

SUMMARY OF GRADED ASSIGNMENTS AND PERCENTAGES

- DUE FEBRUARY 8, 2023: SETTLEMENT LETTER & CLIENT EMAIL (20%)
- DUE APRIL 12, 2023: FINAL DRAFT OF APPELLATE BRIEF (50%)
- DUE WEEK OF APRIL 26, 2023 (as individually scheduled): FINAL ORAL ARGUMENT (20%)
- THROUGHOUT: PROFESSIONALISM (10%)

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.

Expectations for Students in Zoom Sessions:

- **Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.**
- **Arrive to class early and dressed as you would to attend an in-person class.**
- **Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.**
- **Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.**
- **Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.**
- **If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.**
- **If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.**
- **Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.**
- **Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify your professor in advance so you are not marked absent.**
- **Unless your professor instructs you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.**
- **Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.**
- **If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.**

- **Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your professor will inform you about the ways in which you should use these tools in that particular class.**
- **Professors may use a number of interactive functions in Zoom to engage with students, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.**

[END]