

LAWYERING SKILLS I

Fall Semester 2010

Professor Benjamin C. Carpenter

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Meeting Times and Classrooms

Section B7: T/TH, 9:00 a.m. – 10:25 a.m. (Room 321)

Section A3: T/TH, 1:30 p.m. – 2:55 p.m. (Room 244)

Office Hours

My regular office hours will be Tuesday 3:00 – 4:30; Wednesday 3:00 – 4:00; and Thursday 10:30 – 12:00. In addition, please feel free to make an appointment to see me at other times or to stop by my office anytime my door is open.

Writing Fellow

Emily Christiansen is the writing fellow for this course. Emily will hold office hours (which I will post to Blackboard), and you can also reach her at chri7416@stthomas.edu. Emily will be available to answer questions regarding the writing and editing process, but she will not edit or revise your writing for you.

Textbooks

The required textbooks for this course are:

- Helene S. Shapo et al., *Writing and Analysis in the Law* (5th ed., Thomas/Foundation Press 2008)
- ALWD & Darby Dickerson, *ALWD Citation Manual* (3d ed., Aspen Publishers 2007)

I also recommend:

- Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Academic Press 2007)
- Joseph G. Allegretti, *The Lawyer's Calling: Christian Faith and Legal Practice* (Paulist Press 2005)

Course Goals

My three main goals for this course are to help you:

1. Learn to analyze and critically evaluate ideas, arguments, and points of view;
2. Develop the skills necessary to express yourself, as a lawyer, in writing and orally; and
3. Develop the specific skills, competencies, and points of view needed by practicing lawyers.

Course Overview

Your ability to distill the relevant law from various sources and to relate your analysis in a clear, concise, and persuasive way will be essential to your success as a lawyer, regardless of your future practice area. To help you develop these skills, we will discuss how to:

1. Distinguish between mandatory authority and persuasive authority;
2. Determine the relative weight of various forms of persuasive authority;
3. Analyze and interpret statutes;
4. Pull out the applicable rule of law from a case;
5. Synthesize a rule of law from numerous cases;
6. Apply those rules to your fact situation to determine the likely outcome (or advocate for a particular outcome);
7. Structure your writing in the appropriate format for your situation; and
8. Document your analysis through proper citation.

As you can see, this course is as much about legal analysis as it is about writing. In practice, the two are inseparable. It is not possible to write effectively until you first have properly analyzed the law. On the other hand, a perfect analysis is meaningless if you cannot express it to another in a way that he or she can understand. You will find that drafting a legal memorandum or brief is not a two-step process (analyzing, then writing), but a dynamic process. It is often through the writing process that you find weaknesses in your arguments and return to your research, fine-tune your analysis, and then return to the keyboard.

This course will take you through this process and give you the opportunity to practice these skills by completing individual and small group exercises in class, by reviewing your classmates' work, and by writing three major documents on your own. In addition, I will meet with each of you at least twice during the semester in a one-on-one conference to discuss the assignments and your development as a legal writer. In Lawyering Skills I, I will provide to you the law and facts you will need to complete each of your assignments; you must analyze that law and apply it to the facts. In Lawyering Skills II next spring, you will learn how to perform the legal research yourself and how to make an oral argument to support your position.

Finally, whether you are working for a partner in a law firm, communicating with opposing counsel, or advocating to a judge, your professional reputation will be built, in large part, on your writing. We will discuss throughout the semester the legal community's professional expectations of you, your ethical obligations while advocating for your client, and specific ways you can establish credibility through your writing.

Grading and Expectations

Your grade for the course will be based primarily on a midterm examination (20%), a legal memorandum (40%), and a persuasive brief (40%). The legal memorandum and persuasive brief will be graded anonymously. You will also write an initial legal memorandum that I will review but will not grade.

Your grade may also be affected by how well you meet your overall responsibilities as a student in this class. Because you are training to be professionals, I will expect you to meet some of the minimum duties required of professionals. The following factors may affect your final grade:

1. **Attendance.** I will take attendance each day. If you are not in your seat when I take roll, you will be counted absent. If you have an excessive number of unexcused absences at the end of the semester, I reserve the right to lower your final grade by up to two grade increments (for example, from an A-minus to a B, or from a C-plus to a C-minus). Please note that we will cover some material in class that is not in the textbook. If you miss a class, you are responsible for all materials, assignments, and announcements covered in class. Likewise, though we will not have time to cover in class all of the material I have assigned from your textbook, you are responsible for all assigned material.
2. **Preparation and Participation.** Class preparation and participation are essential. You should prepare for each class by doing the assigned readings and exercises. I may call on you during class discussions, whether or not you raise your hand to volunteer. If I call on you, you should make a good-faith effort to answer the question. If you are genuinely unprepared to answer, say so, and I will not call on you again during that day's class (unless you decide to volunteer). As with attendance, I reserve the right to lower your grade by up to two grade increments at the end of the semester if you repeatedly are unprepared or fail to participate. On the other hand, I reserve the right in exceptional circumstances to raise a student's grade by up to one increment if that student has contributed consistently and in a high-quality manner to class discussions.
3. **Timeliness of Assignments.** Law school is preparing you for a profession that emphasizes timeliness. Because you need to develop now the good habit of submitting all assignments, memoranda, and briefs on time, I will hold you to the timeliness standards of practicing attorneys. This Syllabus lists the date, time, and location that each assignment will be due. You must turn in **two** written copies of all assignments; no submissions by e-mail will be accepted. **These time requirements are strict – you will receive a grade penalty on any assignment you turn in late, as follows:**
 - One minute to one hour late: 10% reduction
 - One hour to 24 hours late: 20% reduction
 - 24 hours to 48 hours late: 40% reduction
 - 48 hours to 72 hours late: 50% reduction
 - 72+ hours late: 100% reduction

Please note that an assignment turned in one minute late is considered late. Further, computer and printer problems are neither unexpected nor rare and are never an excuse for being late. The same is true regarding traffic delays and the reliability of public transportation. Give yourself plenty of time to get to the building, to print your documents, and to turn your assignment in on time.

4. **Format of Assignments.** Your assignments must conform to the format requirements at the end of this syllabus. Please master these format requirements so that you do not lose points on assignments.

5. **Honor Code.** All regulations in the University of St. Thomas School of Law Code of Student Responsibility govern this class. In particular, note Section V-5, Part II, Sec. 101:
 - A. **Cheating.** Cheating includes giving, receiving, possessing, or using any materials, information, or study aids prohibited by the instructor. Cheating also includes other dishonesty or fraud relating to law school work or violating the rules established by the instructor to govern work for that instructor.

 - B. **Plagiarism.** Plagiarism occurs when students claim or submit as their own original work the research, ideas, or writings of another without acknowledging and clearly identifying the source, all without regard to the quantity of materials used. Examples of plagiarism include copying, summarizing, or paraphrasing another's work without proper attribution. It is not a defense to plagiarism that there was no intent to deceive, to misrepresent, or to gain any unfair advantage.

 - D. **Misuse of Property or Services at the Law School.** Misuse of property or services includes stealing, hiding, damaging, defacing, destroying, or impeding access to property or services of the library, of the law school, or of any member of the law school or university community.

6. **Collaboration.** Although we may work together in class on some aspects of some assignments, this is a graded course, and you must be evaluated on the work you prepare. Therefore, unless I specifically instruct otherwise, you are honor bound not to use any outside help in completing your assignments. "Outside help" includes faculty, staff, current students, former students, family, or friends. When in doubt, remember that the default rule is always no collaboration.

Professionalism

During law school you must make the critical shift from student to professional. The expectations on your behavior in law school are greater than what existed in your undergraduate or other graduate atmospheres. My expectations for your attitude, behavior, and performance reflect the expectations that your future employers will have of you. The following list is not exhaustive, but it should give you an idea of my expectations so you can make good choices and govern yourselves as professionals, even when something particular comes up that does not appear on this list.

1. **Think of me as your supervising attorney.** You soon will be working as a clerk or summer associate at a law firm, and your prospective employer may ask me to evaluate your professionalism and maturity – not just your grades. During your first year of law school, think

of me as your supervising attorney and conduct yourself accordingly, in class and out of it. If you do not, my evaluation of you will reflect that.

2. **Prepare to be in class.** Sitting in class for 1½ hours can seem long. Prepare for it. Eat a meal before class so you are not hungry. Use the restroom before class so you are not uncomfortable. If you are ill and need to use the restroom, that is of course fine. However, if you are not ill, do not leave the classroom once class has started.
3. **Food and Drinks.** You may bring water, coffee, or soda with you to class. You may also bring discrete food items that you can eat silently, such as granola bars, candy bars, etc. Do not bring food such as sandwiches, pizza slices, chips, etc.
4. **E-expectations.** Email is an everyday part of law practice, and I welcome emails from you. However, there are expectations in the legal community regarding the format and content of emails, and I expect you to follow those. When you email me (or your future supervising attorney) think through the information you are hoping to receive before you write. Include in the email a greeting, your purpose in writing, your clear and succinct request, a thank you for the reader's anticipated response, and your name. Then, when you get a response, thank the person again or provide some other indication that you received the response. This habit will help ensure that your supervisors and coworkers view you as professional and respectful. I will do my best to respond to all emails I receive (1) during the week within 24 hours and (2) over the weekend by noon on Monday. If you do not hear back from me by those times, do not hesitate to stop by my office or call me directly.
5. **Cell phones.** If there is a reason that you need to have your cell phone on during a particular class, please let me know that before class starts. If you have not and your cell phone goes off during class, I will consider that your way of volunteering to answer all questions the remainder of that class.
6. **Use of laptops.** Use of a laptop in class is a privilege, not a right. You may use your laptop to take notes in class, but you may not use it for any other purpose. Surfing the internet, checking email, playing solitaire, instant messaging, and any other activities during class (other than taking notes) prevent you from giving your full attention to learning and distract your classmates. Again, if you do so, I will consider that your way of volunteering to answer all questions the remainder of that class. (And, no, that will not count as great participation for that day!)

Disability Accommodations

Qualified students with documented disabilities who may need classroom accommodations should make an appointment with the Enhancement Program – Disability Services by calling (651) 962-6315 or in person in O'Shaughnessy Educational Center, room 119. For further information, you can locate the Enhancement Program on the web at <http://www.stthomas.edu/enhancementprog/>.

CALENDAR

Here are the days that we will meet as a class; the topics we will discuss on those days; the reading assignment you should do before each class; and the dates when exercises and assignments will be handed out and when they are due. Because this Syllabus is subject to change, you should regularly check your St. Thomas e-mail account and Blackboard for other assignments, announcements, and information.

Please note that I have not stated below which exercises from the Shapo book you should do each week, because that will depend in part on how the class progresses. I will try to alert you in advance if an exercise is not required; if I have not, assume that all exercises covered in the assigned reading are required and come to class prepared to discuss them. If we do not cover the exercise in class and you have questions or would like me to review your answers, I am happy to do so during my office hours.

Class/Date	Topic	Reading	Assignment
Class 1 (Aug. 31)	A. <u>Introduction</u> B. <u>U.S. legal system</u> 1. separation of powers/federalism 2. statutory/case law 3. court systems 4. weight of authority	Shapo, Ch. 1 (pp. 3-38)	
Class 2 (Sept. 2)	U.S. legal system cont'd		
Class 3 (Sept. 7)	<u>Analyzing case law</u> 1. reading/briefing cases 2. issue/rule/holding 3. legal citation 4. factors vs. elements 5. analogies/distinctions 6. synthesis	1. Shapo, Ch. 2 (pp. 39-62) 2. ALWD, Part 1 (introduction)	Note: All students meet at 9:00 in classroom 321
Class 4 (Sept. 9)	Analyzing case law cont'd	Shapo, Ch. 2 (pp. 62-87)	
Class 5 (Sept. 14)	<u>The legal memorandum</u> 1. purpose 2. format a. statement of facts b. question presented c. short answer 3. writing process	1. Shapo, Ch. 7 (pp. 171-191) 2. Shapo, Ch. 8 (pp. 193-205)	Practice legal memo assigned

Class 6 (Sept. 16)	<u>Large scale organization</u> 1. one issue 2. one issue w/ subparts 3. multiple issues 4. discuss memo cases	1. Shapo, Ch. 4 (pp. 117-141) 2. Shapo, Ch. 6 (161-170)	
Class 7 (Sept. 21)	<u>Small scale organization</u> 1. Introduction (issue) 2. Rule (inductive) a. identify b. explain 3. Application (deductive) 4. Conclusion	Shapo, Ch. 5 (143-159)	
Class 8 (Sept. 23)	<u>Better writing</u> 1. transitions 2. quoting/paraphrasing 3. grammar 4. revising and rewriting 5. questions regarding assignment	1. Shapo, Ch. 8 (205-208) 2. Shapo, Ch. 9 (209-228) 3. Shapo, Ch.10 (229-248)	
Class 9 (Sept. 28)	A. <u>Peer review memos</u> B. <u>Analyzing statutes</u> 1. determining elements 2. canons of construction 3. legislative history 4. regulations	1. Shapo, Ch. 3 (89-116) 2. ALWD, Rule 14	Practice memo due at beginning of class
Class 10 (Sept. 30)	Analyzing statutes, cont'd		
Class 11 (Oct. 5)	<u>Making legal arguments</u> 1. precedent (narrow/broad) 2. resolving conflicts 3. policy	Shapo, Ch. 11 (249-276)	Graded legal memo assigned
Class 12 (Oct. 7)	Making legal arguments, cont'd		
Class 13 (Oct. 12)	Catch-up day, discuss themes from practice memo, student questions re: graded memo		
Class 14 (Oct. 14)	Midterm exam		Note: All students meet at 9:00 in classroom 321
FALL BREAK			
Class 15 (Oct. 26)	No class – conferences		

Class 16 (Oct. 28)	Professionalism		
Monday, November 1st	Graded legal memo due in MSL 311 by 5:00 p.m.		
Class 17 (Nov. 2)	Persuasion, advocacy, and ethics	Shapo, Ch. 16 (363-376)	
Class 18 (Nov. 4)	Motion practice	Shapo, Ch. 17 (377-393)	
Class 19 (Nov. 9)	Persuasive writing and analysis	Shapo, Ch. 18, part VII, sections A-C (444-462)	Graded persuasive brief assigned
Class 20 (Nov. 11)	Theory of the case, Persuasive strategies	Shapo, Ch. 18, part VII, sections D-E (462-474)	
Class 21 (Nov. 16)	Persuasive fact analysis, persuasive point headings	1. Shapo, Ch. 18, Part IV (410-426) 2. Shapo, Ch. VI (433-444)	
Class 22 (Nov. 18)	Class debate on first major issue of brief		
Class 23 (Nov. 23)	No class – conferences		
Nov. 25 – THANKSGIVING			
Class 24 (Nov. 30)	Class debate on second major issue of brief		
Class 25 (Dec. 2)	Open for student questions regarding brief or other topics		
Monday, December 6th	Graded persuasive brief due in MSL 311 by 5:00 p.m.		
Class 26 (Dec. 7)	Introduction to oral argument		

REQUIRED FORMAT FOR LEGAL WRITING ASSIGNMENTS

1. Turn in **two** copies of each paper. Keep a third copy for yourself.
2. Do not put your name on the paper. You will “file” your assignment with Henry Bishop in MSL 311, and he will record the time that it was filed and assign your paper a number.
3. Use “Times New Roman” font, 12.5 point, only.
4. Type on one side of the page only.
5. Double-space each page, except for the caption and signature block in a court brief.
6. Place a page number at the bottom center of each page, beginning with page 2.
7. Use one inch margins on the top, bottom, left side, and right side of paper for all text. The page number, however, should be ½ inch from the bottom of the page.
8. Do not right-hand or full justify your work; set the justification to “left.”
9. Bind papers together by using one staple in the upper left hand corner.
10. Do not exceed the word or page limit I assign.