LEGAL ANALYSIS, WRITING AND RESEARCH I – LAW 1720 C2

Fall Semester, 2014
Tuesdays and Thursdays, 8:10 a.m. to 10:00 a.m.
Roosevelt Hall, Room 010

VERY FIRST CLASS HELD ON WEDNESDAY, AUGUST 20, FROM 1:30 to 3:30 IN A ROOM TO BE ANNOUNCED.

Professor Juli Campagna, Associate Professor of Legal Writing

Office location: 033 [ basement, around the corner from the copy office ]
How to contact me: juli.campagna@hofstra.edu / (516) 463-5933
Office Hours: TO BE ANNOUNCED BASED ON OUR MUTUALLY FREE TIME

AND BY APPOINTMENT. You are welcome to make an appointment at any time, including five minutes before you hope to drop by. Just e-mail me or call me [35933] to be sure I am in my office. I only ask that you not drop by un-announced outside my hours, unless you really have an emergency situation, of course. This is not to play some power game. I ask this simply because I have a lot of other duties, beyond teaching, as a faculty member. Thus, just because I am in my office does not mean I am free. If I can see you within minutes of your call or e-mail, I will gladly do so. I am open to seeing students on weekends, as well.

LEARNING OBJECTIVES

The following objectives are or should be yours. They reflect the standards you should satisfy at the end of this course (both semesters). Bracketed citations are to the law school’s Learning Outcomes for Graduating Law Students.

1. **Be able to do** the following at the proficiency level needed of an entry-level lawyer:

   - Write analytically using Plain English. [4(a)]
   - Write persuasively using Plain English. [4(a)]
   - Use the appropriate tone when writing based on your audience and the purpose of the document.

2. **Be able to do** the following at an introductory level. (You will need further writing in advanced and specialized courses for entry-level proficiency.)

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1 I am also Assistant Faculty Director of International Programs, so feel free to ask me questions about working and studying abroad.

Legal Writing Syllabus – Fall 2014 – juli.campagna@hofstra.edu – (516) 463-5933 - Page 1 of 25
• Draft legal documents such as client communications [4(b)]
• Construct arguments and identify flaws in an argument [5(e)]
• Present analysis orally and argue orally [5(h)]
• Identify legal issues in facts and apply rules and policy to facts [5(c)]
• Present written communications in a professional setting in a manner that meets the standards of the legal profession. [7(a)]

3. **Be able to understand** the following at an introductory level:

• Your role as a writer and the role of your reader and your duty to explain.

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Congratulations on being admitted to law school. Whether you are fresh out of undergrad, have worked a year or two, or (like me when I went to law school) have worked more than a decade since the last time you were in school, you are about to have the intellectual time of your life! While law school is undeniably stressful, it need not be solely stressful. I truly hope you enjoy studying the law, at least most of the time!

Next, welcome to the Maurice A. Deane School of Law at Hofstra University. This is a great school with alumni working in top firms and doing important and interesting legal work in New York, around the country, and around the world.

Finally, welcome to Legal Analysis, Writing and Research, more popularly known as “Legal Writing” even if all three skills are critical and intertwined. Here you will learn and improve the essential skills of our profession: analysis, research, and writing.

Lawyers must be able to communicate their ideas effectively. *Language* embodies and conveys ideas. We lawyers communicate with a wide range of individuals on a daily basis, throughout our careers. Thus, **language is the lawyer's seminal tool.** The ability to understand what you read, and to convey your legal opinion is what you will do for a living.

As a lawyer, you will be a professional reader and a professional writer. **LANGUAGE WILL BE YOUR LIVELIHOOD.** The better command you have of it, the more successful you will be: plain and simple.

Language command includes the ability to read closely to determine the type of conduct that is required, prohibited, or allowed.

• What are the steps necessary to bring about the desired outcome?
• What, if any, are the alternative steps to reach the same end?
• What is the allowable or required framework?
• What are the consequences for missing a deadline?
Language command includes the ability to read language closely to determine the likely outcome of a dispute that your client may have, whether as plaintiff or as defendant.

- What type of evidence will you have to produce?
- What type of evidence will the other side have to produce?

Law students need to communicate with fellow students, professors, and potential employers. Lawyers need to communicate with colleagues, clients, opposing counsel (in litigation), “the other side” (in transactions), and decision makers. Decision makers include supervising attorneys, judges, regulators, and arbitrators.

**As a lawyer, you will be a professional writer.** You will need to produce professional documents of all types. Legal communications take many forms, including:

- memoranda of law [memos]
- letters
- briefs
- motions
- summaries of investigations and records
- written agreements / contracts
- wills
- deeds
- patent claims
- appendices, attachments or exhibits to governmental forms or private-party documents, such as contracts
- requests for private-party rulings from state and federal agencies.

In our course you will develop the precision, clarity, style, tone, and efficiency you will need to be a lawyer. During the semester, we will cover a broad range of topics, including:

- an overview of the sources of law;
- the process of reading, interpreting, and analyzing cases and statutes;
- the process of obtaining, understanding, and documenting clients’ facts;
- the critical concept of jurisdiction;
- legal and factual research;
- the form of legal memoranda and letters to clients;
- writing style;
- Plain English;
- organization;
- the writing process and writer’s block; and
- writing for different audiences and purposes.
**THE PLAIN ENGLISH RULE**

In order to “think” like a lawyer, you have to be able to “read” like a lawyer and “write” like a lawyer. “Writing is thinking in ink.” ² Lawyers read and write in very trade specific ways. This is neither inferior nor superior to the way a journalist or scientist or other professional or craftsman reads or writes. It is simply specific to what we do. We read and write to gather, analyze and communicate information concerning the legality of one or more parties’ past, future or contemplated conduct. We are in the rules business. Language and how we express it are our bread and butter.

You will learn to write in Plain English in this course. **WRITING IN PLAIN ENGLISH IS ONE OF THE MOST IMPORTANT THINGS YOU WILL LEARN IN THIS COURSE.**

During the first semester, we will focus on “predictive” legal writing. Predictive writing is the type of writing that addresses the likelihood of getting what you want for your client. You will write predictive documents to fellow legal counsel and your clients.

Next semester we focus on argumentative writing. You will argue to courts. Next semester you will write two persuasive documents: one to a trial court; the other to an appellate court.

**Legal Writing “Peculiarity” – Two Credit Hours**

I address this section particularly to younger, “fresh-out-of-undergraduate” students. I do not wish to patronize or insult you, but we all have our life contexts, and yours, quite naturally, is school and credit hours.

This class is a lot of work – there is simply no way around it. Learning to write like a lawyer is not just necessary for your relatively distant career. It is necessary to take and pass your immediate exams, starting with those you will take this December.

This is a two credit-hour course. Those two hours do not represent “less work” than other courses, which may carry four or five credits. The course hour allocation represents decisions made elsewhere. Thus, you need to anticipate more than “just” a two-hour course. I am here to teach you to be a lawyer. I am doing so within the context of a school. I assure you that **you will have to work just as hard in legal practice whether you are a first-year attorney, a fifth-year, or a partner.**

Older students will undoubtedly be glad to know it is only a two-hour course because they will get the same “bang” for their substantial buck in this course as they do in courses with more hours allotted to them, making this course a real bargain, as opposed to some kind of injustice.

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² Professor Maureen Collins of The John Marshall Law School, Chicago.
Finally, all students should be relieved to know that this course is “front-loaded.” This means that you work a lot, and produce a lot, during the semester, unlike in most of your substantive law classes. Happily for you, however, you will be done with this course before Thanksgiving, and can then focus exclusively on studying for your finals, without worrying about any more research or writing assignments!

**COURSE POLICIES**

The best way to improve your writing is to write, rewrite, and write some more. You need to recognize from the outset that you will have to put a lot of work into this course. I do not say this because this is the course I teach. I tell you this for real, and not for nonsensical reasons. Your doctrinal classes will give you an excellent background in substantive and procedural law. In this course we focus on the skills you will need throughout your career, regardless of the type of law you ultimately practice.

**Attendance**

Attendance is key to learning how to read, research and write in our profession. This class is all about “working” as a lawyer. The key to any job is showing up. Thus, you must attend class. You will sign in to each class. Any student with more than two un-excused absences will be administratively withdrawn from the class.

**Graded Assignments**

You will have five major writing assignments: four are graded; one is pass/fail. You will also have short, focused research and question/answer/discussion exercises. Some of these exercises will be assigned from the course book(s); others will be assigned in the form of worksheets or similar that I draft and distribute.

The client letter is a pass/fail assignment in the first semester. Note that you must pass it, however, and will need to work on it until you receive a passing grade. You will need to receive a passing grade by Tuesday, November 4. Note very carefully that I did not say that “the last day to turn in the letter” is Tuesday, November 4. I call this to your attention first thing in the semester so that you get used to reading very closely. Lawyers get sanctioned, and even lose their licenses for failing to read closely. Focus is the heart and soul of successful lawyering. Casual reading, so-called “multi-tasking,” and other distractions are anathema to success in our profession.

I have set forth the major assignment names and course grade percentage allocations on the following page. On pages 15 and 16 of this syllabus, you can see the due dates of your first three writing assignments. I will also post the all-course assignment sheet, with deadlines and percentage allocations, as a separate, single document, on TWEN.
<table>
<thead>
<tr>
<th>Assignment Number</th>
<th>Task / Topic</th>
<th>Percentage of Course Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Objective Memorandum of Law [Memo] – Closed Universe ³</td>
<td>5%</td>
</tr>
<tr>
<td>2</td>
<td>Re-write of Assignment #1</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>- Will include new (additional) law and may include new facts.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Client letter based on the facts and law involved in the Objective Memo</td>
<td>Pass/fail *</td>
</tr>
<tr>
<td>4</td>
<td>Objective memo #2</td>
<td>10%</td>
</tr>
<tr>
<td>5</td>
<td>Fact Chronology and Research Journal for objective memo #2</td>
<td>10%</td>
</tr>
<tr>
<td>5</td>
<td>Rewrite of objective memo #2 – will include additional law</td>
<td>35%</td>
</tr>
<tr>
<td>6</td>
<td>Very brief e-memo written to a supervising attorney relating to your second memo.</td>
<td>5%</td>
</tr>
<tr>
<td>7</td>
<td>Research and short citation exercises to be turned in during the semester, as assigned.</td>
<td>10%</td>
</tr>
</tbody>
</table>

**OTHER REQUIRED ASSIGNMENTS**

**Bluebook**

You will need to learn the *Bluebook* citation form and adhere to it. As I will repeat ad nauseum in class, there is nothing intuitive about the *Bluebook*. It is, however, indispensable to the practice of law. We even use the word *bluebook* as a verb in the law! “I need to bluebook it,” means “I need to determine the correct citation.”

³ A term of art. A “closed universe” memo is one where your boss (or your professor) provides the file. In other words, you do not have to do any research in a closed-universe memo.

⁴ All students must pass this. If you fail with the first submission, you will have a chance to try again without any penalty. See comments on prior page. This assignment is not pass/fail because it is unimportant. You will write to clients throughout your career. It is pass/fail because the task is so challenging.
During the first semester, you will focus on citing cases and statutes; that’s it. I absolutely insist that you learn how to cite case names and use Table 6 (T6), starting on page 430 of the Bluebook during first semester. You will focus on the more advanced aspects of the Bluebook during second semester. You will use the Interactive Citation Workbook for the Bluebook, which is one of the assigned textbooks for this class. You will do most of these lessons next semester, but will need to complete a few this semester. More on this in September.

I will give at least two in-depth lectures, with handouts, to get you going. The most critical thing you need to develop this semester is your writing ability within the legal paradigm. However we approach it, you can always ask me questions. You may have colleagues in other Legal Writing sections who work intensely on the Bluebook their first semester. That is at their professors’ discretion. You will need to be very conversant with the Bluebook by the end of your first year. I will not send you out to work in courts and law firms without knowing how to bluebook. Worry not.

Core Grammar for Lawyers

Core Grammar for Lawyers is a self-study, online program that you must complete by December 3, 2014. Rules and procedures regarding Core Grammar for Lawyers are set forth in a separate memo that I will distribute and discuss with you in class. I will also post the memo, as a separate document, on TWEN.

Class Participation

I will not assign a specific “class participation” component. You do not need to “participate” to get an A or a B in this course. That said, exceptional class participation could help you get the higher grade in any border-grade situation. I look to quality of participation and not quantity. Some of the top lawyers I have known sat in stunned silence during their first semester of law school, so I don’t put too much weight on first-semester participation.

Professionalism

You are about to enter an adult profession. The legal profession is all about conduct: adult conduct. Following is conduct that it is unprofessional.

- Surfing the web (in any form) during class.
- Talking on cell phones (or any related gadget) during class. You must TURN your cell phone/i-phone/i-pad – whatever – OFF when class starts.
- Texting or other distractions.

SANCTIONS WILL ARISE FOR FAILING TO CONFORM TO THE RULES OF PROFESSIONALISM.
Tone and Usage in Communications with Me

I apologize in advance to students who would never consider doing any of the following. Experience has shown me, however, that I need to set forth the following rules and standards in writing.

I am all about respect: mutual respect. Because you have to call me “Professor” during our class, I will call each one of you Mr. or Ms., with your last name.

When writing to me, I expect you to address me by name. I will address you by name.

I do not respond to any of the following:

- Hi -
- Hey –
- Yoo / Yoa ,etc.

I will simply delete the above if I receive anything written with such disdain. Try writing like that to a managing partner or supervising lawyer and see how long you keep your job! You must always address people by name in the law. Ordinarily, you will address them by their last name, and will frequently address them by title.

When writing to me, you must start with:

- Dear Prof. Campagna,
- Dear Prof. C.,

I will respond to you in kind.

If we are in the midst of several e-mails, a more conversational tone may be just fine.

Classroom Language

People may not swear in my class. Period. I do not swear in class, either.

I will ask anyone using vulgar language to leave the class that day.

Again, my sincere apologies for a page of this information. I realize that most of you would never consider doing anything written above.
Monitoring Your Own Progress

In grading your writing assignments, I will evaluate the format, the depth of research, the quality of legal analysis, and the organization, style, and overall effectiveness of each paper. You will have a point-based rubric for each memo and its rewrite. I will not simply write some letter grade on your paper.

The Neumann / Tiscione text contains an excellent checklist for editing on the inside front and back covers. During the semester, you should develop a personal revision checklist as you become more aware of your own strengths and weaknesses. Do not be nervous. The early assignments carry less weight than later assignments specifically because we recognize that it takes time, effort and application to achieve excellence.

Writing Samples and Legal Employment

Please keep in mind that the memos and letters you write in this course will constitute the writing samples you will be submitting to firms and courts for summer positions! THEY ARE SO MUCH MORE THAN MERE “HOMEWORK”. They will build the bridge for you to cross from law school to legal practice. Your documents will tell your employer who you are, professionally – at a specific point in time. Your employer will not just read what another lawyer/law professor “gave” you on a test. Your employer will read exactly how you described a set of facts; what law you decided to apply; and how you analyzed the facts to come to a reasoned conclusion. Because that is what most of your summer employers will want you to do for them, they will look closely at your writing, and judge the work themselves. Make sure your written product shows you at your best.

Ethical Standards

The law is a learned profession that demands the highest ethical standards. Two necessary components to fulfilling the standards are independent work and academic honesty.

Independent Work

One of your goals for this course should be to develop your creativity and your analytical skills. Your work should therefore represent your independent effort. While you may wish (and are permitted) to talk to your classmates about the issues presented by your assignments, you may not:

1. show anything you have written -- even fragments of a "rough draft" -- to anyone else for any purpose before you turn your work in; this prohibition includes any help in editing or proofreading from anyone at anytime -- edit your own work; or

2. discuss your assignments with any lawyer or judge -- even one to whom you are related.
The only exception to the above rules is that you may show, discuss with, and seek help from myself and our class teaching assistant. I repeat that YOU MAY NOT SHOW YOUR WORK, OR GET HELP ON ASSIGNMENTS, FROM RELATIVES, SPOUSES, OR BOSSES IN THE FIELD. Doing so constitutes unethical conduct, which I must report to the Academic Dean.

**Academic Honesty and Prohibition Against Plagiarism**

The Law School's Code of Academic Conduct provides:

I (B). **PLAGIARISM.**

1. **Definition.** A student plagiarizes when the student represents the work of any other person as the student's own work. Plagiarism includes but is not limited to:

   a. copying or substantially copying someone else’s words *without* both citing the author of the quotation and using either quotation marks or an indented block quotation;
   b. paraphrasing someone else’s words or work *without* citing the source.

2. **The violation.** A student violates the Code of Academic Conduct when the student:

   a. purposely plagiarizes or aides another student to plagiarize; or
   b. plagiarizes with knowledge of circumstances which should alert a reasonable student that there is a substantial risk that the student would be plagiarizing.

**Read this very carefully.** YOU ARE ON NOTICE of the rules and must comply with them. Among other things, be sure to put quotes around all words not of your own composition, and attribute each quote properly to its source. Attribute each thought not originally yours to the source from which you got it. Ask me whenever you are not sure.

The Code of Academic Conduct also contains other prohibitions that are particularly relevant to this course. E.g.,

- Section 1(A)(3), which prohibits a “material misrepresentation for the purpose of obtaining a benefit in connection with any matter for which academic credit is given;”
Section I(A)(2), which prohibits damage to and hiding or unauthorized removal of library material.

Consequences for Non-Compliance

If you violate any part of the Code of Academic Conduct, you will be reported to the Associate Dean for disciplinary action. As you know, violations of the Code may result in expulsion from the Law School.

In addition, violation of any of the course rules set out herein will result in a penalty to be deducted from your final grade.

I encourage each and every one of you to ask me if or when you are not sure about the above rules. I ask any non-U.S. students to pay particular attention to the plagiarism rules. Plagiarism is not seen with the same seriousness in most other countries in the world. We are not “culturally relative” about plagiarism in U.S. academic institutions. A law school simply cannot take a culturally relative approach because its accreditation is at risk for doing so.

There is nothing “wrong” with using other people’s thoughts and words. Sanctions do not arise for using the thoughts and words of others. Under the legal system of stare decisis, it is inevitable that you will do so frequently. You must do so in many instances! The judge will not be convinced that the law is as you say it is if you do not cite your source. Therefore, you absolutely must use the thoughts of “others” with great frequency in the law. This is also why learning to cite is so critical.

Sanctions arise for not attributing those thoughts and words to their author. Sanctions arise for pretending that the thoughts and words are your own, original ones. Failure to attribute constitutes intellectual theft and academic dishonesty.

Paper Submission

Please note the due dates for your papers, set forth below and as set forth throughout the semester. Deadlines are one of the driving forces in the law. Statutes of limitations are just as important as substantive law statutes! Lawyers must allocate their time. Judges will not easily grant extensions. Clients will not be remotely sympathetic to your requests for extensions. Thus, the sooner you become accustomed to the unforgiving environment that is the legal profession, the better.

In addition, the fundamental concept of justice in the common law is that similarly situated parties must receive equal treatment under law. As first semester law students, you are all similarly situated to each other. Thus, I may not treat students who
turn their papers in on time in the same way as I treat those who do not. The penalty for late submission is one-half grade per day, beginning with the due date.

Some assignments will have a page limit which you should follow, to the best of your ability. I am less stringent on page limits in this course because I realize that these are the very first legal documents you ever produce. You need to know, however, that many courts and regulatory agencies have page and/or word limits on documents lawyers submit. You will sometimes have to swear, on oath and affirmation, that you have not exceeded a word limit imposed by statute, or by an individual judge. This is why many of my colleagues are extremely strict about page numbers and word limits. I am exercising my discretion to be less focused on this, particularly during the first semester. Know, however, that you will be subjected to page and/or word limits throughout your career.

You will be turning in paper copies of each assignment to my assistant, Ms. Skura. You will also e-mail me a copy. I will give detailed instructions on each assignment during the first semester because I know this is all new to you. I will post the submission instructions for each assignment on TWEN.

Please use a font with at least a 12-point character size and double-space your memos. We will discuss the formatting of your client letters in class. As in the courts, use standard margins of one inch at the left, top and bottom, left and right. Please number your pages.

**Required Texts / Online Programs:**

The primary text for the course is *Legal Reasoning and Legal Writing* (7th ed.) by Neumann and Tiscione. You also need the research text: *New York Legal Research* (2d ed.), by Adelman. In addition, your written work must conform to the rules in the *Bluebook* (19th ed.). The only exception to this requirement is the first draft of the first memo. We will also be using the *Interactive Citation Workbook for the Bluebook* by McGaugh and Hurt. I may give you supplemental materials to read and prepare, as indicated, before particular classes over the semester. Please bring your Neumann text and your Bluebook with you each time we meet. It is only necessary for you to bring the *New York Legal Research* book when I instruct you to.

As stated and explained elsewhere, and posted on TWEN, *Core Grammar for Lawyers*, an online, self-study program, is also required.

**Sharing or Renting**

I know the books are stunningly expensive.
You may share the research and writing books if it is convenient for you. I will not structure this course so that “having” the book in any particular form will hinder your progress or performance. You may rent one or both of the course texts if the bookstore provides them for rent. If at all possible, cost-wise, I recommend buying the Neumann / Tiscione book. It is a happy coincidence that Professor Neumann teaches here. His *Legal Reasoning and Legal Writing* book is the most widely-used legal writing book in American law schools. I had it myself, in an edition much earlier than this one!

You will need to purchase your own copy of the *Bluebook*, and your own copy of the *Interactive Citation Workbook (2014)* however, so that you can access the online exercises related to the workbook. The same is true of *Core Grammar for Lawyers*, which you will need to purchase.

**Recommended Texts:**

As a lawyer, you will have to make your writing clear and accessible to the reader. You must be meticulous in adhering to the rules of style and grammar. *A Writer’s Reference* is a useful and readable general style work. Wydick’s *Plain English for Lawyers* is a classic. You will also find several other excellent texts that focus on style in the context of legal writing in the list below. The library will either have these texts, or be able to order them for you. Thus, I do not recommend buying them, I simply recommend consulting them. I will have a copy of each put on reserve both semesters.


O’Connor, *Woe Is I* (1996 Grosset/Putnam) (also available in paperback)


Wydick, *Plain English for Lawyers* – all editions are excellent.

**CLASS COMMUNICATION: TWEN**

TWEN is a type of Blackboard product produced by Westlaw. It is available to all law students here at Hofstra. Students in my class must sign on to our class TWEN board.

I use TWEN extensively to communicate with you. I also post all assignments, handouts, and class notes on it. I am not a “hide-the-ball” kind of person. Thus, I will let
you know any time I post something on TWEN.

Students sometimes “get nervous” if they receive e-mails from their professors. You need to get over this. You will get e-mails and phone calls from your supervising attorneys, judges and clients throughout your career. The law is not a profession where you just go and “do your homework” and then re-appear someplace. The LAWR course is a skills course; it is the closest course you will have to legal practice until you do a clinic or internship. Thus – you need to get used to e-mail notices from me.

GOOD NEWS FOR LAST

You have a wonderful teaching assistant in this class: Goldy Gluzman. Goldy is a 3L who took this exact class two years ago when, like you now, she was a 1L. You will meet Goldy during the first week of classes.

You will turn in some assignments exclusively to Goldy. Goldy will grade your Bluebook assignments, for example. She will also monitor much of your work for Core Grammar for Lawyers. All this will be set forth in writing as time goes by.

Goldy will also be able to handle many of your questions.

This does not mean that you may not or should not ask me. On the contrary. I want you to have as much support as we can provide.

Goldy will come in and meet you and give you any relevant information about herself. Her e-mail address, so that you have it in one place, is: opolivoda@hotmail.com.
ASSIGNMENT FORMAT AND DUE DATES

Before describing the assignments themselves, I would like to clarify four key points for this class.

1. I am not a very computer savvy individual. I started practicing law in the Word Perfect days. I then learned Word. The end. As a result, I need you to send me all your documents in Word, or in a file that Word can open. This is your responsibility, not mine. End of story.

2. Do not send documents in pdf format. I like to give you individualized feedback and am unable to do so on a pdf document.

3. Your major writing assignments will not be due on days when we have classes. This is by design. Your assignments will not be due on a school day, period. I have you turn assignments in via e-mail on weekend days / evenings out of respect to my colleagues – your substantive law professors. This way none of the students in my class will appear in my class or other professors’ classes “hung-over” from a writing all-nighter.

4. You will e-mail me a copy of your memoranda and client letter at a specific address designated for that purpose. This e-address is different from my Hofstra address, again by design. All this information will be repeated, on each assignment. In addition to e-mailing your assignments to me, you will bring one or more paper copies to my assistant, Ms. Skura. Either Goldy or I will show you where her office is. Sometimes you will e-mail the assignment first, and follow-up with a hard-copy delivery to Ms. Skura. Other times you will turn in your hard copy first, and e-mail me later. This is also by design. You need to get used to reading directions closely and following up precisely. I will post the specific instructions on every assignment on TWEN, and will also state them in class.

Summary of Major Assignments

On the next page I have outlined the dates and requirements for the first three major assignments. I will complete this summary by the end of the month, after I have my first major faculty meeting with my fellow legal writing professors. I will then post all the major assignments, as a separate sheet, on TWEN. I will notify all of you, through TWEN, when I do so. You can expect to receive this shortly after Labor Day.

Note that you will have a detailed assigning memo, or similar, for each assignment.
1. **First Memo; First official draft** (5% of grade). Due **Sunday, September 7, by 5:00 p.m.** Send via e-mail to me at prevailingpartner@gmail.com. Request a delivery and a read receipt when you send it (cover yourself). The paper copy, which you turn in to Ms. Skura the following Monday, must be the same as the e-copy.

Bring two printed, stapled copies of your memorandum to my administrative assistant, Ms. Doris Skura. Ms. Skura shares an office with other assistants on the second floor: Room 206. Ms. Skura will time stamp both copies of your memo. Keep one of them and bring it to our individual conference[s]. **The paper copy is due by 2:00 p.m. on Monday, September 8. This means it must be time-stamped 2:00 or earlier.** Plan accordingly.

The memo’s appearance must be professional in all ways. Professional does not require spending money on colored binders. Professional means 12-inch, non-decorative font, such as Times New Roman, Courier New, or Arial. Professional means page numbers on the bottom. Professional is double-spaced, with one-inch margins on all sides, as required by the courts. Professional is stapled. A paper tear or bobby pin on top is not professional. Ever.

As instructed elsewhere, for Assignment 1, you need only make a statement of the issue presented, as you determine the issue to be. You will then draft a Discussion Section, only, using Neumann/Tiscione, Appendix A [starting on page 374] as a model. **FOLLOW OUR CLASS NOTES AND DISCUSSIONS AS WELL TO MODEL THE ASSIGNMENT.** Essentially, I want:

- a breakdown of the elements of the IIED tort;
- a one-sentence conclusion as to whether the defendant or plaintiff can satisfy the element in question at the pleading stage;
- a statement of the rule [with citations];
- a rule-proof section [how have prior courts determined that a party came within, or did not come with, the rule] – all cited;
- an application of the Feltons’ facts to the rule, in light of the earlier courts’ reasoning [precedent – your rule proof section].

**That’s it.** No other sections are required, or welcome, for Assignment 1. This will all make a great deal more sense to you after class lectures and discussions.
2. **First Memo Rewrite** (25% of grade). Due Sunday, October 12, via e-mail, at 5:00 p.m. You must turn in a hard copy to Ms. Skura by 2:00 on Monday, October 13. The hard copy must be the same as the e-copy. Please note the following:

I will not take (partial) drafts of the rewrite for comment after Sunday night, October 5. You have four days without classes – Thursday, September 25 through Sunday, September 28, to work diligently on your memo rewrite. I will make myself available to you for drafts and questions during that time. You will also have the following week to ask questions of myself or Goldy.

Students who observe religious holidays in September and October will be given extra time to make up for the days when they cannot work. This applies to the First Memo Rewrite (above) and the Client Letter (below). Please identify yourselves sooner, rather than later, so we can work it all out.

3. **Client Letter** (Pass/Fail). Due Sunday, October 19, by 5:00. Submit two copies via e-mail ([prevailingpartner@gmail.com](mailto:prevailingpartner@gmail.com)) with the heading *Assignment 3 Submission*. One e-copy should be in pdf, so I can determine whether you have formatted it correctly. The other e-copy should be in Word, so I can make comments. The next day, Monday, October 20, bring two copies to Ms. Skura. Time stamp both. Deliver the paper version no later than 2:00 p.m. on October 20. The paper version must be the same as the version you submitted via e-mail. Leave one paper copy with Ms. Skura. Bring the other to any meetings we may have.

Use Neumann / Tiscione, Appendix C, *Sample Client Advice Letter*, with modifications discussed in class, as your format. Appendix C starts on page 386. In addition to the power point presentation you will have in class entitled *Letters Lawyers Write*, I will provide you with a model client advice letter. I will post the presentation and my model on TWEN. TO THE EXTENT MY MODEL AND ANY CLASSES-SPECIFIC INSTRUCTION DIFFER FROM THE NEUMANN MODEL, MY MODEL AND OUR CLASS INSTRUCTION CONTROL.

**CONFERENCES**

We will have formal, scheduled conferences after the first draft of each of the memos. I also encourage you to meet with me after the client letter. Even though you do not have to meet with me if you pass the letter the first time, I encourage you to do so. Every year students get summer internships based on their client letter. Note that I did not say that “all” students get them this way. If you are interested in Public Interest law, you will be writing a lot of letters. This is why these entities often ask for a letter as a writing sample.
Given the sheer number of students in this (and my other, skills-based course), some of the students will have to meet with me during evening hours and on weekends. Believe me, you will be working plenty of evenings and weekends throughout your legal career. You have not signed up for a 9 to 5 profession.

This is just to put you on notice. I will post sign-up sheets on TWEN for all these events. I always do the best I can to provide more sign up “slots” than the number of students in the class, so that no single student is stuck with the dregs.

**LAWYERS – WHO WE ARE / WHO WE ARE NOT**

We lawyers are not the rocket scientists.

We are the guys who sue when the rocket blows up.

Your job is to know how to represent your client who claims injury from or who is defending himself / herself / itself from claims of liability for injury. Your job may be to carefully craft contracts (insurance policies, for example) that protect or limit your client’s risk.

The only way to understand this is to come to class, and to pay attention. There is simply nothing intuitive about legal writing. This is our trade talk. You need to learn and hone your trade. It will simply not come in that “breath of inspiration” more popularly known as the all-nighter.

Law school is professional school. It is a complete break from undergraduate school, not an extension of it.

The most important thing you have to do as a lawyer: your job.
WEEKLY SCHEDULE OF CLASSES

This schedule takes us up to the date when Memo #1 (first official draft) is due. That memo is due on Sunday, September 7, as explained above, and as I will explain in a separate Assigning Memo that I will distribute in class and post on TWEN.

WEEK ONE

WEDNESDAY, AUGUST 20, 2014

THURSDAY, AUGUST 21, 2014

Assignments:

Wednesday. Bring the “response” essay to class, as instructed on the “First Assignment” sent to you and posted for you on TWEN. Late submissions will not be accepted for any reason.

Please read Neumann / Tiscione, Legal Reasoning and Legal Writing (7th ed. 2013):

- Appendix G, Basic Legal Usage, pages 443-46. Do not memorize Appendix G, but note key terms, such as affirm, argue, say and stipulate. I will not give you a quiz on these terms, but these terms are all your bread and butter. We will discuss some of them in class.

Thursday. Assignments due. Bring a paper copy to class. Be sure your name is on it.

  - The exercise instructions require a statement as the type of law [mandatory, prohibitory, discretionary or discretionary]. State that.
  - The exercise instructions then require a diagram. Follow the model on pages 12 and 13 to diagram the provisions in each exercise.
• The exercise instructions also require a flowchart. Don’t do it. Instead, determine the questions you need to ask and answer for each provision. That is enough. See p. 14 for a model.

• Be prepared to discuss this exercise. Some students will be asked to write their diagrams on the board.

• **Exercises II and III, pp. 33-34.**
  
  o Ex. II: Divide the rule and the determinative facts into separate sections.
    
    ▪ Just state the rule to the best of your ability.
    
    ▪ Review page 31 for a description of *determinative* facts, with examples. Do the best you can.

  o Ex. III. Divide the three questions posed on page 34 into separate sections before answering them.

**Discussion and Lecture Topics:**

• Introduction to Lawyering Skills:
  
  o course polices;
  o getting acquainted.

• Goals of the course; managing expectations.

• Introduction to the work of the lawyer: the importance of analysis, research and writing

• Introduction to the American Legal System: origin and structure

• Sources of American law:
  
  o constitutions
  o statutes
  o regulations
  o judicial decisions

• Structure of the court system
Differing roles of trial and appellate courts

Fundamental terminology:
- Civil v. criminal law;
- Private v. public law;
- Primary v. secondary authority
- Jurisdiction
- Judicial precedent

The structure and jurisdiction of the federal and state courts: an introduction to the legal concept of federalism

The related concepts of “element” and “elemental analysis” and “prima facie case”

Plain English presentation.

Parsing the elements of the *Sherman Act* (15 U.S.C. §1): to be distributed in class, and parsed the following week.
WEEK TWO

TUESDAY, AUGUST 26, 2014

THURSDAY, AUGUST 28, 2014

Assignment:

- Please re-read Neumann, Chapters 2, 3. Read Chapter 6, *Office Memoranda*. Do not worry about or focus on the distinction between “Short-Form Office Memoranda” (§6.2) and any other. I will also discuss the office memorandum in class, but like everything else in legal writing – it is not intuitive. Thus, do yourself a favor and get some background by reading Chapter 6. Note the short section: §6.3, on page 65. This is very useful. For your very first memo (your first official draft, due Sunday, September 7), you do not have to make a Statement of Facts. You will need to know which facts are determinative, however. Finally, please read Chapter 7, *Predictive Writing*, which starts on page 67. You will be doing predictive writing all semester.

- Please read the *Bluebook*, pp. 87-99, and glance at Table 6 (T6), starting on page 430. The *Bluebook* is not light reading. I do not expect you to “learn” everything on these pages. This is round one of many.

- Read the cases distributed during Week One – as instructed in class. These are the cases that you will use for Memo Assignments 1 and 2. They will serve as the basis for your prediction in the memo you write to your boss about the likely outcome of your client’s legal risk.

BE SURE TO COMPLETE THE PRE-TEST FOR CORE GRAMMAR FOR LAWYERS THIS WEEK.

Memo One: Assigning Memo distributed and discussed

Distribute governing cases:


Unpacking Case Law – posted on TWEN.

Students will start alone; work in class in groups; discuss in class.

Discussion and Lecture Topics:

- The cases for Assignments 1, 2 and 3:

I will distribute and post comprehension questions for these cases. They are not “due” to turn in, but we discuss them, first in pairs and groups, and then as a class.

- Legal reasoning –
  - *defining rules;*
  - *inductive reasoning;*
  - *broad and narrow interpretations of rules;*
  - *deductive reasoning;*
  - *When is there room for argument?*
  - *creating exceptions to rules;*
  - *reasoning by analogy;*
  - *When do courts overrule precedent?*

- Mandatory v. persuasive authority
- Mandatory v. secondary authority

Deep reading and analysis of judicial decisions:

- the structure of a decision - majority, concurring and dissenting opinions;
- how a case makes law - holding v. dicta;
Introduction to the legal memorandum:

- Preparing to advise the client;
- Purpose of the memorandum;
- Understanding your audience;
- Predictive v. persuasive writing

The sources and uses of secondary authority

*The Commando Guide to Civil Procedure - the structure of a lawsuit:*

- pleadings;
- motions to dismiss;
- obtaining information for trial;
- summary judgment;
- trial;
- post-trial motions;
- appeals;
- remedies

**Comprehension Questions for Public Finance and McGrath cases.**

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Writing a legal memorandum:

- getting started,
- breaking the problem into component parts
- framing the issues
- reaching a conclusion
- predictive style
- organizing your discussion of legal rules to support your conclusion
- the formula for organizing a memo
- applying legal rules to your client’s case
- analysis and counter-analysis of opposing arguments on facts and law).
WEEK THREE

TUESDAY, SEPTEMBER 2, 2014

THURSDAY, SEPTEMBER 4, 2014

Note that your memo is due on Sunday, September 7, by 5:00 p.m. You turn in the hard copy on Monday, September 8. These dates and procedures are explained above, and will be explained clearly on each individual assignment. I will discuss and distribute all written assignments, and will also post them on TWEN.

Assignment:

Please read Neumann, Chapters 10 and 11. Read and re-read §12.2, A Paradigm for Structuring Proof. Make a permanent note of the structure the authors set forth on the bottom of page 145. This is the one you will use for all your memos this semester. It is also the structure you will use in legal practice.

Be sure to review Appendix H, Nine Punctuation Issues, starting on page 447 in Neumann/Tiscione. You should review your work against these tips before submitting your first memo assignment on Sunday, September 7.

Discussion and Lecture Topics:

- Discussion of the first memorandum assignment and selected cases.
- Beginning the writing process – first draft:
  - gathering and organizing the facts about the client’s case;
  - eliciting rules from the cases; and
  - applying rules to your client’s situation;
- The need for objectivity in evaluating your client’s case.
- Applying the rule: Using Plain English and perfect grammar in legal writing.
- Common problems in legal analysis: the book report; the ping pong match.
- Your duties as a legal writer.
- The core of all writing: Audience, Purpose, Tone