## Law 207.5 (secs. 1 and 2) -- Advanced Legal Writing

## Berkeley Law Fall 2012

## Professor Donna Petrine

### Course Goals, Policies and Other Important Information

This course is designed to pick up where your 1L course left off. The project this semester will be to write a Bench Memo (as you might do as a judge’s clerk—but the formatting is not the important part). The case involves a complex issue of statutory interpretation under the Americans with Disabilities Act (ADA).

The final project will be written in two parts.

**Major Drafts are due**:

Draft #1: Sept 11th and 12th (in class). This is not conceptually difficult BUT the better you attend to it, the easier the remainder of the paper will be. You will get comments back, but the comments won’t help you as much as having a complete understanding of the cases (I can’t fix that with comments.)

Draft #2: All sections due Friday 10/12. This is conceptually difficult. The more work you put into this draft the better your final paper will be. You will get comments back here and they should be helpful for the final. Re-draft is due 11/19.

Final: Due 11/20 and 21 in class. You will receive summary comments on these papers by the January deadline for grades (though I aim to get them back earlier.)

**Note that I will NOT provide re-reads for writing samples at the end of the class**. I have to move on to the next group and it is not feasible to carry over students from semester to semester. For the same reason I will be very reluctant to allow students to take an IP grade and finalize the paper later. If you have worked hard on the paper and taken the comments to heart, you should not need an instructor’s advice on a writing sample. (Many times students want reassurance, etc., but they don’t really need it; instead they need to rely on their own judgments.) Sorry if that seems harsh, but most of the time you know what is good/bad about your paper.)

The focus of the class will be on understanding the substantive law, and translating that understanding to writing. Understanding the law is key to writing about it – especially in a case where you are choosing which rule to apply, out of several competing rules from other circuits.

You can expect to: identify the rules; explain the major cases; do some research on regulations and legislative history; apply all the rules and choose the best one. You will receive detailed feedback on your written work and will have the opportunity to meet with me about it.

The final written product is a bench memo to a judge. The formatting is of little concern: think of it like a memo you wrote 1L year. The main difference is you won’t be applying a known rule, but recommending the application of a rule you choose. This memo will be 30-35 pages. Anyone who successfully completes the course will receive writing requirement credit and the course fulfills the skills course requirement.

The course is worth 2 units, and is graded on the regular grading system NC/PC/P/H/HH. To receive a passing grade in this class, you must:

* Complete all assignments in a timely fashion; and
* Attend class regularly.

Note that assignments are not “complete” unless they are done completely and correctly, in my assessment.

**Grading breakdown:**

 Final Paper: 80%

 Presentations/class participation: 20%

**LLM Students may take this course only if their English writing skills are comparable to those of a native speaker. Other LLM students will get LRW instruction in a course designed especially for them.**

Due to the amount of individualized feedback students will receive on their papers, I am unable to take more than 32 students, total. I wish I could take everyone who is interested, but I’d never be able to get the papers back in a timely fashion!

 **Course Meeting Logistics**

There are two sections of this course available: Tuesdays from 3:35-5:25 (Room \_\_\_) and Wednesdays from 3:35 – 5:25 (Room \_\_\_). In addition, other class instruction will occur outside these time blocks, including paper conferences and some required small group meetings.

My office hours are generally Mondays from 1-3. I am usually available to meet other times on Mondays, and will stay after class to meet with students. I will also set up appointments with you outside of office hours. You may email questions to me, however, I vastly prefer it if you bring your questions to office hours – which is one reason I am very open to scheduling them to meet your needs. If you truly have a Yes/No question, you can email me.

Class attendance is expected. If you are absent from class more than twice over the term, you should speak to me about it. We will move through the material fairly quickly. Because this course teaches a skill, each class builds on prior classes. Thus, significant absence from class can influence whether or not you pass this course.

The JD student Honor Code applies to this course, and it will be strictly enforced. Submitting the work of another will result in a failing grade for the course. Collaboration on research and in discussion of assignments is encouraged, and some work in small groups will be required. However, each student must write his or her own papers separately. In addition, there are particular sources you will not be allowed to use to research your brief – please consult the assignment sheet.

# Writing Assignment Policies

Formatting requirements are generally the same as those used in 1L Skills: typed in 12 point font, one-inch margins, double spaced unless instructed (or Bluebook form requires) otherwise. If you turn in a hard copy of an assignment, please leave the back side of each page blank (do not print double-sided) – I comment on the hard copies; sometimes I use the back of the page, sometimes the ink bleeds through.

I will give you formatting information for the final memo in class. Please ask me if you have any other formatting questions for the shorter assignments.

Reading Materials

Required Reading

There is no book purchase required, but there will be a selection of excerpts on b-space geared towards our problem; they should already be posted on b-space. In addition some other materials will be posted there from time to time, and I will alert you about their existence and due dates.

Most of the reading for this course is available on b-space (as excerpts from larger texts) or it is case law you can get from lexis and westlaw. I may add to this material during the semester.

Please DO NOT read any secondary source material – like law reviews or practice guides – unless I specifically ask you to do so. This area of the law is evolving and I doubt any of that material will help you too much. Also: no “case brief” version of the cases will help you very much – you’ll need the full text with concurrences & dissents.

**Book Excerpts on B-space:**

**Milner, Aliza: Judicial Clerkships: Legal Methods in Motion**

WARNING: the author is writing for law clerks who are writing/drafting opinions – a very different task than our bench memo, which has more in common with a regular old memo. But there are a few interesting things about judicial opinions that I think will be useful in reading/analyzing/reconciling our case.

Excerpts from this book appear on b-space; designated “Judicial Clerkships”

Judicial Clerkships Chapter 1 (Intro)

Judicial Clerkships Chapter 2 (Controversies)

Judicial Clerkships Chapter 4 (Stare Decisis -- in class exercises, if time),

Judicial Clerkships Chapter 5 (Drafting) pps 87-94 + in class exercise (if time),

Judicial Clerkships Pages 98-101 (Components of Legal Analysis)

Judicial Clerkships Pages 106-110 (Hints for Improved Writing)

Judicial Clerkships Ch. 6 (Divided Benches) read notes on page 143 and apply to Barnett (also in-class exercise if we have time).

Judicial Clerkships Ch. 8 (Law and Fact) Think about this with respect to our choice of rule.

**Smith, Michael R.: Advanced Legal Writing, 2d Edition**

WARNING: This book is directed at persuasive writing, which is NOT our assignment this term. While there’s a bit of persuasion in most writing, and the book says some things about writing in general, always read the material carefully with the author’s main goal in mind.

Excerpts from this book appear on b-space and are designated Smith/ALR

Smith/ALR Chapter 3: Illustrative Narratives in Rule-based Analysis (That’s a long way of saying when do you use text versus parentheticals? Includes a list of MISTAKES in parenthetical writing.)

Smith/ALR Chapter 5: Evoking Favorable Emotions and Values (This is included here to the extent we are discussing policy arguments and how they affect cases.) We will probably not do sample exercises here.

Smith/ALR Chapter 8: Evincing Intelligence (You have heard much of this before. I like the two summary charts at the end of the chapter –concentrate on those.)

Smith/ALR Chapter 15: Other Figures of Speech Unless you were a hardcore English major, you’ll learn something here. Often these are things NOT to do, or to do sparingly. If you need gimmicks, you probably don’t have much to say…)

**Recommended Reading/Purchase:**

I am sure you all own the **Bluebook**. You will be responsible for substantial compliance with it in your papers.

Another very helpful resource is the “Redbook,” which you may already own. It has quite a bit of resource material on legal grammar and word choice. You can look at mine before you buy one, but if you are at all concerns with your legal grammar, it’s a good buy. (We won’t have assigned reading from it.)

I am very interested in hearing your reactions to the posted readings. If they are useful, I want to include them in a course reader in the future.

\*\*Some of the opinions in this case are quite long – be prepared. You will need to read all parts of the opinions (don’t neglect dissents, etc.)

Finally, this is a new course, and I want it to be useful to you. If you have suggestions about the class during the semester, or afterwards, please let me know. Even if something can not be changed for this year, it likely can be modified in the future.