LEGAL PRACTICE I, II, AND III
COURSE POLICIES
AND POLICIES GOVERNING ACADEMIC INTEGRITY

Welcome to Legal Practice ("LP") at the Roger Williams University School of Law ("RWUSOL"). LP is comprised of three semesters - LP I, II, and III - during which you will undergo training in legal analysis and research, and develop and hone the writing skills necessary for practicing law. Upon completing the three semesters, you will have acquired the knowledge and the skills necessary to, among other things: (1) read and critically analyze cases, statutes, and other sources of law; (2) research legal issues using a variety of sources including cases, statutes, and secondary sources; (3) write legal memoranda, legal correspondence, and pleadings; and (4) argue orally the merits of a particular legal issue.

As an LP student, you are required to read, understand, and comply with these and the LP Policies Governing Academic Integrity (together, the “Policies”). The Policies are based upon the expectations and responsibilities of the RWUSOL and within the legal profession more generally. Please read them carefully.

I. Mandatory Attendance

Your attendance in your LP class or any rescheduled class(es) is mandatory; therefore, if you miss more than twenty percent of your LP classes (that is, more than two LP classes per semester), you will be academically withdrawn and given a W/F for the course. (For purposes of these Policies, a LP “class” includes your mandatory conference(s), your mandatory legal research training(s), and your Oral Argument.) Occasionally, your LP professor will reschedule your LP class to accommodate Monday holidays or a cancelled class; your attendance at any rescheduled class is mandatory. The RWUSOL’s full attendance policy is set out in Article Five of the ACADEMIC CODE OF THE ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW found in your student handbook. Please note that a student who is unprepared for class may, at the professor’s discretion, be counted as absent for that class for these purposes.

II. Professionalism

A core part of your LP course is to prepare you, as a law student, to become a legal professional and to adhere to the high standards for written work, communication, and conduct expected of a legal professional. Accordingly, a lack of professionalism will affect your grade in this course, just as it would affect your legal employer’s view of your reliability and credibility as a lawyer. As such, we expect LP students to:

- Be on time and fully prepared for each class;
- Bring to class appropriate textbooks and materials;
- Participate regularly, substantively, and thoughtfully in class discussions;
- Engage respectfully in class discussions and exercises, by disagreeing respectfully with your professor or classmates when inclined to do so, refraining from monopolizing class or group time, and contributing actively to any group work;
- Treat with respect all faculty, staff (in particular, the librarians and faculty secretaries), and classmates in your LP course;
- Take personal responsibility for and pride in your written work, focus on the task at hand, and put diligent effort into all of your work, whether it is ungraded or graded;
- Turn in, when due, all assigned and mandatory work, making sure that each assignment complies with all course requirements for assignments and communications, as well as assignment grading and submission requirements, as set out in these Course Policies, the assignments themselves, and your LP syllabus;
- Timely complete all Core Grammar lessons, as assigned in the syllabus;
- Pick up all assignments once your LP professor informs you that they are ready to be picked up;
- Read all of your professor’s written feedback carefully, including the feedback about grammar and/or other writing issues;
- Maintain a positive and productive attitude toward your work, professor, and class, always making sure to take constructive criticism well;
- Communicate with your professor, the librarians, and the faculty secretaries in professional emails that comply with the standards for content, tone, and courtesy set out in the Email Policy below;
- Attend office hours when your professor asks that you do so or when you have questions;
- Meet with the writing specialist, Justin Kishbaugh, or Professor Kathy Thompson, the Director of Academic Support, when your professor requests or suggests that you do so or when you need writing help;
- Power off all cell phones and other electronic devices during class, oral arguments, meetings with your professor, and at all required library trainings or other events where your attendance is mandatory;
- Use a laptop in class only to the extent permitted by your LP professor (no Internet surfing, instant messaging, playing games, searching, or emailing);
- Refrain from asking your professor or any faculty secretary when assignments will be graded and returned to you;
- Conduct yourself professionally with library staff and other outside training staff at all research trainings;
- Refrain from discussing, sharing, or otherwise reviewing any assignments with current or former students or anyone outside the law school community, including attorneys, paralegals, friends or family, as outlined in the Non-Collaboration Policy below;
- Refrain from reviewing or copying any portion of another (current or former) LP student’s work product (whether in draft or final form) as outlined in the Non-Collaboration Policy below;
- Consult your own class notes, handouts, PowerPoints and other materials when looking for answers to questions about assignments and, if the answer is not in those materials, email or otherwise ask your LP professor rather than fellow classmates; and
- Refrain from asking students in other LP sections any questions about assignments, whether about content, format or other instructions.
III. Course Assignments

Your LP I, II, and III assignments must conform to the requirements set out below. Your professor may penalize any failure to comply with these requirements by reducing your grade on a non-conforming assignment and by reducing your final LP course grade by one-third of a letter grade, at your professor’s discretion.

A. Written Assignments. Each written assignment for LP must be a neat, clear, professional, and well-edited work product that complies with your professor’s specific directions, the assignment directions, and:

- is typed in black ink, single-sided, double-spaced,¹ in unaltered 12-point, regular (not narrow or widened) font,² with the first line of each paragraph indented five character spaces, and the page numbers centered at the bottom of each page (including the first page), and one-inch margins all around;
- includes, in a single-spaced one-line header in the upper left-hand corner of each page, your name, your LP section, your LP professor’s name, and the date (e.g., Fall 2016);
- is free of typographical, spelling, grammatical (including contractions), and printing errors; spells out all numbers up through ninety-nine, as per Bluebook rule 6.2;
- complies with the assigned page limit;
- is timely submitted on the assigned due date and in the method(s) your professor requests; and
- is prepared independently, in full compliance with the non-collaboration policy set forth below in the LP Code of Academic Integrity.

B. Assignment Copies and Retention. You are expected to retain a clean hard copy of each assignment that you submit for a grade or other evaluation in LP I, II, and III, through the end of your third year of law school, including the summer following that academic year. You need to be able to produce your assignments as requested throughout that period. Moreover, for every written assignment you are instructed to turn in at the start of your LP class, you must bring two copies of that assignment to class (one copy for your professor and one copy for you to refer to in class).

C. Core Grammar Assignments. Words are the lawyer’s stock in trade; thus, every lawyer must have strong skills in writing composition and mechanics when writing to the court, judges, clients, and other lawyers. Legal writing must be clear, concise, accurate, efficient, and easy-to-understand for your busy readers who do not have time to struggle over the meaning of the words on the page and who need to have a precise, accurate understanding of your writing. You can achieve those goals only through grammatical writing. In addition, the legal profession discredits writers who are not grammatical because it reflects a lack of knowledge, care, credibility, and

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¹ Microsoft Office Word automatically inserts extra space between the last line of a paragraph and the first line of the next paragraph; please adjust the appropriate default setting to eliminate that extra space between paragraphs so that the full page is double-spaced. However, block quotes, footnotes, and headings should be single-spaced.

² Most LP professors require either Times New Roman or Arial font. You may not use a “small” 12-point font.
ability. As part of your LP I and LP II classes, you will be required to complete a number of lessons in Core Grammar for Lawyers. You should attend to those lessons conscientiously, as they will improve your writing in LP, in your other classes, in practice, and on the bar exam. The writing specialist is also available for assistance with writing mechanics.

D. Legal Research for Course Assignments. Your research for LP assignments must comply with the following specifications:

- You must conduct independently all research for LP assignments, in full compliance with the non-collaboration policy set forth;
- You must retain – through the end of your second year of law school, including the summer following that academic year – detailed research logs or organized files (either in hard copy or electronic) of all of your legal research for your LP assignments, so that you can recreate that research, if necessary, and so that you can show your research process and results at your professor’s request; and
- If your professor asks you to restrict your research to a particular type of source (e.g., print sources only), you must comply.

IV. Grading and Submission of Assignments

A. Submission of Assignments. An assignment is due on the day, in the place, by the method, and at the exact time your professor specifies. An assignment is “late” when you fail to meet precisely any of the applicable instructions. You must submit to your LP professor every assignment to pass LP I, II, and III; failure to turn in an assignment may result in an “F” for the course. All required assignments are noted on the LP syllabi; please make sure to read carefully through each syllabus and take note of when an assignment is due. If your assignment cannot be found after you have turned it in, you will have twenty-four hours to produce a copy of that assignment once your professor or a faculty secretary requests that you to do so.

1. Grade Reduction for Late Assignments. Just as practicing attorneys must adhere to deadlines, you must adhere to the deadlines set for each assignment. Absent extreme circumstances, for graded and ungraded assignments, your professor will penalize a late assignment as follows: (i) for graded assignments, by reducing the grade on that particular assignment by ten percent of the assignment’s points for each twenty-four hour period after the specified due time that the assignment remains outstanding, including weekends and holidays, and (ii) for ungraded but mandatory assignments, by reducing your final course grade by one-third of a letter grade. Your professor may exercise some discretion in penalizing assignments that are less than half an hour late. When turning in a late assignment, hand it either directly to a faculty secretary, who will mark the assignment with a date and time of receipt, or submit your assignment via Bridges per the assignment submission requirements you received from your professor. Please note that the “extreme circumstances” noted above are limited; two examples of an “extreme circumstance” are a student’s serious illness accompanied by medical verification or the death of a student’s close relative. If an extreme circumstance arises, you should notify your LP professor as soon as possible, and, when possible, before an assignment is due to discuss the situation. In either case, you must be prepared to explain the “extreme circumstance” and provide appropriate documentation regarding the same.
2. **Grade Reduction for Exceeding the Page Limit.** Just as practicing attorneys must write concisely and within the page limits courts set, you must keep your written assignments within the page limit set for each assignment. Your professor may penalize assignments that exceed the page limit by not reading the material falling beyond the page limit, by reducing the grade of a graded assignment, or by reducing your final course grade by one-third of a letter grade.

3. **Grade Reduction for Lack of Professionalism or Diligent Effort.** Just as practicing attorneys must adhere to the high standards of professionalism and diligence the legal profession expects and that the ethics rules governing lawyers’ work and conduct demand, you must comply with the requirements set out above for professionalism and diligence in your written work, other communications, and conduct. Accordingly, each assignment you turn in – graded and ungraded – must reflect a professional and diligent effort on your part. Therefore, as noted above, your professor may reduce your final course grade for any assignment that does not reflect a diligent effort or otherwise comply with the professionalism requirements for this course.

B. **Anonymous Grading.** The Office of Student Services will provide you with your anonymous number for the fall and spring semesters. In LP I, II, and III, you will use your anonymous number **only** for the Legal Citation, Research, and Writing Quiz, which is administered in LP I.

C. **Feedback Process.** As part of the learning and evaluation process in LP, your professor often will give you detailed feedback on your written work. As noted above, once you get back an evaluated or graded assignment, you are expected to read all of the feedback provided, to read any assigned materials, and to meet with your professor or the writing specialist when your professor requests or suggests in the feedback that you do so. Moreover, you are expected to wait at least twenty-four hours after you receive your assignment to meet with your professor about your assignment; your professor looks forward to working with you, but this waiting period gives you important time to read the comments thoroughly, digest them, gain critical insight, and formulate appropriate questions that focus on the task at hand.

V. **Email Policy**

In emailing your LP professor, you are to exercise professionalism in your content, tone, and courtesy and:

- Include a formal greeting (“Dear Professor X”) and a closing before your signature/name (e.g., “Regards”);
- Write in complete, grammatical sentences, with proper paragraphs;
- Follow up on any email from your professor with a “thank you” or other appropriate response;
- Omit texting abbreviations and other casual characters; and
- Before you hit “Send,” proofread and revise the email to make sure your message is clear, free of errors, grammatical, thoughtful, constructive, and appropriate enough to copy and place in a file.
LP POLICIES GOVERNING ACADEMIC INTEGRITY

We expect LP students to abide by the same rules of integrity, honesty, and responsibility that practicing attorneys must abide by and that the RWUSOL’s Code of Student Responsibility demands. Accordingly, you must abide by the following in LP; any violation has implications under the RWUSOL’s Code of Student Responsibility, including severe disciplinary action. For purposes of LP, a violation of these Policies may result in your LP professor reducing your final LP I, II, or III course grade by one-third of a letter grade and any other action available under the RWUSOL’s rules and policies.

I. Non-Collaboration and Use of Resources Policy

LP is designed to teach each student how to undertake legal research, analysis, and writing, and a student can learn and develop these essential skills only by working independently on all of the legal writing and research assignments. Therefore, in conjunction the RWUSOL’s Code of Student Responsibility found in your student handbook, you must conduct independently all legal research and produce independently all LP written assignments. Thus, every graded and ungraded LP assignment must be your own, independent, work product and you may not:

a) Collaborate or work with another student(s) to outline or write an LP assignment or any part of an LP assignment, with the exception that your LP professor may assign group exercises from time to time that relate to your assignments; you may collaborate on the limited basis your professor instructs for purposes of those in-class exercises only;

b) Review, read, consult, copy, or use another student’s work product (prepared anywhere and at any time) that discusses the same or somewhat similar issues as those raised by your LP assignments;

c) Seek assistance from another law student (current or former) or unauthorized third parties with any aspect of your written work, including outlining, reading, writing, editing, and proofreading assignments. Unauthorized third parties include anyone or any writing assistance program other than the RWUSOL’s writing specialist, your LP professor, the RWUSOL’s reference librarians, Professor Kathy Thompson, Professor Justin Kishbaugh, and text-to-speech readers like “Natural Reader” and “Dragon” software.

d) Discuss any assignments in any capacity outside of class with other students, including, but not limited to, cases and client facts, except as your professor may instruct for purposes of oral argument.

e) Seek assistance from another student or unauthorized third parties (as defined above) with any aspect of a LP research assignments, except from your LP professor, Professor Kathy Thompson, and the law librarians in the RWUSOL’s library. This prohibition includes allowing or asking a training representative from Lexis, Westlaw, or any other computer-based legal research service, to help you with research related in any way to an LP assignment, graded or ungraded.

NOTE: This policy does not prohibit you from reviewing and consulting the materials you need to conduct proper legal research in primary and secondary legal authority and using legal research “finding tools” available in the RWUSOL’s library or on the computer. Further, your LP professor may assign group exercises from time to time that relate to your assignments; you may collaborate on the limited basis your professor instructs for purposes of those in-class exercises only.
II. Responsible Use of Library Materials Policy

As a diligent law student, you will spend a good deal of time in the RWUSOL’s law library researching and working on your LP assignments. Please use the library responsibly and with consideration for everyone else who uses it by, among other things, re-shelving all library materials when you are finished with them. Intentionally leaving library materials where you believe others will not be able to find them, removing library materials without complying with the library’s circulation policies, or marking, defacing, tearing, mutilating, or removing any part or parts of library materials is dishonest, unethical, and violates the Code of Student Responsibility. Similarly, removing another’s printed materials from any printer, for purposes of your own use of those materials, is dishonest, unethical, and likewise violates the Code of Student Responsibility.

III. Plagiarism Policy

The failure to properly attribute language or ideas derived from another person’s work is particularly serious for a prospective or practicing lawyer because honesty and trustworthiness are the cornerstones of the legal profession. “[P]lagiarizing, misappropriating, or failing to acknowledge the ideas or written work of another” violates the RWUSOL’s Code of Student Responsibility set out in Disciplinary Rule 1(c) of the student handbook. When you are in doubt about whether particular language or thoughts require a citation to a resource you used in preparing your assignments, err on the side of caution and provide the appropriate citation.

The Legal Writing Institute (“LWI”) defines plagiarism, in the law student context, as “[t]aking the literary property of another, passing it off as one’s own without appropriate attribution, and reaping from its use any benefit from an academic institution.” Legal Writing Institute, Plagiarism Brochure, www.lwionline.org. This applies to material obtained from any source, including online databases. The LWI’s Plagiarism Brochure identifies these “important rules and suggestions to follow when working with authority”:

- “Acknowledge direct use of someone else’s words”;
- “Acknowledge any paraphrase of someone else’s words”;
- “Acknowledge direct use of someone else’s idea”;
- “Acknowledge a source when your own analysis or conclusion builds on that source”;
- “Acknowledge a source when your idea about a legal opinion came from a source other than the legal opinion itself.”

Plagiarism, then, includes at least the following:

- directly quoting someone else’s words without using quotation marks, even if you properly cite to the quotation’s source;
- paraphrasing without attribution someone else’s language;
- using without attribution someone else’s idea; and
- submitting a research or writing assignment that someone else prepared in whole or in part.

For examples of plagiarism, see the attached Appendix. Although not exhaustive, these examples provide you with some guidance as to what qualifies as plagiarism. If you have any questions about plagiarism, please consult your LP professor.
IV. Failure to Report Violations of the Code of Student Responsibility

A student with personal knowledge of a violation of the RWUSOL’s Code of Student Responsibility must report that violation. The student’s failure to do so likewise violates these Policies.

V. Potential Sanctions for Violating and one of these Policies

One or more of the following sanctions, in descending order of severity, may be imposed for a student’s violation of these Policies:

- expulsion from the RWUSOL;
- suspension from the RWUSOL, or from any LP course, for one or more semesters, or for the balance of any semester;
- a grade of “F” in LP;
- withdrawal of credit in LP;
- a grade reduction in LP;
- academic probation;
- a written reprimand; and
- an oral admonition.

In addition, the sanctions that the RWUSOL administers for Code violations may have consequences beyond the RWUSOL. For example, the RWUSOL may be required to report sanctions to a state’s Board of Bar Examiners, which could affect your ability to be licensed to practice law after law school.
APPENDIX

Examples of Plagiarism
by Julie M. Cheslik, University of Missouri-Kansas City
Adapted and Updated*

Immediately below is a passage taken directly from a law review article, Mark D. Kemple, Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations, 62 So. Cal. L. Rev. 1733, 1754-55 (1989) (footnotes renumbered) (emphasis in original). Four examples illustrating different ways in which someone writing a brief or memorandum might plagiarize the original passage follow. These examples do not represent every possible instance of plagiarism.

ORIGINAL

Text:

Even if the Mariel Cubans are not being “punished,” their civil detention still denies them their liberty interest in being free from prolonged detention. The Fourth and Eleventh Circuit Courts of Appeals have held that excludable aliens have no liberty interest in freedom from prolonged detention, and therefore, are not entitled to due process of law. These courts reason that detention, even for as long as seven years, is merely a part of the exclusion process. These courts inaccurately rely on the well-settled principle that “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.”

The problem with these circuit court decisions is that they fail to distinguish between an alien’s interest in his or her “initial admission” or “application” for admission, which in most cases has already been processed and denied, and his or her interest in being free from arbitrary and prolonged detention; these two interests are distinct. Consider that the courts have long recognized that an alien’s interest in admission is distinct from his or her interest to be free from arbitrary and prolonged criminal detention, the latter of which is protected by the due process clause. A criminal sentence can be handed down only in accordance with the due process clause, but why aliens should receive the protections of the due process clause only after violating our criminal laws, and not prior to civil detention, has never been satisfactorily explained.

Footnotes (renumbered here):

1. Landon v. Plasencia, 459 U.S. 21, 32 (1982) (emphasis added). Further, at least one commentator has suggested that this principle is not well settled at all and is, in fact, incorrect. See generally Christopher R. Yukins, Note, The Measure of a Nation, 73 Va. L. Rev. 1501 (1987) (suggesting that the history of Supreme Court decision-making indicates that aliens do have an interest in admission to the United States, but that the process due is defined by those procedures which Congress has provided to an alien).
considers that the conditions of the “civil” confinement are often worse than the criminal confinement, not to mention the fact that the civil confinement is open-ended. See supra notes 25-39 and accompanying text.

PLAGIARISM EXAMPLE 1**

Two federal appellate courts have held that excludable aliens have no liberty interest in freedom from prolonged detention, and therefore, are not entitled to due process of law.

Comments: The above example qualifies as plagiarism because its writer has used the exact words of the source (first paragraph, second sentence of original) without quotation marks and without attribution. The fact that the first few words are paraphrased (“Two federal appellate courts” instead of “The Fourth and Eleventh Circuit Courts of Appeals”) does not avoid the need to attribute the source of the sentence and to put in quotation marks any exact words taken from the source.

PLAGIARISM EXAMPLE 2

In holding that the due process clause does not apply to the Mariel Cubans, the courts have failed to distinguish between two interests: the Cubans’ interest in freedom from arbitrary and prolonged detention and their interest in the initial application for admission into the United States.

Comments: The above example qualifies as plagiarism because its writer has used the idea of another (second paragraph of original), although not the other’s exact words, without attribution. Even thorough paraphrasing does not “save” the writer of Example 2. By using the original author’s ideas without attribution, the second writer has created the impression that those ideas are his or her own, rather than another person’s ideas.

PLAGIARISM EXAMPLE 3

Those federal appellate courts that have denied a due process liberty interest in freedom from prolonged detention reason that prolonged detention, even for several years, is just a part of the exclusion process. In so holding, the federal appellate courts erroneously rely on the Supreme Court’s holding that “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” Landon v. Plasencia, 459 U.S. 21, 32 (1982).

Comments: At first glance, Example 3 may not look like plagiarism because its writer has quoted and cited the Supreme Court’s language. But what the writer also has done is use the idea of another – the idea that the federal courts in question have incorrectly relied on the principle from Landon (first paragraph, fourth sentence of original) – without attributing that idea to its original source, the law review article. By citing to Landon itself and not also to the law review article, the writer is representing that he or she has read the case and placed it within the context of this idea. In fact, the writer may have done neither. Even if the writer goes on to read the Landon case (as he or she must), the writer must attribute the entire idea (that some courts have incorrectly relied on the Landon principle) to the author of the law review article. If the writer does not, he or she has impermissibly used the law review author’s idea without attribution.
PLAGIARISM EXAMPLE 4

As one commentator has noted, these circuit court decisions are problematic because they fail to distinguish between an alien’s interest in his initial admission and his interest in freedom from arbitrary detention. See Mark D. Kemple, Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations, 62 So. Cal. L. Rev. 1733, 1754-55 (1989). The United States Supreme Court, however, has long recognized that these two interests are distinct because the freedom from arbitrary and prolonged detention in the criminal context is protected by the Fifth Amendment due process clause. See, e.g., Wong Wing v. United States, 163 U.S. 228, 235 (1896).

Comments: The writer of this example has committed plagiarism in the same way as in Example 3, because the second sentence of the example uses the idea of the law review article (second paragraph, second sentence of original) and cites only to Wong Wing, not to the article. The writer is not “saved” by the (appropriate) citation to the law review article after the writer’s first sentence because the failure to attribute the second sentence to the author of the law review article creates the erroneous impression that the writer developed this idea independently, when in fact he or she is using the idea appearing in the law review article.

END NOTES
* Adapted by Carolyn Spenser and Jessica Elliott
** The format for these examples was inspired by Ralph D. Mawdsley, Legal Aspects of Plagiarism (National Organization on Legal Problems of Education 1985) (using examples from H. Bond, T. Seymour and J. Stewart, Sources: Their Use and Acknowledgment (Trustees of Dartmouth College 1982)).

BIBLIOGRAPHY
Morris Friedman, Plagiarism Among Professors or Students Should Not Be Excused or Treated Gingerly, 34 Chron. Higher Educ. 48 (Feb. 10, 1988).


ACKNOWLEDGMENT

(Please sign and turn this Acknowledgement in to your LP professor during your Orientation class.)

I acknowledge that I have read carefully and understand fully the preceding Legal Practice I, II, and III Course Policies and Code of Student Responsibility, including the Appendix.

Signature: ___________________________________

Printed Name: ____________________________________

Section: ___________________________________

Date: ____________________________________
THE AMERICAN COURT SYSTEMS

THE FEDERAL COURT SYSTEM

COURT OF FINAL APPEALS

United States Supreme Court

COURTS OF INTERMEDIATE APPEALS

United States Court of Appeals for the Federal Circuit

United States Court of Appeals

United States District Court

COURTS OF ORIGINAL JURISDICTION

United States Bankruptcy Court

United States Tax Court

United States Court of International Trade

United States Court of Federal Claims

THE STATE COURT SYSTEM

STATE SUPREME COURT

(The court of final resort. Some states call it the Court of Appeals, Supreme Judicial Court, or Supreme Court of Appeals.)

INTERMEDIATE APPELLATE COURTS

(Also alternatively called Intermediate Appellate Court or Intermediate Court of Appeals. Currently 40 of the 50 states, including Massachusetts and Connecticut but not Rhode Island, have an intermediate appellate court, which is an appellate court between the trial courts and the court of final resort.)

SUPERIOR COURT

(The highest trial court with general jurisdiction and in some states is called the Circuit Court, District Court of Common Pleas, and in New York, the Supreme Court. It may have specialized branches, such as probate court and family court.)

COUNTY COURT OF LIMITED JURISDICTION

(Municipal Court)

(These courts, sometimes called Common Pleas or District Courts, have limited jurisdiction in civil and criminal cases.)

(Municipal Court)

(In some cities, it is customary to have less important cases tried by both civil and criminal municipal magistrates.)

1 Diagram adapted from Laurel Currie Oates and Anne Enquist, The Legal Writing Handbook, 21-22 (5th ed. 2010)
<table>
<thead>
<tr>
<th>Type of Primary Authority</th>
<th>When Binding</th>
<th>When Persuasive</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Constitution</td>
<td>Binding on all federal and state courts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Supreme Court decisions interpreting and applying federal law</td>
<td>Binding on all federal and state courts.</td>
<td></td>
<td>The U.S. Supreme Court is the only federal court whose decisions on issues of federal law are binding on state courts.</td>
</tr>
<tr>
<td>Federal statutes (assuming no conflict w/ U.S. Constitution)</td>
<td>Binding on all federal and state courts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal administrative regulations (assuming no conflict w/ U.S. Constitution or a federal statute)</td>
<td>Binding on all federal and state courts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Court of Appeals decisions interpreting and applying federal law</td>
<td>Binding on federal district courts within the given federal judicial circuit.</td>
<td>May be persuasive for federal courts outside the given judicial circuit and for state courts.</td>
<td>A state court frequently will follow lower federal court decisions on issues of federal law. Generally, a state court is most likely to follow decisions from a U.S. Court of Appeals whose circuit includes that state or from a U.S. District Court located within that state.</td>
</tr>
<tr>
<td>U.S. District Court decisions interpreting and applying federal law</td>
<td></td>
<td>May be persuasive for other federal courts and for state courts.</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Type of Primary Authority</th>
<th>When Binding</th>
<th>When Persuasive</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>State constitution (assuming no conflict w/ U.S. Constitution, a federal statute, or a federal administrative law)</td>
<td>Binding on all state courts within the given state.</td>
<td>May be persuasive for federal courts, as well as state courts in different states.</td>
<td>State law may, at times, be binding on federal courts. When a federal court has to interpret, apply, or enforce the law of any state, the federal court must accept as its starting point that state's interpretation of its own law. The federal court may determine whether the state's interpretation violates federal law. A federal court's interpretation of state law is not binding on that state's courts.</td>
</tr>
<tr>
<td>Decisions of a state's highest court interpreting and applying the state's law (assuming no conflict w/ U.S. Constitution, a federal statute, or a federal administrative law)</td>
<td>Binding on all lower state courts within the given state.</td>
<td>May be persuasive for federal courts and different state courts.</td>
<td></td>
</tr>
<tr>
<td>Decisions of state's intermediate appellate court interpreting and applying that state's law (assuming no conflict w/ U.S. Constitution, a federal statute, or a federal administrative law)</td>
<td>Binding on all lower state courts within the jurisdictional boundaries of the deciding court (if less than statewide jurisdiction).</td>
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<td>State statutes (assuming no conflict w/ U.S. Constitution, a federal statute, a federal administrative law, or that state's constitution)</td>
<td>Binding on all state courts within the given state.</td>
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<td>State administrative regulations (assuming no conflict w/ U.S. Constitution, a federal statute, a federal administrative law, that state's constitution, or any of that state's statutes)</td>
<td>Binding on all state courts within the given state.</td>
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BRIEFING CASES

What is a case?

Usually a lawsuit begins in the trial court and is resolved by a trial judge (sometimes with the assistance of a jury). When one of the parties to the litigation believes that the trial judge or jury erred during the trial, that party may appeal to a higher court, a court of appeals.

The court of appeals reviews written arguments that the appellant (the party appealing the trial court decision) and the appellee (the party responding to the appeal) submit to it. Along with the written arguments (presented in documents referred to as briefs), the judges (called justices in the highest appellate court in each jurisdiction and in some lower state courts) may review trial transcripts, documents, and other exhibits introduced as evidence during the trial (the trial court record), and listen to oral arguments by the attorneys for the appellant and the appellee.

One of the appellate judges expresses the court’s decision in a written opinion. An appellate opinion usually sets forth the pertinent facts of the case; the case’s procedural history; a statement of the issue(s) presented to the court (the legal question(s) the litigants raised); the holding (the court’s decision); the applicable law (often called the rule of law); and the reasoning or rationale that the court employed to reach its holding. The court will also order a procedural result (for example, the case may be remanded – sent back to the trial court for another trial).

What is a case brief?

A case brief (as distinguished from a brief that is filed with an appellate court, for instance) is a summary and critical analysis of a judicial opinion. You will brief cases for your Legal Practice course and for your other classes throughout the year. In all your classes, in-class discussions will build on your case briefs. Each case brief you prepare should include:

- the case name, court, and date;
- the relevant parties;
- the relevant procedural facts;
- the relevant evidentiary facts;
- a summary of the issue(s);
- the applicable rule(s) of law;
- the holding(s);
- the reasoning/rationale;
- any dicta in the case;
- the judgment/disposition of the case;
- a synopsis of concurring and dissenting opinions, if any; and
- your notes on the opinion.

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1 Your professor might refer to the procedural facts as the procedural history.
2 Dicta is explained on page 4 of this document.
Actively Resolve Questions While Reading

Before you begin a case brief, read through the opinion at least once, noting the important evidentiary facts, procedural history, and decision. Use your own words in your case brief; quote the court’s opinion only when its precise language is essential to understanding the case. After you write your case brief, you may realize that you did not include all of the relevant facts; included irrelevant facts; missed some important rationale; or confused rationale with dicta. That back-and-forth process shows that you are thinking about what you are doing, and because a case brief is a record of your understanding of a court’s opinion, it should always be open to revision.

You must read and understand every word in an opinion. Thus, you must look up in either a standard dictionary or a legal dictionary words you do not understand. Otherwise, you will be unable to figure out what the court is deciding. As you read the opinion, write your questions and criticisms in the “notes” section discussed below. After an in-class discussion, or after reading additional opinions, you may be better able to answer your own questions.

CASE-BRIEFING FORMAT

**Case Name, Court, and Date (and Proper Bluebook Citation)**

Your case brief should note the parties’ surnames or business names, the court that decided the case, the date the court decided the case, and where and in which legal reporter, if any, the case can be found (the legal citation).

**Parties**

Identify the parties’ roles in the underlying lawsuit (plaintiff and defendant) and in the appeal (appellant or petitioner and appellee or respondent). Also, describe the parties’ relevant roles in the underlying factual dispute (e.g., buyer, seller, borrower, lender, accident victim, driver of a car that struck the victim).

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3 See § 4.3.3 (pp. 62-68) of Laurel Currie Oates & Anne Enquist, Just Memos (4th ed. 2014) (included in your Legal Practice Binder), for additional guidance on reading and understanding a judicial opinion (case), and chapter 3 of Laurel Currie Oates & Anne Enquist, The Legal Writing Handbook (6th ed. 2014), for additional guidance on critically reading a judicial opinion (case) and a statute.
**Facts**

**Procedural Facts**

Explain what has happened since the lawsuit began. Identify who sued whom and under what legal theory of recovery (e.g., negligence, trespass, breach of contract). When the case is on appeal, identify the outcome at the trial court and any previous appellate court (e.g., judgment in the plaintiff’s favor; court granted the defendant’s motion for summary judgment); which party appealed (the appellant); the part of the trial court’s/appellate court’s judgment appealed; and the relief the appellant is seeking.

**Evidentiary Facts**

Explain what happened before the parties arrived in court – before the plaintiff even thought of filing a lawsuit. Courts do not rule on a principle of law except in the context of a particular factual dispute. Accordingly, identify those – and only those – facts that are essential to the court’s decision. When an opinion omits what you believe is an essential fact, indicate that omission.

**Issue(s)**

Articulate the precise legal question(s) the court had to resolve to decide the case. When the case raises more than one issue, number them. Phrase each issue as a question that can be answered “yes” or “no.” Your statement of each issue should include the disputed legal principle; the facts relevant to that legal principle; and the relevant party(ies), generically (e.g., seller, buyer, landlord, tenant). Do not use the parties’ names (Ms. Smith) or the parties’ designations (“plaintiff” or “defendant”).

For example:

(a) Is the builder of a house liable for injuries the buyer suffered two years after she moved into the house when she fell down the negligently constructed steps?

(b) Does a first-time spectator at a hockey game assume the risk of being hit by a puck, thereby preventing him from recovering damages against a negligent stadium owner?

**Rule(s)**

Articulate the legal principle on which the court relied to reach its holding. The court reaches a holding by applying the rule to the relevant facts in the case.

For example:

A builder of a house is liable to a buyer for injuries she suffered due to the negligent construction of her house for the life of that house, unless the builder notified the buyer of the defect before the sale and the buyer agreed to accept the house “as is.”

**Holding(s)**

Articulate the court’s answer to the legal question(s) the case raises. Answer “yes” or “no”; then, rephrase your issue into a statement, including the legal principle and the relevant facts. If there is more than one issue, there will be more than one holding.
For example:

(a) Yes. A builder of a house is liable for injuries the buyer suffered two years after moving into the house when she fell down the negligently constructed steps.

(b) Yes. A first-time spectator at a hockey game assumes the risk of being hit by a puck, thereby preventing him from recovering damages against a negligent stadium owner.

**Reasoning/Rationale**

Explain step-by-step the analysis the court used to justify its holding(s). The reasoning/rationale is why the court decided the way it did. “Reasoning” (or “rationale”; the terms are interchangeable) includes a statement of the law on which the court relied to reach its holding(s), the logical analytical steps the court took to reach its holding(s), and any public policy on which the court relied to reach its holding(s). Explain in your own words all of the court’s reasons/rationale for reaching the holding(s) it did. Remember, this section should include only the court’s reasoning/rationale, not that which one of the parties proposed but was not adopted by the court or that which you personally think may have justified the court’s decision.

**Dicta**

Often, a statement that may appear to be a part of a court’s holding is dictum (the singular of dicta), an opinion or other remark by the court that goes beyond the facts of the case under review and is not a necessary step in the court’s reasoning. Although dicta is not legally binding on future cases, it may offer important guidance as to when or how a holding should be applied in future cases, especially when it comes from the highest court of a jurisdiction.

**Judgment/Disposition**

Identify who won; the relief the court granted; and how the lower court’s judgment is affected (e.g., affirmed, reversed, remanded).

**Concurring/Dissenting Opinions (if any)**

Briefly discuss any separate opinions to a case. A dissenting judge disagrees with the court’s opinion and explains why (s)he does not agree. A concurring judge agrees with the court’s holding, but disagrees with its reasoning and offers his/her own rationale.

**Notes**

- Note your questions about a case;
- Note your criticism of the court’s decision;
- Note arguments the parties may have raises but which the court rejected;
- Highlight those concepts that you have difficulty with;
- Play the devil’s advocate, noting contradictions, omissions, and mistakes; and
- Consider what the court left unstated.
SAMPLE OPINION

In re Gaunt
Terse, J.

John Gaunt was having coffee with his nephew Felix. John told Felix that he was giving him a gift of his gold watch, which he kept in a safe deposit box in his bank. He said he would get the watch for Felix the next time he went to the bank. John died that night, without going to the bank. Felix has demanded the watch be delivered over to him as his gift. The administrator of John’s estate is keeping the watch as part of the estate. The trial court dismissed Felix’s claim, ruling that Felix never gained title to the watch before John’s death. Felix appeals the trial court’s decision to this court (the appellate court with jurisdiction over the appeal). We affirm the trial court’s dismissal.

Felix’s demand must be refused, and the trial court’s decision must be affirmed. A completed gift requires first, the intention of the donor to give the gift; second, delivery of the gift; and third, acceptance by the donee. Only then does the intended donee have title to the item. John probably did intend that Felix have the watch. The watch had been John’s grandfather’s, and Felix is the next male heir in that family. We can assume that Felix would have accepted the watch. Sentiment aside, it is a valuable piece of jewelry. John, however, never delivered the watch to Felix. If he had given him the key to the safe deposit box, that may have been constructive delivery, effective to create a gift. As it is, without delivery, John made only an unenforceable promise. A court will not enforce an uncompleted gift. The court’s decision below is affirmed, and this case is remanded for further proceedings consistent with this decision.

4 This opinion is adapted from an exercise in Helene Shapo et al., Writing and Analysis in the Law (5th ed. 2008).
SAMPLE CASE BRIEF


Parties: Appellant – Nephew        Appellee – Uncle’s estate

Facts:

Procedural: Nephew sued, but trial court dismissed his claim, holding no completed gift before uncle’s death. Nephew appealed to higher court.

Evidentiary: Uncle told nephew he was going to give him a gold watch. He kept the watch in a safe deposit box at his bank. He told nephew he would get the watch for nephew next time he went to the bank. Uncle died that night without ever giving the watch to nephew. The nephew is demanding that the administrator of the estate give him the watch.

Issue: Did uncle make a valid gift to nephew when he orally promised nephew the watch, but never actually gave the watch to nephew before uncle died?

Rule/s of Law (Elements of Valid Gift):

The requirements for a valid gift are:

1) intent to give;
2) delivery; and
3) acceptance.

Rule of Case: A mere promise to gift, without delivery of gift, is insufficient to create a gift.

Holding: No. Uncle needed to actually give (deliver) the watch to nephew while uncle was alive for the gift to be valid.

Reasoning: Here, there is evidence of intent to give from uncle’s statement to nephew that uncle wanted to give nephew the watch and that nephew was the next male heir to the watch in family. Court assumes nephew would have accepted the watch. Watch valuable (and sentimental). But there was no delivery of the watch because uncle died before retrieving it from the bank and giving it to nephew. As a result, the gift was not completed, nephew never gained title to the watch, and all that remains is an “unenforceable promise.” Nephew cannot have the watch.

Dicta: If uncle had given nephew the key to the safe deposit box, “that may have been constructive delivery,” effective to create a gift.

Disposition: Trial court’s decision affirmed and case remanded to trial court.