



# WESTERN STATE COLLEGE OF LAW

AT ARGOSY UNIVERSITY

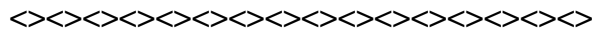
## PRETRIAL CRIMINAL LITIGATION

Professor Kimberly Menninger

[kmenninger@occourts.org](mailto:kmenninger@occourts.org)

Fall 2017

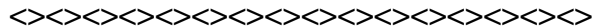
T 6:40 p.m. – 9:50 p.m.



### REQUIRED TEXT

Adamson and Caldwell, *Criminal Pretrial Advocacy*, (Vandeplas Publishing)

Students must enroll in the Lexis Blackboard course titled “Criminal Litigation: Pre-Trial MENNINGER Fall 2017” prior to the first day of class.



### COURSE DESCRIPTION

Welcome to Criminal Pretrial Advocacy!

- ◆ This class is a practical course where students will use their knowledge to argue and present cogent positions of law and facts in an adversarial (mock) scenario in class. The classroom format will reflect a courtroom hearing for a portion of each class and all students are expected to participate in these sessions.
- ◆ Trials are the most exciting part of the criminal case but most cases do not go to trial and are instead resolved at the pre-trial level. Constitutional challenges of arrest’s, interviews, searches and discovery are all addressed at the pre-trial stage. This class will study criminal cases from the occurrence of a crime to the day of trial. Students will learn how to file a case, file and argue motions, present and defend preliminary hearings and resolve cases with appropriate settlements.

## **LEARNING GOALS**

After completion of this course, students should be able to:

- ◆ Objectively review police reports, analyze facts, research the elements of crimes and use analytical skills to file appropriate charges.
- ◆ Identify defenses theory's to charges.
- ◆ Understand the legal process a criminal case takes from filing to trial
- ◆ Recognize evidentiary challenges and provide responses to those legal challenges.
- ◆ Write and argue motions in court.
- ◆ Understand and apply the Evidence Code to pre-trial courtroom hearings.
- ◆ Understand the ethical obligations of prosecutors and defense attorneys.
- ◆ Appreciate the effects those ethical obligations have on criminal case courtroom scenarios including Brady, Confidential Informants, Fifth Amendment claims, children as witnesses, victims of sexual assault, criminal records of a defendant, criminal records of witnesses, Messiah claims, Trombetta, immunity and other issues.
- ◆ Effectively prepare, present facts and arguments to jurors and judges.
- ◆ Work in teams to tackle legal issues
- ◆ Present and defend preliminary hearing evidence.
- ◆ Settle cases.

## **ATTENDANCE, EXAMINATIONS, & GRADES**

Class attendance is mandatory. Students who miss more than two class sessions are subject to administrative dismissal from the course per the WSCL Attendance Policy (reprinted in the Student Handbook).

Students earn a numeric grade for the course. The grade will consist of a “mock-trial” mid-term and final exam as well as weekly class projects. The breakdown will be: 40 points for class participation and preparation (5 points for 8 classes); 20 points for the practical mid-term and 40 points for the practical final exam. Both exams will be verbal, given in a mock hearing scenario. The midterm will involve writing and arguing a motion while the final will require students to present and/or defend a preliminary hearing. Weekly, students will present verbal arguments and presentation of legal issues in a mock trial forum.

Advocacy and preparation will be expected as students play the roles of prosecutors and defense attorneys each week opposing various legal positions presented. Students will be graded on their knowledge, articulation, and presentation of these issues before the class.

## **PREPARATION, PARTICIPATION, & PROFESSIONALISM**

**Participation & Professionalism (P&P)**: It is expected that each student come prepared to class each week. Preparation for this class will include:

- ◆ Completing assigned reading.
- ◆ Preparing motions for court.

**Outside Preparation**: You should anticipate that, on average, preparing your weekly assignments will take you a minimum of two hours for every one hour of class time. This is a 3 hour class, so it is anticipated that your preparation for this class will take 6 hours each week. Please make sure to schedule time for this commitment.

## **SYLLABUS**

### **Pretrial Criminal Litigation**

#### **WEEK 1: TUESDAY SEPTEMBER 19, 2017**

The Filing of a Criminal Case

pp. 1 - 78

ABA Model Rules of Professional Conduct Rules: 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8

Brady v. Maryland (1963) 373 U.S. 83.

The Sixth Amendment to the United States Constitution

California proposed rules of professional conduct: 5-110, 5.310, 5.120, 5.200, 5.210, 5.220, 5.300, 5.310, and 5.320.

California Penal Code Section: 1382

Kellett v Superior Court 409 P.2d 206 (1966)

#### **WEEK 2: TUESDAY SEPTEMBER 26**

Arraignment, Bail, Grand Jury, Settlement, Restitution

pp. 79 – 104; 213- 227; 301-332;

California Penal Code Sections: 1275-1275.1, 1048 - 1050.5

The Eighth Amendment of the United States Constitution

Faretta v. California 422 U.S. 806 (1975)

The Fifth Amendment of the United States Constitution

**WEEK 3: TUESDAY OCTOBER 3**

Discovery  
pp. 167 - 186  
California Penal Code Sections 1054 – 1054.10, 293, 293.5;  
Brady v. Maryland (1963) 373 U.S. 83.  
Welfare and Institution Code Section 827  
Marsy's Law California Constitution, Article I, Section 28(b)

**WEEK 4: TUESDAY OCTOBER 10**

Motions: drafting and arguing \*  
Difficult witnesses Interviewing clients/client interviews/  
pp. 105 – 166;  
pp. 229-251  
California Penal Code Section 1050  
Penal Code Sections 1326 – 1347.5

**WEEK 5: TUESDAY OCTOBER 17**

Specific Motions  
pp. 253 – 300  
California Penal Code Section 1538.5  
Missouri I v. Seibert 542 (2004)  
Edwards v Arizona 451 U.S. 477 (1981)  
Miranda v. Arizona 437 U.S. 385 (1968)  
The Fourth Amendment of the United States Constitution

**WEEK 6: TUESDAY OCTOBER 24**

Special Pre-trial Motions  
pp. 333-362  
Penal Code Section 1368-1370

**WEEK 7: TUESDAY OCTOBER 31**

**MID-TERM**

**Motions for the mid-term will be assigned in Week 6**

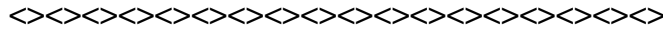
**WEEK 8: TUESDAY NOVEMBER 7**

pp. 187-212  
Preliminary Hearings/ Prop 115

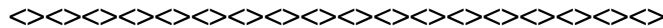
**TUESDAY NOVEMBER 14:**

Preliminary Hearings/Motions  
Written motions, mock pre-trial motions and preliminary hearings will be held in class.  
Students will receive their assignments on week 8.

**WEEK 10: NOVEMBER 21:  
FINAL  
PRELIMINARY HEARINGS**



**Disability Services Statement:** Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law. To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator. Dean Espinoza’s contact information: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”



**Western State College of Law Programmatic Learning Outcomes:** Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

- (1) **Doctrinal Knowledge**  
Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.
- (2) **Practice Skills**  
Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to,

the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

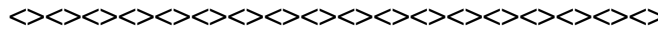
Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.



**Argosy University Institutional Learning Outcomes:**

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession.