

PRETRIAL CRIMINAL LITIGATION

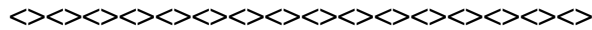
Adjunct Professor Marni Entin

mentin@wsulaw.edu

Spring 2024

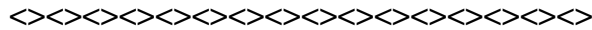
Wednesday 6:30 p.m. – 9:40 p.m.

Office Hours- By appointment. Please email me to schedule.



REQUIRED TEXT

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



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 often reflect a courtroom hearing for a portion of each class and all students are expected to participate each session
- ◆ 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 crime report to the preliminary hearing. Students will learn how to file a case, write and argue motions, present and defend preliminary hearings and resolve cases with appropriate settlement tactics. Students will learn to objectively identify, analyze and address issues that arise in all pre-trial phases of a criminal case.

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.
- ◆ Prepare pre-trial briefs and effectively argue legal positions.
- ◆ 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.
- ◆ Work in teams to tackle legal issues.
- ◆ Understand Mental Health and the Law including issues concerning legal competency and diversion.
- ◆ Present and defend preliminary hearing evidence.

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). **Please communicate with me if there is anything going on in your life where your attendance or ability to be prepared is affected. Your mental health should be number one and I am here and willing to help and work with you if I am in the loop.**

Students earn a numeric grade for the course. The grade will consist of class participation, short projects (as assigned in class), and the “mock preliminary hearing” final exam. The breakdown will be: 50% of your grade will be participation and professionalism (10 points per class, excluding finals) and 50% of your grade will be the practical final exam. Final exam will be verbal, given in a mock hearing scenario. The final will involve the presentation and defense of 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 contesting various legal positions presented. Students will be graded on their understanding, 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,

- ◆ Writing required research briefs and preparing oral arguments
- ◆ Researching and reviewing ancillary text and codes
- ◆ Collaborating with fellow students

Outside Preparation: You should anticipate that, on average, preparing your weekly case reading and brief writing 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

Note- These assignments are subject to change

Pretrial Criminal Litigation

WEEK 1: WEDNESDAY, September 18, 2024

Ethical Obligations

Overview of Pretrial Procedure

Themes/Case Theory

Adamson and Caldwell: pp. 1 - 78

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

California proposed rules of professional conduct: 5-110, 5-310, 5-120, 5-200, 5-210, 5-220, 5-300, 5-310, 5-320.

WEEK 2: WEDNESDAY, September 25, 2024

The Filing of a Criminal Case- **Guest Speaker**

Arrestment

Bail

Settlement

Adamson and Caldwell: pp. 79 – 104; 301-332;

The Eighth Amendment of the United States Constitution

In Re Humphrey 11 Cal. 5th 135 (2021)

WEEK 3: WEDNESDAY, October 2, 2024

Federal Practice/Procedure- **Guest Speaker**

Discovery

Adamson and Caldwell: pp. 213- 227; 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 (CONTINUED)

Marsy's Law California Constitution, Article I, Section 28(b)

WEEK 4: WEDNESDAY, October 9, 2024

Interviewing clients/client interviews/difficult witnesses
Mental Health
Mental Health Diversion + Competency
Other types of diversion

Adamson and Caldwell: pp. 105 – 166
Review Penal Code 1001.36
Review Penal Codes 1368-1372

WEEK 5: WEDNESDAY, October 16, 2024

Specific Motions

Adamson and Caldwell: pp. 229-300
California Penal Code Section 1538.5
Edwards v Arizona 451 U.S. 477
Missouri v. Seibert 542 US 600 (2004)
Miranda v. Arizona 437 U.S. 385 (1968)
Kellett v Superior Court 409 P.2d 206 (1966)

Preliminary Hearings
Adamson and Caldwell: pp. 187-212

WEEK 6: WEDNESDAY, October 23, 2024

TBD

WEEK 7: WEDNESDAY, October 30, 2024

Questioning witnesses
Cross-examination
Objections
Special Pre-trial Motions
Adamson and Caldwell: pp. 333-362

WEEK 8: WEDNESDAY, November 6, 2024

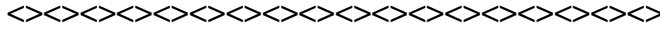
Preliminary Hearings

WEEK 9: WEDNESDAY, November 13, 2024

Preliminary Hearings

WEEK 10: WEDNESDAY, November 20, 2024

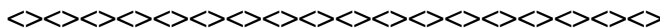
Preliminary Hearings



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, whose office is in the Library Building, Room 275-B. Dean Espinoza’s phone number and email address are: (714) 459-1117; 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 Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (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.

