APPELLATE PRACTICE
Fall 2012

Instructor:  Troy L. Booher,
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Email:  troy.booher@law.utah.edu
Office Hrs:  Wednesday before and after class or by appointment

Class Meetings
Lecture:  Wednesday 5:25 to 7:15 p.m.  Seminar: Thursday 5:25 to 6:25 p.m.
         Room 107          Room 107

Seminar Professors
Appellant Professor  Appellee Professor
Linda Jones          Diana Hagen
Zimmerman Jones Booher LLC  Appellate Chief
Previously: Salt Lake Legal Defenders  United States Attorney’s Office
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Reading Materials
Ruggero J. Aldisert, Winning on Appeal: Better Briefs and Oral Argument
(Note:  The chapters are not lengthy and are easy to read and digest.)
Course Packet (on TWEN)
Cases and Articles Listed in Syllabus (Available on LEXIS and Westlaw)
(Note:  The cases and articles are few and not particularly lengthy.)

Objectives
This course has three goals: (i) instruct on the substantive and procedural principles
of appellate practice; (ii) assist in developing appellate practice skills, primarily brief
writing and oral advocacy; and (iii) develop appreciation of appellate practice and
encourage you to participate in the Traynor Moot Court Competition.

Structure
This course proceeds on three tracks.  On the first track, I will offer lectures
every Wednesday on general appellate principles and strategies, touching upon
both federal and Utah practices.  As much as I can, I will link the lecture topics to
the case you will be briefing and arguing this semester.
On the second track, you will attend a seminar section that meets every Thursday. The seminar section will be team taught by two Appellate Practice adjunct faculty members who are extremely experienced and prominent local appellate lawyers. One faculty member’s focus will be on the opening briefs and the other faculty member’s focus will be on the response briefs. In the seminar section, the faculty will expand on concepts covered in the lectures, but they will focus on (i) brief drafting and (ii) feedback on your drafts.

On the third track, you will receive instruction on oral argument: (i) I will discuss it in my lectures; (ii) the seminar professors will discuss it in the seminar section; and (iii) a panel of different appellate lawyers/judges will provide their views in the lecture class.

Assignments and Grading

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Microcommentaries: Beginning August 29, students are required to turn in microcommentaries, which are 200-400 word responses to a question posed about the reading. I will announce the assignment via email. (Please ensure that your email address is on file with the University.) The microcommentaries are due on Tuesday by 6 p.m., and must be submitted via email (in the text of the email, not in an attachment) to the following address: troy.booher@law.utah.edu.

Late microcommentaries will be accepted, but will automatically lose 1 point out of a possible 10 if they are turned in before the lecture class and 5 points out of a possible 10 if they are turned in after the lecture class. You also must attend both classes the week the microcommentaries are due to receive full credit. If you are not in either class, then you will lose 50% of the points you otherwise would have received. If you are not in one of the classes that week, then you will lose 25% of the points you otherwise would have received.

There will be 9 microcommentaries. You need to turn in 8. It is up to you to choose which one you skip. If you turn in all 9, then the lowest grade will be dropped.
Briefs: Each student will be paired with one other student. One student will represent the Appellant and submit an opening brief (“AOB”), and the other student will represent the Appellee and submit a response brief (“RB”). (The briefs will be up to 30 pages in length, but otherwise must comply with the Utah Rules of Appellate Procedure.) Brief grades depend upon content and formatting. If your brief is late, you will be penalized at a rate of 10 points per day, absent good cause (e.g., serious illness).

Note: Your seminar professors will submit a recommended score for your brief, which I will weigh heavily when I assign final score for each brief.

Oral Arguments: Paired students also will present oral argument in light of their briefs. Each student must submit an oral argument outline at the oral argument. You will divide into groups to practice your oral arguments.

Note: Those judging oral arguments will recommend scores, which I will weigh in determining oral argument scores, but I will assign final scores.

Pass/Fail Assignments: Students must turn in the following 5 items by the dates listed in the “Key Dates” section of this syllabus: (i) Draft of Issues Presented and Outline of AOB; (ii) Draft of Issues Presented and Outline of RB; (iii) Draft of Fact Section of either AOB or RB; (iv) Draft of Argument Section of either AOB or RB; (v) Oral Argument Outline. Each assignment represents 1% of the final grade.

ADA Accommodations

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS), to make arrangements for accommodations. CDS is located at 200 S. Central Campus Drive (Olpin Union Building), Rm. 162, or you can call (801) 581-5020 (V/TTY). All written information in this course can be made available in alternative format with prior notification.

TWEN Page

Please note that there is a TWEN page for our course on which you will find a
copy of the record for State v. Simpson.

**Other Requirement and Policies**

Our work this semester in simulating a criminal appeal will be based on a real case, State v. Simpson. A major objective of this course is to replicate, to the extent possible, the process of handling an actual appeal. Nonetheless, we must impose some constraints on the brief-writing process for purposes of this course.

Some of these constraints are artificial and are designed to ensure equity in grading and academic honesty.

1. You are NOT permitted to consult or use the actual materials from the case other than the record provided to you in the course packet (on TWEN). You are not permitted to consult the briefs filed in the case itself or discuss the case with any outside attorneys. You also should not copy or heavily rely upon any prior opinions based upon this case.

2. You are NOT permitted to consult or use any actual appellate briefs filed in any court, except for those briefs we make available during this course.

3. You are permitted—even encouraged—to discuss the State v. Simpson case, any relevant precedents, and brief-writing strategies with your classmates in this course. Students learn just as much from each other as they do from their professors. Even so, you are NOT permitted to collaborate on or exchange written drafts of your brief or any part thereof with your classmates, except as directed in class (e.g., providing your draft and brief to your opponent). Similarly, you may NOT have anyone else assist you with the writing, analysis, or editing of your brief, unless otherwise directed in class.

4. In addition to (1)-(3), please note the rules regarding plagiarism contained in the Student Code of the University of Utah, which apply in this course.

5. On a positive note, there is NO final exam in the course, only an oral argument at the end of the course.
**Key Dates**

August 29  
All Students  Choose an Opponent for the appeal.  
Each student will represent either the **Appellant** or the **Appellee**. Those students representing the Appellant will submit the Appellant’s Opening Brief (“AOB”) and those representing the Appellee will submit the Appellee’s Response Brief (“RB”).

August 30  
All Students  Complete review of the Record, including the Trial Transcript.

September 13  
Pass/Fail - All Students  Submit Draft of Issues Presented and Outline

September 20  
P/F - All Students  Submit Draft of Fact Section

September 27  
P/F - Appellants  Submit Draft of Argument Section of AOB

October 4  
P/F - Appellants  Submit Draft of AOB to Professor Jones and Their Opponents

October 15-16  
Appellants  Meet with Professor Jones to Discuss Draft

October 25  
Graded - Appellants  Submit and Serve Final AOB

November 1  
P/F - Appellees  Submit Draft of Argument Section of RB

November 8  
P/F - Appellees  Submit Draft RB to Professor Hagen and Their Opponents

Nov. 13-14  
Appellees  Meet with Professor Hagen to Discuss Draft

November 20  
Graded - Appellees  Submit and Serve Final RB

November 26-29  
All Students  Practice Oral Arguments

Dec 6 or 7  
Graded - All Students  Present Oral Argument

Dec 6 or 7  
P/F - All Students  Submit an Oral Argument Outline
Schedule of Assignments

Week 1:  **August 22:** Lecture: Introduction to Appellate Practice  
Assignment: *Aldisert* Chapter 1  
**August 23:** Seminar: How to Review a Record  
Assignment: Be Prepared to Discuss the Record in *State v. Simpson*

Week 2:  **August 29:** Lecture: Jurisdiction/Preservation  
Assignment: *Aldisert* Chapter 4; § 5.1.  
- *State v. Prawitt*, 2011 UT App 261  
- *State v. Johnson*, 748 P.2d 1069 (Utah 1987)  
- *Boyle v. Christensen*, 2011 UT 20  
**August 30:** Seminar: No Class – Football Game  
Assignment: Read *Aldisert* Chapters 7, 8, and 9

Week 3:  **Sept. 5:** Lecture: Harmless Error/Standards of Review  
Assignment: *Aldisert* Chapter 5 and Appendix A  
- *State v. Levin*, 2006 UT 50  
**Sept. 6:** Seminar: Drafting the Statement of the Issues and Standards of Review  
Guest Lecturer: *Lori Seppi, Salt Lake Legal Defenders*  
Assignment: *Aldisert* Chapters 10, 11 and Appendix B  
NOTE: Drafts of Issues Presented and Outline are due Sept. 13.

Week 4:  **Sept. 12:** Lecture: Panel Discussion on Brief Writing  
Assignment: *Aldisert* Chapter 2  
**Sept. 13:** Seminar: Drafting the Statement of the Case and the Statement of Facts  
Assignment: *Aldisert* Chapter 12 and Appendix C  
NOTE: Drafts of Fact Section are due Sept. 20.
Week 5:  **Sept. 19: Lecture:** Brief Writing

**Guest Speakers:**

[Awaiting Confirmation of Additional Speakers]
Former Judge Judith Billings, Utah Court of Appeals
Former Judge Pamela Greenwood, Utah Court of Appeals

**Sept 20: Seminar:** Drafting Argument and Summary of Argument

*Assignment: Aldisert* Chapters 13, 14, 15, 16 and Appendix D

NOTE: Drafts of AOB Argument Section are due Sept. 27.

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Week 6:  **Sept 26: Lecture:** Final Judgments and Collateral Orders

*Assignment: Kilpatrick v. Bullough,* 2008 UT 82, only ¶¶ 1-16.
*ProMax Dev. Corp. v. Raile,* 2000 UT 4; only ¶¶ 1-16
*Powell v. Cannon,* 2008 UT 19

**Sept 27: Seminar:** Finalizing the Brief for Filing

*Assignment: Aldisert* Chapters 18, 19.1-19.4 and 20

NOTE: Drafts of AOB due Oct. 4-copy for Professor Jones and copy for opponent.

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Week 7:  **Oct. 3: Lecture:** Final Judgments (cont.) and 54(b) Certification

*Assignment: Clark v. Archer,* 2010 UT 57
*Kennecott v. Utah State Tax Comm’n,* 814 P.2d 1099 (Utah 1991)
*Stockman’s Water Co., LLC v. Vaca Partners, L.P.,* 425 F.3d 1263 (10th Cir. 2005)

**Oct. 4: Seminar:** How to Revise a Brief

*Assignment: Aldisert* Chapter 17

NOTE: Schedule time to discuss AOB with the Professor Jones on Oct. 15 or 16

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**FALL BREAK**

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Week 8:  **Oct. 17: Lecture:** Petitions for Review of Interlocutory Orders

*Assignment: Utah Rule of Appellate Procedure 5*
*United Transp. v. Albuquerque,* 178 F.3d 1109 (10th Cir. 1999)
*Dept. of Health v. Kennecott Corp.,* 14 F.3d 1489, 1491 (10th Cir. 1994)

**Oct. 18: Seminar:** Drafting Issues and Standards of Review for Response Briefs

*Assignment: Aldisert* pp. 266-67 (found in Chapter 19.5).

NOTE: Submit and Serve Final AOB by October 25.
Week 9:  **Oct. 24: Lecture:** Writs of Certiorari and Extraordinary Writs

*Assignment:* Utah Rule of Civil Procedure 65B
Utah Rules of Appellate Procedure 19, 20, 46
Renn v. Bd. of Pardons, 904 P.2d 677 (Utah 1995)
In re Cooper Tire, 568 F.3d 1180, 1187 (10th Cir. 2009)

**Oct 25: Seminar:** Drafting the Statement of the Statement of Facts in in Response Briefs.

*Assignment: Aldisert*  pp. 267-68 (found in Chapter 19.5).

**NOTE:** Drafts of RB Argument Sections are due November 1

**Week 10**  **Oct 31: Lecture:** Motions and Supersedeas Bonds

*Assignment:* Utah Rule of Civil Procedure 62
Utah Rule of Appellate Procedure 3, 4, 8, 23, 23A, 37
Richards v. Baum, 914 P.2d 719 (Utah 1996)

**Nov. 1: Seminar:** Drafting the Argument and the Summary of Argument in Response Briefs

*Assignment: Aldisert* Chapter 19.6

**NOTE:** Drafts of RB Drafts due Nov. 8-copy for Professor Hagen and copy for opponent

**Week 11:**  **Nov. 7: Lecture:** The Work of Clerks and Staff Attorneys

**Guest Speakers:**
Lisa Collins, Clerk of Court, Utah Court of Appeals
Clark Sabey, Staff Attorney, Utah Supreme Court

**Nov. 8: Seminar:** Reply Briefs and Oral Argument Preparation
*Assignment: Aldisert* Chapters 22, 23 and 25.2

**NOTE:** Schedule time to discuss RB with the Professor Hagen on Nov. 13 or 14

**Week 12:**  **Nov. 14: Lecture:** Oral Argument Preparation

*Assignment: Aldisert* Chapter 3

**Nov. 15: Seminar:** Oral Argument Techniques

*Assignment: Aldisert* Chapters 24.

**NOTE:** Submit and Serve RB by November 20.
Week 13:  
**Nov. 28: Lecture:** Panel Discussion on Oral Argument

*Guest Speakers:*
- Michael Zimmerman, Former Chief Justice, Utah Supreme Court
- Ryan Tenney, Utah Attorney General’s Office

**Nov. 29: Seminar:** Feedback

**NOTE:** Between November 26 and 29, students practice oral arguments

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Final:  
**TBD**  Oral Arguments