

Seminar in Constitutional Law: Appellate Advocacy

Week 1

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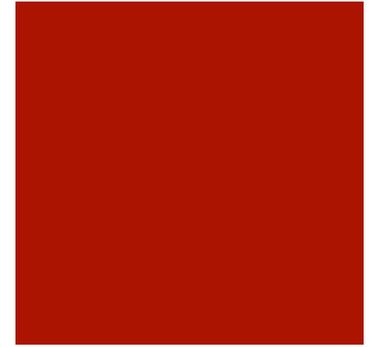
Office Hours: Wednesdays 11 am-11 pm

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Wednesday, March 30th, 2016

Hello from Us!



- Matthew Bergman
 - Teaching/Professional Experience
 - Research Interests
 - Goals for this Class

- Nazita Lajevardi
 - Teaching/Professional Experience
 - Research Interests
 - Goals for this Class

Breakdown of today's class:

Introduction to the course and to the appellate process



- Hr 1: Introduction to Course and to the Appellate Process
- Hr 2: Guest Speaker: Annelise Sklar, Librarian, Legal Research (*bring your laptops)
- Hr 3: Guest Speaker: Michael Devitt, Professor at USD School of Law, Head of Appellate Advocacy

What you can expect from this course



- Learn about the fundamentals of the American court systems.
- Understand basic appellate procedure.
- Develop persuasive writing skills.
- Get feedback on writing.
- Work in teams.
- Get a written product that can translate into a writing sample.
- Make oral arguments.
- Be immersed in a professional environment.

What we expect from you.



- (1) Prepare for every class by reading and digesting the assigned material.
- (2) Actively participate in class discussions.
- (3) Work in teams (your final grade depends on your peers' evaluation of you).
- (4) Write an appellate brief with your team.
- (5) With your teammates, orally argue your brief in front of a panel of judges from USD Law.
- (6) Show up. Attend every class, with the exception of a pre-arranged conflict.
- (7) Be a professional.

Laptop Policy

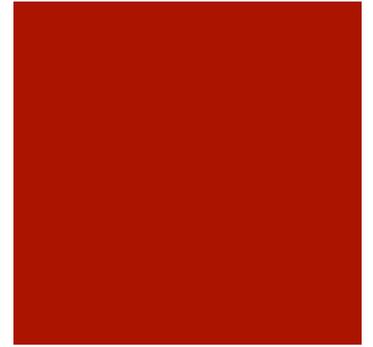


- *We strongly encourage you to bring laptops to class.*
- Yes, you read that correctly.
- Legal research = online law libraries.
- However, we expect you to conduct yourselves with professionalism, to pay attention, and to only access materials relevant and necessary to the course.
- We reserve the right to change this policy at any time.

Breakdown of the course

- **Week 1: Introduction to the Appellate Process**
- **Week 2: Introduction to Legal Writing** and Assignment 1 Due
- **Week 3: Types/Parts of a Brief**
- **Week 4: Persuasion Discussion** and Midterm
- **Week 5: Preparation for Appellate Brief Writing**
- **Week 6: Writing Opening Briefs** and Assignment 2 Due
- **Week 7: Appellee and Reply Briefs**
- **Week 8: Preparing Oral Arguments**
- **Week 9: Presenting Oral Arguments**
- **Week 10: In Class Oral Arguments and Final Written Briefs Due**

- **No Final During Finals Week*



The Appellate Advocacy Problem



- USD Law – Michael Devitt
 - Developed a child advocacy problem that you will be arguing in the form of a written brief and through oral arguments.

- Thus, you will spend:
 - Weeks 1-4:
 - What is an appellate case?
 - How to conduct legal research
 - How to read and brief cases
 - Write persuasively

 - Weeks 5-7:
 - Work with 3 partners to prepare a simulated appellate response and write persuasively
 - Learn to tell a persuasive story and craft persuasive arguments and present those arguments in an appellate brief (to be due Week 10).

 - Weeks 8-9:
 - Focus on practice oral arguments and developing your public speaking skills.

Grading



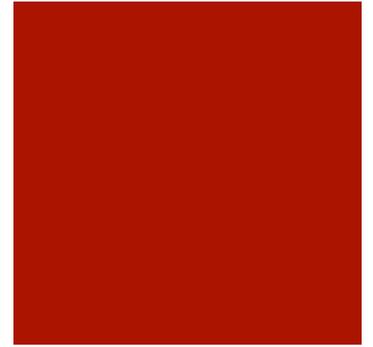
- 5 pts Assignment 1: Appellate Jurisdiction (Due Week 2)
- 5 pts Assignment 2: Brief A Case (Due Week 6)
- 25 pts In Class Midterm Exam (Week 4)
- 25 pts Oral Argument to be judged by a panel of judges (Week 10)
- 25 pts Written Appellate Brief(Final draft to be turned in Week 10)
- 15 pts Participation (Evaluation of your work by your peers and attendance)

Our pledge



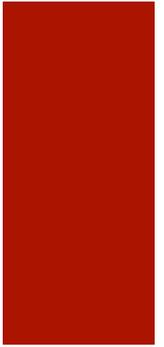
- We will give you hands on guidance on writing.
 - We will make this course as fun as possible.
 - We will help you develop oral advocacy skills.
-
- We want you to walk away having learned valuable skills from a class at UCSD and that can translate to your future careers.

A little about you: Hello! Introductions, and Names



- Your Name
- Year in school
- Major
- Favorite food
- Where you want to be in 5 years

Introduction to the Appellate Process



The American Court Structure



- The U.S. has a **dual court** system
 - (1) System of state courts
 - (2) System of federal courts
- The authority that any court has to hear a case is determined by jurisdiction, which varies from court to court and must be established by the plaintiff or petitioner.
 - Thus, cases typically do not begin at the appellate level.
- An appeal is *not* a retrial or a new trial of the case.
 - The appellate courts do not usually consider new witnesses or new evidence.
 - Appeals are usually based on arguments that there were errors in the trial's procedure or errors in the judge's interpretation of the law.
 - In most instances, the appellate courts weigh whether the issues were preserved at trial.

What happens at trial?



1. A person is accused of breaking a criminal or civil law.
2. At the trial, the government or the person who is accusing another of breaking a law presents a case with their attorney as to why that other person broke the law.
3. Then, the court allows the accused person and their attorney to put on a case to say they did not break the law.
4. Either side may use witnesses or evidence to prove their case.
5. The judge makes a decision – usually in favor of one side or the other.

What comes next: The appeal process



- An appellate court is a court that accepts or rejects the decision of another court's decision, made by a different judge.
- When you don't like a judge's decision, you have the right to appeal the decision, asking another court to decide whether that decision was right.
- **More on this later*
- We have federal and state appellate courts/processes

Federal Appellate Courts: Circuit Courts



- There are 3 levels of federal courts:
 - **Federal District Courts**: Federal trial courts cover certain geographic regions (i.e. Southern District of OH, Western District of PA, etc.). Then, you can appeal to the...
 - **Federal Circuit Courts of Appeal**: Intermediate federal courts of appeals are over several federal districts. There are 13 of these. Finally, as a last resort, you can appeal to the...
 - **U.S. Supreme Court**: One court to rule them all (court of last resort)

State Appellate Courts: CA as an example



- There are **3 levels of courts** in California:
 - **Superior courts**: In CA, superior courts are at the county-level. As mandated by the California Constitution, each of the 58 counties in California has a superior court. If you want to appeal the decision, you move up to the...
 - **CA Courts of Appeal**: intermediate appellate courts that cover multiple counties. The state is geographically divided into six appellate districts, Notably, all published California appellate decisions are binding on all superior courts, regardless of appellate district. If you will want to appeal, there is always the...
 - **CA Supreme Court**: covers the **entire state**. The Supreme Court of California consists of the Chief Justice of California and six Associate Justices. It deals with about 8,800 cases per year.

US Court Structure

- **Federal Courts** (3 major paths to the SC)

- **PATH 1:**

- District Courts



- Circuit Courts (13 of them)



- Supreme Court of the United States

- **PATH 2:**

- (1) Hearings at certain independent regulatory agencies OR (2) US Tax Courts



- Circuit Courts (13 of them)



- Supreme Court of the United States

- **PATH 3:**

- (1) US Court of Customs and Patent Appeals OR (2) US Court of Military Appeals OR (3) US Court of Claims



- Supreme Court of the United States

- **State Courts** (2 major paths to the SC)

- **PATH 1:**

- Minor Courts



- Trial Courts



- State Appellate Courts



- State Supreme Court



- United States Supreme Court

- **PATH 2:**

- Trial Courts



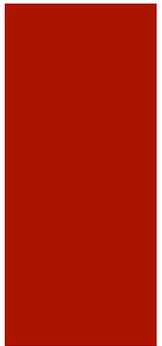
- State Appellate Courts



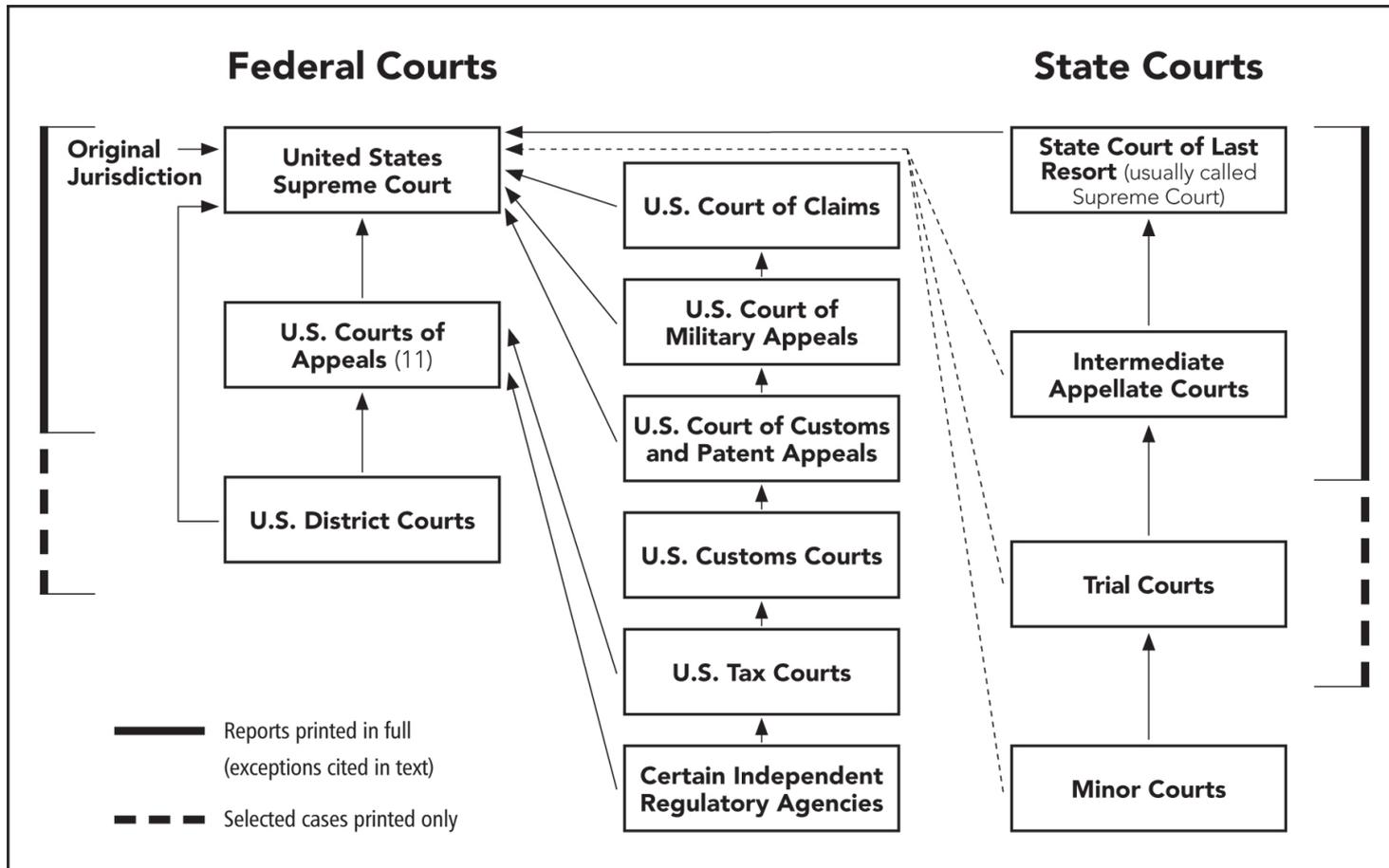
- State Supreme Court



- United States Supreme Court



The Appellate Process

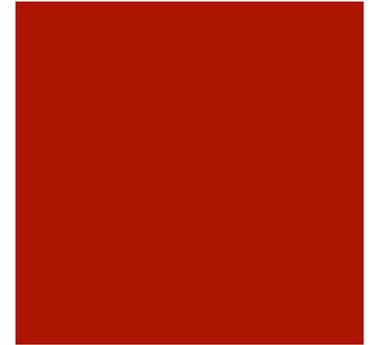


How do I know which court I want?



- Different courts have different jurisdictions, or categories of cases that they are allowed to hear
- State courts have jurisdiction over state law and the U.S. Constitution.
- Federal courts have jurisdiction over federal law and the U.S. Constitution.
- The U.S. Supreme Court is the ultimate decider of constitutional questions. The Supreme Court can overrule state courts, but only on federal or constitutional questions.

Why might someone appeal?



- On appeal, you must show that the trial court committed some sort of error.
- These can be errors of:
 - Fact, Law, Application of law to facts, Application of facts to law, and Procedure
- The record is the collection of testimony, evidence, exhibits, and arguments made to the trial court.
- The appellate court can only consider what's in the record

The US Supreme Court



- The US Supreme Court may hear cases:
 - Appealed from the federal courts
 - Appealed from the state courts
 - Directly if it has original jurisdiction Article III, Section 2 of the Constitution Court of last resort in all questions of federal law and U.S. Constitution.
- The US Supreme Court is composed of:
 - 1 chief Justice
 - (Justice Roberts)
 - 8 Associate Justices
 - Justice Ginsburg
 - Justice Kagan
 - Justice Sotomayor
 - Justice Kennedy
 - Justice Breyer
 - Justice Alito
 - Justice Thomas
 - (*Vacant*)