

Writing for Criminal Defense

Spring 2023

Monday & Wednesday – 4:00 – 5:20

Professor Jani Maselli

Lecture	Topic	Class Work	Assignment(s)
Week One January 18	-Introduction and Parameters -Writing and a criminal law topic -Brian Garner's Book – two presentations per person per semester on an assigned section	Discuss Codes and Rules Research refresher Assignment – why you are taking this class and what you hope to achieve by the end of the semester	
January 18	1. Bryan Garner presentation 2. Discussion of courts in Texas. 3. Strategies in defending someone	Motions to work on in class: Motion to appear <i>pro hac vice</i> Designation of Counsel Motion to Substitute counsel Motion to Withdraw	

Week Two January 23	Discussion and editing of motions from prior class Strategies in motion work	Writ for bond or bond reduction (why not a motion?) Motion to modify conditions of bond	Ungraded assignment due
January 25	Discussion and editing of motions from prior class	Motion for an examining trial Challenge to the array of the Grand Jury Motion for copy of GJ testimony Motion to discover GJ names and background Grand Jury Packet	Bryan Garner Discussion – Prologue – Rule 1
Week Three January 30	Motions to Suppress	Fourth Amendment litigation	Bryan Garner Rules 2-4 Discussion of assignment one
February 1		Motions to Suppress Statements Arrest Illegally obtained evidence Identification	Bryan Garner – Rule 5-7

<p>Week Four February 6</p>	<p>Pretrial Issues</p>	<p>Motion to preserve evidence Motion for police officer to preserve rough notes Motion to inspect evidence Motion to have Defense Expert Inspect Evidence</p>	<p>Brian Garner - Rules 8-10</p>
<p>February 8</p>		<p>Motion for color copies or exact replicas of photos from line up Motion for a translator (deaf clients require three interpreters) Motion for Immigration Attorney Consult</p>	<p>Bryan Garner - Rules 11-14</p>

Week Five February 13	Evidence Refresher	<i>Theus</i> Motion Request for Notice under 404(b), 609, 37.07	Bryan Garner – Rules 15-19
February 15		Motion to Admit CW's prior sexual conduct (TRE 412) Motion to Admit CW's prior bad acts	Bryan Garner – Rules 20-22 First Assignment Due
Week Six February 20	Challenging Statutes	Motion to Withdraw Guilty Plea (remember plea must be voluntary – Brady v. United States)	Second Assignment Bryan Garner – Rules 23-26
February 22		Defendant's Plea in Bar – double jeopardy, collateral estoppel Defendant's Plea of Double Jeopardy Pretrial Writs	Bryan Garner – Rules 27-31

<p>Week Seven February 27</p>		<p>Motion to have Defense Expert present and to video State Forensic Expert testing</p> <p>Motion to reweigh/re-test evidence</p> <p>Motion to inspect evidence</p> <p>Motion to allow accused to inspect evidence</p>	<p>Bryan Garner – Rules 32-38</p>
<p>March 1</p>		<p>Motion to be present at lineup</p> <p>Motion for Blind Sequential Line up</p> <p>Motion to view identification procedures</p>	<p>Bryan Garner Rules 39-43</p>

<p>Week Eight March 6</p>		<p>Motion for Speedy Trial</p> <p>Motion for continuance</p> <p>Motion for Jury Questionnaire</p> <p>Motion for record from any previous hearing or trial</p> <p>Motion for Disclosure and transcripts and copies of intercepted oral or electronic or wire communications</p>	
<p>March 8</p>		<p>Motion to extend time limits for voir dire</p> <p>Motion to invoke the rule</p> <p>Motion in limine</p> <p>Motion for Deposition</p> <p>Motion to take testimony of a child witness</p> <p>Motion to test competency of a child witness (or elderly)</p> <p>Motion to Require Live Testimony of Child Complainant</p>	<p>Bryan Garner – Rules 44-50</p> <p>Second Assignment Due</p>
<p>Week Nine March 20</p>	<p>Prosecutorial Misconduct</p>	<p>Motion for <i>Brady</i> evidence</p> <p><i>Brady</i></p> <p><i>Agurs</i></p> <p><i>Giglio</i></p> <p><i>Bagley</i></p>	<p>Bryan Garner Rules 51-56</p>

March 22		<p>Motion to compel prosecution to learn of favorable evidence</p> <p><i>Kyles</i></p> <p>Motion for Government to Disclose any and all agreements for Government Witnesses</p> <p>Motion to Disclose and all benefits given to State's witnesses (hotel, meals, etc)</p> <p>Motion to Disclose Government Informants</p> <p>Motion to Disclose any reports prepared from another police agency (DEA and FBI)</p> <p>Motion for in camera review of State's "work product" file</p>	<p>Bryan Garner Rules 57-62</p> <p>Third Assignment handed out</p>
<p>Week Ten</p> <p>March 27</p>	<p>Brief Writing</p> <p>Typography for Lawyers</p> <p>Persuasion</p> <p>Strategy</p>		<p>Bryan Garner – Rules 63-69</p>
March 29		<p>Objections to jury charge</p> <p>Proposed jury charge</p> <p>Motion that each juror has a copy of the charge</p>	<p>Bryan Garner – Rules 70-75</p>
<p>Week Eleven</p> <p>April 3</p>	<p>Post Trial</p>	<p>Motions for New Trial</p> <p>Motion in Arrest if Judgment</p> <p>Court cost 103.008</p>	<p>Bryan Garner – Rules 76-80</p>

April 5	Brief problems – issues – the record		Bryan Garner – Rules 80-84
Week Twelve April 10		Oral argument CCA – PDR’s .. work on PDR in class	Bryan Garner – Rules 85-88
April 12		Editing – brief issues – make up motions	Bryan Garner – Rules 89-93
Week Thirteen April 17		Certiorari – Supreme Court litigation Writs – state and federal	Bryan Garner – Rules 94-97
April 19		Editing Make up motions	Bryan Garner – Rules 98-100
Week Fourteen April 22	Writs and what is cognizable	Let’s fill out an 11.07 writ form	
April 26		Last class –practice oral arguments of the brief	Final Brief Due

Assignments

There will be three graded writing assignments throughout the semester. The final brief will account for 50% of your grade. The other writing assignments will each account for 25% of your final grade.

Absences

You have 5 absences without penalty. On your sixth absence, I will lower your final grade by one grade level and refer you to Student Services. Since this class requires we work together as a “firm,” your presence and participation is necessary not just for yourself, but for your colleagues and clients.

Assignments Due

On the date an assignment is due, it is timely if brought to class and turned in or emailed to a private email address which will be given to you during class. This email is set up to ensure the anonymity of your assignments. It is not timely if presented after 4:15 p.m. on the due date.

If the assignment is presented within 24 hours from its due date and time, a reduction of 20% of the points earned will be deducted. If the paper is presented within one week of the due date, there will be a 50% deduction in points. After one week, the paper will not be accepted and a grade of 0 for that assignment will be assigned.

Real and true emergencies will be taken into consideration.

CAPS

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Chosen Names and Preferred Pronouns

I want to address each of you in a manner that corresponds to your identity. I will most often address students by their surnames (e.g., Ms. Smith, Mr. Perez). Recognizing that mistakes may unfortunately happen, chosen names and preferred pronouns—including non-binary ones such as they/them/their—will be respected in our classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun or if you have concerns about how I or your classmates address you.

Discrimination and Misconduct Information

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf>
(antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf>
(sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

Required Textbook

The Winning Brief by Bryan Garner

Hardcover: 800 pages

Publisher: Oxford University Press; 3 edition (May 1, 2014)

Language: English

ISBN-10: 0199378355

ISBN-13: 978-0199378357

Participation

This is not a class where you can sit back and take notes, although there will be times when that is required. This will be interactive with your colleagues. We will research together and write separately or in small groups. We will present our findings to the class. We will edit our colleagues' papers. Collaborative work is the foundation for this class.

Goal

As future attorneys, rarely will your client ever present himself with his issue squarely insular and written as “Question Presented.” This class will challenge you with writing effectively for the client when the answer is not always easily discernible or available.

UHLC Course Listing Course Note

The plan is for this class to meet face to face.

However, there may be some classes that meet by Zoom depending on circumstances or scheduling outside of our control.

If any of the classes are held via Zoom, here are some guidelines:

- (i) you must be connected to the internet videoconference when class starts;
- (ii) your computer must have a working video camera and quality audio capability, joining by audio-only due to your lack of video capability may be treated as an absence (you may need an external mic or headset for sufficient audio quality);
- (iii) if your computer is a laptop, you must not be distracted by traveling or other activities when you join the internet videoconference;
- (iv) you may not join the class session internet videoconference from a phone;
- (v) you must listen closely and speak loud and clear, as hearing students speak in the classroom and classmates ability to hear the remote presence student may not be optimal;
- (vi) you must identify yourself with your class roll name in the internet videoconferencing software;
- (vii) you must present your face and upper body area professionally in the video stream, eating “on-camera” is not a professional presentation;
- (viii) you must be able to fulfill your responsibilities if called on to discuss a case or course materials; and
- (ix) you must manage the “mute button” when remote to keep a professional demeanor.

Please feel free to email me at jani.maselli@gmail.com.

I will provide my cell number on the first day of class.