

Course Syllabus (pdf)

University of Washington School of Law

LEGAL ANALYSIS, RESEARCH AND WRITING, A506, Section I

Wednesday 9:00am-10:20pm/Friday 11:00pm-12:20pm

Remote Instruction via Zoom

Instructor:

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Course Description:

Welcome to Legal Analysis, Research and Writing. I look forward to working with all of you. Being a lawyer is a dynamic, exciting profession. We get paid to think, write and talk, helping our clients navigate worry, uncertainty, risk and potential exposure. Understandably, clients place great reliance on our judgment.

We have to understand all the facts of each client's particular situation, fitting them into the law which governs the events or controversy involved. The thinking, analysis and writing part of the lawyering process is often intense, requiring sustained effort over an extended period. But finding the right solutions for our clients is enormously satisfying.

Life events unfold in random ways. No two situations are exactly alike. An important part of our job is to figure out what body of law is the best fit for a client's precise circumstances. Some legal solutions are much clearer than others. But often enough, we have to wade through much uncertainty and ambiguity in our search for the right answers. This is an evolutionary process that requires us not only to be good thinkers and writers, but also good communicators.

We must talk with our clients regularly, updating them as we gather new information about their cases and our legal analysis evolves. This is just as important as the research and writing pieces.

The single most common bar complaint filed against practicing lawyers falls under the umbrella term of “client relations errors.” What does this mean? In the usual case, the lawyer failed to keep the client informed of what was going on and did not get their buy in for a course of action. I saw this again and again over many years as a WSBA disciplinary officer.

If litigation is involved, there is no way to predict precisely how a judge will rule on a motion or the verdict a jury will reach. Sensible people do not like to roll the dice on an outcome. So it is our job to outline the strengths, weaknesses and relative risks of a client’s situation. After thorough investigation of the facts and the law of a case, we make recommendations that try to put our clients in the strongest possible position, with the least downside.

Learning Objectives:

LARW is a critical part of legal education. The ability to write effectively has become more and more important, as the number of jury trials drastically declines in favor of motion practice and alternative dispute resolution. Developing a reputation as a good thinker and writer is one of the essential elements of a successful career. Judges, colleagues and opponents will respect you for it.

The main goals of this course are to help you:

1.
 1. Read, understand and apply case law well in making legal arguments.
 2. Properly interpret and apply statutes and other legislative rules.
 3. Understand how to put together the most complete, persuasive and compelling factual story on a client’s behalf.
 4. Come up with appropriate prediction models outlining the upside and downside of the potential outcome for clients.
 5. Write a predictive analytical memo which summarizes your assessment of a client’s legal situation in a succinct professional manner.
 6. Conduct basic legal research.
 7. Develop an appreciation of how best to meet the needs of your reader for information.
 8. Recognize and use the stylistic conventions of proper form.
 9. Use insight, self-reflection and collaboration with others to achieve the best thought out and persuasive position for a client.

Textbooks:

Helene S. Shapo, et al., *Writing and Analysis in the Law* (6th ed. 2013). A 7th edition of this book has been available for more than a year. However, close inspection revealed little substantive change, so I opted for the less expensive path.

Core Grammar for Lawyers (Requirement):

One of your required resources for Autumn and Winter LARW is *Core Grammar for Lawyers*, available at www.coregrammarforlawyers.com. CGL is an interactive learning program to help you learn to write accurately and clearly. While some of you have received a robust education in sentence-level writing and grammar, you'll likely find that legal writing has some new conventions. Others of you may not have received much instruction or feedback on your writing in your prior academic experiences. Regardless of your writing background, Core Grammar for Lawyers (CGL) is an excellent resource. **Pre-Test completion no later than Friday, October 23rd at 5:00 pm ([Online Registration and Instructions](#))**

Case Fact Patterns-Analytical Memo:

As a longtime criminal and civil practitioner, it has been an important part of my teaching style to bring the real world into the legal academy. While I greatly enjoy fiction when reading for pleasure, the material I draw upon as a teacher most often comes from true life events. The nature of our work requires the confident handling of similar problems. Experience is a very good anchor for learning the essential practice skills of legal writing and analysis. My goal as a teacher is to infuse real world situations in an interesting, appropriate and challenging way in the classroom.

Drawing heavily on common law, tort fact patterns are ideal source material for our work in LARW. We will use two tort cases for your analytical legal memos this quarter, one ungraded, the other graded.

Ungraded Analytical Memo-Colbert v. Moomba Sports

Your ungraded memo will assess the viability of a cause of action for the negligent infliction of emotional distress (NIED) that I handled on behalf of Jay Colbert, the father of 21 year-old Denise Colbert. A dual citizen of Germany and the U.S., Denise had graduated from Sumner High School. Admitted to college at both UW and a university in Germany, she decided the options in Germany were better suited for her international business career plan.

Set to fly to Germany the next day, she gathered with friends for a farewell party at a house on Lake Tapps in Pierce County. In the early morning hours, the group went out onto the lake in a ski boat owned by the host, Marc Jacobi. Denise was alternately swimming and holding onto the rear platform of the boat. Mr. Jacobi intermittently idled the engine. When the group decided to go back in, Denise and her good friend Lindsay Lynam elected to swim the short distance to the dock. A strong athlete, this should not have been at all difficult for Denise. However, she disappeared beneath the water. Lindsay became alarmed when Denise did not resurface. Multiple people called 911. Search and rescue authorities promptly arrived and began looking for Denise, as did her friends.

Jay Colbert was at home asleep when he received a call from Denise's boyfriend Kyle Swanson, who told him that his daughter was "missing" out on Lake Tapps. Given Denise's strong athletic skill, this made no sense to Mr. Colbert. He dressed quickly and went with his wife Kelly to a

friend's dock on Lake Tapps, not far from the search operation. Mr. Colbert continued to believe that his daughter would be rescued until he saw the police diving team send up a marker buoy a few hours later. Then he saw the police bring her body and take it to the shore, where it was loaded into an ambulance.

Six years earlier, the manufacturer of Marc Jacobi's boat had been made aware of the serious risk of carbon monoxide poisoning for anyone at the rear of their boats through a near-death of a young girl. This danger was a general problem for all passengers seated at the rear of similar ski boats with inboard automobile engines.

Denise Colbert's estate has filed an action for wrongful death against the manufacturer under Washington's product liability laws. Mr. Colbert also has filed an action against the defendant for the negligent infliction of emotional distress. You will be writing your ungraded analytical memo on his cause of action. **I ask that you not look at the Washington State Supreme Court's opinion in *Colbert* until after you have completed your memo, as you will get far more benefit from this exercise that way.**

Graded Analytical Memo-Wingate v. City of Seattle

Your graded memo will consider the case of Mr. William Wingate, a 71-year old African American man who alleges violations of his Constitutional rights and the Washington Law Against Discrimination by an officer of the Seattle Police Department. Mr. Wingate was standing at the corner of 12th and Pike, waiting for the light to change. A veteran of the United States Air Force and a Metro bus driver for years thereafter, until his retirement, Mr. Wingate was a responsible citizen who had an unblemished record. He regularly used a golf club as a cane on his daily walks over a 10-year period because it didn't make him "look old."

Mr. Wingate's claim arises out of an encounter he had on this Capitol Hill corner with then-SPD Officer Cynthia Whitlach. Defendant pulled up in her patrol car, with everything recorded on her dash camera. Claiming that he had used the golf club in a menacing way, she commanded him to put his "weapon" down. The officer was about 30 feet away, next to the driver's side of her patrol car. Hard of hearing, listening to sports radio on ear buds, Mr. Wingate initially was confused. When he realized that the officer was accusing him of misconduct, he repeatedly told the officer that he hadn't done anything wrong. He did not put the golf club down as ordered and told her that she'd better "call somebody," which she did. Mr. Wingate peacefully surrendered the golf club to a backup SPD officer after he arrived. He was then handcuffed and arrested, charged with harassment by the Seattle City Attorney's Office.

Represented by a Rule 9 legal extern, Mr. Wingate agreed to take a deferral on the charge. The agreement with the City Attorney was that everything would be dismissed if he had no criminal law violations for a two-year period. Meanwhile, the Seattle Police Department began an internal investigation of the officer, based on lack of probable cause for her stop of the plaintiff, then escalating the encounter in an unprofessional manner. Following the investigation, she was discharged from the force for cause.

Plaintiff filed a claim for damages and then a lawsuit against the City and the officer. The defendants removed the case to federal court, where it was assigned to the Hon. Richard Jones. On defendants' motion, all the federal claims were dismissed, but Judge Jones held that plaintiff could proceed on the basis of the Washington Law Against Discrimination and the intentional infliction of emotional distress (IIED). Unlike in *Colbert*, it is fine to read the opinion of Judge Jones, which is included in the course materials. The scope of his ruling is limited to striking the federal causes of action and upholding the state ones. **But please do not seek out and read the media accounts of this case and the jury trial based on it. This will not advance your knowledge in any meaningful way and will detract from the learning potential of your work in this class. You have all the evidence from the case right here in the Canvas file.**

I previously spent an entire class session on *Wingate v. City of Seattle* in my 1L Torts class in 2018, receiving strongly positive student feedback on its relevance and teaching value. I chose it for the graded analytical memo in LARW for the following reasons:

1.
 1. Actions under the Washington Law Against Discrimination (WLAD) have seen a significant increase over time, making a working knowledge of this cause of action important.
 2. Police encounters with civilians of color have become a matter of considerable national public concern.
 3. The near-universal presence of cell phone videos and recordings when events of legal significance occur makes it likely that you will be handling cases in your career with this form of electronic evidence. You need to know how to work with it, assessing the overall impact on an outcome.
 4. In that Judge Jones dismissed all but the WLAD and intentional infliction of emotional distress (IIED) cases, the legal analysis boundaries are well contained, making the project quite manageable.
 5. This is a case that could go either way before a jury, making your predictive analytical memo very important.
 6. Mr. Wingate was not harmed physically in the encounter, which allows greater focus on the underlying legal issues.
 7. The Seattle Police Department conducted an extensive investigation of the encounter, determining that the officer should be fired for her conduct. This lessens the "he said she said" dynamic in the case and the amount of time you must spend sorting out what actually happened. The question is what these facts mean for any potential liability under the law.

Grading:

You will receive one final grade for your combined performance during Autumn and Winter Quarters. This course is subject to UW Law's mandatory grading curve. You must satisfactorily complete all required assignments and activities, whether graded or not, in order to pass this course.

Autumn Quarter

Graded Assignment-35%

Winter Quarter

Graded Assignment-55%

Overall Class Engagement and Professionalism-10%

Winter quarter is weighted more heavily than Autumn (even though it is only two credits instead of three) because I want to base your grade more on the proficiency you ultimately achieve, and less on the earlier part of your learning curve.

The assignment sequence is designed to help you build skills over time by:

1.
 1. Learning skills
 2. Practicing them
 3. Receiving feedback on your work
 4. Incorporating it, resulting in improved performance

Division of Class Into Small Groups-In Class Presentations

Teaching by Zoom has required changes in how all courses are structured. A talking head on your computer screen for extended periods does not work. It is important to break things up, encouraging participation and discussion. To this end, I will be creating small groups of 4 members each in the class.

These groups will provide a convenient forum for discussing issues that come up in class. Each group also will be responsible for presenting an assigned case in class relevant to either the ungraded or graded analytical memo. (Everyone in class is responsible for reading these cases though. The group presentation will give you the opportunity to revisit your analysis, seeing if you missed anything).

Each group will use the basic Issue-Rule-Analysis-Conclusion structure for their presentation. But I also want each group to discuss the following other aspects of the case:

1. What was the procedural posture of the case on appeal? (e.g., decided by judge on summary judgment or jury verdict).
2. What remedy was the appellant seeking? (e.g., reversal and a new trial; reversal and judgment in favor of appellant).
3. What facts in the case story seemed the most important to the court's decision?
4. Core foundational elements. What legal theory, theories or guidelines did the court use to frame its decision?

5. How consistent was the outcome of this case with the common law precedent cited in the opinion? Did it change anything, making a cause of action easier or harder in the future?
6. What role did policy considerations play in the decision, if any?
7. Integrity and consistency of the court's reasoning. Did it hold together?
8. Any practicality or feasibility issues in applying this decision in the future?

Preparation For Class:

Recheck The Syllabus Periodically

Though I have put a great deal of thought into the design of this course, I remain vigilant about finding ways to make it of even more value to you as the quarter proceeds. Please check the syllabus regularly, as there may be some changes based on our progress week-to-week.

Reading/Assignment Schedule:

Week 1 -- Introduction to Judicial Decision Making, Legal Reasoning and Research

Before Class: [Please fill out the online questionnaire \(Due Sept. 28th before 12:00 pm; and How to Use Zoom in LARW;](#)

Class 1--Sept 30th (*Wed, 9:30 am – 10:20 am*)

Topic: Introduction to Legal Reasoning and How Judges Make Decisions.

Assignment: [Please Submit Your Online Questionnaire](#)

Presentation: Introduction to Legal Reasoning and How Judges Make Decisions.

Readings:

ONLINE READING: [Kerr, *How to Read a Legal Opinion*; Summary of Daniel Kahneman's *Thinking Fast and Slow*; Sutton, *How Judges Think and What Constraints Them* \(excerpt\); Bailey, *Questions Regarding Briefs*, Interview of Judge Lynn Duryee, Marin County, CA Superior Court \(ret.\)](#)

Class 2, Oct 2nd (*Fri, 11:00 pm – 12:20 pm*)

Topic: Summarizing Legal Case Analysis; The IRAC method and how to use effectively

Presentation: How to use the IRAC method

In Class: Group IRAC discussion for *Copier Specialists* case.

[Assignment: Prepare an IRAC outline of the *Copier Specialists* case](#)

[Readings:](#)

Text: Shapo, pp. 41-43; 56-61 (stop after 1st paragraph); 111-115; 119 (Sec. 2)-121 (stop at Ex. 4-B; 122 (Sec. 3)-125 ((stop at Ex. 4-D).

[Online Reading: Writing Legal Analysis \(excerpt from *Synthesis*\); *Copier Specialists* case.](#)

Week 2 -- Fundamental Common Law Concepts-The Role of Story in Legal Writing and Analysis

Class 3--Oct 7th (*Wed, 9:00 am – 10:20 am*)

Topic: *Fundamental Common Law Concepts*

Presentation: *Patterns and Challenges in Common Law Analysis; History of Emotional Injury Claims in Common Law*

Assignment: Small Group 1 Presentation [Dillon v. Legg](#)

[Readings:](#)

Text: Shapo, pp. 11-18 (stop after 2nd full para.); 20 (start with Sec. 5)-23 (omit Ex. 1-A).

Online Reading: [Dillon v. Legg](#)

Class 4, Oct 9th (*Fri, 11:00 pm – 12:20 pm*)

Topic: *The Central Role of Story in Legal Analysis and Writing*

Presentation: *Storytelling Structure and Impact on Thought*

In Class: *Discussion of the storyline in Colbert.*

Assignment: Small Group 2--Presentation [Hunsley v. Giard](#)

Readings:

Online Reading: [Hunsley v. Giard](#); [Zak, Why Your Brain Loves Good Storytelling](#); [Duggan, Shakespeare Just Wrote Your Opening.](#); [Declaration of Jay Colbert](#); [Declaration of Lindsay Lynam](#).

Week 3 -- *Colbert v. Moomba Sports*; Synthesis of Multiple Cases ; Statutory Analysis and Policy.

Class 5--Oct 14th (Wed, 9:00 am – 10:20 am)

Topic: Discussion of case “fusion”—creating a useful legal rule from multiple cases.

Presentation: Case Fusion Techniques;

In Class: Fuse three Washington automobile cases--duties of favored v. disfavored drivers.

Assignment: Small Group 3--Presentation [Cunningham v. Lockard](#)

Readings:

Text: Shapo, pp. 63-66 (omit Ex. 2A); 72 (sec. 3), 73 (sec. 4)-74 (stop at Ex. 2-6); 78-83 (omit Ex. 2-I and 2J; 135-143 (omit Ex. 5A); 145-150 (omit Ex. 5A); 247-252

Online Readings: [Cunningham v. Lockard](#); [WA Fusion Cases](#)

Recommended: Begin reading NIED case materials, guided by memo: [Reading Questions for NIED Cases.pdf](#)

Class 6, Oct 16th (Fri, 11:00 am – 12:20 pm)

Topic: Statutory Analysis and Policy

Presentation: How to read and analyze statutes, trying to make sense of them.

Assignment: Small Group 4 Presentation [Gain v. Carroll Mill Co.](#)

Readings:

Text: Shapo, pp. 87-93; 98-103; 107-109 (omit Ex. 3J), 253-268.

Online Readings: [Gain v. Carroll Mill Co.](#)

Week 4 -- Synthesizing NIED Cases; *Examining the Colbert Factual Record; Intro To Legal Writing*

Class 7--Oct 21st (*Wed, 9:00 am – 10:20 am*)

Topic: Synthesizing NIED Cases

Presentation: Discussion of pre-Colbert NIED law in Washington. Understand individual case holdings. Work toward a single issue statement of Washington's NIED rule.

Assignment; Small Group 5 –Presentation [*Hegel v. McMahan*](#)

Readings:

Text: Shapo, 155-160 (stop at Ex. 6A)

Online Readings: [*Hegel v. McMahan; Colbert Case Materials \(edited and condensed\)*](#)

Class 8, Oct 23rd (*Fri, 11:00 am – 12:20 pm*)

Topic: Introduction to the Legal Writing Process

Presentation: A look at the overall structure of legal writing and how best to communicate your legal analysis to others.

Assignment (due): [Written Assignment: Turn in synthesized NIED Rule](#)

Readings:

Text: Shapo, pp. 155-160 (stop at Ex. 6A), 189-212 (skip exercises).

Week 5 -- The Predictive Office Memo: *Introduction to Legal Research*

During this week, you should be working on your Colbert “first draft” memorandum

Class 9--Oct 28th (*Wed, 9:00 am – 10:20 am*)

Topic: The Predictive Office Memo

Presentation: An Overview of the Purpose, Structure and Conventions of Predictive Office Memos

Readings:

Text: Shapo, pp. 163-169; 171 (section B)-179; 181-184: 185 (start at Editing Checklist)-188.

[Online Readings; Analytical Memo Format and Content Guidelines-Colbert;](#)

Class 10, Oct 30th (*Fri, 11:00 am – 12:20 pm*)

Topic: Introduction to Legal Research

Presentation: Guest lecture by UW Reference Librarian Mary Whisner

Readings:

No reading for today's class

Week 6 -- The Colbert Analytical Memorandum: First Draft

Class 11--Nov 4th (*Wed, 9:00 am – 10:20 am*)

Topic: Peer-review of “version 1” *Colbert* memo..

[Assignment: Turn in your “version 1” Colbert memo](#)

Class 12, Nov 6th (*Fri, 11:00 pm – 12:20 pm*)

Topic: *Colbert* oral arguments. Continue to work toward “version 2” *Colbert* memo.

Readings:

Online Reading: [Questions About Summary Judgment Pleadings](#)

Week 7 -- Begin work on Final Graded Assignment-Memo in Wingate v. Seattle

Class 13--Nov 11th (*Wed, 10:30 am – 12:20 pm*)

Veteran's Holiday--No Class

Class 14, Nov 13th (*Fri, 11:00 pm – 12:20 pm*)

Topic: Discussion of facts of *Wingate v. City of Seattle*

Assignment Due: Turn in your final *Colbert* memo.

Readings:

Online Reading: [Wingate case materials; Washington cases alleging discrimination/police misconduct on Canvas](#)

[[Note: The Grimsby case differs from the others, here to describe the standard for intentional infliction of emotional distress; The summary of Washington's Law Against Discrimination is intended as helpful background on the general body of law](#)]

[Pre-Class Video: Watch SPD dash camera video of encounter between Mr. Wingate and Officer Whitlach.](#)

Week 8 -- Conferences

Class 15, Nov 18th (*Wed*)

No Class-- Set up a time to meet with me using the Canvas' calendar scheduling feature.

Class 16, Nov 20th (*Fri*)

No Class-- Set up a time to meet with me using the Canvas' calendar scheduling feature.

Week 9 -- Continued Discussion of Wingate case and legal authority:, Writing Tips and Fine Tuning

Class 17--Nov 25th (*Wed, 10:30 am – 12:20 pm*)

Topic: Continued discussion of Washington case authority applicable to Wingate case.

Assignment (due 9:30am): Turn in research summary of Washington legal authority that applies to *Wingate case*.

Readings:

ONLINE READING: [Review prior reading from 11-13, Summary, Washington's Law Against Discrimination](#)

Pre-Class Video: [Review officer's dash camera video of the incident leading to this case.](#)

Fri Nov 27th Thanksgiving Holiday—No Class

Week 10 -- Peer Review of the First Draft

Class 18--Dec 2nd (*Wed, 10:30 am – 12:20 pm*)

Topic: Fine-tuning memorandum structure and organization. Substantive questions/discussion.

Assignment Due: You must send a final draft of your memo to your partner by 5 PM today for peer review

Class 19, Dec 4th (*Fri, 11:00 am – 12:20 pm*)

Topic: Peer review activity, with group discussion thereafter about the feedback.

Week 11 -- Final Assignment Due

Class 20--Dec 9th (*Wed, 10:30 am – 12:20 pm*)

Assignment Due (9:00 am): [Turn in your final graded assignment](#)