Day 1: Overview & Case Briefs:

- Organization
- Style
- Authority
- Analysis
Legal Papers

- Demand Letters; Emails to opposing counsel;
- Interoffice Emails; Client Letters, emails; Memos to a Partner;
- Appellate or Motion Briefs;
- Contracts;
- Judicial Opinions, and more.
Consistent Organization & Style

- Know your audience;
- Know your purpose;
- Determine the customary heading, greeting, structure, and style;
- Begin with an Introduction;
- State the relevant facts;
Consistent Organization & Style

- CRAC the Issue(s);
- Conclude - Address any next steps;
- Maintain a Professional tone;
- Consider when and how you deliver the communication; and
- Cite to authority!
Know Your Audience

Audience:

U.S. trained lawyer

(Judge, attorney, professor, business associate)
U.S. Rhetorical Preferences

- State the conclusion early and at the end.
- Straightforward words. Avoid informal, but avoid “legalese.”
- Concise sentences.
- Active voice.
- Paragraph form.
- Topic Sentences.
Civil Law v. U.S. Common Law

- Judicial Reasoning Matters!
- Can be hard to find the Rules.
Goals and Learning Objectives

1. To understand the U.S. written organizational format for legal communication and issue analysis.

2. To efficiently and effectively read a U.S. opinion.

3. To assess and apply U.S. legal reasoning in issue analysis.

4. To adopt the preferred U.S. legal writing style and rhetoric.

5. To understand U.S. rules on citations - proper attribution to authority.

6. To improve understanding of the U.S. legal system.
1) To understand the U.S. written organizational format for legal communication and issue analysis.

A) Identify in legal opinions the basic format of Introduction, Issues/Questions, Background/Facts, Discussion IRAC (Issue Rule Application Conclusion) by noting the sections in the margins.
1) To understand the U.S. written organizational format for legal communication and issue analysis.

B) Identify in the Discussion sections of legal opinions the basic organization format of IRAC (Issue Rule Application Conclusion) by noting the sections in the margins.
1) To understand the U.S. written organizational format for legal communication and issue analysis.

C) Identify CRAC (Conclusion, Rule, Application, Conclusion) in a practitioner memo or brief by noting the sections in the margins; and
1) To understand the U.S. written organizational format for legal communication and issue analysis.

D) Implement the CRAC format in a written memo on a hypothetical legal scenario by:

1) Stating the CONCLUSION succinctly using language defining the legal ISSUE and key material facts;

2) Identifying the RULE(s) for a specific issue by stating it succinctly and noting the proper citation to the authority;

3) Effectively APPLYING the rules to the facts at hand by:
   a. Explaining the rule(s) by describing how the court applied the rule to the determinative facts in precedent;
   b. Directly comparing and contrasting to the facts of the precedent cases you identified when explaining the rule; and
   c. Stating whether the reasoning in other cases applies to the facts analyzed and how; and

4) Explicitly stating your CONCLUSION on each issue.
2. To efficiently and effectively read a U.S. opinion.

A) List the basic pieces of a “case brief,” including procedural posture, issues, rules, facts, reasoning, holding, judgment, and functional analysis;
2. To efficiently and effectively read a U.S. opinion.

B) Complete a Case Brief of a U.S. opinion;
2. To efficiently and effectively read a U.S. opinion.

C) Cite to legal authority; and
2. To efficiently and effectively read a U.S. opinion.

D) Determine a case’s weight of authority on a specific audience.
3. To assess and apply U.S. legal reasoning in issue analysis.

A) Effectively explain the policy context of a case;
3. To assess and apply U.S. legal reasoning in issue analysis.

B) Describe how the case applies the rule;
3. To assess and apply U.S. legal reasoning in issue analysis.

C) Describe a court’s reasoning; and
3. To assess and apply U.S. legal reasoning in issue analysis.

D) Compete a fact comparison chart to show the similarities and differences in the facts from a case or cases to the matter being analyzed.
4. To adopt the preferred U.S. legal writing style and rhetoric.

A) Choose words that are simple and pointed, avoid legalese but also avoid informal words;
4. To adopt the preferred U.S. legal writing style and rhetoric.

B) Write in paragraph form, using lists sparingly and strategically;
4. To adopt the preferred U.S. legal writing style and rhetoric.

C) Use topic sentences;
4. To adopt the preferred U.S. legal writing style and rhetoric.

D) Use headers and sub-headers, understand the use of outlining prior to writing;
4. To adopt the preferred U.S. legal writing style and rhetoric.

E) Use active voice as a default; and
4. To adopt the preferred U.S. legal writing style and rhetoric.

F) Cite to authority.
5. To understand U.S. plagiarism rules and proper attribution to authority.

A) Identify U.S. practice standards for plagiarism;
5. To understand U.S. plagiarism rules and proper attribution to authority.

B) Demonstrate knowledge of when to use direct quotes, when to paraphrase, and when to summarize in written work; and
5. To understand U.S. plagiarism rules and proper attribution to authority.

C) Implement basics of the commonly used system for citation (Bluebook) and identify free resources to find information on citation format.
6. To improve understanding of the U.S. legal system.

A) Demonstrate a basic understanding of U.S. federalism, U.S. court structure, and the three branches of government;
6. To improve understanding of the U.S. legal system.

B) Differentiate between the U.S. common law system and one’s own legal system (civil, common law or mixed);
6. To improve understanding of the U.S. legal system.

C) Explain possible sources of U.S. law, identifying primary and secondary authorities;
6. To improve understanding of the U.S. legal system.

D) Discuss a current U.S. case to demonstrate an understanding of the U.S. system; and
6. To improve understanding of the U.S. legal system.

E) Find and use free online resources to find information on court systems and legal vocabulary.
“You will study the wisdom of the past…. You will study the life of mankind, for this is the life you must order, and to order with wisdom, must know. You will study the precepts of justice, for these are the truth that through you shall come to their hour of triumph.”

—Benjamin Cardozo, Former Supreme Court Justice

Excerpt from speech delivered at the 74th commencement of the Albany Law School on June 10, 1925.
U.S. System Overview

- Dual System - Federal and State
- 3 Branches of Government
- Court Hierarchy: Trial, Intermediate Appellate, Final Appellate
- Federal Court System
- State Court System
- Authority: Primary v. Secondary; Mandatory v. Persuasive
Case Briefing

Why?

- To improve your understanding of the U.S. legal system and to increase your practice in efficiently and effectively reading U.S. opinions

- By rewriting the pieces of the case in a case brief, you will better comprehend the case and understand the pieces of the organizational structure most opinions follow.
Case Briefing

What?

- Short document that breaks down the pieces of a case.
- What pieces? Ask what matters in understanding a case and in putting the case in context (for a U.S. Law School class?).
Case Briefing

- **Heading:**
  - Case name & citation (practice The Bluebook format here).

- **Procedural History or Posture:**
  - Where is this case procedurally—what court, what level of appeal—and how did it get there?

- **Issue(s):**
  - A substantive statement of the issue consists of the point of law in dispute with some mention of the key facts of the case relating to that point of law in dispute.

- **Facts:**
  - List the legally relevant details that tell the story of the case.
Case Briefing

- **Rules:**
  - What rule(s) of law did the court apply to determine the issue. A rule of law could derive from a statute, case rule, regulation, or may be a synthesis of prior holdings in similar cases (common law). The rule or legal principle may be expressly stated in the opinion or it may be implied.

- **Holding:**
  - This is the court’s decision in this specific case— the application of the rule(s) to the facts. If you have written the issue statement(s) as a question, the holding is often the answer to the question of the issue statement.

- **Reasoning:**
  - This is the court’s analysis of the issues and the heart of the case brief. Reasoning is the way in which the court applied the rules/legal principles to the particular facts in the case to reach its decision. This includes application of rules as well as policy arguments the court uses to justify its holding.
Case Briefing

☐ Concurring/Dissenting Opinions.

☐ Functional Analysis:

☐ Why does this case matter considering the legal issue you are concerned with [or: why did the professor assign this case at this time in the semester for this class]?
Rule Extraction

- How do you find the rules in U.S. law?
- It is important to be able to read a legal opinion and extract from that opinion the legal rule(s) used to determine the case.
- There may be rules from statute, precedent, constitutions, or regulations. There may also be a new rule created in the judicial opinion.
- Identify the rule and pull it out of the case, and state it in a way that it can be applied to other sets of facts in the future.