Online Teaching Ideas

K.K. DuVivier

7-1-2020

Some tools

- 1) Multiple choice questions (both for student learning & assessment)
- 2) Videos with reflection and attention questions
- 3) Student video presentations with peer assessment
- 4) Hypothetical essays & reflections

Reminder: Tools are just a means for reinforcing pedological goals.

| ∷ PRE F2F Content | | | |
|--------------------------|------------|--|--|
| ii | | Part II: Subject Matter Jurisdiction: Federal Question | |
| ii | | Part IV: Venue | |
| :: | P | Connected Quizzing #2 - Practice Jan 31 0 pts | |
| ij F | POST | F2F Content | |
| # | <i>\$3</i> | M2: SMJ & Venue Hypothetical Essay Feb 7 1 pts | |
| # | = | M2: Review/Reflection SMJ & Venue Feb 7 1 pts | |
| : | B | M2 Essay Assignment - Federal Question and Venue (Buffalo Creek) Feb 7 1 pts | |
| ii | | Connected Quizzing #2 - Closed Book Feb 7 0 pts | |

Instructions

Please write your response in no more than 600 words. Once you submit your response the answer key and a real student sample will be provided. You have 60 minutes to write your response/essay.

For the next assignment you will be reflecting on your essay compared to the answer key and real student sample. You will be asked to list 2 things you did well and 2 things/questions you would like to focus on to improve.

Quiz Type Graded Quiz

Points 1

Assignment Group Assignments

Shuffle Answers No

Time Limit 60 Minutes

Multiple Attempts No

Question 1 1 pts

Fact Pattern: For ten years, Lee and Olle Ryan have lived in an apartment complex at the corner of University Blvd and Evans Avenue in Denver. In 2018, the couple spent the 4th of July at picnics with their friends. By the time fireworks began to crack in the evening sky, Lee had had quite a bit to drink. His wife, Olle, drove the couple home, but when they got there, Lee told her he was going to drive to the convenience store for another 6-pack. Olle tried to hide the keys, but Lee jumped on her to get them and knocked her to the ground, giving her a black eye and several bruises. Once he got the keys, Lee headed for the car, and Olle called 911 to report the couple's struggle and to ask for help to keep her husband from driving.

Two security guards employed by the apartment complex, Ashe and Beck, arrived before Lee had left the apartment parking garage. They asked Lee to go up to his apartment with them. Lee refused and lurched toward the guards while cussing. Ashe wrestled Lee to the ground, and Beck tasered Lee. Ashe and Beck are both citizens of Nebraska hired by Protection, Inc., to provide security for the Ryans' apartment building over the 4th of July week while the regular guards were on vacation.

Lee hired an attorney to file a lawsuit against Ashe and Beck in the Denver District Court on Colfax Avenue. The complaint alleged state law tort claims and included a federal count based on the fact that the tort occurred on federal property. Lee's attorney did not list an amount for damages, following the Colorado rules, but she feels she can support a claim for at least \$80,000 from the defendants jointly or severally, based on both actual damages and damages for emotional distress.

Assume you are the attorney for Ashe. Discuss what you need to consider if you wish to remove this action to federal court.

Answer Key:

M2 Question and Answer Key (See this word document for helpful highlights)

M2 Student Sample

SMJ

- 5__Removal: The process is started by a Δ (not P) when it files a notice of removal 28 USC 1446(a) with the federal court "for the district or division embracing the place where such action is pending." 28 USC 1441a. Because only one federal court encompasses all of the state of Colorado, then any case brought in the state must be removed to the United States District Court for the District of Colorado, which is located in downtown Denver. Removal is only allowed if the federal district court would have original SMJ determined at the time of the notice of removal, but if D attempts to join parties that would destroy SMJ, the court may deny joinder or permit joinder and remand to state court. 28 USC 1447(e). Even though this case is based on Diversity (28 USC §1332), removal from state to federal court is not barred by 1441(b)(2) because neither A nor B is a "citizen" of Colorado for purposes of 1332, so no in-state Δ problem. Under 1446bA, when there are multiple Δs, all must join or consent to a 1441a removal, so A must contact B to get approval before filing the notice of removal.
- 5____ SMJ generally: Federal cts & state cts often have concurrent jurisdiction. In comparison to state cts with general jurisdiction, federal cts have limited SMJ through statutes enacted by Congress, which are more limited than the Art. III, §2 powers. SMJ is the power of a federal (v. state) court over the particular type of case (subject of the lawsuit). This case was originally brought in state court, so the first step for determining removal under 28 USC 1441 is to see whether there is SMJ over each claim and party in the original action by L v. A & B.
- **5**____Federal Question: Lee alleged a federal count due to the fact that the tort occurred on federal property. This is probably insufficient to qualify as a federal question under **28 USC 1331**. Using the **Holmes "arises under" test**, the basic claim itself seems to be based on **state tort law**, and thus does not arise out of federal law similar to Glannon (3^{rd} ed) p. 103. There is no **federal question on the face of the well-pleaded complaint (Mottley).** Also similar to Mottley, a federal question must be based on the π "s claim **and not a potential defense** by the Δ .

- 5____Diversity under 28 USC §1332 requires Diversity of Citizenship and Amount in Controversy. For DOC, look at the citizenship of each of the parties. Constitution only requires minimal DOC, but SCOTUS decided that 1332 requires Complete DOC (Strawbridge), meaning no π & Δ can be domiciliaries of the same state. Citizenship is measured at the time the complaint is filed, not at the time of the event leading to the action. Citizenship of Individuals: Individuals have only 1 citizenship, where they are domiciled= where they reside and intend to stay indefinitely (Milliken/Gordon/Mas).
- 5___ DOC test Applied: Lee as π has his home of 10 years in Colorado. Even though he is renting an apartment, we can probably assume he both resided and intended to stay indefinitely in CO, and for purposes of DOC at the time the lawsuit would be filed, L appears to be a citizen of CO, so we will make that assumption for the remainder of this analysis. A new citizenship is not established until an individual has satisfied both requirements—residence and intent to stay in that residence (WWVW). The fact pattern says that Δs , A & B, "are both citizens of Nebraska" so no further discussion is required concerning where they reside or intend to stay. We have complete DOC for L (CO) v. A & B (NE) claims.
- 5_AIC: SMJ must be established for each claim so even if there is DOC, the claim must also meet the AIC. 28 USC 1332a says AIC must "exceed the sum or value of \$75,000" to keep federal cts from wasting time on trivial lawsuits. There must be both a legal and factual basis for the AIC (Kahn). Although P's attorney did not list an amount in the complaint, she thinks she can support \$80K, so we don't need to worry about accepting π 's demand in good faith. However judge can take evidence on AIC and will decide on nature of π 's injuries not the # in the complaint. Δ can challenge if can prove to legal certainty π will not meet threshold (Diefenthal/ St. Paul).
- 3__Aggregation: Under case interpretations, a single π may aggregate related or unrelated claims against a single Δ to meet the AIC requirement. Here we have a single π but 2 Δ s. Normally claims against Δ s cannot be aggregated but here **P** is suing them "jointly or severally" for the \$80K claim. If the either might be liable for the full amount, then it meets the AIC requirement. Glannon 3.VI.4. A's counterclaim probably cannot be included in meeting the AIC requirement. Glannon 3.VI.5.

Venue

- 5___Venue generally: Venue is a localizing principle for allocating cases between cts. Not a constitutional right, but instead is created by legislation for convenience and the relationship of the ct to the action or parties. The primary federal venue statute is 28 USC 1391. 1391(b) sets out the 3 main ways of establishing federal venue. 1391b1=where the Δ resides as long as all Δs reside in the forum state. 1391c1 defines residency for "natural persons" as "the judicial district in which that person is domiciled. P's residence is not relevant to proper venue under the federal statute. 1391b3 is the fallback provision, which can be used only when 1391b1 (defendant residency) and 1391b2 (substantial part of events) do not apply. If wrong venue, transfer under 1406; if correct under 1404. These events are inside US, so forum non conveniens not likely to apply.
- 5____ Venue applied here: A&B are both domiciled, and thus reside in NE, so a CO forum does not fit 1391b1. Section 1391b2 says proper venue is "where a substantial part of the events occurred" and does not require the MOST substantial part (Uffner). Because the events of 7/4/2017 occurred in CO, venue in CO does meet this test. 1391b3 cannot be applied because we have proper venue in CO under 1391b2. Furthermore, once the lawsuit is removed to federal court, the court to which it was removed is considered the proper venue. 28 USC 1441a & Glannon (3rd ed) p. 382-83.

Removal

Removal is the process of moving a case from state to federal court. Only goes one way (cannot go from federal to state) and only D has right to do this. Federal Court (FC) in Denver is just blocks away from district court. Additionally, all Ds must agree to remove. Removal statute is 1441 (if you're going to remove, you'd file a 1446). You cannot remove if D is a citizen of the state in which the case was originally filed. However, because Ashe/Beck are citizens of NE (and not CO where the case was filed) this isn't relevant. If they wanted to remove the case to NE, they'd need to establish the court in CO didn't have jurisdiction (JX). However, the facts don't indicate this is what we intend to do (and likely wouldn't succeed).

If we wish to remove to FC, we need to do SMJ analysis.

Subject Matter Jurisdiction (SMJ)

SMJ is the ability of federal (vs. state) court to hear a certain type of issue. It's given power by Article 3 Section 2 of constitution. State and FCs often have concurrent jx but state courts are courts of general jx, while FCs are courts of limited jx. You must have SMJ for each claim in a lawsuit. It cannot be waived/ can be brought up at any point in trial (even appeal) sua sponte by the court. To get SMJ, you need one of the following things: federal question under 1331, diversity under 1332, or another statute.

Federal Question (FQ

This FQ statute is 1331. You ask if the case arose from federal law (Holmes creation test). There must be a FQ on the face of the well-pleaded complaint (potential defenses/counterclaims aren't sufficient) (Mottley). The claims in this case are related to state law (tort) so it doesn't appear there are FQs.

Diversity

The diversity statute is 1332 and requires two things: diversity of citizenship and amount in controversy (AIC).

Diversity of Citizenship (DOC)

To determine DOC, you look at citizenship of each party at time of filing. Individuals have 1 citizenship, where they are domiciled. Domicile means where they reside + intend to stay indefinitely (Milliken/Gordon). If they haven't acquired a new domicile, it'll revert back to previous domicile until they acquire a new one (Mas). Corporations can have 2 citizenships under 1332c, their state of incorporation (SOI) and PPOB (Hertz). The constitution only requires minimal diversity, but Strawbridge interpreted 1332 to mean complete diversity is necessary – means no P can have same citizenship as any D.

Lee Ryan is likely domiciled in Colorado. The fact pattern states he's lived there for 10 years so I'll assume he's made that his permanent residence and intends to stay indefinitely. Ashe/Beck are citizens of Nebraska, as explicitly stated in the facts. Therefore, there's complete DOC for P's original claims:

AIC

The AIC must be above \$75k. This requirement was created to avoid wasting time/ taxpayer money. You must have a factual and legal basis (Diefenthal/Kahn). There's a good faith rule but if D can show you wouldn't get this amount, they can question the SMJ (Saint Paul).

Lee's attorney feels she can support a claim for \$80k+ (but cannot list an amount under Colorado rules). If the state tort claim has a factual and legal basis of being \$80k, this case would meet the AIC.

Aggregation

Generally, one P can aggregate related/unrelated claims against one D. One P cannot aggregate claims against multiple Ds (unless they're jointly/severally liable). Multiple Ps cannot usually aggregate claims together to meet AIC.

The fact pattern indicates that Ds could be jointly/severally liable, so Ryan would be allowed to aggregate these claims.

Other Statutes

The last way to get SMJ is by another statute giving FCs original jx to hear type of case. Examples of these are 28 USC §§1333, 1334, 1338, or 42 USC §1983.

Venue

Venue is a localizing principle for allocating cases between courts. It's not constitutional – was created by legislation for convenience. There can be more than one proper venue. The venue statute is 1391.

1391b1 says the proper venue is where the D resides (if there are multiple Ds, they all must reside in the same state). 1391c says that a corporation resides where they are subject to PJ and individuals reside where they are domiciled (residing+intending to stay indefinitely). Under 1391b1, proper venue could be in NE because Ashe/Beck are citizens of NE.

1391b2 says the proper venue is wherever substantial part of the events (or omission) occurred to give rise to the claim. It doesn't have to be THE most substantial, just A substantial part (Uffner). Use Uffner "but for" test to determine. Under this, proper venue would be in CO because the events occurred there.

1391b3 is the fallback provision you only use when b1 and b2 don't apply. This says that proper venue is wherever the D is subject to PJ. Both apply so this is not necessary for this case.

If transferring and you're in proper court, transfer's under 1404. If you're not in proper court, under 1406. If there are multiple districts, for purposes of venue, you treat each district as if it were its own state. However, in CO there's one district so this isn't an issue. Proper venue for alien Ds is it anywhere in United States. Forum non conveniens applies in international cases (not relevant here). Therefore, the proper venue is in CO but also could be in NE.

Instructions

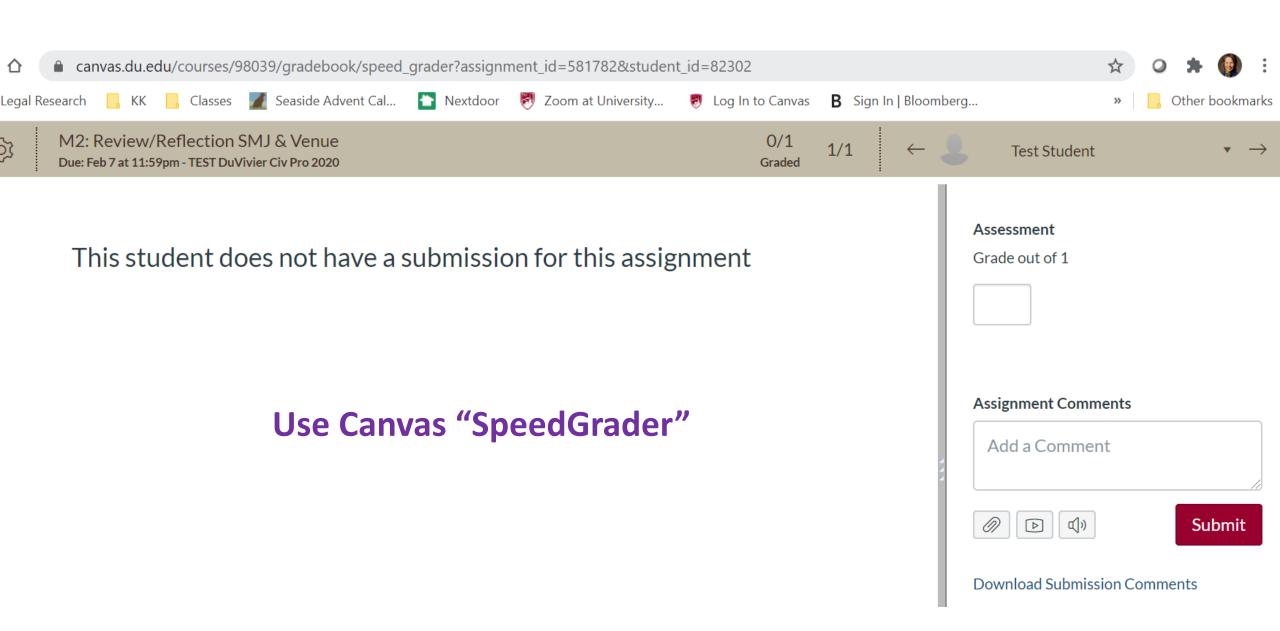
Review your response to the hypothetical against the answer key and student sample. Write a short reflection (about 200 words) on how you did, specifically listing 2 things you did well and 2 things you have questions about or think you could improve on. These answers will be reviewed by Professor DuVivier or the AAP student leaders.

Points 1

Submitting a file upload

| Due | For | Available from | Until |
|-------|----------|----------------|-------|
| Feb 7 | Everyone | - | - |





Using Technology to Assist in Providing Meaningful Feedback

June 24, 2020

AALS Technology Section Webinar Series

Welcome & Introduction

Leanne Fuith
Professor and Dean of Career and
Professional Development,
Mitchell Hamline School of Law



Logistics

- Format
- How to ask questions
- Webinar will be recorded and available for on-demand viewing

AALS Technology Section Webinar Series

Michelle Zakarin

- Associate Professor of Legal Process
- Touro College, Jacob D.
 Fuchsberg Law Center
- Connect on LinkedIn
- Follow me on Twitter@MLZESQ



mzakarin@tourolaw.edu

Feedback

 Most important tool for learning and teaching.

ABA Standard 314 ASSESSMENT OF STUDENT LEARNING

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide *meaningful feedback to students*.

Feedback is only effective when:

- Read by the student
- Understood by the student.

Handwritten Feedback:

- Comments made throughout paper, using a pen or pencil
- Comments also made on a separate "grading sheet" or rubric
- Can be time consuming, sloppy
- If in pencil, need a backup if worried a student will change a grade
- If lost, no replacement and no feedback
- Handwriting concerns cursive concerns



Microsoft Word – Text Comments

- Great way to get started providing feedback electronically.
- Allows you to type specific comments on the side of the paper.
- Easy to read.
- Can be saved on your computer and then sent to the students via email as an attachment.

or the copyright occurs upon properly sending an approach to the copyright office.

B. The legislative intent of the statute supports the application approach because congress wanted a party with copyrightable work be able to bring an action of infringement while their application was being decided so as to not allow an infringing party to continue to profit.

The application approach is supported by the legislative intent of 17 U.S.C.§ 411(a) because Congress did not want someone to profit off of someone else's work while their application was being decided. The institution of infringement actions supports the position that Congress intended for registration to be complete upon application of copyright. Id. at 634.

The United States District Court of the District of Columbia has held that the application approach is the right approach in determining the legislative intent of 17 U.S.C.§ 411(a).

International Kitchen Exhaust Cleaning Ass'n v. Power Washers of North America. 81.

E.Supp.2d 70, 72 (D.D.C 2000). The court reasoned that in order to promote the interest of justice and judicial economy a party may sue once the Copyright Office receives the plaintiff's application, deposited their work and paid the appropriate feel Id.

Michelle Zak..., 6/19/2018 8:47 PM

Comment [22]: an.

Michelle Zak..., 6/19/2018 8:47 PM

Comment [23]: any support for this?

Michelle Zak..., 6/19/2018 8:47 PM

Comment [24]: for.

Michelle Zak..., 6/19/2018 9:09 PM

Comment [25]: The first two paragraphs

should be combined.

Canvas – Speedgrader:

- Not every school uses Canvas.
- Learning Management System (LMS)
- Learning curve but worth it.



 Speedgrader function on Canvas allows teachers to provide comments electronically (similar to Word).

Many options for providing comments





Submitting a file upload



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF JERICHO UNITED STATES OF AMERICA,

Prosecution,) No. 710 L 4113

v.) N.W.

NICHOLAS BRODY,)

Defendant.

MEMORANDUM IN SUPPORT OF THE MOTION TO SUPPRESS EVIDENCE INTRODUCTION

The prosecution, the United States of America, has brought action against the defendant,

Nicholas Brody, a local resident of the city of Garden View, Jericho. The prosecution alleges Mr.

Brody was in possession of fifty marijuana plants found during a search warrant executed on

February 14, 2020. These plants are classified as scheduled substances and illegal to possess,

under 21 U.S.C. §811. On May 4, 2020 Nicholas Brody filed a motion to suppress as to the

evidence of the marijuana plants pursuant to a violation of his Fourth Amendment Rights. This

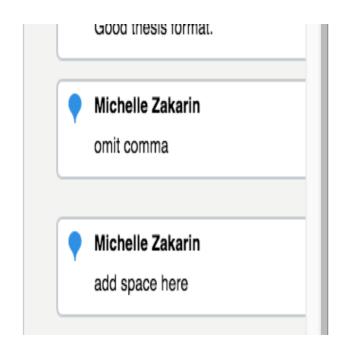
memorandum is submitted in support of the motion to suppress evidence because the officer

exceeded the plain view doctrine when searching Nicholas Brody's computer sub-folders and

| Assessment 2 | | | |
|--------------|-----------------------------|-------------------|--|
| Criteria | Ratings | Pts | |
| Caption | Saved Comments | | |
| | [Select] | / Invalid score | |
| | Comments | / 1 pts | |
| | | 11 | |
| | Save this comment for reuse | | |
| Introduction | Saved Comments | | |
| | [Select] | / Invalid score | |
| | Comments | /4 pts | |
| | | | |
| | Save this comment for reuse | | |
| 1 | Total Po | oints: 0 out of 5 | |
| Save Cancel | | | |

Point Annotations:

One way a will can be revoked is by destruction. Id. The issue is whether Frieda, upon Molly's request, destroyed the will when she threw it in a pail of water, in front of Molly and their two neighbors. In determining whether a will was revoked by destruction, the courts look at how the will was destroyed, the actual damage and whether the decedent had the intention to revoke the will. In re Davis' Estate 6 Misc.2d 10, 11, 161 N.Y.S.2d 759, 760 (Sur. Ct. N.Y. Cty. 1957).



Highlight Text -

decedent did not have testamentary capacity when executing a second will. Id.

Our case is like <u>Giaquinto</u> because like in the opinion of the friend of the testator, the therapist in our case stated that even though Molly had many moments of clarity. Furthermore, our case is like <u>Friedman</u>, because like the drafter of the will and decedent <u>Friedman</u>, Darlene and Molly had many meetings and discussed the will multiple times. Our case is different from <u>Slade</u>, because the decedent did not know what stocks she owned and how much the property she was disposing was worth. In our case, Molly knew she was leaving her diamonds to her daughter.



Michelle Zakarin

I think you may have meant to omit "even though" - always edit carefully to be sure it states what you intend.

Strikeout Text -

Another way a will can be revoked is by execution of a subsequent will. In re Estate of

Giaquinto 164 A.D.3d 1527, 1528, 83 N.Y.S. 3d 728 731 (3d Dept. 2018). This issue is whether

Molly Maplewood was able to demonstrate the requisite intent to revoke her original will when

she executed a second will. The proponent has the burden of proving that the testator had

testamentary capacity when executing a will. Id. The courts look at whether the testator



S Michelle Zakarin

No need for an issue statement here.



Michelle Zakarin

Good.

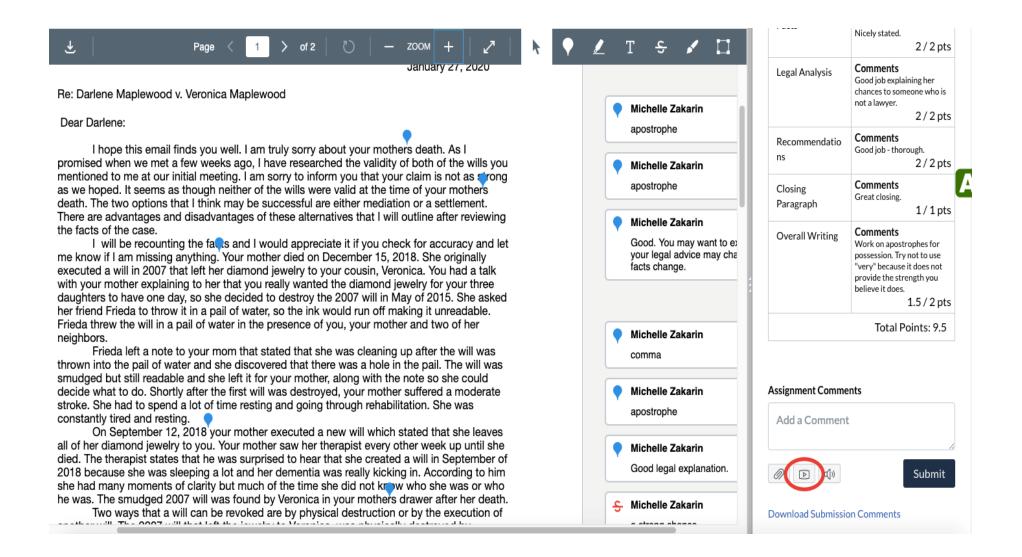
Other Annotation Tools

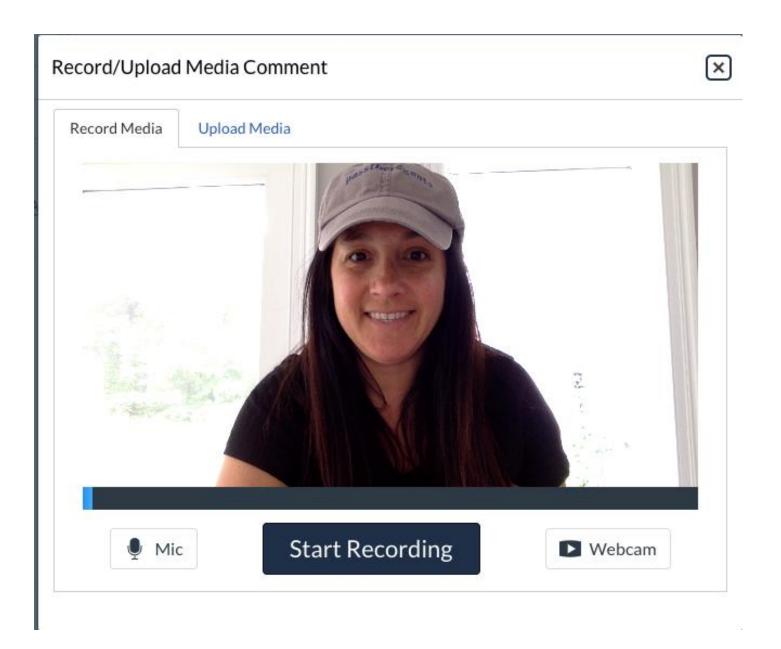
 Those are the tools I use most often – but there are others as well.



Alternatives/ Additions to Written Feedback

- Audio
- Video





Rubrics:

- Rubrics are optional to provide even more detailed feedback.
- Students can view rubric before they submit assignment.
- Saves comments.

Final Appellate Brief



You've already rated students with this rubric. Any major changes could affect their assessment results.

| Criteria | Ratings | Pts |
|---|---|---------|
| Table of Contents Displays sections of the appellate brief with corresponding page numbers. Headings and subheadings are persuasively written and have page numbers corresponding to where they appear within the brief. | This area will be used by the assessor to leave comments related to this criterion. | 3.0 pts |
| Table of Authorities Provides authorities cited within the brief in Bluebook form without pinpoint citations. Can be separated into groups of: cases, statutes, miscellaneous. Within each separated part, should be listed in alphabetical order. | This area will be used by the assessor to leave comments related to this criterion. | 5.0 pts |
| Statutory Provision(s) Involved Provide exact language of statute(s). Uses proper block quote form if required under Bluebook rules. Follows all Bluebook rules for citation. | This area will be used by the assessor to leave comments related to this criterion. | 1.0 pts |
| Question Presented Persuasively written question subtly suggesting the answer that you hope the court will reach. | This area will be used by the assessor to leave comments related to this criterion. | 3.0 pts |
| Statement of the Case Contains a preliminary statement (first paragraph) providing the procedural history of this case. The rest should be dedicated to an accurate portrayal of the facts written in a way that emphasizes the positive facts and de-emphasizes the negative facts. | This area will be used by the assessor to leave comments related to this criterion. | 3.0 pts |

Assessment

Grade out of 25

24

View Rubric

| Assignment 5 | |
|---|--|
| Criteria | Ratings |
| Applicable Statute | Comments Good. 3/3 pts |
| Brief Answer | Comments Good. 5 / 5 pts |
| Discussion section with thesis paragraph Comments Thesis paragraph is great. This section is organized beautifully and you make some great points. Be sure to work on the analogies/distinctions that relate to the specific ROL for each analysis. See my comments on this. Otherwise, your and great. | |
| Conclusion | Comments Great job. This is a less formal version of your thesis paragraph so you can omit parts of the rule. Good use of CRAC format. 4.75 / 5 pts |
| | Total Points: 24 |

Places grades in the internal gradebook and calculates it for you once each assignment is graded.

| Assignment 2 - Five Paragraph Sin Out of 5 | Assignment 3 - Statement of Facts Out of 5 | Legal Research Exercise 1 - Resear Out of 5 | Assignment 4 - Heading, Question Out of 5 | Assignment 5 - Discussion with the Out of 25 |
|---|---|---|--|--|
| 4.5 | 4 | 5 | 5 | 24 |
| 4.5 | 4.5 | 5 | 5 | 22.75 |
| 4.5 | 4.75 | 5 | 5 | 20 |
| 4.25 | 4.5 | 5 | 4.5 | 21.75 |
| 4.75 | 5 | 5 | 4.5 | 24 |
| 3.75 | 4.25 | 5 | 4.5 | 18.25 |
| 4.75 | 4.75 | 5 | 4.5 | 23.25 |
| 4.25 | 4.25 | 5 | 5 | 23.5 |
| 4.5 | 4 | 5 | 4.25 | 20 |
| 4.25 | 4.5 | 5 | 4.25 | 22 |

Be Aware:

- A teacher must be sure that the grade posting policy is set up to reflect the teacher's wishes.
 Ex: Students may receive grades/feedback as soon as it is entered on Speedgrader unless specified to wait until the entire class is graded.
- Not all students are tech savvy. Some struggle in the beginning.

Summary:

- Feedback is important however it is given (no NEED for technology) – but technology can be helpful.
- Technology can be useful to provide feedback.
 - Can make teaching more effective.
 - Can help students because it will not "get lost," it is easy to read and understand, helps students know how they are performing in the class (before it's too late!).

AALS Technology Section Webinar Series

Questions & Answers



Michelle Zakarin

Mzakarin@tourolaw.edu

Upcoming Webinars

- Digital Accessibility: Tips on Making Your Course Accessible (July 8)
- Al Fundamentals for Faculty (July 15)
- Helping Law Students Become Tech-Ready for Practice (July 22)

For full list: www.aals.org/sections/list/technology-law-and-legal-education/

Wrap Up

Survey – Your Feedback is Important!

Please consider joining the Section on Technology, Law and Legal Education

Thank you for your attendance!