

Science and Law

University of Oklahoma College of Law
Spring 2020

Thursdays 1:00 - 2:50 p.m.
Classroom CLC

Eric E. Johnson
Associate Professor of Law

SYLLABUS

1. GOALS AND LEARNING OUTCOMES: My primary goals for this seminar are for you to have the chance to explore the intersection of science and law (and in the process think more deeply about the law and its place in society), to develop the ability to act comfortably in the role of law teacher and law scholar, and to create a strong paper that will be helpful in establishing your career.

The following are key particular learning outcomes:

1. Be able to insightfully analyze readings and arguments concerning the intersection of science and law.
2. Be able to develop, research, write, and refine a strong scholarly paper on the law within the ambit of the intersection of science and law.

While it is not required that you publish your seminar paper or that it be of publishable quality, it is my strong hope that most of you will seek publication for what you produce. You will be putting in a lot of work – why not maximize the return on your investment by taking it all the way to publication? And please keep in mind that after the semester is done, I can still be a resource for you in advising you to help you develop your paper further and to help you strategize about publication.

2. COURSE STRUCTURE: Most sessions will consist of two parts: (1) “Writing Time,” during which we will talk about scholarly writing and the progress being made on students’ papers, and (2) “Reading Time,” where we will have discussions about the day’s reading. For most classes, the Reading

Time portion will be led by teams of students. We will make those assignments in class. I will provide more specific instruction on how to do a good job as a discussion leader.

3. MATERIALS:

3-1. Required Books to Purchase:

Please have a physical, paper copy of the following book:

Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review (5th Edition) by Eugene Volokh (Foundation Press 2016). Please bring this book with you to class each day.

3-2. Law Review Articles:

Most weeks we will read a law review article. For all law review articles assigned as reading in this course, please obtain your own copy, print it out, and bring the printed copy with you to class. I will provide links to free online copies when I can. Otherwise, obtain your own copy from HeinOnline, using your OU login credentials. Always get the article in its original typeset form, with footnotes rather than endnotes. And bring that original version to class. (Thus, please don't use Lexis or Westlaw for obtaining the reading.)

4. CLASS WEBSITE, COMMUNICATIONS, OFFICE HOURS, POSTING OF ASSIGNMENTS, ETC.:

4-1. Class Website and Canvas: The central repository for class materials and information is the class website. It is not password protected. Go to [ericjohnson.com](http://www.ericjohnson.com) and find the link on the upper left. The direct URL is: http://www.ericjohnson.com/courses/science_and_law_20/.

We will also make some use of Canvas for particular things, including turning in deliverables and for posting information that has student names.

4-2. Posting: Reading assignments will be posted to the Chart of Assignments, which may be accessed from the class webpage. Here is the direct link to the Chart of Assignments: http://www.ericjohnson.com/courses/science_and_law_20/Science_and_Law_Chart_of_Assignments.html

4-3. Office and Office Hours: My office is on the third floor, room number 3034. My phone is 405-325-2273. I post open office hours on my website at ericjohnson.com. I may post a sign-up sheet outside my office for students to reserve slots ahead of time. If office hours are not convenient, please do not hesitate to e-mail me to make an appointment to talk, and when you do, it helps if you include some suggested times that work for you. Or grab me after class with your calendar. I am happy to meet students after the completion of the course, either by appointment or during open office hours, for review and consultation, including providing feedback on the final paper.

4-4. E-mail: My e-mail address is eric.e.johnson@ou.edu. Please note that I do not answer or discuss substantive questions about the law or your paper through e-mail. Why not? The answer to a substantive question is almost always, “It depends ...”, and thus it becomes very difficult to draft satisfying written responses to such questions. Answering those questions in person is much easier, because I can ask clarifying questions and we can go back and forth until there’s an answer you find satisfactory. So please bring substantive questions to class or to office hours.

Please do not ask questions for which the answers are clearly found in this syllabus. And if you miss class, please ask other students what you may have missed.

Any e-mail communications you have with me should be prepared in a professional manner, including the use of a meaningful subject line. Also please note that, perhaps unlike many students, I do not read e-mail on a constant basis. So please be patient for a reply.

4-5. Please Do Not Ask for Deadline Extensions: I already have a system in this syllabus for handling the turning in of things late and the consideration of extenuating circumstances. See §11-0, *infra*.

4-6. Faculty Reporting Obligations; Lack of Confidentiality; No Legal Advice:

(a) It is important for students to understand that faculty are subject to various mandatory reporting obligations stemming from federal law, state law, and university policies adopted to make our community safer. Information a student shares with me, that I may be obligated to report, may include, but is not necessarily limited to, that which relates to sexual harassment; gender-based discrimination; sexual-orientation discrimination; other forms of discrimination; sexual assault; stalking, dating or domestic violence; child abuse or neglect; and various crimes. This might include third-hand accounts of claims or allegations of these things. Mandatory reporting obligations can cover things that happened in the past, on or off campus, involving university-affiliated persons or not. The requirements can be complex. More information can be found here: <http://www.ou.edu/eoo/reporting-responsibilities>. Bottom line, **you should assume that nothing you tell me will be kept in confidence.**

(b) Please do not ask me for legal advice. I am not licensed to practice law in Oklahoma, and I cannot be your attorney. It is my job to prepare you eventually to give legal advice to others, and I am obviously happy to talk through hypotheticals with you, as that is a key way of exploring and learning the law. But giving legal advice upon which someone should be able to rely generally takes working up an in-depth understanding of the facts and taking a careful appraisal of the client’s interests – all of which calls for working in the

context of a confidential relationship. It also sometimes requires doing legal research. I'm not in a position to do any of that for you.

4-7. Letters of Recommendation, Serving as a Reference: It's important to me to do a good job as a reference for my students. So if you might wish for me to serve as a reference for you or write a letter of recommendation for you in the future, then I ask you to let me know that on the last day of class with an e-mail that attaches your résumé. **Take a moment to put this on your calendar now.** This will allow me to file away some notes about my recollections of you, and then I can use those notes in the future as a basis for writing a letter for you or taking a telephone call on your behalf. I also refer you to a memo I've written about references and recommendations: Find the link on the left side of my homepage.¹ If you review that memo, you can help me to do the best possible job in helping you.

5. READING AND DISCUSSION OF READING:

5-1. Approach to Reading: Don't take anything you read for granted. Be critical. Try to read like a scholar: Instead of looking past mushiness, confused explanations, or glossed over analytical steps, confront them. Welcome thoughts going through your head such as: "Mmmm, interesting!" "Ah ha! That makes sense!" "What is wrong with this writer?!" "That connects to this other thing we read ..." "What the writer is doing here is effective ..." and so forth. The admonition to read critically applies not just the law-review articles we will read, but to the Volokh reading as well.

5-2. Discussion: Discussing the reading is the heart of the seminar format. So use the reading as the raw material for coming to class filled with things to say, insights to share, and compelling questions to pose. Above all, aim to participate in discussion of the reading in such a way as to clearly evidence the fact that you did the reading and did it well. See §8-8 for more information along these lines and for information about how class participation will be graded.

6. PAPER TOPICS:

6-1. Topic Categories That Fit Within Science and Law: To fit within the subject matter of this course – science and law – it is expected that your paper will fall within one of the following broad categories, listed below. If you have an idea for a topic that does not fall within one of these categories, I will be happy to discuss the prospect with you, but you will bear the burden of demonstrating that your paper belongs within the ambit of science and law. Here are the broad categories for papers in this course:

- Uses of scientific evidence in litigation and legal processes (including the standards for admissibility of scientific expert testimony; junk

¹ The direct URL is

http://ericejohnson.com/docs/Memo_to_Students_re_References.pdf

science in the courtroom; wrongful convictions based on bad scientific evidence; criminal exonerations; establishing causation in tort claims; etc.)

- The effect of intellectual property law on science (including how IP encourages, frustrates, or redirects scientific work or access to the fruits of scientific research)
- The use of scientific knowledge and methods in regulatory work and administrative decision-making
- Science versus constitutional rights or human rights (including First Amendment controversies with regard to vaccine objectors, the teaching of evolution and intelligent design in public schools, and prior restraints on the publication of scientific research)
- Risks of scientific research to subjects or bystanders in the context of liability or administrative regulation
- The use of scientific knowledge or methods to critique substantive or procedural law
- Comparing and contrasting methods, norms, or ethics of science or scientists versus the methods, norms, or ethics of law or lawyers

6-2. Distinguishing Technology from Science: Please note that a paper does not fit within the ambit of science and law merely because it concerns some technology which makes use of scientific principles or knowledge. For instance, an automobile involves the application of scientific principles and knowledge (Newtonian mechanics, hydrocarbon chemistry, etc.), but that doesn't mean that papers about the vehicular code, highway safety regulation, or automobile products liability fall within the ambit of science and law. The same holds true even in discussing a new technology: A paper about the regulation of drones, without more, is not science-and-law paper. Along these lines, please consider that this seminar is generally not a good vehicle for doing papers concerning reproductive rights, reproductive technologies, gun rights, animal rights, video games, or sports, unless there is an unusually clear and explicit focus on science. Papers that concern those things and yet fall within the ambit of science and law are expected to be rare.

6-3. Crowded Fields: Certain topics are perennial favorites for student writing, including reproductive rights, reproductive technologies, gun rights, animal rights, video games, and sports. As such, they have become crowded fields in the literature. The more crowded the field in which you write, the greater the burden you will bear in being familiar with the existing literature and explaining why your paper makes a novel contribution. Because of this, even if such a paper would have an unusually clear and explicit focus on science, I strongly encourage you to avoid such crowded fields.

7. PAPER PROGRESS AND DELIVERABLES:

7-1 Introduction: You will not just turn in a final paper to me at the end of the semester. I will need to see your progress in the form of intermediate work product throughout the semester. The purpose of this structure is to help you get your paper done and to help me help you make the paper the best it can be.

7-2 Modes for Delivering Deliverables: Check the Chart of Assignments for information on how to turn in deliverables.

7-3 Comments from Me: I will provide you with written comments on the comment draft of your paper (deliverable no. 10). For other deliverables, I generally will not provide you with written comments. If you want oral feedback, please ask. I'm happy to go over any deliverable and any aspect of your writing in office hours or after class.

7-4 Necessity of Delivering Deliverables: You must turn in the deliverables. Turn them in when due. Turning in deliverables on time according to the instructions earns you automatic, easy-to-get points toward your final grade. (See §8-10 for more information about the grading of these.) But if you don't get a deliverable turned in on time, and thus you have lost out on the opportunity for getting the corresponding point or points, you must still turn in the deliverable as soon as possible. Your turning in of deliverables is what shows me you are making adequate progress toward the finished paper. For any student that falls behind with regard to the deliverables and is not, in my judgment, making adequate progress, I will seek involuntary withdrawal of the student from the course. Administrative withdrawal will presumptively be considered appropriate for any student who is more than one week late in turning in any deliverable. Moreover, I will not award a passing grade for any student who has not turned in all deliverables; thus failure to turn in all deliverables will necessitate a failing grade or an incomplete for the course.

7-5 The Deliverables: The deliverables are set out below along with their point values for grading purposes. Do not rely on the list here for the full instructions on what is required or how to turn it in. Expect that more details will be provided via the Chart of Assignments and will be discussed in class.

Deliverable 1: Annotated Abstracts/Introductions

due in class on Thursday, January 23, 2020

This deliverable consists of abstracts or introductions from at least 15 law review articles² that have been marked up by you with notes. Bring to class three copies: one for me to keep, one for you to hold on to, and one to pass around for other students to leaf through.

² The word "article" as used in this syllabus just means a piece in a law review, even if it is denominated as an "essay," "comment," "note," "book review," etc.

Deliverable 2: Three Paper Ideas

due in class on Thursday, January 30, 2020

This deliverable consists of one page that delineates three ideas you have for your paper. Each paper idea should be described tersely – one to three sentences. Bring to class enough paper copies for every person in the class (i.e., max 17).

Deliverable 3: Paper Proposal/ Abstract

due by noon on Wednesday, February 5, 2020

(file name: LASTNAME_03.docx)

This deliverable consists of at least 250 words describing your proposed paper. This deliverable will be turned in as the paper's abstract using the manuscript template.³

Deliverable 4: Manuscript 750, Literature Discussion

due by noon on Wednesday, February 12, 2020

(file name: LASTNAME_04.docx)

This deliverable is your manuscript⁴ with a total of at least 750 words, which is 500 more than required for the last deliverable. Your manuscript must contain at least 500 new words critically discussing at least two law review articles that are relevant to your topic.

Deliverable 5: Manuscript 1250

due by noon on Wednesday, February 19, 2020

(file name: LASTNAME_05.docx)

This deliverable is your manuscript with a total of at least 1250 words, which is 500 more than required for the last deliverable.

Deliverable 6: Manuscript 2000, Argument Interrogatories

due by noon on Wednesday, February 26, 2020

(file name: LASTNAME_06.docx)

This deliverable is your manuscript with a total of at least 2000 words, which is 750 more than required for the last deliverable. Within your manuscript, you must explicitly answer these interrogatories: (1) What is the problem your paper addresses? (2) Why won't the problem

³ The "manuscript template" is a DOCX file that is set up to look like a law review article, and it is the file that will eventually evolve into your final manuscript. It will be made available from the class website.

⁴ Here and with regard to future deliverables, "your manuscript" means that you will be using further evolutions of the manuscript template, referenced in the preceding footnote.

resolve on its own without a legal solution? (3) What have others suggested to fix the problem, and/or why don't others perceive the problem as a problem? (4) What is your proposed solution to the problem? (5) Why will your solution work? (6) What are at least two examples of how it would work? Those interrogatories and your answers to them must constitute at least 750 words. (Going forward, you should delete the text of the questions themselves, keep the text of the answers, and work that answer text into your evolving manuscript.)

Deliverable 7: Manuscript 3000

due by noon on Wednesday, March 4, 2020

(file name: LASTNAME_07.docx)

This deliverable is your manuscript with a total of at least 3000 words, which is 1000 more than required for the last deliverable.

Deliverable 8: Manuscript 4500

due by noon on Wednesday, March 11, 2020

(file name: LASTNAME_08.docx)

This deliverable is your manuscript with a total of at least 4500 words, which is 1500 more than required for the last deliverable.

Deliverable 9: Manuscript 6000

due by noon on Wednesday, March 25, 2020

(file name: LASTNAME_09.docx)

This deliverable is your manuscript with a total of at least 6000 words, which is 1500 more than required for the last deliverable.

Deliverable 10-A: Manuscript 7000 - Comment Draft, Delivered Electronically

due by noon on Wednesday, April 1, 2020

(file name: LASTNAME_10.docx)

This deliverable is your manuscript with at least 7000 words; the manuscript is more or less complete, with all sections written, although it is okay at this stage to have a few not-yet-finished/place-holder footnotes below the line, as well as some bracketed notes indicating where something has yet to be done above the line. This comment draft will be reviewed by me (your professor) and by two student reviewers.

Deliverable 10-B: Manuscript 7000 - Comment Draft, Three Copies Delivered on Paper

due in class on Thursday, April 2, 2020

This deliverable is the comment draft on paper – the exact same as the comment draft you already turned in electronically. You must bring to class three copies on paper, one for the professor, and one each for your student reviewers.

Deliverable 10-C: Comment Draft Questionnaire, Three Copies Delivered on Paper

due in class on Thursday, April 2, 2020

This deliverable consists of your answers to a set of questions about your comment draft, including questions about the word count, the number of law review articles you cite, etc. I will distribute the questionnaire via the Chart of Assignments. You must bring to class three copies on paper, one for the professor, and one each for your student reviewers.

Deliverable 11: Peer-Assistance/Feedback Package (Comments on Others' Comment Drafts)

due by noon on Wednesday, April 8, 2020

(file names:

YOURLASTNAME_feedback_for_REVIEWEDLASTNAME.docx,
YOURLASTNAME_mark-up_for_REVIEWEDLASTNAME.pdf)

This deliverable consists of your written comments on the comment drafts of two other students. I will provide specific instructions about how to do this, and I will make assignments concerning who will review whose papers.

Deliverable 12-A: Final Manuscript, Delivered Electronically

due by noon on Wednesday, April 22, 2020

(file name: LASTNAME_12.docx)

This deliverable is your final manuscript, turned in as both a PDF and DOCX file. It must meet the minimum requirements set out elsewhere in this syllabus. Those requirements include that the paper has at least 7,125 words for the body – i.e., including the footnotes, but not including the abstract or table of contents, and not including any bibliography or appendix if present. And the body without the footnotes must be at least 5,000 words. **Note: You may turn your paper in early; you don't need to wait until the deadline. EXTRA CREDIT OPPORTUNITY: If you turn in your final paper electronically at least a full 24 hours before it is due, I will award one extra credit point toward your final course grade.**

Deliverable 12-B: Final Manuscript, Delivered on Paper

due in class Thursday, April 23, 2020

This deliverable is the final manuscript on paper – the exact same as the manuscript you already turned in electronically.

Deliverable 12-C: Final Manuscript Questionnaire, One Copy Delivered on Paper

due in class on Thursday, April 23, 2020

This deliverable consists of your answers to a set of questions about your final manuscript, including questions about the word count, the number of law review articles you cite, etc. I will distribute the questionnaire via the Chart of Assignments.

8. GRADING:

8-1. Overview: Your grade will be based on a paper component (75 of 100 points) and a class-participation component (25 of 100 points). In addition, as discussed below, your grade might be adjusted upward based on exceptional performance or downward based on attendance, lateness in turning things in, or misconduct.

8-2. Initial Assigning of Grades and Grade Distributions: I will add up the paper-component points and the class-participation points, and I will use the sum to make an initial assignment of grades. This initial assignment of grades will not be done on a curve or to correspond to a pre-determined grade distribution or pre-determined grade point average. This means you are not in competition with your fellow students for a limited pool of grades. (Thus, please favor cooperation and generosity with your classmates!) To make the initial assignment of grades, I will look at the total points and use my discretion to draw grade cut-offs based on natural breaks and clumps that occur in the point totals, a developed sense of how a given letter grade corresponds to levels of performance and achievement, and precedent set by grade distributions in various courses in prior semesters. But I treat precedent lightly. If the whole class does well, then the grade point average can skew higher. Of course, the reverse could be true. Bottom line, I aim for grading that is fair, so the grading should neither be harsh nor an easy A. Then, after the initial assignment of grades, I will retain the discretion to adjust grades upward one or two steps, as discussed below. Grades can also be affected by severely or profoundly deficient attendance and by academic dishonesty, as discussed further below.

8-3. Alternative Minimum Grading:

(a) In addition to the method of the initial assignment of grades discussed in §8-2, I will also calculate an alternative minimum grade for each student in terms of the sum of the paper-component points and the class-participation points, according to this schedule:

A+	97% to 100%
A	93% to 96.99%
A-	90% to 92.99%
B+	87% to 89.99%
B	83% to 86.99%
B-	80% to 82.99%
C+	77% to 79.99%
C	73% to 76.99%
C-	70% to 72.99%
D+	67% to 69.99%
D	63% to 66.99%
D-	60% to 62.99%

If the alternative minimum grade according to this schedule is higher for any student than the assignment of grade under the method disclosed in §8-2, that student's initial assignment of grade shall be the alternative minimum grade.

(b) Note that through the alternative minimum grading approach described here, it is possible that one or more students' grades might end up higher than they would have been otherwise. But nothing in this §8-3 can work to make a student's grade lower than it would be otherwise.

(c) For clarity, note that this alternative minimum grade applies prior to any adjustments made upward or downward, including for lateness, attendance, misconduct, etc.

8-4. Discretionary Step-Up Adjustments:

Subsequent to the initial assignment of grades by the means discussed above, I may add to one or more students' grades on a discretionary basis, with the result forming the grade for the course. Such adjustments, if made, will ordinarily be no more than one step, such as from a B to a B+. In extraordinary cases, I could make an adjustment of two steps. Substantively, the rationale for a step-up adjustment would involve a student's distinguishing herself or himself positively from fellow students with regard to both effort and quality of contributions.

8-5. Attendance and Grading: This is a seminar course, and it is built around participation. Moreover, it only meets once a week. These things together make attending every class very important. Thus, absences and tardiness can have a negative effect on your overall course grade. If attendance issues are severe enough, they can result in mandatory step-down adjustments of the final grade or the assignment of a failing grade or the imposition of involuntary withdrawal. See §11 on attendance, *infra*. In addition, absences and lateness may figure into deciding whether to award a discretionary step-up adjustment under

§8-4 – that is, even where absences have not accumulated such that they would cause an automatic step-down in grade (as described in §11-3), if there is more than one absence, attendance can be noticed in the context of overall class participation. As to whether and how attendance will be considered, factors will include the number of absences and partial absences, the student’s attendance record in comparison with the attendance records of others, courteousness and professionalism in dealing with attendance issues, and extenuating circumstances.

8-6. Academic Misconduct/Dishonesty and Grading: Cheating, dishonesty, or serious academic misconduct of any kind in this class will presumptively result in a failing grade (e.g., a letter grade of F) for the semester.

In any instance of misconduct, I reserve the right in my discretion to request involuntary withdrawal or award a lower grade other than a failing grade if I find there to be extraordinary mitigating circumstances. Despite my reservation of rights in this regard, however, do not expect leniency.

Please note that the awarding of a lower grade or a failing grade for misconduct is not to the exclusion of other sanctions, and I intend, in virtually all instances, to refer cheating or serious academic misconduct to the College of Law and/or the administration of the University of Oklahoma for being dealt with under applicable policies, including the Code of Academic Responsibility.

8-7. Incompletes:

If, by the end of the semester, a student has not completed the minimum requirements for the course, including turning in all deliverables and turning in a final paper that meets minimum requirements, I may, in my discretion, either assign a grade of incomplete or a failing grade. A failing grade is the presumptive consequence. If I assign an incomplete, in order to have the grade replaced by a passing letter grade, the student must meet with me and then complete the outstanding tasks on a timetable to which I agree. If the student remedies the incomplete as prescribed, I will assign a letter grade based on the completed work but with an additional grading penalty of at least one step down (e.g., from a C to a C-). Under no circumstances will a student be able to benefit with regard to grading from an incomplete. Thus, for example, if a student received zero points on the peer-assistance/feedback package deliverable because the student did not turn it in during the semester, and if an incomplete is assigned on this basis, then completing the peer-assistance/feedback package may work to remedy the incomplete, but it will not add points to the zero points already assessed.

8-8. Grading the Class-Participation Component:

(a) Class participation will count as one-quarter of the points for the initial assignment of grades. In talking about class participation, I mean to refer to that part of the class that is not the paper. Thus class participation for grading

purposes is generally in-classroom discussion, discussion leadership, and presentations.

(b) The sine qua non for getting class participation points is participating in a way that proves you have done the reading. The essential requirement for having a good seminar discussion about the reading is that everyone has done the reading. The way I will be able to tell whether or not you've done the reading is by carefully listening to your contributions to the discussion. Not every comment has to evidence having done the reading. You might provide a keen insight about the topic under discussion by referencing a television show you've seen, for instance. But do not omit to provide other commentary in class discussion that evidences the fact that you have engaged meaningfully with the reading. My sense of how closely and thoroughly you've read, as evidenced by your contributions to discussion, will be my primary driver for grading your class participation.

(c) While you should stay mindful of demonstrating that you have done the reading, that's the starting point for a good discussion, not the end point. So don't worry so much about giving the "right" answers to questions. Exercise your freedom to have your own views on the materials and topics under discussion. Class discussion is much more about asking questions, offering opinions, and looking for insights than it is about right answers. But to the extent answers might be right or wrong, consider that wrong answers are part of the learning process, and class participation is about furthering the learning process.

(d) Negatives for class participation include exhibiting visible disengagement in the classroom, being unprepared for class, disruptive behavior (including, but not limited to, a pattern of appearing distracted by a computer or phone), conduct contrary to the Classroom Conduct Rules (listed below), conduct contrary to other admonitions communicated in the syllabus or otherwise, and any conduct that detracts from the educational process.

(e) *A rough guide / rubric for assigning point values:* In addition to the guidance disclosed above and further below, I will use the following as a general guide in making class-participation point assignments:

25 points	The student participated in class with alacrity, showing consistent preparedness and willingness to engage. It is evident that the student made a genuine effort to do all the assignments at a reasonably high level. The student read deeply and critically and wrestled with the puzzles presented. The student never or almost never seemed disengaged from class or discussion, such as being absorbed in a phone, working on e-mail, etc. The student showed energy and full effort in the role of a discussion leader and showed good faith in doing the presentation and
-----------	--

	using it as an opportunity to try to better her or his paper.
20 points	The student participated consistently and was generally well-prepared and engaged with the class in good faith. It is evident that the student made a genuine effort to do nearly all the assignments at a reasonably high level. The student read deeply and critically. The student almost never seemed disengaged from class or discussion, such as being absorbed in a phone, working on e-mail, etc. The student showed energy and full effort in the role of a discussion leader and showed good faith in doing the presentation and using it as an opportunity to try to better her or his paper.
17 points	The student's participation evidenced having done the reading much more often than not, and at a reasonably high level most of the time. The student put in a strong showing with the presentation and role as discussion leader.
13 points	The student's participation evidences having done the reading more often than not. But there are shortcomings. The student's participation often did not evidence the student having done the reading with reasonable completeness or depth. In addition, the student may not have put in a strong showing either as a discussion leader or presenter.
7 points	The student's participation did not evidence having done the reading with reasonable completeness and depth most of the time. The student's role as discussion leader or presenter may have shown notable lack of effort.
3 points	The student's participation was substantially lacking. There may have been a lack of effort in both the roles of discussion leader and presenter, or the student may not have done a presentation or class discussion as assigned.

8-9. Grading the Paper Component, in General:

(a) *In general:* Work on the paper component of the class will count as three-quarters of the points for the initial assignment of grades – thus, 75 possible points.

(b) **Breakdown of points:** Of the 75 points for the paper, 60 points are for the final product, 10 points are for “in-progress deliverables,” i.e., deliverables 1-10, which constitute work on the way to your final paper, and five points are for your comments on other students’ papers, as assigned.

8-10. Grading of Deliverables 1-10, the “In-Progress” Deliverables (1 point each, total of 10 points):

For deliverables 1-10, each deliverable is worth one point out of 100 points for the total course grade. I will award the full point simply for the deliverable being done in good faith with reasonable effort, turned in on time and in adherence to the correct format. This is meant to be on an all-or-nothing basis, but if a progress deliverable does not meet this standard, but comes close, I may in my discretion award a half point. Expect that I may not evaluate the deliverables for points until after the last class at the end of the semester.

(c) **Extra credit points available for deliverable 10 (the comment draft):** If the comment draft meets the minimum requirements for a final paper (see §8-12(a), *infra*), then I will assign one extra-credit point toward the student’s final course grade. If the comment draft meets the minimum requirements for a final paper (see §8-12(a), *infra*) and the threshold requirements for a B- grade (see §8-12(c)), then I will assign a total of three extra credit points. But be aware that I will not give out such extra credit points loosely. I will be rigorous in applying final-paper standards to the comment draft for determinations about extra credit.

8-11. Grading of Deliverable 11, the Peer-Assistance/Feedback Package (up to 5 points):

I will award between zero and five points for your feedback and constructive comments on others students’ comment drafts, according to instructions that I will give you. To get all five points, follow the instructions and provide excellent feedback that shows genuine engagement with the paper and which will contribute strongly to its improvement.

8-12. Grading of Deliverable 12, the Final Paper (up to 60 points):

I will award between zero and 60 points for the final paper.

(a) **Minimum requirements:** The final paper must meet the minimum requirements set out below. Note that if the final paper does not meet these minimum requirements, the student cannot receive a passing grade for the course.

- The paper is original work that makes a claim about a legal subject within the scope of the seminar – meaning it relates significantly to the intersection of law and science. (See §6 with regard to acceptable paper topics.)
- It has meaningful organization and the citation broadly corresponds to legal citation style appropriate for legal scholarship printed in a law

review according to the most recent edition of *The Bluebook: A Uniform System of Citation*.

- The paper is submitted
 - in the form of a DOCX file,
 - in the form of a PDF file, and
 - in hard copy on physical paper.⁵
- It is at least 7,125 words for the body – i.e., including the footnotes, but not including the abstract or table of contents, and not including any bibliography or appendix if present. The body without the footnotes is at least 5,000 words.⁶
- In terms of form and style, it is in standard written English and shows generally comprehensible spelling, grammar, and punctuation.
- The paper must have been developed for this course, was not pre-existing, and cannot have been previously submitted, nor is it simultaneously being submitted, for academic credit in another course. Any exception to this must be approved by me in writing, and would only be appropriate in a situation in which the additional content and value added corresponding to this course meets or exceeds the productivity required of a fully autochthonous paper.
- The paper is uncompromised by issues of academic dishonesty, academic misconduct, or plagiarism.

(b) **Basic expectations:** The final paper is expected to meet the basic expectations set out below. A final paper that does not meet these basic expectations will presumptively be heavily penalized in grading.

⁵ Why so many formats to submit? I require the hard-copy/physical-paper version because one is required by the OU College of Law rules in order that a paper satisfy the Graduation Writing Requirement. I require the DOCX file because it is a standard, expedient way of meeting OU College of Law's requirement that to satisfy the Graduation Writing Requirement, an "electronic copy" must be submitted in a form "that allow[s] electronic comparison of [students'] papers with the writings of others." A plagiarism/original-work check, in other words. Also, the DOCX file helps me to check word count and to check sources and citation. I require a PDF because that is the format that best preserves formatting across different platforms, and that is what I will print out and read.

⁶ If there is substantial conformance to the word count, but the paper is somehow below the threshold in a manner consistent with oversight or error, I reserve the right to not fail the student from the course but instead to negatively factor the deficiency into the paper grade.

- The paper has a title, abstract, table of contents, introduction, and conclusion.
- The paper uses footnotes – not endnotes or in-line citation.
- The paper visually looks good – like a law review article.
- The paper’s format – margins, font, font size, headings, headers, footers, etc. – are consistent with the manuscript template provided.

The reason I have kept these basic expectations separate from the minimum requirements of §8-12(a) is that I don’t want to be forced to award a failing grade where, for example, a student has hastily omitted a table of contents. So while the basic expectations are not a per-se requirement for passing the class, I fully expect every paper to comply.

(c) *Substantive guide for grading the final paper:* Here is the substantive guidance or rubric for grading the final paper. References to “minimum requirements” are to those set forth in §8-12(a).

- F A paper with a grade of “F” does not meet one or more of the minimum requirements.
- D- The paper meets the minimum requirements.
- D The paper exceeds the minimum requirements in some meaningful way.
- D+ The grade of “D+” is appropriate for a paper falling between the C- and D standard.
- C- A paper with a grade of “C-” substantially exceeds the minimum requirements at least some important respects, shows in some portions a lawyerly quality of writing and argument, and evidences some meaningful engagement with sources. It is mostly organized in a competent manner.
- C A paper with a grade of “C” substantially exceeds the minimum requirements in at least some important respects, shows in substantial portions a lawyerly quality of writing and argument, and evidences substantial engagement with sources. It is organized in a competent manner. It displays good effort and evidences some meaningful learning from the course with regard to writing scholarship.
- C+ The grade of “C+” is appropriate for a paper that exceeds the C standard but falls short of the B- standard.
- B- The paper is a scholarly, well-documented, and well-written paper that develops a thesis on a legal topic within the broad scope of this seminar’s subject matter. It makes a claim with sound reasoning and argument. It is fully researched and supported by appropriate

authority. It has good organization. It exhibits strong spelling, punctuation, and grammar. With regard to citation, the below-the-line portion of the paper looks to the casual observer like the bluebooked footnotes of a law review article.

- B** In addition to meeting the B- standard, a paper for which a grade of "B" is appropriate has a novel claim that is compelling and, in a very broad sense, intellectually or practically useful to some extent. It displays a grasp of the relevant literature, doing at least some challenging/critiquing of assumptions or conclusions from that literature. It provides a clear background that serviceably situates a legally trained reader who has no special knowledge about the paper's topic. It substantially evidences incorporation of lessons about writing from the seminar, including the assigned reading regarding scholarly writing and the advice found in the General Writing Memo (http://ericejohnson.com/docs/Eric_E_Johnson_General_Writing_Memo.pdf), plus any advice given with regard to capitalization and punctuation. It shows an economy of writing, and it does not appear to be padded in an effort to make the word-count minima. With regard to citation, the below-the-line portion of the paper looks to the careful observer like the bluebooked footnotes of a law review article. Supra cites are done correctly; there are pin cites, etc.; and those things check-out when scrutinized. Law review articles, federal cases, and state supreme court cases are properly cited.
- B+** A grade of "B+" is appropriate for a very good paper that substantially exceeds the B standards, having a novel, nonobvious claim and evidencing a deep engagement with a considerable variety of sources, manifesting intellectual creativity and critical thought, and contributing meaningfully in some fashion within its chosen subject matter. Such a paper has strong, easy-to-follow organization, is clearly written, and is substantially free of grammar/spelling/punctuation problems. It shows admirable word economy. The manuscript shows some eventual promise of publishability.
- A-** The grade of "A-" is appropriate for a paper with a falling between the B+ and A standard.
- A** A grade of "A" is appropriate for an outstanding paper that exhibits excellence in all or nearly all respects, going very substantially beyond the standard of a "B+" paper. The paper makes a claim whose substantial intellectual or practical utility to a legal audience is readily apparent. The paper shows a high degree of intellectual creativity and critical thought, and it indicates the author's expert command over the chosen subject matter. These qualities are evidenced with citation to a wide array of sources and exquisite, appropriately critical engagement

with those sources. The argument is easily understood. The organization is strong, and the paper progresses logically and smoothly. The writing is clear, straightforward, highly polished, and virtually free of grammar/spelling/punctuation problems. Moreover, the paper unambiguously makes a new contribution to thought or understanding in its area. It evidences mastery over what was taught in the seminar with regard to scholarly writing, including what was communicated in class and in the assigned materials. It deserves publication. With regard to citation, the paper proves to adhere to bluebooking rules when checked against the current edition of the Bluebook – even for more unusual cites like treaties and legislative history.

- A+** A grade of “A+” is appropriate for a paper that goes substantially beyond the A standard. It would be considered strong work for a full-time professional legal scholar or well-published scholastically-active practitioner. It is not only publishable, it deserves particular attention from relevant scholars and, depending on the topic, judges, lawyers, or lawmakers who are influential with regard to its subject matter.

For calculating the course grade, the above letter grades will be translated to points. The point value will be the highest whole-number percentage in the grading band for that letter grade according to the table in §8-3(a) multiplied by 60 (since the final paper is worth a total of 60 of 100 points). So, a grade of A+ would be 100% times 60, which is 60 points; a grade of B+ would be 89% times 60, which is 53.40 points. The exception is F; a grade of F on the paper will presumptively be numerically translated as 0 points.

(d) *Expectation of acting on feedback:* It is expected that the student will act on the professor’s feedback and students’ peer-assistance/feedback in preparing the final paper. The student need not incorporate all feedback, as the student might reasonably disagree with some of it. But if the final paper shows a substantial disregard for appropriate, helpful feedback, particularly the professor’s feedback, the student’s final paper grade will be negatively affected.

(e) *The importance of format and of using the supplied template:* You will notice that the minimum requirements, basic expectations, and grading guidance all speak to issues of format. Use the supplied template and get the format right. I anticipate that it may be difficult to use the supplied template if you attempt to write using Pages, Google Docs, LaTeX, or some other platform other than Microsoft Word or a word processing program that works very similarly to Microsoft Word. Yet this does not obviate the requirement that you mind the format and submit deliverables in the format required. Thus, I recommend you stick to using Microsoft Word or a word processing program that works very similarly.

8-13. Timeliness and Lateness Penalties:

(a) *Special penalties for lateness with regard to the comment draft, the peer-assistance/feedback package, and the final paper:* There are no separate, additional penalties for lateness with any of the first 10 in-progress deliverables other than losing out on the points described (and, if very late, consequences described in §7-4, *supra*). But **there are special lateness penalties for late delivery of the comment draft, for late delivery of the peer-assistance/feedback package, and for late electronic submission of the final paper.** Those special lateness penalties are as follows: Late not more than one hour, 1% will be deducted from the paper-component grade. (This means, for instance, that if the paper component grade would otherwise provide 70 points out of 75 possible points toward the course grade, an instance of less-than-one-hour lateness on the comment draft or the peer-assistance/feedback package or the final paper would result in 0.70 points off, for a total paper-component contribution toward the course grade of 69.30.) Late not more than two hours, 2% will be deducted. If not turned in on the due date at all (that is, by 11:59 p.m. on the due date), 3% will be deducted. Each additional day late will result in a further 3% deduction. **Note that such penalties are cumulative** with regard to the comment draft, the peer-assistance/feedback package, and the final paper. So, for instance, if a student turned in both the comment draft and the final paper at 8:00 p.m. on the day after each was due, then that is a total of 6% off the paper component.

(b) *Special extenuating circumstances justifying amelioration of negative grading consequences of lateness:* Please submit everything on time. But if something unforeseeable crops up that keeps you from submitting something on time, I may consider that as special extenuating circumstances that ameliorates negative grading effects from lateness – including loss of in-progress-deliverable points and special lateness penalties, as described above. If a family member suddenly becomes ill, if you or your wife, girlfriend, or roommate suddenly goes into labor, if your house catches on fire, etc., these sorts of things can be considered under the rubric of special extenuating circumstances. I'd obviously rather you not miss the birth of your child to get something in on time. Yet it doesn't have to be that dramatic. Let's say there's an accident on the freeway that causes a traffic jam that makes you late in turning in something in. Honestly, that's a terrible excuse – but I'd rather you be late than be unsafe weaving through traffic on surface streets. **To the extent you have special extenuating circumstances you wish to claim, you must submit an End-of-Semester Mitigation Statement, as described below in §11-6.** Also, if you are going to be late with the paper copy, try to at least get the electronic copy submitted on time – that's helpful in the context of claiming extenuating circumstances.

9. GRADUATION WRITING REQUIREMENT:

This course can be used to satisfy the OU College of Law Graduation Writing Requirement. In most instances, earning a B- on the final paper under the requirements of §8-12, *supra*, means that I can and will certify you as having met the Graduation Writing Requirement. Note that according to the school's handbook, "The paper written for the graduation writing requirement will be evaluated by the supervising faculty member separately from the student's overall performance in a seminar or course for which it may be written." You may wish to independently check the handbook for the most recent version of the rules regarding the Graduation Writing Requirement, since it is a policy that is beyond my control to vary.

Expect that after the semester is over and after grades have been submitted, I will notify those students whom I have certified as meeting the Graduation Writing Requirement. If you don't receive such a notification, then you can follow up with me. Note that your being awarded a B- or above as a course grade does not mean that you have completed the Graduation Writing Requirement through this course. It may be that your paper didn't meet the B- standard but your class participation caused you to receive a grade of B- or higher.

10. IN THE CLASSROOM:

10-1. Classroom Conduct Rules:

In general:

- (a) Avoid behavior that might disrupt class or distract your fellow students.

Some specifics:

- (b) Do not eat in class. Do not chew gum audibly or with your mouth open.
- (c) Refrain from any use of a digital device where such use could reasonably disrupt class or distract fellow students. All digital devices must be operated without audio volume. Screens must not display any distracting content, including, but not limited to, distracting images, indecent content, moving images (video), and animation or flashing graphics. (If you are being distracted by a classmate's digital device usage, please let me know! If you are being distracted, it is almost certain multiple people are being distracted at the same time. Once I know about this, I can then communicate with that student about issue - which I will seek to do tactfully, without causing anyone any embarrassment.)
- (d) You may use digital devices (including, without limitation, computers, phones, and tablets) in class; however, from the time of

class's scheduled beginning until class ends: (1) You may not engage in any digitally enabled network communications with anyone else in class, including, but not limited to, e-mail, text messaging, and IM'ing. (2) You may not engage in any web publication or any live-updating/realtime digitally enabled network communications with anyone at all, including, but not limited to, live chat, Facebook (including, but not limited to, Facebook groups), Twitter, Snapchat, Instagram, What's App, and the like. The prohibitions of this subparagraph (d) are not limited by context and apply without regard to whether the activity in question can be characterized as disruptive or distracting. Any violation of the policy in this subparagraph (d) will presumptively result in a lowered course grade and may also be referred for disciplinary action. The prohibitions of this subparagraph (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with OU information-technology staff for technical-support purposes. Bottom line: Keep the discussion in class, where it is productive and beneficial for all.

10-2. Personal Circumstances Affecting Participation:

This is a seminar, so participation is a crucial element. If you cannot participate fully for a particular class because of some personal circumstances (and there's no need to disclose anything in detail), please tell me before class, in person. Reasonable requests of this sort are entirely understandable and, if kept minimal, will have a correspondingly minimal effect on the class participation grading.

10-3. Audio Recordings and Video:

No one is permitted to make an audio or video recording or transmission (e.g., livestream) of class without my express, written permission. A key part of a seminar is open discussion. Students must feel free to try things out and think openly. Student recordings of class time would impede that. Now, that being said, it is possible I might record some classes or portions of classes. (Sometimes it's helpful for me in improving my teaching – for example, if I feel I've done something particularly well, I can go back and listen to it the following year to try to replicate it.) But to the extent I do make a recording, please don't ask me for a copy, because I don't want to distribute any audio that captures student voices. If I do record in class, you'll be aware, because I will use a clip-on mic or otherwise let you know.

11. ATTENDANCE AND DEALING WITH LATENESS IN DELIVERABLES:

11-0 Do Not Ask For Deadline Extensions: I will not give deadline extensions. So please do not ask for deadline extensions. If you must turn something in late, you will incur the grading consequences associated with that, as spelled out elsewhere in this syllabus (see, e.g., §8-13). If you wish to plead special extenuating circumstances, make sure you do so using the End-of-Semester Mitigation Statement (see §11-6, *infra*). If you want to discuss special extenuating circumstances, talk to me after class, during office hours, or e-mail me to make an appointment. But note that any discussion does not replace the requirement to supply an End-of-Semester Mitigation Statement.

11-1 Communications About Attendance: I appreciate your letting me know by e-mail if you are or anticipate being absent. But there is generally no need for you to explain to me why you have been absent. The only reason I imagine that I would need to know why you are absent is if attendance is approaching a severely deficient level (discussed below) and it becomes necessary to discuss extenuating circumstances, if your absence is excusable under university or college policy and you wish to have it excused, or if you will miss a class where you were scheduled to be a discussion leader or to give a presentation. In that case, make use of the End-of-Semester Mitigation Statement, discussed in §11-6, *infra*.

11-2. In General: My view is that punctual, regular attendance in class is an essential component of the educational experience. That is particularly the case in a seminar class. Moreover, OU College of Law policy states that “students are expected to attend all classes in those courses for which they are enrolled.”

Notwithstanding the expectation that you will attend all classes, I expect that students may have occasional, isolated absences. But how does one draw the distinction between the well-meaning student who missed some classes with good reason and the student who is not making attendance a priority? It’s not easy. Thus, I am providing this detailed attendance policy. I regret that it is so long. Nonetheless, seriously deficient attendance must incur serious consequences; therefore, I’ve erred on the side of particularity.

11-3. Specifics Concerning Effects of Absence from Class:

(a) **Late Arrivals and Early Departures:** As the expression goes, better late than never. But bear in mind that tardiness is disruptive. For purposes of determining the appropriateness of penalties discussed below, a late arrival or early departure will count as a quarter of a whole absence. In my discretion, however, a very late arrival or a very early departure may be counted as a half or a whole absence. (For recordation of late arrivals and early departures, see §11-4, *infra*.)

(b) **Comings and Goings; Intraclass Absences:** I understand that you may have an urgent need to leave class for a short time. Bear in mind that leaving and re-entering class is disruptive, so please do so only when necessary.

(c) **Attendance's Effect on Class-Participation Grading and Discretionary Step-Up Adjustments:** Be aware that any absence or tardiness can impact your class-participation grade. (See §8-8.) Attendance can also factor into my decision about whether or not to award a discretionary step-up adjustment for exceptional performance. (See §8-4.) Please don't miss a class where you are scheduled to be a discussion leader or give a presentation! Expect that an absence or even a late arrival on a day when you are scheduled to be a discussion leader or a presenter will have a particularly negative effect on class-participation grading.

(d) **Automatic Reduction in Grade for Severely Deficient Attendance:** Independent of and cumulative with any effects of attendance on the class-participation grading component and discretionary adjustments, a student's grade will be automatically reduced as follows: **three (3)** or more absences will result in the dropping of a student's final grade by one step (e.g., from a B to a B-); **four (4)** or more absences will result in the dropping of a student's final grade by one additional step (e.g., from a B- to a C+).

(e) **Involuntary Withdrawal or Failing Grade for Profoundly Deficient Attendance:** For a student with a profoundly deficient attendance record, I will presumptively have the student involuntarily withdrawn from the course without credit and with a grade of F, have the student involuntarily withdrawn from the course without credit and with some other grade that may be appropriate under university or college policy, or award a failing grade at the end of the semester. For these purposes, I will presumptively regard as profoundly deficient attendance five (5) or more absences. Recall that partial absences (i.e., late arrivals, early departures) each will count as a quarter of an absence and may, in my discretion, be construed to constitute a whole absence. **It is your responsibility to keep track of your own absences, including with regard to the presumptive involuntary withdrawal or failing grade.** Thus, do not ask me to calculate your attendance record so that you can weigh whether to miss an additional class. And do not expect to get independent notice that you are approaching the threshold for failing or being involuntarily withdrawn. **This syllabus provision is your notice.**

(f) **Special Extenuating Circumstances for Attendance:** In consultation with the dean, or an associate or assistant dean, I may take account of special extenuating circumstances in making decisions about whether to drop a grade, award a failing grade, and/or request involuntary withdrawal on the basis of attendance. Special extenuating circumstances can include weather emergencies, personal illness, illness of a close family member, bereavement, etc. Extracurricular activities, job interviews, court appearances, or the like can be

considered in this vein as well. (For absences caused by religious observances, see §11-3(g), *infra*.) Notwithstanding the foregoing, it is expected that under almost all circumstances students will be able to keep absences within the numerical thresholds identified above – including absences caused by illness, storms, job interviews, etc. Giving students special dispensation on the issue of attendance will only be done if appropriate under the totality of the circumstances. As an example, suppose a student was absent from class a number of times because the student wanted to sleep in; then, at the end of the semester, the student was absent one or more additional times because of an out-of-town job interview. In such a case, if the job-interview absences takes the student over the threshold for an automatic reduction in grade, then the grade reduction is appropriate. If the student had been generally conscientious about attendance from the beginning, the student would not have created any issue with missing class for the job interview.

If you wish for me to consider any special extenuating circumstances with regard to your attendance, then you must file an End-of-Semester Mitigation Statement, as discussed in §11-6.

Note that you should not feel compelled to discuss with me reasons for absences or extenuating circumstances if your attendance is not approaching a severely deficient level.

(g) **Absences Resulting from Religious Observances:** In accordance with University of Oklahoma policy, I will excuse absences that result from religious observances. To have an absence excused on the basis of a religious observance, **you must file an End-of-Semester Mitigation Statement**, as discussed in §11-6. You should also separately contact me as appropriate or useful during the course of the semester in regard to such absences.

11-4. Attendance Record: To avoid being distracted in class by constantly noting things like late arrivals and early departures, I may require students to log their own attendance. It is of paramount importance that you deal with all attendance issues with utmost honesty, integrity, and care. Inaccuracies in marking an attendance log or late slip will presumptively be treated as academic misconduct and will presumptively result in a lowered grade or a failing grade. If an inaccuracy is inadvertent, prompt self-disclosure is encouraged and will be considered ameliorative.

(a) **Means of Taking Attendance:** Attendance may be taken by means of a log (paper sheet or card) for students to fill out during class, by roll call, by reference to the seating chart, or by some other method.

(b) **Indicating Attendance:** If attendance is taken by means of a paper log, then when the attendance log comes around to you, fill it out as instructed, indicating your attendance for the instant date. (“Instant date” means the current date as you are looking at the log.) Indicating your attendance this way is your

responsibility. If the attendance log does not come around to you, then it is your responsibility to make sure you are marked as having attended; simply come up to me immediately after class and ask to fill it in. If you omit to fill in the log during class or immediately afterward and before I leave the room, you will be counted as absent.

This is very important: You may only fill out the attendance log on behalf of yourself and for the instant date. You may not mark the log on behalf of another person, even if that person is in attendance, and you may not permit another person to mark the log on your behalf. You may not make any mark indicating your attendance for any other date other than the instant date, even if you were or will be in attendance on that date.

(c) **Self-Reporting Partial Attendance:** If an attendance log is used, and if you will need to depart class early and not return, then you must make an appropriate notation of that on the attendance log. Alternatively, if you have a change of plans requiring you to leave early despite not having indicated that in advance on the attendance log, then you must inform me by e-mail as soon as reasonably possible afterward to correct the record.

(d) **Filling Out of Late Arrival Slips:** If you arrive late to class, you must legibly and completely fill out a late arrival slip before you sit down. If a blank late arrival slip is not available for you, then before you take your seat you must hand to me a letter-size sheet of paper providing your name, the name of the class, the full date, the day of the week, and the time of your arrival.

(e) **Unrecorded Absences:** At my discretion, I may announce that for a particular class meeting I will not record attendance and that absences from such a class meeting will not count for purposes of the attendance policy. Situations in which I might deem this appropriate are: (1) if it is necessary to hold a make-up class at an irregular time or (2) if there is the occurrence of a disaster that implicates issues of safety or public necessity. It is also possible that I may omit to record attendance for a class. That being said, recordation of an absence is a distinct issue from the existence of an absence. And for the purposes of self-disclosures of profoundly deficient attendance under §11-5, *infra*, a student's self-disclosure obligation is not relieved by the fact that one or more absences (including partial absences) may be unrecorded. Toward the end of encouraging candor, I will exercise discretion with unrecorded-but-disclosed absences and may choose not to count them for purposes of grade penalties and administrative withdrawal. So err on the side of disclosure.

11-5. Mandatory Immediate Self-Disclosure Statement of Accumulated Absences in Cases of Profoundly Deficient Attendance: I do not add up and calculate accumulated absences on an ongoing basis during the semester. As mentioned previously, it is each student's responsibility to keep track of her or his own absences. In keeping with that: Upon a student's accumulation of a record of profoundly deficient attendance (see §11-3(e), *supra*), that student is

required to disclose such accumulation immediately in writing to me. The disclosure must be made to me by e-mail (eric.e.johnson@ou.edu) with a paper copy handed to me in person, or, if in-person delivery is not practicable, to a faculty administrative assistant with an explicit explanation of the nature and urgency of the communication. The subject line of the disclosure e-mail must be "Self-Disclosure Statement of Accumulated Absences."

If the student hopes to avoid involuntary withdrawal or the awarding of a failing grade for the course, then the statement must explain the reasons for the student's absences, or at least a portion of the absences sufficient to avoid the profoundly deficient attendance, and must provide a rationale for why the student should be allowed to continue in the course notwithstanding the accumulated absences. Any supporting backup documentation that is to be considered must be provided with the statement. To this end, the student is referred to §11-3(f), *supra*, regarding special extenuating circumstances.

If a student has already submitted a disclosure under this section and then subsequently accumulates another absence (including a partial absence in the form of a late arrival or early departure), the student must submit a supplemental disclosure, like the original disclosure in form and substance.

For counting absences to determine the necessity of submitting a disclosure under this section, where there are any interpretive questions, a student is instructed to err on the side of inclusiveness. That is, a student who is unsure of whether a given instance will count as an absence or partial absence should err on the side inclusion of that absence or partial absence in the quantification of deficient attendance. A student is advised to note such interpretive questions and the fact of the student's erring on the side of inclusiveness in the statement. Further to this regard, refer to §11-4(e), *supra*.

11-6. End-of-Semester Mitigation Statement: In order for me to consider absence excuses and extenuating circumstances (including with regard to attendance and lateness in turning in deliverables), I must be aware of them. It is crucial that this information is readily accessible to me at the moment I am putting together grades at the end of the semester, and, of course, I want to make sure that I don't miss anything. Thus, I require that students provide this information to me in a particular way: **To the extent a student wishes to make a claim of extenuating circumstances for any reason or seek excuse based on religious observance, the student must file an End-of-Semester Mitigation Statement** not earlier than the last day of class, nor later than the day after the last scheduled day of exams for the College of Law.

If you file an End-of-Semester Mitigation Statement, **it must consist of a single PDF document** containing all pertinent information and any supporting backup documentation you wish to be considered. **If you want me to consider any previously sent e-mails in a claim for special extenuating circumstances, then you must include copies of those e-mails within the PDF document constituting**

with the mitigation statement. **The statement must be sent to me by e-mail (eric.e.johnson@ou.edu) with the subject line, "End-of-Semester Mitigation Statement."**

File just one statement – that is, just one e-mail with just one attached PDF document. Do not send multiple e-mails or multiple files. There is no prescribed format for the statement, but it should be prepared in a professional manner, along the lines of how you would prepare attorney work product for a client. Regarding the substance of what might qualify as extenuating circumstances or excuse, see §8-13(b) and §11-3(f) & (g), *supra*.

If you have already filed a mandatory disclosure for profoundly deficient attendance under §11-5, *supra*, then you should additionally file an End-of-Semester Mitigation statement, which should include copies of any previously filed disclosures made pursuant to §11-5.

11-7. No Waiver: No provision of this attendance policy can be waived by me orally. (See §14, *infra*). If you think I said something that relieved you of an obligation under this attendance policy, you misunderstood me. I also note that I cannot imagine a circumstance under which I would grant a written waiver: The policy is already built to be fair and to take into account varied circumstances. It must apply to everyone equally.

12. MINIMUM OUT-OF-CLASS WORKLOAD EXPECTATION:

The vast majority of your law-school education is meant to take place outside of class. For this class, you should be doing out-of-class work that averages *at least* approximately 4.5 hours per week. This is in line with ABA standards.⁷ I am structuring the class and putting together the assignments with this minimum expectation in mind for a student to earn a passing grade. In reality, I think most students will need to spend substantially more time than the minimum expectation in order to do as well as they are hoping to do. At any rate, note that this minimum out-of-class workload expectation is an average across the semester. Some classes might require less time, other classes more. But when planning your semester in terms of employment, volunteer obligations, commuting, or other demands on your time, you should keep the minimum expectation in mind. And likewise, during the semester, you should keep the numerical expectation in mind when considering whether you are devoting adequate time to preparing, studying, and reviewing.

13. GENERAL INFORMATION IN CONNECTION WITH UNIVERSITY AND COLLEGE POLICIES:

⁷ The American Bar Association (ABA) is the accrediting body for American law schools. Regarding the out-of-class workload expectation, see Standard 310 at https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf.

Disability Accommodation: Students requiring academic accommodation should contact the Disability Resource Center for assistance at 405-325-3852 or TDD: 405-325-4173. For more information please see the Disability Resource Center website <http://www.ou.edu/drc/home.html>. The OU Faculty Handbook §5.4 states that the Disability Resource Center “is the central point of contact to receive all requests for reasonable accommodation and all documentation required to determine disability status under law. This center will then make a recommendation concerning accommodation to the appropriate administrative unit.”

Religious Holidays/Observances: The OU Faculty Handbook §3.13.2 states: “It is the policy of the University to excuse the absences of students that result from religious observances and to provide without penalty for the rescheduling of examinations and additional required classwork that may fall on religious holidays.”

Title IX Resources and Reporting Requirement: For any concerns regarding gender-based discrimination, sexual harassment, sexual assault, dating/domestic violence, or stalking, the University offers a variety of resources. To learn more or to report an incident, please contact the Sexual Misconduct Office at 405-325-2215 (8 to 5, M-F) or smo@ou.edu. Incidents can also be reported confidentially to OU Advocates at 405-615-0013 (phones are answered 24 hours a day, 7 days a week). Also, please be advised that professors are required to report instances of sexual harassment, sexual assault, and discrimination to the Sexual Misconduct Office. (See §7-5, *supra*, in this regard.) Inquiries regarding non-discrimination policies may be directed to Bobby J. Mason, University Equal Opportunity Officer and Title IX Coordinator at 405-325-3546 or bjm@ou.edu. For more information, visit <http://www.ou.edu/eoo.html>.

Adjustments for Pregnancy/Childbirth Related Issues: Should you need modifications or adjustments to your course requirements because of documented pregnancy-related or childbirth-related issues, please contact the Disability Resource Center at 405-325-3852 as soon as possible. Also, see <http://www.ou.edu/eoo/faqs/pregnancy-faqs.html> for answers to commonly asked questions.

14. REVISIONS TO THIS SYLLABUS, WAIVERS OF STUDENT

OBLIGATIONS: This syllabus may be amended or revised, and if it is, the most recent syllabus will be posted to the class website. No student obligation under this syllabus can be waived by me orally. If you think I said something that allows you different treatment under this syllabus, you must have misunderstood me. The syllabus needs to apply to everyone equally.

15. FEEDBACK: If you have feedback for me – suggestions, ideas, commendations, or criticisms – please do not hesitate to tell me in person or by

e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that. I hope you enjoy the course!

© 2020 Eric E. Johnson. Konomark – Most rights sharable. Instructors wishing to use this or other course content without charge should feel free to ask. If it's helpful, I can send you a DOCX version. Note that this syllabus incorporates material from other sources, including some material from other authors, in some cases verbatim or nearly verbatim, without specific notation. Although I will not attempt to catalog all such incorporation, I note that the grading standards are derived in various parts from the OU Law graduation writing requirement standards and also in some phrasing from the University of North Dakota School of Law upper-level writing requirements as they existed in Spring 2015.