

TRIAL PRACTICE

Fall Semester, 2018

LAW 6363/03F2

Room: MLAC Courtroom Professor Jennifer Zedalis
Class Times: Tu/W/Th 10:00 - 10:50am Office: 327 Holland Hall
Workshops: Tuesday Evenings 5:20-8:30pm 352-273-0814
Workshops begin 8/21 E-mail: zedalis@law.ufl.edu
Office Hours: Wednesdays and Thursdays 1-3pm
Open door policy/ appointments are also welcome

Notes, updates, and other important information for this course will be posted regularly on our TWEN site for this course, Trial Practice, Fall, 2018.

Grading: 4 credits, S+/S/U

In order to achieve a satisfactory grade, students must successfully complete the workshop assignments, the practice trials, and the final trials, including their assigned lawyer and witness roles.

Final Trial Dates for fall 2018 are: October 19, 20 (Friday evening, Saturday morning and afternoon) and November 16, 18 (Friday evening, Sunday morning and afternoon-- due to parking limitations on Saturday)

Final Trials are Mandatory

Textbook and Course Materials:

- (1) Thomas A. Mauet, Trial Techniques and Trials, latest edition preferred (Aspen)
- (2) Workshop/Trial Coursebook: available for this course on TWEN and also in hard copy at Book-It
- (3) Florida Evidence Code Summary Trial Guide (available at the Levin College of Law Bookstore)

Other Good Resources (suggested, not required):

Carlson, A Student's Guide to Elements of Proof (Thomson West)
Ehrhardt, Florida Evidence
Ehrhardt, Florida Trial Objections.
Imwinkelried, Evidentiary Foundations
Dubin and Guernsey, Trial Practice (Anderson)
Lubet, Modern Trial Advocacy (NITA)
McElhaney, Trial Notebook (ABA)

Course Description

This course covers trial procedures and advocacy techniques, including jury selection, opening statements, direct examinations, cross examinations, objections and other motion practice, preservation of error, closing arguments, and proper courtroom demeanor. Using realistic fact patterns and full trial assignments, students will learn by doing.

Prerequisite Knowledge and Skills:

Evidence must be taken prior to or in the same semester as trial practice.

Purpose of Course:

The purpose of this course is to provide strong entry-level courtroom skills together with an understanding of effective preparation for trial and an awareness of various persuasive methods. Courtroom skills include effective communication, effective advocacy in each phase of a trial, making and meeting objections, making and addressing other motions, and proper preservation of error. Students are allowed to develop the knowledge and skills necessary for effective trial advocacy through a combination of study, observation, discussion, and (most importantly) mock trial exercises, with helpful critique and feedback from experienced lawyers and judges.

Course Goals and Objectives:

- 1) The development of courtroom communication skills
- 2) An understanding of the structure and function of each part of a trial
- 3) The development of strong entry-level advocacy skill and technique
- 4) The development of understanding and experience in making and meeting objections
- 5) Developing familiarity with case analysis and trial preparation
- 6) Understanding professionalism and best practices in the context of courtroom conduct

Desired Learning Outcomes:

- 1) The student has developed courtroom communication skills.
- 2) The student understands the structure and function of each part of a trial.
- 3) The student has strong entry-level advocacy skill and technique.
- 4) The student understands how to make and meet objections and possesses simulation-based experience as preparation for entry level advocacy.
- 5) The student is familiar with the process of case analysis and trial preparation.
- 6) The student understands professionalism in the context of trial advocacy.

Workload: ABA Standard 310 calls for 120 minutes of preparation for each hour of classroom instruction. This course is a 4-credit course. Trial practice has both classroom and simulation

components. It is expected that over the course of the 14 week semester, students will spend at least 112 hours engaged in the following activities: Study, planning, research, and preparation of workshop and trial materials, video review, observation and critical reflection in courtroom proceedings, and preparation for assigned witness roles.

Course Schedule

Tuesday, August 14 Introduction to Trial Practice
Reading: Chapters 1 and 2 in Mauet, Trials

The jury trial is the ultimate forum for justice. Trials are a search for truth, justice, dispute resolution, closure, or all of the above. We will consider the goal of persuasion as well as the mechanics of advocacy at each stage. This course focuses on skills necessary for excellent courtroom practice.

Wednesday, August 15 Relevance, Proof, and Storytelling

Lawyers should prepare for trial by exhausting every avenue of discovery. In this process issues are framed, and plans are developed to prove claims or defenses and challenge the other party's case. Ask yourselves this: What do we need to prove or challenge? How do we prove or challenge it? How do we make it interesting? How do we appeal to the jury's sense of justice? What is the story in this case?

Thursday, August 16 Direct Examination
Reading: Chapter 5 in Mauet, Trials

Lawyers question their own witnesses and introduce other forms of evidence during direct examination. The sum of a party's direct exam evidence is the "case in chief." A skilled advocate presents witnesses in a straight-forward and engaging style. A direct exam is like a slightly formal interview.

Tuesday, August 21 Direct Examination (continued)

How do we present our proof and our client's story in a clear and interesting manner?

****Tuesday Evening Workshop:** Be prepared to conduct direct examinations in Problems #1 and #2 in Trial Practice Cases and Materials, *State of Florida v. Sheila Menlo* and *State of Florida v. Cynthia Baker*. All students should prepare their questions in writing as part of the training process. Courtroom attire is worn in the workshops.

Wednesday, August 22 Cross Examination

Reading: Chapter 6 in Mauet, Trials

We will begin work on cross examination by considering our goals-- discrediting, impeaching, and exposing weaknesses in the opposing side's case.

Thursday, August 23 Cross Examination (continued)

Techniques for controlling the witness and maintaining the focus of the cross examination will be considered. We will address scope of cross. Foundations and methods of impeachment will be discussed.

Tuesday, August 28 Making and Meeting Objections (Direct and Cross Exam)

We will discuss objections, beginning with relevance. We will also consider other common issues like hearsay and improper impeachment.

****Tuesday Evening Workshop:** Be prepared to conduct direct and cross examinations in:

Problems # 3 and #4 in Trial Practice Cases and Materials, *Winthrop v. Preston's Tree Service* and *State of Florida v. Strong*.

Wednesday, August 29 Exhibits and Visual Aids

Reading: Chapter 7 in Mauet, Trials

Evidence comes in many forms, such as documents, pictures, audio and video recordings, substances, x-rays, charts, diagrams, firearms, and any other item that is relevant in a case. There are other visual elements in a trial that are very important although they are not technically admitted as evidence. Everything the jury can see has significance.

Thursday, August 30 Exhibits (continued)

Foundations for moving items into evidence should become second-nature to a trial lawyer. It is helpful to view foundation as a sort of courtroom mini-quiz to test relevance and reliability. We will begin with the basic foundations for tangible items, pictures, diagrams, and writings.

Tuesday, September 4 Expert Witnesses

Reading: Chapter 8 in Mauet, Trials

Lawyers rely heavily on experts in various fields.

A properly qualified expert is often needed to give opinions on causation, medical procedures, forensic testing and comparison, and any other area that calls for specialized knowledge. Lawyers need to be skilled in handling expert witnesses.

****Tuesday Evening Workshop:** Be prepared to lay foundations for real and demonstrative evidence in Problems # 5 and #6, Trial Practice Cases and Materials. *State v. Menlo* (exhibits only) and *Gentry v. Antiques-4-Less*. Students should be prepared to introduce the exhibits with the appropriate foundation witness and the appropriate questions. Additionally, students should use the exhibits after they have been admitted as evidence.

Wednesday, September 5 Expert Testimony (continued)

Consider preparing and calling expert witnesses, laying proper foundations for expert opinion testimony, and potential objections.

Thursday, September 6 Motion practice and Objections
Reading: Chapter 10 in Mauet, Trials

A lawyer must ask the court to exclude irrelevant or otherwise inadmissible evidence in order to protect the client's right to a fair trial. We will discuss various types of motions and procedures for making objections pretrial and during trial.

Tuesday, September 11 Motions and Objections continued.

****Tuesday evening workshop:** Examination of Expert Witnesses and Key Witnesses: Problems #7 and #8 in Trial Practice Cases and Materials
State v. Harris (full direct/cross) and *Justine Minor v. Paradise Police Department*
Be prepared to conduct full direct and cross examinations.

Wednesday, September 12 Voir Dire
Reading: Chapter 3 in Mauet, Trials

We will consider the goals and the process of jury selection, and ways in which lawyers can best serve the interests of clients at this stage of a trial. Basic procedures and juror questionnaires will be discussed.

*** Trial assignments will be posted in order to give all students a chance to think about voir dire in their assigned cases. The trial practice cases are all "filed" in state court, so state court rules govern the proceedings.

Thursday, September 13 Voir Dire (continued)

Discussion and Demonstration: (1) Who are the potential jurors and (2) How will they react to the case? (3) How do we intelligently exercise our challenges? Jury selection involves careful listening and observation, pre-supposing that a lawyer is skilled in getting jurors to express themselves. We must know the potential jurors well enough to make an educated guess about their reactions to the people and the facts of the case. Thorough and accurate case analysis is critical to a lawyer's decision making during jury selection.

Tuesday, September 18 Opening Statements

Reading: Chapter 4 in Mauet, Trials

What do the jurors need to hear from us before we present our case? Jurors want to know what happened and who is responsible for it. They want to know what the big issues are. They want to be interested and engaged at the outset. We will discuss ways of opening the case in the best manner possible.

The theme of a case is the universal human factor that lies naturally in the story. Lawyers need to recognize themes and offer themes to the jurors as a proper way of allowing shared human experience to inform deliberations. Themes can be very powerful.

****Tuesday Evening Workshop:** Voir Dire: Be prepared to ask at least three significant questions and then follow-up based on your case and your client. What do you need to know about the potential jurors in order to decide whether they will be receptive to your case and fair to your client? How should you exercise your challenges?

Wednesday, September 19 Closing Arguments

Reading: Chapter 9 in Mauet, Trials

What do the jurors need to hear from us before they go to the jury room to decide the case? Closing is the time to *argue* the merits of the case, and challenge the credibility or weight of the other side's evidence. What are the best arguments we can make, and how can we support them with the facts? How can we discredit or neutralize the other side's case?

Thursday, September 20 Opening Statements and Closing Arguments (continued)

We will discuss persuasion. We will also discuss objections that arise during opening and closing and issues of constitutional fairness.

Tuesday, September 25 Professionalism and Civility

****Tuesday Evening Workshop:** Be prepared to conduct an opening statement and a closing argument in your assigned trial case.

Wednesday, September 26

Intensive Review for case analysis and story

Thursday, September 27

Intensive review for evidence and objections

******PRACTICE TRIALS October 2, 4, and 9th******

All practice trials begin at 5:20pm in assigned workshop rooms

(5:20pm)

Tuesday, October 2 (regular workshop date) *Darcy v. Beauchamp & Mobile Medic*

Thursday, October 4 ***(please note this is Thursday) *State v. Wynn*

Tuesday, October 9 (regular workshop date) *Temple v. Prime Global Ins.*

There is no 10am lecture class on October 2,3,4, or 9 because of practice trials

Wednesday, October 10 Plaintiff/Prosecution Trial Review Class (1pm)

Thursday, October 11 Defense Trial Review Class (1pm)

All students should be preparing for final trials at this time
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Final Trials are October 19, 20 and November 16, 18th.

A full schedule for the final trials and remaining class sessions appears on the next page.

Quick summary of workshop dates: 8/21, 8/28, 9/4, 9/11, 9/18, 9/25

Quick summary of practice trial dates: 10/2, 10/4 (Thursday), 10/9

Quick summary of final trial dates: 10/19, 10/20, 11/16, 11/18* (Sunday due to parking limitations on Saturday)

Final Trial Schedule

Friday, October 19	5:00pm	Trial and Critique, Round I.
Saturday, October 20	8:30am	Trial and Critique, Round II.
Saturday, October 20	1:30pm	Trial and Critique, Round III.

Regular 10am class sessions:

Tuesday, October 23	Review of Trial Rounds I, II, III
Wednesday, October 24	Intensive Opening/Closing Clinic
Thursday, October 25	Intensive Cross Examination Clinic
Tuesday, October 30	Guest Speaker Event

Tuesday, November 6	prosecution/plaintiff review for upcoming rounds
Wednesday, November 7	defense review for the upcoming rounds

Friday, November 16	5:00pm	Trial and Critique, Round IV.
Sunday, November 18	8:30am	Trial and Critique, Round V.
Sunday, November 18	1:30pm	Trial and Critique, Round VI.

Tuesday, November 20 (10am class) FINAL CLASS
Discussion: We will look at verdicts and discuss our final round of trials.

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS

Dressing for Court:

Courtroom attire is required for Tuesday evening workshops and for all lawyer assignments during practice trials and final trials. During witness or critiquing roles at trial, students may wear business casual clothing.

Witness Roles:

Each student will be assigned a witness role for the final trials. All witnesses are expected to be well prepared. All students participate in each trial round, either as a lawyer, a witness, or a critiquer.

Video Review:

Workshops on direct exam, cross exam, expert witnesses, and opening/closing will be videotaped, and students are required to review their own performances. Additionally, each student is required to review their recorded performances with an assigned advanced student. Details will be explained in class.

Attendance:

Attendance is important in this course because it is a courtroom skills course. The course is interactive. Although the assigned reading is essential, students cannot develop advocacy skills from reading or relying on passive learning techniques.

Absences must be excused in advance.

Preparation:

All students are expected to prepare for and complete their assigned advocacy exercises. The final trials are considered a skills course equivalent of final exams, and participation is mandatory. Participation includes assigned witness and critiquing roles as well as assigned trial roles.

Laptop Policy:

Laptop use will not be permitted during class, workshops, and trials. Additionally, students should be prepared to print hard copies of their workshop and trial materials.

Accommodations: (UF Policy)

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must

be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

Academic Honesty: (UF Policy)

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at:

<http://www.dso.ufl.edu/students.php>