

TRIAL PRACTICE SYLLABUS

Spring 2023

LAW 6930 – 3 CREDITS

Professor Pamela Marsh

Office Telephone: 352-273-0879

Email: marsh@law.ufl.edu

Office: 326 Holland Hall

Class Time: Tuesdays 3:30 – 6:30 p.m.

MLAC 106 (Large Courtroom)

Office Hours: Wednesday 11:00 to 12:00

Professor Marsh is also available by appointment via phone and Zoom.

Students are welcomed and encouraged to meet with Professor Marsh.

Notes and updates for this course will be posted regularly on CANVAS.

Textbook and Course Materials:

- (1) *Trying Cases: Promise, Prove, and Persuade*, (Jennifer Zedalis, Vandepas Publishing)
(available as an e-book) [Referred to as “TC” under Reading Assignments, below]
- (2) Workshop/Trial Coursebook: available for this course on CANVAS
- (3) Florida Evidence Code Summary Trial Guide (available at the Levin College of Law Bookstore)
- (4) Case Summaries for Trial Preparation (provided by the Professor)

Other Good Resources (not required):

Carlson, A Student’s Guide to Elements of Proof (Thomson West)

Ehrhardt, Florida Evidence

Ehrhardt, Florida Trial Objections.

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.

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, raising and addressing other issues by way of motions, and proper preservation of error. Students 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.

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.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Grading for this three-credit course will be on a Satisfactory Plus/Satisfactory/Unsatisfactory scale (S+/S/U). To achieve a satisfactory grade, students must maintain good attendance, prepare, and actively participate in the workshops and the final trials. All students will be assigned to witness roles in addition to their lawyer/case assignments. Failure to attend class, as set forth in the Attendance Policy below will result in an Unsatisfactory grade.

Final Trial Dates for Spring 2023 are: March 31st (Friday) 5-9 p.m.; April 1st (Saturday) all day; April 14th (Friday) 5-9 p.m.; and April 15th (Saturday) all day.
Final Trials are Mandatory

Assigned Reading and Preparation:

Students are required to do the assigned reading and participate in discussions well as assigned skills exercises. The reading assignments are brief and to the point. This course will be taught in a lab/workshop structure.

Prerequisite Knowledge and Skills:

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

Workload and ABA Out-of-Class Hours Requirements: ABA Standard 310 calls for 120 minutes of preparation for each hour of classroom instruction. This course is a 3-credit course. Trial practice has both classroom and simulation components. It is expected that over the course of the 14-week semester (including the week of Spring Break when we will not meet), students will spend at least 84 hours engaged in the following activities: Study, planning, research, and preparation of workshop and trial materials, review (of recorded work), observation and critical reflection in courtroom proceedings, and preparation for assigned witness and critique roles.

Course Schedule & Reading Assignments

Week 1: January 17th

Introduction to Trial Practice

Reading: TC pages 1-17 (Preparing for Trial; Command of the Courtroom)

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

Although this is a trial course, keep in mind what comes before-- Lawyers should prepare for trial by exhausting every avenue of discovery. This is the way issues are framed and plans are developed to prove claims or defenses and challenge the other party's case. Ask yourselves: What do we need to prove or challenge? How do we prove or challenge it? Who has the burden of proof? What is opposing counsel likely to argue? How do we make our case interesting? How do we appeal to the jury's sense of justice? What is the story in this case? How can we make the case easy for the jurors?

Lawyers must understand the purposes and goals of each part of the trial before they can excel at any level.

First Class: Getting to know you, and a broad overview of the jury trial and rules of evidence. Key Words: Language, word choice, tone, emphasis, open-ended questions, closed (leading) questions, listening, fair argument, relevance, protecting your client.

In addition, you will observe a direct examination during this class that will help you begin preparing to do a direct examination of a witness when we meet next week.

Week 2: January 24th

Preparing and Presenting Key Witnesses

Readings: TC pages 52-75 (Direct Examination); TC pages 130-161 (Making and Meeting Objections); Trial Practice Cases and Materials, Problems #1 & #2: *State of Florida v. Sheila Menlo* and *State of Florida v. Cynthia Baker*.

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. All evidence must be relevant and admissible. For this reason, good trial lawyers are prepared to address relevance and other evidentiary issues.

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

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*.

In addition, you will observe a cross examination in which a lawyer asks improper questions, and we will all participate in an exercise in spotting and professionally making objections. Observing this cross will help you prepare to conduct a cross examination of a witness when we meet next week.

Week 3: January 31st

Cross Examination

Readings: TC pages 76-99 (Cross Examination)

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

We will work on cross examination by considering our goals, such as discrediting, impeaching, and exposing the weaknesses in our opposing counsel's case.

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

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

Be prepared to conduct cross examinations regarding Problems # 3 and #4 in Trial Practice Cases and Materials, *Winthrop v. Preston's Tree Service* and *State of Florida v. Strong*. We will also continue our practice of identifying and articulating objections to improper questioning.

You will observe a lawyer as she lays the foundation necessary to move a piece of evidence into the record of the case. This will prepare you for our exercise regarding the admission of tangible evidence next week.

Week 4: February 7th

Exhibits and Visual Aids

Reading: TC pages 100-110 (Laying Foundations)

Evidence comes in many forms, such as documents, pictures, audio and video recordings, substances, x-rays, charts, diagrams, firearms, and any other item that has relevance. All visual elements are important in trial, whether they are technically admitted as evidence or used solely in trial to assist the jury. Everything the jury can see has significance.

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

Students will work on laying the proper foundation (with a qualified witness) in assigned problems.

You will observe lawyers qualifying an expert witness and then questioning the expert regarding her area of expertise as it relates to the facts. This will prepare you to qualify and question an expert witness in our exercises next week.

Week 5: February 14th

Expert Witnesses, Motions in Limine and Case Strategy

Reading: TC pages 111-125 (Expert Witnesses)

Lawyers rely heavily on experts in various fields. A properly qualified expert is often needed to give opinions on causation, medical procedures, professional methods, forensic testing and comparison, and any other area that calls for specialized knowledge. Lawyers need to be skilled in handling expert witnesses. They must understand how to properly qualify an expert through proper foundation, how to present the expert's opinions, and how to challenge opposing expert testimony.

We will consider preparing and calling expert witnesses, laying proper foundations for expert opinion testimony, and potential objections. A simple fact pattern will be assigned, and students will work on direct- and cross-examinations of an expert witness.

In your Final Trial, you will have a brief period to make and argue a Motion in Limine during a pre-trial conference. We will discuss the purpose, structure, and strategy for raising such a motion.

Additional Week 5 Topic: Protecting Your Client and the Record

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

Students will observe lawyers make their opening statements and practice making and responding to objections. We will also discuss the consequences of making objections in front of a jury and professional civility.

Week 6: February 21st

Voir Dire and Opening Statements

Reading: TC Pages 18-35

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 prior to this class so all students have a chance to think about voir dire in their assigned trial cases. The trial practice cases are all "filed" in state court, so state court rules and codes govern the proceedings.

- (1) Who are the potential jurors?
- (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 a critical pre-requisite to a lawyer's decision-making during jury selection.

Students will conduct voir dire on behalf of their respective clients. “Senior” partners will be present to assist.

Be prepared to conduct opening statements on behalf of your client.

You will also observe a lawyer give her closing argument to the jury. This will help you prepare to give a closing argument on behalf of your client, next week.

Week 7: February 28th

Closing Argument/Jury Instructions

Reading: TC 37-51; 157-161

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, without drawing objections or reprimands from your judge.

What do jurors need to hear from us *after* all the evidence is admitted? Closing is the time to argue the merits of the case. How should the case be decided, and why? What are the best arguments to make based on the facts and the law? How can we discredit or neutralize the other side’s case?

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

We will discuss persuasion. We want each of you to possess this ability.

In addition, we will briefly discuss the art of proposing proper jury instructions. Some judges give jury instructions before closing arguments, and others prefer to instruct the jury on the law after closing arguments. Knowing how and when the judge will instruct the jury on the law will affect the perspective of your closing argument.

Be prepared to conduct closing arguments on behalf of your clients.

Weeks 8, 9 and 10 : March 8th, March 21st, and March 28th

Practice Trials

ALL Students will be involved in each practice trial for Weeks 8, 9, and 10. The practice trials are held during the regular weekly class period. In each practice trial, students will either be a lawyer a witness, or a juror.

All students should be preparing for final trials at this time
--

Final Trials are Friday evening/Saturday morning/Saturday afternoon
The Dates are March 31st, April 1st, April 14th, and April 15th
PLEASE SEE NEXT PAGE FOR TRIAL SCHEDULE

Final Trials and Final Weeks of Class

All students participate in each round of the trials (students try cases, perform witness roles, and critique).

First Trial Weekend:

Friday, 3/31	5:00pm	Trial and Critique, Round I.
Saturday, 4/1	8:30am	Trial and Critique, Round II.
Saturday, 4/1	1:30pm	Trial and Critique, Round III.

Week 11: April 4th

Review and Preparation for the Upcoming Round

Week 12: April 11th

Intensive Clinic for the Final Round of Trials

Second Final Trial Weekend:

Friday, 4/14	5:00pm	Trial and Critique, Round IV.
Saturday, 4/15	8:30am	Trial and Critique, Round V.
Saturday, 4/15	1:30pm	Trial and Critique, Round VI.

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS

Dressing for Court:

Business attire is required for the Final Trials. Please don't hesitate to contact me or one of our Teaching Assistants if you need any help regarding this requirement. Resources are available.

Witness Roles:

Each student will be assigned a witness role for the trials. All witnesses are expected to be well prepared.

Self-review and critique

Workshops will be recorded, and students are required to review their own performances.

Required work with teaching assistants

Each student is required to review their recorded performances with an assigned advanced student. Details will be explained in class.

ADDITIONAL INFORMATION AND POLICIES

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed two absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

Attendance is critical in this course because of the interactive nature required to learn courtroom skills, including virtual attendance if necessary due to COVID-19 restrictions. 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. Please call or email Professor Marsh.**

COMPLIANCE WITH UF HONOR CODE:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

EXAM DELAYS AND ACCOMMODATIONS:

The law school policy on exam delays and accommodations can be found [here](#).

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

STUDENT COURSE EVALUATIONS

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on

how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.blucera.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

RECORDINGS OF CLASSES:

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

In addition, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code."

PREFERRED NAME AND PRONOUNS:

It is important that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name.

You may also change your "Display Name" in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use

my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

COMPLIANCE WITH UF HONOR CODE:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.