

Trial Practice

University of Florida Levin College of Law

Fall 2023 Syllabus
LAW 6363 / Class Number 29082

CONTACT INFORMATION

Professor Joshua Silverman
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Meeting Time: Tuesdays, 5:00 p.m. – 8:00 p.m.
Meeting Location: MLAC 106

UFLCL Office: Adjunct Offices, 3rd Floor Holland Hall
UFLCL Office Hours: Fridays, 3:00 p.m. – 5:00 p.m.

Office: 300 East University Avenue, Suite 240, Gainesville, FL 32601
Office Hours: by appointment.

How to Contact Me

I am available by appointment, phone, e-mail and Zoom. Students are welcome to call or text at any reasonable time. Please do not leave a voicemail. If a student is unable to reach me immediately by voice call, please follow up with a text message or e-mail.

Students wishing to schedule a time to meet with me (either in person or via Zoom/phone) not during my regular UFCLC office hours should contact my paralegal Brent Lanier, at (352) 337-8373 and/or brent@lawgainesville.com.

I welcome meetings with students. I am happy to answer any questions you may have pertaining to the course, to trial practice in general, or to the practice of law in general. Please don't hesitate to ask questions. I don't consider any questions silly, unnecessary or not worth my time.

Course Description and Objectives

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.

Textbook and Course Materials:

- (1) *Trying Cases: Promise, Prove, and Persuade*, (J. Zedalis, Vandephas Publishing) (also available as an e-book)
- (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)

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. Students are required to prepare for all in-class presentations prior to the commencement of the class for which that presentation will occur. A written or electronic copy of each student's preparation for that day's class must be provided to the professor prior to the start of class.

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 13-week semester, students will spend at least 78 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.

Attendance

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed no unexcused absences during the semester and final trials. 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. 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.

Grading

3 Credits, 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 required to participate as a witness, juror, and courtroom personnel in both class and final trials in addition to their lawyer / case assignments. Competence, preparation, and attendance as a witness, juror, and courtroom personnel are considered in grading.

In-Class Participation / Use of Electronic Devices

Class is divided into 2 hours of practical exercises and 1 hour of instruction. Students are required to actively participate in both instruction and practical exercises. Participation during practical exercises includes both presenting, observing, and critiquing the exercises and practice trials.

During instruction, students are permitted to use electronic devices. Use of electronic devices for recording instruction is governed by the recording policy below. During practical exercises, students may not use electronic devices except as necessary during presentation of the assigned exercise by the student(s) actively presenting. For example, the use of a computer, tablet, or phone is permissible while a student is conducting an examination of a witness or presenting a closing argument. Students observing and critiquing such presentation may not use electronic devices. Use of an electronic device includes having such device visible to either the student or the professor.

During practical exercise portion of the class, students are permitted to excuse themselves from the classroom to use an electronic device when necessary.

Final Trials

Final Trial Dates for Fall 2023 are: November 11, 12, 17, and 18. All students must be present for each day of the final trials, even if not presenting.

Prerequisite Knowledge and Skills

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

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.bluer.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS

Dressing for Court:

Courtroom attire is required for the FINAL TRIALS.

During regular weekly classes, and for witness or critiquing roles at trial, dress comfortably and appropriately. I have no desire to be a member of the fashion police.

I do encourage, but not require, students to consider wearing courtroom attire for at least a couple of our regular classes, later in the semester closer to the final trials. Some students may not be accustomed to wearing courtroom attire, and there is something to be said for getting used to it before the final trials.

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 required work with teaching assistants:

Workshops on direct exam, cross exam, expert witnesses, and opening/closing will be recorded, 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.

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. All students participate in each trial round.

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>

Class Recording Policy:

Students can 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.”

Course Schedule

Class will be divided into a two-hour trial skill exercise block and a one-hour block of instruction. Exercises will follow from the previous class instruction as set forth below. There are no exercises for the first class. There will be four classes of practice final trials without lecture. There is no class between the first and second final trial.

Date	Part No	Exercises	Lecture
8/22/2023	1	None	Introduction to Trial Practice
8/29/2023	2	Direct Examination	Cross Examination
9/5/2023	3	Cross Examination	Exhibits and Visual Aids
9/12/2023	4	Exhibits and Visual Aides	Expert Witnesses and Case Strategy
9/19/2023	5	Expert Witnesses	Voir Dire
9/26/2023	6	Voir Dire	Opening Statement
10/3/2023	7	Opening	Closing Argument
10/10/2023	7	Closing	Final Trial Case Discussion
10/17/2023	8	Practice Final Trial	None
10/24/2023	8	Practice Final Trial	None
10/31/2023	8	Practice Final Trial	None
11/7/2023	8	Practice Final Trial	None
11/11/2023	Final	Final trial	None
11/12/2023	Final	Final trial	None
11/14/2023	NA	Prep for 2nd Round, Evaluations	None
11/17/2023	Final	Final trial	None
11/18/2023	Final	Final trial	None

PART 1: Introduction to Trial Practice

Part 1: Introduction & Course Overview:

1	<p>Required Reading: Pages v, vi, (Forward) and 1-17 (Preparing for Trial; Command of the Courtroom); and pages 52-75 (Direct Examination) in <u>Trying Cases</u>.</p> <p>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 as well as the mechanics of advocacy at each stage. This course focuses on skills necessary for excellent courtroom practice.</p>
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	<p>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 this: What do we need to prove or challenge? How do we prove or challenge it? Who has the burden of proof? How do we make it 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?</p> <p>Lawyers must understand the purposes and goals of each part of the trial before they can excel at any level.</p> <p>First Class: A broad overview of the jury trial and warm-ups. Key Words: Language, word choice, tone, emphasis, open-ended questions, closed (leading) questions, listening, fair argument, relevance, protecting your client.</p>
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<p>PART 2: Relevance, Proof, and Storytelling: Preparing and Presenting Key Witnesses</p>	
	<p>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 issues like hearsay.</p> <p>How do we present our proof and our client's story in a proper, clear, and interesting manner?</p> <p>Be prepared to conduct direct examinations in Problems #1 and #2 in Trial Practice Cases and Materials, <i>State of Florida v. Sheila Menlo</i> and <i>State of Florida v. Cynthia Baker</i>.</p>

	<p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Reading: Pages 130-161 (Making and Meeting Objections)
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PART 3: Cross Examination	
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	<p>We will work on cross examination by considering our goals-- discrediting, impeaching, and exposing weaknesses in the opposing side's case.</p> <p>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.</p> <p>We will also discuss objections, beginning with relevance. We will consider other common issues like hearsay and improper impeachment.</p> <p>Be prepared to conduct direct and cross examinations in:</p> <p>Problems # 3 and #4 in Trial Practice Cases and Materials, <i>Winthrop v. Preston's Tree Service</i> and <i>State of Florida v. Strong</i>.</p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Pages 76-99 (Cross Examination)
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PART 4: Exhibits and Visual Aids	
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	<p><i>Required Readings:</i> Pages 100-110 (Laying Foundations)</p> <p>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,</p>
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	<p>whether they are technically admitted as evidence. Everything the jury can see has significance.</p> <p>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.</p> <p>Students will work on laying the proper foundation (with a qualified witness) in assigned problems.</p>
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<p>PART 5: Expert Witnesses and Case Strategy</p>	
	<p>Reading: pages 111-125 (Expert Witnesses)</p> <p>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. 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.</p> <p>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 directs and crosses of an expert witness.</p> <p><u>Additional Week Five Topic: Protecting Your Client and Your Record</u></p> <p>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 pretrial and during trial.</p>

	<p>We will have an intensive objections class. Students will listen to closing arguments and practice making and responding to objections (this is a FUN!) We will also discuss Pretrial Conferences and Civility.</p>
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<p>PART 6: Voir Dire</p>	
	<p>Reading: Pages 18-35</p> <p>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.</p> <p>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.</p> <ol style="list-style-type: none"> (1) Who are the potential jurors and (2) How will they react to the case? (3) How do we intelligently exercise our challenges? <p>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.</p>

<p>PART 7: Opening Statement and Closing Argument</p>	
	<p>Reading: 37-51; 157-161</p>

	<p>What do the jurors need to hear from us <i>before</i> 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.</p> <p>What do jurors need to hear from us <i>after</i> 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?</p> <p>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.</p> <p>We will discuss persuasion. We want each of you to possess this ability.</p> <p>Be prepared to conduct opening statements and closing arguments on behalf of your clients.</p>
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PART 8: Practice Trials	
	<p>ALL Students will be involved in each practice trial for weeks Eight, Nine, and Ten. The practice trials are held during the regular weekly workshop timeframe. In each practice trial, students will either be a lawyer a witness, or a juror.</p>

Final Trials are Friday evening/Saturday morning/Saturday afternoon

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, [TBD]	5:00pm	Trial and Critique, Round I.
Saturday, [TBD]	8:30am	Trial and Critique, Round II.
Saturday, [TBD]	1:30pm	Trial and Critique, Round III.

Week Eleven: [TBD], Review and Preparation for the Upcoming Round

Week Twelve: [TBD], Intensive Clinic for the Final Round of Trials

Second Final Trial Weekend:

Friday, [TBD]	5:00pm	Trial and Critique, Round IV.
Saturday, [TBD]	8:30am	Trial and Critique, Round V.
Saturday, [TBD]	1:30pm	Trial and Critique, Round VI.
