

TRIAL ADVOCACY

LAW 6360 / CLASS 16564

3 Credits

SYLLABUS – SPRING 2019

Professor Rod Smith

Contact: c/o Linda Curry, lc Curry@law.ufl.edu 273-0859

COURSE DESCRIPTION:

This course will provide an overview of trial situations and skills and a chance for students to get practical experience using those skills. The course will begin by looking at trial analysis and how to develop trial themes and theories. As the semester proceeds students will learn about and perform the various skills needed to be a successful trial attorney. The course moves, for the most part, sequentially through the events that would likely occur during a trial. Those include jury selection, opening statement, direct examination, cross examination, use of evidence at trial, working with demonstrative evidence, handling experts, and closing arguments.

WORKLOAD:

ABA Standard 310 calls for 120 minutes of preparation for each hour of classroom instruction. This is a 3 credit-hour course. Pretrial practice has both classroom and simulation components. It is expected that over the course of a 14-week semester, students will spend at least 84 hours engaged in the following activities. The basic course structure will proceed as follows: There will be a lecture on a given topic. In the last 30 minutes of the lecture class, the students will be responsible for performing a very short (typically 3 minute) version of the skill that is being discussed. The students will use the materials referenced below in the Additional Reading materials to perform this short trial skill performance. Then during the next class meeting, the students will be required to prepare a full version of the trial skill to perform. This full trial skill performance will be based on materials in the *Potter v. Shrackle* and *State v. Diamond* case files, which is detailed below in the Required Reading materials. After this class, students will then be responsible for watching video recordings of their performances and submitting critique forms.

LEARNING OUTCOMES AND COURSE OBJECTIVES:

Students will become familiar with a wide range of trial skills. Students will benefit from reading about these skills, participating in related lectures and discussions, and then performing these skills in a classroom setting. The classroom

is a safe environment where students will be encouraged to feel comfortable with experimenting with and practicing these skills. The case packets are fun and creative but still fictional. No one is going to jail if convicted and no one will pay millions of dollars if found civilly responsible. Students are encouraged to take this seriously and focus on the development of this skill. For many people, thoughts of public speaking are full of fear. That fear will be confronted in this class and students will begin to learn ways to deal with these pressures and stress in a courtroom setting. Through the practice and repetition that this course offers, it is hoped that students will become more knowledgeable about trials and more confident in their own skills.

By the end of the semester, students are expected to accomplish the following:

1. Learn basic and moderate trial skills.
2. Have two opportunities to practice the following skills: jury selection, opening statement, direct examination, cross examination, and closing argument.
3. Learn ways to manage the stress and uncertainty of trial work.
4. Gain confidence for future work opportunities by gaining knowledge about the trial process and skills needed to succeed in a courtroom.

REQUIRED READING:

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

1. Trial Techniques and Trials, Thomas A. Mauet (Aspen)
2. NITA Casefiles:
 - (a) *Potter v. Shrackle*, (NITA Latest), Kenneth S. Broun and James H. Seckinger
 - (b) *State v. Diamond*, (NITA Latest), James H. Seckinger
3. *State of Florida v. Frankie Tone* approximately six (6) pages (TWEN).

CLASS TIMES:

Monday and Thursday - 4:00 to 5:50 PM in Advocacy Center, Room 209

❖ ATTENDANCE IS MANDATORY ❖

IT IS THE RESPONSIBILITY OF STUDENTS TO KEEP MONDAYS AND THURSDAYS FROM 4:00PM TO 5:50PM AVAILABLE DURING THE SEMESTER TO ACCOMMODATE POTENTIAL RESCHEDULING OF CLASS TO AN OPEN DATE IN THE SYLLABUS

All classes will meet in the **Levin Advocacy Center, Room 209** unless indicated otherwise on this Syllabus. Should any changes occur, they will be posted on TWEN and sent via TWEN email. All Trial Advocacy students should register on the TWEN site. Workshops are scheduled on the calendar.

ABSENCES:

Excused absences: Documented illness, serious sickness in the family, death in the family.

Unexcused absences: Ski trips, weddings, vacations, etc.

Note: If you must miss a class, please contact Linda Curry, Trial Skills Programs, Faculty & Academic Support, Holland Hall, Room 323A, at 273-0859 or via email lc Curry@law.ufl.edu **before 12:00 PM on the scheduled class day.**

ATTIRE, AND GROUP ASSIGNMENTS:

Courtroom attire for all workshops.

After the class roll is finalized, all students will be assigned either to Group A or B. This will be done randomly by Linda Curry and students will be given their assignments. Assignments will then correspond as detailed below in this syllabus.

STUDENTS REQUIRING ACCOMMODATIONS:

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. Request for accommodations should be presented to Dean Rachel Inman. 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.

GRADING

This course is graded satisfactory/unsatisfactory (S, U). In order to receive a satisfactory grade, students must complete and submit each of the seven written assignments and each of their video reviews and must participate in workshops and video reviews.

COURSE EVALUATION

Students will be given an opportunity to provide a course evaluation toward the end of the semester. Students are encouraged to participate in these evaluations as summaries of these evaluations are available to students in future semesters.

CLASS DEMEANOR AND UNIVERSITY HONESTY POLICY

Students are expected to conduct themselves in accordance with all University policies regarding honesty. Additionally, students will be expected to conduct themselves in a professional and appropriate manner. Understanding that students often want to take notes, there will not be a prohibition on using computers. However, students should not use these electronic devices for non-class related purposes. We are together for an hour and fifty minutes a couple of times per week. Let's use the time to become better trial lawyers. Twitter, Facebook, Instagram, text messages, etc. will all be around when the class ends.

CLASS SCHEDULE – SPRING 2019

DATE	CLASS
Monday, January 7 Adv. Center 209	Class roll finalized Course organization and assignments
Thursday, January 10 Adv. Center 209	Lecture: The Trial Process <i>Assignment:</i> Study and be ready to discuss Mauet, Chapters 1 and 2
Monday, January 14 Adv. Center 209	Lecture and demonstration: Jury Selection <i>Assignment:</i> Study and be ready to discuss Mauet, Chapter 3
Thursday, January 17 Adv. Center 209	Guest Lecture on Jury Selection
Monday, January 21	MARTIN LUTHER KING HOLIDAY
Thursday, January 24 Adv. Center 209	Workshop #1: Jury Selection <i>Assignment:</i> Submit written questions for Jury Selection Group A: Be prepared to choose a jury for the defendant in the case of <i>State v. Diamond</i> and for the plaintiff in the case of <i>Potter v. Shrackle</i> . Group B: Be prepared to choose a jury for the state in the case of <i>State v. Diamond</i> and for the defendant in the case of <i>Potter v. Shrackle</i>
Monday, January 28 Adv. Center 209	Lecture and Demonstration: Opening Statements <i>Assignment:</i> Study and be ready to discuss Mauet, Chapter 4
Thursday, January 31 Adv. Center 209	Workshop #2: Opening Statements <i>Assignment:</i> Submit a written Opening Statement Group A: Be prepared to deliver the opening statement for the defendant in the case of <i>State v. Diamond</i> and for the plaintiff in the case of <i>Potter v. Shrackle</i> . Group B: Be prepared to deliver the opening statement for the state in the case of <i>State v. Diamond</i> and for the defendant in the case of <i>Potter v. Shrackle</i> .

Monday, February 4 Adv. Center 209	Lecture: Demonstration on Direct Examination of the Lay Witness <i>Assignment:</i> Study and be ready to discuss Mauet, Chapter 5; see also <u><i>United States v. John Lawson</i></u> under “Course Materials” – TWEN
Thursday, February 7 Adv. Center 209	Lecture and Mini Workshop: Demonstration on Direct Examination of the Lay Witness (continued) Group A: Be prepared to do the direct examination of Sgt. Emery Cook. Group B: Be prepared to do the direct examination of Mr. Lawson. <u><i>United States v. Lawson.</i></u> (TWEN)
Thursday, February 14 Adv. Center 209	Workshop #3: Direct Examination of the Lay Witness <i>Assignments:</i> 1. Submit a written direct examination assignment 2. Be prepared to perform the following: Group A: 1. Perform the Direct Examination of Marilyn Kelly from the case of <i>Potter v. Shrackle.</i> 2. Oppose the Direct Examination of Estelle Mason from the case of <i>State v. Diamond.</i> Group B: 1. Perform the Direct Examination of Estelle Mason from the case of <i>State v. Diamond.</i> 2. Oppose the Direct Examination of Marilyn Kelly from the case of <i>Potter v. Shrackle.</i> Notes on Assignments: ❖ Students should be prepared to perform the direct examinations and to function as opposing counsel for the other direct examination. This function includes interposing all appropriate objections to the direct examination. You are not expected to perform a cross examination at this point. ❖ NO DEMONSTRATIVE AIDS are to be used during this initial direct examination
Monday, February 18 Adv. Center 209	Lecture: Demonstration and Mini Workshop – Basic Cross Examination of the Lay Witness. See <i>State v. Lawson</i> (TWEN) <i>Assignments:</i> 1. Study and be ready to discuss Mauet, Chapter 6 Group A: Be prepared to perform a cross examination of Sgt. Emery Cook. Group B: Be prepared to perform a cross examination of Mr. Lawson.

<p>Thursday, February 21 Adv. Center 209</p>	<p>Workshop #4: Cross Examination <i>Assignments:</i></p> <ol style="list-style-type: none"> 1. Submit written cross examinations 2. Be prepared to perform the following: <ul style="list-style-type: none"> Group A: <ol style="list-style-type: none"> 3. Perform the Cross Examination of Estelle Mason from the case of <i>State v. Diamond</i>. 4. Oppose the Cross Examination of Marilyn Kelly from the case of <i>Potter v. Shrackle</i>. Group B: <ol style="list-style-type: none"> 3. Perform the Cross Examination of Marilyn Kelly from the case of <i>Potter v. Shrackle</i>. 4. Oppose the Cross Examination of Estelle Mason from the case of <i>State v. Diamond</i>. <p><i>Notes on Assignments:</i> No demonstrative aids are to be used in the exercise this week.</p>
<p>Monday, February 25 Adv. Center 209</p>	<p>Lecture and Demonstration: Evidence <i>Assignments:</i> Study and be ready to discuss Mauet, Chapter 7</p>
<p>Thursday, February 28 Adv. Center 209</p>	<p>Guest Lecture: Evidence</p>
<p>March 4 – 8</p>	<p style="text-align: center;">SPRING BREAK</p>
<p>Thursday, March 14 Adv. Center 209</p>	<p>Workshop #5: Introduction and Use of Real and Demonstrative Evidence <i>Assignments:</i></p> <ol style="list-style-type: none"> 1. Review the case of <i>State of Florida v. Frankie Tone</i> 2. All students submit written preparation for introducing into evidence the following items: Consider the case against Frankie Tone at trial. Officer Gray is on the stand and you represent the State: <ul style="list-style-type: none"> • Graffiti Photos • Wal-Mart diagram • Paint Cans • Cell phone Records Consider the civil case of Ms. Rose Hughes at trial and you are representing the plaintiff, Ms. Hughes. Introduce the medical records (produced by custodian of the records from the hospital). <ul style="list-style-type: none"> • Medical Records – Rose Hughes (see TWEN as part of Tone case file) 3. All students should be prepared to introduce all items of evidence.

Monday, March 18 Adv. Center 209	Lecture: Demonstration and Discussion – The Expert Witness <i>Assignment:</i> Study and be ready to discuss Mauet, Chapter 8
Thursday, March 21 Adv. Center 209	Guest Lecture: Examining the Expert Witness
Thursday, March 28 Adv. Center 209	<p>Workshop #6: The Expert Witness <i>Assignments:</i></p> <ol style="list-style-type: none"> Submit written preparation for direct or cross examination Be prepared to perform the following: <p>Group A: Problem A Perform direct examination of Dr. Pierce in <i>State v. Diamond</i>.</p> <p>*Problem B Perform cross examination of Dr. Macdonald in <i>State v. O'Reilly</i>.</p> <p>Group B: Problem A Perform cross examination of Dr. Pierce in <i>State v. Diamond</i>.</p> <p>*Problem B Perform direct examination of Dr. Macdonald in <i>State v. O'Reilly</i>.</p> <p>*Note: <u>Problem B</u>, <i>State v. O'Reilly</i>, assigned for this workshop, is not in your textbook. Materials will be posted on TWEN by Linda Curry.</p>
Monday, April 1 Adv. Center 209	Lecture and Demonstration: Closing Argument <i>Assignment:</i> Study and be ready to discuss Mauet, Chapter 9
Thursday, April 4 Adv. Center 209	<p>Workshop #7: Closing Argument <i>Assignments:</i></p> <ol style="list-style-type: none"> Submit written closing argument Be prepared to deliver the closing argument (see below) <p>Group A: Be prepared to deliver the closing argument for the defendant in the case of <i>State v. Diamond</i> and for the plaintiff in the case of <i>Potter v. Shrackle</i>.</p> <p>Group B: Be prepared to deliver the closing argument for the state in the case of <i>State v. Diamond</i> and for the defendant in the case of <i>Potter v. Shrackle</i>.</p>
Monday, April 8 Adv. Center 209	Discussion: Professionalism – “The Lawyer as Liar” <i>Assignment:</i> Read articles and prepare to discuss problems from the information posted by Linda Curry on TWEN.

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Format for Workshop Preparation Assignments

Your written assignments should be typewritten with your name, date and workshop title located at the top. Include your fully-developed objectives and reasoning, as appropriate for the specific assignment.

****Two copies required:** Please submit **one copy** of your workshop assignment PRIOR to each workshop to my assistant, Linda Curry. She will log-in receipt of your papers. Your original will be useful to you as you prepare for the workshop.

Format for Workshop Video Review

You will review your workshop performance online after each workshop and complete the video review form (see p.7 in Syllabus). The video review form should be typewritten.

To access them, simply login via TWEN and click on the video link located on the left. Students will be able to view the videos there.

You will complete the video review form (see p. 7 of syllabus) and submit to Linda Curry. All video review forms must be typewritten. Review forms are due no later than the evening of the next workshop (but you may submit at any time prior). **The review sheet for the final workshop (Closing Arguments) is due by Friday of the next week *after* the workshop.**

TRIAL ADVOCACY VIDEO REVIEW FORM

Name: _____

Date of Performance: _____ Date of Review: _____

Workshop Title: _____

VOICE:

POSTURE:

DEMEANOR:

GESTURES:

MOVEMENT:

PACE:

JURY'S FOCUS:

USE OF NOTES:

CLOTHING:

COURTROOM ETIQUETTE:

OVERALL IMPRESSION TO JURORS: