**COURSE SYLLABUS**

**TRIAL PRACTICE - LAW 6363**

***Fall 2021***

**INSTRUCTOR’S CONTACT INFORMATION:**

Professor Sarah H. Wolking

Office Location: Bruton-Geer Hall

Office Phone: (352) 273-0815 Cell: (510) 376-7837

Email: wolking@law.ufl.edu

***Office Hours***: Tuesdays and Wednesdays 1:00-2:00pm. Students should feel free to contact the professor at any time to discuss class materials or to ask questions.  Students are welcome to contact the professor via email, text, or phone. Professor Wolking is also available for Zoom appointments.

**CLASSROOM AND CLASS TIME:**

Mondays, 3:00pm – 6:00pm; MLAC 106

**Final Trials: Friday, November 5th from 5-9pm**

 **Saturday, November 6th from 9am-5pm**

 **Friday, November 19th from 5-9pm**

 **SaturdayNovember 20th from 9am-5pm**

 ***FINAL TRIALS ARE MANDATORY***

**COURSE PREREQUISITE:**

Evidence must be taken before or during the same semester as Trial Practice.

**COURSE OBJECTIVES AND GOALS:**

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

My goal is to provide strong entry-level courtroom skills together with an understanding of effective preparation for trial and an awareness of various persuasive methods. Students will develop the knowledge and skills necessary for effective trial advocacy through a combination of study, observation, discussion, and most importantly, mock trial exercises, with critique from experienced lawyers. To promote these objectives, students will:

* Effectively communicate in court
* Present evidence
* Examine and prepare witnesses
* Frame pre-trial motions
* Make and meet objections
* Analyze and prepare a case for trial
* Identify and develop best practices for professional conduct

**LEARNING OUTCOMES:**

At the conclusion of this course, students should be able to:

* Demonstrate mastery of the nuts and bolts of presenting a case to a judge or jury, including delivering effective opening statements and closing arguments, as well as crafting well-organized direct and cross examinations
* Communicate effectively in court
* Make and meet objections
* Analyze the facts of a case and strategically prepare it for trial
* Argue pre-trial motions
* Model professionalism in the context of trial advocacy

**REQUIRED READING:**

* Jennifer Zedalis, Trying Cases: Promise, Prove, and Persuade (2018) *also available as an e-book*
* Workshop/Trial Coursebook: available for this course on Canvas
* Florida Evidence Code Summary Trial Guide *available at the Levin College of Law Bookstore*
* Case Summaries for Trial Preparation *provided by the Professor*

**RECOMMENDED TEXTS:**

* Richard J. Crawford and Charlotte A. Morris, The Persuasive Edge (2nd ed. 2011)
* Charles W. Ehrhardt, Florida Trial Objections (6th ed. 2019)
* Teresa McGarry, Lisa Hirsch, Anthony J. Bocchino, and David A. Sonenshein, Florida Evidence Code with Objections (NITA, 7th ed. 2021)
* James W. McElhaney, Trial Notebook (ABA, 2005)

***Updates for this course will be posted regularly on Canvas***.

**CLASS ATTENDANCE AND PARTICIPATION:**

You must of course attend and participate in class. Attendance is particularly important because this is a courtroom skills course which is interactive. Students cannot develop keen advocacy skills from simply reading or relying on other passive learning techniques. Absences must be excused in advance. The practical exercises conducted during class make attendance and participation mandatory. Absence will be excused for illness or emergencies and for significant educational or career opportunities. If you need to miss a class, please let me know as soon as possible. Unexcused absence from class will result in a 5-point reduction in a student's final grade (on the 100 point scale) for each missed class.  Further information about the law school's attendance policy is available here: http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3.

**PERFORMANCE EXPECTATIONS AND INFORMATION ON GRADING:**

For this course, you will earn three (3) total credits. These credits are pass/fail (Satisfactory/Unsatisfactory). 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 roles. 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.

This course follows the grading policies at the Levin College of Law, available at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies. Although this course is graded S/U, the law school recognizes the following letter grades:

|  |  |
| --- | --- |
| A 4.00 (excellent) | C 2.00 (satisfactory) |
| A- 3.67 | C- 1.67 |
| B+ 3.33 | D+ 1.33 |
| B 3.00 (good) | D 1.00 (poor) |
| B- 2.67 | D- 0.67 |
| C+ 2.33 | E 0.00 (failure) |

The law school policy on exam delays and accommodations can be found here:

https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form.

**CLASS PREPARATION AND ELECTRONIC DEVICE USE:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every hour of classroom instruction. This course has 3 classroom hours of in-class instruction each week, requiring at least 6 hours per week of preparation outside of class.

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: Studying, planning, researching, and preparing workshop and trial materials; reviewing recorded performances; observing and critically reflecting on courtroom proceedings; and preparing for assigned witness and critique roles.

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.

To encourage discussion and engagement in class, use of laptops will be limited. You may be able to refer to your laptop when presenting to the group or researching an issue requested by the professor, but that’s it. Most of the time, laptops and other electronic devices should be closed in class.

**UF LAW HONOR CODE:**
Academic honesty and integrity are fundamental values of the University community. The University of Florida Levin College of Law Honor Code represents a commitment by students to adhere to the highest degree of ethical integrity. Teaching and learning flourish best in an environment where mutual trust and respect form the bedrock of relationships. The Honor Code helps create a community in which students can maximize their intellectual and academic potential. Students are bound by the UF Honor Code, which may be found at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code.

**LEARNING ENVIRONMENT AND PREFERRED NAME:**

It is important to the learning environment 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.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  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. I welcome you to the class and look forward to a rewarding learning adventure together.

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.

**GETTING HELP:**

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at:

helpdesk@ufl.edu or 352-392-HELP

http://elearning.ufl.edu/ (See “Message Us” at the top of the page)

**DISCOURSE, INCLUSION, AND THE CLASSROOM ETHOS:**

I consider this classroom to be a place where you will be treated with respect, and I welcome individuals of all ages, backgrounds, beliefs, ethnicities, genders, gender identities, gender expressions, national origins, religious affiliations, sexual orientations, ability – and other visible and non-visible differences. All members of this class are expected to contribute to a respectful, welcoming, and inclusive environment for every other member of the class. As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution which can be found at https://www.law.ufl.edu/law-news/support-the-uf-law-anti-racism-resolution.

**COMMUNICATION COURTESY AND CIVILITY:**
Please follow rules of common courtesy in all email messages, threaded discussions and chats. Do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

**ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:**
Students requesting accommodations for disabilities should first register with the Disability Resource Center (352-392-8565, https://disability.ufl.edu/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Asst. Dean Brian Mitchell). Students with disabilities are encouraged to follow this procedure and to share their accommodation letter with me as early as possible in the semester.

**CLASS RECORDINGS:**

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.

**STATEMENT REGARDING ONLINE COURSE EVALUATION:**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

**HEALTH AND WELLNESS RESOURCES:**

***U Matter, We Care***: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.

***Counseling and Wellness Center***: Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis services as well as non-crisis services.

***Student Health Care Center***: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.

***University Police Department***: Visit UF Police Department website or call 352-392-1111 (or 9-1-1 for emergencies).

***UF Health Shands Emergency Room/Trauma Center***: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.

**BASIC NEEDS ASSISTANCE:**

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs.  If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

**ASSIGNMENTS**

**Week One: Introduction to Trial Practice**

***Reading***: Trying Cases: pp. v-vi, (Forward) and pp. 1-17 (Preparing for Trial; Command of the Courtroom); and pp. 52-75 (Direct Examination)

The jury trial is the ultimate forum for justice. Trials are a search for truth as well as a method of dispute resolution. There is no greater privilege in the law than to speak on behalf of a client in court or to wield the power of the government with compassion and integrity. We will consider the art of persuasion as well as the mechanics of advocacy at each stage of the trial process. This course focuses on developing the skills necessary for excellent courtroom practice.

Although this is a trial course, the most important rules in trial work are to prepare early and to think ahead! Lawyers should prepare for trial by exhausting every avenue of discovery. This is how issues are framed and plans are developed to prove claims or defenses and to challenge the other party’s case. Ask yourself 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?

**Week Two: Relevance, Proof, and Storytelling: Preparing and Presenting Key Witnesses**

***Reading***: Trying Cases: pp. 130-156 (Trial Evidence; Putting the Case Together)

Lawyers question their own witnesses and introduce other forms of evidence during direct examination. The sum of a party’s direct exam evidence is their “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. 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.

**Week Three: Cross Examination**

***Reading:*** Trying Cases: pp. 76-99 (Cross Examination)

We will work on cross examination by considering the goals of discrediting, impeaching, exposing weaknesses in our opponent’s case and ultimately setting up our closing argument.

Techniques for controlling the witness and maintaining the focus of the cross examination will be considered. We will address the scope of cross as well as foundations and methods of impeachment. Finally, we will discuss objections, beginning with relevance. We will consider other common issues like hearsay and improper impeachment.

Be prepared to conduct direct and cross examinations in Trial Practice Cases and Materials,

Problems # 3 and #4, Winthrop v. Preston’s Tree Service and State of Florida v. Strong.

**Week Four: Exhibits and Visual Aids**

***Reading***: Trying Cases: pp. 100-110 (Laying Foundations)

Evidence comes in many forms, including documents, pictures, audio and video recordings, substances, x-rays, charts, diagrams, firearms, and any other item that is relevant. Every item the jury can see has significance, whether or not it is technically admitted as evidence.

Laying a foundation to admit 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, pictures, diagrams, and writings. Students will practice laying the proper foundation with a qualified witness in assigned problems.

**Week Five: Expert Witnesses and Case Strategy**

***Reading***: Trying Cases: pp. 111-129 (Expert Witnesses)

Lawyers rely heavily on experts in various fields. A properly qualified expert is often needed to give opinions about causation, medical procedures, forensic testing and comparison, and many other areas that require specialized knowledge. Lawyers need to be skilled in handling expert witnesses. They must understand how to properly qualify an expert, how to present the expert’s opinions, and how to challenge opposing expert testimony.

We will practice preparing and calling expert witnesses, laying a proper foundation for expert opinion testimony, and review potential objections. A simple fact pattern will be assigned and students will work on direct and cross examination of an expert witness.

**Week Five Bonus Topics: Protecting Your Client and Your Record/Objections**

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 both pretrial and during trial.

We will have an intensive objections workshop. Students will listen to closing arguments and practice making and responding to objections.

**Week Six: Voir Dire**

***Reading***: Trying Cases: pp. 18-36 (Jury Selection)

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

NB: 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. 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 prerequisite 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.

**Week Seven: Opening Statement and Closing Argument**

***Reading***: Trying Cases: pp. 37-51; 157-166 (Opening the Case; Closing Argument)

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. Great trial lawyers often comment that a case is won or lost in opening. We’ll learn to craft effective opening statements.

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 experience, tendency or emotion that is embedded in your case (e.g., greed, safety, fear, etc.). Lawyers need to be able to identify and convey themes to allow shared human experience to inform deliberations. Themes can be powerful and persuasive. Students will learn to be persuasive and to make a compelling argument.

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

**Weeks Eight, Nine, and Ten: Practice Trials**

ALL Students will be involved in each practice trial for weeks Eight, Nine, and Ten. The practice trials are held during the regular weekly class period. In each practice trial, students will either be assigned to be a lawyer, a witness, or a juror. All students should be preparing for Final Trials during this time!

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***First Final Trial Weekend***: *All students will participate in each round of the trials (students will try cases, perform witness roles, and critique one another).*

Friday, 11/5 5:00pm Trial and Critique, Round I

Saturday, 11/6 8:30am Trial and Critique, Round II

Saturday, 11/6 1:30pm Trial and Critique, Round III

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**Week Eleven: Review and Preparation for the Upcoming Round**

**Weeks Twelve and Thirteen: Intensive Clinic for the Final Round of Trials**

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***Second Final Trial Weekend:*** *All students will participate in each round of the trials (students will try cases, perform witness roles, and critique one another).*

Friday, 11/19 5:00pm Trial and Critique, Round IV

Saturday, 11/20 8:30am Trial and Critique, Round V

Saturday, 11/20 1:30pm Trial and Critique, Round VI

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**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, students may wear business casual clothing.

***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 during our first class.