

TRIAL ADVOCACY
PROFESSOR BILL DAW FALL
FALL SEMESTER 2014

REVISED TRIAL ADVOCACY REQUIRED TEXTS FOR PURCHASE

Mauet, Trial Techniques (latest edition, 9th)

Dixon v. Providential Life Insurance Company (NITA case file) State v. Delaney (NITA case file)

Access to Texas Rules of Evidence

GENERAL INFORMATION - COURSE COMPONENTS

1. LECTURE/DEMONSTRATION (Large Group Session)

All of the students will meet together each week in a large group for the lecture portion of the class which will address a specific area or areas of trial skills that will be worked on the following week's small groups. The lecture will be held each Tuesday beginning at 8:00 pm, which is immediately following the Small Group Sessions.

2. PERFORMANCE (Small Group Session)

The primary course emphasis will be on you learning trial skills by assuming the role of trial counsel in assigned simulation problems. Students will be divided into small groups that will meet each week to work on the simulation problems. All small groups meet Tuesdays from 6:00 to 7:50 pm.

You will represent either the plaintiff/prosecution or the defendant in the assigned problems for each week. Each week's assignment will depend on whether you have been designated an "A" or a "B". You're A/B assignment will be emailed to you following the first class meeting. You will also be emailed the room in which you will be meeting and the names of the other students in your small group.

During the Small Group Session, each student is expected to be prepared to perform as trial counsel regarding the assigned material. Each student is expected to perform at least once as trial counsel during each Small Group Session. Students who are not performing as trial counsel will act as witnesses. Failure to be prepared to act as a witness will be reflected in the "Professionalism" portion of your grade.

Students are required to wear courtroom attire unless otherwise noted on your schedule. Failure to wear courtroom attire will be reflected in “professionalism” portion of your grade. No hats will be permitted.

3. VIDEO REVIEW

Most class performance as trial counsel will be recorded. You will be required to review your recorded performance with one of the adjuncts during the class session each week except. You should also view the recorded performance on your own to assess areas on which you need to work.

4. TRIALS

There will be two trials during the semester. The first is a non-graded Bench Trial and the second is a full jury trial that will serve as a final exam. The Bench Trials will be held on Saturday, October 4, 2014, at UH Law Center. Final Jury trials will be held on Saturday, November 22, 2014, at the Harris County Civil Courthouse from 8:30am- 1:00pm. Please mark your calendars now.

5. TRIAL OBSERVATION

You are required to observe a jury trial during the course of a semester. You are not required to see an entire trial. You must observe a minimum of 6 hours that includes two out of the following: voir dire, opening statements, direct and cross of two witnesses, jury charge conference, or closing arguments. While you need not see all parts in one trial, you must see complete parts; i.e., you must see both the prosecutor’s and defense counsel's opening statement, or both the plaintiff s and defense counsel's closing argument.

You must submit a paper, not exceeding five pages. The paper should include the date and time of your observation(s), the court, the judge, the style of the case, a brief explanation of the case and a critical description of what you observed including your comments on what you thought the lawyers did that was effective and ineffective. The paper is to be submitted via email to the Professor Daw. **The paper must be turned in by 5p.m., October 13, 2014.** Trials may be announced periodically during the semester; however that information is for your convenience. All students are required to independently identify trials to observe.

6. ATTENDANCE AND GRADING

Attendance at the Lecture/Demonstration and Small Group sessions is mandatory. There is no attendance taken, however, each week, your performance in the Small Groups is judged and graded. The failure of a grade will count as an absence. An unexcused absence will be marked as a "0" for that week, which will reduce the overall grade for the Small Group performances. It will be considered an Honor Code violation for a student to attend the Small Group session and fail to attend the following lecture without notifying Professor Daw.

The final grade for the course will be based on your performance in the Small Group sessions, your performance on other assigned work such as the observation paper, and your performance in the final jury trial. There is also a professionalism category which addresses such things as your attire, your preparedness, your compliance with class requirements, the manner in which you address judges when playing the role of an attorney in a simulated event, and your general overall professionalism. There will be no written final examination. The performances in the Small Group sessions will count for 50% of your final grade. Your performance in your final trial will count for 35% of your final grade. The court observation paper will count for 5% of your final grade. The final 10% of your final grade will be based upon your professionalism as observed by all adjuncts.

7. ADDITIONAL READING

There are a number of excellent references and texts you may refer to as a supplement to the assigned text. The following titles are on reserve in the library.

ABA, Litigation Manual, Trial Bergman, Trial Advocacy in a Nutshell Jeans, Trial Advocacy Hegland, Trial and Practice Skills in a Nutshell McElhaney, Trial Notebook

8. GENERAL RULES FOR THE SMALL GROUPS

- A. You must be prepared to play the role of the witness for all problems for which you are assigned and to prepare and conduct a direct or redirect examination. Not being fully prepared as a witness will be noted by the observing adjuncts and reduce your professionalism grade.
- B. We will follow the Texas Rules of Evidence. Review the Rules as necessary before class and bring a copy of the Rules to class.

- C. We are using Harris County local rules regarding the examination of a witness; as such, you are to conduct all examinations of witnesses while seated at counsel table except when it is necessary to stand or if ordered by your presiding judge.
- D. Follow the ALL OBJECT RULE. Everyone, except the witness, should object whenever there are legal grounds for doing so. Do not hold back for tactical reasons unless otherwise instructed. Failure to object during the Small Group session can be a factor in your Small Group grade.
- E. When objecting or otherwise addressing the judge, stand up immediately and remain standing until the judge rules on the objection. If the witness has given an adverse answer before you had time to object, remember to ask the court to strike the answer and to instruct the jury to disregard the answer. Not standing when addressing the judge will be noted by the grading adjuncts and will reduce your professionalism grade.
- F. All objections should be addressed to the judge and should include a very brief statement of the reason for the objection. Do not argue unless you are invited to do so by the judge. If argument is requested, approach the bench (constructively unless instructed otherwise) to present your argument. Counsel should present their argument and responses to the judge and should not engage in discussion with each other.
- G. You should be prepared to conduct the examinations and other assigned exercises in their entirety, although usually you will be able to conduct only a portion. You usually will be expected to examine a witness or perform for eight minutes. You will then be given a 4 minute critique where you will be able to ask questions. You will then perform for another two minutes applying the critique. The next performer may be asked to pick up the witness where previous counsel left off.
- H. Because of the nature of the class, it is necessary to use “volunteers” on three occasions to fulfil the roles of jurors and witnesses. You will be expected to provide two “jurors” to make up a voir dire panel during the Small Group session for October 21 and October 28. Please make arrangements well in advance of these dates so there will be no issues as the success of these two classes depends on the participation of “jurors” that are not attending the class. Failure to procure “jurors” for these days will reduce your professionalism grade. You will be expected to provide your two witnesses for the final trial. As the final trial should be a “team event”, you will likely be responsible for only one witness.

ASSIGNMENTS

Case Files: *Nita Liquor Commission v. Jones* (Provided); *State v. Delaney and Dixon v. Providential Life Insurance Company*

The Building Blocks, non-case file problems and all other documents referred to below may be found on the UH Trial Advocacy webpage: <http://www.law.uh.edu/blakely/trialadvocacy/homepage.asp>

Note: For Weeks 1 through 3 the class will work on the *Nita Liquor Commission v. Brown* case. This problem may be found online. A's will represent the prosecution; B's will represent the defense.

WEEK 1 DIRECT EXAMINATION (Building Block #1) August 26

Required reading: Mauet, pp. 1-11, 109-177, 569-579

Problems: No Small Group session this week. Instead, students will remain in the Lecture/Demonstration group from 6:00pm until 9:00pm to watch a trial demonstration.

[Casual Dress; No Videotaping]

WEEK 2 CROSS EXAMINATION (Building Block #2) September 2

Required reading: Mauet, pp. 190-192, 197-270, 579-581

Problems: 1 (see website) A's prepare and conduct a direct examination of Investigator Bier; B's prepare and conduct a direct examination of Dan Jones.

WEEK 3 FOUNDATIONS (Building Block #3) September 9

Required reading: Mauet, pp. 271-375, 606-609

Problems: 1 (see website) A's prepare and conduct a cross examination of Dan Jones; B's prepare and conduct a cross examination of Inspector Bier.

WEEK 4 OBJECTIONS (Building Block #4) September 16

Note: For Weeks 4 through 7 the class will work on the *State v. Delaney* case file. This will also be the case file for the bench trials. B's will represent the prosecution; A's will represent the defendants.

Required reading: Mauet, pp. 505-552

Problems: A's prepare and conduct a direct examination of Marty Pafko and a cross examination of Detective Alex Lowrey; B's prepare and conduct a direct examination of Detective Alex Lowrey and a cross examination of Marty Pafko. You must use an exhibit as part of your direct examination.

WEEK 5 IMPEACHMENT (Building Block #5) September 23

Required reading: Mauet, pp. 168-173, 221-270

Problems: A's prepare and conduct a direct examination of Ardell Delaney and a cross examination of Val Cavaretta; B's conduct a direct examination of Val Cavaretta and a cross examination of Ardell Delaney. **You must use an exhibit as part of your direct examination.**

WEEK 6 EXPERTS (Building Block #6) September 30

Required reading: Mauet, pp. 377-442
For Bench Trials, Mauet, pp. 595-613

Problems: 2, 3 (see website) A's conduct a cross examination and impeachment in Problem 2 and a redirect examination in Problem 3A; B's conduct a redirect examination in Problem 2 and a cross examination and impeachment in Problem 3A. (These problems are on the course website, not in the case file)

[Court Attire, No Videotaping]

BENCH TRIALS: October 4, 2014

For the remainder of the semester, the class will work on *Dixon v. Providential Life*

Insurance Company. This will also be the case file for the final trials. A's will represent the plaintiff; B's will represent the defendant. (However, for the week 7 problem, we are using a problem from a different case file, which can be found on the course website.)

WEEK 7 CASE THEORY (Building Block #7) October 7

Required reading: Mauet, pp. 13-27, 560-568, 579-594

JIM PERDUE, *Inspiring with Your Trial Story* (Distributed in class; reprinted with permission of the State Bar of Texas)

Problems: A's prepare and conduct a direct examination of Robert Glenn; B's prepare and conduct a cross examination of Robert Glenn. (This problem is on the course website, not in the case file.)

WEEK 8 JURY SELECTION (Building Blocks #8 and #9) October 14

Required reading: Mauet, pp. 29-70, 567-568

Problems: Case Analysis for the side you will be representing in your final trial. You will be conducting an analysis of the case for the side you will be representing in your final trial, concentrating on the development of:

- (1) Legal Theory of the case
(why the law allows your client to win);
- (2) Factual Theory of the case
(what happened and why); and
- (3) Persuasive Theory of the case
(why your client should win as a matter of fairness and justice).

Prosecution and Defense Counsel will meet separately. [Casual Dress, No Videotaping]

WEEK 9 JURY SELECTION (Building Blocks #8 and #9) October 21

Problems: Prepare and conduct voir dire examination. Limit your questioning to a maximum of two issues concerning the demographics of the panel members.

YOU ARE STRONGLY ENCOURAGED TO BRING TWO "OUTSIDERS" TO YOUR SMALL GROUP SESSION TO SERVE AS PANEL MEMBERS

[Court Attire, No Videotaping]

WEEK 10 OPENING STATEMENT (Building Block #10) October 28

Required reading: Mauet, pp. 73-108, 565-567

Problems: Continue conducting voir dire for the side you were assigned concerning two of the issues in the case.

YOU ARE STRONGLY ENCOURAGED TO BRING TWO "OUTSIDERS" TO YOUR SMALL GROUP SESSION TO SERVE AS PANEL MEMBERS

[Court Attire, No Videotaping]

WEEK 11 CLOSING ARGUMENTS (Building Block #11) November 3

Required reading: Mauet, pp. 443-503, 590-591

Problems: Present a portion of your opening statement, no more than 8 minutes in length, for the side you will be representing in your final trial.

WEEK 12 PRETRIAL PROCEDURE (Building Block #12) November 17

Required reading: Mauet, pp. 236-237, 553-560, 593-594

Problems: Present a portion of your closing arguments, no more than 8 minutes in length, for the side you are representing in the final trial.

FINAL TRIALS

SATURDAY, NOVEMBER 22, 2014