TRIAL ADVOCACY REQUIRED TEXTS FOR PURCHASE. Make sure you purchase correct editions noted.

1. **Mauet, Trial Techniques and Trials (9th Edition)** – may be purchased at UH bookstore or at [www.amazon.com](http://www.amazon.com)


4. **Texas Rules of Evidence** (can be viewed online or purchased) (OPTIONAL)

### GENERAL INFORMATION

1. **CLASSROOM PERFORMANCE**
   
   The primary course emphasis will be on your learning trial skills by assuming the role of trial counsel in assigned simulation problems. The class meets on Monday and Wednesday from 8:30 a.m. – 9:50 a.m.

   You will represent either the Plaintiff 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". Your A/B assignment will be emailed to you following the first class meeting. Each student is expected to be prepared to perform as trial counsel regarding the assigned material. Each student should prepare to give a complete performance lasting approximately in 6-7 minutes (for example, if the assignment is to conduct a direct examination of a witness, the student must prepare the entire direct). You may be required to perform the entire 6-7 minutes of the skill/activity, or due to time constraints, you may be limited to performing only a portion of what you prepared from the beginning, middle or end of the planned activity. Many of the performances will be videotaped (see Video Review below.) Students who are not performing as trial counsel will act as witnesses during the exercises.

   Students may wear business casual attire except for Jury Selection, Bench Trials and Final Jury Trials. On those occasions, courtroom attire is required. Failure to wear courtroom attire when required will be reflected in the “professionalism” portion of your grade. In no event, will hats, shorts or flip flops be permitted.

2. **RULES OF EVIDENCE**
   
   Students are not required or even encouraged to take an evidence course before participating in this class. Prior to the preparation for the performances, brief lectures will be given on evidentiary issues and objections that may arise during the exercises in order to assist students in having a more “real life” trial experience. However, students will not be graded on their knowledge of the rules of evidence or how well they apply those rules. That being said, it should be noted that application of the rules as discussed in class will enhance the overall experience during the performances.
3. **VIDEO REVIEW**
Following the videotaping of each performance, you will be required to review your recorded performance and submit a self-critique consisting of at least two things you believe you did well and at least two things you plan to work on and improve. These self-critiques must be emailed to each of the professors no later than 5:00 p.m. the day before the next class meeting.

4. **TRIALS**
There will be two trials during the semester. You will most likely have a co-counsel for each trial, although depending on the number of students enrolled in the class, one or more may not have a co-counsel. The 1st is a non-graded Bench Trial and the 2nd is a full Jury Trial that will serve as a final exam. The Bench Trials will be held in the morning on **Saturday, September 23, 2017** at the Houston Law Center. Final Jury Trials will be held **Saturday, November 18, 2017** at the Harris County Civil Courthouse from 8:30 a.m. - 12:45 p.m. Please mark your calendars now! **Note:** if you are not available on the Bench Trial date, you must notify Professor Hon. Harvey Brown harvey.brown@txcourts.gov and Nicole Dellario nhdellar@central.uh.edu in the Blakely Institute office by the first day of class. In your email, please state the reason you are not available. **Due to logistics, you must be available on the date for the Final Jury Trial.**

5. **ATTENDANCE AND GRADING**
Attendance is mandatory. Each week, your performance is judged and graded. The failure to receive a grade for an exercise will necessarily count as an absence. It will be your responsibility to make sure that you perform each exercise (either during the Monday or the Wednesday class) in order to receive a grade.

If you must be excused from class, you must advise all of your professors and Nicole Dellario via email or text before class. You will be allowed one (1) unexcused absence. For that one unexcused absence, you will not receive a “0” grade and will be allowed to do a makeup performance for a grade at your option by contacting one of your professors and scheduling a performance time with him/her. For any additional absences, you must contact at least one of your professors in advance, and if he/she agrees that your anticipated absence is excused, you will be allowed to do a makeup performance by arranging it with one of your professors or in class if there is time. However, for any unexcused absences (in excess of the one allowed), you will not be allowed to make up your missed performance and will receive a “0” grade for that exercise.

When considering whether to miss a class, you should keep in mind that your performance and presence in the class enriches not only your own experience, but also the experiences of your fellow students. You may be needed to act as a witness when you are not performing. Also from a grade standpoint, the more grades you receive the better as each performance lays the groundwork for future, improved performances. Because makeup performances cannot be videotaped, your performance will not be available for grading by professors not participating in your makeup session so you lose the benefit of not only their critiques and grades, but the ability to improve based on the review of a videotaped performance.

The final grade for the course will be based on your performance in class, your self-critiques of your videotaped performance, and your performance in the final jury trial. There is also a professionalism category which addresses such things as your compliance with the attire and
other class requirements, your preparedness both as trial counsel and witness, your “courtroom” conduct, and your general overall professionalism. There will be no written final examination. The classroom performances will count for 50% of your final grade. Your performance in your final trial will count for 35% of your final grade. The self-critiques 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 of your professors.

6. GENERAL RULES FOR CLASS PERFORMANCES
A. You must be prepared each week to perform the required assignment and to act as a witness for the required assignment. You will be graded on your performance AND on whether you demonstrated a full understanding of the role of the witness you were portraying in the exercise. Not being fully prepared as a witness will be noted by the observing adjuncts and will reduce both your daily grade for your performance that evening and your professionalism grade.

B. We will follow the Texas Rules of Evidence to the extent they are discussed in class. The rules vary from jurisdiction to jurisdiction and from judge to judge on the proper way to question witnesses. In Harris County, most judges require examination of witnesses while seated at the counsel’s table. In Federal Court in Houston, most judges require questioning from a podium. Some judges allow the attorney to walk around the courtroom while questioning. We may use all 3. You can assume that all questioning will be done while sitting at counsel table unless you are told otherwise.

C. 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.

D. 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 judge to strike the answer and to instruct the jury to disregard the answer. Not standing when addressing the judge will reduce your professionalism grade.

E. All objections should be addressed to the judge. You should be prepared to give a legal basis for the objection should the judge ask for one. (Recall that objections will be covered before the exercise and you will not be graded on whether your objections are in fact correct.) Do not make an argument 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.

F. As stated earlier, you must be prepared to conduct the assigned exercises in their entirety, although there may only be time for you to perform a portion of what you have prepared. You will then be given brief critiques from your professors. If you are not satisfied with your performance and would like to do a second performance incorporating changes based on the critiques, you may do so if time permits after all other students have performed. In that case, the grade you receive will be based on
your second performance. Due to time constraints, it will be rare to have time for repeat performances.

G. Because of the nature of the class, it is necessary to use “volunteers” not enrolled in the class to assist in two of the exercises. The first one is during the second week of jury selection. One half of the class will arrange to have one person (friend, family member, other non-class law student, etc.) come to class on Monday, October 23, 2017. The rest of the class will bring one outside person to the class on Wednesday, October 25, 2017. These people will serve as additional potential jurors. The second instance is for the final jury trials on November 18, 2017. Each team of lawyers is responsible for bringing their own witnesses, typically three in total. Please make arrangements with your volunteers well in advance of these dates to avoid scheduling conflicts.

7. ADDITIONAL RESOURCES (OPTIONAL)
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: Litigation Manual: Trial (ABA); Trial Advocacy in a Nutshell (Bergman); Trial Advocacy (Jeans); Trial and Practice Skills in a Nutshell (Hegland); Trial Notebook (McElhaney). There are other various texts and tapes in the Blakely Advocacy Institute available for review.

CLASS ASSIGNMENTS

WEEK 1
BASICS OF DIRECT AND CROSS / CASE ANALYSIS / EVIDENTIARY ISSUES

Case file for Weeks 1-3: Nita Liquor Commission v. Cut-Rate Liquor and Jones; A's will represent the prosecution; B's will represent the defense.


Monday, August 21
There will be a lecture covering the basics of direct and cross examination. Also there will be a discussion of the case analysis, strategies and theories to be developed in the direct and cross examinations as well as evidentiary issues in the Nita Liquor Commission v. Dan Jones case.


Wednesday, August 23
Nita Liquor Commission v. Dan Jones - A's conduct a direct examination of Investigator Bier; B's conduct a direct examination of Dan Jones.

WEEK 2
DIRECT AND CROSS EXAMINATION

Monday, August 28
Continuation: Nita Liquor Commission v. Dan Jones - A’s conduct a direct examination of Investigator Bier; B's conduct a direct examination of Dan Jones.
**Wednesday, August 30**
Nita Liquor Commission v. Dan Jones - A's conduct a cross examination of Dan Jones; B’s conduct cross examination of Inspector Bier.

Lecture will cover laying foundations for admission of exhibits.

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**WEEK 3**
**CROSS EXAMINATION / FOUNDATIONS (USE OF EXHIBITS)**

**Monday, September 4 – NO CLASS.**

**Wednesday, September 6**
*Required reading: Mauet, pp. 271-375, 606-609.*
Continuation: Nita Liquor Commission v. Dan Jones - A's conduct a cross examination of Dan Jones; B's conduct a cross examination of Inspector Bier.

Practice introducing exhibits into evidence and making objections using foundations (predicates) for demonstrative evidence, business records, photographs, public records, and chain of custody.

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**WEEK 4**
**ADVANCED DIRECT / CROSS EXAMINATION / USE OF EXHIBITS**

For rest of semester, we will use *Flinders Aluminum Fabrication Corporation v. Mismo Insurance Company* case file. B's will represent Flinders; A's will represent Mismo.

*Required reading: Mauet, pp. 505-552.*

**Monday, September 11**
A’s conduct direct examination of Marie Williams and cross examination of Arthur Jackson; B’s conduct direct examination of Arthur Jackson and cross examination of Marie Williams. **You must use an exhibit as part of your direct examination, laying the proper foundation.**

**Wednesday, September 13**
Continuation: A’s conduct direct examination of Marie Williams and cross examination of Arthur Jackson; B’s conduct direct examination of Arthur Jackson and cross examination of Marie Williams. **You must use an exhibit as part of your direct examination, laying the proper foundation.**

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**WEEK 5**
**ADVANCED DIRECT AND CROSS EXAMINATION**

**Monday, September 18**
A’s conduct direct examination of John Anderson and cross examination of Janice Jackson; B’s conduct direct examination of Janice Jackson and cross examination of John Anderson. **You must use an exhibit as part of your direct examination.**
**Wednesday, September 20**
Continuation: A’s conduct direct examination of John Anderson and cross examination of Janice Jackson; B’s conduct direct examination of Janice Jackson and cross examination of John Anderson. *You must use an exhibit as part of your direct examination.*

Lecture will cover impeachment, present recollection refreshed and past recollection recorded.

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**BENCH TRIALS**

**SATURDAY, SEPTEMBER 23 (UHLC)**  **COURTROOM ATTIRE REQUIRED.**

**Required Reading:** Mauet, pp. 595-613.

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**WEEK 6**
**IMPEACHMENT / RECOLLECTION REFRESHED**

**Required Reading:**  *Mauet, pp. 209-249, 259-267.*

**Monday, September 25**
B’s impeach Marie Williams and John Anderson with inconsistent statements in their depositions and A’s rehabilitate; A’s impeach Arthur Jackson and Sonia Peterson with inconsistent statements in their depositions and B’s rehabilitate.

**Wednesday, September 27**
Continuation: B’s impeach Marie Williams and John Anderson with inconsistent statements in their depositions and A’s rehabilitate; A’s impeach Arthur Jackson and Sonia Peterson with inconsistent statements in their depositions and B’s rehabilitate.

A’s and B’s will impeach a witness using a method other than by inconsistent statement. There will also be opportunity to refresh recollection of witnesses on direct examination.

Lecture on direct and cross examination of experts.

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**WEEK 7**
**DIRECT AND CROSS EXAMINATION OF EXPERTS**

**Required reading:**  *Mauet, pp. 377-442.*

**Monday, October 2**
B’s conduct direct examination of David Pinkus and cross examination of Donald Olsen. A’s will conduct direct examination of Donald Olsen and cross examination of David Pinkus.

**Wednesday, October 4**
Continuation: B’s conduct direct examination of David Pinkus and cross examination of Donald Olsen. A’s will conduct direct examination of Donald Olsen and cross examination of David Pinkus.
WEEK 8
CASE ANALYSIS

Monday, October 9
A’s and B’s meeting separately will perform case analysis (facilitated by faculty) for their case-in-chief in preparation for final trials, including the development of case theories and themes.

Wednesday, October 11
No class performance. Lectures on voir dire (jury selection) and the Art of Communication.

WEEK 9
JURY SELECTION (VOIR DIRE)


Monday, October 16
Conduct voir dire examination, limiting your questioning to the demographics / background of potential jurors (rather than issues relevant to your case). Jurors will be fellow students in the class.

Wednesday, October 18
Continuation: Conduct voir dire examination, limiting your questioning to the demographics / background of potential jurors (rather than issues relevant to your case). Jurors will be fellow students in the class.

WEEK 10
JURY SELECTION (VOIR DIRE)

FOR THIS WEEK, ONE-HALF OF STUDENTS MUST BRING AT LEAST ONE “OUTSIDER” TO SERVE ON THE JURY PANEL ON MARCH 27 AND THE OTHER ONE-HALF MUST BRING AT LEAST ONE “OUTSIDER” TO SERVE ON THE JURY PANEL ON MARCH 29. COURTROOM ATTIRE REQUIRED.

Monday, October 23
Conduct voir dire examination, limiting your questioning to no more than two (2) issues / “fears” in your case. Focus should be on issues rather than demographics of potential jurors.

Wednesday, October 25
Continuation: Conduct voir dire examination, limiting questions to no more than two (2) issues / “fears” in your case. Focus should be on issues rather than demographics of potential jurors.

Lecture on opening statements.

WEEK 11
OPENING STATEMENTS

Required reading: Mauet, pp. 73-107, 565-567.

Monday, October 30
Present your opening statement, no more than 8 minutes in length for the side you represent in your final trial. Be prepared to go to your “canned” ending if required to cut your opening short due to time constraints.
Wednesday, November 1
Continuation: Present your opening statement, no more than 8 minutes in length for the side you are representing in your final trial. Be prepared to go to your “canned” ending if required to cut your opening short due to time constraints.

Lecture on closing arguments.

WEEK 12
CLOSING ARGUMENTS

Required reading: Mauet, pp. 443-504.

Monday, November 6
Give closing arguments, no more than 10 minutes in length, for the side you will be representing in your final trial. Party with burden of proof goes first and may reserve 2 minutes for rebuttal.

Wednesday, November 8
Continuation: Give closing arguments, no more than 10 minutes in length, for the side you will be representing in your final trial. Party with burden of proof goes first and may reserve 2 minutes for rebuttal.

Lecture on motions in limine.

WEEK 13
PRETRIAL CONFERENCE REQUIRED / TRIAL PREPARATION

Monday, November 13
Each trial team will meet with the opposing team to discuss witnesses you plan to call, exhibits you want to introduce, motions in limine, disputed issues, etc. and will present pretrial motions for rulings to be used in final trials. (If possible, discussions with opposing counsel prior to this class would be beneficial and provide more time to prepare for oral argument on motions in limine.)

Wednesday, November 15 - NO CLASS.

FINAL TRIALS
SATURDAY, NOVEMBER 18 (Harris County Civil Courthouse)
8:30 a.m. – 12:45 p.m.

Required reading: Mauet, pp. 553-594. COURTROOM ATTIRE REQUIRED.

To contact your professors, email or text using contact information below and include “Trial Advocacy Class” in the subject line.

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Karen Lukin
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(Sept. 11 – Nov. 18)

Kevin Hedges
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(Aug. 23 – Sept. 6)