TRIAL ADVOCACY 5386/10695
PROFESSOR WILLIE BEN DAW, III
SPRING SEMESTER 2025

TRIAL ADVOCACY REQUIRED TEXTS FOR PURCHASE - please make sure you purchase correct editions noted

1. **Mauet, Trial Techniques (11th edition)** – may be purchased at UH bookstore or online - (*author: Thomas Mauet – ISBN #:978-1454822332*)
2. ***Dixon v. Providential Life Insurance Company* (7th edition NITA case file)** – may be purchased at UH bookstore or online *(author(s): Frank Rothschild & Edward Stein – ISBN # 9781601567994 – hard copy; e-book (if available: 9781601568007)*
3. ***State v. Delaney* (3rd edition NITA case file)** may be purchased at UH bookstore or online *(author(s): Joseph Taylor & AJ Griffith-Reed – ISBN #:9781601567154 - hard copy or – e-book version – if available)*
4. **Texas Rules of Evidence** *(can be viewed online or purchased, does not have an ISBN #)*

GENERAL INFORMATION - COURSE COMPONENTS

The course is designed for a live lecture/demonstration format. As long as campus is open, the class will be held as designed on campus. There will be no remote options.

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 in the following week's small groups. **The lecture will be held each Monday 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 on Mondays from 6:00 to 7:50 pm**. in designated classrooms.

   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". Your A/B assignment will be emailed to you following the initial 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 should prepare the whole task, (i.e., if the assignment is to direct a witness, the student must prepare the whole direct). The student initially be asked to perform 5-7 minutes of the skill/activity, but a portion could be the beginning, middle or end of the planned activity. After a critique, video review (see below), and time spend in the coaching session, each student will return to their breakout room for additional practice/discussion. Students who are not performing as trial counsel will act as witnesses.

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/COACHING ROOM

Small Group performance as trial counsel will be videoed unless specifically noted on the schedule. You will be required to review your videoed performance with one of the adjuncts during the class session each week video occurs (see assignment section for further information). You should also view the recorded performance on your own to assess areas on which you need to work. It can be accessed at any time.

After your initial Small Group performance, in class students will go to the William D. Wood Advocacy Atrium for video review. It is not graded and should be conducted by the first open adjunct available.

After the video review, all students will go to the "Coaches' Room", which will be located in the immediately across from the entrance to video review in the William D. Wood Advocacy Atrium. Each student will be in the Coaches' Room for 8 minutes and can use that time to ask the adjuncts assigned any question you have related to the class, the assignments, future activity, or being a trial lawyer in general. The format of the coaching room is left entirely up to the coaches. Sometimes it will be one-on-one. Other times, it will be similar to a panel discussion. Regardless of the format, use the coaching room to ask questions. This is your time. After the coaching room, return to your assigned breakout room.

4. TRIALS

There will be two trials during the semester. 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 starting on Tuesday, FEBRUARY 18, 2025, through Saturday, MARCH 1, 2025 . The location can be agreed upon by the teams and the assigned judges. If the location agreed upon is on campus, please contact Amy Hawk to determine if a room is available at your agreed upon time. There is very limited availability on Saturday, FEBRUARY 22. Final Jury Trials will be held Saturday, APRIL 19, 2025, at the Harris County Civil Courthouse, starting at 8:30am, to be concluded by 12:30pm. Please mark your calendars now! Note: if you are not available on those dates: please notify Professor Daw wbdaw@dawray.com & Professor Barake gbarake@jw.com at the beginning of the semester via email only. In your email, please generally advise of the reason you are not available.

5. TRIAL OBSERVATION

You are required to observe a jury trial during the course of the 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 and defense counsel's closing arguments).

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 wbdaw@dawray.com and cc to Gabriela Barake in the Blakely office gbarake@jw.com. **The observation must occur between JANUARRY 13, 2025 and APRIL 25, 2025. There will be no exceptions. The paper must be turned in by 5p.m., Friday, APRIL 25, 2025.** 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. **This requirement will only be in place if jury trials are back by the start of class. An announcement will be made during the first lecture regarding whether this will still be required.**

This requirement will be waived if trials are not going forward in sufficient numbers to allow for attendance.

6. ATTENDANCE AND GRADING

Attendance at the Lecture/Demonstration and Small Group sessions is mandatory. There is no generally attendance taken. 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 and/or Professor Barake. It will also result in a 50% reduction in the professionalism portion of your grade.

As your presence is necessary for the demonstrations, any absence will need to be planned for. If you are not going to attend, you must advise Professor Barake & Professor Daw via email as soon as possible, even if you chose not to provide a reason. Failure to attend without notifying Professor Barake and Professor Daw will result in a "0" grade being given for the day and 10% reduction in your professionalism grade. Obviously, sickness, death in the family, religious/culture holiday, etc. will be designated as excused absences without any effect on grades. We will consider other reasonable requests/reasons, which will be liberally granted. Many of you are on Advocacy teams. It is considered an excused absence if you are participating in a competition, except for the date of the final. It is not an excused absence for you to miss class to attend any form of a practice session.

There are 10 graded Small Group Sessions. Your "final" Small Group grade is the total of your daily scores divided by the number of classes attended. If you attended all 10 graded sessions, your final tally will be divided by 10 for you Small Group grade. Any unexcused absence will be counted as an attended class, (i.e., if you attend 9 classes and fail to notify Nicole Dellario or Professor Daw of your absence for the 10 session, the total score will be divided by 10).

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.

8. 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

9. GENERAL RULES

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 only, however your professionalism grade will take into consideration 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 your professionalism grade. Also, inappropriate or obstructive behavior as a witness will 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. 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 will use all 3. **Please check the daily assignment to determine whether questioning of the witness should be while seated, at a podium, or while walking around the courtroom**.

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 or the exchange is completed. 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 5-7 minutes. You will then be given a 2-3 minute critique where you will be able to ask questions. You will then go to video review. When you return, you will do an additional 1-2 minute performance.

H. Because of the nature of the class, it is necessary to use "volunteers" on 3 occasions to fulfill the roles of jurors and witnesses.

You are strongly encouraged to provide 2 "jurors" to make up a voir dire panel during the Small Group session for **MARCH 24** and **MARCH 31**. Please make arrangements well in advance of these dates so there will be no issues as the success of these 2 classes depends on the participation of "jurors". If you are unable to procure jurors, please notify Professor Barake and Professor Daw, via email, by 3:00pm on the Monday prior to class. If you do not notify Professor Barake and Professor Daw by the required time, your professionalism grade will be reduced by 10%. **(The request to provide two individual for the voir dire panel is contingent on the status of campus related to the Covid-19 virus.)**

You and your final trial partner, when applicable, will be required to provide 2 individuals to play the parts of the witnesses your team presents for the final trial. As the final trial should be a "team event", you will likely each be individually responsible for only 1 witness. (One or more students may be required to conduct the final trial "solo". If that occurs, the students are obligated to provide both witnesses. One person can play both roles, but it is not advised.)

ASSIGNMENTS

Case Files: *Nita Liquor v. Dan Jones*, *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 student webpage: http://www.law.uh.edu/blakely/trial-advocacy/homepage.asp

Note: For Weeks 1 through 3 the class will work on the Nita Liquor Commission case. This problem may be found online. A's will represent the plaintiff/prosecution (NITA Liquor Commission); B's will represent the defense (Dan Jones).

WEEK I **DIRECT EXAMINATION (Building Block #1)** **JANUARY 13**

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 Video]

WEEK 2 **CROSS EXAMINATION (Building Block #2)** **JANUARY 27**

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.

Questioning is to be from counsel table.

WEEK 3 **FOUNDATIONS (Building Block #3)** **FEBRUARY 3**

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.

Questioning should be from counsel table.

WEEK 4 **OBJECTIONS (Building Block #4)** **FEBRUARY 10**

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. Please note that B's will represent the prosecution and A's will represent the defendant.

Required reading: Mauet, pp. 505-552

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

The class will be conducted as follows: An "A" attorney will direct Pafko for four minutes followed by a "B" attorney doing a three-minute cross. The "B" then direct Detective Lowrey and the "A" attorney does the cross of Detective Lowrey. The critiques will then occur. Both attorneys then go to video review. If there is an odd number of students, the last session should be conducted with three attorneys so that all do a direct and a cross before being released for video review.

There is no additional questioning after students return to class after video.

Questioning should be from the podium.

WEEK 5 **IMPEACHMENT (Building Block #5)** **FEBRUARY 17**

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

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

The format for questioning is the same as in Week 4. No additional questioning should occur after a student returns to class after video.

Questioning should be from the podium.

BENCH TRIALS: SATURDAY, FEBRUARY 22, 2025
(at UHLC or locations/times selected by students and adjunct judges)

WEEK 6 **EXPERTS (Building Block #6)** **FEBRUARY 24**

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 3; B's conduct a cross examination and impeachment in Problem 3 and a redirect examination in Problem 2.

(These problems are on the course website, not in the case file)

Questioning will be unrestricted; i.e., standing and walking in courtroom.

[Casual Dress; no video]

For the remainder of the semester, the class will focus on *Dixon v. Providential Life Insurance Company*. This will also be the case file for the final trials. Please note that A's will represent the plaintiff; B's will represent the defendant.

WEEK 7 **CASE THEORY (Building Block #7)** **MARCH 3**

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

Problems: A's prepare and conduct a substantive direct examination of Robert Glenn; B's prepare and conduct a substantive cross examination of Robert Glenn. For this witness only, please pick up where the previous attorney left off. The class should proceed as follows: first "A" attorney substantively directs Glenn (assume qualifications have been established and address opinions), first "B" attorney conducts cross on what was directed. Then, second "A" attorney picks up generally where first "A" attorney left off, then the next "B" attorney crosses

on that direct. Critique should occur after the cross and should be directed at both counsels.

(Robert Glenn's report, as well as the report of the defense expert, can be found on the course website. It is not part of the *Dixon* case file.)

Questioning will be unrestricted; i.e., standing and walking in courtroom.

WEEK 8 **JURY SELECTION (Building Blocks #8 and #9)** **MARCH 17**

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 to discuss case theme and theory.

[Casual Dress; no video]

Week 9 **JURY SELECTION (Building Blocks #8 and #9)** **MARCH 24**

Problems: Prepare and conduct voir dire examination. Limit your questioning to a maximum of 2 issues concerning the demographics of the panel members.

YOU ARE STRONGLY ENCOURAGED TO BRING 2 "OUTSIDERS" TO YOUR SMALL GROUP SESSION TO SERVE AS PANEL MEMBERS

WEEK 10 **OPENING STATEMENT (Building Block #10)** **MARCH 31**

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

Problems: Continue conducting voir dire for the side you were assigned concerning 2 of the issues in the case.

YOU ARE STRONGLY ENCOURAGED TO BRING 2 "OUTSIDERS" TO YOUR SMALL GROUP SESSION TO SERVE AS PANEL MEMBERS (This may change based upon Covid protocols.)

WEEK 11 **CLOSING ARGUMENTS (Building Block #11)** **APRIL 7**

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)** **APRIL 14**

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

Problems: Present a portion of your closing arguments, no more than 10 minutes in length, for the side you are representing in the final trial.

FINAL TRIALS **SATURDAY, APRIL 19, 2025 (Harris County Civil Courthouse), 8:30-12:30**

All professors, including Professor Barake and Professor Daw, are adjunct professors, thus they have no office on campus nor do they maintain office hours. If for any reason you need to contact Professor Barake or Professor Daw, please contact via email at gbarake@jw.com and/or wbdaw@dawray.com. Most questions can be answered by this means. However, if you need to set up an appointment for an in-person conference, arrangements will be made. Please identify yourself as a student in the Trial Ad class in the "subject line" of the email. All adjuncts for the semester will also be listed on the student webpage, which you will receive access to after the class begins.

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus.

http://www.uh.edu/caps/outreach/lets_talk.html