

TRIAL ADVOCACY
PROFESSOR WILLIE BEN DAW, III
SPRING SEMESTER 2016

RULES FOR FINAL JURY TRIALS

1. The final jury trials will be held on Saturday, April 23, 2016, from 8:30 am until 12:45 pm at the Harris County Civil Courthouse, 201 Caroline Street. Everyone must be out of the Courthouse by 1:00 pm.
2. The jury trials will be tried before one or more faculty adjuncts. One of the adjuncts will be sitting as a judge in a District Court for the State of Texas while the other, if applicable, will be an observer. The Texas Rules of Evidence will apply.
3. NO FOOD OR DRINK MAY BE TAKEN INTO ANY OF THE COURTROOMS OTHER THAN BOTTLED WATER IN CLEAR BOTTLES WITH SCREWED ON LIDS. ABSOLUTELY NO SOFT DRINKS OR COFFEE IS TO BE BROUGHT ONTO THE ELEVATOR OR INTO THE COURTROOM. COURTROOMS MUST BE LEFT NEAT AND CLEAN AT THE END OF THE TRIALS. DO NOT TOUCH ANY OF THE JUDGE'S OR JURORS' MATERIALS. WE ARE GUESTS OF THE JUDGES, PLEASE ACT ACCORDINGLY. THE COURTROOM MUST BE LEFT EXACTLY AS IT WAS FOUND.
4. You will be paired with a co-counsel who will be assigned to you. Do not request that a specific classmate be assigned to you. It will not happen. You are expected to work with and cooperate with your assigned co-counsel in preparing for and trying the case.
5. The co-counsel pairings will be announced approximately one month before the final trial, and courtroom and judge assignments will be distributed two weeks before the final trial. You will receive those assignments via email. The math often requires one or two individuals to "go it alone" without a partner. If that is the case, we will request volunteers first before randomly selecting a student or students to proceed individually.
6. The trial material used will be *Dixon v. Providential Life Insurance*.
7. You are responsible for obtaining persons who can play the roles of the witnesses for your side. Your witnesses must be well prepared for their roles before they testify. While your witness is not graded, a well prepared witness enhances the process. An unprepared or overacting witness detracts from the process and could affect the professionalism grade of the "sponsoring" student.
8. You and co-counsel will conduct a "full" trial; including a pretrial conference with a Motion in Limine if necessary, Voir Dire, Opening, Direct and Cross examinations of witnesses, presenting of evidence outside the two called witnesses if necessary, and Closing arguments. Each side must present, and is limited to, the testimony of two live witnesses. Both counsel will do a voir dire. One counsel will conduct opening while the other will conduct the closing arguments. You may select which of the witnesses available within the problem you wish to call live. You may use as many witnesses as you need for your case via other means, and their testimony will be read and treated as a deposition. A few words of caution: Your selection of live witnesses should reflect your persuasive theory and be substantive enough to demonstrate the student attorney's abilities. Also, your use of additional witnesses should be made with the time limits in mind.

9. At the conclusion of the voir dire examination, you should make any challenges for cause deemed necessary. You should then be prepared to make peremptory strikes as you would in a regular trial. The jurors will not actually be stricken and they will sit through the trial. You will then be able to watch the jury deliberation after closing arguments and will be able to evaluate your strikes.
10. Pretrial conferences will be held at a time to be scheduled with the judge(s). Counsel for both sides MUST meet before the conference and complete the proposed pretrial order found on the class website. At the meeting each side should:
 - a. Notify the other side of the exhibits it proposes to offer during the trial. All exhibits shall be pre-marked.
 - b. Inform the other side of the live witnesses that will be called.
 - c. Inform the other side of all deposition testimony to be offered and any objections to the opposing party's proposed deposition testimony. Each side shall select a highlighting color and shall highlight all deposition testimony it proposes to offer. Either side may highlight any portion of the testimony of the other side's witness whose testimony will be presented by deposition. Each side shall bracket with black ink all portions of the opposing party's proposed testimony to be presented by deposition to which an objection will be made.
 - d. List any motions in limine. It is not necessary to prepare written motions or briefs, but it is necessary to provide one sentence designations of each motion on the proposed pretrial order. Each side is required to explain to the other side what motions will be brought. Argument will be heard at the pretrial conference.
 - e. Review and stipulate where appropriate to foundations and admissibility of exhibits, but each counsel MUST lay the foundation for at least one exhibit. All exhibits in the case file shall be deemed authentic.
 - f. Agree on, to the extent possible, a set of proposed jury instructions and verdict form. Those instructions that have been agreed upon shall be brought to the pretrial conference.
 - i. The instruction in the case file may be used.
 - ii. To the extent the parties cannot agree on the instructions and/or verdict form to be given, each side shall present its proposed instruction and/or verdict form at the conference. Each proposed jury instruction must be on a separate page with authority supporting the instruction at the bottom of the page.
11. Broad submission form is required.
12. Trials will start promptly at 8:30 am. Please arrive at your courtroom no later than 8:00 am.

13. The following are the MAXIMUM amount of time to be spend on each segment:
- i. Voir Dire Examination - 15 minutes per side (to be divided as appropriate between counsel with both attorneys doing a substantial portion of a voir dire)
 - ii. Challenges for Cause and Peremptory strikes - 5 minutes
 - iii. Opening Statement - 10 minutes per side
 - iv. Plaintiff's Case (including cross examination of defendant's witnesses) - 70 minutes – Each side will present two live witnesses and any deposition testimony necessary during this time limit. A good rule of thumb is to limit your direct to 20 minutes per witness; however, remember that many times “less is more.” That will give the other side time to do cross-examination and for re-direct and re-cross. You will be limited to one “round” of re-direct and re-cross. The use of re-direct and re-cross is a trial decision and should not be done unless needed.
 - v. Break - 10 minutes
 - vi. Defendant's Case (including cross examination of prosecution's witnesses) - 70 minutes – The same rules and suggestions explained above apply to the Defendant’s Case
 - vii. Closing Argument - 15 minutes per side
 - viii. Jury deliberation - 20
 - ix. Critique - 15 or as time permits

TIME LIMITS WILL BE STRICTLY ENFORCED

14. Plaintiff must reserve rebuttal time for its closing at the beginning of the Plaintiff's closing argument. Failure to do so will result in a significant reduction in grade of the student attorney giving the closing portion of the Final Trial.
15. Depositions may only be read to the jury; you may not place a witness in the witness box.
16. The judge, at his or her discretion, may deduct the time spent on arguing objections from the allotted time of the party raising the objection if the number of objections or the time spent arguing is excessive.
17. A party may invoke the rule (TROP 267 and THE 614). The witnesses, after proper instructions, will not be excluded from the courtroom.
18. The jury will deliberate with counsel present. Counsel shall not interject themselves in any way into the deliberations.

19. Counsel are admonished not to change or "juice" the facts. Witnesses may make up background facts that are consistent with the given facts. It is not an objection that the witness is using facts that are outside the problem. Hint: going outside the problem may be an opportunity for impeachment!
20. Courtroom attire is required.
21. Do not attempt to bring into the Courthouse anything that resembles a firearm.

A brief critique will follow the conclusion of the trial. However, understand the critique is designed to continue the teaching process and is not to be considered any indication of the grade.