

University of Florida Levin College of Law
COURSE SYLLABUS: TRIAL PRACTICE (Section D)
LAW 6363 (29644) - 3 credits S/U
Fall 2024

INSTRUCTOR'S CONTACT INFORMATION:

Kristofer Eisenmenger

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Office Hours: Wednesday 4:30 PM – 5:30 PM

Adjunct Offices – Holland Hall - 323F

Additional office hours are available by appointment via Zoom or Teams.

Teaching Assistant(s): Kaitlyn Jenkins and Michael Porter

MEETING TIMES AND LOCATIONS:

Classroom location: Martin Levin Advocacy Center, room 106 (Morgan & Morgan Courtroom)

This course will meet on the following dates and times: Wednesdays from 5:30-8:30 pm

MANDATORY FINAL TRIALS:

Round 1: November 1st (1:30-5 pm) and 2nd (8:30 am-5:00 pm)

Round 2: November 8th (1:30-5 pm) and 9th (8:30 am-5:00 pm)

-All students must be present for each day of the final trials, even if not presenting-

COURSE DESCRIPTION AND OBJECTIVES:

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

The purpose of this course is to provide strong entry-level courtroom skills together with an understanding of effective preparation for trial and an awareness of various persuasive methods. Courtroom skills include effective communication, effective advocacy in each phase of a trial, making and meeting objections, raising, and addressing other issues by way of motions, and proper preservation of error. Students develop the knowledge and skills necessary for effective trial advocacy through a combination of study, observation, discussion, and (most importantly) mock trial exercises, with helpful critique and feedback.

STUDENT LEARNING OUTCOMES:

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

- Demonstrate strong courtroom communication skills;
- Understand the structure and function of each part of a trial;
- Exhibit good advocacy skills and technique;
- Capably make and meet objections;
- Analyze and prepare a case for trial; and
- Exemplify professionalism and best practices in courtroom conduct.

PREREQUISITE:

Evidence must be taken prior to or concurrently with Trial Practice.

REQUIRED READING AND VIEWING MATERIALS:

1. Trying Cases: Promise, Prove, and Persuade (J. Zedalis, Vandephas Publishing) also available as an e-book
2. Workshop/Trial Coursebook (weekly skills exercises and accompanying material) available for this course on Canvas
3. Florida Evidence Code Summary Trial Guide available at the Levin College of Law Bookstore (laminated tri-fold quick reference aide)
4. Irving Younger, The 10 Commandments of Cross-Examination at UC Hastings College of Law, <https://www.youtube.com/watch?v=dBP2if0l-a8> (43:20)
5. Case Summaries for Trial Preparation provided by the Professor

RECOMMENDED READING:

- Carlson, A Student's Guide to Elements of Proof (Thomson West)
- Ehrhardt, Florida Evidence
- Ehrhardt, Florida Trial Objections
- McElhaney, Trial Notebook (ABA)

COURSE EXPECTATIONS AND GRADING EVALUATION:

For this course, you will earn 3 (three) total credits. Students are required to do the assigned reading and participate in discussions as well as assigned skills exercises. This course will be taught in a lab/workshop structure. Students are required to prepare for all in-class presentations prior to the beginning of class. Students must submit to the Professor a written or electronic copy of each student's preparation for that day's class **prior** to the start of class. Class is divided into 2 (two) hours of practical exercises and 1 (one) hour of instruction. Students are required to actively participate in both instruction and practical exercises. Participation during practical exercises includes both presenting, observing, and critiquing the exercises and practice trials.

To achieve a satisfactory grade, students must maintain good attendance, prepare, and actively participate in the class workshops and the final trials. All students will be required to participate as witnesses, jurors, and courtroom personnel in both class and final trials in addition to their lawyer/case assignments. Competence, preparation, and attendance as a witness, juror, and courtroom personnel are considered in your final grade evaluation.

INTERNET USE DURING CLASS:

Use of the Internet during class is not permitted unless directed by me. You may not check social media sites, email (even clinic- or career-related emails), or news sites. Consider class a vital client meeting and schedule your emailing needs accordingly. Your internet use, even for a noble purpose, violates the standards of professionalism. If you have concerns about this policy, please discuss them with me.

The use of a computer, tablet, or phone is permissible only while a student is conducting an examination of a witness or presenting a closing argument. Students observing and critiquing such presentations may not use electronic devices.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Students are allowed no unexcused absences during the semester and final trials. A student who fails to meet the attendance requirement will be dropped from the course. Attendance is especially important in this course because it is a courtroom skills course that is interactive. Although the assigned reading is essential, students cannot develop advocacy skills from reading or relying on passive learning techniques. Any absence must be excused in advance. The law school's policy on attendance can be found at this link: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#>

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations, can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Our weekly class time is approximately three hours, requiring at least six hours of preparation outside of class, including reading the assigned materials, preparing for in-class exercises, reviewing recorded work, observing and reflecting on courtroom performances, preparing for assigned witness and critique roles, and submitting your prepared materials before class.

COMMUNICATION COURTESY AND CIVILITY:

Please follow the rules of common courtesy in all email messages and class discussions. 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.

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS:

Dressing for Court: Courtroom attire is required for the Final Trials and for our in-class practice Final Trials. During regular weekly classes and for witness or critiquing roles, students may wear business casual clothing.

Witness Roles: Each student will play the witness whom they cross-examine in the 1st round of Final Trials. All witnesses are expected to be well-prepared and to stick to the assigned facts. Making up facts will result in a 10-point penalty for your team during the Final Trials.

Review/Critique required with Teaching Assistant(s): Workshop performances on direct exam, cross-exam, expert witnesses, and opening/closing will be recorded, and students are required to review their own performances with our TA(s). We'll discuss the details in class.

Preparation: All students are expected to prepare for and complete their assigned advocacy exercises. The Final Trials are the 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.**

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of difficulty of each section and is subject to change. In addition to completing the assigned reading/viewing, be prepared to discuss your case theory and strategy during each class. These "case rounds" enable students to form connections with one another and help them analyze legal, ethical, and practical problems more easily than doing it on their own. Learning by rounds is one of the best aspects of experiential legal education!

Class will be divided into a two-hour trial skill exercise block and a one-hour block of instruction. Exercises will follow the previous classes' instruction as set forth below.

Date	Exercises	Lecture
8/21/24* via Zoom	None	Introduction to Trial Practice & Direct Examination
8/28/24	Direct Examination	Cross-examination
9/4/24	Cross Examination	Exhibits and Visual Aids
9/11/24	Exhibits and Visual Aids	Expert Witnesses and Case Strategy
9/18/24	Expert Witnesses	Voir Dire
9/25/24	Voir Dire	Opening Statement
10/2/24	Opening	Closing Argument
10/9/24	Closing	Final Trial Case Discussion
10/16/24	Practice Final Trial	None

10/23/24	Practice Final Trial	None
10/30/24	Open Prep Week	None
11/1/24	Final Trial Round 1 Day 1	None
11/2/24	Final Trial Round 1 Day 2	None
11/6/24	Round 1 Debrief	None
11/8/24	Final Trial Round 2 Day 1	None
11/9/24	Final Trial Round 2 Day 2	None
11/13/24	Debrief-Last day of class	None

Note: This syllabus represents my current plans and objectives. As we proceed through the semester, I may need to alter them to enhance your learning opportunities or in response to factors internal or external to our course. Such changes, communicated clearly, are not unusual and should be expected.

PART 1: Introduction to Trial Practice & Course Overview

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

The jury trial is the ultimate forum for justice. Trials are a search for truth, a search for justice, a method of dispute resolution, a form of closure, or all the above. We will consider the goal of persuasion as well as the mechanics of advocacy at each stage. This course focuses on skills necessary for excellent courtroom practice.

Although this is a trial course, keep in mind what comes before trial. Lawyers should prepare for trial by exhausting every avenue of discovery. This is the way issues are framed and plans are developed to prove claims or defenses and challenge the other party's case. Ask yourselves 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?

Lawyers must understand the purposes and goals of each part of the trial before they can excel at any level.

First Class: A broad overview of the jury trial and warm-ups.

Key Words: Language, word choice, tone, emphasis, open-ended questions, closed (leading) questions, listening, fair argument, relevance, protecting your client.

PART 2: Relevance, Proof, and Storytelling: Preparing and Presenting Key Witnesses

Required Reading: pp. 130-161 (Making and Meeting Objections)

Lawyers question their own witnesses and introduce other forms of evidence during direct examination. The sum of a party's direct exam evidence is the "case in chief." A skilled advocate presents witnesses in a straightforward 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.

PART 3: Cross-examination

Required Reading: pp. 76-99 (Cross-examination)

We will work on cross-examination by considering our goals—discrediting, impeaching, and exposing weaknesses in the opposing side’s case.

Techniques for controlling the witness and maintaining the focus of the cross-examination will be considered. We will address scope of cross-examination. Foundations and methods of impeachment will be discussed.

We will also 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:
Problems # 3 and #4 in Trial Practice Cases and
Materials, Winthrop v. Preston’s Tree Service and State
of Florida v. Strong

PART 4: Exhibits and Visual Aids

Required Reading: pp. 100-110 (Laying Foundations)

Evidence comes in many forms, such as documents, pictures, audio and video recordings, substances, x-rays, charts, diagrams, firearms, and any other item that has relevance. All visual elements are important in trial, whether they are technically admitted as evidence. Everything the jury can see has significance.

Foundations for moving items into 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 work on laying the proper foundation (with a qualified witness) in assigned problems.

PART 5: Expert Witnesses and Case Strategy

Required Reading: pp. 111-125 (Expert Witnesses)

Lawyers rely heavily on experts in various fields. A properly qualified expert is often needed to give opinions on causation, medical procedures, forensic testing and comparison, and any other area that calls for specialized knowledge. Lawyers need to be skilled in handling expert witnesses. They must understand how to properly qualify an expert through proper foundation, how to present the expert's opinions, and how to challenge opposing expert testimony.

We will consider preparing and calling expert witnesses, laying proper foundations for expert opinion testimony, and potential objections. A simple fact pattern will be assigned, and students will work on direct and cross-examinations of an expert witness.

Additional Week Five Topic: Protecting Your Client and Your Record

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 pretrial and during trial.

We will have an intensive objections class. Students will listen to closing arguments and practice making and responding to objections. We will also discuss pretrial conferences and civility.

PART 6: Voir Dire

Required Reading: pp. 18-35

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

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 filed in state court, so state court rules and codes govern the proceedings.

Key questions include: who are the potential jurors and how will they react to the case? How do we intelligently exercise our challenges?

Jury selection involves careful listening and observation, pre-supposing that a lawyer is skilled in getting jurors to express themselves. 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.

PART 7: Opening Statement and Closing Argument

Required Reading: pp. 37-51; 157-161

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. We will discuss ways of opening the case in the most effective way.

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 human factor that lies naturally in the story. Lawyers need to recognize and convey themes to jurors as a proper way of allowing shared human experience to inform deliberations. Themes can be powerful.

We will discuss persuasion and ways to enhance your ability to persuade.

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

PART 8: Practice Trials

ALL Students will be involved in each practice trial. The practice trials are held during the regular weekly workshop timeframe. In each practice trial, students will either be a lawyer, a witness, or a juror.

