

TRIAL PRACTICE

Fall Semester, 2022

LAW 6363

Adjunct Professor Stacy Biggart (she/her/hers)

Contact: stacybiggart@icloud.com
 (850) 459-2226

Class Times: Mondays 3:00-6:00pm
MLAC 106 (Large Courtroom)

Office Hours: Wednesday 11:00am – 1:00pm
Professor Biggart is also available by appointment, phone, and zoom.
Students are welcomed and encouraged to meet with Professor Biggart.

Notes and updates for this course will be posted regularly on CANVAS.

Grading: 3 credits, S+/S/U

To achieve a satisfactory grade, students must maintain good attendance, prepare, and actively participate in the workshops and the final trials. All students will be assigned to witness roles in addition to their lawyer/ case assignments. Please see <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies> for more information.

Final Trial Dates for Fall 2022 are: Nov 4 (Friday) 5-9pm, Nov 5 (Saturday) all day, Nov 18 (Friday) 5-9pm, and Nov 19 (Saturday) all day.

Final Trials are Mandatory

Textbook and Course Materials:

- (1) *Trying Cases: Promise, Prove, and Persuade*, (J. Zedalis, Vandeplas Publishing)(also available as an e-book)
- (2) Workshop/Trial Coursebook: available for this course on CANVAS
- (3) Florida Evidence Code Summary Trial Guide (available at the Levin College of Law Bookstore)
- (4) Case Summaries for Trial Preparation (provided by the Professor)

Other Good Resources (not required):

Carlson, A Student's Guide to Elements of Proof (Thomson West)
Ehrhardt, Florida Evidence
Ehrhardt, Florida Trial Objections.
McElhaney, Trial Notebook (ABA)
Mitnik, Don't Eat the Bruises

Course Description:

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

Assigned Reading and Preparation:

Students are required to do the assigned reading and participate in discussions well as assigned skills exercises. The reading assignments are brief and to the point. This course will be taught in a lab/workshop structure.

Prerequisite Knowledge and Skills:

Evidence must be taken prior to or in the same semester as trial practice.

Purpose of Course:

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.

Course Goals and Objectives:

- 1) The development of courtroom communication skills
- 2) An understanding of the structure and function of each part of a trial
- 3) The development of strong entry-level advocacy skill and technique
- 4) The development of understanding and experience in making and meeting objections
- 5) Developing familiarity with case analysis and trial preparation
- 6) Understanding professionalism and best practices in the context of courtroom conduct

Desired Learning Outcomes:

- 1) The student has developed courtroom communication skills.

- 2) The student understands the structure and function of each part of a trial.
- 3) The student has strong entry-level advocacy skill and technique.
- 4) The student understands how to make and meet objections and possesses simulation-based experience as preparation for entry level advocacy.
- 5) The student is familiar with the process of case analysis and trial preparation.
- 6) The student understands professionalism in the context of trial advocacy.

Workload:

ABA Standard 310 calls for 120 minutes of preparation for each hour of classroom instruction. This course is a 3-credit course. Trial practice has both classroom and simulation components. It is expected that over the course of the 13 week semester, students will spend at least 78 hours engaged in the following activities: Study, planning, research, and preparation of workshop and trial materials, review (of recorded work), observation and critical reflection in courtroom proceedings, and preparation for assigned witness and critique roles.

Preferred Name and Pronouns:

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

Course Schedule

Week One: August 22 Introduction to Trial Practice

Reading: Pages v, vi, (Forward) and 1-17 (Preparing for Trial; Command of the Courtroom); and pages 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-- 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.

Week Two: August 29

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

Reading: Pages 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 straight-forward 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*.

Week Three: September 5

Cross Examination

Reading: Pages 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. 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*.

Week Four: September 12

Exhibits and Visual Aids

Reading: Pages 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 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.

Week Five: September 19

Expert Witnesses and Case Strategy

Reading: pages 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 directs and crosses 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 (this is a FUN!)
We will also discuss Pretrial Conferences and Civility.

Week Six: September 26

Voir Dire

Reading: Pages 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 all "filed" in state court, so state court rules and codes govern the proceedings.

- (1) Who are the potential jurors and
- (2) How will they react to the case?
- (3) 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 pre-requisite 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.

Week Seven: October 3

Opening Statement/ Closing Argument

Reading: 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 best manner possible.

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. We want each of you to possess this ability.

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

Weeks Eight, Nine, and Ten : Practice Trials October 10, 17, 24

ALL Students will be involved in each practice trial for weeks Eight, Nine, and Ten. The practice trials are held during the regular weekly class period. In each practice trial, students will either be a lawyer a witness, or a juror.

All students should be preparing for final trials at this time
--

Final Trials are Friday evening/Saturday morning/Saturday afternoon
The Dates are Nov 4,5 and Nov 18,19

Final Trials and Final Weeks of Class

All students participate in each round of the trials (students try cases, perform witness roles, and critique).

First Trial Weekend:

Friday, 11/4	5:00pm	Trial and Critique, Round I.
Saturday, 11/5	8:30am	Trial and Critique, Round II.
Saturday, 11/5	1:30pm	Trial and Critique, Round III.

Week Eleven: Review and Preparation for the Upcoming Round

Week Twelve: Intensive Clinic for the Final Round of Trials

Second Final Trial Weekend:

Friday, 11/18 5:00pm Trial and Critique, Round IV.

Saturday, 11/19 8:30am Trial and Critique, Round V.

Saturday, 11/19 1:30pm Trial and Critique, Round VI.

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS

Dressing for Court:

Courtroom attire is required for the FINAL TRIALS. During regular weekly classes, and for witness or critiquing roles at trial, students may wear business casual clothing.

Witness Roles:

Each student will be assigned a witness role for the trials. All witnesses are expected to be well prepared.

Self-review and critique, required work with teaching assistants.

Workshops will be recorded, and students are required to review their own performances. Additionally, each student is required to review their recorded performances with an assigned advanced student. Details will be explained in class.

Attendance:

Attendance is important in this course because it is a courtroom skills course, including virtual attendance as necessary due to COVID-19 restrictions. The course is interactive. Although the assigned reading is essential, students cannot develop advocacy skills from reading or relying on passive learning techniques. Absences must be excused in advance.

Preparation:

All students are expected to prepare for and complete their assigned advocacy exercises. The final trials are considered a 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.

Accommodations: (UF Policy)

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

Academic Honesty: (UF Policy)

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at:

<http://www.dso.ufl.edu/students.php>

Course Evaluations:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>.

Class Recording Policy:

“Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.”