

TRIAL PRACTICE

Fall Semester, 2022
LAW 6930 Section 25247

Professor Jonathan Barry-Blocker (he/him; él; li)

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352.273.0666 (office)

CLASS TIME: Thursday 9am-Noon

CLASSROOM: MLAC 106 (Large Courtroom)

OFFICE HOURS: Wednesdays 10am-Noon, Room 356 Holland Hall

Alternatively, Professor Barry-Blocker is available by appointment, phone, and zoom. Students are encouraged to meet with him. Per the school's updated pandemic policies, people declining to wear masks should notify Prof. Barry-Blocker in advance so alternative meeting location(s) can be chosen.

Notes and updates for this course will be posted regularly on CANVAS and/or disseminated via email.

GRADING: 3 credits, S+/S/U

This course follows the Levin College of Law's grading policies found [here](#). Students can earn an S+, S, or U. An "S" is equal to an "A," "B," or "C" on the customary grading scale. Per the policies, grades of "S" (satisfactory) and "U" (unsatisfactory) are not computed in the GPA.

To achieve a satisfactory grade, students must maintain good attendance, prepare for class, actively participate in workshop exercises and participate in the final trials. All students will be assigned to witness roles in addition to their lawyer roles/case assignments.

Final Trial Dates:

Friday November 4th 5-9pm

Saturday November 5th all day

Friday November 18th 5-9pm

Saturday November 19th all day.

Final Trials are Mandatory

TEXTBOOK & 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)

COURSE DESCRIPTION

This course covers trial procedures and advocacy techniques, including voir dire (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, PREPARATION, & PARTICIPATION

Trial advocacy is a "full contact sport." The only spectators are jurors. Therefore, students are required to do the assigned reading and participate in discussions as well as assigned skills exercises. The reading assignments are brief and to the point. This course will be taught in a lab/workshop structure.

Furthermore, 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.

PREREQUISITE

Students must take Evidence prior to or in the same semester as Trial Practice.

STUDENT LEARNING OUTCOMES

- 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

COMMUNICATION POLICIES

Preferred Name and Pronouns

Some students have a preferred name that is not the name provided on the official roll. It is critical that you feel welcome, safe, and recognized in this course. Therefore, I will refer to you by your preferred pronouns and surnames. If your preferred name is not listed on the official UF roll, please inform me ASAP.

You may also change your “Display Name” in Canvas. Canvas uses the “Display Name” as set in myUFL. The “Display Name” is what people see in the UF Directory, such as “Ronnie” instead of “Veronica.” To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select “Directory Profile.” Click “Edit” on the right of the name panel, uncheck “Use my legal name” under “Display Name,” update how you wish your name to be displayed, and click “Submit” at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

I expect reciprocal courtesy from all students.

When generally addressing your fellow students, use your class member’s preferred pronouns and names. Use the class member’s preferred surname during trial exercises and the Final Trials.

Humanizing Language

Traditionally, the law uses sterile or dehumanizing language – especially in the criminal justice context – to address parties and participants. This can include the litigators. Furthermore, trial practices can permit cultural insensitivities and disrespect. Younger or newer attorneys are challenging these practices with more inclusive and humane communication. Therefore, make efforts to persuasively communicate without denigrating adverse parties, opposing counsel, and unsympathetic/adverse witnesses.

COURSE SCHEDULE

Week One: 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: 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: 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: 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: 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.

Week Six: 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?
- (2) How will they react to the case?
- (3) How do we intelligently & ethically 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: 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

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
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Final Trials are Friday evening/Saturday morning/Saturday afternoon

The Dates are November 4-5 and November 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

Final Trial Delays/Accommodations

The law school policy on exam delays and accommodations can be found [here](#). **Please notify me of all foreseeable conflicts.** If necessary, we can reschedule your affected-Final Trial.

Dressing for Court:

Courtroom attire is required for the FINAL TRIALS for all attorney roles. Students serving in witness or critiquing roles at trial may wear business casual. During regular weekly classes, students may wear business casual or standard student attire.

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, Work with Teaching Assistants.

Workshops on direct exam, cross exam, expert witnesses, and opening/closing 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. The Teaching Assistants will also provide out-of-class seminars on Trial Mechanics & Trial Notebooks. *You are not required to attend the TA-led seminars.*

Attendance:

Attendance is important in this course because it is a courtroom skills course, including virtual attendance as necessary due to adapting COVID-19 pandemic policies. 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 for Differently Abled Students: (UF Policy)

Differently abled students who request accommodations pursuant to the Americans with Disabilities Act 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 that they must present to me when requesting accommodations. 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>

Class Recording Policy:

Students can 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.”

Course Evaluations

Students should provide professional and respectful feedback 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 emails received from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Students can access summaries of course evaluation results available to students [here](#).

Diversity, Equity, & Inclusion in the Classroom Ethos

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution (if applicable).

Health & Wellness Resources

- *U Matter, We Care*: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department*: [Visit UF Police Department website](#) or call 352-392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center*: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](#).

Basic Needs Assistance

If a student lacks access to sufficient food or lacks a safe place to live, then s/he/they should contact the Office of Student Affairs. Students can also notify Prof. Barry-Blocker for help obtaining resources.