

COMPRESSED COURSE:
ADVANCED FLORIDA CIVIL TRIAL PRACTICE
Spring Semester, 2023

CONTACT INFORMATION

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Office Hours: As needed upon request.

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

Classroom: MLAC 210; **Class Times:** MTWR: 9:30 – 12:30; F: 9:30 – 11:30

Grading: 1 credit, A-E

To achieve a satisfactory grade, students must maintain good attendance, prepare for class and specifically the interactive trial simulations, actively participate in the interactive trial simulations, and prepare a written 10-page (or less) opening statement incorporating the skills learned in the class. All students will be assigned to witness roles in addition to their lawyer/ case assignments.

The grade will be determined as follows:

- (1) 50%: participation in the trial simulations; and,
- (2) 50% grade for written opening statement.

Textbook and Course Materials:

- (1) Fact Pattern for Interactive Trial Simulations (provided by the Professor)
- (2) Florida Rules of Civil Procedure Excerpt (provided by the Professor)
- (3) Florida Evidence Code Excerpt (provided by the Professor)

Other Good Resources (not required):

Imwinkleried, Evidentiary Foundations
McElhaney, Trial Notebook (ABA)

Course Description

This course focuses on identifying, actively developing and building the skills needed for persuasively trying civil cases in Florida state courts, from creating a theme and theory for

trial through closing argument, using a hands on approach of: (1) explanation, (2) modeling, (3) doing/practicing; and, (4) feedback.

Assigned Reading and Preparation:

Students are required to review the fact pattern and its related documents (i.e., pleadings, deposition transcripts, etc.) that will be used for the practical exercise, in detail, before the first day of the course. Students should be able to actively discuss the application of the fact pattern to trial. For example, if the fact pattern includes a deposition transcript, students should have read and annotated the transcript such that they can identify the critical passages that would be brought out on direct examination, or alternatively, used for potential impeachment, at trial. Further, students will work daily to prepare to actually perform the discussed skill, like direct examination, cross examination, etc. Students should familiarize themselves with the excerpts of the Rules of Civil Procedure and Rules of Evidence provided, and bring all materials to each session. This course will be taught in a lab/workshop structure.

Prerequisite Knowledge and Skills:

Evidence is required.

Trial Practice is highly recommended.

Criminal Clinic is recommended.

Purpose of Course:

This course is designed to provide students who intend to handle trials in Florida an engaging opportunity to identify, sharpen and actively develop advanced courtroom skills. The course will cover not only the major components of trial (theme/theory, jury selection, opening statement, direct examination, cross examination and closing argument), but also more subtle techniques, like courtroom positioning, cadence/tone/volume, use of physical and digital exhibits, and conducting impeachment. Students will first be presented with explanation and modeling of the skills by Board Certified Trial Lawyers with extensive jury trial experience, will perform the skill using the fact pattern provided, and will receive constructive feedback.

Course Goals and Objectives:

- 1) Identifying how to develop the underlying facts of a case into a coherent and persuasive theme and theory;
- 2) Understanding how to incorporate theme and theory into the main components of trial;
- 3) Developing primary and secondary trial skills;
- 4) Grasping the requisites of trial preparation and execution;
- 5) Developing a courtroom presence as a part of trial advocacy; and,
- 6) Understanding the intersection of the rules of evidence and actual courtroom presentation

Desired Learning Outcomes:

- 1) The student understands how to develop a theme and theory for trial.
- 2) The student understands how to incorporate a theme and theory into the major parts of trial.
- 3) The student understands how to conduct jury selection, opening statement, cross examination, impeachment and closing argument.
- 4) The student understands how to prepare for trial effectively, and how to convert pre-trial preparation into courtroom success.
- 5) The student appreciates how to advocate directly and indirectly for their client.
- 6) The student understands how the rules of evidence work practically in the courtroom.

Workload: ABA Standard 310 calls for 120 minutes of preparation for each hour of classroom instruction. This course is a 1-credit course. Trial practice has both classroom and simulation components. It is expected that over the one week course, students will spend at least 28 hours engaged in review/reading the fact pattern, development of themes, theories, and outlines for jury selection, opening statement, direct examination, cross examination, impeachment, and closing argument, and critical reflection or the feedback provided.

INFORMATION ON UF LAW GRADING POLICIES:

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.0	C (Satisfactory)	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D (Poor)	1.0
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

The law school grading policy is available [here](#).

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.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

Course Schedule

August 14, 2023:

Session One (3 hours): Course Introduction

Reading: Fact Pattern

1. Introduction.
 - a. Instructor introductions.
 - b. Career paths involving trial advocacy.
 - c. Course outline review.
 - d. Trial work generally in Florida courts, i.e., criminal jury trials, civil jury trials, family law trials, bench trials, federal vs. state court, arbitration, etc.
 - e. Board Certification.
2. Review of key trial events:
 - a. Jury Selection.
 - b. Opening Statement.
 - c. Direct Examination.
 - d. Cross Examination & Impeachment.
 - e. Closing Argument & Rebuttal.
3. Review of key trial components:
 - a. Theme vs. Theory.
 - b. Evidence vs. Demonstrative Aides.
 - c. Multimedia use.
 - d. Preparation.
 - e. Trial-Focused Discovery.

August 15, 2023:

Session Two (3 hours): Developing Themes & Theories, Using the Courtroom, Opening Statement

Reading: Fact Pattern

1. Tactics & Techniques.
 - a. Audience (Bench vs. Jury).
 - b. Developing Theme & Theory.
 - c. Evidence vs. Demonstrative Aids, and Incorporation Throughout Trial.
 - d. Multimedia Presentation.
 - e. Forensics.
 - f. Rehearsal.
 - g. Beta Testing.
 - h. Equipment.
 - i. Court Rules.
 - j. Courtroom/Well Positioning.
2. Opening Statement.

- a. Florida Law Re Opening Statement.
- b. Florida Standard Civil Jury Instruction 202.2
- c. Opening statement is intended for counsel to describe expected testimony, *Brooks v. State*, 175 So. 3d 204 (Fla. 2015), but opening statement is *not* a time for counsel to provide argument. *Arizona v. Washington*, 434 U.S. 497, 513, n. 32 (1978); *First v. State*, 696 So. 2d 1357 (Fla. 2d DCA 1997).
- d. Instructor Example.
- e. Student Presentations and Feedback.

August 16, 2023:

Session Three (3 hours): Witness Examination

Reading: Fact Pattern

1. Direct Examination.
 - a. Techniques.
 - b. Elements of Case (Claims and Defenses)/What You Need for Closing Argument.
 - c. Open Ended Questions.
 - i. Rules of Evidence.
 - ii. How to Formulate.
 - d. Chronological vs. Bottom Line Up Front.
 - e. Story Telling/Connection with Audience.
 - f. Theme & Theory.
 - g. Exhibits Now, Use in Closing Argument to Trigger Memory.
 - h. Courtroom/Well Positioning.
 - i. Instructor Example.
 - j. Student Presentations and Feedback.
2. Cross Examination.
 - a. Techniques.
 - b. Elements of Case/What You Need for Closing Argument.
 - c. Leading Questions.
 - i. How to create.
 - ii. "Death by 1000 papercuts"
 - d. Controlling Witness/Bench Involvement.
 - e. Courtroom/Well Positioning.
 - f. Exhibits?
 - g. Instructor Example.
 - h. Student Presentations and Feedback.
3. Impeachment.
 - a. Fla. Rules and Law Re Impeachment.
 - b. Technique.
 - i. Lock in Answer.
 - ii. Preliminary Questions.
 - iii. Transcript (lawyer quote vs. witness read).

- iv. Move on.
- c. Instructor Example.
- d. Student Presentations and Feedback.

August 17, 2023:

Session Four (3 Hours): Jury Selection

Jury Selection.

1. Fla. Rules and Law Re Jury Selection.
 - i. The purpose of voir dire is to, “obtain a fair and impartial jury, whose minds are free of all interest, bias or prejudice.” *Pope v. State*, 94 So. 865, 869 (Fla. 1922).
 - ii. Fla.R.Civ.P. 1.431
2. Techniques.
 - i. Preparation.
 - ii. Jury Questionnaires/On-site Research.
 - iii. Open Questions.
 - iv. Agreement Amongst Venire.
 - v. Testing & Identifying.
 - vi. Establish (Or Fight) For Cause Challenge.
 1. Rehabilitate. *Lewis v. State*, 931 So. 2d. 1034 (Fla. 4th DCA 2006); *Algie v. Lennar Corp.*, 969 So. 2d 1135 (Fla. 4th DCA 2007).
 - vii. Identifying/Ranking:
 1. Cannot have;
 2. Prefer not to have;
 3. Would like to have; and,
 4. Must have.
 - viii. Using Theme and Theory.
 - ix. Courtroom/Well Positioning.
 - x. Relationship Between Voir Dire and Closing Argument: Commitment.

August 18, 2023:

Session Five (2 Hours): Closing Argument.

Fla. Rules and Law Re Closing Argument.

1. Florida Standard Jury Instructions in Civil Cases.
 - a. “Argument” means applying the law to the evidence. *Geralds v. State*, 111 So. 3d 778, 795 n. 16 (Fla. 2010).
 - b. Cannot comment on facts *not* in evidence. *Murphy v. Int’l Robotic Sys., Inc.*, 766 So. 2d 1010, 1028 (Fla. 2000).
 - c. Attorney cannot testify. *Johnnides v. Amoco Oil Co., Inc.*, 778 So. 2d 443 (Fla. 3d DCA 2001).
 - d. Cannot violate the “Golden Rule” by putting the jury in the plaintiff’s place. *Smith v. State*, 320 So. 3d 20, 31 (Fla. 2021).
2. Techniques.

- a. Fluid/Based On What Actually Happened.
 - b. Pull Through Theme & Theory.
 - c. Use Jury Instructions.
 - d. Use Exhibits from Opening and Examination.
 - e. Be Specific.
 - f. Courtroom/Well Positioning.
 - g. Audience/Juror Questionnaires.
 - h. Instructor Example.
 - i. Student Presentations and Feedback.
3. General Issues.
- a. Evidence vs. Demonstrative Aides.
 - b. Multimedia use.
 - c. Zoom/Remote Witnesses and Trials.
 - d. Preparation.
 - e. Trial-Focused Discovery.

IMPORTANT INFORMATION FOR ALL TRIAL PRACTICE STUDENTS

Dressing for Court:

Courtroom attire is required for the student presentation of closing argument, and optional for the balance of the week.

Witness Roles:

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

Self-review and critique, required 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.

Preparation:

All students are expected to prepare for and complete the student presentations, and participation is mandatory.

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. The law school's policy on attendance can be found [here](#).

Observance of Religious Holidays:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

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>

Class Recording Policy

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.