

# **PRE-TRIAL ADVOCACY**

**Law 521 – FALL 2021**  
**Professor Jason R. Caraway**

## **COURSE SYLLABUS**

### **I. Class Time & Room**

Room 206  
Tuesdays 6:00-8:30

OR

VIA ZOOM

### **II. Contact Information**

Prof. Jason R. Caraway  
SIU LAW  
School of Law Office: Room 254  
[carawaylaw@hotmail.com](mailto:carawaylaw@hotmail.com)

I will attempt to keep office hours approximately 30 minutes to 1 hour prior to the beginning of each class. Please feel free to e-mail me with any questions you may have. E-mail is the best way to reach me. I will also be amenable to setting up specific meeting times if need be.

### **III. Purpose & Scope of the Course**

This course is an invaluable opportunity to learn the mechanics of a case prior to a civil jury trial. We will not be covering any criminal material. My method of instruction intends to provide a very hands on practical approach, which is what the subject matter demands, and why this class will provide value to your future careers.

As such, this class is very writing intensive and will demand significant time both in and out of the classroom drafting various legal documents. Due to these demanding requirements the class is a pass/fail course without a midterm or final exam.

Further, to ensure compliance with evolving ABA standards and requirements, the School will be focusing, in most classes on bar preparedness. In our class, this will mean taking a mock Multi-State Performance test on 8/29/17. This material

and exercise will also give you an introduction to the case law that will be the focus of our writing exercises thereafter.

#### **IV. Attendance**

As you already know the Law School has a mandated attendance policy. That policy is detailed in §III.5(f-g) of the School of Law Rules. Pursuant to that policy you will only be allowed to miss 3 classes throughout the semester. I strongly encourage you to attend each and every class session as we will be building on fact patterns and lectures in a cumulative fashion throughout the semester. Failure to comply with the School of Law attendance policy shall result in the sanctions detailed in the afore cited rules.

There will also be occasions where class will be extended to allow for the practical exercises to occur. Each student will be assigned a task while their peers perform the practical exercises and specific times will be given to students for the practical exercises well in advance of the specific class period.

The law school will be implementing a set of rules to monitor and comply with the new section 310 ABA Rule. The Rule states as follows:

“Standard 310. DETERMINATION OF CREDIT HOURS FOR COURSEWORK (a) A law school shall adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework. (b) A “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or (2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.”

Interpretation 310-1 For purposes of this Standard, fifty minutes suffices for one hour of classroom or direct faculty instruction. An “hour” for out-of-class student work is sixty minutes. The fifteen-week period may include one week for a final examination.

Interpretation 310-2 A school may award credit hours for coursework that extends over any period of time, if the coursework entails no less than the minimum total amounts of classroom or direct faculty instruction and of out-of-class student work specified in Standard 310(b).

## V. Required Text & Statutory Sources

1. Fundamentals of Pre-Trial Litigation 9<sup>th</sup> ed. (FPL)  
Haydock, Herr & Stempel
2. Federal Rules of Civil Procedure (FRCP)
3. Illinois Code of Civil Procedure (ICCP)  
(Available on Westlaw)
4. Illinois Rules of Professional Conduct – Online
5. Local Rules for the Circuit Courts of Illinois-Online

## VII. Emergency Procedures & Saluki Cares

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at [www.bert.siu.edu](http://www.bert.siu.edu), Department of Safety's website [www.dps.siu.edu](http://www.dps.siu.edu) (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or [siucares@siu.edu](mailto:siucares@siu.edu), <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is [judiray@siu.edu](mailto:judiray@siu.edu), and her phone number is 618-453-3135.

## VIII. Assignments & Grades

This course is Pass/Fail. If you provide adequate, timely writing assignments and participate in all practical exercises (Depositions & Oral Arguments) you will pass this class. In the event I determine any of your written assignments are inadequate, you will be given an opportunity to correct any deficiencies based upon my written feedback. I will allow each student one extension of time to turn in one writing assignment during the semester. To use your one extension you must email me 1 day prior to the submission deadline as contained in the syllabus. Unless otherwise noted or instructed, all written assignments must be emailed to my [carawaylaw@hotmail.com](mailto:carawaylaw@hotmail.com) address in Word document form before 5 pm on the day each assignment is due.

Towards the end of the semester we will engage in practical live exercises. Some of these exercises will be done with a partner, as a law firm. The firms will be randomly paired and randomly assigned argument dates. These pairings will be posted to TWEN as well as the scheduled times for you or your firm's live exercises.

If the timing of the live exercises poses a problem, you must email me 7 days prior to the live exercise and explain why you cannot participate at the scheduled time. I will work to accommodate all schedules.

COVID-19. As a condition of on-campus enrollment, all SIUC students are required to engage in safe behaviors to avoid the spread of COVID-19, including the requirement that all students wear a mask in campus buildings, including classrooms, laboratories, and studios when others are present, regardless of social distancing. Students are expected to follow physical or social distancing guidelines by keeping at least 6 feet from others, and practicing good hand hygiene. Failure to comply with this policy may result in dismissal from the current class session. If the student refuses to leave the classroom after being dismissed, the student may be referred to the Office of Student Rights and Responsibilities. SIUC will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation. Students should regularly review the link for the SIUC COVID-19 response.

## IX. Recording of Classes

Instructors at SIU Law should provide notice to their classes as to whether the class sessions will be recorded. **Our class is not set up to be recorded.** If you must miss class you may contact Mr. Tom Furby in advance and inquire as to whether a certain class session may be recorded. Also, please be aware that using video or audio devices to record our class without express permission will be deemed to be a violation of the SIU Law honor code.

## X. Reading & Case Assignments

**August 17 – Introduction to the Course & The Intake & Writing Workshop**

Readings: FPL 45-72/See TWEN

Writing Assignment Due: NONE

Sample Materials Provided: Attorney-Client Contingent Fee Agreement (TWEN)  
Fact Pattern 1(TWEN)

Writing Assignment #1 Handed out – Interview Questions for Plaintiff (WA-1)(TWEN)

We will walk through the outline of the course. In addition we will discuss the process of taking in a potential claim, including a contingency fee agreement. After the lecture material is covered I will go over the writing assignment and answer any questions you may have.

**August 24 – Practice MPT**

Readings: None

Writing Assignment Due: WA-1 Interview Questions for Plaintiff

We will take a timed 90 minute sample Multi-State Performance Test. All materials will be provided for you. You will examine the material provided and then provide the directed written response. I assume most of you will be using your laptops, but if you wish to write that is fine, simply ensure you bring the proper materials to do so. For laptop users the maximum of 9,200 characters will be allowed. For writers, this equates to roughly 8 pages. (one sided)

**August 31 – The Case Law Investigation**

Readings: Section 414 2<sup>nd</sup> Restatement of Torts

Moorehead v. Mustang Construction Co., 354 Ill.App.3d 456 (3<sup>rd</sup> Dist. 2005)

Martens v. MCL Construction Co., 347 Ill.App.3d 303 (1<sup>st</sup> Dist. 2004)

Bokodi v. Foster Wheeler Robbins, et. al., 312 Ill.App.3d (1<sup>st</sup> Dist. 2000)

Moss v. Rowe Construction Co., 344 Ill.App.3d 772 (4<sup>th</sup> Dist. 2003)

Harberer v. The Village of Sauget, 158 Ill.App.3d 313 (5<sup>th</sup> Dist. 1987)

Writing Assignment Due: None

We will lecture through the case law relevant to our case.

**September 7 -Complaint Drafting & Writing Workshop**

Readings: FPL 91-100  
ICCP 5/2- 101,102,108,201, 202, 209,601-614  
See TWEN for specific cases

Writing Assignment Due: None

Sample Complaint Handed Out (TWEN)

Writing Assignment #2 Posted – The Complaint (WA-2)

We will discuss pleading requirements in Illinois while comparing and contrasting the Federal requirements. We will also during class begin drafting the Complaint.

**September 14 - Feral Court Jurisdiction & Removal Issues**

Readings: FPL 91-100, 193-198  
FRCP 28 USC§ 1441-1452  
See TWEN for additional materials

Writing Assignment Due: (WA-2)

Fact Pattern 2 Handed Out- Removal to Federal Court

Writing Assignment #3 Posted – Plaintiff’s Memorandum Regarding Removal Question (WA-3)

We will discuss the potential removal of the state court complaint to Federal Court and the rules regarding the same. We will also during class begin drafting WA-3.

**September 21 - The Defendant’s Motion to Dismiss Pursuant to ICCP**

Readings: FPL 669-694  
ICCP 5/2 – 615-620  
See TWEN for Additional Materials

Writing Assignment Due: (WA-3)

Fact Pattern #3 Handed Out – Motion to Dismiss Facts

Writing Assignment #4 Posted – Defendant’s Motion to Dismiss (WA-4)

We will discuss the filing of pre-answer Motions to Dismiss in Illinois and the accompanying materials. We will also during class begin drafting WA-4.

**September 28 - Answer w/ Affirmative Defenses**

Readings: FPL 141-152  
ICCP 5-2 – 610-613  
See TWEN for Additional Materials

Writing Assignment Due: (WA-4)

Fact Pattern #4 Posted – Defendant’s Answer w/ Affirmative Defenses

Assignment #4 Posted – Defendant’s Answer w/Affirmative Defenses (WA-5)

We will discuss the filing of an Answer with Affirmative Defenses and the accompanying material.

**October 5- The Written Discovery Process**

Readings: FPL 225-240  
ICCP 5/2-1003  
See TWEN for other materials

Writing Assignment Due: (WA-5)

Fact Pattern 5 Posted- Interrogatories

Assignment #6 Posted - Interrogatories (WA-6)

We will discuss the written discovery process and discuss potential drafting strategies. We will also during class begin drafting Interrogatories.

**October 12- Deposition Lecture**

Readings: FPL 300-319, 321-325,337-338,340-345, 353-363  
ICCP 5/2-1003; 5/8-2301  
Illinois Supreme Court Rules 201,202,212,206,207,211  
See TWEN

Writing Assignment Due: (WA-6)

Fact Pattern 6 Posted – Deposition Preparation of Parties

Fact Pattern 7 Posted- Deposition of Physician

Writing Assignment #6 – Party Deposition Questions (WA-7)

Writing Assignment #7 – Physician Deposition Questions (WA-8)

I will lecture through the materials and discuss deposition strategies for party deponents.  
We will also begin drafting Party & Physician Deposition Questions.

### **October 19 - Live Depositions of Party Deponents**

Readings: NONE  
See TWEN for schedule

Writing Assignments Due: (WA-7)(For Those on this Date)

We will pair off into 2 person firms and conduct truncated depositions with me being the deponent. Class time will be extended accordingly.

### **October 26- Live Depositions of Party Deponents Continue**

Readings: NONE  
See TWEN for schedule

Writing Assignments Due: WA-7 (For those going on this day)

We will pair off into 2 person firms and conduct truncated depositions with me being the deponent. Class time will be extended accordingly.

### **November 2 – Live Depositions of Physician**

### **November 9 – Live Deposition of Physician**

### **November 16 -The Motion for Summary Judgment Lecture**



Readings: FPL 623-628  
ICCP 5/2-1005 & 617  
IL Supreme Court Rules 191,192  
See TWEN for additional materials

Writing Assignments Due: NONE

Fact Pattern 10 Posted – Defendant’s Motion for Summary Judgment

Writing Assignment #9 Posted Out- Defendant’s Motion for Summary Judgment (WA-9)

I will lecture through the material and begin to discuss the form for the Motion.

**December 11 - WA-9 Due!!!!**