

Trial Advocacy

Law 537-3, § 1

Fall 2023

Monday, 5:30 p.m. to 8:00 p.m. Classroom 108 (courtroom) in Lesar Law Building

REVISED SYLLABUS

Professor Julie A. Thompson

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Course Description and Learning Objectives

The purpose of this course is to build the foundational skills you will need to try a bench trial and a jury trial in a courtroom setting. This trial advocacy course will focus exclusively on those skills. There are three course objectives: 1) to achieve mastery of basic trial skills, including case analysis, opening statement, closing argument, direct and cross-examinations, and the admission of various types of physical and testimonial evidence; 2) to try two cases in an actual adversarial courtroom setting; and 3) to develop confidence in public speaking, courtroom procedures, and the use of physical evidence. Additionally, students will be able to critique the adversarial system for its ability to provide equitable access to justice.

Office Hours

No specific office hours will be kept. I am always available to meet with students before or after class, and specific individual meetings can always be requested by any student. Also, I can be contacted by email or text message to my cell phone between 9:00 a.m. and 11:00 p.m. any day of the week to discuss problems or answer questions.

Required Textbooks and Materials

Mastering Trial Advocacy, Charles H. Rose III and Laura Anne Rose
(Thomson West, 2d ed., 2020) ISBN: 978-1-68467-121-2

Case Files: You will be provided with necessary case files.

Advocacy Resource Center (ARC): You may use video taped lectures, articles and other information from Stetson University College of Law's Advocacy Resource Center at <http://www.law.stetson.edu/advocacy-resource-center/>. There are video discussions and demonstrations on all aspects of trial advocacy. Reviewing the applicable video for each class meeting is suggested, but not required.

You will also need access to the following materials, all of which are available on-line through free public access: Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Illinois Code of Civil Procedure, Illinois Code of Criminal Procedure, Illinois Rules of Professional Conduct, Federal Rules of Evidence, Illinois Rules of Evidence, Local Rules of the Circuit Courts of Illinois, as well as everything you've ever known.

Additional Recommended Materials (for those who plan a litigation career)

Evidentiary Foundations by Edward J. Imwinkelried, gives the script for laying a

foundation for the admissibility of all types of evidence. Any edition is useful, but there are recent editions contain foundations for electronic evidence (Facebook messages, emails, texts, etc.).

Trial Handbook for Illinois Lawyers, Robert S. Hunter, Thomson West. There is a set for criminal, civil, homicide and sentencing. These are heavily relied upon by trial attorneys and judges regarding the admissibility of all types of evidence at trial.

Class Meetings

Prior to each class meeting, there will be specific reading assignments that must be completed before you arrive to class.

During class, we may discuss the assigned materials, but I do not teach from the book. The class will consist of lectures, reviews of articles and videos applicable to the class topic, and skill drills focusing on all aspects of trial advocacy.

Basic Rules for Class

It is critical that you adhere to the following rules in order to achieve the goals/objectives referenced above.

1. Dress: For the class sessions and trials, you must wear courtroom appropriate attire. I will let you know when formal clothes are not necessary.

2. Computers: No computers are permitted in this class. Bring your textbook, any written assignments, and legal pads to take notes.

3. Class Participation: If you are in the room, you are participating. You are not allowed to “note out,” “pass,” or decline to participate, whether as an attorney, witness, or observer. This class requires a commitment of your time and attention, and you must be prepared for class every time. This class is designed to teach you trial practice skills for the real world, where trial work occurs with and in front of other people, including opposing counsel, clients, judges, bailiffs, witnesses, court reporters, circuit clerks and court watchers. Also, none of you has the ability to “wing-it” at this point in your training. Cases are very often won or lost based on the preparation that occurs before anyone walks into the courtroom. Do the work or you will not be an effective advocate for your client (and it will be reflected in your performance and your grade).

4. Punctuality: Please arrive on time for all classes. I will start without you, but I will not lock you out.

5. Partners: The jury trial exercise during the semester requires a partner. Depending on enrollment numbers, it is possible that someone may have to try a case without a partner or try a case twice. If we have an odd number of students and you prefer to work alone, let me know as soon as possible. I will make the final decision on partners when I provide you the trial file for your jury trial.

Grading

This course is graded. It is not offered pass/fail. Law school rules provide that the median grade will be between 2.8 and 3.2. Your grade will be based on the following:

1. Trial Notebooks/Bar Prep Assignment (15%) of final grade. The class is arranged so that you can build your trial notebook throughout the semester. The final notebook is due the night of your jury trial.

2. Weekly Advocacy Exercises (Prepared/Unprepared). In class, you will perform certain skills and receive critique and coaching from your professor. These performances are worth 5 points each if you are prepared and 0 points if you are not prepared. This is 5% of your final grade.

3. The courtroom observation paper is worth 10% of your final grade. It should be three to five pages long and explain what you observed during three hours of court-watching. I prefer that you observe a jury trial, but understand that those are not always available. If not a trial, then an active courtroom where a judge is hearing motions or handling a larger docket. If you are interested, you can seek court consent to observe in juvenile court or adoption court as a student. The paper should include who was in the courtroom, what type of case was handled, what did the lawyers do, what did the judge do, how did the litigants act, was a decision made, what did you learn? If you got to see a trial, tell me the story that you heard and what you thought about it.

4. Bench Trial is 20% of your final grade. You will try a case with one witness per side. You will give an opening statement, present a direct examination, conduct a cross-examination, and give a closing argument.

5. The exhibits introduction demonstration is 5% of your final grade. It is worth 0 to 5 points. The laying of a proper foundation so that an item is admissible is worth 3 points, and the explanation for that foundation is worth 2 points. If an item is not admitted due to a lack of adequate foundation, no points will be awarded. However, counsel will be allowed multiple attempts to lay the appropriate foundation.

6. Jury Trial is 50% of your final grade and serves as your final examination. You and your partner will try a jury case. You will give either the opening or closing and conduct one direct exam and one cross exam of a witness. Depending on the number of students in class, one or more students may be needed to volunteer to perform more than one jury trial. If this is necessary, I will advise of special grading rules for those individuals before I ask the class for volunteers.

7. All assignments must be timely completed to pass this course. You will not pass this class unless you complete each component of the class, and no exceptions will be made.

8. Written assignments are due by submitting them to me in class on the date due or to my email no later than 11:59 p.m. on the date due.

Workload

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. Under the ABA standards, **you should expect to spend 150 minutes per week in class (2.5 hours), plus (a minimum of) six hours of study a week, for a total of 8.5 hours per week of work.** Please understand from the beginning that this class carries a heavy workload.

Attendance

In a skills class, you will not learn if you are not present. An advocacy course absolutely requires your presence so you can learn, and through you, others can learn. Do not skip class because you cannot make it up later, and each skill builds upon the last

skill you learned. If you absolutely must miss a class for some extraordinary reason, please notify me as far in advance as possible so that we can attempt to minimize the impact on you and your classmates.

Because this is a trial advocacy class, you will be required to wear courtroom appropriate clothing to class. When casual dress is permitted, it is noted on the class schedule below.

Notice of Recording Policy

These class sessions will not be recorded either by video or audio recording device. If a student wishes to have classes recorded, please bring that to my attention and if the rest of the class agrees, I will reconsider the issue of recording classes. Furthermore, it is a violation of the Honor Code for any student to create and/or distribute such class recordings when the instructor has prohibited class recording.

Style and Format of All Writing Assignments

Documents shall be on standard paper using an easily readable 12 point font with double-spaced text with a one-inch surrounding margin.

Final Exam

There is no written final examination for this course. The final exam is the jury trial.

Class Schedule:

August 21, 2023 missed (Class 1) doing make-up courtroom observation assignment

August 28, 2023 (Class 1)

Story Telling and what happens in a trial. Read Chapter 1 on How Trials Work and be prepared to discuss it in class. Courtroom Dress for class. Receive case file on Derek Steele

September 4, 2023 No Class. Labor Day Holiday.

September 11, 2023 (Class 2)

Theme and Theory and how to tell the story. Read chapter 2 on Case Analysis and Preparation and the case file on Derek Steele. Begin case analysis and come to class with the beginnings of two trial notebooks for Derek Steele's case, one as the prosecutor and one as defense counsel. Casual Dress is fine.

September 18, 2023 (Class 3)

Opening Statements. Read chapter 4 on opening statements. Prepare and be ready to perform an opening statement for Derek Steele's case as both prosecutor and

defense counsel. Courtroom Dress for class.

September 25, 2023 (Class 4)

Direct Examinations. Read chapter 5 on direct examination and prepare defense counsel's direct examination of Derek Steele and the prosecutor's direct examination of Officer Parker and be ready to perform both. Courtroom Dress for this class.

October 2, 2023 (Class 5)

Cross-Examinations. Read chapter 7 on cross-examinations. Prepare the prosecutor's cross-examination of Derek Steele and defense counsel's cross examination of Officer Parker and be ready to perform both. Courtroom Dress for Class.

October 9, 2023 (Class 6)

Closing arguments. Read chapter 11 on closing arguments. Prepare the prosecution and defense closing argument and be ready to perform both. During class, you will make notes for a rebuttal argument for the prosecution and perform it also. Courtroom Dress for Class.

October 11, 2023 (Class 7)

Bench Trial. Students will perform a bench trial in the Steele case. Courtroom Dress for Class. Students will receive jury trial case file.

October 16, 2023 (Class 8)

Bench Trial. Students will perform a bench trial in the Steele case. Courtroom Dress for Class. Students will receive jury trial case file, partner assignments, and items for foundation demonstration class.

October 23, 2023 (Class 9)

Advanced examinations. Read chapter 9 on advanced direct and cross. Younger impeachment video. Begin case analysis on jury trial cases. Casual Dress is fine.

October 30, 2023 (Class 10)

Read chapter 10 on expert witnesses and chapter 3 on jury selection. Casual Dress is fine.

Jury Trial Preparation. Each group of plaintiff's attorneys will meet privately with professor during the last one-half hour of class to review trial notebooks and discuss their trial plan.

November 6, 2023 (Class 11)

Read chapter 6 on exhibits. Direct examination with exhibits will be taught and demonstrated by the trial teams using various items and laying various foundations for

admissibility . Students will also submit a written paper explaining the proper method of laying an evidentiary foundation for each of their exhibits. The paper will be in outline form and prepared by the trial team. Both the performance and written paper will be graded. The written grade will be the same for the team, and the performance grade will be individual. Courtroom Dress for Class

Jury Trial Preparation. Each group of defense attorneys will meet privately with professor during the last one-half hour of class to review trial notebooks and discuss their trial plan.

November 16, 2023 (Class 12)

Jury Trial. Dress for Courtroom

November 20, 2023 No Class, Thanksgiving Break

November 27, 2023 (Class 13)

Jury Trial. Dress for courtroom.

*At some point during the semester we will have a certified court reporter as a guest speaker for class.

EMERGENCY PROCEDURES: We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

DISABILITY POLICY: SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

SALUKI CARES: 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) 453-2461, or siucares@siu.edu, <https://salukicare.siu.edu/>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Please email her at judiray@siu.edu, or call 618- 453-3135.

SAFETY AWARENESS FACTS AND EDUCATION: Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here:

<http://safe.siu.edu>