

TRIAL ADVOCACY FOR NON-LITIGATORS
FALL SEMESTER 2022
PROFESSOR KAREN LUKIN

TRIAL ADVOCACY REQUIRED TEXTS FOR PURCHASE. Make sure you purchase correct editions noted.

1. Nita Liquor Commission v. Cut-Rate Liquor and Jones at <http://www.law.uh.edu/blakely/trial-advocacy/> (Problem 1: “Nita Liquor Control” and “Diagram”).
2. ***Flinders Aluminum Fabrication Corporation v. Mismo Fire Insurance Company (10th Edition)***
– may be purchased at UH bookstore.

RECOMMENDED TEXTS:

1. **Texas Rules of Evidence** (can be viewed online or purchased)
2. **Mauet, Trial Techniques and Trials** – This is an excellent resource. The latest edition is the 11th, but there are used copies of the 9th and 10th editions available online. References to pages in the syllabus are to the 9th edition, but the corresponding pages for the 10th and 11th editions can be provided if necessary.

GENERAL INFORMATION

CLASSROOM PERFORMANCE

The primary course emphasis will be on your learning trial skills by assuming the role of trial counsel in assigned simulation problems. The class meets on Tuesday and Thursday from 9:00 a.m. – 10:30 a.m. Currently, this class is scheduled to be conducted in person, but is subject to change based on the status of the pandemic and U of H policy.

You will represent either the Plaintiff or the Defendant in the assigned problems for each week. Each week's assignment will depend on whether you have been designated an "A" or a "B". Your A/B assignment will be emailed to you following the first class meeting. Each student is expected to be prepared to perform as trial counsel regarding the assigned material. Each student should prepare to give a complete performance lasting approximately in 6-7 minutes. (For example, if the assignment is to conduct a direct examination of a witness, the student must prepare the entire direct). You may be required to perform the entire 6-7 minutes of the skill/activity, or due to time constraints, you may be limited to performing only a portion of what you prepared from the beginning, middle or end of the planned activity. Students not performing as trial counsel will serve as witnesses.

RULES OF EVIDENCE

A course in Evidence is not a prerequisite for taking this class. Lectures will be given on evidentiary issues and objections that may arise during the exercises in order to assist students in having a more “real life” trial experience. However, students will not be graded on their knowledge of the rules of evidence or how well they apply those rules. That being said, it should be noted that application of the rules as discussed in class will enhance the overall experience during the performances.

VIDEO REVIEW

Your performances will be videotaped. After each class in which you perform an exercise, you will be required to review your recorded performance and submit a self-critique consisting of at least two things you believe you did well and at least two things you plan to work on and improve. These self-critiques must be emailed to your professor no later than 10:00 p.m. the night before the next class meeting.

TRIALS

There will be two trials during the semester in the ***Flinders v. Mismo*** case. One will be a bench trial (judge only) and the other a jury trial. You will most likely have a co-counsel for each trial, although depending on the number of students enrolled in the class, one or more of you may not have a co-counsel. The first bench trial will be non-graded and will last no more than three hours. It will be based on the witnesses and exhibits covered thus far in class. During this first trial, each team will serve as its own witnesses. For anyone acting as sole counsel, we will encourage a classmate to serve voluntarily as your witness and that failing, faculty will assist you in getting witnesses. The first trial will take place during the morning or early afternoon of **Saturday, October 1, 2022**. Faculty will serve as the judges. The final bench trial will be held **Saturday, November 19, 2022** and will cover the entire ***Flinders v. Mismo*** case file from approximately 8:30 a.m. - 1:00 p.m. CST. For the final trial, you will need to bring your own witnesses. Please mark your calendars now! **NOTE: Because your absence from the bench trial affects not only you, but also faculty and fellow classmates, your absence must be excused in advance and capable of being rescheduled. Due to the use of outside individuals as jurors in the final jury trial, you MUST be available for trial on November 19. If you become aware that you must miss the bench trial on October 1, you must notify Professor Karen Lukin kblukin@comcast.net and Nicole Dellario nhdellar@central.uh.edu in the Blakely Institute office as soon as possible. In your email, please state the reason you are not available so it can be determined if the rescheduling of your bench trial will be allowed.**

GRADING

You have the option of receiving either a grade or a “pass/fail” designation for this class. Do not tell your professor or fellow students which option you have chosen. You cannot change the designation after the first class has begun. *(There may be deadlines for changing this designation set by U of H Law School so be sure to check those policies and comply with them before the semester begins.)* Performances for all students will be graded and adjusted according to the options chosen by each student after the course is completed. If you have decided you want a grade in this course, the final grade for the course will be based on your performances in class, your self-critiques of your videotaped performance, and your performance in the final trial. There is also a professionalism category which addresses such things as your level of preparation, class participation, willingness to serve as witness, general attitude, etc. There will be no written final examination. The classroom performances will count for 50% of your final grade. Your performance in your final trial will count for 35% of your final grade. The self-critiques will count for 5% of your final grade. The final 10% of your final grade will be based upon your professionalism as observed by your faculty.

ATTENDANCE

The attendance requirement for U of H Law School is 80%. You are responsible for making sure that you meet this requirement. Those failing to meet this requirement will be dropped from the class. Attendance will be taken promptly at the beginning of class. If this class is changed to an online option, you must be on screen the entire class period to be counted in attendance. You are expected to perform every exercise. Each week, your performance will be critiqued and graded. The failure to receive a grade for an exercise will necessarily count as a “zero” for that exercise. In the event of an excused absence, it will be your responsibility to make sure that you make up your performance of the missed exercise either during class or at another time agreed to by faculty as soon as possible in order to receive a grade for that exercise. If you know you are going to be absent in advance of class, you should advise your professor via email or text before the class you must miss.

When considering whether to miss a class, you should keep in mind that the more grades you receive, the better. Your performance and presence in the class enriches not only your own experience, but

also the experiences of your fellow students. You may be needed to act as a witness when you are not performing. Also from a grade standpoint, the more grades you receive the better as each performance lays the groundwork for future, improved performances. Your makeup performances may not be videotaped if done outside of the regularly scheduled class, so you may not have the opportunity to review and learn from your performance.

GENERAL RULES FOR CLASS PERFORMANCES

You must be prepared each week to perform the required assignment and to act as a witness for the required assignment. You will be graded on your performance AND on whether you demonstrated a full understanding of the role of the witness you were portraying in the exercise. Not being fully prepared as a witness could reduce your daily grade for professionalism.

We will follow the Texas Rules of Evidence to the extent they are distributed and/or discussed in class. The rules vary from jurisdiction to jurisdiction and from judge to judge on the proper way to question witnesses. In Harris County, most judges require examination of witnesses while seated at the counsel's table. In Federal Court in Houston, most judges require questioning from a podium. You can assume that all questioning will be done while sitting at counsel table unless you are told otherwise.

In class, we will follow the ALL OBJECT RULE. Everyone, except the witness, should object to a question whenever there are legal grounds for doing so. Do not hold back unless otherwise instructed. In ordinary circumstances, during in person trials, you stand when addressing the judge and the jury. When making an objection, you would immediately stand, make your objection and remain standing until the judge ruled on the objection. If opposing counsel stands to object or to otherwise address the judge, the counsel who is in charge of that particular witness must also immediately stand and be prepared to respond to the objection. If the witness has given an adverse answer before you had time to object, remember to ask the judge to strike the answer and to instruct the jury to disregard the answer.

All objections should be addressed to the judge and not opposing counsel. You should be prepared to give a legal basis for the objection should the judge ask for one. (Recall that objections will be covered before the exercise and you will not be graded on whether your objections are in fact correct.) Do not make an argument unless you are invited to do so by the judge. If argument is requested, ask to "approach the bench" to present your argument. These techniques will be demonstrated in class.

You must be prepared to conduct the assigned exercises in their entirety, although there may only be time for you to perform a portion of what you have prepared. You will then be given brief critiques from your professor. If you are not satisfied with your performance and would like to do a second performance incorporating changes based on the critiques, you may do so if time permits after all other students have performed. In that case, the grade you receive will be based on your second performance. Due to time constraints, it will be rare to have time for repeat performances.

CLASS ASSIGNMENTS

WEEK 1

BASICS OF DIRECT AND CROSS / CASE ANALYSIS / EVIDENTIARY ISSUES

Case file for Weeks 1-3: Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones; A's will represent the prosecution; B's will represent the defense.

Suggested reading: Mauet, pp. 1-11; Review Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones.

Tuesday, August 23

There will be a lecture covering the basics of direct and cross examination. Also there will be a discussion of the case analysis, strategies and theories to be developed in the direct and cross examinations as well as evidentiary issues in *Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones*.

Suggested reading: Mauet, pp. 109-196, 569-579.

Thursday, August 25

Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones - A's conduct a direct examination of Investigator Bier and cross examination of Dan Jones; B's conduct a direct examination of Dan Jones and cross examination of Investigator Bier.

WEEK 2

DIRECT AND CROSS EXAMINATION

Tuesday, August 30

Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones - A's conduct a direct examination of Investigator Bier and cross examination of Dan Jones; B's conduct a direct examination of Dan Jones and cross examination of Investigator Bier.

Suggested reading: Mauet, pp. 197-270, 579-581.

Thursday, September 1

Lectures on general evidence requirements, objections, hearsay, and laying foundations for admission of exhibits. Class discussion about evidentiary issues in *Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones*.

WEEK 3

DIRECT AND CROSS EXAMINATION / FOUNDATIONS (USE OF EXHIBITS)

Tuesday, September 6

Suggested reading: Mauet, pp. 271-375, 606-609.

Practice introducing exhibits into evidence and making objections using foundations (predicates) for demonstrative evidence, business records, photographs, public records, and chain of custody.

Thursday, September 8

Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones - A's conduct a direct examination of Investigator Bier and cross examination of Dan Jones; B's conduct a direct examination of Dan Jones and cross examination of Inspector Bier. *Each side must introduce and use at least one exhibit with their witness on direct examination.*

WEEK 4

DIRECT AND CROSS EXAMINATION / FOUNDATIONS (USE OF EXHIBITS)

Tuesday, September 13

Nita Liquor Commission v. Cut-Rate Liquor and Dan Jones - A's conduct a direct examination of Investigator Bier and cross examination of Dan Jones; B's conduct a direct examination of Dan Jones and cross examination of Inspector Bier. *Each side must introduce and use at least one exhibit with their witness on direct examination.*

For the rest of the semester, we use *Flinders Aluminum Fabrication Corporation v. Mismo Insurance Company* case file. B's represent Flinders; A's represent Mismo.

Prior to class, review the case file in Flinders Aluminum Fabrication Corporation v. Mismo Insurance Company so that you are prepared to participate fully in a case analysis.

Thursday, September 15

Class discussion of the case analysis, strategies and theories to be developed in the direct and cross examinations as well as evidentiary issues in Flinders.

WEEK 5

ADVANCED DIRECT AND CROSS EXAMINATION / USE OF EXHIBITS

Suggested reading: Mauet, pp. 505-552.

Tuesday, September 20

A's conduct direct examination of Marie Williams and cross examination of Arthur Jackson; B's conduct direct examination of Arthur Jackson and cross examination of Marie Williams. You must use an exhibit as part of your direct examination, laying the proper foundation.

Thursday, September 22

A's conduct direct examination of Marie Williams and cross examination of Arthur Jackson; B's conduct direct examination of Arthur Jackson and cross examination of Marie Williams. You must use an exhibit as part of your direct examination, laying the proper foundation.

WEEK 6

ADVANCED DIRECT AND CROSS EXAMINATION / USE OF EXHIBITS

Tuesday, September 27

A's conduct direct examination of John Anderson and cross examination of Sonia Peterson; B's conduct direct examination of Sonia Peterson and cross examination of John Anderson. You must use an exhibit as part of your direct examination.

Thursday, September 29

A's conduct direct examination of John Anderson and cross examination of Sonia Peterson; B's conduct direct examination of Sonia Peterson and cross examination of John Anderson. You must use an exhibit as part of your direct examination.

Lecture on impeachment, present recollection refreshed and past recollection recorded.

BENCH TRIALS

SATURDAY, OCTOBER 1

Suggested Reading: Mauet, pp. 595-613.

WEEK 7
IMPEACHMENT / RECOLLECTION REFRESHED

Suggested Reading: Mauet, pp. 209-249, 259-267.

Tuesday, October 4

B's impeach Marie Williams and John Anderson with inconsistent statements in their depositions and exhibits and A's rehabilitate; A's impeach Arthur Jackson and Sonia Peterson with inconsistent statements in their depositions and exhibits and B's rehabilitate.

Thursday, October 6

B's impeach Marie Williams and John Anderson with inconsistent statements in their depositions and A's rehabilitate; A's impeach Arthur Jackson and Sonia Peterson with inconsistent statements in their depositions and B's rehabilitate.

A's and B's will impeach a witness using a method other than by inconsistent statement. There will also be opportunities to refresh recollection of witnesses on direct examination.

Lecture on direct and cross examination of experts.

WEEK 8
DIRECT AND CROSS EXAMINATION OF EXPERTS

Suggested reading: Mauet, pp. 377-442.

Tuesday, October 11

B's conduct direct examination of David Pinkus and cross examination of Donald Olsen. A's will conduct direct examination of Donald Olsen and cross examination of David Pinkus.

Thursday, October 13

B's conduct direct examination of David Pinkus and cross examination of Donald Olsen. A's will conduct direct examination of Donald Olsen and cross examination of David Pinkus.

WEEK 9
DIRECT AND CROSS EXAMINATION OF EXPERTS

Tuesday, October 18

B's conduct direct examination of David Pinkus and cross examination of Donald Olsen. A's will conduct direct examination of Donald Olsen and cross examination of David Pinkus.

Thursday, October 20

B's conduct direct examination of David Pinkus and cross examination of Donald Olsen. A's will conduct direct examination of Donald Olsen and cross examination of David Pinkus.

Lecture and demonstration on voir dire (jury selection).

WEEK 10
JURY SELECTION (VOIR DIRE)

IF COVID PROTOCOL ALLOWS, STUDENTS WILL BRING INDIVIDUALS TO SERVE AS JURORS.

Suggested reading: Mauet, pp. 13-71, 567-568.

Tuesday, October 25

Conduct voir dire examination, limiting your questioning to no more than two (2) issues / “fears” in your case. Focus should be on issues rather than demographics of potential jurors.

Thursday, October 27

Continuation: Conduct voir dire examination, limiting questioning to no more than two (2) issues / “fears” in your case. Focus should be on issues rather than demographics of potential jurors.

WEEK 11
CASE ANALYSIS / OPENING STATEMENTS

Tuesday, November 1

A’s and B’s meeting separately will perform extensive case analysis (student lead with assistance from faculty) for their case-in-chief in preparation for final trials, including the development of case theories and themes, admissibility of exhibits and other evidence, witness testimony, trial strategy, etc.

Lecture on opening statements.

Thursday, November 3

Present your opening statement, no more than 8 minutes in length for the side you represent in your final trial.

WEEK 12
OPENING STATEMENTS

Suggested reading: Mauet, pp. 73-107, 565-567.

Tuesday, November 8

Present your opening statement, no more than 8 minutes in length for the side you represent in your final trial.

Thursday, November 10

Continuation: Present your opening statement, no more than 8 minutes in length for the side you are representing in your final trial.

Lectures on closing arguments, motions in limine and pretrial conferences.

WEEK 13
CLOSING ARGUMENTS

During this week, each trial team will confer with the opposing team to discuss witnesses, exhibits, motions in limine, disputed issues, etc. and agree on a date and time for a 30 minutes pretrial conference with your faculty who will rule on your motions. The last pretrial conference will be held

no later than 5:00 p.m. on Thursday, November 17. Pretrial conferences may be held online if all parties agree. You must exchange all motions, witness lists, etc. and provide copies to your faculty by 5:00 p.m. the day before your pretrial conference. (Note that pretrial conferences will be scheduled in order of request.)

Suggested reading: Mauet, pp. 443-504.

Tuesday, November 15

Closing arguments, no more than 10 minutes in length, for the side you will be representing in your final trial. Party with burden of proof goes first and may reserve 2 minutes for rebuttal.

Thursday, November 17

Closing arguments, no more than 10 minutes in length, for the side you will be representing in your final trial. Party with burden of proof goes first and may reserve 2 minutes for rebuttal.

FINAL TRIALS

SATURDAY, NOVEMBER 19

8:30 a.m. – 1:00 p.m.

Suggested reading:

Mauet, pp. 553-594.

To contact your professor, email or text and include “Trial Advocacy Class” in the subject line.

Karen Lukin

kblukin@comcast.net

(832) 331-6675

IMPORTANT NOTE TO ALL STUDENTS: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. For additional information, see http://www.uh.edu/caps/outreach/lets_talk.html.