

Advanced Trial Advocacy, Competition: Section 408A – Fall 2014

SYLLABUS

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1. Objectives:

The Advanced Trial Advocacy course is devoted to the continued development and performance of trial advocacy skills in the courtroom. Among the skills we will be perfecting are case analysis, motions in limine, opening statements, direct and cross examination, use and introduction of exhibits, objections, impeachment, expert witnesses, closing arguments and perfecting the record. We will be concerned with the application of the rules of evidence to the materials in the case file.

Although there will be assigned readings and some lectures, the primary learning device will be actual performance assignments and an interschool mock trial competition in either early November, 2014 or February 2015.¹ Since we will not have the case file for the November ABA competition until sometime in September,² the first several classes will be devoted to our reading and hypothetical performance assignments involving the NITA civil case file for *MacIntyre v. Easterfield* (see first required text).

Keep one thing in mind, though. We are a team. Just as serious law firms use an in-house trial review process by colleagues prior to trial, we will make one another better and more effective advocates if we are prepared and candid in our work with one another. So, as much as anything else, an objective of this class will be to help us learn the value of teamwork.

2. Required Texts:

Problems and Materials in Evidence and Trial Advocacy, Volume I [Cases], Burns, Lubet and Moberly (5th Ed. National Institute for Trial Advocacy)³

Fundamental Trial Advocacy, Rose (2nd Ed. West)

You should also have access to the Federal Rules of Evidence (the version you used in your Evidence class should suffice); and any text that you used in your Trial Practice class may also be helpful.

¹ If there are 8 students in the course we will attempt to enter two teams in the ABA Employment Law Section Mock Trial Competition to be held on November 8 & 9, 2014, in Los Angeles. If there are fewer than 8 students or if the ABA competition is too full, the first four students to register for the course will be entered in the ABA competition and the remaining students will be entered in the February 2015, Texas Young Lawyers Association (“TYLA”) competition. Western State has entered teams in the TYLA competition for the last 4-5 years. The preliminary regional TYLA rounds will be held somewhere in Southern California.

² The Rules for the ABA competition are attached to this syllabus as Exhibit 1.

³ This case file was used last semester in my Evidence Practice class. There were 20 students in that class so you should be able to obtain a used copy of that text from one of those students. If you would like a list of those students let me know.

3. General structure:

The class has two formally scheduled hours each week – Wednesday, 4-6 pm. Since this is a 3 hour class, we will meet less formally at other hours during the week which we will discuss at our first class. Also, as we approach the November competition, we will meet more often. After the November competition, we will meet only once or twice for a postmortem and, if necessary, to prepare for the February competition.

The reading for the course will be very “front loaded.” The assigned reading is set forth in the final pages of this syllabus. As we approach the November competition, our meetings will be more and more devoted to performance exercises. We will play this a little bit by ear until we have the competition case files.

4. Preparation for the First Days of Class:

Since the starting points for any trial attorney are learning⁴ and analyzing the facts of the problem and developing a “factual theory of the case,” that’s where we will start. We will not have the case file for our mock trial problem(s) on the first day of class. Instead we will use the case file from *MacIntyre v Easterfield*. For the first day of class please learn that case file and read pages 1-46 from the Rose text. Also, please be prepared to discuss exactly how you would go about organizing that case file.

An advocate’s “factual theory of the case” is critical to determining what evidence is relevant and, therefore, admissible. There are often several possible “factual theories of the case” that can be constructed by the advocate. These theories are often conflicting. One of the crucial responsibilities of the advocate is to consciously and carefully choose which factual theory to construct and to present to the trier of fact.

On the first day of class (August 27) I will ask each student to present a “factual theory of the case” for either MacIntyre or Easterfield. You should be prepared to do one for either side by having a written outline of your theory which incorporates relevant pieces of evidence. You should be prepared to describe why certain evidence (pro and con) will or will not be admitted. Finally, you should be prepared to critique the “factual theories” of other students.

On the second day of class (September 3) we will read about, do and critique opening statements for *MacIntyre v Easterfield*. On the first day of class, we will assign each student to one side or the other. After the first class our performance assignments (but not our reading) will depend on when we get the ABA case file.

5. Exams and Grading:

There will be no midterm and no final exam for this course.

Each student will receive a numeric final course grade. The grade will be based upon some combination of preparation, contribution and performance which I am still working out. Since we are a team, attendance (i.e. reliability) and being prepared will be pretty important. In the event some students in the class are unable to enter an interschool mock trial competition until February, their grades will be “incomplete” until after the competition.

⁴ Of course, in real life, the process of “learning the facts” is an ongoing one. Almost never will an attorney learn all of the facts in the initial meeting or meetings with the client. In this class we will have the advantage (that you may never again have) of being able to work with a “closed” case file.

6. Attendance

Quite apart from the impact it may have on one's grade, I will take attendance at the beginning of each class by asking you to sign in for the class on a roll sheet. **In accordance with school rules, if you miss more than four (4) 2 hour classes, you will be academically dismissed from the course and will receive a grade of 0.** I do not make the school's attendance policies and I will not change them.

7. Office Hours:

Since we are a team you can pretty much come to see me any time you want. This semester, I teach Thursday nights and will probably not be around very much on Thursday afternoons. Other than that, if I am in town you can arrange to see me pretty much any day at any hour.

8. Web Course

I will have set up a LexisNexis webcourse for this class and will have enrolled each of the registered students in the course. **Please check the web course by at least August 14.** If you are unable to access it, send me an email or, better yet, seek help in the library. During the semester I will use the web course to send you emails, make class announcements and post course documents. **You should check the web course regularly during the semester.**

Easy and regular communication will be important to our success as a team.

Week	Date	Subject	Reading Assignment	Performance Assignment
1	August 27	- Case analysis - Factual theory of the case	- Read carefully the case file of <i>MacIntyre v. Easterfield</i> - Rose text, 1-46	- Describe how you would organize the materials and facts in the <i>MacIntyre v Easterfield</i> case file - Present your factual theory of the case
2	September 3	- Opening statements	- Rose text, 63-108	- Present an opening statement for one side or the other in
3	September 10	- Direct examination	- Rose text, 47-62 & 109-145	TBD – some direct exam exercise
4	September 17	- Cross examination	- Rose text, 147-193 & 301-332	TBD – some cross exam exercise
5	September 24	- Exhibits - Impeachment	- Rose text, 195-217 & 253-287	TBD – some exhibit exercise; some impeachment exercise
6	October 1	- Objections - Motions	- Rose text, 219-238 & 239-252	TBD – some objections exercise; some motions exercise
7	October 8	- Past recollection - Experts	- Rose text, 289-299 & 333-359	TBD – some past recollection exercise; some experts exercise
8	October 15	- Closing argument	- Rose text, 361- 402	TBD – some closing argument exercise
9	October 22	- preserving the record	- Rose text, 439-451	TBD – preparation for competition
10	October 29	- Competition prep	None, yet	TBD – preparation for competition
11	November 5	- Competition prep	None, yet	TBD – preparation for competition
12	November 12	- Competition post mortem - Preview February competition (if file available)	None	
13	November 19	- Preview February competition (if file available)		
14	November 26	No class		