

**Advanced Trial Advocacy 408A Fall 2020**  
**Thursdays 4:00-6:00pm**  
**Competitions Fall 2020 and Spring 2021**

**SYLLABUS**

Professor: Robert Molko  
Office: Room 152  
Phone: 714- 459-1149  
Email: [rmolko@wsulaw.edu](mailto:rmolko@wsulaw.edu)

Professor: Mark Brown  
Office: Tbd  
Phone: 562-431-7520  
Email: [msdebrun@gmail.com](mailto:msdebrun@gmail.com)

**1. Objectives and Learning Outcomes:**

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 **Federal Rules of Evidence (FREs)** to the materials in the case file(s).

The Mock Trial competitions are all based on oral presentations by the competing advocates. Accordingly, we will also focus on improving oral presentations and effective advocacy. Students will improve their ability to evaluate the strengths and weaknesses of a case, to formulate proper strategies and to use appropriate authority as well as social policy to persuade others.

Although there will be suggested reading materials, the primary learning device will be actual performance assignments and eventually culminating in interschool mock trial competitions in October/November, 2020 and/or February 2021.<sup>1</sup> All competitions are based on the **Federal Rules of Evidence (FREs)**. If we do not have the case fact patterns for the October/November competition until Labor Day in September, the first several classes will be devoted to our reading and hypothetical performance assignments involving the case file from a previous mock trial competition. Our classes and practices will initially be online and may be moved to the Moot Courtroom depending on the status of the Covid-19 Health crisis.

Keep one thing in mind, though. You are part of 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 learn how to work as a team, to be open-minded about opposing points of view of our teammates, and to appreciate the value of teamwork.

**2. Instructors:**

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<sup>1</sup> **All Fall 2020** competitions will be **online**. Each team will consist of four students. Each team will practice separately once we get the competitions fact patterns. Whether or not our law school's team will be assembled in the Moot Courtroom for the competition (or have all the students separately online) will depend on the Covid-19 health crisis status at that time. One team will be participating in the **All-Star National Challenge on Thursday Nov. 5- Saturday Nov. 7, 2020** online. The other team will be participating in the **Buffalo-Niagara Invitational Mock Trial Competition on October 23-25, 2020** online. We also plan to enter two teams of two or three students in the Texas Young Lawyer's Association (TYLA) national competition in February 2021. The regionals of that competition will be held in Southern California.

The course will be taught and the teams will be coached by Professors Brown and Molko who both have extensive criminal trial experience. They may be assisted by former team members.

## 2. Required Texts:

A copy of the **Federal Rules of Evidence** (the version you used in your Evidence class should suffice).

There are, in the final pages of this syllabus, suggested reading regarding topics pertinent to trial practice from one or more of the texts listed below. **We are suggesting that you NOT purchase the texts unless you have a lot of extra money that you don't want to keep.** Between faculty copies and texts you have already used in another class, there should be enough to go around.

Fundamental Trial Advocacy, Rose (3<sup>d</sup> Ed. West)(hereinafter "Rose"); this book was required in this class in past years and there should be multiple copies around.

Trial Practice, Martin, Radvany, Dubin and Guernsey (2<sup>nd</sup> Ed. LexisNexis)(hereinafter "TP"); this book is and has been a required text in Professor Shapiro's Trial Practice class and there should be multiple copies around.

In addition, portions of the following texts may be helpful, although less so than Rose and TP.

Materials in Trial Advocacy, Problems and Cases, Mauet, Wolfson and Easton (7<sup>th</sup> Ed. Wolters Kluwer)(hereinafter "Mauet"); this book is and has been a required text in Professor Shapiro's Trial Practice class and there should be multiple copies around.

Problems and Materials in Evidence and Trial Advocacy, Volumes I & 2 [Cases and Problems], Burns, Lubet and Moberly (5<sup>th</sup> Ed. National Institute for Trial Advocacy)(hereinafter "NITA"); these books have been used the last couple of years in Evidence Practice class and there should be multiple copies around.

## 3. General structure and Credit:

The class has two formally scheduled hours each week: Thursday, 4:00-6:00pm. We will also meet less formally at other hours during the week which we will discuss at our first class. We will have group practices and individual practices. Also, as we approach the October/November competitions, we will meet more often, including sometimes on weekends. Some of the weekend practices may run as much as five hours. It is expected that you will spend an average of more than four hours a week in your preparation outside of the classroom on each fact pattern.

After the October/November competitions, we will meet for a postmortem and, when appropriate, to prepare for the February competition. This is a two-credits course with one additional credit for each of the competitions.

From day 1, we will be focusing on not using any notes when presenting any part of the case. You may create a one page (or less) bullet point summary, but you may NOT read your presentation or questions. It may be difficult at first, but this approach at practices has been shown to be useful leading up to the competition where all the good teams never use any notes. Competition judges also score you down for using notes.

## 4. Preparation for the First Days of Class:

Since the starting points for any trial attorney are learning<sup>2</sup> and analyzing the facts of the problem and developing a “theme” and a “factual theory of the case”, that’s where we will start. We may not have the case file for our mock trial competition problem(s) on the first day of class. In that case, we will use the case file from a previous competition until we do receive the competition fact patterns. A copy of the case file will be distributed in advance of the first day of class. For the first day of class, please learn that case file and be prepared to discuss on the second day of class how you would go about organizing your approach.

An advocate’s “**theme**” and “**factual theory of the case**” are 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 (and theme) to construct and to present to the trier of fact. Everything that the advocate does during a trial should be consistent with this theme and the factual theory.

**On the first day of classes (Thursday August 20, 2020)**, we will be reviewing some of the very common evidence presentation rules that come up in every trial. **We will practice** how to lay the proper foundation for, inter alia, refreshing a witness’ recollection, past recollection recorded, identifying and introducing exhibits, impeachment of a witness with a prior inconsistent statement, along with simultaneously focusing on proper decorum and smoothness of your presentations. You should review the materials which have been posted in the **LexiNexis** webcourse and be prepared for these practice sessions ahead of the first class. Each student should **review the related evidence rules before the first class** and **bring a copy of the Federal Rules of Evidence to each class**.

On the second day of class (August 27), we will ask each student to present a “factual theory of the case” and a “theme” for one side or the other. You should be prepared to do one for either side by having a short written outline (10 bullet points maximum) 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” and “themes” of other students.

After the second class, our performance assignments will depend on when we get the competition case file(s).

## **6. 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 a combination of preparation, team work, contribution and performance. Preparation is the foundation of any trial presentation; it will count as 40 % of your grade. Since we are a team and we will be practicing as a team during class, attendance (i.e. reliability) and being prepared and being a good teammate is very important. Effectively practicing every part of the trial before the interscholastic competition is critical; we will be competing at a much higher level than an introductory trial practice class against mostly experienced teams from other law schools; the practices will count as 40% of your grade. The performance at the competition will count as 20% of your grade. 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.

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<sup>2</sup> 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.

## 7. Attendance

Quite apart from the impact it may have on one's grade, we 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.**

## 8. Office Hours:

Since we are a team you can pretty much come to see Professor Molko any time you want during his office hours. Professor Brown will let you know when he will be available for office hours. You will also be able to communicate with both professors by email and phone.

## 8. Web Course

A LexisNexis web course for this class will be set up; you have to enroll in the class by registering on the webcourse. **Please check the web course by at least Friday, August 9.** If you are unable to access it, send Professor Molko an email or, better yet, seek help in the library. During the semester we 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.**

## 9. Requirements for Students in online Zoom Sessions:

Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session. **Arrive to class at least 10 minutes early and dressed as you would to attend an in-person class.** Come prepared, as you would for an in-person class. **Turn your camera on.** Mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera. Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session. If you have to miss a Zoom session, or arrive late or leave early, notify the instructor in advance, as you would for an in-person class.

Participation in Zoom classes is no less extensive or required than an in-class session. Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.

If you are using your computer to take notes and/or using an e-casebook, remember that you will not necessarily be able to use those apps and watch the Zoom session. Figure out how you will resolve that technological problem before your first class session and consider modifications to your normal note taking style or a two-screen set-up.

If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your instructor so other accommodations can be explored.

You should be in your seat at the commencement of class. It is fairly inconsiderate (not to mention unprofessional) to walk in late. We will have a break midway during each class. Similarly, you should not leave until the end of class. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Dean of Students.

Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the instructor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your instructor will inform you about the ways in which you should use these tools in that particular class.

Do NOT share or post any part of the Zoom session on any other media including social media such as Facebook, YouTube, etc..

### 9. Class schedule

Week	Date	Subject	Reading Assignment	Performance Assignment
1	August 20	Exercises in Presentation of Evidence	- Read the posted materials on the LexisNexis webcourse - Read carefully the actual competition fact pattern if it has been provided at that time (Or the prior competition case file provided)	Refreshing a witness' recollection, past recollection recorded, identifying and introducing exhibits, impeachment of a witness with a prior inconsistent statement, prior consistent statement use.
2	August 27	- Case analysis - Factual theory of the case -Theme of the case	- Rose, 1-46 - TP, 3-17	Opening Statements and Closing Arguments Individual presentations. Present your theme and factual theory of the case
3	September 3	- Opening statements	Rose, 63-108 - TP, 18-24 & 141-184	Present an opening statement for one side or the other in the provided case
4	September 10	- Direct examination	- Rose, 47-62 & 109-145 - TP, 185-290	TBD – some direct exam exercise
5	September 17	- Cross examination	- Rose, 147-193 & 301-332 - TP, 365-414	TBD – some cross exam exercise
6	September 24	- Exhibits - Impeachment	- Rose, 195-217 & 253-287 - TP, 291-364 & 415-440	TBD – some exhibit exercise; some impeachment exercise
7	October 1	- Past recollection - Experts	- Rose, 289-299 & 333-359 - TP, 441-496	TBD – some past recollection exercise; some experts exercise
8	October 8	- Closing argument	- Rose, 361- 402 - TP, 497-532	TBD – some closing argument exercise
9	October 15	Objections - Motions	- Rose, 219-238 & 239-252, 439-451 - TP, 25-80	TBD – some objections exercise; some motions exercise
10	October 22-25 Team 1	<i>Buffalo/Niagara Competition</i>	None, yet	TBD – preparation for competition

11	October 29	<i>All-Star National Challenge Prep</i>	None, yet	TBD – preparation for competition
12	November 5-7 Team 2	<i>All-Star National Challenge</i>		TBD
13	November 12	TBD	None, yet	TBD *
14	November 19	TBD	None, yet	TBD *

\* The TYLA case file will likely be released in mid-November and the competition will be held in February 2021.

### **10. DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services suite #111. Dean Espinoza’s phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at [aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

### **11. Western State College of Law – Programmatic Learning Outcomes**

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) **Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in some of the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility. The actual law will depend on the factual pattern presented to us by each competition.

(2) **Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy;

interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

**(3) Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

**(4) Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

**(5) Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

**(6) Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

**(7) Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

**(8) Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

**Institutional Learning Outcomes:**

**1. Analytical Reasoning**

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

**2. Effective Communication**

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

**3. Information Competency**

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

**4. Interpersonal Effectiveness**

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

**5. Personal and Professional Integrity and Ethical Behavior**

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

**6. Professional Competence**

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession