

# **CRIMINAL TRIAL PRACTICE**

**Spring 2021**

Mark S. Brown  
Adjunct Professor  
Western State College of Law  
msdebrun@gmail.com

## **COURSE MEETING TIMES AND LOCATION:**

Days: Thursdays; 6:40 p.m. to 9:40 p.m.  
Location: TBD

## **OFFICE HOURS:**

By appointment.

## **COURSE DESCRIPTION:**

This course will teach you the components of a criminal trial and teach you how to conduct a criminal jury trial.

## **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 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.

### **(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.

## **WESTCLIFF UNIVERSITY – 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

## **COURSE LEARNING GOALS:**

Upon successful completion of the course, you should expect to achieve a level of competency in each of the following areas:

(1) Knowledge and practical application of Criminal Law and Criminal Procedure.

(2) Oral presentation and advocacy, pre-trial preparation, fact investigation, assessing evidence, utilizing experts, trial practice, professional civility and applied ethics.

(3) The ability to identify the factual and legal issues implicated by a fact pattern for a criminal trial.

(4) The ability to locate and cite relevant legal authorities during a criminal trial.

(5) The ability to effectively communicate both orally and in writing to a judge and jury during a criminal trial, including the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the judge and jury.

- (6) Develop a sensitivity to clients', judges' and jurors' backgrounds and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious backgrounds), and the ability to tailor communications to clients, judges and jurors that reflect an appropriate focus on those backgrounds and circumstances.
- (7) The ability to identify ethical issues in criminal jury trials and make appropriate decisions to resolve those issues.

## REQUIRED RESOURCES:

Required Reading Materials: *Trial Techniques and Trials, 10<sup>th</sup> Edition* by Thomas A. Mauet, Walters Kluwer Law and Business Publishing Company

## COURSE REQUIREMENTS:

1. Attendance and Class Participation – You are expected to come to class each night prepared to discuss the assigned readings and participate in class exercises. For this reason, attendance is mandatory. Only one (1) unexcused absence will be tolerated. Two or more unexcused absences may result in a student receiving a failing grade in the course. Three absences of any kind will result in a failing grade per school policy.
2. Reading Assignments and Preparation for Class – Unless otherwise specifically assigned, reading assignments are taken from the required resources specified above. The reading assignments listed for each class are those readings which a student must complete *before* the class to be prepared for class that week. **Students should expect to spend at least six hours per week on assigned reading and preparation for class exercises.**
3. Final Exam – There will not be a written final exam. Your course grade will be made up of your participation in class discussions, participation in class exercises and your performance during the final mock trial.

## COURSE GRADE:

Your final grade will be made up of the following:

1. Your participation in class discussions. In each class, you should expect to be called upon to lead the discussion on one or more of the readings and to answer questions posed by the professor and other students.
2. Your participation in class exercises. In each class, you should expect to participate in class exercises in the role of an attorney, a witness and a juror. Your grade will be dependent on the quality of your preparation and participation for each role in the class exercises. In each of these roles, you will be expected to openly communicate with your classmates and, at times, stand in front of your classmates and perform various tasks (e.g. opening statements, direct examination, cross examination and closing arguments).
3. Your overall performance during the final mock criminal trial.
4. No individualized "extra-credit" work will be permitted.

## **CLASS PARTICIPATION THROUGH ZOOM:**

Due to existing COVID restrictions, much if not all of the class will be conducted on Zoom. Here are some suggestions / requirements when using Zoom:

1. Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
2. Arrive to class early and dressed as you would to attend an in-person class.
3. Your camera must be turned on for the duration of the class. 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.
4. Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
5. Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
6. If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
7. 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 professor so other accommodations can be explored.
8. Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.

## **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."

**COURSE SCHEDULE & ASSIGNMENTS:**

CLASS/DATE	TOPIC	READING ASSIGNMENT:
1. January 21, 2021	The Trial Process Jury Selection	Chapter 1, pp. 1-11 Chapter 3, pp. 31-73  Exercises 1.5-1.8
2. January 28, 2021	Psychology of Persuasion Closing Arguments Opening Statements	Chapter 2, pp. 13-29 Chapter 9, pp. 456-460 Chapter 4, pp. 75-109  Exercises 9.6, 9.8 & 9.10
3. February 4, 2021	Opening Statements	Continued
4. February 11, 2021	Direct Examination -Lay Witnesses -Objections	Chapter 5, pp. 111-200 Chapter 10, pp. 524-551  Exercises 3.3, 3.6, 3.9, 3.10, 3.13 & 3.16
5. February 18, 2021	Direct Examination -Exhibits and Visual Aids -Objections	Chapter 7, pp. 271-375 Chapter 10, pp. 551-555  Exercises 4.1, 4.13 & 4.21
6. February 25, 2021	Cross Examination	Chapter 6, pp. 201-274  Exercises 3.3, 3.6, 3.9, 3.10, 3.13, 3.16, 4.1, 4.13 & 4.21
7. March 4, 2021	Direct and Cross Examination	Exercises 3.3, 3.6, 3.9, 3.10, 3.13, 3.16, 4.1, 4.13, 4.21, 6.2, 6.7, 6.10 & 6.11
8. March 11, 2021	Experts	Chapter 8, pp. 381-446  Exercises 6.2, 6.7, 6.10 & 6.11
9. March 18, 2021	SEMESTER BREAK	

**COURSE SCHEDULE & ASSIGNMENTS:**

10. March 25, 2021	Jury Instructions Closing Arguments	Chapter 9, pp. 453-456 Chapter 9, pp. 447-453, 456-480, 488-497 & 508-510  Exercises 8.4, 8.5 & 8.6
11. April 1, 2021	Closing Arguments	Continued
12. April 8, 2021	Final Trial	TBD
13. April 15, 2021	Final Trial	TBD
14. April 22, 2021	Final Trial	TBD
15. April 29, 2021	Final Trial	TBD