

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please let me and Dean Mitchell and/or Denise Boessen know as soon as possible.

If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please let Dean Mitchell and/or Denise Boessen know and they will help me make sure you are accommodated. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

## **TRIAL PRACTICE**

Spring 2020

Angela K. Drake

Class: Tuesday/Thursday, 3:00-4:15

Meetings: (drop in and by appointment), Clinic Office

Email [drakea@missouri.edu](mailto:drakea@missouri.edu)

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### **Course Overview**

#### **I. Course Description**

This course concentrates on techniques for presenting evidence in trial, opening statements, direct and cross examination of witnesses, and closing arguments. Discovery, voir dire, pre-trial motions and conferences, and jury instructions will be only briefly discussed. Each student will participate in classroom problems selected from the course materials or provided by the instructor. Each student will participate in a jury trial as a capstone event.

Learning outcomes include the following skills students will develop in class:

- Familiarity with the lawyer's role as a courtroom advocate
- Application of the rules of evidence at trial;
- Advocacy in opening statements, direct and cross examinations, motions and closing arguments;
- Proper pretrial preparation;
- Familiarity with the rules of professional conduct impacting trial work

Assessment: Formative and summative

Standard 303 compliant (simulation/law clinic/field placement)? Yes

## II. Course Materials

The casebooks for this class will be:

Bocchino & Beskind, *Problems in Trial Advocacy*, 2019 Edition [NITA]

and

Thomas Mauet, *Trial Techniques and Trials*, 10<sup>th</sup> Edition [Wolters Kluwer]

## III. Attendance and Assignments

Attendance is mandatory. Please come to class fully prepared. As a general rule, there are no excused absences. I will reconsider this general rule on a case-by-case basis. Every absence will reduce your grade by 5 points unless I make an exception. If there is an emergency or illness, contact me by phone or email. I will not ask private details but do need to hear from you if you will be absent.

*Written assignments are due in hard copy form at the time you are “up.” This is the rule so that I can assess your preparation. Late assignments are not accepted.*

Attendance will be recorded. There is no such thing as a “pass” or “taking a pass” should you be called on to add your thoughts to discussions in this class. Appearing in class unprepared or failing to offer helpful constructive criticism is the same as failing to attend and will reduce your grade by 5 points each time.

*Please note that you will have partners in this class. You owe it to your partners to be timely and prepared. In addition, this class involves a great deal of constructive criticism. We can only improve by hearing ideas for improvement. Every person’s opinion matters.*

**Your assignment for the first class is to read this Course Overview and the Table of Contents in the Mauet book we will use in class. You must also watch the three-hour TYLA 2013 National Trial Competition/Championship Round on youtube.**

## IV. Grading

Grading will be based on Daily Problems and class participation (50 percent), and the jury trial (50 percent). Any written assignment (e.g., outlines, briefs, jury instructions) associated with the course activity will be considered when grades are given for that activity. Therefore, daily problems and trial notebooks are worth 50% of the grade for that portion.

## V. Meetings

I am available to discuss your ideas about your coursework with you. I will be available to meet with you outside of class upon request. Feel free to email or call me to set up an appointment.

## VI. Academic Integrity

Academic integrity is important. Follow the Honor Code. If you have any questions about your work as it relates to the Honor Code, consult me immediately.

## VII. Drop Policy

Because the course involves group exercises that must be planned well in advance, students wishing to withdraw from the class must do so by 3 p.m. on January 25, 2020. Absent extraordinary circumstances, students dropping the course after that date will receive failing grades.

## VIII. Additional Information about Assignments

Information will be provided via TWEN before class or in a group email. Please check TWEN regularly, as well as your email. Generally, be aware of the following:

### A. Daily Problems:

1. **Outlines and Exhibits:** All students who are “up” on a given day will submit written materials (e.g., notes, outlines) the students expect to use in the problem. Students are also responsible for bringing any exhibits(s) they may need. For example, if your task is to introduce a baseball bat into evidence, then bring it with you to class. Coordinate acquisition efforts with others, as only one item per class is needed.
2. **Critiques**

- a. **Self-Critique:** Daily problems may be video recorded. All students who have been videoed in a graded performance must view their recording and submit at least one written self-critique about a performance. Keep your critique short and focus on what you did well, and what you would do differently if you had another chance. If for some reason there is no video, submit a self-critique based on your own recollection of what occurred.
  - b. **Professor Critique:** I will usually provide input at each class. Please understand that your performance cannot improve without constructive criticism. I will also make it a point to tell you your strengths.
  - c. **Peer Critique:** Your colleagues will also provide constructive criticism and compliments. It is imperative that everyone participates, with honest and helpful comments.
3. **Trials/Format:** We will discuss the trial formats at great length, as that time gets closer. Jury trials will take place during the regular class period, extended as necessary, over a two-week period. Briefly, the trial will unfold approximately as follows: Openings 6 minutes each side; Plaintiff 40 minutes for all directs and crosses; Defendant 40 minutes for all directs and crosses; Closing 10 minutes each (plaintiff may reserve up to 3 minutes for rebuttal). Unless we have an odd number of students, there will be two student “partners” representing each side. Students will also turn in a witness and exhibit list.

- a. **Obtaining Witnesses and Jurors:** You will be responsible for obtaining witnesses and jurors for the trials. You may use law students for witnesses if you wish. I would prefer non-law students to serve as jurors. Getting witnesses and jurors will be a group effort and we will talk about it as the semester progresses. *Your experience in this class will be greatly improved by securing as many diverse jurors as possible in terms of age and life experience.*

As a goal, each student (not each team, each individual student) is encouraged to find three persons eligible to serve as jurors in one of our trials. An “eligible juror” is anyone who is not a lawyer or a law student and who is at least 18.

- b. Sit In:** Each student is required to attend trials in which she is not a participant. For each type of trial, each student will write a critique of the other lawyers' performance.
- c. Visiting Judges:** We will likely have real judges serve in our class as judges. Every effort will be made to provide time for general "tips from the bench" which will be invaluable to you as future lawyers. We may travel to other courthouses for trials.
- d. Stay Flexible:** We will run over scheduled time during trials. Please let me know if you have time constraints.

## **IX. Dress Code**

For trials, dress like lawyers at trials; I recommend wearing a suit. For Daily Problems, when you are "up," dress like lawyers at trial. If you do not have a suit, and cannot borrow one, business casual is acceptable.

