

**TRIAL SIMULATION
PRACTICUM (PERFORMANCE)**

**LAW 514 – SECTION 1
SPRING 2023**

**LYDIA D. JOHNSON
PROFESSOR**

TABLE OF CONTENTS

The Professor	3
Course Books & Materials	4
Course Description, Design, Objectives, & Expectations.....	5
Attendance & Participation.....	5
Campus-wide Policies and Procedures	5
Performance Component.....	7
Student Learning Outcomes.....	8
Grading.....	9
Extra Credit Opportunities.....	10
Schedule of Class Readings and Assignment Exercises.....	11
Evaluation Rubric	13



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

PROFESSOR CONTACT INFORMATION

NAME: Lydia D. Johnson

TELEPHONE: 713-313-7275

EMAIL: Lydia.Johnson@tmslaw.tsu.edu

LOCATION: Room 100- Legal Clinic

OFFICE HOURS: Tuesday 3:00 - 5:00 via zoom
Thursday 5:00 - 7:00 via zoom
(All other times by appointment)

ZOOM LINK:

<https://zoom.us/j/7886734244> (<https://zoom.us/j/7886734244>)

COURSE BOOKS & MATERIALS -- REQUIRED

Mauet, *Trial Techniques and Trials*, Eleventh Edition

Mauet et.al, *Materials in Trial Advocacy, Problem and Cases*, Ninth Edition

COURSE DESCRIPTION, DESIGN, OBJECTIVES & EXPECTATIONS

Course Description

This course is devoted primarily to prepare and train students to be effective litigators and oral advocates in the courtroom through role-play exercises that simulate trial practice. At a minimum, students will prepare lay and expert witnesses, perform voir dire, direct and cross-examination, opening, and closing statements, develop and implement a case theory, practice making and responding to objections, and introduce exhibits. Also, students will consider ethical and tactical issues arising in the trial process. Like other skills courses, most of this course will be conducted through exercises, simulated parts of the trial, and role-playing. At the conclusion of the course, students, acting in teams, take part in a full trial (bench or jury).

Trial Simulation Course Design

The format of the trial simulation course consists of two components--lecture component and performance component:

1. Lecture Component -- (Large Group Session(s)). This component will focus on teaching students the various stages of a trial. Students will meet in a large group each week for the lecture portion of the class, which will address specific stage(s) of the trial that will be worked on in the small groups.

2. Performance Component – (Small Group Session(s)). This component will focus on learning trial skills by assuming the role of trial counsel in assigned simulation problems. Students will participate in various class exercises that will be held on the dates indicated herein. Students will be divided into small groups to meet weekly to work on the simulation problems. During the Small Group Session, each student is expected to be prepared to perform as trial counsel regarding the assigned material. Each student should prepare the whole task (i.e., if the assignment is to direct a witness, the student must prepare the whole direct). Critiques and comments will follow at the conclusion of the skill/activity. Students who are not performing as trial counsel will act as witnesses. Please review the “Evaluation Rubric” (Pages ?--?) included in this syllabus. It establishes a framework on which the critiques will be based. The class will be divided into teams of two. Each team will represent the plaintiff/state or the defendant. The class professor will call upon the students to perform the assigned exercise. A critique always follows performance in class. The purpose of the critique is not to put you on the defensive but to help you and others in the class develop skills and to enable you to learn from the experience.

Course Objectives

The course objectives are three-fold: (1) to achieve competency in basic trial skills, (2) to understand tactical considerations regarding the order of testimony, the choice of case theories, and the relationship between the admissibility of evidence and case theories; and (3) to try a case in a simulated courtroom setting; and.

Course Expectations and Requirements

Expectations: For each class, each student is expected to show up having done three things: (1) completed any out-of-class assignments; (2) read the assigned materials; and (3) prepared for in-class demonstrations, exercises, and discussions.

Trial Notebook: Students are required to prepare a trial notebook, which should include, the following items: Trial Plan, Opening Statement, Witness(es) List, Exhibit(s) List, Outline of Direct Examination; Outline of Cross-Examination; Closing Argument; and any other documents or information required by the professor.

Proof Chart: Students are required to prepare a proof chart for trial showing what witnesses and exhibits will be used to prove the key elements of the claim or defense.

Final Trial: At the conclusion of the semester, each student will participate in a mock trial, where he/she will demonstrate proficiency in the skills identified in the course objectives. Mock trials may be scheduled in the evening hours with 2-3 students assigned to a team. One team will represent the plaintiff or state, and the other team will represent the defendant. Each team will be responsible for recruiting and preparing its own witnesses for trial. Students are expected to be appropriately attired for mock trial, arriving at her/her designated “courtroom” at the scheduled time.

Performance Component: For details, see “Performance Component” section above.

ATTENDANCE AND PARTICIPATION

Attendance and class participation are MANDATORY. There are no EXCUSED ABSENCES. Pursuant to Article III.9 of the Student Rules and Regulations, if you miss more than the allotted number of classes in accordance with Article III.9, your grade may be reduced up to two (2) letter grades. Students should be aware that the quantity of class participation is not determinative of a student’s ability to earn credit for class participation; rather, the quality of participation is also taken into account.

CAMPUS-WIDE POLICIES AND PROCEDURES

1. ADA Policy. TMSL’s administrative process for student disability accommodations will be carried out by the TSU Student Accessibility Services Office (SASO). SASO specializes in accommodation services and will provide efficient and professional services to Thurgood Law students who may need accommodations. The following is the transition process for accommodation services:

2. Previously Approved Law Students Law students who have been approved for accommodations in previous years by the Law School Student Affairs Office must complete the SASO [Accommodation Request Form](#) to request pre-approved accommodations for the Fall 2022 academic term. Students with questions should contact SASO via email [at DisabilityServices@tsu.edu](mailto:DisabilityServices@tsu.edu) or phone at 713-313-4210. Accommodation Request Form link <http://www.tsu.edu/students-services/departments/disability-services/forms/student-accomodation-request-form.html>.

3. New Accommodation Requests

1. Students must have a diagnosed disability and authentic documentation to apply. Once the applicant's disability information is received, SASO will contact the student to schedule an Intake (virtual) appointment for the student to self-report any disability challenges/barriers associated with the condition that impacts their functional abilities in the learning environment.
2. SASO will determine the student's eligibility status and accommodation plan based on the disability, historical documentation, and self-reporting data. SASO will send a notification letter indicating the applicant's service status. The notification letter requires the applicant's signature. Upon receipt of the signed notification letter, SASO will forward a copy of the accommodation letter to the student, with instructions on completing the accommodation process.

4. Implementation of Accommodations Students must meet with their professor(s) to discuss how accommodations will be implemented. The student and professor(s) must sign the accommodation letter. The student will return a copy of the signed accommodation letter to SASO electronically.

5. COVID Related Accommodations COVID accommodations will be processed for those who report testing positive or exposure to COVID. Documentation is required. Students will quarantine for five days. Students must submit Release of Care documentation from a licensed health care professional to the Student Accessibility Services Office (SASO) before returning to class. They must discuss make-up plans for any missed assignment(s) or exam(s) with Professor Harmon. Students will not engage in class activities during the quarantine period. Accommodation services do not fundamentally alter course/program formats, requirements, standards, and guidelines.

6. Plagiarism. Plagiarism in any form is strictly prohibited and will not be tolerated. You may not plagiarize any other written work, including, but not limited to, another student's writing, a sample, an assignment document, a document from a law firm, something you find on the internet, or any document filed with any court. Doing so is a violation of school policy, and the matter will be forwarded to the Dean for appropriate action. In addition, you will receive zero points for that assignment and may receive an F in the course on this basis alone, regardless of your points on other assignments.

7. Gun Policy. State law permits you to carry a concealed firearm on campus into areas that have not been designated as gun-free zones. My office and any space in which I work or meet

with students is a *gun-free zone*; thus, it is unlawful to carry a firearm inside these spaces. Bringing a firearm into my office or any other designated gun-free zone on campus could lead to criminal charges and/or expulsion from this university. For a complete list of the gun-free areas on campus and the rules governing campus carry at this university, please visit Texas Southern University's website.

8. Not a Contract. This syllabus is NOT a contract and is subject to change. Changes will be announced in class with as much warning as possible.

PERFORMANCE COMPONENT

General Rules

1. You must be prepared each week to perform the required assignment and to take on your assigned role for each required assignment. You will be graded on your performance, taking into consideration whether you demonstrated a full understanding of the role of you were portraying in the exercise. Not being fully prepared as a witness will be noted and will reduce your professionalism grade. Also, as a witness, inappropriate or obstructive behavior will reduce your professionalism grade.
2. Texas Rules of Evidence will be followed. Review the Rules as necessary before class and bring a copy of the Rules to class.
3. The rules vary from jurisdiction to jurisdiction and judge to judge on the proper way to question witnesses. In Harris County, most judges require the examination of witnesses while seated at the counsel's table. In Federal Court in Houston, most judges require questioning from a podium. Some judges allow the attorney to walk around the courtroom while questioning. Check with your professor about his/her preference.
4. Follow the ALL-OBJECT RULE. Everyone, except the witness, should object whenever there are legal grounds for doing so. Do not hold back for tactical reasons unless otherwise instructed. Failure to object during the Small Group session can be a factor in your Small Group grade. When objecting or otherwise addressing the judge, stand up immediately and remain standing until the judge rules on the objection or the exchange is completed. Not standing when addressing the judge will be noted and will reduce your professionalism grade.
5. All objections should be addressed to the judge and should include a very brief statement of the reason for the objection. Do not argue unless you are invited to do so by the judge. If an argument is requested, approach the bench (constructively unless instructed otherwise) to present your argument. Counsel should present their argument and responses to the judge and should not engage in discussion with each other.
6. You should be prepared to conduct the examinations and other assigned exercises in their entirety, although usually, you will be able to conduct only a portion. You usually will be expected to examine a witness or perform the requisite number of minutes allotted by the professor. You will then be given a brief critique where you can ask questions.
7. Each student will be assigned a designated role for the assignments. Please prepare each assignment according to your role designation unless instructed otherwise. Students are expected to act as trial counsel at all times other than during critique or discussion.

STUDENT LEARNING OUTCOMES

1. To develop and present a strong case theory and theme.
2. To zealously represent a party, mindful of one's legal obligation to conduct himself/herself professionally and civilly at all times
3. Learn how to "think on one's feet" and adjust one's approach due to a witness's unexpected "turning" at trial.
4. To master the skill of direct and cross-examination of lay witnesses and experts.
5. How to create a proof chart for trial.
6. How to impeach, redirect, and rehabilitate a witness.
7. How to lay the proper foundation for various evidence/exhibits and timely object to evidence to preserve the record for appeal.

GRADING

Students will receive a letter grade for the skilled component.

The final grade will be determined as follows:

1. Workbook Exercises.....	<u>5</u>
2. Self-care Log.....	<u>5</u>
3. In Class Practicum.....	<u>25</u>
a. Case Analysis (5)	
b. Opening (5)	
c. Direct (5)	
d. Cross (5)	
e. Closing (5)	
4. Motion in Limine.....	<u>5</u>
5. MPT Exercise – Bench Memo.....	<u>5</u>
6. Quizzes.....	<u>10</u>
a. Opening (2)	
b. Direct (2)	
c. Cross (2)	
d. Closing (2)	
e. Experts (2)	
7. Objection Game.....	<u>10</u>
8. Trial	<u>35</u>
TOTAL.....	100 POINTS

Extra Credit Opportunities:

January 23, 2023: TLAP Information (1pt)

February 23, 2023: Indigent Defense CLE and Criteria- Attend a session and write a 1-page report (1pt)

March 4, 2023: Expunction Clinic (1pt)

Trial Observation form- complete form must be signed by Court Coordinator or person approved by Professor (1pt)

SCHEDULE OF CLASS PERFORMANCE EXERCISES

Read: read applicable chapters in “Trial Techniques and Trials.”

Performance Exercises = use problems and cases found in “Materials, Problems & Cases” or supplemental materials or videos provided by the professor

Team A = Represents Plaintiff or State Team B = Represents Defendant

Wk. 1

- a. Reading: Chapter 1- Trial Process.
Chapter 2- The Psychology of Persuasion
- b. Performance Exercise: **Theory & Theme of Case**

Wk. 2

- a. Reading: Chapter 5-Direct Examination
- b. Performance Exercise: **Direct Examination**

Wk. 3

- a. Reading: Chapter 5-Redirect (Sec. 5.16); Chapter 10-Rehabilitation (Sec. 10.6.30)
- b. Performance Exercise: **Redirect Examination and Rehabilitation**

Wk. 4

- a. Reading: Chapter 6-Cross Examination; Impeachment
- b. Performance Exercise: **Cross-Examination & Impeachment**

Wk. 5

- a. Reading: Chapter 8- Experts
- b. Performance Exercise: **Expert Testimony (Direct and Cross)**

Wk. 6

- a. Reading: Chapter 10- Evidentiary Objections
- b. Performance Exercise: **Objections**

Wk. 7

- a. Reading: Chapter 7- Exhibits and Visual Aids
- b. Performance Exercise: **Foundations and Exhibits**

Wk. 8

- a. Reading: Chapter 11-Trial Preparation and Strategy
- b. Performance Exercise: **To Be Determined by Professor**

Wk. 9

- a. Reading: Chapter 11-Trial Preparation and Strategy
- b. Performance Exercise: **To Be Determined by Professor**

Wk. 10 SPRING BREAK

Wk. 11

- a. Reading: Chapter 4 – Opening Statements
- b. Performance Exercise: Opening Statement

Wk. 12

- a. Reading: Chapter 9 - Closing Arguments
- b. Performance Exercise: **Closing Argument**

Wk. 13

- a. Reading: Chapter 3 - Jury Selection
- b. Performance Exercise: **Jury Selection**

Wk. 14

- a. Reading: Chapter 3 - Jury Selection
- b. Performance Exercise: **Jury Selection**

Wk. 15

- a. Reading: Chapter 12 – Bench Trials and Other Contested Hearings
- b. Performance Exercise: **To be Determined by Professor**

Wk. 16 Wrap-up

Final Trials: **To Be Determined by Professor**

Trial Simulation: Evaluation Rubric (Performance Exercises and Written Assignments)

Direct Examination

- Organization
- Witness introduction & background
- Background appropriate to witness and purpose of testimony
- Verbal (or written) description of scene from occurrence and other appropriate witnesses
- Appropriate description of events & damages
- Logical sequence to questions
- Theory - developed and clear from questions
- Completeness
- Form of Question - Open-ended for most part
- Good use of who, what, when, where, why, and how questions
- Exceptions: transition Q's leading to new area of inquiry
- Foundation Q's for conversations or exhibits
- Evidence of listening to witness: appropriate follow-up questions (not applicable to written assignment)
- Demeanor - professional but conversational (not applicable to written assignment)
- Placement in Courtroom - back out of jury's line of vision (not applicable to written assignment)
- Pace & delivery of questions **or** pacing of the written questions effectively sets the tone.
- Diminishing reliance on notes (not applicable to written assignment)
- Strong ending

Cross Examination

- Theory - developed and clear from questions
- Completely addresses all non-frivolous issues raised by the facts
- Form of Question - single fact leading questions/statements throughout
- Good witness control - repeat questions to get answers when necessary **or** written questions show quality and clarity of thought
- Organization by theme/issues raised by the facts
- Questions relating to same point/theory are asked together
- Placement in Courtroom - in jury's line of vision or (not applicable to written assignment)
- Demeanor - appropriate to witness (not applicable to written assignment)
- Effective beginning and closing questions
- Evidence of listening to witness: appropriate follow-up questions (not applicable to written assignment)
- Diminishing reliance on notes (not applicable to written assignment)

Impeachment by Prior Inconsistent Statement

Note: Prior statements of witnesses provide information for you to use in developing your cross-examination. They do not provide the basis for impeachment unless and until the witness testifies to something contrary to the information contained in the prior statement.

- Clear contrast between trial testimony and prior statement
- The contradiction concerns a material point or is otherwise relevant to your theory

- Separately addresses each inconsistency
- On cross, you have recommitted the person to their contrary trial testimony
- Appropriate accreditation of prior statement
- Appropriate clarifying questions where contradiction is ambiguous
- Correct format of questions exposing the contradiction
- Note: format of questions will vary based on nature of prior inconsistent statement
- Knowing what to do when the witness denies, is ambivalent about or admits his prior inconsistent statement

Objections

- Proper basis
- Timing: objection is made after question is complete, before answer given
- Basis articulated by short phrase, without argument, to the judge (the judge may ask you to further explain)
- Stand when objecting
- Problem is properly analyzed, and all non-frivolous objections have been made
- Ability to correctly respond to opponent's objections
- Recovery when objection is sustained
- Makes an offer of proof when critical evidence is ruled inadmissible

Exhibits

- Correct identification of exhibit by name (proponent - # - "for identification" before receipt in evidence by judge)
- Proper foundation for the exhibit
- Exhibit is "moved" or "offered" into evidence after foundation is laid
- Appropriate use of exhibit within context of entire examination (consider both timing and importance/weight given to exhibit in relation to balance of examination) **or** Appropriate use of exhibit within context of entire examination—written assignment
- Ambiguous information on exhibit is explained by witness **or** highlights essential testimony --written assignment only
- Clear and appropriate marking by witness of exhibit, when appropriate (not applicable to written assignment)
- Create "legend" where appropriate (not applicable to written assignment)
- Publication of exhibit to jury

Opening Statements

- Impact opener
- Confident informative delivery
- Good "storytelling"
- Clear logical organization
- Informs jury of anticipated facts and theory of case
- Clarity of explanation
- Emphasizes facts, not conclusions (does not overstate)
- "Broad brush" strokes
- Use of exhibits where appropriate
- No first person ("I believe")

- Strong ending requesting verdict for plaintiff/defendant stated w/conviction
- Gives jury questions to answer/things to listen for during presentation of evidence

Closing Argument

- Impact opener
- Argument rooted in case as it evolved
- Uses forceful and active language
- Develops theory of case
- Clear forceful explanations of why facts prove theory
- Deals candidly with weaknesses
- Refutation of opponent's case = secondary to proving own case
- Use of exhibits where appropriate
- No first person ("I believe")
- Appropriate use of rhetorical devices (E.g., Repetition, alliteration, rhetorical questions).
- Strong ending requesting verdict for plaintiff/defendant stated w/conviction
- Confident persuasive delivery
- Rebuttal that responds to main points of defense argument and restates key facts supporting the State/Plaintiff's theory of the case

All Other Performance Exercises

- To Be Determined by Professor