

University of Miami School of Law  
Litigation Skills I  
Syllabus  
Fall 2009

**I. Faculty and Staff**

The Interim Director of the Litigation Skills Program is Professor Sarah A. Mourer. Her office is located in the Kozyak, Tropin & Throckmorton Suite of the Litigation Skills Program, Suite A-380B, telephone number 305 284-2303.

The regular adjunct faculty consists of thirty practicing trial lawyers and judges in the Trial Skills section, and eleven in the Pretrial Skills section.

The Program Manager is Lydia Sanchez. The assistants are Betty Vilaboy and Hazel Nicholson. They are in the Litigation Skills Office, Suite A-380B, telephone number 305 284-2303. You may contact the Litigation Skills staff via e-mail [litskill@law.miami.edu](mailto:litskill@law.miami.edu).

**II. Class Schedule**

The first day of class is **Monday, August 17, 2009 in classroom 352 (1:30-3:20pm)**.

The class schedule for Lecture/Demonstration, Trial, and Pretrial classes is on Page 6.

Each student will be assigned a code for Trial and a code for Pretrial. The codes will be available by Monday, August 17th. Please check your e-mail or the board outside the Litigation Skills Office to obtain your individual codes.

**III. Course Material**

A list of reading assignments is on page 7. The following books are required for this course:

---

PRETRIAL BOOKS

---

Pretrial books are available at the University of Miami Book Store or Book Horizons:

1. Florida Rules of Court - State (West), 2009
2. Pretrial, Mauet (Aspen), Seventh Edition

---

TRIAL BOOKS

---

Trial books are available at the Litigation Skills Office, only checks are accepted. We are sorry, credit cards are not accepted:

1. Modern Trial Advocacy, Lubet, Law School, 2nd Ed. (NITA).... \$53.00
2. Problems in Trial Advocacy, 2007 Ed. (NITA).....\$53.00
3. In Re: Cooperman, 2<sup>nd</sup> Edition, (NITA) Bench Trial..... \$23.00
4. Case file for final trial will be available later in the semester.....(price TBA)

Please note the following ***SPECIAL CLASSES:***

---

## **WEEK TWO**

**Trial and Pretrial workshops begin on Week Two.**

**August 28 (Friday)**      **SPECIAL** Lecture/Demonstration. Room 352 (1:00 – 4:00pm)  
Discovery, Objections, Investigation, Pre-Trial Hearings & Pleadings.

## **WEEK FOUR**

**September 7 (Monday)**      NO CLASSES (Labor Day Holiday).

**September 11 (Friday)**      1:30-4:30pm  
This class is **ONLY** for Monday night students to make-up the  
Labor Day Holiday (Monday, September 7<sup>th</sup>) trial and pretrial classes.

## **WEEK SEVEN**

**Bench Trials**              Each student will participate as co-counsel in a Bench Trial. The Bench Trial might not be scheduled on your regular morning or evening classes. You will be assigned a bench trial partner. *Your bench trial partner should not be the same person that you would choose for final trial partner.*

If you are paired with the person that you would like to choose as a final trial partner, please let the Program Coordinator know a.s.a.p. Your bench trial assignment will be changed accordingly.

#### IV. **Pretrial and Trial Assignments**

Specific Pretrial and Trial assignments will be made by Monday, August 17th. Please check your e-mail or outside the Litigation Skills Office for your individual class assignments.

#### V. **Format**

The purpose of the Monday Lecture/Demonstrations is to examine theoretical questions arising during litigation and to explain proper technique in a variety of litigation settings. The proper preparation of the exercises assigned for each week will be specifically addressed. Professor Mourer will conduct presentations and demonstrations.

The Monday lecture will address that week's skill in detail and provide an overview of the following week's skills. Each student should be familiar with the facts of the hypotheticals for their small trial section before the Monday Lecture/Demonstration, in addition to having completed the required reading assignment.

All students are required to attend the **SPECIAL** Lecture/Demonstration class scheduled for **Friday, August 28th (1:00 to 4:00pm), Room 352 (Labor Day make-up Lecture)**.

The course will be conducted by the simulation and critique method. Students will be required to prepare simulated exercises for each workshop. During the class time, the instructor will call upon the students, individually or in teams, to assume the role of counsel for one of the parties and then to perform the assigned exercise. Performance in class is always followed by critique. The purpose is to develop skills by learning from experience.

Students must be prepared, each week, to make a presentation. Students are encouraged to work together. On some occasions, hopefully infrequent, not all students will be called upon during the class session. Those students not performing one week should so indicate to the instructor at the beginning of the next class session.

#### **PRETRIAL CLASSES**

Pretrial morning classes meet from 7:00 to 8:50am on Tuesday, Wednesday or Thursday.

Pretrial evening classes meet from 6:35 to 9:30pm on Monday, Tuesday, Wednesday or Thursday.

#### **TRIAL CLASSES**

Trial morning classes meet from 7:00 to 8:50am on Tuesday, Wednesday or Thursday.

Trial evening classes meet from 6:35 to 9:30pm on Monday, Tuesday, Wednesday or Thursday.

Each student will participate as co-counsel in a bench trial during the week of **September 28th**. The bench trial is usually scheduled on students' regular morning/evening class.

A jury trial will be held on **SATURDAY, NOVEMBER 14, 2009**. You will choose your final trial partner. Students with a religious or other unavoidable conflict may be scheduled for a jury trial at another time with the permission of the coordinator, Lydia Sanchez. These arrangements must be made, in writing, via e-mail to [litskill@law.miami.edu](mailto:litskill@law.miami.edu) no later than **Wednesday, September 2, 2009**.

## VI. **Videotaping**

Trial classes and bench trials will be videotaped. Students are required to review their weekly taped performances. During the semester, students will be scheduled to review their tapes one-on-one with a communications instructor. These communications instructors will not grade your performances, but are there to enhance your communication skills. The video reviews for morning and evening classes are announced, each week, in trial class.

## VII. **Method of Evaluation**

While Litigation Skills I is taken Honors/Pass/Fail, to determine these classifications the students will be graded on their performance in each classroom simulation. Students are also graded on their overall classroom participation including but not limited to, attendance, evidence of preparation for the simulated exercises, quality of involvement in classroom discussion, and degree of professional skills demonstrated.

<u>TRIAL SKILLS (3 CR.)</u>		<u>PRETRIAL SKILLS (3 CR.)</u>	
Weekly sessions (10)	50%	Weekly sessions (10)	100%
Bench Trial	20%		
Jury Trial	30%		

Bench Trial evaluations are based on Direct and Cross-Examination, Objections, Strategy and Demeanor. Final Jury Trials will be evaluated based upon the following areas: Opening or Closing, Direct and Cross-Examination, Objections, Legal Arguments, Demeanor and Level of Preparation. No written final examination will be given.

## VIII. **Attendance**

Because the course consists primarily of performances and demonstrations, attendance is mandatory at all Lecture/Demonstrations, Pretrial, and Trial classes. Attendance will be taken regularly and the Director reserves the right to invoke any sanction set forth in the section on attendance in the Student Handbook.

Although occasional absences may be necessary due to illness or emergency, such absences cannot be "made-up." If difficulties arise due to illness or extraordinary circumstances, the Interim Director of the Program or the Program Coordinator should be consulted immediately. In the event you must be absent from class, you are required to: 1. Contact the Litigation Skills Office and 2. File a notification of absence with the Dean of Students, for each class you miss.

NOTE: It is your responsibility to obtain any information that you may have missed due to an absence.

While this is an intense and rigorous course, which necessitates a great deal of outside preparation, it is not intended that students take time from other classes.

**STUDENTS WHO DO NOT FEEL THEY CAN CARRY THIS HEAVY WORKLOAD ARE DISCOURAGED FROM ENROLLING IN THE COURSE.**

**IX. Courtroom Attire**

Appropriate courtroom attire is required for all trial classes and also for formal hearings or conferences in the pretrial seminars. This is intended to simulate actual courtroom atmosphere and to make the videotapes of your performances as useful as possible.

**X. Professional Responsibility Issues**

A thorough understanding of the role of the professional advocate in the trial system is an essential part of preparation for trial advocacy. A first step toward developing this understanding is to know the provisions of the Model Rules/Code of Professional Responsibility bearing upon the advocate's responsibility as a representative of the client and as an officer of the court. Students should be able to recognize the meaning of these provisions in those practical contexts for which the Model Rules/Code provides clear answers and to know and understand the different professional opinions regarding issues that are not clearly answered in the Model Rules/Code.

Some of the problem materials in this course are designed to confront student counsel with issues of professional responsibility in circumstances typically found in practice. In addition, issues of professional responsibility, though not planned in advance as part of an exercise, sometimes arise because of the particular way in which the performance develops.

**XI. Additional Materials**

There is a library of videotapes on various subjects available in the Litigation Skills Office. You may sign these tapes out overnight or watch them in the Litigation Skills conference room. There is also a limited supply of handouts on specific topics, i.e. objections, jury selection, etc.

We have placed on reserve in the Law Library two copies of the materials you will use for this course. They are there for emergency use only and should not be monopolized.

**XII. Posting of Information and Notices**

To maintain the type of flexibility that allows the Litigation Skills Program to respond to your needs and the needs of the instructors, close communication is necessary with all the students at all times. Throughout the semester, the Litigation Skills Program will be posting information that you will need to prepare for your class assignments, room changes and faculty changes. These postings will occur in two places: via e-mail and posted outside the Litigation Skills Office.

**XIII. PROFESSIONALISM**

Students must behave professionally in this class at all times. This includes but is not limited to courtesy to your professors, classmates, timeliness, and respect.

**It is imperative that you check your e-mail daily for announcements from the Litigation Skills staff or from your individual instructors.**

**PLEASE PROVIDE US WITH YOUR CURRENT E-MAIL ADDRESS.**

**Thank you**

# READING ASSIGNMENTS

## Fall 2009

The following reading assignments are to be read prior to each Lecture/Demonstration.

<b>Date</b>	<b>Text</b>	<b>Pages</b>	<b>Subject</b>
August 17	Lubet	1-12 15-27	Trial Basics Case Analysis, Persuasion and Storytelling
August 24	Lubet	29-67	Direct Examination
	Mauet	3-18 28 - 37 40 - 50	Planning Client Interviewing Witness Interviewing
August 28	Lubet	203-239	Objections
	Mauet	19 - 27 37 - 40 55 - 81 117 - 183 185-268	Fact Investigation Exhibit Acquisition Legal Investigation Pleadings Discovery
August 31	Lubet	69-113	Cross Examination



# Trial Skills Assignments

## Fall 2009

Trial skills workshops begin on Week 2, August 24th. The following assignments are from the book Problems in Trial Advocacy. In trial class, each student will be assigned a code as either **1A, 1B, 2A or 2B**. Your individual code will be posted at the Litigation Skills Office by August 17th.

### **Week 2 - August 24**

(Direct /Theory of the case)

- 1A: Direct in Problem 1A , Case Analysis, Problem 1
- 1B: Direct in Problem 1B, Case Analysis, Problem 1
- 2A: Direct in Problem 3A, Case Analysis, Problem 3
- 2B: Direct in Problem 3B, Case Analysis, Problem 3

All students should be prepared to identify all of the strong and weak facts in their case.

### **Week 3 – August 31**

(Cross)

- 1A: Cross in Problem 1B (No diagrams)
- 1B: Cross in Problem 1A (No diagrams)
- 2A: Cross in Problem 3B (No diagrams)
- 2B: Cross in Problem 3A (No diagrams)

### **Week 4 - September 7**

(Direct/Cross)

- 1A: Direct in Problem 4B, Cross in Problem 4A
- 1B: Direct in Problem 4A, Cross in Problem 4B
- 2A: Direct in Problem 8B (Blanchard), Cross in Problem 8A (Devine)
- 2B: Direct in Problem 8A (Devine), Cross in Problem 8B (Blanchard)

### **Week 5 - September 14**

(Impeachment)

- 1A & 2A: Cross in Problems 28A & 32B
- 1B & 2B: Cross in Problems 28B & 32A

All the students should be prepared to demonstrate a Re-direct in Problems 28 or 32.

### **Week 6 – September 21**

(Exhibits I)

The following exercises require more than foundational questions.

Prepare to introduce and use exhibits in the following problems:

- 1A & 1B: Problems 1 (diagram) and Problem 14 (photograph)
- 2A & 2B: Problems 3 (diagram) and Problem 19 (baseball bat)

Be prepared to demonstrate the opposition of evidence in all problems.

# Trial Skills Assignments

## Fall 2009

**Week 7** – September 28  
(Bench Trials)

### **BENCH TRIALS**

Assignments will be posted outside the Litigation Skills Office or via email.  
No Lecture, Trial or Pretrial class this week.

**Week 8** - October 5  
(Expert Witness)

1A: Direct in Problem 37 (Part 1)  
1B: Cross in Problem 37 (Part 1)  
2A: Direct in Problem 37 (Part 2)  
2B: Cross in Problem 37 (Part 2)

**Week 9** – October 12  
(Closing Arguments)

Prepare a six-minute segment of Closing Argument in your final trial.

**Week 10** – October 19  
(Opening Statements)

Prepare a six-minute Opening Statement in your final trial.

**Week 11** – October 26  
(Exhibits II)

Prepare to introduce and use exhibits in the following problems:  
1A & 1B: Problems 16 (wine bottle & bag) & 22B (accident report)  
2A & 2B: Problem 23A (medical record) & 25A (letters & phone log)  
Be prepared to demonstrate the opposition of evidence in all problems.

**Week 12** – November 2  
(Pretrial Conferences)

### **PRETRIAL CONFERENCES**

Pretrial classes are NOT cancelled during the week of pretrial conferences.  
Trial classes are cancelled during the week of Pretrial conferences.

**Week 13** – November 9  
(Final Trials)

### **FINAL TRIALS (Saturday, November 14, 2009)**

**Week 14** – November 16  
(Class Critique/Summary)

Evaluations and Awards. Room 352, 1:30pm

# Civil Pretrial Skills Assignments Fall 2009

Pretrial workshops begin on Week 2, August 24th.

Each student will be assigned to be a counsel for Plaintiff (X), or Defense (Y).

Counsel assignments will be posted outside the Litigation Skills Office by August 17th.

---

## Assignment:

### Week 2

August 24

Client Interviewing

### Week 3

August 31

Filing Complaints and Witness Interviews

### Week 4

September 7

Filing of Responses to Complaints

### Week 5

September 14

Submission of Discovery Requests

### Week 6

September 21

Discovery Responses

### Week 7

September 28

#### **BENCH TRIALS**

Lecture, Trial and Pretrial classes are cancelled during the week of Bench Trials.

### Week 8

October 5

Motions to Compel and Deposition Preparation

### Week 9

October 12

Depositions I

### Week 10

**October 19**

**Depositions II**

### Week 11

October 26

Motion Hearings

### Week 12

November 2

Ethics

# Criminal Pretrial Skills Assignments Fall 2009

Pretrial workshops begin on Week 2, August 24th.

Each student will be assigned to be a counsel for Plaintiff (X), or Defense (Y).

Counsel assignments will be posted outside the Litigation Skills Office by August 17th.

---

## Assignment:

### Week 2

August 24

Client Interviewing

### Week 3

August 31

Witness Interviews

### Week 4

September 7

The Charging Process, Arraignments, Bond Hearings

### Week 5

September 14

DUI & Juvenile

### Week 6

September 21

Depositions I

### Week 7

September 28

#### **BENCH TRIALS**

Lecture, Trial and Pretrial classes are cancelled during the week of Bench Trials.

### Week 8

October 5

Depositions II

### Week 9

October 12

Motions: Non- Evidentiary

### Week 10

October 19

Motions: Evidentiary

### Week 11

October 26

Plea Negotiations/Sentencing

### Week 12

November 2

Ethics