

Legal Reasoning & Argument

(PHL 385 / PSC 385)

Mon/Wed 4:50 p.m. – 7:30 p.m.

Course Description

This course is designed to introduce students to the use of legal reasoning and argument in the context of trial advocacy. Students will develop skills in formulating, presenting, and critiquing legal arguments. Initially, we will explore the sources of law, the theory behind the adversarial system, and the various procedural and evidentiary rules in place to achieve the system's goals. We will also discuss how the rules of logic and reasoning govern the application of the law to the facts. Throughout the semester, we will achieve these goals through the lens of preparing to conduct a mock trial of a fictional civil case.

A mock trial is an exercise where students, playing the roles of attorneys and witnesses for either the plaintiff/prosecution and defense, engage in a trial of a fictional civil or criminal case. To prepare for a mock trial, students will learn the techniques used to conduct trials, including opening statements, direct examinations, cross examinations, closing arguments, and objections. During the semester, the class will break up into two or more teams, and each team will prepare either the plaintiff's case or the defense's case. At the end of the semester, the teams will scrimmage against each other in a mock trial.

You should take this course if:

- You are interested in competing with the University of Rochester's extra-curricular mock trial team—you will learn essential fundamental skills that will help you succeed in the competition;
- You are interested in attending law school—you will learn fundamental argumentation techniques as well as procedural and evidentiary rules that you will likely have to learn in law school;
- You are interested in learning or sharpening your oral communication skills—you will learn effective presentation and communication techniques.

About the Instructor

I am an attorney at Kenney Shelton Liptak Nowak LLP, in Buffalo, New York. My area of practice is commercial litigation and insurance defense—i.e., I represent clients who are embroiled in some sort of dispute—usually commercial in nature or involving a

defendant whose potential liability is covered by its insurance carrier—where the dispute is likely to or has already reached the judicial system. I competed in mock trial in high school, college, and law school. I benefited tremendously from the experience, and I hope you will similarly benefit from this course.

Below is my contact information. Because I practice in Buffalo, office hours will have to be by appointment, but I will usually be available by email or phone. Though I don't anticipate any problems, if my trial calendar conflicts with any particular class, depending on the substance scheduled to be covered during that class, I may have the TAs cover the class or I may reschedule the class. I will do my best to avoid such a situation. If at any point during the semester, you have any questions or concerns, don't hesitate to contact me.

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Teaching Assistants

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Wil Dietz
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Textbook/Materials

Required:

1) Mock Trials: Preparing, Presenting, and Winning Your Case (Author: Steven Lubet and Jill Trumbull-Harris)

2) AMTA 2014-2015 Case Materials and Midlands Rules of Evidence (to be downloaded from <http://www.collegemocktrial.org>). Login: rochestermt Password: yellowjackets80

NOTE: we have been granted a license by AMTA for the use of its 2014-2015 case materials for the purpose of this course. These materials are proprietary and confidential, and our license limits the use of these materials for this course ONLY. It would be a violation of our license to disseminate or to provide access to the AMTA materials to anyone not currently enrolled in the class (those competing on the University's mock trial team who are not enrolled in this course will be provided access to the case through the team itself). **Do not provide these materials or the login information to anyone outside of this course.**

Recommended (Optional):

1) Book: The Tools of Argument: How the Best Lawyers Think, Argue, and Win (Author: Joel P. Trachtman)

2) Book: The Five Types of Legal Argument (Author: Wilson R. Huhn)

3) Book: Legal Argument: The Structure and Language of Effective Advocacy (Author: James A. Gardner)

The above recommended books are suggestions for books that I wish I had read before attending law school. For those interested in attending law school, I highly recommend reading these books. For those who don't plan on attending law school, I nonetheless recommend reading at least the Trachtman book. It is possible that I will draw on some portions of the Trachtman book during our discussions of theory and logical reasoning. You are only required, however, to buy the Lubet/Trumbull-Harris book.

Grading Policy

Grading will be based on a combination of traditional assignments and quizzes as well as on practical exercises performed both individually as part of a team. The mock trial scrimmage will serve as the final examination for the course.

It goes without saying that attendance and class participation will be crucial to succeeding in this class. That being said, a component of your grade will be the improvement you make as the semester progresses. So as long as you attend class, participate, do your work in a timely fashion, and demonstrate that you are making an

effort, there's no reason why you shouldn't do well in the class. The breakdown of the overall grade will be as follows:

- 20% Attendance/Class Participation (2 points for each of the 20 substantive class, for up to 40 points)
- 50% Assignments/Quizzes (10 points per assignment/quiz, total of 10 assignments/quizzes, for up to 100 points)
- 30% Final Scrimmage (up to 60 total points for the full scrimmage)

The full scrimmage will be graded based on the following rubric:

- substantive technique (e.g., foundation, content and organization of examination, etc.)—20 points;
- presentation/persuasiveness technique (e.g., proper use of juxtaposition, headlining, looping, witness control, positioning, etc.)—20 points;
- command of rules of evidence—10 points
- demonstration of overall improvement—10 points

Absences

You will be allowed 2 excused absences that will not count against your attendance/participation grade. An excused absence is one where you have given either me or one of the TAs notice reasonably in advance that you will be unable to attend due to a legitimate reason. An unexcused absence will, of course, result in a 0 for that class's attendance/participation grade (i.e. 1% of your final grade). But please note that I reserve the right to deduct a greater portion of that component if you have multiple unexcused absence (in other words, if you have 3 unexcused absences, you will likely lose more than just 3% of your overall grade).

Honor Code Obligations

Finally, you are obligated and expected to comply with the University's honor code and all University rules and regulations. Likewise, I expect you to treat each other with respect. Failure to abide by these requirements may result in adverse consequences for your grade, aside from any other academic or administrative consequences of your actions.

Course Outline

NOTE: Please understand that this outline is simply my current, general plan for how the course will progress. In all likelihood, there will be changes to our outline—perhaps

because I decide to spend less time on one topic or more time on another; because we have to cancel a class for some reason (e.g., if I have an unavoidable court appearance), or for another reason. Thus, don't simply rely on the outline—make sure you come to class, pay attention, and keep up with what I announce we will cover in subsequent classes.

Unless otherwise instructed, make sure to come to class with the reading/assignment listed under that class **already completed**. Thus, for example, you should come to class on 9/8/14 having already read Ch. 1 in the Lubet book. NOTE: some assignments are more time-intensive than others. It would be advisable to get a head start on assignments that require a lot of reading (e.g., the assignment for 9/17).

Week 1

Wednesday, September 3, 2014:

Course overview; sources of law and theory of adversarial process; syllogisms, necessary/sufficient conditions, analogies/distinctions, and their application to the law; introduction to mock trial and AMTA case; assign teams.

Week 2

Monday, September 8, 2014:

Theory put into practice—how the procedural and evidentiary rules attempt to achieve the goals of the adversarial system; Relevance and Personal Knowledge rules of evidence.

Assignment: Lubet, Ch. 1; read AMTA case pp. 14-17, 21-24; read Midlands Rules of Evidence 602, 401, 402, 104(b); prepare a 3-minute speech about a topic of your choice.

Wednesday, September 10, 2014:

Continue Rules of Evidence (relevance, personal knowledge, unfairly prejudicial evidence, and improper character evidence, hearsay)

Assignment: Lubet Ch. 5; read Midlands Rules of Evidence 403, 404, 609, 801, 802.

Week 3

Monday, September 15, 2014:

Rules of Evidence: Hearsay

Assignment: Lubet Ch. 12(IV)(B)(1); read Midlands Rules of Evidence 803, 804.

Wednesday, September 17, 2014

Continue Rules of Evidence (hearsay exceptions)

Assignment: Lubet Ch. 2; Start reading AMTA case

Week 4

Monday, September 22, 2014

Case theory/theme; how to break down a case

Assignment: Lubet Ch. 3, 6, 7.

Wednesday, September 24, 2014

Quiz (rules of evidence): 104(b), 401, 402, 403, 404, 602, 609, 801, 802, 803, 804

How to do direct examinations; nuances of direct examination / introducing exhibits into evidence

Assignment: read entire AMTA case materials applicable to the intentional shooting claim (affidavits/depositions, exhibits, jury instructions, etc.); e-mail breakdown of case to your TA by 5 p.m. on Sunday, 9/28/14

Week 5

Monday, September 29, 2014

How to deal with experts on direct exams

Assignment: Lubet Ch. 11(I, II, III); e-mail 1st draft of direct exam to your TA by 5 p.m. on Friday, 10/3/14

Wednesday, October 1, 2014

How to do cross examinations

Assignment: Lubet Ch. 8, 9.

Week 6

Monday, October 6, 2014

Nuances of cross examination / impeachment / refreshing recollection

Wednesday, October 8, 2014

How to deal with experts on cross exams

Assignment: Lubet Ch. 11(IV); e-mail 1st draft of cross exam to your TA by 5 p.m. on Friday, 10/10/14

Week 7

Monday, October 13, 2014

Fall Break, no class

Wednesday, October 15, 2014

Objections

Assignment: Lubet Ch. 12.

Week 8

Monday, October 20, 2014

DX exercises with all-object; opening statements

Assignment: Lubet Ch. 13.

Wednesday, October 22, 2014

Continue opening statements

Assignment: e-mail your opening statement to your TA by 5 p.m. on Friday, 10/24/14

Week 9

Monday, October 27, 2014

CX exercises with all-object; closing statements

Assignment: Lubet Ch. 14.

Wednesday, October 29, 2014

Continue closing statements

Assignment: e-mail your closing statement to your TA by 5 p.m. on Friday, 10/31/14

Week 10

Monday, November 3, 2014

Team meeting with your team's TA

Wednesday, November 5, 2014

Team meeting with your team's TA

Assignment: e-mail 2nd draft of direct and cross examinations to your TA by 5 p.m. on Friday, 11/7/14

Week 11

Monday, November 10, 2014

Trial decorum / pre-trial procedure

Wednesday, November 12, 2014

Evidence Introduction / Impeachment / Refreshing Recollection Drills

Assignment: e-mail 2nd draft of opening and closing statements to your TA by 5 p.m. on Friday, 11/14/14

Week 12

Monday, November 17, 2014

Team meeting and/or TBD guest speaker

Wednesday, November 19, 2014

Team meeting and/or TBD guest speaker

Week 13

Monday, November 24, 2014

Team meeting and/or TBD guest speaker

Wednesday, November 26, 2014:

Thanksgiving break, no class

Week 14

Monday, December 1, 2014

Practice Scrimmage (graded as an assignment)

Wednesday, December 3, 2014

Continue Practice Scrimmage

Week 15

Monday, December 8, 2014

Full Scrimmage (graded as final exam)

Wednesday, December 10, 2014

Continue Full Scrimmage