**SYLLABUS**

**Trial Advocacy**Justin Bernstein / Fall 2023

#### LAW 705 – Section 4 (4.0 units). Lecture - Tuesday 1:45 – 2:45 pm (Room 1310) Performance Section – Tuesday / Thursday 10:35 am – 12:05 pm (Room 1310)

# Professor Information

Email addresses: bernstein@law.ucla.edu

# Course Materials

* All materials – including the course textbook, case problems, and my lecture slides – will be available electronically (and at no cost) on the course MyLaw page.
* The course textbook is *Trial Advocacy in a Nutshell* (Bergman, 6th ed., 2016).
* Our first case, *Davis v. HappyLand*, is already on MyLaw. The other cases, to be used for the trials starting in Week 11, will be made available by Week 9.

# Course Description and Goals

This is a practical course in trial advocacy. Students will learn and perform the skills of a trial lawyer through a series of lectures, video and live examples, performance exercises, and trial simulations. By the end of the course, students should feel comfortable developing a theory and theme for a case; delivering an opening statement, direct and cross examination, and closing argument; raising and responding to evidentiary objections; conducting an impeachment and refreshment of recollection; and introducing exhibits.

# Grading

This course is graded on a P/U/NC basis.

# Your Performances

You will represent one party in the *Davis v. HappyLand* case:

**Plaintiff:** Ashley, Chris, Christina, Courtland, Jade, Jordain, Kaya
**Defense:** Eddy, Katelyn, Micalyn, Nathan, Rachel, Sal, Sara

That will be your client for the first nine weeks of class. During those first nine weeks, classes will generally follow this structure: During the lecture period, I will teach an element of trial advocacy (e.g., opening statement). The week after, in our smaller section, you will perform that element and receive feedback.[[1]](#footnote-1)

During the last four weeks of class, you will prepare for trial and then try a full case. There will be three trials; you will be an attorney in exactly one of them (and likely a witness and juror in the other two). To the extent possible, you will have your choice of case and client (subject to the need to assign an equal number of students to each). Because we are using a civil case for the first nine weeks, you will have the opportunity to choose a criminal case for your final trial. Signups will occur in Week 9.

#  “Local Rules” (Course Policies)

My office hours are by appointment—not because I don’t want to meet with students, but rather just the opposite: I enjoy speaking with students, and I know that any selected times will only work for a fraction of your schedules. So please feel free to email me to set up a time!

To remain in the course, you must attend all classes during Week 1.

I reserve the right to change the schedule or curriculum, but I promise to announce any changes prominently.

Laptops are encouraged during lecture, but please do not use them during other students’ performances.

# Course Schedule

For Reading Assignments, please read the material *before* that week’s lecture. “Chapter” refers to *Trial Advocacy in a Nutshell*. Yellow indicates classes when I will be lecturing, and blue indicates classes when (at least some) students will be performing.

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| **Week****(Dates)** | **Reading Assignment** | **Section** | **Lecture** | **Section** |
| Tuesday(10:35-12:05) | Tuesday(1:45-2:45) | Thursday(10:35-12:05) |
| 1(Aug 22, 24) | *Davis v. HappyLand* | Team Building | Introduction | Trial Strategy |
| 2(Aug 29, 31) | Chapters 8, 9 | Public Speaking (Plaintiff) | Opening Statement | Public Speaking (Defense) |
| 3(Sept 5, 7) |  | Plaintiff Openings | Direct Exam I | Defense Openings |
| 4(Sept 12, 14) |  | Plaintiff Lay Directs | Direct Exam II | Defense Lay Directs  |
| 5(Sept 19, 21) |  | Plaintiff Lay Directs (exhibits) | Direct Exam III | Defense Lay Directs (exhibits) |
| 6(Sept 26, 28) | Chapter 11 | Plaintiff Expert Direct Exams | Cross-Examination I | Defense Expert Direct Exams |
| 7(Oct 3, 5) | Chapter 10 | Defense Crosses (cooperative) | Cross-Examination II | Plaintiff Crosses (cooperative) |
| 8(Oct 10, 12) | Chapter 12 | Defense Crosses (uncooperative) | Closing Argument | Plaintiff Crosses (uncooperative) |
| 9(Oct 17, 19) | Chapter 12 | Plaintiff Closing Arguments | Objections | Defense Closing Arguments |
| 10(Oct 24, 26) | Chapter 13 | Objections Workshop | Trial Preparation | Objections Workshop |
| 11(O 31, N 2) |  | Trial #1 | Trial Preparation | Trial #1 |
| 12(Nov 7, 9) |  | Trial #2 | Trial Preparation | Trial #2 |
| 13(Nov 14, 16) |  | Trial #3 | Trial Preparation | Trial #3 |
| 14(Nov 21) |  | Wrap-up | Wrap-up |

# Performance Assignments

**Public Speaking Exercise**

Please *memorize* one of the four *Davis v. HappyLand* speeches below (each fewer than 100 words) and perform it in class without notes. For the rest of the course, you will prepare your content, but here please avoid rewriting the speech. No doubt you could write it better or choose language you would find more natural. The point of the exercise is focus purely on the delivery – speech, volume, gestures, movement.

Option 1 (Plaintiff Opening)

A two-year-old boy is in the emergency room. His arms begin to tremble. His legs start to convulse. The nurses have to hold his head down so his neck doesn’t snap. When his seizure finally stops, the boy throws up all over himself and, in his vomit, there are 25 plastic beads. The doctors think the worst is behind him. They think he’s going to be okay. But they’re wrong. Because those beads he threw up contained poison, and that poison has already made its way to his bloodstream. In an hour, this two-year-old boy will be dead.

Option 2 (Plaintiff Opening)

These are the Princess Beads. You can tell by looking at them that they come in bright colors. You can tell that they’re pretty and shiny. But no matter how hard you look, no matter how hard you squint, what you can’t tell is that every one of these beads is coated in a colorless, odorless substance. Every one of these beads is coated in a chemical. Every one of these beads is coated in poison that can kill. In 2009, the Defendant, the HappyLand Toy Company, sold these beads to children. They put poison on a children’s toy.

Option 3 (Defense Closing)

A young boy is in the hospital. He can’t breathe. He’s gasping for air. And the doctor doesn’t have any idea what to do. Ladies and Gentlemen, the boy I’m describing is Joey Davis – but this horrible image doesn’t come from the day he died. Because this trial doesn’t start in August of 2009. Doesn’t start with Princess Beads. It starts in the summer of 2008, when Joey Davis began having trouble with the most basic human activity. He literally couldn’t breathe.

Option 4 (Defense Closing)

Take a look at this chair. Is there anything wrong with it? Was it defectively designed? I should know. I sat in this chair for the last twenty minutes. It didn’t collapse. Didn’t break. Didn’t even sway. But then again, I was just sitting in it. I was using it the way it was intended. But what if I picked up this chair and threw it? That could be dangerous. The fact is, when we’re trying to figure out whether a product chair is dangerous, it’s not about how it was made. It’s about how it was used.

**Opening Statements**

Prepare the first 6 minutes of your party’s opening statement. You do not need to complete the entire opening statement in 6 minutes, but make sure you include the theme, story, theory, summary of the law, and roadmap of main arguments. Minimize your use of notes. Ideally, deliver the opening without any notes. But at minimum do not use notes while you are telling the story at the beginning of your opening statement.

**Lay Directs**

Prepare the first 5 minutes of one of your party’s lay witnesses. You do not need to complete the entire direct examination. No exhibits. Minimize your use of notes.

**Lay Directs with Exhibits**

Prepare the first 5 minutes of one of your party’s lay witnesses. Introduce, admit, and then use at least one exhibit from the case. Minimize your use of notes.

**Expert Directs**

This is a group project. Work in pairs with another attorney representing your party. Prepare the entire direct examination of your party’s expert witness. It may be up to 15 minutes total. For the introduction and all foundational questions, one of you is the attorney and the other is the witness. After the witness testifies to their conclusion, you will switch places – the attorney becomes the witness, and the witness becomes the attorney. You will then finish the rest of the direct by having the witness walk the jury through their conclusions in detail. You may assume that all exhibits are already in evidence.

If there is an odd number of attorneys for your party, there should be one group of three. Divide the direct into thirds so you each have an equal amount of time to ask questions. It may be up to 20 minutes total.

Minimize your use of notes.

**Cross Examinations**

Prepare the first two chapters of a cross examination of one of the opposing party’s witnesses. It should be 3-5 minutes. Minimize your use of notes.

**Cross Examinations with Uncooperative Witnesses**

Prepare the first two chapters of a cross examination of one of the opposing party’s witnesses. It should be 3-5 minutes. Be ready to control the witness when they are evasive, and be ready to impeach the witness with their sworn statement when they lie. Minimize your use of notes.

**Closing Arguments**

Pair with another attorney representing your party. Prepare a closing argument together. One of you will deliver the first half, and the other will deliver the second half. (Make sure the halves match when it comes to roadmap, theory, theme, etc.). You have 15 minutes for the entire closing. If there is an odd number, there should be one group of three, which should divide the closing into thirds. You have 20 minutes. Minimize your use of notes.

**Objections Workshop**

You will receive instructions the week before.

# Additional School of Law Policies

UCLA Law strives to provide accommodations in a way that supports students with disabilities while maintaining their anonymity and the fundamental nature of our law program. As such, students needing academic accommodations should not contact their professors directly, but contact Carmina Ocampo, Director of Student Life (ocampo@law.ucla.edu) or the UCLA Center for Accessible Education (CAE) at www.cae.ucla.edu. When possible, students should start this process within the first two weeks of the semester, as reasonable notice is needed to coordinate accommodations.

Students needing assistance with medical or mental health issues, substance abuse, anxiety or depression or other health-related matters should contact the Office for Student Affairs at studentaffairs@law.ucla.edu, UCLA Counseling and Psychological Services (CAPS) at 310-825-0768 or the Ashe Student Health & Wellness Center at 310-825-4073. CAPS operates a satellite clinic in our Law Library on Mondays, Tuesdays and Wednesdays, 10:00 a.m.-1:00p.m. in Room 1112Q of the Law Library. UCLA has many resources to help students so please take advantage of them.

Regular, in-person attendance is required for all classes at UCLA Law. Pursuant to our academic standards, students who do not regularly attend class may, at the professor’s discretion, receive a grade of “F” or be dropped from the class. Students for whom this may be an issue will receive a written warning before this final action and may need to attend all remaining classes after the written warning is given.

1. During the first week, there will also be some lecture during our smaller section. [↑](#footnote-ref-1)