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**Expert Witnesses**

**TADR 429**

**2 Credit Hours**

Course Syllabus

Spring 2022

Professor: Johanes Maliza

Email: [jmaliza@uic.edu](mailto:jmaliza@uic.edu)

Telephone: 216-385-4679

Wednesdays, 6-8 p.m.

ONCAM attendance

**Prerequisites:**

JD 401, and JD 405, and JD 406, and JD 407, and JD 411, and JD 414, and 415, and JD 416; and LAW 402 or LAW 403 or LAW 404; and LAW 412 or LAW 413; and JD 425 or TADR 457

**Learning Objectives:** Students will learn the procedural and substantive law regarding expert witnesses, and how to incorporate the expert’s opinion into litigation, trial, and appellate record. The course combines theory and practice, where students will study the rules and regulations pertaining experts and will also practice the theory in class presentations and simulations.

**Required Texts/Materials**:

Lubet, Steven & Boals, Elizabeth, Expert Testimony (4th ed.)

Illinois Rules of Evidence (on-line)

Federal Rules of Evidence (on-line)

Federal Rules of Civil Procedure (on-line)

Federal Rules of Criminal Procedure (on-line)

The case files for simulations and the final mock exercise will be distributed during the semester

**Grading Criteria:** Attendance and participation are mandatory. Students will be graded upon their performance on simulations and written materials (40%), general class preparation and participation (20%), and final mock exercise (40%).

**Special Assistance:** The University of Illinois at Chicago is committed to maintaining a barrier-free environment so that individuals with disabilities can fully access programs, courses, services, and activities at UIC. Students with disabilities who require accommodations for full access and participation in UIC programs must be registered with the Disability Resource Center (DRC), <https://drc.uic.edu/>. Please contact DRC at (312) 413-2183 (voice) or (312) 413-0123 (TDD).

**Attendance:** Regular and punctual attendance is required of all students. The maximum number of absences is three. Consult the law school’s attendance policies for additional information.

The Law School’s Common Syllabus Provisions, available at <https://go.uic.edu/lawcsp>, are incorporated by reference.

**Lesson 1: (1/12/22)**

Lay Witnesses, Expert Witnesses, and the Admissibility of Testimony

Learning Objectives: Learn the difference between lay opinion and an expert’s opinion. Learn the boundaries of permissible expert testimony.

Preparation Assignment: Lubet & Boals, pp. 1-8; 163-84

*Frye v. U.S.*, 293 F.1013 DC (1923)

*Donaldson v. Central Illinois Public Service Co.*, 199 Ill.2d 63 (2002)

*People v. Pingelton*, 2021 IL App (4th) 180751

Illinois R. Evid. 701 and 702

*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)

*Kumho Tire Co., ltd. Et al. v. Carmichael*, 526 U.S. 137 (1999)

*United States v. Tingle*, 880 F.3d 850 (7th Cir. 2018)

Fed R. Evid. 701 and 702

Class: Discussion on admissibility of expertsunder *Frye* and *Daubert* standards; expert v. lay opinion; federal and state rules on expert witnesses.

Lesson 2: (1/19/22)

When to Get an Expert

Learning Objectives: Learn how to recognize when to retain an expert, the expert’s role in the stages of litigation, how to find an expert, what information to provide an expert, the role of an attorney in preparing the expert’s opinion and how to respond to an opposing expert’s report.

Preparation Assignment: Lubet & Boals, pp. 9-47

Class: How do you know when you need an expert? What is the expert’s role in the case at each phase? How do you hire an expert? What information do you provide an expert? What is the role of an attorney in forming the expert’s opinion? How does counsel respond to an opposing expert’s report?

Lesson 3: (1/26/22)

Discovery Rules for Experts

Learning Objectives: Students will learn the boundaries of expert engagements and knowing how to fit the expert’s testimony into your overall trial strategy.

Preparation Assignment: Lubet & Boals, pp. 49-80

Fed. R. Civ. P. 26, 30, 31, 33, 36, 37

Fed. R. Crim. P. 12.1, 16

Fed R. Evid. 702-705.

Class: Discussion of goals and strategies of expert discovery.

Lesson 4: (2/2/22)

Expert Discovery

Learning Objectives: Learn about taking and defending expert depositions.

Preparation Assignment: Lubet & Boals, pp. 49-80 (same as last week)

Fed. R. Civ. P. 26, 30, 31, 33, 36, 37

Fed. R. Crim. P. 12.1, 16

Review trial court order from *Security National Bank of Sioux City, Iowa v. Abbott Laboratories*, N.D. Iowa No. 5:11-cv-04017-MWB (July 28, 2014 N.D. Iowa) (to be distributed in class on or before 1-26-22)

Review <https://www.npr.org/sections/health-shots/2019/10/30/761257653/some-academics-quietly-take-side-jobs-helping-tobacco-companies-in-court>, accessed 12-15-21

Class: Discussion of expert discovery.

Lesson 5: (2/9/22)

Expert Discovery Depositions

Learning Objectives: Students will learn the principles of taking expert depositions.

Preparation Assignment: Review hypothetical expert materials (to be distributed in class on or before 2-2-22)

Draft Requests for Admissions using hypothetical expert materials

Class: Conduct an actual expert witness deposition. Each student will conduct an expert’s deposition.

Lesson 6: (2/16/22)

Discovery Depositions (Cont.)

Learning Objectives: Students will learn the principles of taking an expert’s deposition.

Preparation Assignment: Review hypothetical expert materials (to be distributed in class on or before 2-9-22)

Draft expert deposition outline

Class: Conduct an actual expert witness deposition. Each student will conduct an expert’s deposition.

Lesson 7: (2/23/22)

Trial: Preparing an Expert for Trial Testimony and *Daubert* Challenge

Learning Objectives: Students will learn how to admit an expert’s testimony at trial, as well as preparing the expert for that direct testimony.

Preparation Assignment: Lubet & Boals, pp. 81-100

Review hypothetical expert materials (to be distributed in class on or before 2-16-22)

Fed. R. Evid. 703

Fed. R. Civ. P. 26(a)(2)

Fed R. Crim. P. 16(b)(1)(C)

*Wilson v. Clark*, 417 N. E. 2d 1322(1981)

*People v. McKown,* 875 N.E.2d 1029 (2007)

*People v. Safford*, 910 N.E.2d 143 (2009)

*People v. Luna*, 2013 IL App (1st) 072253

Draft a summary of expert testimony to comply with Fed. R. Crim. P. 16(b)(1)(C)

Class: Lay the foundation for an expert to testify and be admitted.

This session will discuss getting your expert admitted to testify before the court. You will exchange expert witness summaries/reports, and prepare to facilitate their admission as experts. The class will also discuss the difference between civil and criminal procedure in federal court, and the requirements for each.

Lesson 8: (3/2/22)

Direct Examination of Expert

Learning Objectives: Students will learn the principals of how to conduct an expert an expert’s direct examination at trial.

Preparation Assignment: Lubet & Boals, pp. 81-109 (same as last week), 140-162

Review hypothetical expert materials (to be distributed in class on or before 2-23-22)

Class: In this session you will conduct a direct examination of an expert.

Lesson 9: (3/9/22)

Direct Examination of Expert (Cont.)

Learning Objectives: Students will learn the principals of how to conduct an expert’s direct examination at trial.

Preparation Assignment: Draft direct examination outline for hypothetical expert

Class: In this session you will conduct a direct examination of an expert.

Lesson 10: (3/16/22)

Preparing an Expert for Cross Examination

Learning Objectives: Students will learn how to prepare a cross examination of an opposing expert at trial, as well as preparing your own expert for you opponents cross-examination at trial.

Preparation Assignment: Lubet & Boals, pp. 111-140

Review hypothetical expert materials (to be distributed in class on or before 3-9-22)

Class: This session will discuss preparing for cross examination of an opposing expert including: impeachment with a learned treatise and deposition transcript.

Lesson 11: (3/30/22)

*Daubert* Hearing -- *Voire Dire* and Motion to Oppose Expert

Learning objectives: Students will learn how to conduct a *Daubert* hearing.

Preparation Assignment: Lubet & Boals, pp. 2-8, 125-132

Review hypothetical expert materials (to be distributed in class on or before 3-23-22)

*Kirk v. Clark Equip. Co.*, 991 F.3d 865 (7th Cir. 2021)

Draft Motion for *Daubert* hearing to challenge admissibility of hypothetical expert

Class: In this session you will conduct a *voire dire* of an expert, challenging admissibility of expert’s testimony

Lesson 12: (4/6/22) \*\*\*No class on April 6. Class to be Scheduled for evening of March 28 or March 29, 2022, location TBD.\*\*\*

Cross Examination of an Expert at Trial

Learning objectives: Students will learn how to conduct a cross examination at trial.

Preparation Assignment: Review hypothetical expert materials (to be distributed in class on or before 3-30-22)

Class: In this session you will conduct a cross examination of an expert.

Lesson 13: (4/13/22)

Final Exam – Simulation Trial

Learning Objections: Students will learn to use all of the above-mentioned principles and guidelines to prepare and conduct the trial of the hypothetical given in this case.

Each student will participate as either a plaintiff or defendant’s attorney.