Trial Advocacy - Student Materials
Fall 2016
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Trial Advocacy Materials 2016

Sequence of Study

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Osgoode Hall Law School
York University
OSGOODE HALL LAW SCHOOL
TRIAL ADVOCACY
2016

SEQUENCE OF STUDY

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<td>Class 10: Case Analysis, Opening Statements, Closing Argument &amp; Trial Preparation</td>
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Welcome to the TRIAL ADVOCACY SEMINAR. Tonight at the opening meeting, we will introduce you to the program, the schedule and how it all works. We will then break into the three sections and have two short workshops.

The skills workshop introduces you to the basic techniques of direct and cross examination.

The second session focuses on “case analysis and cooperative brainstorming”.


Format:  

7:00 - 7:30  ALL SECTIONS MEETING (Moot Court, Room 1005).

7:30 - 8:30  FULL SECTION MEETINGS (Home rooms) 
Basic skills workshop based on Problem #1

8:30 – 8:45  FULL SECTION MEETINGS (Home rooms) 
Case analysis and cooperative brainstorming of Problem #1 (Bier).

8:45- 9:00  Break

9:00 - 10:00  Demonstration (Moot Court, Room 1005).


The problems will be made available online for those students who have not yet purchased the casebook from MDC.
The goal of this evening is to work on basic direct-examination and cross-examination of a lay witness – *i.e.* an eye witness to certain events.

**Direct-examination** -- introducing the witness; setting the scene; and eliciting what the witness saw. The examinations and critiques will focus on the structure of the examination and the form of the questions -- a topic sentence (heading) followed by short, non-leading questions, simple language -- and on eliciting testimony in appropriate detail in a way that develops your case theme.

**Cross-examination** -- having a point and making the point through a sequence of short, simple, single-fact, leading questions, which build toward a conclusion that relates to theme of your case.

Making **objections** will also be covered.

**Readings:**
1. **Casebook**
   - Introduction pg 4-5
   - Some Points on Witness Examination pg 6-16
   - Examination in Chief, Cross-Examination and Re-Examination pg 17-19
   - Rules of Professional Conduct pg 112-115

2. **Modern Trial Advocacy**
   - Chapter One: Case Analysis, Persuasion and Storytelling pg 1-13
   - Chapter Four: Examination-in-Chief pg 43-78
   - Chapter Five: Cross-Examination pg 79-137
   - Chapter Nine: Objections pg 235-270


**Assignment:**
- “Xs” will conduct a **direct**-examination of Bier
- “Ys” will conduct a **cross**-examination of Bier
All students must be prepared to play the witness role.

The purpose of this class is to develop basic examination skills. It will also focus on the making of objections and submissions to the court supporting the objection. An opposing counsel will be selected for each student performance. His or her job will be to raise an objection to each question that is not a proper or effective direct-examination question. For example:

- counsel is leading the witness;
- the question calls for a conclusion; or
- the question is too long and/or complex.

Note: These objections are broader than those that could be made at a real trial.

Keep in mind the following ground rules:

- if you are going to make an objection you will first need to stand and state that you object to the question and then wait to be recognized by the court.

- if the question is likely to draw an objectionable answer, for example hearsay, you need to object promptly and before the witness answers;

- when the opponent stands and objects the examining counsel should sit down while opposing counsel makes his or her submissions.

**Format:**

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<tr>
<td>7:00 - 8:45</td>
<td>SMALL GROUP SESSION (Breakout Rooms) Direct and Cross Examination of Officer Bier</td>
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<td>8:45 - 9:00</td>
<td>Break</td>
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<tr>
<td>9:00 - 10:00</td>
<td>ALL SECTIONS Demonstration (Moot Court Room 1005)</td>
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**Demonstration:** Direct and Cross Examination of Bier in Problem #1
This evening’s focus will again be on **direct and cross-examination**.

You will spend the whole of the evening (prior to the demonstration) in your break out groups performing direct and cross-examinations of Officer Bier with real police officers playing Officer Bier.

**Readings:**

1. **Casebook**
   - Some Points on Witness Examination pg 6-16
   - Examination in Chief, Cross-Examination and Re-Examination pg 17-19
   - Rules of Professional Conduct pg 112-115

2. **Modern Trial Advocacy**
   - Chapter One: Case Analysis, Persuasion and Storytelling pg 1-13
   - Chapter Four: Examination-in-Chief pg 43-78
   - Chapter Five: Cross-Examination pg 79-137
   - Chapter Nine: Objections pg 235-270

**Problems:**


**Assignment:**

- “Ys” will conduct a **direct** examination of Officer Bier
- “Xs” will conduct a **cross** examination of Officer Bier

**Note:** Police officers will play the role of Officer Bier.

The purpose of this session is to develop basic direct and cross-examination skills. This session will also continue to focus on the making of objections and submissions to the court supporting the objection. An opposing counsel will be selected for each student performance.

By the end of this class, you should understand the difference between leading and non-leading questions; be able to develop a line of cross-examination; to make and meet objections and to develop a theory of the case.

**Format:**

7:00 – 8:45 SMALL GROUP SESSION (Breakout Rooms)
Direct and Cross-examination of Bier

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8:45- 9:00 Break

9:00 - 10:00 ALL SECTIONS (Moot Court, Room 1005)
Demonstration/Lecture on Exhibits

Demonstration Readings:


* For these notes, please use the following information to reference the problems, rather than the page number indicated in the note:

Demonstration:

**DIAGRAM:** Problem #5: *N.L.C. v Jones* (diagram at page 135).

**PHOTOGRAPHS:** Problem #8: *Murphy v. Wagner* page 143 (photo at page 145).

**REAL OBJECT/BOTTLE:** Problem #5 *N.L.C. v Jones* (wine bottle at page 135).

**LETTERS AND PHONE LOG:** Problem #10: *NitaSport v. Nita Slugger* - at page 152 (letters/phone log begin at pages 155-157).
We will spend this evening working on exhibits and demonstrative aids -- the third fundamental building block of witness examination (along with direct and cross-examination).

First, we will work with diagrams, photographs and real evidence. The goal will be to learn how to lay the foundation necessary for introducing/using an exhibit or demonstrative aid at trial -- and then working with the exhibit. Then, we will work with paper exhibits: letters, documents and summaries. We will continue to work on the fundamentals of laying a foundation, getting an exhibit into evidence and then working with the exhibit.

Rather than have everybody perform a few problems, we will take up a range of problems with just a couple of people performing each one. This will allow us to work with a broad sample of exhibits and demonstrative aids.

Readings:

1. Casebook
   - The Introduction and Use of Exhibits pg 21 - 23
   - Introducing Exhibits Into Evidence pg 24 - 31
   - Statutes Regarding Business Records Exception pg 32 - 34

2. Modern Trial Advocacy
   - Chapter Ten: Foundations and Exhibits pg 271 - 332

Problems and Assignments:

Problem #5  *N.L.C. v Jones*
Y₁ - Introduce
Problem #7  *Brown v. Byrd*
X₁ - Introduce
Problem #8  *Murphy v. Wagner*
Y₂ - Introduce
Problem #8  *Murphy v. Wagner*
X₂ - Introduce the medical records
Problem #10  *NitaSport Inc. v. Nita Slugger*
Part 1 (letter)
Y₃ - Introduce
Part 2 (phone log)
X₃ - Introduce
With regard to each of these exercises, the persons who have responsibility for introducing the exhibit are to choose and prepare a person or persons (from your small group) to play the witness(es).

* No one is assigned to play the role of opposing counsel - faculty will do this as necessary.

**Format:** 7:00 – 8:45  
SMALL GROUP SESSION (Breakout rooms)  
The focus of this class will be on introducing exhibits into evidence and their use in examinations. By the end of this session, students should know how to introduce an exhibit and how to make use of it in an examination.

8:45 - 9:00  
Break

9:00 - 10:00  
ALL SECTIONS Demonstration (Moot Court, Room 1005)

**Demonstration:**  
Lecture/Demonstration on Impeachment and Rehabilitation

Problem #11 *R v Carrol* (O’Rourke) *Casebook*, page 158.

Problem #12 *N.L.C. v Jones & Chateau Guy Wines Ltd* (Bier)  
*Casebook* page 161.
This evening will be devoted to Impeachment. Our goal is to provide you with the basic skills of Impeachment. (Next week, we will have another evening on Impeachment.)

**Readings:**
1. *Casebook*
   - Materials on Impeachment of Witnesses pg 42 - 63
2. *Modern Trial Advocacy*
   - Chapter Six: Impeachment, pg 139 - 188
   - Chapter Seven: Re-Examination and Rehabilitation pg 189 - 194

**Problems:**
2. Problem #11: *R. v. Carroll (O'Rourke)*, *Casebook* page 158.

**Assignments:**
   - Xs cross-examine
   - Ys re-examine and play witness role

2. Problem #11: *R. v. Carroll (O'Rourke)*
   - Ys cross-examine
   - Xs re-examine and play witness role

This class is an introduction to impeachment by use of prior inconsistent statements, and by reference to omissions made from an earlier statement, e.g., omissions from a police officer’s notes.

**Format:**
7:00 – 8:45 SMALL GROUP SESSIONS (Breakout Rooms)
8:45 - 9:00 Break
9:00 - 10:00 ALL SECTIONS Demonstration (Moot Court, Room 1005)

**Demonstration:**
1. Problem #13 *Manning v Carleton*, *Casebook* page 162.
This evening we will continue with Impeachment and Rehabilitation, followed by a demonstration of opening and closing statements.

**Readings:**

1. **Casebook**
   - Materials on Impeachment of Witnesses  pg 42 - 63

2. **Modern Trial Advocacy**
   Review:  Chapters Six and Seven  pg 139 - 194

**Problems:**

1. Problem #13  *Manning v. Carleton* (M. Carleton)
   - discovery of transcript, *Casebook* page 162.

2. Problem #14  *Gentry v. Smith* (James Taylor)
   - signed statement, *Casebook*, page 164.

**Assignment:**

1. Problem #13  *Manning v. Carleton* (M. Carleton)
   - Xs cross-examine
   - Ys re-examine and play witness role

2. Problem #14  *Gentry v. Smith* (James Taylor)
   - Ys cross-examine
   - Xs re-examine and play witness role

**Format:**

7:00 – 8:45  SMALL GROUP SESSION
(Breakout Rooms)
Performance of Impeachment Problems

8:45 - 9:00  Break

9:00 - 10:00  ALL SECTIONS Demonstration (Moot Court, Room 1005)

**Demonstration:**  Opening and Closing Statements for the Crown and Defence in Problem #1  *N.L.C. v Jones and Chateau Guy* (Bier), *Casebook*, page 116.
You have now learned all the basic techniques to conduct a trial, other than opening statement and closing arguments (but you have seen these demonstrated). This evening you will get a chance to put it all together, in a mini-trial in *N.L.C. v. Jones and Chateau Guy*.

**Readings:**
1. *Casebook*
   - Materials on Openings and Closings  pg 78 - 111
2. *Modern Trial Advocacy*
   - Chapter Twelve: Final Argument  pg 385 - 432

**Problem:**

**Assignment:**
The facts are contained in Problem #1. Dan Jones will be called as a witness for the defence. At the voir dire, the judge ruled admissible the voluntary statement Jones gave.

At trial, Dan Jones will testify in accordance with his statement to police except he will state that he recalls seeing Watkins in the store but does not recall speaking to him. The direct examiner is to elicit this evidence from Jones on the examination-in-chief.

**Format:**
The *Bier* trial will take place in the Small Groups according to the following rules:

**Time Guidelines and Rules**

Two rounds of trials; 1.5 hours each.

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<td>Trial #1</td>
<td>8:30 - 10:00</td>
<td>Trial #2</td>
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Classmates will be witnesses to play the role of Bier or Jones. Each side is also invited to bring three jurors (friends, family, even children from the age of eleven are very suitable as jurors).

Trial teams will consist of two students within your small group who will act as counsel for either the defence or the Crown.

- The Mini Trial Schedule will be posted on the course website shortly before the Mini Trials and this schedule is to be followed absolutely.

Skills

You will be expected to make use of the skills, which you have learned so far. In particular, you will be expected to:

(a) prove the diagram;
(b) use it in examination and cross-examination;
(c) introduce the wine bottle as an exhibit;
(d) make appropriate objections on any matters which call for objections, including the admissibility of evidence.
We will devote the whole of the evening (except for the demonstration) to performance of the two parts of *Scott v. Jamison*.

The demonstration of the examination and cross-examination of an expert witness will prepare you for next week’s performance exercise.

**Readings:**
1. Casebook
   - Some Points on Witness Examination pg 6-16
   - Examination in Chief, Cross-Examination and Re-Examination pg 17-20
2. Modern Trial Advocacy
   - Chapter Five: Cross-Examination pg 79-138

**Problem:**
Problem #4: *Scott v Jamison* (Horrigan & Colson) Casebook, page 129.

**Assignment:**
(a) Xs to conduct the cross-examination of Horrigan;
(b) Ys to conduct the cross-examination of Colson;

Students should also be prepared to play the role of the witness in the problem to which they are assigned.

**Format:**
7:00 - 8:00 SMALL GROUP SESSION (Breakout Rooms)
Performance of cross-examinations in *Scott v. Jamison*

8:45 - 9:00 Break

9:00 - 10:00 ALL SECTIONS Demonstration on Expert Witnesses and Q & A for Praxicum Paper (Moot Court, Room 1005)

**Demonstration:**
Tonight the entire evening will be devoted to the examination and cross-examination of an expert witness, with the role of the expert witness being played by real, real estate appraiser experts!

Readings:
1. Casebook
   - Materials on Examination of Expert Witnesses pg 69 - 77
2. Modern Trial Advocacy
   - Chapter Eight: Expert Testimony pg 195 - 234


Assignments:
1. The focus of this class will be the examination and cross-examination of an expert witness. Real experts will play the witness roles.
2. - Xs will conduct the direct examination;
   - Ys will conduct the cross-examination.

You will be given up to 15 minutes to conduct your examination or cross-examination. Given the nature of the problem, you should attempt to conduct an entire direct or cross within this time frame.

Format: 7:00 - 10:00 SMALL GROUP SESSION (Breakout Rooms)
The entire class will be spent in small groups. You will be given 10 minutes at the outset of the class to ask the expert witness any questions you may have.
For the first part of the evening everyone in the seminar will divide into two groups, according to which side of the case you will be presenting in your final trial. An email will advise students which room to attend at 7:00 pm. We will be working with you on *brainstorming*/analysing/planning the presentation of your case for your final trial. We believe this is a useful method of trial preparation and we will try to share with you some of the techniques that are available.

In the second half of the evening we will be working on opening & closing statements. Each student is to prepare and present BOTH an opening statement AND a closing argument.

**Readings:**

1. Casebook
   - Materials on Openings and Closings pg 78 - 111

2. Modern Trial Advocacy
   - Chapter Eleven: Opening Statements pg 333 - 383
   - Chapter Twelve: Final Argument pg 385 - 432

**Problems:**

You must be fully familiar with the case file you will be trying in the final trials.

**Assignment:**

Openings and Closings

The purpose of this class is to alert you to the differences in:

(a) tone
(b) format
(c) content

in opening statements and closing arguments.

Opening statements will focus on having a theme, telling a story, engaging the jury and using clear, simple, forceful language. Remember, you must start the process of persuasion without “arguing your case,” which is not permitted in opening statements.

We will also focus on the techniques of a good closing:

(a) persuasive language;
(b) use of jury instructions and key exhibits;
(c) arguing why your side should win, rather than simply restating the evidence.

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Remember:

(a) Closing argument is no time for a neutral review of the evidence. It is the time for powerful argument to persuade the jury of your client’s position.
(b) Openings and closings are your only opportunities to speak directly to the trier of fact.

Also, we will reinforce the principle that in preparing any trial you should start with your closing argument. The closing argument is your blueprint for the trial and the conduct of the entire trial should be geared towards adducing the evidence which you will emphasize in your closing argument. This will assist you in developing your theory of the case and will help you decide how you will present the evidence.

**Format:**

7:00 - 7:30

In the first part of this class we will divide into two separate groups (Plaintiff and Defendant) for the case analysis and trial preparation session. Rooms will be assigned shortly before class.

Case analysis and trial preparation for the case you will be trying at the final trial.

7:30 - 7:45

Break

8:00 - 10:00

Regular Small Group Sessions: (Breakout Rooms)

Openings and Closings

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This evening you will perform a direct or cross-examination of a witness from your final trial.

Readings: Read and fully familiarize yourself with the file you will be working with in your final trial.

Assignment: Prepare and perform the direct or cross-examination of a witness from your final trial.

Format: 7:00 - 10:00 SMALL GROUP SESSIONS

Tonight you are to do the direct or cross-examination of a witness in your Final Trial (your choice as to both task and witness). By now you will have developed a clear theory of your case so tailor your direct or cross to dovetail with your case theory.

In the small groups for this evening you will be with your final trial partner. The groups and room assignments will be posted in advance. You must be prepared also to play the role of all the witnesses for the side you will be representing at trial.
CLASS #12: DIRECT OR CROSS-EXAMINATION OF A WITNESS IN YOUR FINAL TRIAL AND TRIAL PREPARATION
November 22, 2016

In the first part of the evening we will have a discussion session on conducting the final trial. In the second part of the evening you will perform a direct or cross-examination of a witness from your final trial.

Readings: Read and fully familiarize yourself with the file you will be working with in your final trial.

Assignment: Prepare and perform the direct or cross-examination of a witness from your final trial.

Format:

- 7:00 - 7:15  FULL SECTION MEETINGS (Moot Court, Room 1005)
  Discussion will focus on conducting the final trial and answering any questions you may have about the final trial.

- 7:30 - 10:00  SMALL GROUP SESSIONS (Breakout Rooms)

Tonight you will again do a direct or cross-examination of a witness in your Final Trial (your choice as to both task and witness). By now you will have developed a clear theory of your case so tailor your direct or cross to dovetail with your case theory.

The small groups for this evening will be organized according to trial assignments: each group will have only lawyers for a particular trial. The groups and room assignments will be posted in advance. You must be prepared also to play the role of all the witnesses for the side you will be representing at the trial.
Please refer to Section 10, Final Trials, located in the Course Description.

Please keep in mind that the final trials are not to be an exercise in making up facts. This is not a course in teaching you how to suborn perjury! As in real live trials, you are “stuck with the facts that you are dealt”. Stay with the evidence and facts that are in the record in your case and attempt to put them in the most persuasive context for your side.