

## Syllabus

### TRIAL TACTICS IN MEDICAL MALPRACTICE

#### **Instructors:**

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#### **Class Meetings:**

This will be a 3 credit hour experience course –Fall Semester - August 20, 2025 through November 19, 2025

Wednesday evenings, 6 pm to 9 pm, in person

#### **Required Course Texts:**

1. The Ohio Rules of Civil Procedure (online version sufficient <https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/civil/CivilProcedure.pdf>) ;
2. The Ohio Rules of Evidence (online version sufficient <https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/evidence/evidence.pdf>) ;
3. Carolina Center for Civic Education Medical Malpractice Mock Trial Competition Fact Pattern: *Thomas v. Davis, M.D.* (hereinafter “Fact Pattern”)(The Mock Trial Competition Fact Pattern will be provided to you by professors).
4. TRIAL TECHNIQUES, Mauet, Thomas A.; Little, Browne & Co. (7th Ed.) (hereinafter “Techniques”)(recommended reading will correspond with this edition, but any addition is fine)
5. MCELHANEY’S TRIAL NOTEBOOK, 4th Edition, James McElhaney (hereinafter “Notebook”)(recommended reading will correspond with this edition, but any addition is fine).

**Recommended Texts:**

COURTROOM EVIDENCE HANDBOOK, Steven Goode, West Group. (any addition).

Additional reading assignments and/or educational media may be assigned and/or provided throughout the course.

**Case Law:** Will be provided.

**Course Overview:**

This survey course is designed with three broad objectives. First, it is intended to guide students through the major components of pretrial and trial practice. Second, the course is designed to provide the student with "hands-on" experience as they argue pretrial motions and conduct: voir dire; motion arguments; opening statement; direct/cross examination; and, closing argument. The purpose of this course is to foster professionalism and excellence in trial advocacy. Third, the course is designed to offer these teachings in the context of medical malpractice and healthcare law litigation, exposing students to the nuances of this area of practice and inspiring them to consider this practice area.

**General Course Objectives:**

The purpose of this course is to foster professionalism, ethics, and excellence in trial advocacy, with a strong emphasis on Medical Malpractice and Healthcare law. Students will gain an understanding of basic and intermediate trial advocacy techniques, as well as an increased understanding of rules of evidence and procedure, all in the context of a mock medical malpractice case. At the completion of this course, students will feel comfortable that they have the skills necessary to prepare for, and carry out, the various stages and elements of the trial process. Additionally, students have a unique opportunity to practice their advocacy skills before distinguished members of Ohio's legal community.

In more concrete terms, students should acquire an understanding of and ability to critically evaluate:

- Basic and intermediate trial advocacy techniques
- The application of the Rules of Evidence and Civil Procedure in a "live" trial scenario, including side bar objection conferences
- Trial preparation and trial strategy necessary for each stage of the trial process and
- The various stages and elements of the trial process

## Course Objectives Specific to Medical Malpractice / Healthcare Law:

At each phase of teaching, we will emphasis law and procedure specific to Medical Malpractice / Healthcare law, including exploring topics such as:

affidavits of merit, 180 day letters, statutes of limitations, statutes of repose, complaints, damage caps, life care plans, economic and non-economic damages, Evid. R. 702, expert medical witness preparation, medical lien negotiations and protection, *Robinson v. Bates* damage calculations, *Bruni v. Tatsumi* elements of medical negligence, comparative fault, contributory negligence, non-party liability, informed consent and jury instructions/interrogatories.

## Class Attendance Policy:

Preparation and attendance for class is mandatory. The class is designed in such a way that class members rely on each other to attend each class. Of course, extenuating circumstances may make it impossible to attend every session. These circumstances will be understood by the professors of the course. However, unexcused absences or habitual tardiness will be grounds for removal from the course and, therefore, denial of credits.

**IT IS YOUR RESPONSIBILITY TO CONTACT THE INSTRUCTORS AT LEAST 24 HOURS IN ADVANCE IF YOU CANNOT COMPLETE AN ASSIGNMENT IN A TIMELY FASHION.**

## Course Description and Detailed Overview of Assignments:

Class	Date	Concepts Covered on day of class	Begin and Complete reading for next week's class	Written Assignment Due on day of class	Performance Due on day of class	Guests
1	8/20	Introduction to Trial and Trial Lawyers  Overview of Medical Negligence	Fact pattern and Jury Instructions  <i>Bruni v. Tatsumi</i> (1976), 46 Ohio St. 2d 127	None	None	None

		<p>Case Theories and Themes</p> <p>Credibility and Ethics</p> <p>Burden of Proof</p> <p>Trial Notebooks, Preparation and Trial Table</p>	<p>Notebook: Chapters 1 (The Qualities of Winners), 2 (Picking the Right Fight), 3 (The Theory of the Case)</p> <p>Techniques: Ch 1 (The Trial Process)</p>			
2	8/27	<p>Elements of Medical Negligence</p> <p>Elements of Wrongful Death: ORC §2125.01</p> <p>Case Investigation</p> <p>Statutes of Limitations</p> <p>Statute of Repose</p> <p>180 day Letters versus filing of Complaint and John Does: ORC § 2323.451</p> <p>Affidavit of Merit/Experts</p>	<p><i>Bruni v. Tatsumi</i> (1976), 46 Ohio St. 2d 127</p> <p>ORC §§ 2305.113 2305.113(C) 2125.01 2323.43 2323.451</p> <p><i>National Union Fire Insurance Company of Pittsburgh. PA v. Wuerth, et al</i> (2009), 122 Ohio St.3d 594</p> <p><i>Clawson v. Heights Chiropractic Physicians, LLC, et al.</i> (2022), 2022-Ohio-4154,</p> <p>Ohio Civ. R. 3, 15, 8, 10, 12</p>	None	None	None

		<p>Complaint &amp; Answer</p> <p>Damage Caps</p> <p>Introduction to Motions in Limine (MIL)</p>	<p>Techniques: 10.2.3 (Motions in Limine)</p> <p>Evid R. 401, 402, 403</p> <p>Evid R. 701, 702, 703</p> <p>Evid. R. 801, 802, 803</p>			
3	9/3	<p>Motions</p> <p>Exhibits</p> <p>Foundation</p> <p>Objections</p> <p>Hearsay</p> <p>Relevance</p> <p>Experts</p>	<p>Evid R. 401, 402, 403</p> <p>Evid R. 701, 702, 703</p> <p>Evid. R. 801, 802, 803</p> <p>Notebook Ch 26 (The Big Ideas), 27 (Arguing Relevance), 28 (Opening the Door), 29 (Getting the Evidence In), 30 (Get it in Some Other Way), 33 (An Outline on Hearsay), 41 (Foundations), 43 (Effective Objections), 44 (The Limine Trap)</p> <p>Techniques: 6.1 (Introduction to Exhibits), 6.2 (How</p>	One-page MIL on any issue of evidence from the Fact Pattern	Present MIL	TBD



			to get Exhibits in Evidence), 8.1 (Introduction to Experts), 8.2 (The Law of Experts), 8.3 (Experts from the Jury's Perspective), 10.3 (When to Make Objections During Trial), 10.4 (How to Make Objections During Trial)			
4	9/10	<p>Experts</p> <p>Voir Dire / Jury Selection</p> <p>Witnesses</p> <p>Exhibits continued</p> <p>Objections Continued</p> <p>Collateral Sources and Damage Caps</p>	<p>Notebook: Ch 37 (Nine Ways to Use a Deposition), 56 (The Law of Experts), 58 (Fixing the Expert Mess), 59 (Learned Treatises), 60 (Nine Ways to Cross-Examine an Expert)</p> <p>Techniques: 3.3 (Jury Examination and Selection Methods)</p> <p>Notebook: Ch 22 (Angus on Jury Selection),</p> <p><i>Robinson v. Bates</i> (2006), 112 Ohio St.3d 17</p> <p>ORC § 2315.20 (Collateral</p>	None	None	TBD


			<p>Sources); See also ORC §2317.45(B)</p> <p>ORC §2323.43 (Damage Caps)</p> <p>Notebook: Ch. 75 (Impact)</p> <p>Watch:</p> <p>Deepak Malhotra Shares His Award- Winning Negotiation Tips <a href="https://www.youtube.com/watch?v=VsaxtLqh4h0&amp;list=RDLVicequGKKdtw&amp;index=4">https://www.youtube.com/watch?v=VsaxtLqh4h0&amp;list=RDLVicequGKKdtw&amp;index=4</a></p> <p>“How to be an Effective Negotiator” – Michael Wheeler <a href="https://hbr.org/video/4616186008001/how-to-be-an-effective-negotiator">https://hbr.org/video/4616186008001/how-to-be-an-effective-negotiator</a></p>			
5	9/17	<p>Damages</p> <p>Lien Resolution</p> <p>Assessing Case Value</p>	<p>ORC §2323.43</p> <p>ORC §§ 2315.32, 2315.33, 2315.34, 2315.35, 2315.36</p>	None	None	TBD

		ADR  Know your audience	<i>Robinson v. Bates</i> (2006), 112 Ohio St.3d 17  ORC § 2315.20 (Collateral Sources); <i>See also</i> ORC §2317.45(B)			
6	9/24	Contributory and Comparative Fault  Apportionment  Non-party liability  The “empty chair”  Jury Instructions	Notebook: Ch 23 (Goals for Opening Statements), 24 (The Story Method)  Techniques: 4.1 (Introduction), 4.2 (Opening statements from the jury’s perspective), 4.3 (Strategic and evidentiary considerations), 4.4 (Content of effective opening statements), 4.5 (Examples of opening statements)	None	None	TBD
7	10/1	Opening Statement	Watch:  Opening Statement in Philadelphia - <a href="https://www.youtube.com/watch?v=QCz33bRYwP8">https://www.youtube.com/watch?v=QCz33bRYwP8</a>  A Mock Trial Opening <a href="https://www.youtube.com/watch?v=QCz33bRYwP8">https://www.youtube.com/watch?v=QCz33bRYwP8</a>	None	None	TBD



			<a href="https://www.youtube.com/watch?v=05uaOrBdtbE&amp;t=9s">be.com/watch?v=05uaOrBdtbE&amp;t=9s</a>  A ridiculous one (don't do this): <a href="https://www.youtube.com/watch?v=tDcJo2LTP0">https://www.youtube.com/watch?v=tDcJo2LTP0</a>  Chauvin Prosecution Opening (Convicted) <a href="https://www.youtube.com/watch?v=UwDQ30MNVKs&amp;t=647s">https://www.youtube.com/watch?v=UwDQ30MNVKs&amp;t=647s</a>			
8	10/8	Opening Statement	Notebook: 45 (Bland and Canned Direct), 47 (Direct Questions), 48 (Simple Direct), 50 (Cross-Examination Choices), 51 (The Real Purpose of Cross), 52 (Evasive Witnesses), 53 (The Witness Doesn't Remember), 55 (Impeachment by Omission)	Opening Statement	Present Opening Statement	TBD
9	10/15	Direct and Cross	Techniques: 5.1 (Introduction to Direct), 5.2 (Elements of Direct), 7.1 (Introduction to Cross), 7.4			TBD

			(Elements of Cross)   10 Command Direct.pdf   Younger on Cross--10 Commandr			
10	10/22	Direct and Cross	Notebook: Ch. 78 (The Law of Final Argument), 79 (Analogies in Final Argument), 80 (Dealing with Dishonesty), 81 (Damages vs. Liability), 82 (Losing Arguments)	Direct and Cross	Present Direct and/or Cross	TBD
11	10/29	Closing Argument	Notebook: Ch 83 (The Final Five)  Techniques: 9.1 (Introduction to Closing), 9.3 (Closing Arguments from the Jury's Perspective), 9.4 (Strategic Considerations), 9.5 (Contents and Organization of Effective Closing Arguments)  Watch:  Jodi Arias Prosecution	None	None	TBD

			Closing Argument (Convicted) <a href="https://www.youtube.com/watch?v=t64ZDuL0Rac">https://www.youtube.com/watch?v=t64ZDuL0Rac</a>  Casey Anthony Defense Closing Argument (Acquitted) <a href="https://www.youtube.com/watch?v=muVATnIDh_8&amp;t=1657s">https://www.youtube.com/watch?v=muVATnIDh_8&amp;t=1657s</a>			
12	Nov. 5	Closing Argument	 The Reptile - Intro, Open & Close.pdf	Closing Argument	Present Closing Argument	TBD
13 and 14	Nov. 12 and 19	Mock Trial		Final Versions of: Open, Direct, Cross, Close	Present entire Mock Trial: Open, Direct, Cross, Close	TBD

Each semester, the course consists of a preparation component as well as individual mock trial scenarios.

Students will be given a fictional legal case, focused on medical malpractice, complete with pleadings, witness depositions, exhibits, and jury instructions. Using the Ohio Rules of Evidence and the Ohio Rules of Civil Procedure, students must develop arguments and create their own case theory based on the facts. Students represent both plaintiff and defendant in various aspects of trial practice. Each student will be assessed on how well they articulate their arguments and develop their case theory.

## **Grading Policy:**

This is a three (3) credit hour/semester trial advocacy pass/fail course.

Each student's final grade will be determined based upon their individual performance during the semester relative to written assignments, practices, and trial activities. Each student's effort, preparation, and completion of class assignments will contribute toward their final grade. To that end:

- Students must read and be familiar with the required texts, as noted above
- Students must satisfactorily complete the following assignments:
  1. Read and analyze the provided fact patterns and evidence, then spot the issues and formulate a theory of the case as well as themes commensurate with that theory.
  2. Index all depositions provided in the fact patterns citing page and line numbers to be used for impeachment purposes at trial.
  3. Prepare to discuss "housekeeping" matters with judges (i.e., courtroom preferences of each particular judge regarding courtroom etiquette to be utilized at trial).
  4. Prepare motions in limine relevant to the fact pattern.
  5. Prepare opening statement/closing argument.
  6. Prepare direct examinations (argue objections).
  7. Prepare cross examinations (argue objections).
  8. Prepare exhibit books and become familiar with laying foundations at trial.
  9. Prepare and use demonstrative evidence.
- Students must attend class for instruction on trial techniques and strategy. The students are taught professionalism in the courtroom, trial techniques, and basic federal evidentiary and civil rules concepts.
- Students are taught the basics of preparing and delivering opening statements, direct examinations, cross examinations, closing arguments, use of exhibits and demonstrative evidence, pretrial and trial motions, as well as objections and responses.

## **Assignments:**

Each student must demonstrate a high level of proficiency with the entirety of the trial fact pattern. Students are required to learn the Rules of Civil Procedure and the Rules of Evidence as they relate to court room trial practice. Students are also responsible for writing, revising and performing their assigned roles as advocates and witnesses. Students will be assigned to write and deliver an opening or a closing statement as well

as one direct examination and one cross examination of an assigned witness. In addition, students will be expected to perform many other smaller assignments such as writing Motions in Limine or making Directed Verdict arguments.