ALL STUDENTS ENROLLED IN TRIAL ADVOCACY FOR THE SPRING SEMESTER MUST REPORT FOR THE FIRST CLASS SESSION TO COURTROOM 1304 of the RICHARD J. DALEY CENTER. CLASS WILL BEGIN PROMPTLY AT 5:50 P.M. ON WEDNESDAY, JANUARY 14, 2015. BE SURE TO HAVE A PICTURE I.D. WITH YOU FOR THE SECURITY CHECK. YOU WILL BE ASSIGNED TO YOUR SECTIONS DURING THE FIRST CLASS SESSION.

IF FOR ANY REASON YOU KNOW THAT YOU WILL MISS MORE THAN TWO CLASSES AT THE TIME OF REGISTRATION, PLEASE DO NOT REGISTER. ANY STUDENT WHO FAILS TO APPEAR FOR THE FIRST CLASS WILL BE PRESUMED TO HAVE DROPPED THE COURSE UNLESS PRIOR ARRANGEMENTS HAVE BEEN MADE WITH CINDY BROWN or MARIA AYALA.

I. **Required Materials**

Mauet, Trial Techniques and Trials, (Aspen Law & Business; Aspen Publishers, Inc. 9th ed.).

II. **Recommended Additional Materials**

Imwinkelreid, Evidentiary Foundations (STRONGLY recommended)
Federal Rules of Evidence (KF8935.R65)
Illinois Rules of Evidence
Illinois Pattern Jury Instructions, Civil and Criminal (KFI 1742.A87 & KFI 1783.A65)
Federal Pattern Jury Instructions, Civil and Criminal (KF 8984.A65 F43 & KF 9682.A65 F43)

In addition, these materials may assist you in further understanding the course and in preparing your classroom exercises. Copies are available in the library.

Bennett and Hess, Criminal Investigation (2004)
Bergman, Trial Advocacy (Nutshell) (2013)
Zweir and Bocchino, Fact Investigation, NITA (2000)
Goldstein and Lane, Trial Techniques (4 volume set) (1984)
Harr, A Civil Action (1995)
Hegland, Trial and Practice Skills (Nutshell) (2002)
Nolan, Trial Practice
In addition, the library maintains a large number of civil and criminal practice manuals published by the Illinois Institute for Continuing Legal Education (IICLE). For Illinois law, refer also to:


III. Method and Format

Class Meetings
The class meets Wednesdays evenings from 5:50-8:30 p.m. at the Richard J. Daley Center.

Simulation and Critique Method
The course will be conducted by the simulation and critique method. Each student will be assigned to a section, and one-two instructors will supervise each section. Students will be required to prepare several simulated trial exercises for each class session. Please give us the benefit of your best work in class. Practice the exercises assigned as many times as possible, preferably out loud and in front of anyone who will listen.

Please review the “Points for Evaluation” (Pages 7-9) included in this syllabus. They establish a framework on which the critiques will be based.

During the class time, the instructor will call upon the students, individually or in teams, to assume the role of counsel for one of the parties. The students will then perform the assigned exercise. Performance in class is always followed by critique. The purpose of the critique is not to put you on the defensive but to help you and others in the class develop skills and to enable you to learn from the experience. Be prepared to answer each of the following questions:

1) What were you trying to accomplish?
2) How did the examination address elements of your cause of action or defense?
3) What evidentiary issues did you anticipate from the problem?
4) Do you think you succeeded?
5) What additional objectives, if any, did you consider and reject?

Preparation and Performance
Although you may only be called upon to perform one simulation each week, you must be prepared to perform each problem assigned to your team. You will receive a grade for each of your performances.

Excused Absence
A student may be excused from class for religious observances or for participation in a regional or national trial advocacy competition.
Non-Performance due to Time Constraints

While an instructor will schedule as many simulations and critiques as class time allows, time constraints occasionally make it impossible for all of the students in each section to perform. If, because of time constraints, you do not perform on a given week, you will not receive a grade for that night. You must, however, inform your instructor the following week, so that you can be called upon early and not risk missing further work or grading.

Non-Performance Due to Absence or Failure to Prepare

In addition to the excused release from performance on a given week described above, each student will have the opportunity to miss one performance. If you are never absent, you will be able to drop your lowest grade, and have your average computed based upon a reduced number of grades and class sessions. Do not waste your “freebie.” If you miss more than one performance for reasons other than time constraints, your average will be computed as if you received an “F” for each of those additional missed classes.

Administrative Matters

A list with names, addresses and phone numbers will be distributed within the first few weeks of class. The purpose of this is to facilitate communication among the students. Students are encouraged to work together. When instructors name the students who will act as witnesses the following week, you are encouraged to contact those students to prepare their testimony.

Cindy Brown (773) 330-3028 (cscamperella@aol.com) is the team leader for Wednesday. Any questions concerning weekly assignments or the content of the course should be directed to her.

IV. Method of Evaluation

You will be graded on your performance in each classroom simulation. You will also be graded on your overall classroom participation and your performance during the trial at the end of the semester. The final trial will account for 1/4 of the final grade. Participation includes, but is not limited to, evidence of preparation for the simulated exercises, quality of involvement in class discussion, and degree of professional skills demonstrated. While instructors will not divulge weekly grades, you are encouraged to discuss your work and progress with them. Grades are curved within the class.

Showing up and winging it will not serve you well. By the same token, you need not be the most charismatic person in the world to excel. As with most courses, preparation and attention to constructive critique is key.

There is one additional requirement for this course: Completion of ten hours of courtroom observation (see section VII). This requires the submission of written documentation to Maria Ayala DePaul College of Law Room 737 O’Malley by certain specified dates.
STUDENTS WHO FAIL TO COMPLETE THIS REQUIREMENT WILL RECEIVE A GRADE OF “FX” FOR THE COURSE.

There is no written final examination.

V. **Professional Attire**

While choice may differ, every successful trial lawyer recognizes the importance of dressing for trial. Professional attire enhances the attorney's image and strengthens the presentation.

Professional attire is required for certain exercises in the course. Whenever you see “PROFESSIONAL DRESS REQUIRED” in the weekly assignments, you must adhere to the dress code or risk being graded down for the exercise.

VI. **Final Trial**

At the end of the semester, each student will participate as co-counsel in the simulation of an entire trial. You may select any student in the Wednesday night class to be your partner. The assignment for the final trial will be distributed in week twelve. Partner Preference sheets are due by April 1, 2015. Please submit only one preference sheet per team. The trials will be scheduled according to student and faculty availability.

VII. **Court Observation Requirements** **DEADLINE DATE:**

**Wednesday, April 15, 2015**

Every student is required to spend a minimum of 10 hours during the semester as an observer of contested evidentiary proceedings in the Dirksen Federal Building, the Daley Center, suburban court buildings, or the Criminal Court Building at 26th and California. Traffic court observations do not count. If you wish to visit a court other than those listed, please obtain prior approval from Cindy Brown. Students will not receive credit for more than four hours observing any one civil or criminal action. Thus, students must visit at least three courtrooms in session as part of the 10-hour requirement.

NOTE: Students are required to complete a separate “Court Observation Form” (See form attached) for each courtroom they visit. Each form must describe the nature and extent of proceedings observed, witness examinations or arguments of counsel observed, presence of juries, and your impressions of the court and counsel's understanding of the rules of evidence and trial technique. Please give completed Court Observation forms to Maria Ayala DePaul College of Law Room 737 O’Malley.

VIII. **Professional Responsibility Issues**

A thorough understanding of the role of professionalism in the trial system is an essential part of preparation for trial advocacy. A first step toward developing this understanding is to know the provisions of the Rules of Professional Responsibility bearing upon the advocate's responsibility as a representative of the client and as an officer of the court. You will develop an ability to recognize the meaning of these provisions in those
practical contexts for which the Rules provide clear answers, and to know and understand the different professional opinions regarding issues that are not clearly answered under the Rules.

Some of the problem materials in this course are designed to confront student counsel with issues of professional responsibility in circumstances typical of those in which the issues are likely to arise in practice. In addition, issues of professional responsibility, though not planned in advance as part of an exercise, sometimes arise because of the particular way in which the performance develops.

IX. **A Note About Learning Disabilities**

The Center for Students with Disabilities (CSD) coordinates DePaul University’s provision of accommodations and other services to students with disabilities pursuant to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. CSD regularly works with students diagnosed with a range of disabilities such as learning disabilities, AD/HD, medical conditions, chronic illness, mental health disorders, and physical/visual disabilities, amongst others. Student success is at the core of the CSD’s mission and fits integrally with DePaul University as a diverse learning community. Students are encouraged to enroll with CSD to receive accommodations and additional support services. Some accommodations and services may include extended time on exams, assistance with note-taking, adaptive equipment, real-time captioning, classroom accommodations, advocacy, and assistive technologies amongst other support services.

CSD enrollment procedures require appropriate documentation of a student’s disability and other identified information, as well as a personal meeting with CSD staff. After enrolling with CSD, students requesting accommodations on law school exams should notify the Associate Dean for Student Affairs on their enrollment.

To contact the office, see [www.studentaffairs.depaul.edu/scd](http://www.studentaffairs.depaul.edu/scd). The Loop campus location is Suite 1400 of the Lewis Center. See also (773) 325-1677 and (773) 325-3720 or email csd@depaul.edu.

X. **If Personal Problems Arise During The Semester**

Life is complex. At any given time, something might happen that could substantially interfere with a student’s law school performance. When this happens, some students fail to notify the proper law school officials and merely plod ahead. There are many reasons why someone might act this way (e.g., overconfidence, embarrassment, etc.). Nevertheless, whatever the reason, this course of conduct is a mistake. Students who follow it imperil their professional careers, because once poor grades are received, their impact is permanent. Consequently, if something arises in your life that affects your ability to perform at DePaul, you should promptly contact the Office of Students Affairs to explore the alternatives available to you. (Of course, you may in addition seek guidance from your professors.) (Note: Look out for your friends as well. If something
happens to one of them that detrimentally affects his or her academic performance, encourage that friend to contact the Office of Student Affairs.)

XI. **Discrimination and Sexual Harassment**

The department recognizes that sex discrimination and sexual harassment is still a problem in the courts. To increase student awareness of the problem and to promote ideas on how to address it we have placed three articles on reserve in the library that analyze the problem.

It is the policy of the University and Lawyering Skills Department to maintain a program free of sex discrimination and sexual harassment. Any complaints of inappropriate behavior should be directed to Professor Cindy Brown (773) 330-3028.

XII. **Relations with Clerical/Administrative Personnel**

One final word to the wise: During the course of your careers, you will have considerable interaction with clerical and administrative personnel, both in your firm and for the courts. Because of the amount of control they can exert over your daily business, you must make every effort to keep that interaction productive. The most effective way of handling difficult encounters is to remain respectful and courteous.

The Trial Ad program involves more interaction between staff and students than other classes at DePaul. You will do well to have empathy, be civil and show respect in these exchanges as well.
DePaul Law School

Trial Advocacy

Points for Evaluation:

Direct Examination

✓ Organization
✓ Witness introduction & background
✓ Background appropriate to witness and purpose of testimony
✓ Verbal description of scene from occurrence and other appropriate witnesses
✓ Appropriate description of events & damages
✓ Logical sequence to questions
✓ Theory - developed and clear from questions
✓ Completeness
✓ Form of Question - Open-ended for most part
✓ Good use of who, what, when, where, why and how Q’s
✓ Exceptions: transition Q’s leading to new area of inquiry
✓ Foundation Q’s for conversations or exhibits
✓ Evidence of listening to witness: appropriate follow-up questions
✓ Demeanor - professional but conversational
✓ Placement in Courtroom - back out of jury’s line of vision
✓ Pace & delivery of questions
✓ Diminishing reliance on notes
✓ Strong ending

Cross Examination

✓ Theory - developed and clear from questions
✓ Completely addresses all non-frivolous issues raised by the facts
✓ Form of Question - single fact leading questions/statements throughout
✓ Good witness control - repeat questions to get answers when necessary
✓ Organization by theme/issues raised by the facts
✓ Questions relating to same point/theory are asked together
✓ Placement in Courtroom - in jury’s line of vision
✓ Demeanor - appropriate to witness
✓ Effective beginning and closing questions
✓ Evidence of listening to witness: appropriate follow-up questions
✓ Diminishing reliance on notes
Impeachment by Prior Inconsistent Statement

Note: prior statements of witnesses provide information for you to use in developing your cross-examination. They do not provide the basis for impeachment unless and until the witness testifies on the stand to something contrary to the information contained in the prior statement.

- Clear contrast between trial testimony and prior statement
- The contradiction concerns a material point or is otherwise relevant to your theory
- Separately addresses each inconsistency
- On cross, you have recommitted the person to their contrary trial testimony
- Appropriate accreditation of prior statement
- Appropriate clarifying questions where contradiction is ambiguous
- Correct format of questions exposing the contradiction
- Note: format of questions will vary based on nature of prior inconsistent statement
- Knowing what to do when the witness denies, is ambivalent about or admits his prior inconsistent statement

Objections

- Proper basis
- Timing: objection is made after question is complete, before answer given
- Basis articulated by short phrase, without argument, to the judge (the judge may ask you to further explain)
- Stand when objecting
- Problem is properly analyzed and all non-frivolous objections have been made
- Ability to correctly respond to opponent’s objections
- Recovery when objection is sustained
- Makes an offer of proof when critical evidence is ruled inadmissible

Exhibits

- Correct identification of exhibit by name (proponent - # - “for identification” before receipt in evidence by judge)
- Proper foundation for the exhibit
- Exhibit is “moved” or “offered” into evidence after foundation is laid
- Appropriate use of exhibit within context of entire examination (consider both timing and importance/weight given to exhibit in relation to balance of examination)
- Ambiguous information on exhibit is explained by witness
- Clear and appropriate marking by witness of exhibit, when appropriate
- Create “legend” where appropriate
- Publication of exhibit to jury
**Opening Statements**

- Impact opener
- Confident informative delivery
- Good “storytelling”
- Clear logical organization
- Informs jury of anticipated facts and theory of case
- Clarity of explanation
- Emphasizes facts, not conclusions (does not overstate)
- “Broad brush” strokes
- Use of exhibits where appropriate
- No first person (“I believe”)
- Strong ending requesting verdict for plaintiff/defendant stated w/conviction
- Gives jury questions to answer/things to listen for during presentation of evidence

**Closing Argument**

- Impact opener
- Argument rooted in case as it evolved
- Uses forceful and active language
- Develops theory of case
- Clear forceful explanations of why facts prove theory
- Deals candidly with weaknesses
- Refutation of opponent’s case = secondary to proving own case
- Use of exhibits where appropriate
- No first person (“I believe”)
- Appropriate use of rhetorical devices (E.g. Repetition, alliteration, rhetorical questions).
- Strong ending requesting verdict for plaintiff/defendant stated w/conviction
- Confident persuasive delivery
- Rebuttal that responds to main points of defense argument and restates key facts supporting the State/Plaintiff’s theory of the case
XIII. **SCHEDULE OF CLASSES – SPRING 2015**

<table>
<thead>
<tr>
<th>CLASS</th>
<th>Date</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1</td>
<td>January 14, 2015</td>
<td>INTRODUCTION AND VOIR DIRE</td>
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<tr>
<td>2</td>
<td>January 21, 2015</td>
<td>DIRECT\CROSS</td>
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<td>3</td>
<td>January 28, 2015</td>
<td>DIRECT\CROSS\EXHIBITS</td>
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<td>4</td>
<td>February 4, 2015</td>
<td>DIRECT\CROSS\EXHIBITS</td>
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<tr>
<td>5</td>
<td>February 11, 2015</td>
<td>IMPEACHMENT</td>
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<tr>
<td>6</td>
<td>February 18, 2015</td>
<td>IMPEACHMENT</td>
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<tr>
<td>7</td>
<td>February 25, 2015</td>
<td>DIRECT\CROSS\EXHIBITS\IMPEACHMENT</td>
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<td>8</td>
<td>March 4, 2015</td>
<td>CLOSING ARGUMENTS</td>
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<td>9</td>
<td>March 11, 2015</td>
<td>STRATEGY/THEORY</td>
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<td>10</td>
<td>March 18, 2015</td>
<td>OPENING STATEMENTS/MINI TRIALS*</td>
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<td>*Preference Sheets Due</td>
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<tr>
<td>MARCH 21 – MARCH 27, 2015  SPRING BREAK</td>
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<tr>
<td>11</td>
<td>April 1, 2015</td>
<td>OPENING STATEMENTS/MINI TRIALS*</td>
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<td><em>(Preference Sheets Due)</em></td>
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<tr>
<td>12</td>
<td>April 8, 2015</td>
<td>CLOSING ARGUMENTS</td>
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<td>13</td>
<td>April 15, 2015</td>
<td>PRE-TRIAL CONFERENCES</td>
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<td><em>(Court Observation Forms Due)</em></td>
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<td>14</td>
<td>April 18 &amp; April 22, 2015</td>
<td>FINAL TRIALS*</td>
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<td><em>Professional Dress Required</em></td>
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The final trials will be held at the Richard J. Daley Center. The trials will be scheduled according to student and faculty availability.

Additional trial dates may be scheduled after Thanksgiving, if necessary to meet the needs of students or faculty.
Welcome to the Wednesday evening Trial Advocacy Class. This year, we are strengthening our emphasis on theory and preparation. You will see that many classes require you to consult the Illinois Pattern Jury Instructions and/or Seventh Circuit Pattern Jury Instructions issues instructions for the substantive cause of action or crime. These instructions are easily accessible through Westlaw for IPI or at the Seventh Circuit website for federal claims. These instructions will help you understand the legal framework within which your case will be tried by defining the burden of proof and affirmative defenses where appropriate for these cases. They provide a good starting point for your analysis of the problems.

A. ASSIGNMENT FOR CLASS ONE (Voir Dire)

Class Objective: initial introduction to the role of theory in trial preparation through this key litigation skill.

1. STUDENTS MUST BE PREPARED FOR THE FIRST CLASS

2. Read Mauet, Trial Techniques and Trials:

<table>
<thead>
<tr>
<th>The Trial Process</th>
<th>pp. 1-11</th>
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<tbody>
<tr>
<td>The Psychology of Persuasion</td>
<td>pp. 13-27</td>
</tr>
<tr>
<td>Voir Dire</td>
<td>pp. 29-71</td>
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</tbody>
</table>

Exercises: Mauet/Wolfson, Materials in Trial Advocacy, Problems & Cases

<table>
<thead>
<tr>
<th>Team A</th>
<th>Team B</th>
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<tbody>
<tr>
<td>Problem 1.3</td>
<td>All students prepare for both</td>
</tr>
<tr>
<td>Problem 1.5</td>
<td>Plaintiff/State and Defendant</td>
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3. Please remind your instructors to designate the students who will act as witnesses for the following week.

4. When you are acting as a witness: Please be as prepared for the problem as you would want a witness whom you are examining to be. Your peers are counting on you to know the problem and be able to answer the questions they pose, just as you will be counting on them when you are performing the examination.

5. When you are creating the background information for the witness, which you will frequently need to do, please make the background about the witness consistent with the thrust of the problem. If possible, talk to the student attorney who will be conducting the direct prior to class so that you are both on the same page concerning this.
B. ASSIGNMENT FOR CLASS TWO (Direct and Cross Examination)

Class objective: Theory; Fundamentals of Direct and Cross Examinations; Conversations, Foundations and Objections.

1. Name, address & phone lists are being completed tonight. They will be distributed next week to facilitate communication among you.

2. Read Maquet, Trial Techniques and Trials:

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<tr>
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<tbody>
<tr>
<td>Direct examinations</td>
<td>pp. 109-196</td>
</tr>
<tr>
<td>Cross examinations</td>
<td>pp. 197-270</td>
</tr>
<tr>
<td>Evidentiary Objections</td>
<td>pp. 505-551</td>
</tr>
</tbody>
</table>

Exercises:

<table>
<thead>
<tr>
<th>Team A – Problem 7.1</th>
<th>Team B – Problem 7.9</th>
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</thead>
<tbody>
<tr>
<td>Direct: James Gable</td>
<td>Direct: Val Potempa</td>
</tr>
<tr>
<td>Cross: James Gable</td>
<td>Cross: Val Potempa</td>
</tr>
<tr>
<td>Direct: Douglas Cannon</td>
<td>Direct: Larry Riley</td>
</tr>
<tr>
<td>Cross: Douglas Cannon</td>
<td>Cross: Larry Riley</td>
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<td></td>
<td>(If Necessary)</td>
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<tr>
<td></td>
<td>Direct Inv. Sam Polk</td>
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<td>Cross Inv. Sam Polk</td>
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4. You are to thoroughly analyze Problems 7.1 and 7.9 from both the state/plaintiff and defense perspectives and to prepare direct and cross-examinations of the witnesses assigned to your team.

5. This class will be spent first in thorough analysis of the problems, followed by student simulations, faculty critiques and a faculty demonstration at the end of class.

C. ASSIGNMENT FOR CLASS THREE (Direct and Cross Examination cont.)

Class objective: Theory; Fundamentals of Direct and Cross Examinations; Conversations, Foundations; Exhibits, Foundations; and Objections.

1. In this class students will prepare the same problems from Class 2, but from the opposite side. If you represented the Plaintiff or State in Week 2, you will represent the defendant in Week 3. Students who represented the defendant in Week 2 will represent the State/Plaintiff in Week 3.
2. You will be expected to know how to lay a proper foundation for both face-to-face conversations (When did it take place? Where did it take place? and Who was present?) and phone conversations, and for the introduction of a demonstrative exhibit during the course of a direct examination.

3. Review prior readings and additional pages below.

<table>
<thead>
<tr>
<th>Conversations</th>
<th>pp. 178-183</th>
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</thead>
<tbody>
<tr>
<td>Exhibits</td>
<td>pp. 271-375</td>
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</table>

Exercises:

<table>
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<tr>
<th>Team A – Problem 7.1</th>
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<tbody>
<tr>
<td>Direct: James Gable</td>
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<tr>
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<td>Cross: Val Potempa</td>
</tr>
<tr>
<td>Direct: Douglas Cannon</td>
<td>Direct: Larry Riley</td>
</tr>
<tr>
<td>Cross: Douglas Cannon</td>
<td>Cross: Larry Riley</td>
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<td>Direct Inv. Sam Polk</td>
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<td>Cross Inv. Sam Polk</td>
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4. Review copies of issues instructions from Illinois Pattern Jury Instructions for motor vehicle accidents, armed robbery and witness identification. Consider: how do these instructions inform your theory of the case and your development of the direct and cross-examinations?

D. ASSIGNMENT FOR CLASS FOUR

Class objective: Theory; Direct and Cross Examinations; Conversations, Foundations; Witness Preparation; Exhibits, Foundations; and Objections.

1. This week, we will begin a new problem and continue our focus on analysis of theory and development of effective direct and cross-examinations.

2. Re-Read Mauet and Review Rules of Evidence:

<table>
<thead>
<tr>
<th>Objections</th>
<th>pp. 505-551</th>
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<tbody>
<tr>
<td>Conversations</td>
<td>pp. 178-183</td>
</tr>
<tr>
<td>Exhibits</td>
<td>pp. 271-375</td>
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</tbody>
</table>
Exercise: The full case file is contained in the CD at the back of the Problems & Materials Textbook.

<table>
<thead>
<tr>
<th>Team A</th>
<th>Team B</th>
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<tbody>
<tr>
<td>9.3</td>
<td>9.3</td>
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<tr>
<td>Direct: J. Minor</td>
<td>Cross: J. Minor</td>
</tr>
<tr>
<td>Direct: W. Henderson</td>
<td>Cross: W. Henderson</td>
</tr>
<tr>
<td>Cross: H. Stark</td>
<td>Direct: H. Stark</td>
</tr>
<tr>
<td>Cross: A. Tubbs</td>
<td>Direct: A. Tubbs</td>
</tr>
</tbody>
</table>

3. One aspect of litigation is preparing your witness to testify. This includes:
   - reviewing questions you will ask on direct,
   - anticipated problems with cross,
   - what to do if the opposing attorney objects,
   - any subjects about which they may not testify under the Rules of Evidence,
   - in general what to expect of the trial experience

One or two students may be asked to demonstrate how they would prepare Harold Stark for his trial testimony.

4. Meet with your team to decide who will examine which witnesses, to develop your theory and construct your examinations.

5. When assigned to conduct a direct examination, students should, by now, also be preparing the redirect examination. Anticipate what rehabilitation your witness might need and what key facts you want the witness to repeat on redirect examination.

6. You will be expected to know how to lay a proper foundation for both face-to-face conversations (When did it take place? Where did it take place? and Who was present?) and phone conversations, and for the introduction of exhibits during the course of a direct examination.

7. Many local shops can make enlargements of an exhibit for a reasonable cost. You will get more out of the exercise if you bring an enlarged exhibit to class this evening.


9. **Don’t forget the courtroom observation requirement.** A list of Chicago area courtrooms is attached to help you fulfill this requirement.
E. ASSIGNMENT FOR CLASS FIVE (Impeachment)

Class Objective: Fundamentals of refreshing recollection and effective impeachment by prior inconsistent statement or omission.

1. Read Mauet:

<table>
<thead>
<tr>
<th>Refreshing Recollection</th>
<th>pp. 184-186</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impeachment</td>
<td>pp. 221-249</td>
</tr>
</tbody>
</table>

Exercises:

<table>
<thead>
<tr>
<th>3.3 (Part 1)</th>
<th>All students prepare direct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2</td>
<td>All students prepare a full cross-examination and redirect examination of the witness</td>
</tr>
<tr>
<td>5.7</td>
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<tr>
<td>5.12</td>
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</table>

*Students preparing the redirect may be asked to do a short direct setting up the impeachment.

2. Refreshing recollection is a technique that is generally used on direct when working with your own witness. Refreshing a witness’s recollection requires specific evidentiary procedures and foundation questions. (When you are cross examining a witness you may simply use a leading question to refresh a forgetful witness’s recollection.) If the witness does not remember, you may confront the witness with any document or exhibit (properly identified for the record and shown to opposing counsel) to prompt his/her memory. Evidentiary Foundations by Imwinkelreid is very helpful to understanding both the evidentiary basis for and specific questions that must be asked to lay a correct foundation for refreshing recollection.

3. Impeachment is a technique that is generally used on cross for a variety of purposes. You are confronting the witness with their prior inconsistent statement or simply using their prior words to form questions that elicit information valuable to your theory of the case. When you impeach a witness by his/her prior inconsistent statement, follow these three steps: (Note, the order of these steps may vary according to the circumstances.)

a) RECOMMIT the witness to the direct testimony that you will be impeaching. That sets up the impeachment so that the jury knows precisely what the contradiction is. Be sure the prior statement contradicts the direct testimony. Use clarifying questions if necessary to develop the contradiction.

b) ACCREDIT the prior statement. Build up the circumstances of the statement that you will use to impeach so that it seems to be more reliable than the direct testimony.
c) **EXPOSE** the impeachment. And at that time, you said ..., didn’t you?” DO NOT start up with “were you lying then or are you lying now?” Some clarifying questions may be necessary to expose the implications of the inconsistency. Then leave the impeachment alone and either sit down or go on to something else. You may also argue the implications of the impeachment during closing.

4. The faculty will do small group demonstrations of witness preparation in the context of expected impeachment, followed by a large group demonstration of impeachment at the end of class.

F. **ASSIGNMENT FOR CLASS SIX (Impeachment)**

Class Objective: Continue/consider/practice impeachment by prior inconsistent statement, omission and bias in more complex problems. Understand the role of structuring the examination to prepare for expected impeachment

1. Review last week’s readings.

<table>
<thead>
<tr>
<th>Exercises:</th>
<th>Team A</th>
<th>Team B</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.8</td>
<td>Cross</td>
<td>Redirect*</td>
</tr>
<tr>
<td>5.14</td>
<td>Redirect*</td>
<td>Cross</td>
</tr>
<tr>
<td>5.17</td>
<td>Cross</td>
<td>Redirect*</td>
</tr>
<tr>
<td>5.19</td>
<td>Redirect*</td>
<td>Cross</td>
</tr>
</tbody>
</table>

*Students preparing the redirect may be asked to do a short direct setting up the impeachment.

2. You are expected to conduct a complete cross-examination of the witness incorporating the impeachment into the examination where you deem appropriate. Please note the different contexts in which the prior inconsistent statement can be found and craft appropriate questions for accrediting the prior statement and exposing the inconsistency given its context.

3. Students who are preparing the redirect will be given an opportunity to meet with the witness to inquire about the reason for the inconsistency. On redirect, use open-ended questions to give the witness an opportunity to explain, if possible, the inconsistency between the trial testimony and prior statement and/or returning to your original theory of the case and reason for calling this witness.

4. **REMINDER:** Final Trial Partner Preference Sheets are Due Wednesday, April 1st, and Courtroom Observation Forms Are Due Wednesday, April 15, 2015.
G. ASSIGNMENT FOR CLASS SEVEN

Class objective: Theory; Fundamentals of Direct and Cross Examinations; Conversations, Foundations; Exhibits, Foundations; and Objections.

1. In this class, students will work as a team to present evidence from a full trial.

2. Review prior readings and additional pages below.

<table>
<thead>
<tr>
<th>Conversations</th>
<th>Exhibits</th>
</tr>
</thead>
<tbody>
<tr>
<td>pp. 178-183</td>
<td>pp. 271-375</td>
</tr>
</tbody>
</table>

Exercises: The full case file is contained in the CD at the back of the Problems & Materials Textbook.

<table>
<thead>
<tr>
<th>Team A</th>
<th>Team B</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.10</td>
<td>Cross: R. Foster</td>
</tr>
<tr>
<td>Direct: R. Foster</td>
<td>Cross: N. Johnson</td>
</tr>
<tr>
<td>Direct: N. Johnson</td>
<td>Cross: M. Goodman</td>
</tr>
<tr>
<td>Direct: M. Goodman</td>
<td>Cross: C. Benson</td>
</tr>
<tr>
<td>Cross: C. Benson</td>
<td>Direct: A. Wentworth</td>
</tr>
<tr>
<td>Cross: A. Wentworth</td>
<td></td>
</tr>
</tbody>
</table>

3. Review copies of issues instructions from the Illinois Pattern Jury Instructions for bribery charge. Consider: how do these instructions inform your theory of the case and your development of the direct and cross-examinations?

4. Meet with your team to divide the witnesses among team members. Please work together to develop your theory and construct your examinations. The faculty may remove one or more of these witnesses from the assignment to accommodate the section.

5. You will be expected to lay proper foundations for both face-to-face (When did it take place? Where did it take place? and Who was present?) and phone conversations, and for the introduction of a demonstrative exhibit during the course of a direct examination. You will also be expected to properly and effectively impeach a witness where there has been a prior inconsistent statement.

H. ASSIGNMENT FOR CLASS EIGHT (Closing Arguments)

Class Objective: To understand the role of closing arguments in assisting the attorney to shape the theory of the case based on the governing law and provided facts and how that theory then informs the development of direct and cross examination of the witness.
1. As part of this assignment, you must bring to class copies of the relevant Illinois/Federal Pattern Jury Instructions outlining the issues to be proved, for both the prima facie case and any defenses raised by these problems.

2. Read Mauet:

<table>
<thead>
<tr>
<th>Trial Prep &amp; Strategy</th>
<th>pp. 553-581</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closing Arguments</td>
<td>pp. 443-504</td>
</tr>
</tbody>
</table>

Exercises: Per handout distributed during class 7. Potential Exercises: 7.4, 7.8 and 7.10

3. The team leader for Wednesday night will distribute specific assignments concerning this class to all students one week before this class. You will be assigned to represent either the Plaintiff /State or Defense on one of the listed problems. The purpose of this class is to help you understand how preparing the closing argument is a tool for developing the theory of the case based on the law and facts of the given problem. Once you understand the theory and the applicable burden of proof for the case, that theory should be used to develop both the closing argument to which you are assigned as well as the direct and cross examinations for Class Nine. (Please also review “Points for Evaluation at page 7 of the syllabus).

4. Closing argument is limited to 8-10 minutes.

5. Where more than one student is assigned to represent the same client, you will both present a closing argument for that client. We encourage you to work with your “co-counsel” to develop your theory of the case and analysis of the problem. You will be graded separately on your individual closing argument.

6. Do not even THINK about reading or even using extensive notes for your closing. This is an exercise in persuasion, not lecture. Use a jury-centered approach. Think about those 12 people at all times: worry less about getting all the facts in and more about convincing people you are right.

7. Review copies of issues instructions from the 7th Circuit Pattern Jury Instructions for 18 U.S.C. Sec. 1341 and 1343 fraud claims and Illinois Pattern Jury Instructions for the bribery case. 7th Circuit has both civil and criminal instructions at [http://www.ca7.uscourts.gov](http://www.ca7.uscourts.gov). Consider: how do these instructions inform your theory of the case and your development of the direct and cross-examinations?

8. Please concentrate on the theory of your case, argue the facts (explain how they prove your theory), think about how the physical evidence in the case informs your theory, and PRACTICE, PRACTICE, PRACTICE.
I. ASSIGNMENT FOR CLASS NINE (Strategy/Theory)

Class Objective: to develop direct and cross-examinations consistent with the theory and argument presented in Class 8. Now that you have developed your argument, you must construct examinations that will develop the facts to support that argument.

1. Reading Mauet:

   | Trial Lawyer’s Self-Evaluation Guide | pp. 593-594 |

Exercises: **Per handout distributed during Class 7.**

2. This class is a continuation of the Strategy-Theory/Closing Argument exercise begun during Class 8. Tonight, you will each conduct either a direct or cross-examination of one of the witnesses in your assigned problem. Please continue to work together with your co-counsel to insure that your direct and cross-examinations, as a whole, develop your theory of the case.

3. All students should be prepared to incorporate skills from earlier classes into these examinations and to make appropriate objections to admission of the evidence.

4. You will receive a handout this week indicating your mini trial and opening statement/closing argument assignment. Please ask your faculty member to schedule the mini trials so that you know which week you will present.

5. **Don’t forget the courtroom observation requirement.** A list of Chicago area courtrooms is attached to help you fulfill this requirement.

J. ASSIGNMENT FOR CLASS TEN and ELEVEN

(Opening Statements/Mini Trials)

*Professional Dress is required on the night you present your trial.*

Class Objective: To give students the opportunity to conduct a complete trial on their own. Opening Statements will be followed by presentation of the evidence. Students should ask their faculty member to schedule the mini trials for either Class 10 or 11.

1. Reading: Mauet:

   | Opening Statements  | pp. 73-107 |
   | Objections          | pp. 505-551 |
   | Trial Prep & Strategy | pp. 553-581 |
Exercises: Per handout distributed during Class 9

Potential exercises:

7.2 Excessive Force Civil Rights case
7.4 Home purchase contract case
7.6 Murder/Self-defense
7.7 Drug Entrapment case

2. Exercises: Each student will present an opening statement for the client s/he is assigned to represent on the mini trial.

3. Your opening statements should be brief. Please aim for five minutes in length. Remember, your primary task is to tell a story. Let the jury know what to listen for in the coming trial. Remember your audience. Try to give the opening statement in English and not in legalese. Try also to highlight for the jury what you think will be the key or crucial evidence.

4. Don’t even think about reading your opening statements to the jury. If notes are absolutely necessary, make them as inconspicuous as possible.

5. Opening statement will be followed by the presentation of evidence for that trial. You will be responsible for a direct and cross-examination of one witness per side, and for making all trial objections and legal arguments.

6. Review copies of issues instructions from the 7th Circuit Pattern Jury Instructions for 42 U.S.C. Sec. 1983 excessive force and Illinois Pattern Jury Instructions for the contract, murder/self-defense and drug entrapment cases. 7th Circuit has both civil and criminal instructions at http://www.ca7.uscourts.gov. Consider: how do these instructions inform your theory of the case and your development of the direct and cross-examinations?

7. Unfortunately, there is no time for pre-trial hearings. Assume that all pre-trial motions have been denied. Brief motions-in-limine will be allowed. Note: Federal Rules of Evidence apply to evidentiary issues. Refer to Illinois law for other questions of law.

8. Witnesses may not read from a prepared script, but may take documents with them to refresh their memory. You are strongly encouraged to bring in outside witnesses for these mini trials; however, you may choose other students in your section who are not involved in your case.

9. Your final trial preference sheets (one per team) are due on April 1, 2015. This allows you to indicate your preference for a partner (any student from Wednesday night) and the kind of trial you would like to do. Though no guarantees are made, we will do what we can to accommodate your preference.
K. ASSIGNMENT FOR CLASSES TEN and ELEVEN (Mini Trials)
PROFESSIONAL DRESS REQUIRED on the night you present your trial.

1. During class 11, students will continue with the presentation of their opening statements and mini trials. (It will take two classes to accommodate everyone.)

2. Attendance is required of all students for both weeks.

3. Court observation reports may be turned in anytime between now and April 15, 2015 to Maria Ayala DePaul College of Law Room 737 O’Malley. Remember to check the syllabus for report guidelines. Your reports should comment on what you observed.

L. ASSIGNMENT FOR CLASS TWELVE (Closing Arguments)
Class Objective: to reinforce skills necessary for an effective closing argument.

1. Read Mauet:

| Closing Arguments | pp. 443-504 |

2. You will present your closing argument on behalf of the client you represented at the mini trial. Closing argument is limited to 8-10 minutes.

3. Do not even THINK about reading or even using extensive notes for your closing. This is an exercise in persuasion, not lecture. Use a jury-centered approach. Think about those 12 people at all times: worry less about getting all the facts in and more about convincing people you are right.

4. Please concentrate on the theory of your case and PRACTICE, PRACTICE, PRACTICE.

M. ASSIGNMENT FOR CLASS THIRTEEN (Pre-trial Conference)

1. The purpose of the pre-trial conference is to address all possible issues arising out of the case file prior to the trial itself, including evidentiary matters, selection of witnesses and jury instructions.

2. For the pre-trial conference, you must prepare a pre-trial memorandum (one per side) that includes:

   a) A short statement, no longer than two pages, addressing your theory of the case and the relevant supporting facts.
   b) A list of witnesses you intend to call - in person or by stipulation.
c) A list of the pre-numbered exhibits that may be used during the trial

d) Any relevant motions in limine.

e) Issues jury instructions setting forth the issues of the case and relevant defenses. You may use the general jury instructions included in Mauet & Wolfson, pp.667-675. Use Illinois Pattern Jury Instruction for the issues instructions concerning the state/plaintiff’s burden of proof and any available defenses in state causes of action and Seventh Circuit pattern jury instructions for federal causes of action.

3. Pre-Trial Motions will be heard this class. All motions to be heard at that time must be in writing and must have been served upon opposing counsel at least 24 hours prior to hearing. Also please give cites to any significant cases on which you will rely to opposing counsel with sufficient time for them to prepare a response. There is no requirement that the motion be filed with the instructor prior to hearing. Responses to motions may be, but are not required to be in writing. A sample Motion in Limine is attached to the syllabus. Any matters left unresolved at the hearing may be raised, at the discretion of the instructor, during the 30-minute period immediately prior to trial.

4. You are encouraged to meet with opposing counsel to resolve any pre-trial matters, such as, stipulations, witness backgrounds, jury instructions, etc. It is your responsibility to take the surprise out of the final trial.

5. The instructors reserve the right to review your “game plans” during the pre-trial hearings and to revise them to suit educational needs.

N. FINAL TRIAL - PROFESSIONAL DRESS REQUIRED

1. You are responsible for bringing your own witnesses, preferably non law students and preferably with some background in the appropriate area of expertise. Assume that all witnesses have been subpoenaed.

2. Time is a factor at the trial and may require the Instructor to cut short examination or arguments if the parties have not been well-disciplined on time usage. Opening Statements are limited to 8 minutes per side. Closing arguments are limited to 12 minutes per side. The primary responsibility for time usage is upon the parties. If necessary, students will be restricted or prohibited from conducting redirect and/or recross examinations.

3. Reference any exhibits used at trial by the “name” assigned to them in the pre-trial memorandum.

4. Stand while making objections and otherwise addressing the court.
5. Students must allocate trial assignments equally between them. One should give the opening statement; the other closing argument. Each student should do one direct and one cross-examination. The witness backgrounds that you compose must be realistic and consistent with the intent of the problem.

6. Feel free to consult with faculty concerning the trials. We will not, however, tell you what to argue, how to argue it or how to examine a witness.

7. The testimony of any additional witnesses identified in the problem should come in by stipulation. These stipulations should include testimony that would reasonably be solicited both during direct and cross-examinations of that witness. At the discretion of the faculty member, third witnesses may be called to testify rather than testify by stipulation.

8. Don’t forget motions for directed verdict in both civil and criminal cases. Attorneys representing the State: Your case can be directed out if you fail to establish venue: i.e. that the alleged criminal act occurred in the City of Chicago, County of Cook, State of Illinois.

9. Please remember that the Federal Rules of Evidence apply to evidentiary matters. Look to Illinois or federal law on substantive issues as the cause of action dictates.

10. Motions to exclude witness will not be granted; however examinations should be prepared as though they were.

11. Critiques will be done at the discretion of the presiding faculty member.
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

State,

vs. No.

Defendant.

Judge

Presiding

PLAINTIFF’S MOTIONS IN LIMINE

NOW COMES the (Party: Plaintiff/State or Defendant) ______(insert name)__________, by and through her attorneys,______________________, and respectfully moves this Honorable Court, in limine, to preclude and prohibit the Defendants from introducing either during voir dire, opening statements, closing arguments or through direct or cross-examination of any witness, including any expert witnesses, evidence, comment or suggestion concerning the following matters:

MOTION IN LIMINE #1
REGARDING …

This motion contemplates several sub-motions or requests to limit testimony with brief argument and reference to the authority supporting the request as well as a final paragraph in each section restating the specific relief granted.

Ruling: _____ Granted; _____ Granted in Part; _____ Denied; _____ Reserved
MOTION IN LIMINE #2
MOTION #2 REGARDING ... (e.g.)

1. "X" law says this.
2. Courts have interpreted it thus.

WHEREFORE, (party) requests that evidence of such and such matter be barred.

Ruling: _____ Granted; _____ Granted in Part; _____ Denied; _____ Reserved

MOTION IN LIMINE #X
BARRING WITNESSES FROM THE COURTROOM DURING TRIAL

NOW COMES the (Party), by her attorneys,_____________________, and moves this Honorable Court to exclude all non-party witnesses from the courtroom during any and all of the trial proceedings, except when said witnesses are to testify.

Ruling: _____ Granted; _____ Granted in Part; _____ Denied; _____ Reserved

By:______________________________

Individual Attorney
Firm Name
Attorneys for (Party)
Address
City, State Zip
Phone Number
TRIAL ADVOCACY

SPRING 2015
FINAL TRIAL PREFERENCE SHEET
WEDNESDAY NIGHT
(Please submit one form per team.)

1) Your Name__________________________________________(Section _____)

Partners Name___________________________________________(Section _____)

2) Civil or Criminal (Please circle your preference.)

3) Plaintiff/Prosecutor or Defense (Please circle your preference.)

4) Final Trials will be scheduled on the following dates. Please circle any time period when you CANNOT be available for the final trial and give a brief explanation below.

April 18th A.M. April 18th P.M. April 22nd P.M.
(9:00 AM to Noon) (1:00 to 4:00 PM) (5:30 TO 8:30 PM)

REASON:

WHILE WE ARE REQUESTING YOUR PREFERENCES FOR THE FINAL TRIAL and will try to accommodate your requests to the best of our abilities, we are not promising that that you will receive everything that you have requested.

Students who indicate no preferences or whose form is not in by the deadline date will be randomly assigned to a partner and a case file.

Please give your completed form to Professor Brown or Maria Ayala DePaul College Room 737 O’Malley no later than Wednesday, April 1, 2015.
TRIAL ADVOCACY
COURT OBSERVATION FORM – SRPING 2015

STUDENTS NAME: ____________________________ SECTIONS: ________________

DATE: ___________ TIME SPENT OBSERVING: ______________

LOCATION: Dirksen Bldg. _____ Daley Center _____ Criminal Court: ________
(check one)

(26th & California)

COURTROOM #: _____ JUDGE: ________________________________

NAME OF CASE: ____________________________________________

FACTS OF CASE: ___________________________________________

ISSUES ARGUED: ___________________________________________

RESOLUTION, if known:

STRENGTHS OF PROSECUTING ATTORNEY: ______________________

27
WEAKNESSES OF PROSECUTING ATTORNEY:

STRENGTHS OF DEFENSE ATTORNEY:

WEAKNESSES OF DEFENSE ATTORNEY:

GENERAL OBSERVATIONS:
SURVEY OF CHICAGO AREA COURTROOMS STATE COURTS

Daley Center, Washington & Dearborn Streets County Department: Note - the “Jury Room” on the 17th Floor has a list of courtrooms where juries are being sent.

Law Division (Contracts and Torts exceeding $15,000.00) Daley Center Trial Section-Floors 19 through 26 also room 1503, 1606, and 1610

Chancery Division (Injunctions, specific performance, partition, foreclosure, trusts, accounting, etc). Rooms: 2108, 2201, 2302, 2305, 2308, 2402, 2403, 2407, 2408, 2502, 2508, 2510

Suburban Courts and Criminal Division

Criminal Courts Building
2600 S. California Ave.
Clerks Office Phone
(773) 869-3140

Skokie Civic Center
5600 Old Orchard Road
Skokie, IL 60077
Phone (708) 470-7500

Bridgeview Civic Center
10220 South 76th Avenue
Bridgeview, IL 60455
Phone (708) 974-6542

Markham Civic Center
16501 So. Kedzie Parkway
Markham, IL 60426
(708) 210-4220

Juvenile Division - 1100 S. Hamilton Avenue Roosevelt & Ogden
(Requires clearance or permission from the family to observe.)

Municipal Department - Daley Center

✓ Tort and Contract jury trials, less than $15,000.00:
✓ Personal Injury: Jury and non-jury, Room 1501

Federal Court Dirksen Building, 219 South Dearborn (www.ilnd.uscourts.gov)
View the judges' calendars at http://www.ilnd.uscourts.gov/DailyCal/0.htm

U.S. District Court - generally motions heard in the morning, trials in the afternoon. Check *Daily Law Bulletin for judges, courtrooms and times.

You may also observe trials in other counties, but please advise Professor Brown in advance if possible.

Note: The Clerk’s office on the 20th floor posts a list of scheduled cases on the bulletin board
Use with Problem 7.2

Not to Scale
EASY LIFE TAVERN

Entry

Men's Room

Door

Women's Room

Door

Storage Cooler

Delivery Door

Access Door

Table

Table

Stage for DJ

Dance Floor

Bar

Table

Table

Pool Table

Table

Fire Exit

Use with Problem 7.6

Not to Scale
Val's Chicken House

1210 N Woods

Alley

Entrance
1214 N. Woods

Customer Seating and Take-out Area

Service Counter

Kitchen & Storage

Order Window  Pick-up Window

Parking Lot

Use with Problem 7.9 during Class 3

Not to scale