**Legal Reasoning & Argument**

(PHL 285 / PSC 285)

Mon/Wed 4:50 p.m. – 7:30 p.m.

**Course Description**

This course is designed to introduce students to the use of legal reasoning and argument in the context of trial advocacy. Students will develop skills in formulating, presenting, and critiquing legal arguments. Initially, we will explore the sources of law, the theory behind the adversarial system, and the various procedural and evidentiary rules in place to achieve the system's goals. We will also discuss how the rules of logic and reasoning govern the application of the law to the facts. Throughout the semester, we will achieve these goals through the lens of preparing to conduct a mock trial of a fictional civil case.

A mock trial is an exercise where students, playing the roles of attorneys and witnesses for either the plaintiff/prosecution and defense, engage in a trial of a fictional civil or criminal case. To prepare for a mock trial, students will learn the techniques used to conduct trials, including opening statements, direct examinations, cross examinations, closing arguments, and objections. During the semester, the class will break up into two or more teams, and each team will prepare either the plaintiff’s case or the defense’s case. At the end of the semester, the teams will scrimmage against each other in a mock trial.

You should take this course if:

* You are interested in competing with the University of Rochester’s extra-curricular mock trial team—you will learn essential fundamental skills that will help you succeed in the competition;
* You are interested in attending law school—you will learn fundamental argumentation techniques as well as procedural and evidentiary rules that you will likely have to learn in law school;
* You are interested in learning or sharpening your oral communication skills—you will learn effective presentation and communication techniques.

**About the Instructor**

I am an attorney at Kenney Shelton Liptak Nowak LLP, in Buffalo, New York. My area of practice is commercial litigation and insurance defense. I represent clients who are embroiled in some sort of dispute—usually commercial in nature or involving a defendant whose potential liability is covered by its insurance carrier—where the dispute is likely to or has already reached the judicial system. I competed in mock trial in high school, college, and law school. I benefited tremendously from the experience, and I hope you will similarly benefit from this course.

Below is my contact information. Because I practice in Buffalo, office hours will have to be by appointment, but I will usually be available by email or phone. Though I don’t anticipate any problems, if my trial calendar conflicts with any particular class, depending on the substance scheduled to be covered during that class, I may have the TAs cover the class or I may reschedule the class. I will do my best to avoid such a situation. If at any point during the semester, you have any questions or concerns, don’t hesitate to contact me.

Anant Kishore, Esq.,

Kenney Shelton Liptak Nowak LLP

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Office Hours: by appointment

**Teaching Assistants**

Wil Dietz

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**Textbook/Materials**

*Required:*

1) Mock Trials: Preparing, Presenting, and Winning Your Case (Author: Steven Lubet and Jill Trumbull-Harris)

2) A Student’s Guide to Trial Objections (Author: Charles Gibbons)

3) AMTA 2014-2015 Case Materials and Midlands Rules of Evidence (to be downloaded from <http://www.collegemocktrial.org>). [Login and password to be provided at the first class]

NOTE: we have been granted a license by AMTA for the use of its 2015-2016 case materials for the purpose of this course. These materials are proprietary and confidential, and our license limits the use of these materials for this course ONLY. It would be a violation of our license to disseminate or to provide access to the AMTA materials to anyone not currently enrolled in the class (those competing on the University’s mock trial team who are not enrolled in this course will be provided access to the case through the team itself). **Do not provide these materials or the login information to anyone outside of this course**.

*Recommended (Optional):*

1) Book: The Tools of Argument: How the Best Lawyers Think, Argue, and Win (Author: Joel P. Trachtman)

2) Book: The Five Types of Legal Argument (Author: Wilson R. Huhn)

3) Book: Legal Argument: The Structure and Language of Effective Advocacy (Author: James A. Gardner)

The above recommended books are books that I wish I had read before attending law school. For those interested in attending law school, I highly recommend reading these books. For those who don’t plan on attending law school, I nonetheless recommend reading at least the Trachtman book. It is possible that I will draw on some portions of the Trachtman book during our discussions of theory and logical reasoning. The only book you are required to buy, however, is the Lubet/Trumbull-Harris book.

**Grading Policy**

Grading will be based on a combination of traditional assignments and quizzes as well as on practical exercises performed both individually as part of a team. The mock trial scrimmage will serve as the final examination for the course.

The breakdown of the overall grade will be as follows:

* 20% Attendance/Class Participation/Demonstrated Improvement
* 50% Assignments/Quizzes
* 30% Final Scrimmage

Absences:

In this class, you will be doing work individually as well as on teams. You will need to work in collaboration with your teammates, in and out of the class, just as they will need to work in collaboration with you. Likewise, your teammates will rely on your individual work just as you will rely on theirs. Thus, it goes without saying that attendance and class participation will be crucial to your success in this class. But equally significantly, absences, particularly unexcused absences, will not only diminish your ability to learn and succeed in this class, they will also negatively affect your teammates’ and classmates’ ability to learn and succeed as well. By enrolling in this class, you are making a commitment to me and to your classmates that you will not hamper their ability to learn and succeed in this class.

You will be allowed 2 excused absences that will not count against your attendance/participation grade. An absence will be considered excused if you have given reasonably advanced notice to either me or one of the TAs that you will be unable to attend class for a legitimate reason. This syllabus does not define ‘legitimate reason’ because the legitimacy of the excuse often depends on the circumstances, but the spirit underlying a legitimate excuse is that an unavoidable conflict will prevent you from attending the class. By way of illustration only, being unable to attend class because you have a test tomorrow in another class that you need to study for does not qualify as a legitimate reason—that is an avoidable situation through the proper exercise of time management. Conversely (and, again, by way of illustration only), being unable to attend class because another professor scheduled a test during the same time as this class qualifies as a legitimate reason. It would be wise to talk to either me or one of the TAs in a reasonably advanced fashion so that we can advise you whether your absence will be considered excused.

Each unexcused absence will, of course, result in a deduction from the attendance/participation component of your grade. If you have multiple unexcused absences, I retain the right to preclude you from participating in the final scrimmage, which will, of course, severely affect your final grade.

The final scrimmage will be graded based on the following criteria:

* substantive technique (e.g., foundation, content and organization of examination, etc);
* presentation/persuasiveness technique (e.g., proper use of juxtaposition, headlining, looping, witness control, positioning, etc.);
* command of rules of evidence;
* demonstration of overall improvement between practice scrimmage and final scrimmage.

A final word on my philosophy regarding grading:

I teach this class in addition to my work obligations (and I travel from Buffalo to Rochester twice a week to do so) because I want to spark your interest in mock trial, law school, and the law. When it comes to my teaching/grading style, I firmly believe in an approach that encourages further interest in learning about mock trial, the law, and legal reasoning, and I eschew an approach that discourages or dampens that interest. I also believe that my approach is particularly appropriate for this class, considering that some of you might be pursuing majors that focus less on developing critical reasoning skills and considering that, for many of you, this will be your first experience in mock trial, legal reasoning, and oral presentation through a trial advocacy framework.

It is of no surprise that my approach has, so far, resulted in high grades for most students who have taken this class. It is also of no surprise that some might view this class as “an easy ‘A.’”

If you signed up for this class because you believe it will be an “easy ‘A,’” it very well might be…all you have to do is attend class, participate, do your work in a timely fashion, incorporate the TAs’ and my feedback into your subsequent product—all of which can be boiled down to one simple concept: demonstrate that you are making an effort.

But be warned: if you *treat* this class as “an easy ‘A’”—such as by failing to make an effort because you are taking this class for granted—you do so at your own peril.

**Honor Code Obligations**

You are obligated and expected to comply with the University’s honor code and all University rules and regulations. Likewise, I expect you to treat each other with respect. Failure to abide by these requirements may result in adverse consequences for your grade, aside from any other academic or administrative consequences of your actions.

**Course Outline**

This outline is my current plan for how the course will progress. But as they say, the best laid plans of mice and men often go awry. In all likelihood, there will be changes to the outline—perhaps because I decide to spend less time on one topic or more time on another; because we have to cancel a class for some reason (e.g., if I have an unavoidable court appearance); or because of another unforeseeable reason. Thus, don’t simply rely on the outline; make sure you come to class, pay attention, and keep up with what I announce we will cover in subsequent classes.

NOTE: while I or the TAs will endeavor to update the syllabus as the course outline evolves, it is your responsibility to come to class, write down the announced changes to the course outline, and to update your copy of the syllabus.

Unless otherwise instructed, make sure to come to class with the reading/assignment listed under that class **already completed**.

NOTE: some assignments are more time-intensive than others. It would be highly advisable to plan ahead and start early on assignments that require a lot of reading (e.g., such as reading the entire AMTA case) or require you to produce written work product (case breakdown, closings, openings, directs, and crosses).

**Week 1**

Monday, August 31, 2015

* Course overview;
* Introductions;
* Sources of law and theory of adversarial process;
* Syllogisms, necessary/sufficient conditions, analogies/distinctions, and their application to the law;
* Overview of mock trial and AMTA case.

Wednesday, September 2, 2015

* 3-minute speeches;
* Theory put into practice—how the procedural and evidentiary rules attempt to achieve the goals of the adversarial system;
* Rules of Evidence (relevance, unfairly prejudicial evidence, and personal knowledge).

**Assignment Due Today**: Lubet, Ch. 1, Ch. 5(I, II, III); read Midlands Rules of Evidence 602, 401, 402, 104(b); prepare a 3-minute speech about a topic of your choice.

**Week 2**

Monday, September 7, 2015

NO CLASS—Labor Day

Wednesday, September 9, 2015

* Impromptu speeches;
* Continue Rules of Evidence (improper character evidence, hearsay, and hearsay exceptions).

**Assignment Due Today**: Lubet Ch. 5(IV, V); read Midlands Rules of Evidence 403, 404, 609, 801, 802, 803, 804; read entire AMTA case.

**Week 3**

Monday, September 14, 2015

* Continue Rules of Evidence (remaining hearsay exceptions);
* Case theory/theme;
* Analyzing a case and preparing a trial strategy by using a case breakdown.

**Assignment Due Today**: Lubet Ch. 12(IV)(B), Ch. 2.

**Assignment you should start working on**: complete case breakdown of the AMTA case due by e-mail to your TA no later than 5 p.m. on Sunday, September 20, 2015; prepare for quiz on Rules of Evidence on September 28, 2015.

Wednesday, September 16, 2015

* Openings/Closings;
* Sample opening/closing.

**Assignment Due Today**: Lubet Ch. 13, Ch. 14.

**Assignment you should start working on**: opening statement (1st draft) and closing statement (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, September 27, 2015.

**Assignment you should continue working on**: complete case breakdown of the AMTA case due by e-mail to your TA no later than 5 p.m. on Sunday, September 20, 2015; prepare for quiz on Rules of Evidence on September 28, 2015.

Sunday, September 20, 2015

**Assignment Due Today**: complete case breakdown of the AMTA case to be e-mailed to your TA no later than 5 p.m. today.

**Assignment you should continue working on**: opening statement (1st draft) and closing statement (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, September 27, 2015; prepare for quiz on Rules of Evidence on September 28, 2015.

**Week 4**

Monday, September 21, 2015

* Video of AMTA championship round;
* TAs will assign teams;

**Assignment you should start working on**: work with teammates to decide case theory, case theme, and roles.

**Assignment you should continue working on**: opening statement (1st draft) and closing statement (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, September 27, 2015; prepare for quiz on Rules of Evidence on September 28, 2015.

Wednesday, September 23, 2015

* Questions for TAs re: openings/closings and rules of evidence;
* Movie: My Cousin Vinny.

**Assignment you should continue working on**: opening statement (1st draft) and closing statement (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, September 27, 2015; prepare for quiz on Rules of Evidence on September 28, 2015; work with teammates to decide case theory, case theme, and roles.

NOTE: I will be out of town this week, so both these classes will be run by the TAs. Do not presume you can skip these classes because they involve watching a videotaped round and a movie. The videotaped AMTA championship round will be tremendously beneficial because you’ll see a full trial, beginning to end, once all the pieces are put together. As for My Cousin Vinny, I will be using it as a springboard to teach portions of this course. And it may come up on your quiz…so pay close attention to the movie, especially the trial techniques employed by Joe Pesci’s character, Vinny.

Sunday, September 27, 2015

**Assignment Due Today:** opening statement (1st draft) and closing statement (1st draft) due by e-mail to your TA no later than 5 p.m. today.

**Assignment you should continue working on**: prepare for quiz on Rules of Evidence on September 28, 2015; work with teammates to decide case theory, case theme, and roles.

**Week 5**

Monday, September 28, 2015

* Quiz (rules of evidence): 104(b), 401, 402, 403, 404, 602, 609, 801, 802, 803, 804;
* Direct-examinations;
* Direct-examination of expert witnesses;
* Introducing exhibits into evidence;
* Form objections.

**Assignment Due Today**: Lubet Ch. 6, Ch. 7, Ch. 11(I, II, III), Ch. 12 (all remaining sections); by now, your team should have decided on a case theory, case theme, and roles.

**Assignment you should start working on**: direct exam (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, October 11, 2015; work with your witness/attorney on your team to prepare/practice your direct exam.

Wednesday, September 30, 2015

* Cross-examination;
* Cross-examination of expert witnesses;
* Impeachment;
* Refreshing recollection;
* Drills.

**Assignment Due Today**: Lubet Ch. 8, Ch. 9, Ch. 11(IV).

**Assignment you should start working on**: cross exam (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, October 11, 2015;

**Assignment you should continue working on**: direct exam (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, October 11, 2015; work with your witness/attorney on your team to prepare/practice your direct exam.

**Week 6**

Monday, October 5, 2015

NO CLASS—Fall Break

**Assignment you should continue working on**: direct exam (1st draft) and cross-exam (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, October 11, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam.

Wednesday, October 7, 2015

* Work with TAs on directs/crosses;

**Assignment you should continue working on**: direct exam (1st draft) and cross-exam (1st draft) due by e-mail to your TA no later than 5 p.m. on Sunday, October 11, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam.

Sunday, October 11, 2015

**Assignment Due Today**: direct exam (1st draft) and cross-exam (1st draft) due by e-mail to your TA no later than 5 p.m. today.

**Assignment you should continue working on**: work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam.

**Week 7**

Monday, October 12, 2015

* Courtroom decorum;
* Pre-trial procedure;
* Voir dire;
* 30-second closings.

**Assignment you should start working on**: 2nd draft of openings/closings due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; start practicing presentation of your opening/closing.

**Assignment you should continue working on**: work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam.

Wednesday, October 14, 2015

* Objections game.

**Assignment you should continue working on**: 2nd draft of openings/closings due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 8**

Monday, October 19, 2015

* Presentation of openings.

**Assignment you should continue working on**: 2nd draft of openings/closings due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, October 21, 2015

* Presentation of closings.

**Assignment you should start working on**: 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015.

**Assignment you should continue working on**: 2nd draft of openings/closings due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 9**

Monday, October 26, 2015

* Run-through of directs and crosses.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, October 28, 2015

* Run-through of directs and crosses.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 10**

Monday, November 2, 2015

* Run-through of directs and crosses.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, November 4, 2015

* Run-through of directs and crosses.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 11**

Monday, November 9, 2015

* Scrimmage (casual dress)

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, November 11, 2015

* Scrimmage (casual dress)

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 12**

Monday, November 16, 2015

* Post-scrimmage feedback;
* Make-up Quiz.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, November 18, 2015

* Attorney Panel.

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 13**

Monday, November 23, 2014

MAKE-UP DATE—No class unless otherwise instructed

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, November 25, 2015

NO CLASS—Thanksgiving Break

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

**Week 14**

Monday, November 30, 2015

* Practice Scrimmage (formal dress)

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Wednesday, December 2, 2015

* Practice Scrimmage (formal dress)

**Assignment you should continue working on**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. on Sunday, December 6, 2015; work with your witness/attorney on your team to prepare/practice your direct exam; practice your cross-exam; practice presentation of your opening/closing.

Sunday, December 6, 2015

**Assignment Due Today**: 2nd draft of openings/closings and 2nd draft of directs/crosses due by e-mail to your TA no later than 5 p.m. today.

**Week 15**

Monday, December 7, 2015

* Full Scrimmage (formal dress)

Wednesday, December 9, 2015

* Full Scrimmage (formal dress)