

LAW 602: ADVOCACY

COURSE INFORMATION FOR STUDENTS 2019

1. CASE FILE INFORMATION

Students registered in the civil advocacy course, will be working with the *Dixon v Providential Life Insurance Company* case file (available for purchase at the bookstore). Students registered in the criminal advocacy course will be using the *R v Bolton* case file as posted on D2L. Students will also be using the narrative of *Goldilocks and the Three Bears* for some of the fundamental trial skill exercises. Summaries of all of these case files are posted on D2L.

For those assigned to the civil file, please note that the case was originally formatted for American audiences and therefore it still retains some American legal terms. For the purposes of the course we will not be concerned with these differences **other than the following references and instructions:**

1. **Stipulations** on page 5 refer to agreed facts for purposes of the trial for which you will not need to prove. In other words, these facts will be assumed for this case.
2. **Recommendations for full trials** on page 5, list 4 witnesses for the Plaintiff and 4 witnesses for the Defendant. As the trial presentations on January 26, 2019 must be finished by 2:00 pm, each party **must call no more than 3 witnesses each**. Be strategic and call only those witnesses who will prove a material issue at trial. In You must also be mindful of the evidence you will need to argue your case and the need to satisfy the burden of proof. For instance, Mary Dixon, who is the Plaintiff in the matter, must be called as a witness for the Plaintiff. For the Defendant, Robert Wilson's evidence would be key to the defence's position. In the third week of the course you and your opposing counsel will negotiate and write an agreed admission of facts. These admissions will be entered as Exhibit 1 at trial and will form part of the evidence. This is your opportunity to negotiate the admission of evidence of witnesses and connected documentary or photographic evidence, which you do not intend to call at trial.
3. **First Claim for Relief** on page 9 and **Second Claim of Relief** on page 10 would be equivalent to the Plaintiff's Statement of Claim and the **Answer** on pages 11 to 12 would be equivalent to the Defendant's Statement of Defence. The Canadian version of these documents (Statement of Claim and Statement of the Defence) is posted on D2L for your use during this course.
4. **Depositions** of the witnesses should be treated as signed statements made by the witnesses. Assume the witness attended a lawyer's office to provide a recorded statement, which was then transcribed and reviewed by the witness before signing. The statements were not given under oath. Do not treat these statements as transcripts from the Questionings.
5. **Exhibits** – there are a number of possible exhibits. Do not admit into evidence all of the exhibits. As part of your trial strategy, determine which exhibits are essential to prove a point in issue. Remember to use the exhibits through a witness's evidence. If you are not going to use it, don't put it into evidence. During your negotiation session with the other party you may come to an agreement on the admission of some of the

exhibits and present the exhibits in an “Exhibit Book” to be marked as an exhibit at trial. However, each party must admit at least one exhibit (document or photograph) at trial and the opposing party must be prepared to argue its admissibility if raised by the opposing party.

2. PREPARATION

Preparation is the key to successful advocacy, both in and out of court. To be successful in this course you **must prepare**. Preparation will give you **confidence**. Preparation means **success**. Preparation will make you a **better advocate**.

The major emphasis of this program is learning by doing: continual performance coupled with feedback. You will be called upon several times each day to perform the role of counsel in the various assigned problems. You must also be prepared to take over a witness from prior counsel and continue with that witness’s testimony from the area previously examined. You may also be called upon to act as a witness to be examined and/or cross-examined by a fellow student. Please be prepared for all of these roles by reading the facts specific to the problem and by **having access to the course material in class**. The specific problem assignments for each day are posted on D2L.

As part of your preparation, you must read the connecting chapters in the textbook. This textbook is an excellent advocacy primer and will guide you through your preparation.

Be prepared to refresh your recollection of the substantive and procedural issues, which may arise in your applicable case file.

3. DECORUM AND DRESS

An important part of advocacy is projecting the right attitude. A good advocate projects confidence and respect for the Rules of Court. Such an advocate abides by the professional Code of Conduct as determined by the Law Society. In Alberta, our Law Society has adopted a Code of Conduct outlining the required professional standards of behavior. Please review this Code of Conduct and be mindful of the two controlling aspects of the Code of Conduct, namely that a lawyer “is expected to establish and maintain a reputation for integrity” and that “a lawyer’s conduct should be above reproach.” Remember, during this course you will be working with members of the Bench and Bar in a unique learning environment. To make the most of this experience, conduct yourself as you would in a real advocacy scenario.

Read pages 27 to 30 of your textbook on *Demeanour* to understand the importance of decorum in court. Please also note that civility and ethical behavior, the other aspects of proper court decorum, will be discussed and emphasized throughout the course.

You will not be expected to “dress the part” of a lawyer while you participate in the workshops, except for the evening in which you will participate in the pre-trial conference before a Justice of the Queen’s Bench of Alberta. You are also expected to wear “business attire” when appearing in Court on your final trial presentation day.

4. STUDENT GROUPS, STUDENT ROLES, AND TRIAL PARTNERS

Student Groups

For the course, you will be divided into ten groups. On D2L, you will find Small Group Assignments listing your small group. Except for the presentation of your opening and closing the last day of the course, the demonstration sessions, any full course discussions or mini-lectures, and the actual trial, presentation, you will be working exclusively with your group. Each group will be assigned a classroom for the entire course, subject to some adjustments due to facility use by other block courses. Although you will be with the same group in the same classroom throughout the course, your instructors will change to provide you with a richer advocacy experience. This list will be posted prior to the start of the course.

Student Roles – Including Witness Assignments

Most of the class exercises require witnesses. On the Small Group Assignments, students may be designated by letter, **A** or **B**, with a number. Check this sheet to see if you have been assigned a witness role for a particular problem.

If you have been assigned a witness role, you must:

1. Be prepared – know the proposed evidence of the witness assigned
2. Be authentic – get into the role of the witness
3. Do not prepare as counsel for the problem if you are a designated witness.

For some problems, there are two parties or roles to be played, e.g. counsel for the Plaintiff or Crown and counsel for the Defendant or Accused. Which role you are to prepare to play is determined by an A designation or B designation. Everyone in the course has been designated either as an A or B. See the Small Group Assignments to see what your designation is: this designation does not change during the course. By referring to the course schedule for each day you can determine your role for each assigned problem.

Trial Partners

You will also be working with a partner for the final trial presentation and the Trial Book submission. You and your partner will be working together throughout the three weeks preparing your case for trial and creating your Trial Book. Due to the number of students registered in the course, it is possible that you will not have a trial partner. If this occurs, the Course Coordinator will discuss appropriate modifications to assist you in presenting your case at trial.

5. TEACHING FACULTY

The teaching faculty for the program consists of practicing litigators and judges from both the Provincial Court and the Court of Queen's Bench. Each day, while in your small group, you will have either a lawyer or Provincial Court Judge assisting you with the in-class exercises and providing feedback. Depending on availability, there will also be lawyers providing individual video review. There will be Justices of the Queen's Bench of Alberta attending for the pre-trial conferences. There will also be Judges for the final trial, which will consist of lawyers and judges. On occasion, there will be special guests coming into the small group session for short periods of time who will be providing expert feedback.

Additionally, each small group will have a Trial Advocacy Mentor, who will provide advice to you in your preparation for trial. This Mentor will be a practicing lawyer who you may contact during

your trial preparation. You will receive the name and contact information of your Mentor but you will be responsible to arrange a time to speak to your Mentor if you need the assistance.

Lisa Silver, the Course Director, oversees the course. She will be present throughout the program and will be responsible for directing the teaching and organizing the final trials. She will be providing digital recording review and advice whenever needed and may act as a “spare” should an instructor be unable to attend. Any issues and concerns must be discussed with the Course Director. She is available via email at lisaann.silver@ucalgary.ca and in her office at MFH 4338.

6. SCHEDULE OVERVIEW

The course starts on Monday, January 7, 2019 and ends on Saturday, January 26, 2019. The Trial Book is due on Monday, January 28 by 4:00 pm. You will have daily classes from Monday, January 7 to Tuesday, January 22. From Wednesday, January 23 to Friday, January 25, you should be completing your final trial preparations, including the preparation of your witnesses and your Trial Book.

We are sharing the facility with the other block weeks and, in an effort to accommodate the instructors who are practicing lawyers and judges, the timing of our daily schedules changes each day. When not in class, you will be expected to prepare for the in-class assignments and your final trial presentation.

The following will give you a general idea of the timing of your daily course sessions. The detailed schedule with the daily assignments will be posted on D2L in late November/early December of 2018.

- A. Week one will start on Monday, January 7 from 8:30 am to 3:00 pm. This an intensive full day on fundamental advocacy skills including examination in chief. **To successfully participate on your first day, you must prepare the assignments, in advance, as required and as posted on D2L.** You will therefore need access to your course material before this first day of the course. **Please ensure you purchase your required texts from the bookstore before the December break.**
- B. Tuesday, January 8, will be from 6:00 pm to 9:00 pm and will cover exhibits and demonstrative evidence. Wednesday, January 9 will commence at 1:00 pm and end at 4:30 pm. It is an intensive session on cross examination techniques. On Thursday, January 10, we will work on impeachment exercises from 9:00 am until 12:00 pm. On Friday, January 11, we will learn re-examination and objection techniques from 9:00 am until noon. At noon, we will attend the Milvain Lecture, which is mandatory for all 3Ls. Typically, the Milvain Chair also participates in classes on January 10 and 11.
- C. Week two will start on Monday, January 14 at 1:00 pm to 4:30 pm when you will be presenting your *Goldilocks* mini-trials. On Tuesday, January 15 from 9:00 am to noon, you will work with professional witnesses, namely police officers and crime scene analysts. On Wednesday, January 16 from 6:00 pm to 9:00 pm, you will discuss trial preparation of your case file, ethical obligations and civility issues. Thursday, January 17 is a full day of working with expert evidence and experts as witnesses from 9:00 am to 3:00 pm. We will have a group of psychologists and psychiatrist to assist in our learnings. To end the second week, on Friday January 18, from 1:00 pm to 4:00 pm, you will negotiate with your opposing counsel on trial admissions and draft an agreed statement of fact and admissions for trial.

- D. Week three will start in the evening of Monday, January 21, from 6:30 pm to 9:30 pm where you must be prepared to conduct a pre-trial conference before a QB Justice. Please dress in business attire for this attendance. Your final class will be on Tuesday, January 22 from 1:00 pm to 5:00 pm where you will present your proposed opening and closing statements for trial.
- E. The balance of week three from January 23 to 25 will be dedicated to your final trial preparation. During these days, it is recommended you contact your Trial Advocacy Mentors (TAM) for some final advice. Trial Advocacy Mentors are practicing lawyers who will make themselves available to you for feedback and advice on final trial preparation. You will be advised of the name and contact information of your TAM at the beginning of the course.
- F. Trial day is on Saturday, January 26 at the Calgary Court Centre from 9:00 a.m. until 2:00 pm. Bring a bagged non-perishable lunch with you.
- G. Submit your Trial Book to my administrative assistant by 4:00 pm on Monday, January 28, 2019.

The above schedule is subject to change at the discretion of the Course Coordinator but you will be informed in advance, if possible, of any such changes.

Before the start of the course daily course content and instructions will be posted on D2L. The following are descriptions of some of the terms used in the schedule:

A. Demonstration Sessions

There will be several demonstration sessions. During these sessions, the faculty will perform demonstrations, which will be followed by discussions and comments on the performance and brief lectures regarding the type of task demonstrated.

The demonstrations each day will deal with those aspects of advocacy that you will be concerned with later that day or the following day. To maximize the benefit of these demonstrations, familiarize yourself with the demonstration problem, before the demonstration. Think through how you would carry out the task being performed by the faculty.

B. Small Group Sessions

The use of small group sessions for much of the day makes it possible for every student to have an opportunity to perform as counsel several times each day. During these small groups, you will either be performing, discussing Trial Book elements, completing written or oral exercises. You may also be reviewing your performance on videotape. The teaching staff will provide feedback on your performances and written material.

C. Digital Recording Review

Each of you are required to have at least one performance digitally recorded for a one-on-one review with an instructor. If your performance was recorded and an instructor is available, you may be called out of your small group to be reviewed by one of your teaching team members. You may also contact the Course Director, who can also provide a review.

D. Drafting Exercises and Small Group Discussion

There will be drafting exercises and small group discussions to help you understand the various requirements involved in litigating a case.

E. Trial Advocacy Mentors

During week three you and your trial partner will have a Trial Advocacy Mentor, who is a practicing lawyer available to assist you with your final trial preparation. This mentor can give you feedback on your approach to your case and act as a “sounding board” in terms of tactics and strategies. During the course, you will meet your Trial Advocacy Mentor and receive their contact information. It is your responsibility to contact your mentor when needed either by email, telephone, Skype or in person. It is strongly recommended that you contact your Trial Advocacy Mentor at least once before your final trial presentation on January 26.

7. FINAL TRIALS

On the final day, Saturday, January 26, 2019, full trials will be held and each of you will have an opportunity to try a full case. These trials will take place at the Court of Queen’s Bench, Calgary Courts Centre, 601 - 5th Street S.W., and will be presided over by experienced lawyers and/or Judges of the Provincial Court or Court of Queen’s Bench. If an alternate date is required for religious or personal emergency reasons, the trial will be held at the University.

You will be conducting either a criminal or civil trial as per your course selection. The trials are conducted with co-counsel (i.e. two participants representing each party) as assigned. The partner assignments will be based on your partner request forms as submitted but may be changed at the Course Director’s discretion. It is also possible, due to course registration numbers, that you will not have a partner or a party will have more than 2 counsel assigned. If this happens, the Course Director will discuss with you any modifications to your trial presentation.

You will need to arrange for witnesses at the trial (1Ls or 2Ls, family, friends, neighbours, etc.). It is recommended that you secure your witnesses early. An email will be sent to all 1Ls and 2Ls to encourage their assistance as witnesses. If you are having problems finding witnesses, please advise the Course Director as soon as possible.

Although many serious trials in Alberta are done without a jury, this is a unique opportunity to practice in a jury trial environment. **However, a jury trial is optional.** If you do decide to try your matter before a jury, you must find the members of the jury. It is recommended you choose individuals who have no legal background. You need not have a full jury (criminal 12 plus alternates and civil 6) but you must have **at least 3 jurors for civil and 5 jurors for criminal**. You must be prepared to give a jury address (closing and opening), which differs from an opening and closing statement without a jury. If you decide to have a jury you must advise the Course Director of this choice as soon as possible.

The dress is business attire for the trials. In a real trial scenario, you would of course be gowned.

8. TRIAL BOOK

The Trial Book is an integral part of your trial preparation and presentation. It is an advocacy tool to assist you in the effective and efficient presentation of your case. It will also reflect your approach to the case including the theory of your case and the themes you will be developing throughout the

file. It will help you think through the various twists and turns of a real case and help you build a persuasive position. The contents of the Trial Book will be explored in more detail in your material. Be aware that you must include in your Trial Book some of the exercises done during the course pursuant to the detailed instructions. The Trial Book must reflect the case presented by you and your partner. You must submit **one Trial Book per trial partner. This means one Trial Book for each party presenting the case. For example, one Trial Book will be submitted on behalf of the two students representing the Plaintiff.** If, due to the number of students registered in the course, you have no partner or you have more than one partner, you must see the Course Coordinator for instructions on any modifications to the Trial Book. The Trial Book must be submitted by 4:00 pm Monday, January 28, 2019 to Therese De Long.