

TRIALS AND TECHNOLOGY
MASSACHUSETTS SCHOOL OF LAW
PROFESSOR TODD CHEESMAN
FALL 2009

SYLLABUS

Overview

In order to become a more effective lawyer in the 21st century, you need to be able to serve more clients better than ever before. Office and courtroom technology can help you be a more productive, higher paid attorney by allowing you to more efficiently organize and prepare for trial and then to argue more persuasively at trial.

The purpose of this course is to teach the student how to prepare and conduct technology-intensive trials or trials in which one must display complex visual or quantitative information. To that end, you will become familiar with programs used to organize large cases including Summation™ and Trial Director™, as well as programs used to present visual information at trial including Sanction™ and PowerPoint™. You will learn evidentiary rules involved in presenting electronic evidence and evidence that is electronic in nature. Also, you will learn how to use courtroom hardware in presenting your case including the document camera, laptop/PC system, LCD projector and e-Beam. You will also develop effective argumentation skills through a series of written and litigation exercises.

When you complete Trials & Technology you will possess:

- 1) An understand how large cases with numerous exhibits are organized
- 2) A working knowledge of the leading courtroom software and hardware available today
- 3) Experience conducting a mock high-tech trial
- 4) A foundation in the principles of conducting Electronic Media Discovery
- 5) Greater ease in conducting trials regardless of the amount of technology employed

Prerequisites

This course is open to all second and third year students. While it is helpful to have completed a course in Evidence or Trial Advocacy, this is not required.

Required Texts

Litigation Technology and Trial Practice by Brian Cummings

Cases and Materials on Trial Technology

The textbook will be available through the bookstore.

Web Site

There is a class web site for this course. Students must regularly check this site for changes in the syllabus, assignments, and class schedule. The site contains handouts, supplemental materials and links to other relevant sites, etc. The website is www.cheesmanlaw.com. You will need a username and password to access these materials.

Contact Information

Todd Cheesman, Adjunct Professor of Law

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Telephone: 978-912-7415

Office Hours: by appointment

Assignments and Grading

This course takes you chronologically through the development of a case requiring the use of visual presentation technology at trial. This organizational model allows you to employ technologies in the way they would be utilized in actual cases, developing the skills you need as the case itself develops.

Each week you will have written, computer or litigation exercises. These assignments constitute 60% of your grade in the course. The remaining 40% is based on your performance in a final trial.

Online:

You will need online access for some parts of this class. Our website is cheesmanlaw.com. I will assign you user names and passwords to access these materials. If you lose your password, you can contact me by email to receive a copy.

Special Needs

Students with special needs are encouraged to meet with me during office hours to discuss accommodations for any type of physical or learning disability.

Class Attendance and Tardiness

You are expected to be in class and ready by 6:30 p.m. If you are late, you may be directed to leave the classroom. If you have an assignment due that day it will not be accepted. Repeated lateness or absences will result in a deduction in your course grade. Assignments for each previous week must be turned in at the beginning of class. Late assignments will result in a deduction of grade on the assignment. Requests for extensions of assignments or for class absence must be made as far in advance as possible. Missing assignments will result in a deduction of course grade.

Eating and Drinking

There is no eating in class. Drinks are permitted.

Software and Hardware

The class will be afforded the opportunity to use PowerPoint and Sanction. Other software may be cursorily utilized in the course. PowerPoint and Sanction will be available for the students for class preparation. If students want to work at home, copies of PowerPoint and Sanction will be made available for purchase. If you choose to do your work at home you should bring your work to class on your own laptop or on a CD. If you have a CD - RW format that will run on an Iomega external CD drive then you can use RW CDs.

Assignments

Week 1 High-Tech (Electronic) Trials v. Conventional Trials

Assignment: The High Technology Trial, Chapters 1 & 2

Week 2 Discoverability of Your Data from Opposing Counsel (Electronic Media Discovery)

We will first review a sample case organization for *Dixon v. Providential*. We will discuss what evidence we have and the purposes for organizing the material as we do.

We will then overview electronic data discovery language, motions for protective order to preserve electronic evidence, requests to produce regarding computerized records discovery, metadata, stipulations regarding computerized records discovery and establishing a procedure for the examination of computer hard drives.

Assignment: Litigation Technology & Trial Practice, Chapters 1 and 2

Week 3 Electronic Media Discovery (EMD) continued – knowing what to look for and where to find it

We will address important issues in conducting EMD including discovery of computer records including e-mail and discovery stipulations.

Assignment: The High Technology Trial, Chapters 3 &4

Week 4 Pre-trial preparation of Data for Your Case/ Transcript Management

Topics covered will include: automated LT considerations, electronic research developments and selecting and retaining a technology consultant.

We will also cover using Sanction to manage transcripts for preparing your own in-house video depositions

Assignment: The High Technology Trial, Chapter 5

Week 5 Introduction to the Smart Courtroom

Traditional Persuasion methods v. Fundamentals of persuasion with visuals: Theme Construction through Value Analysis - two tiered case analysis (central persuasion and peripheral persuasion) and point of view selection. Suggestions for using visuals during opening statements and closing arguments. Introduction to the Use of the Document Camera. Students will be introduced to the document camera and its use with the PC.

Assignment:

Read: The High Technology Trial, Chapter 6

Do: Prepare opening statement in the case of *Dixon v. Providential Life Insurance Company*.

Teams A, C, E prepare Plaintiff's opening

Teams B, D, F prepare Defendant's

Both sides are to create appropriate visuals and use exhibits that support your theory of the case.

Week 6 Opening statements with Linear Presentation

Creating demonstrative slide presentations. We will introduce PowerPoint and competing software, discuss their benefits and drawbacks from the litigator's perspective and experiment with each software.

Students perform opening statements using visuals on the document camera on behalf of their assigned side. At the end of this practice, students' performances will be critiqued. A video of the performances will be placed on hold in the library.

Team A v. Team B

Team C v. Team D

Team E v. Team F

Assignment:

Read: Assignment: Litigation Technology & Trial Practice, Chapter 3

Do: Prepare opening statement in the case of *Dixon v. Providential Life Insurance Company* using Sanction™. The team member who operated the computer last time will argue and vice versa.

Teams A, C, E will again prepare Plaintiff's opening

Teams B, D, F will again prepare Defendant's

Both sides are to create appropriate visuals and use exhibits that support your theory of the case.

Week 7

Non-Linear Visual Presentation and Sanction™

Creating interactive demonstrative slide presentations and discussing needs, benefits and considerations. We will introduce for instance, E-beam and Sanction, discuss creation and display issues from the litigator's perspective and experiment with each software.

Assignment:

Read: Assignment: Litigation Technology & Trial Practice, Chapter 4
The High Technology Trial, Chapter 7

Do: Teams A, C, E prepare to direct Mary Dixon, Dr. Sharpe, Sheriff Webb and attempt to Introduce Video Deposition of Anna Martin

Teams B, D, F prepare to cross Mrs. Dixon, Dr. Edward Sharpe and Sheriff Webb and oppose the introduction of the Video Deposition or portions of it.

Week 8 Directing and Crossing with Linear and Nonlinear presentation tools

Students will perform direct and cross-examinations of Sheriff Fred Webb and Mrs. Mary Dixon and to address the introduction of the video deposition of Ms. Anna Martin.

Assignment:

Read: Assignment: Litigation Technology & Trial Practice, Chapter 5

Do: Teams B, D, F prepare to direct Robert Wilson, William Burns and Norman Crowe.
Teams A, C, E will cross Wilson, Burns and Crowe.

Week 9 Closing Arguments:

Students present a closing argument that incorporates visuals into the presentation. Students may use Linear as well as non-linear presentation media. You should be prepared to use at least 2 of the following: Sanction, Summation, PowerPoint, e-Beam, and the Document Camera.

Assignment:

Read: The High Technology Trial, Chapter 8
Litigation Technology & Trial Practice, Chapter 6

Week 10 Trial Presentation – refining your skills

We will review video of selected performances so far this semester, addressing what students are doing well, asking what they could improve and addressing tactical and persuasion issues of their performances.

Assignment:

Read: The High Technology Trial, Chapter 9

Assignment: Students on Teams A, C, E prepare objections to exhibits 1-7 and arguments for admitting exhibits 8-12; Students on Teams B, D, F prepare arguments for admitting exhibits 1-7 and objections to exhibits 8-12.

Week 11 Evidentiary Issues in using Courtroom Technology

Teams will attempt to introduce and object to evidence from the assignment. We will then discuss their performances, have a short lecture on electronic evidence and watch a video on the presentation of evidence that is originally electronic in nature.

Assignment:

Read: The High Technology Trial, Chapter 10

Do: Students will work individually on the assignments at the end of the chapter on preparing a visually compelling case.

Week 12 Persuasion Issues in using Courtroom Technology

Students will watch several vignettes in which attorneys use visual media to present different kinds of information at trial. After a discussion of the video, students will break up into four teams and in the time remaining organize materials they will be given in Week to illustrate one simple element of their case that they want to communicate to the jury. We will then discuss the selection and presentation of evidence.

Assignment:

Read: The High Technology Trial, Chapter 11

Do: Teams A, C, E will prepare non-linear directs of Mary Dixon and Sheriff Webb and crosses of Robert Wilson, William Burns and Norman Crowe.

Week 13 Direct and Cross Examination Using Non-Linear Applications

Students will perform vignettes based on non-linear software applications and techniques discussed in the previous Week.

Assignment:

Read: The High Technology Trial, Chapter 12

Do: All teams prepare closing arguments for their side of the case. Students should have backup plans in case there is a “disruption” to power, the computer fails or there is some other unusual glitch hampering the presentation of electronic evidence.

Week 14 Closing Arguments – Pulling it all together

This time, students perform closing arguments with visuals using any and all hardware and software they desire. The performances will then be critiqued.

Assignment:

Read: N/A

Do: Prepare for the final trial

Week 15 Legal Strategies and Low Cost Technology Options in the Preparation and Presentation of Your Case

We will discuss options for attorneys in small law offices and courtrooms that are not equipped with technology. We will address considerations for the attorney to consider when evaluating what technology to employ in any given case. We will then address any specific questions students have regarding the final exam.