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FALL 2009

TRIAL ADVOCACY
SYLLABUS
[Course No. 6203]

I. Table of Contents. i-ii

II. Schedule of Class Events (includes Big Trial dates).. 1-2

III. Objectives and Grading of Course:

 (1) Objectives and Syllabus. 3

 (2) Counsel's Role in the Litigation System. 4

 (3) Format of the Course - Part "A".. . . . 5

 (4) The Big Trial - Part "B". 7

 (5) Required Books and Materials. 8

(6) FORM #1.. . . . 9

(7) FORM #2.. . . . 10

 (8) Ground Rules for the Course. 11

 (9) Grade Format for Classroom/Trial. 13

 (10) Master for Trial Advocacy Keys.. . . . 14

 (11) Students with Disabilities

15

IV. Assignments/Dates, and Trial Preparations. 16

V. Preliminary Matters:

ROWE v. PACIFIC QUAD, INC... . . . CASE

(Pick up at the Union Bookstore Textbook Dept.)

1. Opening Statement- <u>ROWE v. PACIFIC QUAD, INC.</u>	CASE
2. Direct/Cross Examination- <u>ROWE v. PACIFIC QUAD, INC.</u> ...	CASE
(a) <u>Key</u> witness for the Plaintiff in <u>ROWE v. PACIFIC QUAD, INC.</u>	
(b) <u>Key</u> witness for the Defendant in <u>ROWE v. PACIFIC QUAD, INC.</u>	
3. Closing Arguments - <u>ROWE v. PACIFIC QUAD, INC.</u>	CASE
4. Plaintiff's Team/Defendant's Team - <i>Appendix A</i>	27-28
5. Attorney Worksheet for the Pretrial Conference - <i>Appendix B</i>	29
6. Representative Table of Contents for A Trial Notebook - <i>Appendix C</i>30
7. Books/Videos - <i>Appendix D</i>	31-33
8. Key to Each Exercise - <i>Appendix E</i>	34
9. Planning for the Big Trial - Evidentiary Issues to Consider - <i>Appendix F</i>	35
10.Key for Prep Sheets - <i>Appendix G</i>	36
11.Additional "Ground Rules" - <i>Appendix H</i>	37
12. Anatomy of a Trial - <i>Appendix I</i>	38-39

**TRIAL ADVOCACY - FALL 2009
SCHEDULE OF CLASS EVENTS**

August 24 (Mon.)	First Written Assignment - [Orientation] (meet student coordinators)	Courtroom 240 See p. 16
August 25 (Tues.)	Second Written Assignment "Short Form" motion due!	Courtroom 240 See p. 17
August 31 (Mon.)	Third Written Assignment	Courtroom 240 See p. 18
September 1 (Tues.)	Fourth Assignment. Meeting with Professor Bailey.	Courtroom 240 See p. 19
September 3 (Thurs.)	Special Written Assignment:: One Question due to Ms. Herrington in room 187 by 3:00 p.m. See pages 18 (Part E) and 19 (Part C).	
September 7 (Mon.)	LABOR DAY HOLIDAY NO CLASS	
September 8 (Tues.)	Fifth Assignment First meeting with Judges (Pretrial Conferences)	See p. 20
September 14 (Mon.)	Sixth Assignment (Critiques of Pretrials)	See p. 21
September 15 (Tues.)	Sixth Assignment continued (Opening Statement)	See p. 21
September 21 & 22 (Mon. & Tues.)	Seventh Assignment - Discuss critiques of Opening Statements and Direct by Plaintiff & Cross by Defendant	See p. 22
September 23 (Wed.)	Last Day to submit Name of Partner for the Big Trial to Ms. Herrington in room #187 or by e-mail (mherrin@uark.edu)	
September 24 (Thurs.)	Pairings e-mailed to list serv	
September 28 (Mon.)	Last minute questions to Professor Bailey and LOTTERY (one member from each team)!!	COURTROOM 240

September 28 & 29 (Mon. & Tues.)	Eight Assignment - Discuss critiques of Direct-X by Plaintiff and Cross-X by Defendants then Direct by Defense & Cross-X by Plaintiff	See p. 23
October 5 & 6 (Mon. & Tues.)	Ninth Assignment - Judges provide Critiques of Defendant's Direct-X, etc. Closing Arguments.	See p. 24
October 12 & 13 (Mon. & Tues.)	Tenth Assignment - Critique Closing Arguments. Arrange Pretrial Conferences for weeks of Oct. 13th and 20th.	See p. 25
October 14 (Wed.)	Collect Instructions for the Big Trial from Mrs. Herrington in office #187. Last minute questions to Prof. Bailey before Pretrials begin - office #315.	
October 19 & 20 (Mon. & Tues.)	Pretrials Begin! For day and times other than Monday/Tuesday class time, please arrange with your Judge or Ms. Herrington in office #187.	
October 26 (Mon.)	(Pretrials continues). TRIALS BEGIN-FIRST TRIAL	
November 5 (Tues.)	TRIALS END - LAST TRIAL	

PRETRIAL DATES: October 19 and 20 or at other mutually agreed upon times.

TRIAL DATES: October 26 Mon. (Trial #1)
October 27 Tues. (Trial #2)
October 28 Wed. (Trial #3)
October 29 Thurs. (Trial #4)
November 2 Mon. (Trial #5)
November 3 Tues. (Trial #6)
November 4 Wed. (Trial #7)
November 5 Thurs. (Trial #8)

TRIAL TIME/PLACE: 4:30 to 7:30 P.M. — COURTROOM, ROOM 240.

OBJECTIVES AND SYLLABUS

A. The Importance of the Litigation System

The Preamble to the United States Constitution lists, in part, the fundamental objectives of an ordered society. The list of objectives includes "establishing justice and insuring domestic tranquility--" To achieve those objectives, the drafters established a government, including a judicial system described in Article III of the Constitution. The functions of that system are corollaries of the drafters' objectives: to dispense justice to litigants and to insure domestic tranquility by serving as a public mechanism for peaceful dispute resolution. As Hobbes wrote in the 17th century, when people feel free to resort to private, violent methods of dispute resolution, "The life of man" is likely to be "poor, nasty, brutish, and short".* In essence, an effective litigation system is a *sine qua non* for a just, orderly society. In our republic, the right of access to the litigation system is considered so valuable that the Supreme Court has elevated the right to constitutional status.**

* A. Castell, An Introduction To Modern Philosophy 360 (2d ed. 1963).

** Bounds v. Smith, 430 U.S. 817 (1977); Boddie v. Connecticut, 401 U.S. 371 (1971).

COUNSEL'S ROLE IN THE LITIGATION SYSTEM

Just as the litigation system serves a vital function with our society, so too does the attorney serve a critical role within that system. The primary conception of the trial attorney's role is that he functions as a representative of and an advocate for a client involved in litigation or anticipated litigation. The Arkansas Rules of Professional Conduct in its preamble list the first role of counsel as that of a "representative of clients." Such a representative, however, must be competent, because incompetent counsel can neither protect a client's interests nor help insure the effective operation of the system.

The purpose of this course is to assist law students to become either competent trial counsel or competent assistants to competent trial counsel (or competent to determine when you're not competent). The Fall 2009 Trial Advocacy course will attempt to inculcate basic trial competencies by following a rigid schedule of assigned readings, brief lectures, video presentations, draftings, role plays, and critiques.

PART "A"

The class schedule is *extremely tight*. So there will be no opportunities to make up a missed assignment. A major objective of the course is to permit you to perform **segments of** and a **full trial** before NOVEMBER 10, 2009.

FORMAT OF THE COURSE

Three graded activities:

1. Written preparatory assignments + Oral arguments - 10%
2. Oral presentations - 40%
3. Big Trial - 50%

I. Written Preparatory Assignments, Practice Session and Critiques - 10% of Grade

Each Student Must:

- (a) **Attend All Classes** *(Any student who is over twenty (20) minutes late to class will be considered absent for that class!)*
- (b) **Read All Assignments** - All students **are required** to read assignments from Mauet's "**Fundamentals of Trial Techniques**" or "**Trial Techniques**."
- (c) **Prepare and Submit** - Written assignments based on the reading assignments. Students **are required** to prepare and submit **three (3)** written assignments (including a "*short form*" motion!) to Professor Bailey. These written assignments will be used to evaluate a student's understanding of the (1) **ROWE v. PACIFIC QUAD, INC.** case (2) **Federal Rules of Evidence**; and (3) **Principles from Mauet, and Rules of Professional Conduct**.

II. Oral Classroom Assignment - 40% of Grade

- (a) **FIVE (5) Graded Exercises: Pretrial Conf., Opening, Direct-X, Cross-X, Closing.**
- (b) Before each graded exercise all students should prepare a **one (1) page "prep"** written outline or verbatim account of the questions, issues plans or strategies he/she intends to employ during that exercise. This **written account** should be based on the Professor's (or your Judge's) lecture and the appropriate chapter(s) in Mauet See **Appendix G at p. 36** of this syllabus.
- (c) On the day of the exercise (usually on Tuesday), the Judge/Professor will require each student to present the day's exercise. The professor will serve as "Judge."

- (d) At the next class day (usually the following Monday) the Judge/Professor will **critique** (assess the good and bad points) of each student's performance. The Judge/Professor shall offer some "general" lessons or principles from the completed exercise.
- (e) This "exercise" performance at one class (Tuesday) then critique at the next class (Monday) format will be repeated until all FIVE EXERCISES have been completed.

III. **BIG TRIAL: 50% of Grade**

- (a) **Two - two**-person teams will oppose each other in a Three (3) hour trial (**ROWE v. PACIFIC QUAD, INC.**). As a part of the team presentation, one student will be required to do an Opening while the other does a Closing. Then, **each** student must perform a Direct-X, Cross-X, and **part of** a Pretrial Conference. [There will be **no Voir Dire** during the **Big Trial!**]
- (b) At the end of the trial, the Judge will critique the student presentations.
- (c) A twelve (12) person jury will be required to complete a **two-page evaluation** of each student's presentations. [The jury evaluations **will not** constitute any part of the final grade.]

PART "B"

THE BIG TRIAL

- (1) See p. 2 of the Syllabus for the Pretrial and Big Trial dates.
- (2) Trials begin **MONDAY, OCTOBER 26, 2009**.
- (3) Each **Big** trial team will consist of two partners. Students should submit **both team members' names** to Mrs. Herrington in a special envelope in her office #187, Leflar Law Center no later than **2:00 p.m. on WEDNESDAY, SEPTEMBER 23, 2009**.
- (4) Each trial will be preceded by a **pretrial conference**. Each team member will not only be graded on her/his performance during the **3-hour "Big Trial"** but each will also be graded on the pretrial conference that precedes the **Big Trial**. Please **dress professionally** for the **"Big Trial"** and the **Pretrial Conference**.

EXTRA POINTS AFTER THE BIG TRIAL

- **TRIAL NOTEBOOK - IN ORDER TO RECEIVE CREDIT FOR A NOTEBOOK, IT MUST BE SUBMITTED TO MRS. HERRINGTON IN ROOM 187 BY 2:00 P.M. THE DAY AFTER THE TRIAL. [A TRIAL NOTEBOOK IS NOT A REQUIREMENT!]**
ONLY **ONE** notebook **per team!!** A notebook submitted **after the deadline** and **to anyone other than** Mrs. Herrington **WILL NOT** receive credit!!

- **See Form #2** - See p. 10 infra. - **FINAL GRADE** form from Classroom and the Big Trial.

REQUIRED BOOKS AND MATERIALS

A. Required Books:

- Mauet “Fundamentals of Trial Techniques” OR “Trial Techniques”

B. Required Course Materials:

- **Syllabus & Case Materials** (Available at the Union Bookstore Textbook Department)
- Arkansas Rules of Professional Conduct
- **Federal** Rules of Evidence
- Arkansas Rules of Civil Procedure

PLEASE READ THE "GROUND RULES" FOR THE COURSE (pp. 11-12 of Syllabus) AND CERTAIN RULES IN THE ARKANSAS RULES OF PROFESSIONAL CONDUCT (e.g. **RULES 3.1 - 3.9**).

SUPPLEMENTARY BOOKS & TAPES

- Bibliography of tapes and study aids in Appendix D.
- Suggested Readings: Several copies in the library of Professor Bailey’s materials located on the **Reserve Shelf** and **on the Web**.
 - a. What Lawyers Owe One Another
 - b. Arkansas case - Lessenberry
 - c. "They Don't Like What They Hear," an article taken from Legal Times (December 24, 1990) about the D.C. Circuit’s increasing frustration with the lack of quality in oral advocacy before the courts.
 - d. How to Prepare a Motion
 - e. Pretrial Conference Order
 - f. Stipulations
 - g. Trial Notebook
 - h. The American Board of Trial Advocates Civility Code.
- Videotapes of **student-conducted** Pretrials

FORM NO. 1

TO WHOM IT MAY CONCERN:

I, _____, consent to the use of audio or video recordings of my presentations in the Trial Advocacy course at the University of Arkansas Law School. I understand that the recorded presentations and transcripts thereof will be used for educational purposes at the Law School and that only those authorized will be allowed to utilize said video or audio records and transcripts.

SIGNED

DATE

**TRIAL ADVOCACY
FALL 2009**

**FORM #2
FINAL GRADE
(Class and Big Trial)**

Student's Name: _____

	Pretrial	Opening	Direct	Cross X	Closing	Total Points
Critiques						
Prep Sheets						

TOTAL: _____ (÷ 5)

CLASSROOM GRADE:

- (1) Classroom Exercises (5) (as shown above) _____ (40%) =
- (2) Classroom Written Assignments _____ (10%) =
- (3) Total _____ (50%)

BIG TRIAL GRADE:

- (a) Trial Grade _____ (50%)
- (b) Extra Points _____ Notebook
- (c) Total 50% = + =

GRAND TOTAL

_____ _____
Numerical Grade Letter Grade

GRADE SCALE		
93-100	=	A
90-92	=	A-
88-89	=	B+
83-87	=	B
80-82	=	B-

GROUND RULES FOR THE COURSE

1. Preparation and Background Materials for Classroom Participation

Each student is required to make at least FIVE (5) videotaped oral presentations in order to satisfy a portion of his/her classroom component grade. **See *Grade Key* at page 10.** Before each student performance, your instructor will assign appropriate chapters from Mauet as background reading for the upcoming exercise. (*For instance, see Reading Assignment for the first oral presentation at page 29 "Pretrial Conference."*)

In addition to the assigned chapters from Mauet, your instructor will present a short lecture and invite classroom discussion on that scheduled exercise. The research assignments for classroom discussion and the discussions based on them will be considered as part of the 10% component to the classroom grade average.

Grade Form for Classroom Component

Student's Name _____

- | | | | | |
|-----|-----|---------------------------|-------|-----|
| (1) | (a) | Oral exercise #1 | _____ | |
| | (b) | Oral exercise #2 | _____ | |
| | (c) | Oral exercise #3 | _____ | 40% |
| | (d) | Oral exercise #4 | _____ | |
| | (e) | Oral exercise #5 | _____ | |
| | | | | |
| (2) | (a) | First written assignment | _____ | |
| | (b) | Second written assignment | _____ | 10% |
| | (c) | Third written assignment | _____ | |

2. Student preferences will be observed in assigning **partners** for the Big Trial. Students desiring to work together at the Big Trial should advise Professor Bailey **as soon as possible (or no later than WEDNESDAY, SEPTEMBER 23, 2009)**.
3. Unless otherwise indicated, each case (in the simulated class exercises) is pending or is to be filed or has been filed in the courts of Washington County.

4. The applicable rules of civil procedure are the same as the Arkansas Rules of Civil Procedure, (Arkansas Rules), with such modifications as are necessary to make them applicable in NITA. You should be thoroughly familiar with the rules affecting trial and pretrial procedures, and especially the rules dealing with depositions.

United States Supreme Court Opinions -Constitutional Criminal Procedure should be consulted as the need warrants!

5. All classroom participation assignments and the **Big Trial** follow the **Federal Rules of Evidence**.
6. Unless otherwise indicated, assume that the only available witnesses who can give admissible testimony are those disclosed in the file materials distributed with the assignment. If you wish to use other testimony, which you consider would surely be available in such a case as the one on trial, ask the instructor before the class meeting for permission to assume the availability of such testimony.
7. All students, whether called on to participate in an oral presentation as counsel or not, may be asked during a subsequent class how he/she would have handled some particular aspect of an exercise. The student questioned in this manner must answer orally or as otherwise instructed regarding the following issues: (1) the theory of the client's case (its strength and weakness); (2) the objectives in that phase of trial and how those objectives relate to the theory of the case (overall plan for trial); (3) any risks in the case, and (4) the applicable **[Federal Rules of Evidence]**.
8. Assume that all parties have been given due notice of the taking of any deposition that appears in the course materials.
9. At times, for tactical reasons, a student may decide not to make a valid objection to evidence. In all such instances, the student should make a note immediately and be prepared to state during the instructor's evaluation of that performance why valid objections were not made. Moreover, after the class assignment, the student should give a copy of his/her "non-objections" to the instructor.
10. Conversely, at times a student may make a legally valid objection in carrying out his/her theory that he/she later regards as tactically unwise. The student should be prepared during a subsequent class or critique session to indicate such occasions with reasons for believing them tactically unwise.
11. In some assignments, counsel may decide that the tactically correct examination would be short or nonexistent. Even so, a student may wish to conduct a longer examination in order to gain experience. That student should indicate this desire by a note to the instructor. If time allows, the instructor may then permit the student to conduct the longer examination.

12. To conserve time for critique, the trial judge may interrupt proceedings during any student presentation and instruct counsel to summarize one or more elements of the planned examination. In that event, the instructor may also call on opposing counsel to indicate what objections, if any, she would have made.
13. The roles of court reporter and bailiff will be performed by students. The instructor will designate a court reporter and a court clerk (or a single individual to play the role of a clerk-reporter).
14. Most statements of witnesses, in this handout and in the special materials, are typewritten for legibility. The signature should be assumed to be the handwritten signature of the witness. All photographs and letters should be considered originals.
15. DATES OF RECENT EVENTS IN THESE MATERIALS ARE FREQUENTLY STATED IN A DATING CASE IN WHICH 19Y1 (OR -1) MEANS ONE YEAR AGO, 19Y2 MEANS TWO YEARS AGO, 19Y3 MEANS THREE YEARS AGO, AND SO ON. PLEASE CORRECT TO THE APPROPRIATE YEAR.
16. In the event of a conflict between a ground rule and any special instruction in the assignment book, the special instruction governs; but, to be safe, discuss with the instructor.

GRADE FORMAT FOR CLASSROOM/TRIAL

GRADING KEY

90 - 100	A- to A
80 - 89	B- to B+
70 - 79	C- to C+
60 - 69*	D- to D+

- (ALTHOUGH I HAVE NEVER GRADED BELOW A D-, I RESERVE THE RIGHT TO "AWARD" A FAILING GRADE TO ANY STUDENT WHO DESERVES IT)

CLASSROOM PARTICIPATION - GRADE FORMAT

Comments: Generally your performance was (poor), (satisfactory-average), (good), or (excellent).

Poor	=	60-69
Average	=	70-79
Good	=	80-89
Excellent	=	90-100

- (1) Salient issues in the exercise.
- (2) Issues student presented.
- (3) Quality of execution.
- (4) Significant issues missed.

TIP: If quality of execution is poor and significant issues are missed, students are likely to score in the low average range or the mid-poor range.

MASTER FOR TRIAL ADVOCACY KEYS

CLASSROOM PARTICIPATION

- Knowledge of class objectives - 25 points
- Quality of preparation - 25 points
- Extent and quality of participation - 25 points
- Creativity - 25 points

WRITTEN ASSIGNMENTS

- Recognition of assignment objectives - 25 points
- Quality of preparation - 25 points
- Clarity and organization of product - 25 points
- Creativity (unique interpretation, etc.) - 25 points

PRETRIAL

- Display knowledge regarding facts and law
- Effective motions and arguments
- Effective preservation of the record
- Establish general ground rules for the trial

OPENING STATEMENTS

- Introduction (i.e., parties, scene, instrumentalities, etc.) - 20 points
- Clear statement of relevant issues - 20 points
- Statement of the case - 20 points
- Conclusions/damages (civil case only) - 20 points
- Manner and style of delivery - 20 points

DIRECT-EXAMINATION

- Introduction - 20 points
- Tell a story (develop facts) - 20 points
- Let witness dominate - 20 points
- Exhibits (use of) - 20 points
- Style, demeanor, objections, responses - 20 points

CROSS-EXAMINATION

- Beginning/middle/conclusion - 20 points
- Control witness - 20 points
- Style and demeanor - 20 points
- Evidence and objections - 20 points
- Confirming points for your case - 20 points

CLOSING

- Introduction - 20 points
- Statement of key jury instructions - 20 points
- Resolve issues, style and demeanor - 20 points

Conclusion - 20 points
Rebuttal - 20 points

STUDENTS WITH DISABILITIES

Students with disabilities, whether physical, learning, or psychological, who believe that they may need accommodations in this class, are encouraged to contact the

Center for Students with Disabilities

ARKU 104

Fayetteville, AR 72701

(479) 575-3104 (voice)

(479) 575-3646 (TTY)

ada@uark.edu

web: <http://www.uark.edu/edu/us/csd/>

as soon as possible to ensure that such accommodations are implemented in a timely fashion. Please meet with CSD staff to verify your eligibility for any classroom accommodations and for academic assistance related to your disability.

ASSIGNMENTS - Fall 2009

FIRST WRITTEN ASSIGNMENT - Monday, August 24 - ORIENTATION!

PLACE: Courtroom 240

ALL STUDENTS FIRST WRITTEN ASSIGNMENT!!

- A. Read the **ROWE v. PACIFIC QUAD, INC.** case - (Pick up at the Union Bookstore Textbook Dept.). Also see **Mary Herrington to pick-up Syllabus and Addendum to the syllabus.**
- B. Read Mauet - Chapters 1 and 2.
- C. **Read pp. 1-15 of the Syllabus! (particularly pp. 11 & 12!).**
- D. **Read "Overhead Notes for Trial Advocacy",** Spring 2009-Professor Bailey's Web page for Trial Advocacy (#55).
- E. **PLAINTIFF TEAMS*** - See APPENDIX A, pp. 27-28.
 1. Prepare a one **(1) page** (no more) memorandum identifying:
(Submit the following to Professor Bailey upon entering class.)
 - The **necessary elements** supporting the *Plaintiff's case-in-chief* in **ROWE v. PACIFIC QUAD, INC.;**
 - The **key witness** for the *Plaintiff's case-in-chief*;
 - The **weakest aspect** of the Plaintiff's case-in-chief;
 - **One** concern you have about the case that you wish to discuss with the -Senior Partner- Prof. Bailey. Why is this a concern to you?
- F. **DEFENSE TEAMS*** - See APPENDIX A, pp. 27-28.
 1. Prepare a one **(1) page** (no more) memorandum identifying:
(Submit the following to Professor Bailey upon entering class.)
 - The **necessary elements** supporting **PACIFIC QUAD, INC. defense;**
 - The **key witness** for **PACIFIC QUAD, INC.;**
 - The **weakest aspect** of the defense;
 - **One** concern you have about the case that you wish to discuss with Senior Partner- Prof. Bailey. Why is this a concern to you?

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of judge.

ASSIGNMENTS - Fall 2009

SECOND WRITTEN ASSIGNMENT - Tuesday, August 25

PLACE: Courtroom 240

ALL STUDENTS - TEAMS

- A. Read Mauet - Chapters 2 and 3.
- B. Read the **ROWE v. PACIFIC QUAD, INC.** case.
- C. See Pretrial Conference Order on Reserve Shelf in the Law Library.
- D. **PLAINTIFF TEAMS*** - See APPENDIX A, pp. 27-28.

Submit to Prof. Bailey at class time a **two page** (no more) memorandum (keep a copy for purposes of #3 below) which should cover the following:

1. Identify **one** fact that the Plaintiff may wish to persuade the defense to stipulate to that might simplify the issues in **ROWE v. PACIFIC QUAD, INC.** this case. (See stipulation cases **on the Web**).
2. Identify **three (3)** issues that the Plaintiff should request the court to resolve before trial. Identify a (only one (1)) Rule of Evidence that supports each issue.
3. Submit a **short form motion** (example on the Web) and be prepared to orally argue to the court (Prof. Bailey) for the exclusion of any (**only one!**) item of evidence that **supports** your theory or that **undermine's** your adversary's theory.

- E. **DEFENSE TEAMS*** - See APPENDIX A, pp. 27-28.

Submit to Prof. Bailey at class time a **two-page** (no more) memorandum (keep a copy for purposes of #3 below) which should cover the following:

1. Identify **one** fact that the Defense may persuade the State to stipulate to that could simplify the issues in the **ROWE v. PACIFIC QUAD, INC.** case. (See stipulation cases **on the Web**).
2. Identify **three (3)** issues that the Defense should request the court to resolve before trial. Identify a (only one (1)) Rule of Evidence that supports each issue.
3. Submit a **short form motion** (an example is on the Web) and be prepared to orally argue to the court (Prof. Bailey) for the exclusion of any (**only one!**) item of evidence that **supports** the defense's theory or that **undermines** the Plaintiff's theory.

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of judge.

ASSIGNMENTS - Fall 2009

THIRD WRITTEN ASSIGNMENT - Monday, August 31 and Tuesday, September 1
PLACE: Courtroom 240

[ALL STUDENTS - TEAMS]

- A. Read Mauet - Chapters 3, 4, 5, 6 & 8.
- B. Read the **ROWE v. PACIFIC QUAD, INC.** case.
- C. **PLAINTIFF TEAMS*** - See APPENDIX A - pp. 27-28.

Submit to Professor Bailey at class time a **one-page** (no more) memorandum identifying:

- 1. **Two (2)** points that the Plaintiff **must raise** during its **opening statement**.
- 2. **One (1)** key portion of the key witness's testimony that is **essential** to the Plaintiff's **case-in-chief**. In **three sentences or less**, describe how you will **dramatize** this testimony to the jury.
- 3. **One key exhibit** necessary to prove an element of the Plaintiff's **case-in-chief**. What **rule or rules of evidence** will govern the admissibility of this exhibit?
- 4. **One key portion** of the **key witness's testimony** that you should be prepared to protect him/her on during the Defense's cross examination.

- D. **DEFENDANT TEAMS*** - See APPENDIX A - pp. 27-28.

Submit to Professor Bailey at class time a **one-page** memorandum identifying:

- 1. **Two (2)** points that the Defendant **must raise** during its **opening statement**.
- 2. **One essential portion** of the **Defendant's key witness's testimony** in **three sentences or less**, and describe how you will **dramatize** this testimony to the jury.
- 3. **One key exhibit** that is supportive of the **Defendant's theory**. What **rule or rules of evidence** will govern the admissibility of this exhibit?
- 4. **One key portion** of the **Defendant's key witness's testimony** that you should be prepared to protect him/her on during the Plaintiff's cross examination.

- E. **SPECIAL WRITTEN ASSIGNMENT**: For both teams due to Ms. Herrington in office #187 no later than Thursday, September 3, 2009 at 3:00 p.m. See next page (#19) **Part C** for full instructions.

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of judge.

ASSIGNMENTS - Fall 2009

FOURTH ASSIGNMENT - Monday, September 7 (LABOR DAY - NO CLASS)

PLACE: Courtroom 240

- A. Consult Mauet - Do you have questions? Then see Professor Bailey.
- B. Read the **ROWE v. PACIFIC QUAD, INC.** case - Do you have questions? Then see Professor Bailey.
- C. In preparation for your first meeting with the judges (**Tuesday, September 8, 2009**) *each student* (both teams) is **required** to pose **one (1) (only one!)**** *written* question to Professor Bailey regarding **any one** of the following matters: the *course*, the *syllabus*, **Rowe v. Pacific Quad, Inc.**, the previous *written* assignments, the *upcoming pretrial* or whatever. This question should be submitted to **Ms. Herrington** in office #187 **no later than 3:00 p.m. on Thursday, September 3, 2009.**
- D. **PLAINTIFF TEAMS*** - See APPENDIX A - pp. 27-28.
Submit questions to Professor Bailey before or at class time regarding any aspect of the course. (Particularly, in the "I STILL DON'T GET...." file folder!)
1. Present questions to Professor Bailey about the course, etc.
 2. Prepare for **first meeting** with Judge - **Tuesday, September 8, 2009!**
- E. **DEFENSE TEAMS*** - See APPENDIX A, pp. 27-28.
Submit questions to Professor Bailey before or at class time regarding any aspect of the course. (Particularly, in the "I STILL DON'T GET...." file folder!)
1. Present questions to Professor Bailey about the course, etc.
 2. Prepare for **first meeting** with Judge - **Tuesday, September 8, 2009!**
- F. Since the **Plaintiff's** and **Defense attorneys** will be meeting at a **Pretrial Conference** before a Judge on **Tuesday, September 8, 2009**, each side should:
1. (Prior to this pretrial conference) meet outside of class and **stipulate** (agree **not** to contest at trial) to certain facts or issues that will facilitate an efficient and uninterrupted trial. Plaintiff and Defense attorneys should not, however, weaken their side's case by stipulating;
 2. **Plaintiff** and **Defense** attorneys should give his/her opponent [at least] **48 hours written notice** of what issues he/she **will argue** at the **Pretrial Conferences on Tuesday, September 8, 2009**; and
 3. **All** stipulated matters **must** be reduced to writing and signed by the Plaintiff and Defense attorneys. A copy of those written stipulations should be presented to the Judge at the **Pretrial Conferences on Tuesday, September 8, 2009.**

****All other** questions must be personally presented to Professor Bailey in his office #315.

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of judge.

ASSIGNMENTS - Fall 2009

FIFTH ASSIGNMENT - Monday, September 7 NO CLASS (University Closed)

Tuesday, Sept. 8 Pretrial Conferences!!

PLACE:	Prettyman	-	Courtroom
	Hyslip	-	Room 339
	Threet	-	Room 342

PLAINTIFF AND DEFENSE TEAMS:

- A. Read Mauet - Chapter 1.
- B. Read Ark. R. Civ. p. 16 and Ark. R. Crim. p. 20.1-10.4.
- C. See Stipulation Cases on the Web.
- D. Read ROWE v. PACIFIC QUAD, INC. case.

1. **MONDAY, SEPTEMBER 7, 2009 - NO CLASS!**
2. See previous page (19) for **additional** written assignment-to submit to Ms. Herrington in office #187.
3. **TUESDAY, SEPTEMBER 8, 2009 - Pretrial Conferences:** During the pretrial conference in the **ROWE v. PACIFIC QUAD, INC.** case, each student from the Plaintiff's side and each from the Defense's side will meet with the judge in "chambers" and discuss those matters usually covered at a pretrial conference (see **Pretrial Conference Order on Reserve Shelf in the Law Library**, Ark. R. Civ. p. 16 and Ark. R. Crim. p. 20.4). Each student will have approximately **TEN MINUTES** to present his/her issues at the conference.
3. The judge will select one of the two attorneys to prepare a pretrial order based on the judge's orders and the party's agreements at the pretrial conference of **TUESDAY, SEPTEMBER 8, 2009**.

The student attorney who was not selected to draft the pretrial order will be responsible for reviewing and editing the selected party's draft order. After the order has been reviewed and edited, both attorneys will sign their names to the completed order. The **signed** order shall be presented to the judge at the class hour on **MONDAY, SEPTEMBER 14, 2009**.

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of judge.

ASSIGNMENTS - Fall 2009

SIXTH ASSIGNMENT - Monday, September 14 and Tuesday, September 15

PLACE:	Prettyman	-	Courtroom 240
	Hyslip	-	Room 339
	Threet	-	Room 342

PLAINTIFF AND DEFENSE TEAMS:

- A. Read Mauet - Chapters 3.
- B. Read the Pretrial Conference Order in **ROWE v. PACIFIC QUAD, INC.** case.
- C. Read the Ground Rules for the Course.
- D. Read the **ROWE v. PACIFIC QUAD, INC.** case.
 1. **MONDAY, SEPTEMBER 14, 2009** - All students (both **Plaintiff*** and **Defense*** teams) must meet with the judges to discuss critiques of the pretrial conferences in the **ROWE v. PACIFIC QUAD, INC.** case.
 2. **TUESDAY, SEPTEMBER 15, 2009** - Each student from the **Plaintiff side** and each student from the **Defense side** will **present opening statements** in the **ROWE v. PACIFIC QUAD, INC.** case. Each student will have approximately **TEN MINUTES** to complete his or her opening statement. (Please present pretrial order to the judge).

* See Appendix A, pp. 27-28 for Classroom Team Designations and name of appropriate judge.

ASSIGNMENTS - Fall 2009

SEVENTH ASSIGNMENT - Monday, September 22 and Tuesday, September 23

PLACE: Hyslip - Courtroom 240
Prettyman - Room 339
Threet - Room 342

PLAINTIFF AND DEFENSE TEAMS:*

- A. Read Mauet - Chapters 4, 5, 6 & 8.
 - B. Read the Pretrial Conference Order in the **ROWE v. PACIFIC QUAD, INC.** case.
 - C. Read the Ground Rules for the Course.
1. **MONDAY, SEPTEMBER 21 and TUESDAY, SEPTEMBER 22** - *All students must meet with Judges to discuss the critiques of Opening Statements in the **ROWE v. PACIFIC QUAD, INC.** case.*
 2. **TUESDAY, SEPTEMBER 22, 2009** - Each student from the **Plaintiff side** will conduct a Direct Examination of his/her **key** witness. Although each student should prepare a full Direct Examination, he or she will be given only **TEN MINUTES** to conduct the Direct Examination.
 3. Each student from the **Defense side** will conduct a Cross Examination of the **Plaintiff's** witness. Each defense attorney should prepare a full Cross Examination; he/she will be given only **FIVE MINUTES** to conduct the Cross Examination.
 4. **WEDNESDAY, SEPTEMBER 23, 2009** - FINAL DAY (2:00 P.M.) TO SUBMIT NAME OF PARTNER TO MRS. HERRINGTON. AN ENVELOPE WITH THE HEADING "**PARTNERS FOR BIG TRIAL**" WILL BE AVAILABLE IN MRS HERRINGTON'S OFFICE, **ROOM 187**.
 5. **THURSDAY, SEPTEMBER 24, 2009** - The pairings for the Big Trial (e.g., who will be Plaintiff's and their respective opponents) will be e-mailed to the students. There shall be two (2) attorneys on each team. All four (4) attorneys should meet on the weekend of **FRIDAY, SEPTEMBER 25 AND SATURDAY, SEPTEMBER 26** to decide the date of the trial, and the name of the judge the group prefers. All selections will be by **LOTTERY**. One representative from the four-person weekend discussion group should come to the **Courtroom** at class time on **MONDAY, SEPTEMBER 28, 2009** to select a Lottery Number (1-12). The lowest pick (#1) will select **first**. Selections will take place in the **Courtroom** on **MONDAY, SEPTEMBER 28, 2009**.

- * See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of appropriate judge.

ASSIGNMENTS - Fall 2009

EIGHTH ASSIGNMENT - Monday, September 28 and Tuesday, September 29

PLACE:	Threet	-	Courtroom 240
	Prettyman	-	Room 339
	Hyslip	-	Room 342

PLAINTIFF AND DEFENSE TEAMS*

- A. Read Mauet - Chapters 4, 5, 6 & 8.
 - B. Read the Pretrial Conference Order in the **ROWE v. PACIFIC QUAD, INC.** case.
 - C. Read the Ground Rules for the Course.
1. **MONDAY, SEPTEMBER 28, 2009** - All students (both Plaintiff* and Defense* teams) must meet with the judge to discuss critiques of opening statements in the **ROWE v. PACIFIC QUAD, INC.** case, **LOTTERY IN THE COURTROOM TODAY!**
 2. **MONDAY, SEPTEMBER 28, 2009** - All students (both Plaintiff* and Defense* teams) must meet with the judges to discuss the critiques of Plaintiff's Direct and Defendant's Cross Examination.
 3. **TUESDAY, SEPTEMBER 29, 2009** - Each student from the **Defense side** will conduct a Direct Examination of its **key** witness. Although each defense attorney should prepare a full Direct Examination, he or she will be given only **TEN MINUTES** to conduct the Direct Examination.
 4. Each student from the **Plaintiff side** will conduct a Cross Examination of the defense's key witness. Although each Plaintiff should prepare a full Cross Examination, he/she will be given only **FIVE MINUTES** to conduct the Cross Examination.

- * See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of appropriate judge.

ASSIGNMENTS - Fall 2009

NINTH ASSIGNMENT - Monday, October 5 and Tuesday, October 6

PLACE: Prettyman - Courtroom 240
Threet - Room 339
Hyslip - Room 342

PLAINTIFF AND DEFENSE TEAMS*

- A. Read Mauet - Chapter 7.
- B. Read the Pretrial Conference Order in the **ROWE v. PACIFIC QUAD, INC.** case.
- C. Read the Ground Rules for the Course.

1. **MONDAY, OCTOBER 5, 2009** - All students (the Plaintiff* and Defense* teams) must meet with the judges to discuss the critiques of the Defendant's Direct and the Plaintiff's Cross Examinations.
2. **TUESDAY, OCTOBER 6, 2009** - Each student from the **Plaintiff side** and each from the **Defense side** will present Closing Arguments in the **ROWE v. PACIFIC QUAD, INC.** case. Each student will have approximately **TEN MINUTES** to complete his or her Closing Arguments.
3. **All students** prepare to participate in **Pretrial Conferences** for the BIG TRIAL during the week of **OCTOBER 19, 2009** at the usual class times on **Monday, October 19** and **Tuesday, October 20** or **at other times and places arranged with your judge.**

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of appropriate judge.

ASSIGNMENTS - Fall 2009

TENTH ASSIGNMENT - Monday, October 12, and Tuesday, October 13

PLACE:	Hyslip	-	Courtroom 240
	Threet	-	Room 339
	Prettyman	-	Room 342

PLAINTIFF AND DEFENSE TEAMS*:

- A. Read Mauet - Chapter 5.
- B. Read the Ground Rules for the Course.
- C. Read the **Instructions for the Big Trial!!**

1. **MONDAY, OCTOBER 12, 2009** - All students (both Plaintiff* and Defense* teams) must meet with the judges to discuss the **critiques of Closing Arguments**.
2. **TUESDAY, OCTOBER 13, 2009** - Continue critiques if necessary. More importantly, schedule **dates** and **times** for **Pretrial Conferences** - Big Trial!! Read the **Big Trial Instructions**. (Pretrial Conferences - week of **October 19, 2009**)! Big Trial Instructions available on **Wednesday, October 14, 2009** in Ms. Herrington's office, room #187.
3. Collect Big Trial instructions from Mrs. Herrington - **Room 187**.
4. Prosecution and Defense Teams meet during the **weekend of October 16, 17, 18** in order to
 - (a) **stipulate to certain matters**;
 - (b) **exchange motions**;
 - (c) **exchange witness lists**; and
 - (d) **exchange exhibit lists, etc.**
 - (e) **clarify other matters prior to their pretrial conference**.

* See Appendix A, pp. 27-28 for classroom Team Designations and name of appropriate judge.

ASSIGNMENTS - Fall 2009

MONDAY, OCTOBER 19, 2009 and TUESDAY, OCTOBER 20, 2009 - BIG TRIAL QUESTIONS OR PRETRIAL CONFERENCES (other conference times should be arranged with your judge). Pretrial conferences may begin at class time (4:30 - 6:30 p.m.) or at other times and places arranged with your judge.

PLACE: Hyslip - Courtroom 240
Threet - Room 339
Prettyman - Room 342

PLAINTIFF AND DEFENSE TEAMS:*

- A. Read the **Instruction Sheet** for the **BIG TRIAL**.
- B. Prepare to ask questions of Professor Bailey about the **BIG TRIAL** [any time during the weeks of **OCTOBER 13 & OCTOBER 19, 2009**]. Professor Bailey will meet with the various teams concerning issues in the **BIG TRIAL** cases.
- C. **PREPARE TO START TRIALS DURING THE WEEK OF OCTOBER 26, 2009. FIRST TRIAL BEGINS MONDAY, OCTOBER 26, 2009.**

* See APPENDIX A, pp. 27-28 for Classroom Team Designations and name of appropriate judge.

APPENDIX A

JUDGE THREET		
PLAINTIFF'S TEAM		DEFENDANT'S TEAM
1. R. Dawn Allen		1. Brian Gaither
2. Kendra Stephens		2. Jon Crews
3. Holly Wilson		3. Buckley Bridges
4. Josh Wilson		4. Jake Porter
5.		5.
6.		6.

JUDGE PRETTYMAN		
PLAINTIFF'S TEAM		DEFENDANT'S TEAM
1. Ezinne Arisukwu		1. James O'Hara
2. Michelle McKinney		2. Lain Lawrence
3. Byron Bowen		3. Trey Otey
4. Josh Potter		4. Garrett Ham
5.		5.
6.		6.

APPENDIX A - (CONT.)

JUDGE HYSLIP		
PLAINTIFF'S TEAM	vs.	DEFENDANT'S TEAM
1. Kambira Jones		1. Fernando Ruiz
2. Laniya Moore		2. Cameron Walker
3. Scott Hilburn		3. Joshua Rosenberg
4. Kelley Parker		4. Tim Watson
5.		5.
6.		6.

APPENDIX B

ATTORNEY WORKSHEET FOR THE PRETRIAL CONFERENCE

1. Who is my judge?

(a) What does he/she require at the Conference?

- Proposed jury instructions
- Written motions with briefs - Proof of service on opposing counsel
- Other?

Some evidence that the parties have attempted to resolve dispute (e.g. negotiation, mediation, arbitration).

(b) Do I have a particular message for the judge? (About my case? My client? Opposing party? opposing party's client? the law? the method of proof?)

2. Are there matters that could/should be easily decided prior to trial?

- How should it be done - Stipulation?

3. Procedure at trial:

- (a) Pre-marking exhibits
- (b) Exchanging witness lists
- (c) The lectern
- (d) Moving about the courtroom
- (e) Side bar conferences

4. Questions for Voir Dire

- ___(a) Who asks?
- (b) Exercising challenges

5. Drafting the order

- editing the draft
- signing the draft
- submitting the draft to the court

APPENDIX C

REPRESENTATIVE TABLE OF CONTENTS FOR A TRIAL NOTEBOOK***

1. Introduction - Nature of the case (Civil/Civil) - Main Issues - Burden of Proof
2. Personnel - Investigators, Clerks, Witnesses, Doctors, Police Officers, etc.
3. Jury Questionnaires
4. Motions in Limine
5. Voir Dire (Method of Challenges)
6. Opening Statement
7. Opponent's Opening Statement
8. Witness List
9. Order of Witnesses
10. Elements of Proof
11. Witness Proof
12. Document List/Litany for Authentication or Discovery Admitting Authentication (Index like pleadings)
13. Closing Argument
14. Pleadings
15. Exhibits
16. Jury Charges

APPENDIX D

**** Examples of trial notebooks on Prof. Bailey's Reserve Shelf in the Law Library.

BOOKS:

1. Sonsteng, John O., THE TRIAL BOOK: A TOTAL SYSTEM FOR THE PREPARATION AND PRESENTATION OF A CASE.

2. Volumes on Litigation, produced by the American Bar Association, section on Litigation; (published four times a year).

Comment: A must journal for any lawyer who intends to do trial work.

3. Making and Meeting Objections, by Robert A. Wenke, Judge of Superior Court.

Comment: Easy to read, short booklet on the common objections raised and heard in trial.

4. The Trial Lawyers Guide, Roland P. Klinge, J.D.

Comment: Can be secured through most law libraries through the Bar Association.

5. Trial Tactics and Methods, Keeton, Second Edition, Little Brown and Company.

Comment: Good-Excellent.

6. Morrill on Trial Diplomacy, Second Edition, Court Practice Institute, Chicago.

Comment: Excellent.

7. Various Volumes published by The Practical Lawyer.

Comment: Usually fair reading.

8. Advanced Civil Trial Tactics, D. Jeffery Herschlerg, Joseph F. Keefe Co-Chairman, Practising Law Institute - (PLI), 1977, 810 Seventh Avenue, New York, N.Y. 10019 (212) 765-5700.

APPENDIX D – (CONT.)

9. Prisoner's Rights, 1979, Alvin J. Brunstein, Phillip J. Hirsckop, Co-Chairman, Vol. Two, Produced by the Staff of the National Prison Project of American Civil Liberties Union Foundation, C4-4137/C6-4133, Practicing Law Institute, New York City.
10. Attorney's Guide to Effective Discovery, Fechniopres-Walter Barthold, Prentice Hall-1975, Englewood Cliffs, N.J.
11. Civil Trial Manual, Robert McFigy, Ralph C. McCullough II, James L. Underwood, Reporters.
12. A Joint Project of the American College of Trial Lawyers, 1977 Supplement; The ALI-ABA Committee on Continuing Professional Education, 1977 Supplement, Library of Congress Catalog Number 73C 93157, 1977 American Law Institute, Release No. 2.
13. Successful Cross Examination Strategy, Noel C. Stevenson, Esq., Executive Reports Corporation, 5th Printing 1977, Library of Congress catalog, card No. 70-166046.

Comment: O.K.

14. Jury Selection in Civil Trials, New Techniques and Concepts, Ann Fayan Ginger.

Comment: Good.

15. Goldstein Trial Technique, Second Edition, Godlstein and Lane, Vols. 1-3.
16. Federal Trial Handbook by Robert S. Hunter, 1974, The Lawyers Co-operating Publishing Co., Rochester, N.Y. 14603.
17. Examples of Trial Notebooks: On reserve shelf in library and in the clinic office.

APPENDIX D – (CONT.)

FOLDERS - Closing Arguments - 2 copies.

COMMERCIAL VIDEOTAPES

A089 ART OF ADVOCACY SKILLS IN ACTION SERIES: OPENING STATEMENT.

A167 DEMO: JURY SELECTION IN A PERSONAL INJURY CASE.

A190 DEVELOPING TRIAL STRATEGY: PREPARING & TRYING A CUSTODY CASE.

A215 TRIAL DEMONSTRATION SERIES: FINAL ARGUMENT (CIVIL MURDER CASE).

A235 TRIAL TECHNIQUE SERIES: FINAL ARGUMENT IN A CIVIL CASE: CONSPIRACY - UNITED STATES v. PETERS.

A32 INTRODUCTION & USE OF EXHIBITS.

LOCALLY-MADE VIDEOTAPES

ABOTA TRIAL COMPETITION 1983 (1 Tape)

ABOTA TRIAL COMPETITION 1984 Tape 1, Tape 2, Tape 3

APPENDIX E

KEY TO EACH EXERCISE

- (1) What we will do.
- (2) Why we will do it.
- (3) How we will do it.
- (4) When we will do it.
- (5) Whether "we" did it correctly.
- (6) Why I did it my way (submit written outline to judge after the exercise).

APPENDIX F

PLANNING FOR THE BIG TRIAL EVIDENTIARY ISSUES TO CONSIDER

1. Credibility of witnesses (Impeachment)
2. Burden of Proof - Elements in the Case
3. Court Procedures - Lectern, etc.
4. Authentication of Documents and Things (Laying a Foundation **Pre-marking** Exhibits)
5. Civil case - Miranda - 4th & 6th Amendment (Confrontation Issues)
6. Civil Case - Due Process Issues
7. Probative Nature Versus Prejudicial Impact
8. Hearsay/Exceptions
9. Offers of Proof/ Making a Record
10. **Character** Evidence?
 - (a) Rule **608**
 - (b) Rule **609**
 - (c) Rule **613**
 - (d) Rule **404(a)**
 - (e) Rule **404 (b)**

APPENDIX G

KEY FOR PREP SHEETS (EXTRA POINTS)

1. One page for Prep!
2. Name of student
3. Identify as Plaintiff or Defendant.
4. Identify the applicable stage of the proceeding (e.g., Opening Statement, Cross-Examination, etc.).
5. Explain in four (4) sentences or less your strategy for this particular proceeding.
6. Explain how this strategy helps your case.

APPENDIX H

ADDITIONAL* GROUND RULES FOR EACH OF THE FIVE (5) CLASSROOM EXERCISES AND THE BIG TRIAL

1. Be present.
2. Be on time.
3. Stay in character throughout the exercise.
4. Show the judge you have a “theory” (“strategy”) for your side of the case.
5. Protect your client at all times.
6. Consult with a professor (or a local attorney) before each exercise.
7. Submit your “Prep Sheet” (page 36) to the judge immediately after your exercise.
8. Ask questions about your performance.

* See Trial Advocacy pp. 11-13 syllabus for the basic “ground rules.”

APPENDIX I

ANATOMY OF A TRIAL

1. **Pretrial CONFERENCE**
2. JUDGE **DESCRIBES** THE CASE (KEY WORDS)
3. **INVOKING THE RULE** — FRE 615
(WITNESSES SWORN IN)
4. **VOIR DIRE** — [*JURY SELECTION*]
5. **OPENING STATEMENTS**
[CAVEAT! — MOTION TO DISMISS! — ADMISSIONS]
6. **PLAINTIFF'S CASE-IN-CHIEF**
 - (a) **PLAINTIFF'S DIRECT EXAMINATION**
 - (b) **DEFENDANT'S CROSS EXAMINATION**
 - (c) **PLAINTIFF'S RE-DIRECT**
 - (d) **DEFENDANT'S RE-CROSS**
[REPEAT PROCESS WITH OTHER WITNESSES]
7. PLAINTIFF **RESTS** — [ASK FOR RECESS **BEFORE!**]
8. **DEFENDANT'S MOTION FOR DIRECTED VERDICT**
[ARK. R. CIV. P. 50(a)]
9. DEFENDANT'S **CASE-IN-DEFENSE**
 - (a) **DEFENDANT'S DIRECT EXAMINATION**
 - (b) **PLAINTIFF'S CROSS EXAMINATION**
 - (c) **DEFENDANT'S RE-DIRECT**
 - (d) **PLAINTIFF'S RE-CROSS**

[REPEAT PROCESS WITH OTHER WITNESSES]
10. DEFENDANT **RESTS** — ARK. R. CIV. P. 50(a) [ASK FOR RECESS **BEFORE!**]
11. PLAINTIFF'S **MOTION**
12. PLAINTIFF'S **REBUTTAL**

APPENDIX I - (CONT.)

13. DEFENDANT'S SURREBUTTAL

14. MOTIONS AT THE CLOSE OF ALL THE EVIDENCE.

- (a) Civil CASE — ARK. R. CIV. P. 50(b)
- (b) Civil CASE — ARK. R. CRIM. P. 33.1

HUGE!! FAILING TO MAKE THIS MOTION WAIVES A PARTY'S RIGHT TO CHALLENGE THE SUFFICIENCY OF THE EVIDENCE ON APPEAL.

SEE WILLIS v. STATE, 334 ARK. 412, 417-18 (1998)

SEE WILSON SAFETY PRODS. v. ESCHENBRENNER, 302 ARK. 228 (1990)

[CAVEAT! THE 50(b) (OR 33.1) MOTION MUST BE MADE BEFORE THE JURY IS INSTRUCTED AND BEFORE CLOSING ARGUMENTS!]

15. CONFERENCES WITH THE JUDGE REGARDING JURY INSTRUCTIONS.

16. JUDGE INSTRUCTS THE JURY.

17. CLOSING ARGUMENTS — (ARGUE!)

- (a) Plaintiff/Plaintiff (OR PARTY WITH THE BURDEN OF PROOF) SHOULD REQUEST REBUTTAL TIME.
- (b) PREPARE KEY **JURY INSTRUCTIONS, EXHIBIT**
[BLOWUP! POWERPOINT! TRANSPARENCY, VIDEO CLIP!]
TO USE DURING CLOSING.
- (c) CONTENTS OF CLOSING:
 - (i) **PROMISES** FROM THE OPENING;
 - (ii) EVIDENCE **SUBMITTED** AND **RECEIVED** DURING TRIAL;
 - (iii) **CREDIBILITY** OF WITNESSES;
 - (iv) REASONABLE **INFERENCES**;
 - (v) TELL THE JURY **WHY** CLIENT IS ENTITLED TO THEIR VERDICT. — ASK FOR VERDICT!

18. JURY RETIRES TO DELIBERATE

19. JURY'S VERDICT

20. POST VERDICT MOTIONS