

**LEGAL RESEARCH AND WRITING III:  
EXPERTS IN CIVIL LITIGATION**

**COURSE SUMMARY AND SYLLABUS SPRING 2022**

Adjunct Professor Richard A. Kolb

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**Class Meetings:**      Tuesdays, 10-11:50 a.m.

**Location:** K6B

**Required Course Materials:**

- Couture, W. & Haynes, A., *Litigators on Experts: Strategies for Managing Expert Witnesses from Retention through Trial* (American Bar Ass'n 2010)
- Additional readings will be assigned and/or posted on **Canvas** as the semester progresses.

The required textbook is available from the Temple University Barnes & Noble Bookstore or may be obtained from any vendor or source that students may choose. Other course materials are available on Canvas and/or online via Westlaw or similar services or through the Law School Library. The cost range for these materials is approximately \$90.

**I.      Introduction**

As any seasoned litigator knows, civil litigation often involves a “battle of the experts” and cases are frequently resolved based on the relative strength of the parties’ expert witnesses. New attorneys are routinely confronted with a host of issues involving the use of experts at trial, including how to find and retain experts, evaluate their qualifications, the admissibility of expert testimony, the scientific or technical reliability of the proposed testimony, methods for effective presentation of expert testimony, cross-examination techniques, and ethical issues surrounding the use of experts.

Preparing for, and ultimately presenting, expert testimony at trial requires both strong trial advocacy and legal writing skills. This serial writing seminar is designed to train students in

how to effectively work with experts from the outset of a case up to the time of trial and to prepare the various documents and court filings related to the use of expert testimony.

## **II. Accommodation**

Persons with disabilities are entitled to reasonable accommodations and academic adjustments. Any law student who requires accommodation based on the impact of a disability, including any new or additional requirements related to Covid-19, should contact the Law School Office of Student Affairs (215-204-8574) located in Barrack Hall.

## **III. E-mail and Canvas LMS**

Important class information and any changes to the syllabus will be posted on the course Canvas site, including this syllabus, all assignments, handouts, and announcements pertaining to the course. Canvas and e-mail are efficient ways to ask questions of your professor, communicate with other students, download course materials, and obtain important information like class cancellations or changes to assignments. In practice, you will be held responsible for regularly checking your mail, telephone and e-mail for communications from opposing counsel, colleagues, clients and the court. Therefore, you will be responsible for checking e-mail and Canvas daily for messages and updated information about this course throughout the semester.

## **IV. Writing Assignments**

Ninety percent (90%) of your grade in this class will be based on your written work. The written work will be comprised of four documents of the type often prepared in connection with expert testimony based on the facts and issues raised in the case of Baker v. GMC, et al. You are solely responsible for each assignment, and you may not collaborate with your classmates or otherwise receive outside help of any kind.

### **A. Subject Matter of Assignments:**

1. Prepare a memorandum to supervising partner summarizing an analysis of the reports and curriculum vitae of plaintiff's expert and potential challenges to his qualifications and areas for cross-examination (15% of grade) (5 pages maximum)
2. Draft answers to expert interrogatories for defense expert (20% of grade) (7 pages maximum)

3. Draft response to defendant's motion *in limine* to preclude plaintiff's expert based on lack of qualifications, and an accompanying memorandum of law (25% of grade) (10 pages maximum)
4. Draft a Frye motion and accompanying memorandum of law to preclude the testimony of plaintiff's expert on substantive issues (30% of grade) (10 pages maximum)

#### **B. Formatting Requirements for All Assignments**

- Assignments must be in Times New Roman 12 pt. and fully justified
- Assignments must have at least 1 inch margins all around
- Assignments must be double-spaced
- Assignments must contain page numbers at the bottom of the page
- Assignments should be neat and free of typographical, grammatical, or other proofreading errors
- Citations must conform to *The Bluebook*.

#### **C. Timeliness of Assignments**

Deadlines are strictly enforced in the practice of law and the easiest way to commit malpractice is to miss a court-imposed deadline. Accordingly, in this class, you must submit your assignments via e-mail by the start of class on the date due. An assignment that is even one minute late will be considered untimely and subject to a grade penalty of a half letter grade to a whole letter grade depending on the degree of lateness. Computer difficulties, traffic jams, or other logistical snafus are not acceptable excuses to avoid the imposition of a penalty for an untimely submission. This course is designed to simulate the realities of practice so if you need an extension of the deadline, you must request it via email at least twenty-four hours before the date due. Absent a truly unforeseen medical or family emergency, an untimely submission will receive a grade deduction.

#### **V. Class Preparation**

This course requires you to study the law and procedural rules governing expert testimony carefully. It also requires you to be fully knowledgeable about the facts of the hypothetical case file utilized for writing assignments (Baker v. GMC), to analyze the issues involved in that case, and to prepare a variety of legal documents, including three such items to be filed with the court. In that regard, the Law School complies with ABA Standard 310 which prescribes the time students are expected to spend in and out of class for each credit hour. Since this is a three (3) credit course, it is expected that you will spend two hours outside of class for each hour we meet reading assigned material, preparing for class discussions and drafting relevant written papers as they are due.

## **VI. Attendance and Class Participation**

I will follow the Wise Guide with respect to attendance, which requires a student to attend a minimum of eighty percent (80%) of regularly scheduled class hours. Students who may miss more than two days of class for compelling reasons such as illness or family emergencies are encouraged to talk to me *prior* to the absence – unless extraordinary circumstances prevent prior notification – to avoid the entry of a grade of FA. In general, students are asked to advise me in advance, if possible, if you will be absent from any regular class session. However, if you feel unwell or if you are under quarantine or in isolation because you have been exposed to the Covid-19 virus or tested positive for it, you should not come to campus or attend in-person classes or activities. It is the student’s responsibility to contact their instructor to create a plan for participation and engagement in the course as soon as they are able to do so, and to make a plan to complete all assignments in a timely fashion, when illness delays their completion.

Ten percent (10%) of your grade will be based upon your class participation. This seminar will only be a rewarding experience if everyone is prepared and participates in class discussions and in-class assignments and exercises. I will expect everyone to come to class prepared to discuss the assigned material. I will keep a record of your participation in each class, noting both the quantity and quality of your participation in class discussions. Based on this, a grade will be assigned at the end of the semester.

## **VII. On Call Assignments**

In order to enhance class participation, starting with Week Two, three (3) students each week will be designated to be “on call” to discuss the details and significance of assigned case readings. All students, however, will be expected have read and be familiar with the cases involved. Each student will likely be “on call” approximately twice during the semester, depending on the size of the class.

## **VIII. Classroom Etiquette**

The best way to maintain a safe and focused learning environment is for everyone to get vaccinated. We all need to follow University guidance on masking as well. For your general health and well-being, hand washing and monitoring your health is highly recommended.

It is also important to foster a productive learning environment that includes being respectful of all students in our diverse community of learners. Therefore, all opinions and experiences must be respected in a tolerant spirit of academic discourse. Everyone must treat fellow classmates and your instructor with courtesy and respect in all communications and class activities.

## **IX. Student and Faculty Academic Rights and Responsibilities**

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The University has a policy on Student and Faculty Academic Rights and Responsibilities (Policy #03.70.02), which can be accessed through the following link:

[http://policies.temple.edu/getdoc.asp?policy\\_no=03.70.02](http://policies.temple.edu/getdoc.asp?policy_no=03.70.02)

## **X. TEMPLE and COVID-19**

Temple University's motto is Perseverance Conquers, and we will continue to meet the challenges of the COVID pandemic with flexibility and resilience. Working together as a community to deliver a meaningful learning experience is a responsibility we all share.

To achieve these learning goals, students must attend in-person classes and/or participate in classes that are taught remotely, to the extent that they are able. However, if you feel unwell or if you are under quarantine because you have been exposed to the virus, you should not come to campus and you will not be penalized for any absences that are COVID-related. Students should contact their instructors to work out a plan for any missed class sessions and relevant assignments. Faculty and students agree to act in good faith and work with mutual flexibility in this regard.

## READING SCHEDULE & ASSIGNMENT DEADLINES

### WEEK 1 (1/11/22)

Reading: **Text**, pp. 1-40; Fed. R. Evid. 702 & 703; Pa. R. Evid. 702 & 703;  
Baker v. GMC case file – Case Summary and pleadings only (posted on **Canvas**)

Topics:

- A. Introduction to Expert Testimony
- B. Basic Governing Rules
- C. Introduction to Baker v. GMC file

### WEEK 2 (1/18/22)

Reading: **Text**, pp. 66-92; Dambacher v. Mallis, 485 A.2d 408 (Pa. Super. 1984); Miller v. Brass Rail Tavern, Inc., 664 A.2d 525 (Pa. 1995); Wexler v. Hecht, 847 A.2d 95 (Pa. Super. 2004);  
Also, MCARE Act, 40 P.S. § 1303.512 and review WEEK 2 specimen hypotheticals posted on **Canvas**.

Topics:

- A. Types of Expert You Need – Selecting & Retaining an Expert
- B. Communicating with Experts
- C. MCARE and Statutory Qualification Requirements
- D. Introduction to Litigation Drafting – Best Practices

### WEEK 3 (1/25/22)

Reading: **Text**, pp. 99-125; Fed. R. Civ. P. 26(a)(2), (b)(4) and (e), including Committee Notes for 2010 amendments to Rule 26; Synthes Spine Company v. Walden, 232 F.R.D. 460 (E.D.Pa. 2005); Fialkowski v. Perry 2012 WL 2527020 (USDC E.D.Pa.); also, Pa. R. Civ. P. 4003.5 and Jones v. Constantino, 631 A.2d 1289 (Pa. Super. 1993)

Topics:

- A. Expert Discovery
- B. Opposing Experts – Background Investigation and Methods – Guest Speaker
- C. Concision Exercises (in class)
- D. Q & A re: Assignment One

### **WEEK 4 (2/1/22) (ASSIGNMENT ONE DUE)**

Reading: Garner, Bryan A., *An Approach to Legal Style: 20 Tips for Legal Writers*, 2 Scribes J. Legal Writing (1991); (posted on **Canvas**); Morrison v. Wal-Mart Stores, Inc., 321 F.R.D. 336 (C.D. Ill. 2017); Downing v. Bob's Discount Furniture Holdings, Inc. 633 F.3d 1 (1<sup>st</sup> Cir. 2011); Virnelson v. Johnson Matthey, Inc., 253 A.3d 707 (Pa. Super. 2021)

Topics:

- A. Hybrid Expert Witnesses
- B. Drafting to Clients and Opposing Counsel
- C. Keys to Effective Legal Writing

### **WEEK 5 (2/8/22)**

Reading: **Text**, pp. 126-143 and 144-167;

Fed. R. Civ. P. 26 (a)(2); Bowersfield v. Suzuki Motor Corporation, 151 F. Supp. 2d 625 (E.D. Pa. 2001); Pa. R. Civ. P. 4003.5(a)(1) and (c); Wilkes-Barre Iron & Wire Works, Inc. v. Pargas of Wilkes-Barre, Inc., 502 A.2d 210 (Pa. Super. 1985);

Greene, Tweed of Delaware, Inc. v. DuPont Dow Elastomers, LLC, 202 F.R.D. 426 (E.D.Pa. 2001)

Topics:

- A. Expert Reports
- B. Drafting Answers to Expert Interrogatories
- C. Ethical Issues re: Experts

### **WEEK 6 (2/15/22)**

Reading: **Text**, pp. 168-193; Giuliani v. Springfield Township, 2017 WL 1382380 (USDC E.D. Pa.); St. Marys Area Water Authority v. St. Paul Fire & Marine Insurance Co., 2006 WL 1670281 (USDC M.D. Pa.); Quinn Construction, Inc. v. Skanska USA Building, Inc. 263 F.R.D. 190 (E.D. Pa. 2009)

Topics:

- A. Taking and Defending Expert Depositions
- B. In-class Interview of Defense Expert
- C. Q & A re: Assignment Two

### **WEEK 7 (2/22/22) (ASSIGNMENT TWO DUE)**

Reading: Sarah Ricks & Jane Istvan, *Effective Brief Writing Despite High Volume Practice: Ten Misconceptions that Result in Bad Briefs*, 38 U. Tol. L. Rev. 1113 (Summer 2007); Schiess, Wayne, *Ethical Legal Writing*, 21 Rev. Litig. 527 (Summer 2002); Bluebook Quick Reference Guide (all available on **Canvas**)

Topics:

Guest Speaker – Presentation by a litigation consulting expert with Q and A

### **WEEK 8 (3/1/22)**

Reading: Vicari v. Spiegel, 989 A.2d 1277 (Pa. 2010); Smith v. Paoli Memorial Hospital; 885 A.2d 1012 (Pa. Super. 2005); Frey v. Potarski, 145 A.3d 1171 (Pa. Super. 2016); Kozak v. Struth, 515 Pa. 554, 531 A.2d 420 (1987); Henderson v. Matthews, 2021 WL 2012544 (USDC E.D. Pa.)

Topics:

- A. Introduction to MIL's (Motions *in limine*)
- B. Drafting Motions and Supporting Briefs – Best Practices – Professor Levy

### **WEEK 9 (3/8/22)**

**SPRING BREAK – NO CLASS**

### **WEEK 10 (3/15/22)**

Reading: Text, pp. 194-231; Fed. R. Evid. 702-705; Pa. R. Evid. 702-705;  
Daubert v. Merrell Dow Pharmaceuticals, Inc., 43 F.3d 1311 (9<sup>th</sup> Cir. 1995)(on remand)  
Grady v. Frito Lay, Inc., 839 A.2d 1038 (Pa. 2003)

Topics:

- A. Daubert/Frye Challenges
- B. Preparing Experts to Testify and Trial Preparation
- C. Demonstrative Evidence – Show and Tell

### **WEEK 11 (3/22/22)**

Reading: Text, pp. 295-316 and 337-343;  
Freeman v. Ruby Tuesday, Inc., 2013 WL 4082235 (USDC E.D. Pa.); Mercurio v. Louisville Ladder, Inc., 2018 WL 4088059 (USDC M.D. Pa.);  
Pa. R. Evid. 702-705; Snizavich v. Rohm and Haas Company, 83 A.3d 191 (Pa. Super. 2014); Walsh v. BASF Corporation, 234 A. 3d 446 (Pa. 2020)

Topics:

- A. Daubert/Frye Case Examples (cases cited above)
- B. Review of Defendant’s Motion to Preclude re: Expert Qualifications
- C. Q & A re: Assignment Three

### **WEEK 12 (3/29/22)(ASSIGNMENT THREE DUE)**

Reading: Garner, Bryan A., *Judges on Effective Writing: The Importance of Plain Language*, 84-FEB Mich. B.J. 44 (February 2005), available on **Canvas**

Topics:

Guest Speaker – Judicial Perspective on Expert Issues

- A. *Garner on Words*
- B. Editing Quiz
- C. Top 10 Legal Writing Tips

### **WEEK 13 (4/5/22)**

Reading: Text, pp. 317-336 and 343-346; McMahon v. Young, 442 Pa. 484, 276 A.2d 534 (1971); Griffin v. Univ. of Pittsburgh Medical Center, 950 A.2d 996 (Pa. Super. 2008) appeal denied 970 A.2d 431 (Pa. 2009); Schulz v. Celotex Corporation, 942 F.2d 204 (3<sup>rd</sup> Cir. 1991)

Topics:

- A. Expert Voir Dire – Qualifying Expert at Trial
- B. Direct Examination of Expert
- C. Cross Examination of Opposing Expert

**WEEK 14 (4/12/22)**

Reading: Text, pp. 375-394; review Daubert/Frye case law (posted on **Canvas**);  
Helpin v. Trustees of the University of Pennsylvania, 10 A.3d 267 (Pa. 2010); Brill v. Marandola, 540 F.  
Supp.2d 563 (E.D. Pa. 2008); In re Linerboard Antitrust Litigation, 497 F. Supp.2d 666 (E.D. Pa. 2007)

Topics:

- A. Experts on Damages Issues
- B. Drafting Tips and Q & A re: Assignment Four

**WEEK 15 (4/19/22)**

Topics:

- A. Course Review
- B. Some Instructive War Stories
- C. Student Evaluations to be completed in class

**APRIL 25, 2022 - FINAL ASSIGNMENT FOUR DUE**