

EBSU School of Law Court Operations Session 1

Instructor:

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Bar Examination

- EBS Bar Exam
 - Only actual test given at EBSU
 - **Some helpful hints for your NOTETAKING**
- EBS Bar Examination Tests
 - Your knowledge of Court Operations
 - Your knowledge of the EBS Citizen's Manual
 - Your judgment about what you already know about the law



**KEEP
CALM
AND YOU'LL
PASS THE
BAR EXAM**



Higher Law to Common Law

- Socrates: Higher law discovered through reasoning
- Cicero: We are all equal in natural rights to reason – “We hold these truths to be self evident...”
- Magna Carta (1215): Even King is under the law of those he rules
- Bonham/Coke Case (1610): Judicial interpretation of Magna Carta and common law – ie Marbury v. Madison
- Glorious Revolution (1688): Natural Law to Natural rights
- Locke (1690): 2d Treaties –Due Process, rights of ownership
- Montesquieu (1742): Spirit of the Laws is liberty!
- Declaration of Independence (1776)
- Constitution (1789)
- Bill of Rights (1791): **Protections from government**
- 14th Amendment (1868): “Completes the Constitution”

EBS Courts – a primer





EBS Courts

- ▶ Superior Court
 - ▶ Court of Original Jurisdiction
 - ▶ Criminal Cases
 - ▶ Civil Cases
- ▶ Supreme Court
 - ▶ Court of Original Jurisdiction
 - ▶ Attorney & Judicial Misconduct
 - ▶ Officials Misconduct
 - ▶ Constitutional Issues
 - ▶ When differing opinions occur, justices vote on them
 - ▶ Majority opinion (Rules)



EBS Courts

- Superior Court – **Civil Cases**

- Civil cases are the most common type of lawsuit
- Begins with a decision to sue
- Contact Superior Court clerk's office (case no.)
- Complete the proper forms
- Response is completed, recorded & defendant's subpoenas served*
- Placed on docket & trial scheduled
- Burden of proof is "a preponderance of the evidence"

*Served by the Sheriff normally, served by the clerk at EBS 18



EBS Courts

- ▶ Civil Cases
 - ▶ Plaintiff files a lawsuit
 - ▶ Defendant responds to plaintiff's lawsuit
 - ▶ Both have a private attorney



EBS Courts

- ▶ Supreme Court
 - ▶ Encroachment on someone's Civil Rights most common EBS case
 - ▶ Requires previous Superior Court trial for appeal
 - ▶ Misconduct cases go directly to Supreme Court
 - ▶ Official misconduct
 - ▶ Example: Governor violates the Constitutional checks and balances of government
 - ▶ Example: Attorney has a conflict of interest between clients
 - ▶ Judicial misconduct
 - ▶ Example: Superior court judge takes a bribe



Officers of the court



Judge

- ▶ Elected by voters
- ▶ Five primary roles
 1. Preside over courtroom proceedings and maintains order
 2. Determine if any evidence was illegally obtained or is improper
 3. Provides instructions to the jury (No juries @ EBS)
 4. Determine the facts and decide the case
 5. Sentence convicted criminal defendants

Supreme Court Justice

- Elected by voters
- Nine (9) members form the Supreme Court
- Court led by Chief Justice
- Decide issues of constitutionality
- Preside over competence of judges and attorneys
- Preside over cases of misconduct of officials





Attorney

- ▶ Licensed by the state to practice law (hence the bar examination)
- ▶ Employed privately or by the Attorney General
- ▶ Present evidence that represents the viewpoint of the client



Court Clerk - Outside

- Appointed by the Court
 - Handles administrative functions of the courtroom.
 - Maintains court docket
 - Schedules hearings and trials
 - Maintains a court file of each case
 - Point of contact for written opinions of the court
- 



Court Clerk - Inside

- Appointed by the Court
 - Introduces judge/justices when proceedings open
 - Announces the closing of judicial proceedings
 - Marks, records and retains exhibits presented to the court
 - Maintains a minute record of court proceedings
- 



Bailiff

- County Sheriff (Not at EBS 18)
- Keeps order in the courtroom
- Administers the oath to every witness
 - Advises witnesses who refuse the oath, they are subject to being charged with contempt of court
- Serves process
 - Complaint notifications
 - Subpoenas
 - Serves arrest warrants



TRIAL process

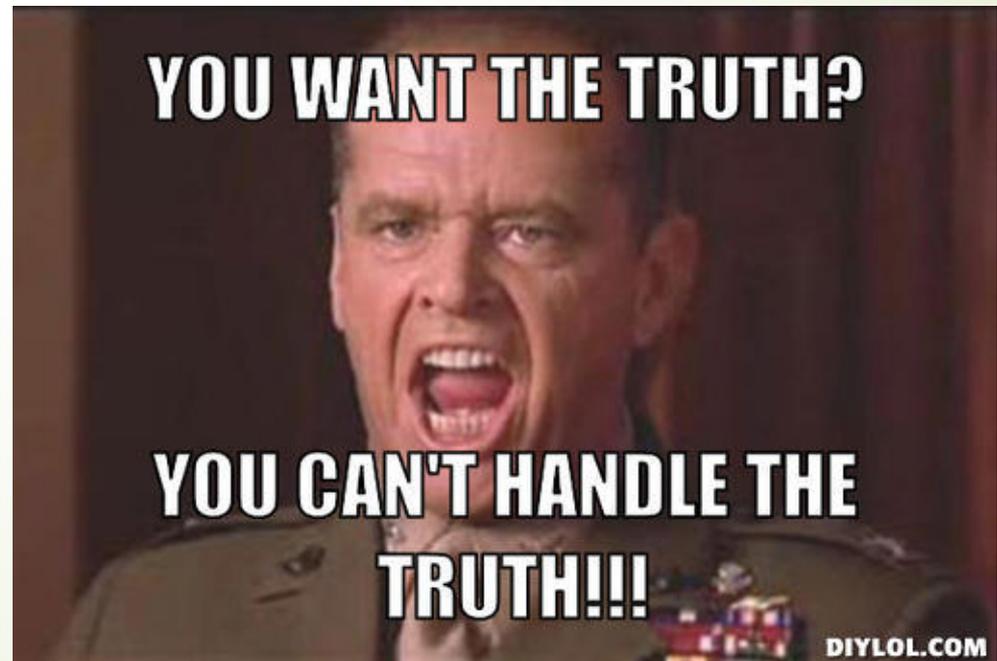




Reading Assignment

- ▶ Citizen's Manual
 - ▶ Fundamentals of the Judicial Branch
 - ▶ Chapter II: The Superior Court
 - ▶ “The Conduct of a Trial in which Facts are in Dispute”
 - ▶ You need to know & understand the TRIAL PROCESS SEQUENCE

Rules of evidence





Rules of Evidence

- Four types of evidence can be offered in court
 - Real
 - Demonstrative
 - Documentary
 - Testimonial
- To be admissible, evidence must meet the following tests
 - Relevancy
 - Materiality
 - Competence

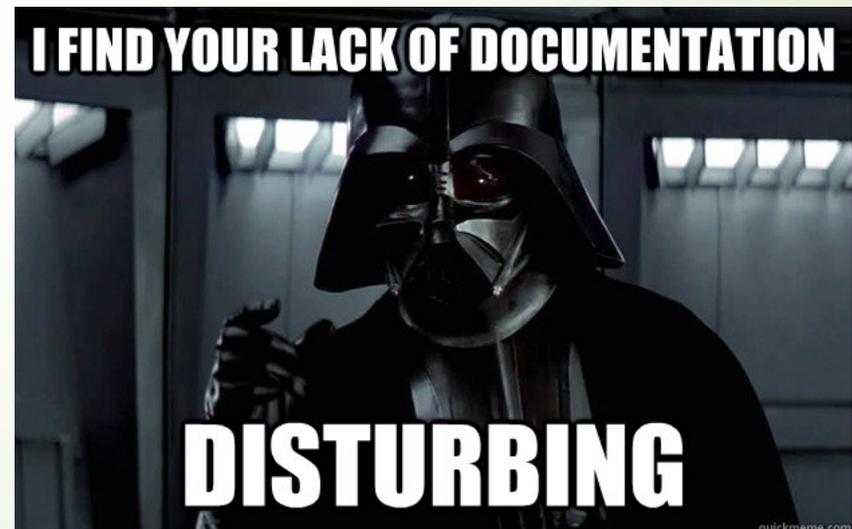


Rules of Evidence

- Real Evidence
 - A murder weapon
 - Crumpled automobile
 - An accident scene
- Demonstrative Evidence
 - A murder scene diagram
 - An accident report
 - Photographs of an accident scene

Rules of Evidence

- ▶ Documentary Evidence
 - ▶ A contract
 - ▶ A public record
 - ▶ Official document
 - ▶ Newspaper or periodical articles





Rules of Evidence

- ▶ Testimonial Evidence
 - ▶ What is said in the courtroom by a witness
 - ▶ Under oath for truthfulness
 - ▶ Must have personal knowledge of the facts
 - ▶ Must remember what he perceived
 - ▶ Must communicate what he perceived
 - ▶ Testimonial evidence is the most common evidence in EBS Superior Court cases



Rules of Evidence

- Relevance
 - An increased likelihood that the fact occurred
- Material
 - The fact offered must have some significance to the case
- **Competent**
 - **The evidence must be reliable**



Opening statement & closing arguments



Opening Statements

- ▶ NEVER WAIVE OPENING STATEMENT
- ▶ Should follow a theory of your case
- ▶ Well organized
- ▶ Use rhetorical questions and an inoculation strategy
- ▶ Walk listener through the theory from the client's perspective



Opening Statements

- ▶ Call into question the credibility of critical opposing witnesses
- ▶ Presented with confidence using powerful, direct, not qualified, language
- ▶ Recognize that this is the point at which the listener's attention is at the highest point



Closing Arguments

- Re-establish your theory
- State again what you promised to show during the opening statement
- Organize your argument around the elements of the case
- Argue within the organization
- Attack the opposition's argument
 - “They would have you believe..., but now you can see...” or “...but their witness said...”

COURTROOM DEMEANOR





Making a Motion

- ▶ **ALWAYS SAY, "I move..."**
 - ▶ for a mistrial
 - ▶ a dismissal of all charges
 - ▶ etc.
- ▶ **NEVER SAY, "I motion..."**
 - ▶ It's not only improper English, but it makes one sound uneducated.
 - ▶ Others will snicker...at you!



Reading Assignment

- ▶ EBS Citizen's Manual
 - ▶ Chapter III: The Supreme Court
 - ▶ “Courtroom Decorum” - You need to know and understand how to address the court.

Objections





What is an Objection?

- ▶ An objection is a formal protest raised in court during a trial to disallow a witness's testimony or other evidence which would be a violation of the rules of evidence or other procedural law.
- 



Why Object?

- ▶ There are several reasons to object
 - ▶ To follow the rules of evidence
 - ▶ To prevent anarchy
 - ▶ To allow decorous courtroom behavior
- ▶ In short, having the ability to object ensures a fair trial



Objections (Continued)

- ▶ Asked & Answered
 - ▶ When the question being asked has both been asked and been answered by this attorney and this witness.
- ▶ Assumes Facts Not in Evidence
 - ▶ A question by the directing attorney that contains information not yet in the record.

Objections (Continued)

- ▶ Best Evidence
 - ▶ Used when the evidence being solicited is not the best source of that information.
 - ▶ For example: Secondary evidence, such as a copy of a document, will not be admissible if an original document exists and can be obtained.





Objections (Continued)

- ▶ Hearsay
 - ▶ A statement made out of this court by a third party, then offered in court to prove the truth of the matter asserted.



Objections (Continued)

- ▶ **Leading**
 - ▶ The question on direct suggests an answer or that can only be answered by a “yes” or “no”.
- ▶ **Non-responsive**
 - ▶ The witness is not answering the question asked.



Reading Assignment

- ▶ Evergreen Boys State University
 - ▶ School of Law
 - ▶ Legal Terminology Handout
 - ▶ You need to know the meaning of each term
 - ▶ Watch the footnotes!!!



Some questions





Questions



- ▶ Can the Governor order the Supreme Court to dismiss a case?
- ▶ Can a Prosecuting Attorney call a Defendant to the stand?
- ▶ If an attorney is late for his case, and the trial has already begun, can he interrupt the proceedings to talk with his client?
- ▶ Is it proper for either attorney to request a recess during a court hearing?



Questions



- ▶ Should every trial begin with an opening statement?
- ▶ Is it possible that some defendants may not want to undergo a trial? How should that be handled?
- ▶ How much power does the Clerk of the Court hold over attorneys, litigants and judges?



Questions



- ▶ What is the restriction on the number of questions asked of a witness in Supreme Court hearings?
- ▶ How do justices of the Supreme Court know what constitutional issue they should use to make a decision?
- ▶ If an attorney believes the judge NOT to be impartial, what should he do?
 - ▶ What would indicate judicial bias?

See you tomorrow!

everybody lies
and everybody
pays a price.

