Foundational Lawyering Skills

Syllabus Fall 2017

For simplicity, let's call this course FLS. Each week FLS includes:

- a Thursday one-hour large-group class introducing the week's topic and
- a Tuesday two-hour small group skills lab in which you will receive assessment and feedback from an instructor.

Learning Objectives

FLS focuses on a cross-cutting theme of practice skills: investigation and analysis of facts. All stages of lawyering — either in the litigation or transactional context — require investigation and analysis of facts.

In client interviews, for example, you must be able to overcome your clients' reticence and to frame questions to elicit clients' stories, listen carefully to their answers, respond in a way that encourages a thorough description of the narrative, and develop legal theories. When you depose an adverse witness, you often must take a different tack and craft questions to break through the witness's hostility with a questioning strategy that can explore and undermine, if possible, your adversary's factual and legal cases. And at trial, you must use differing questioning styles on direct and cross examinations to present persuasively the facts in your case. In a transactional setting, you will collect facts for purposes of informed bargaining.

In all these settings, a number of different skills are brought into play (rapport-building, style of presentation, strategic thinking). But the one cross-cutting skill is the ability to frame and reframe questions of fact.

Most other courses focus primarily on the "persuasive mode" — how to argue law and facts. FLS focuses on the "inquiring mode" — exploring to determine what "really" happened. Unless you learn how to work in the inquiring mode, you will face difficulties in investigating and analyzing facts.

FLS focuses on the following learning outcomes approved by the Law School faculty. (The full outcomes list is on the school's website.)

> **Category 5** - Basic legal analysis, fact development and law-finding. Each graduating student must have demonstrated proficiency in the following:
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> (b) conducting investigation of facts and constructing a coherent narrative based on that investigation;
> (c) identifying legal issues in facts and applying rules and policy to facts;
> (d) weighing evidence to reach factual inferences;
> (e) constructing arguments and identifying flaws in an argument;
> . . .
> (h) presenting analysis orally and arguing orally; . . .

> **Category 6** - Entry level capabilities: At the level of proficiency required for effectiveness as an entry level lawyer, and in a manner appropriate to a student's professional goals, each graduating student must have demonstrated proficiency in:
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> (a) strategic planning: developing a plan to accomplish a goal;
> (b) problem solving in light of a client's objectives: anticipating consequences and assessing risks;
> (c) recognizing the most common ethical and professional liability dilemmas and resolving them with high professional standards;
> (d) negotiating in both dispute and transactional contexts;
> (e) counseling clients;
> (f) interviewing;
> (g) performing basic trial tasks

Required Text

Krieger & Neumann, *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (5th Ed.).

Attendance

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. In FLS, you may not have more than **six hours** of unexcused absences from class over the course of the semester. If you exceed that, you risk not passing FLS or being administratively withdrawn from FLS — either of which would require retaking the *entire* course.

If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations will be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception made to the Office of Student Affairs must be accompanied with appropriate documentation. Your instructor will distribute sign-in sheets for each class, which is the dispositive evidence regarding your absence from a given class.

You are responsible for signing in during the class. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

Grading

You will receive a letter grade for the course, computed as follows:

10% based on attendance and engagement in class discussion (including the lecture class and the skills labs).

40% based on the quality of your preparation and performance in the skills lab, using the cumulative scores of grading rubrics that are uniformly used by the skills lab instructors. In each week's skills lab, you will receive an evaluation and grade based on performance and other criteria pertinent to the specific skill being taught and evaluated.

40% based on an exam, which will require you to work out one or more skills problems.

10% based on case chart, which will be worked on throughout the semester.

WEEKLY ASSIGNMENTS

ELS = *Essential Lawyering Skills*
(the textbook)

Tuesday, August 22

In Class:	No Class
Reading Assignment:	ELS Chapters 1-2 (pp. 3 to 19) and Chapter 10 (pp 143-151) Read case file (on TWEN under Course Materials)
Assignment:	1 page persuasive memo to me concerning which side (Plaintiff or Defendant) you would like to represent and why (you will not necessarily be assigned the side you request) – submit at or before 5 p.m. on August 22

Thursday, August 24

In Class:	Introduction to Course Fact Investigation Charting
Reading Assignment:	ELS Chapter 11 (pp 153 to 161)

Tuesday, August 29

In Class: *Skills Lab - Investigation*

Assignment:

- conduct searches of individuals in case
- draft a memo (1 page single spaced) as to where you looked, why and why you searched where you searched –what were you hoping to find/looking for and why? How would it be relevant? identify where you looked for information
- Give Presentation as to your search (8 minutes and 6 minute feedback) – hand in memo and submit it on TWEN before class begins

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Thursday, August 31

In Class: *Gathering Evidence*
Discovery Requests; ESI

Reading Assignment: ELS Chapter 16 (pp 215 to 229)
Fed. R. Civ. P. 34 and 16

Tuesday, September 5

In Class: *Skills Lab – Discovery* R*equests*

Assignment: Utilizing the form document request on TWEN, make 5 requests on your assigned cause of action.

8 minute presentation (6 minute feedback) concerning what you requested and why and what else you may have asked for; hand in and submit on TWEN your discovery requests prior to class

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Thursday, September 7

In Class: *Electronic Discovery*
Discovery Checklists for ESI

Reading Assignment: *Zubulake I – IV* (in materials on TWEN)
Fed. R. Civ. P. 26
N.Y. Comm. Div. Disc. Order (on TWEN)

Tuesday, September 12

In Class: *Skills Lab - ESI*

Assignment: Prepare 8 minute discussion (6 minute feedback) concerning how to get everything – how did you get your client's documents?
Hand in Memo (1 page single spaced) to Partner concerning responsibilities of obtaining documents from client and submit on TWEN prior to class

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Thursday, September 14

In Class: *Mediation and Settlement Negotiations*

Reading Assignment: ELS Chapter 23 – 24 (pp 301 - 328)
Chapter 25 (pp 333-340; 345-346)
Chapter 27-28 (pp 363-389)

Tuesday, September 19

In Class: *Skills Lab - Client desires*

Assignment: Discuss with your "client" as assigned on TWEN your client's positions/desires/strengths/weaknesses
Hand in memo (1 page single spaced) and submit on TWEN concerning same prior to class beginning
22 minutes – conduct a settlement negotiation with "adversary" assigned on TWEN (7 minute feedback)

Thursday, September 21 - NO CLASS

Tuesday, September 26

In Class: *Skills Lab – Mediation Presentation*

Assignment: Presentation (10 minutes) (5 minute feedback) concerning mediation process – expected outcome? Did your client win or lose? What was most important to your client – did you get it? Do you feel you gave up any client confidences? Any ethical concerns?
Draft memo concerning same – 1 page (single spaced) – submit on TWEN and hand in prior to start of class

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Thursday, September 28

In Class: *Client Counseling*

Reading Assignment: ELS Chapter 18 (pp 239 to 246)
ELS Chapter 21 (pp 279 to 287)
ELS Chapter 22 (pp 291 to 296)

Tuesday, October 3

In Class: *Skills Lab – Client Counseling*

Assignment: Now that you have had a mediation/settlement discussion – discuss with your client what they are looking for and counsel them as to realistic expectations, problems with what they are seeking
Conduct a counseling session (9 minutes) (5 minute feedback)

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Thursday, October 5

In Class: *Stories from the Field/Questions and Concerns*

Assignment: Bring in Chart for review and questions

Tuesday, October 10

In Class: *Skills Lab – Mid-Semester Feedback*

Assignment: Second half instructors are invited and encouraged to join the class

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Thursday, October 12

In Class: *Story Telling*

Reading Assignment: ELS Chapter 13 (pp 173 to 192)

Tuesday, October 17

In Class: *Skills Lab – Storytelling*

Assignment: 9 minute presentation of your client's story (5 minute feedback)
Hand in memo and submit on TWEN (1 page single spaced) of your client's side of the story prior to the start of class

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Thursday, October 19

In Class: *Listening Skills*

Reading Assignment: Excerpt from Robert O. Baruch Bush, "Mediation Skills and Client Centered Lawyering: A New View of the Partnership" 19 Clinical L. Rev. 429 (2013) pp. 429-490 (on TWEN)

Tuesday, October 24

In Class: *Skills Lab – Listening Exercise*

Assignment: Prepare questions on topic assigned to you on TWEN
Prior to the start of class, hand in and submit on TWEN your outline/questions
Using your questions/outline, you will conduct an "interview" 10 minute question/answer period (5 minute feedback)

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Thursday, October 26

In Class: *Timelines*

Reading Assignment: ELS Chapter 12 (pp 163 to 172).

Tuesday, October 31

In Class: *Skills Lab – Hand in Timeline*

Assignment: 9 minute presentation (5 minute feedback)– significance of what you found, any issues for your client discovered through the timeline? How did this assist you?
Prior to the start of class, hand in and submit on TWEN your timeline – highlight any issues found

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Thursday, November 2

In Class: *Direct Examination*

Reading Assignment: ELS Chapter 15 (pp 197 to 213).
Fed R Evidence 401
Excerpt from Carol Caldwell; Harry M. Caldwell and Timothy Perrin, The Art and Science of Trial Advocacy (pp 182-183, 195-202)(on TWEN)

Tuesday, November 7

In Class: *Skills Lab – Direct Examination*

Assignment: 9 minutes (including responses) direct exam of your assigned cause of action (*see* TWEN) (5 minute feedback)
Hand in and submit on TWEN prior to class what you use to conduct your questioning (e.g., outline/list of questions, etc.)

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Thursday, November 9

In Class: *Cross-examination*

Reading Assignment: ELS Chapter 17 (pp 231 to 235).
Excerpt from Carol *Caldwell; Harry M. Caldwell and Timothy Perrin, The Art and Science of Trial Advocacy* (pp 285-288, 295-299; 300-305)(on TWEN)
Fed R Evidence 401

Tuesday, November 14

In Class: *Skills Lab – Cross-examination*

Assignment: 9 minute cross (5 minute feedback) based on the direct

of your topic for prior week
Hand in and submit on TWEN prior to class what you use to question

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Thursday, November 16

In Class: *Direct and Cross-examinations*

Reading Assignment: TBD

Tuesday, November 21

In Class: *Skills Lab - Full direct and cross-redirect new topic*

Assignment: 10 minute direct/cross/re-direct *(*4 minute feedback)

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Thursday, November 23

In Class: *NO CLASS – THANKSGIVING BREAK*

Tuesday, November 28 (Thursday schedule)

In Class: *Cognitive Biases*

Reading Assignment: ELS Chapter 2 (pp 7 to 19)
Chapter 4 (pp 33-49)
Chapter 7 (pp 77-93)

Thursday, November 30

In Class: Final Exam Review
Helpful Hints
Q&A
Takeaways
Thoughts concerning class