

DRUNK DRIVING LAW AND PRACTICE

TRINITY TERM – 2010

Patrick T. Barone

COURSE DESCRIPTION: (2 credit hours): Provides an in-depth study of the prosecution and defense of Michigan's most common crime: Operating While Intoxicated (OWI). Covers the substantive law of OWI, the law and science of breath testing, blood testing and alcohol metabolism; the phases of a typical drunk driving trial, sentencing advocacy, administrative DAAD (driver license) law, ethics and law office management. Students will also be required to participate in a mock drunk driving trial.

COURSE TEXTS:

- Barone, Defending Drinking Drivers (James Publishing, March 2010).
- 2007 Michigan Breath Test Operator Training Manual.
- 2006 Michigan State Police NHTSA (Field Sobriety Tests) Training Manual.

CLASS FORMAT: Lecture and trial skills performance; PowerPoint will be prevalent. Students will not be permitted to use recording equipment in the classroom.

CLASS TIME AND LOCATION: Beginning on May 4, 2010 *Drunk Driving Law and Practice* will be presented in AH-285 on Tuesday nights from 6:00 p.m. to 8:00 p.m.

BASIS FOR GRADING PERFORMANCE: Students will be evaluated on one year-end written examination (100%).

READING ASSIGNMENTS: There are required reading assignments for each class. You should be familiar with the content of each assignment and be prepared to discuss the reading assignments in class.

PREPAREDNESS POLICY: All students are expected to be prepared and to participate in class when called upon. The interaction between faculty and students and between students in the classroom is an important part of the legal education experience. Those who do not participate shortchange both themselves and their classmates. Students who are unprepared when called upon will be assigned a special written report or problem on the subject matter covered that class to be turned in at the next class session as a condition for remaining in the class and taking the final examination.

ATTENDANCE: Do not miss classes. The school's attendance policy permits you up to two absences, but absences will affect your learning. Pursuant to school attendance policy, the registrar will dismiss from class those students who are absent from more than two class sessions.

USE OF LAPTOPS: Laptop computers are permitted but use is restricted to class-related work. While lap tops are allowed, a student should ensure that lap top use does not interfere with the student's ability to focus on the professor and course material presented. **Games and Internet use, of any nature, is absolutely prohibited during class.** Games, e-mailing, instant messaging and Internet use is a distraction to the student and other students in close proximity. Violation of this policy will result in the student's inability to bring a lap top to class the remainder of the term and may, at the professor's discretion, result in the student's expulsion from the course.

OFFICE HOURS:

By Appointment Only: Contact me by email at pbarone@baronedefensefirm.com.

WEEK-BY-WEEK ASSIGNMENTS

WEEK ONE: ALPHABET SOUP – What does it all mean? Overview of statutory law of drunk driving including OWI/OWVI/OUIL/UBAL/OUID; the elements of the various drunk and drugged driving offenses.

Reading Assignment:

- Michigan Vehicle Code § 257.625 *et. seq.*
- Defending Drinking Drivers: Chapter One (§§ 110; 120 - 121.5; 131; 132.2.5).

WEEK TWO: ALPHABET SOUP – Continuation of Week One material, including the common law offenses, a study of the case law, a study of the case law definition of “operation,” and introduction into possible defenses including a brief introduction into the Fourth Amendment as applicable in drunk driving cases.

Reading Assignment:

- Defending Drinking Drivers: Chapter One (§§140 - 143; 160 - 162; 164,165, 167,168,169).

WEEK THREE: THE APPREHENSION OF DRUNK DRIVERS – A study of the investigation and apprehension of drinking drivers; an overview of the National Highway Traffic Safety Administration's Standardized Field Sobriety Tests (SFST), including the three-test standardized and validated battery; non-standardized/validated tests; SFST validation studies, applicable statutes and case law.

Reading Assignment:

- 2006 NHTSA Training Manual: Sessions 5-8.
- Defending Drinking Drivers: Chapter Five (§ 536.8, including §§ 536.8.1 – 536.8.14).

WEEK FOUR: THE ANATOMY OF THE OWI TRIAL - A study of the “typical” drunk driving trial, with a focus on direct and cross examination.

Reading Assignment:

Defending Drinking Drivers: Chapter 6 (§§ 630 – 631.11).

WEEK FIVE: TRIAL SKILLS – Students will be divided into two groups representing the attorneys for the defense and the prosecution. Using mock discovery materials students will use questions they prepare to actually practice direct and cross-examination of “witnesses” in the classroom. This section will give the students the opportunity to apply what they have learned in the first three weeks of the class.

WEEK SIX: THE DISPOSITION OF ALCOHOL IN HUMANS - A study of the absorption, distribution and elimination of alcohol in humans; blood alcohol calculations including a review of Widmark’s formula; a study of the applicable Constitutional, statutory, evidentiary and case law issues relative to blood alcohol calculations and the science of retrograde extrapolation.

Reading Assignment:

- 2006 NHTSA Training Manual; Session 2: pages II-13 to II-18.
- Defending Drinking Drivers: Chapter 2 (§§ 200 - 205; 209).

WEEK SEVEN: TRIAL SKILLS – Students will “reverse rolls” from prior week of trial skills and now present for the other side. Using mock discovery materials students will use questions they prepare in advance to actually practice direct and cross-examination of “witnesses” in the classroom. This section will give the students the opportunity to apply what they have learned regarding alcohol metabolism.

WEEK EIGHT: BREATH TESTING – Part one of a two-part study of the law and science of fuel cell (preliminary) and infrared (evidentiary) breath testing; application of infrared breath testing; a study of the administrative rules, the statutory and case law, and rules of evidence applicable to breath testing.

Reading Assignment:

- 2007 Michigan Breath Test Operator Training Manual: Chapters 6, 7, 8, 10, 12; Appendix A – Administrative Rules for Breath Testing.
- Defending Drinking Drivers: Chapter 2 (§§ 220 - 223.5; 223.8 - 223.8.1; 225, 226, 227 - 227.6).

WEEK NINE: TRIAL SKILLS – Students will “reverse rolls” again from prior week of trial skills and now present for the other side. Using mock discovery materials students will use questions they prepare in advance to actually practice direct and cross-

examination of “witnesses” in the classroom. This section will give the students the opportunity to apply what they have learned regarding breath testing.

WEEK TEN: BLOOD TESTING – A study of the science of blood testing from the vein to the lab, headspace gas chromatography, and serum blood testing; a study of the admissibility of blood tests and the warrant requirement; a study of the administrative rules, statutory and case law, and rules of evidence applicable to blood testing.

Reading Assignment:

- Defending Drinking Drivers: Chapter 2 (§§ 240 - 244).

WEEK ELEVEN: TRIAL SKILLS – Students will “reverse rolls” one final time, allowing each student to be both a prosecutor and defense attorney on two occasions. Using mock discovery materials students will use questions they prepare in advance to actually practice direct and cross-examination of “witnesses” in the classroom. This section will give the students the opportunity to apply what they have learned regarding alcohol metabolism.

WEEK TWELVE: ADMINISTRATIVE HEARINGS AND DRIVER LICENSE ISSUES - A study of the Michigan Driver License Appeal and Assessment Division (DAAD), implied consent hearings and law and driver license restoration; a study of the case law affecting administrative hearings and appellate law and procedures.

Reading Assignment:

- 2007 Michigan Breath Test Operator Training Manual. Review “Testimony at DLAD Hearing,” pages 8-10.
- Defending Drinking Drivers: Chapter 8 (§§ 800 - 824.2).

WEEK THIRTEEN: SENTENCING – A study of the public policy and law of sentencing in drunk driving cases; a study of new and novel scientific “solutions” to drunk driving; a study of the direct, indirect and administrative consequences of conviction, pre-sentence investigations, sentencing memorandums, substance abuse screening and sentencing advocacy; a study of alcohol treatment and various alternatives to incarceration.

Reading Assignment:

- Defending Drinking Drivers: Chapter 7 (§§ 720 - 727; 735 - 735.8; 740).

WEEK FOURTEEN - Course review and exam preparation