

University of Houston Law Center

PRE-TRIAL LITIGATION
SYLLABUS

Spring 2014
Thursday 6 -9 p.m.
Room 111 TU2

THE ONLY ASSIGNMENT FOR THE FIRST CLASS IS TO REVIEW THE SYLLABUS, IF YOU HAVE QUESTIONS ABOUT THE SYLLABUS AND HOW COURSE IS STRUCTURED ASK THE QUESTIONS IN CLASS. AFTER THE FIRST LECTURE YOU WILL BE DIVIDED INTO SMALL SECTIONS AS A "CATLETT/BUCKLEY" SECTION AND A "CARMINATI/ORLANDO" SECTION. ONCE IN THOSE SECTIONS, YOU WILL BE ASKED YOUR PREFERENCE TO ACT AS PLAINTIFF OR DEFENSE COUNSEL AND PAIRED UP AGAINST A STUDENT IN YOUR SECTION. WE MAY OR MAY NOT ASSIGN YOU YOUR PREFERENCE BASED ON WHETHER WE HAVE EQUAL PREFERENCES FOR PLAINTIFF AND DEFENDANT. YOU WILL KEEP THAT SECTION AND PARTY ASSIGNMENT THE REST OF THE SEMESTER

CASE MATERIALS WILL BE DISTRIBUTED BY YOUR PROFESSOR AS THE COURSE PROGRESSES.

DO NOT PURCHASE OR REVIEW THE FLINDERS V. MISMO CASE MATERIALS FROM NITA OR OTHER SOURCES. AS A PARTICIPANT IN THIS CLASS, YOU WILL BE PROVIDED PLAINTIFF OR DEFENSE ONLY MATERIALS. YOU WILL RECEIVE OTHER PARTY SENSITIVE MATERIALS AS THE CASE PROCEEDS AND YOU WILL HAVE TO SECURE ADDITIONAL MATERIALS THROUGH DISCOVERY IN THE CLASS. AS THE COURSE PROGRESSES, YOU WILL BE GIVEN PASSWORDS TO THE SPECIFIC LOCKBOXES ON THE TWEN PRE TRIAL LITIGATION SITE. DO NOT ATTEMPT TO ACCESS A LOCKBOX UNLESS AND UNTIL YOU HAVE BEEN GIVEN THE PASSWORD FROM YOUR PROFESSOR. ACQUIRING MATERIALS OR INFORMATION FROM THE FLINDERS V. MISMO CASE MATERIALS FROM SOURCES OUTSIDE OF THE COURSE AND CLASS IS NOT PERMITTED.

Sections & Break out rooms (Three additional breakout rooms will be assigned by first day of class):

John Buckley jbuckley@greerherz.com

Deb Catlett catletts@swbell.net

Giugi Carminati giugi.carminati@gmail.com

Michael Orlando MOrlando@meyerorlando.com

Objective of the Course: To provide law students with an opportunity to apply pre-trial rules of procedure to a civil case problem. This course will expose students to the use of the Texas Rules of Procedure in an adversarial setting. Students will engage in advocacy, strategic thinking and logical analysis. Students will receive actual experience in interacting with clients, drafting pleadings, interpreting the rules, arguing motions and taking depositions.

Overview of the Course: The class will meet in a general session for select topics for the first hour of class. The class then breaks into smaller sections where they will prepare to prosecute and/or defend various aspects of civil cases. In each small section the class will be taught and supervised by licensed attorneys and/or judges in developing their case. When not meeting for general session, the small sections will meet and will be split into Plaintiff's Counsel and Defense Counsel representing the two sides in a civil lawsuit. In these sections, the students will receive supplemental instruction and will be expected to perform like associates in a law firm reporting to the senior partner. The students' assignments are to investigate the law and the facts, and report on various strategies, file suit, conduct discovery, prepare, respond to and argue pretrial motions, including a summary judgment hearing. The students will be expected to have knowledge of the Texas Rules of Civil Procedure and the Local Rules and fees for State Courts in Harris County, Texas.

As a student in this class, you will prepare for client interviews and prepare a contract for services. You will research and prepare a preliminary jury charge. You will draft pleadings and motions, such as original and amended petitions, original and amended answers, motions and discovery, including requests for disclosure, requests for admissions, interrogatories and requests for production and other documents. You will advise your client for deposition preparation and settlement negotiations. You will prepare a motion for summary judgment and/or a response to a motion for summary judgment. You will conduct and defend a deposition using a court reporter, conduct a mediation with a mediator and argue motions before a sitting Judge in a Texas state court. Your professor will provide you with a list of courts conducting hearings. It is your responsibility to contact the court to schedule the hearing. As in actual practice, it is important that work be submitted when due unless your opposing counsel and/or professor have okayed an extension in advance.

You will also maintain a trial notebook and submit it at the end of the semester. During the course of the litigation, you will keep a billable hours statement of activities and charges. You must submit the documents timely, participate in and attend the hearings and conduct a deposition as required in the syllabus.

YOU ARE EXPECTED TO REVIEW THE MATERIALS LISTED IN THE "CLASS PREPARATION" SECTION OF THE SYLLABUS AS WELL AS ANY MATERIALS IN THE COURSE MATERIALS ON TWEN BEFORE EACH WEEK'S CLASS. YOU DO NOT NEED TO REVIEW POWERPOINTS ON TWEN BEFORE LECTURES.

ANY WEEKLY ASSIGNMENT DUE FOR THE CLASS IS TO BE SUBMITTED TO YOUR PROFESSOR BY NOON ON WEDNESDAY, THE DAY BEFORE THE CLASS. PLEADINGS, MOTIONS AND DISCOVERY ARE LIKEWISE TO BE SERVED ON YOUR OPPOSING COUNSEL BY NOON ON WEDNESDAY, THE DAY BEFORE THE CLASS.

ALL ASSIGNMENTS ARE TO BE FILED ON TIME.

All assignments must be either have a signature or a notation of electronic signature by <student's name>

YOU WILL SUBMIT CUMULATIVE WEEKLY BILLING STATEMENTS CONTAINING A DESCRIPTION OF SERVICES AND TIME WORKING ON ASSIGNED CASE AS THOUGH YOU WERE BILLING A CLIENT FOR YOUR TIME.

Professional dress is REQUIRED for all hearings, client interviews, depositions and mediations. Law office casual is acceptable for daily class.

Because this class depends upon the initiative and imagination of the students, there is no accurate and complete way to predict the exact contours of various assignments.

Grading Breakdown: You will receive oral and/or written evaluations, critiques and suggestions on work submitted and oral advocacy.

Class participation: 30 percent; Trial Notebook/15 percent

Daily assignments: 30 percent; advocacy skills/15 percent Final quiz: 10 percent

Pretrial Litigation Class Schedule and Assignments

As a student in this class, you will prepare agreements, letters, discovery requests, motions and other documents – required and voluntary – that are relevant to the litigation. Under the Texas Rules, some documents are filed with the court with a copy delivered to opposing counsel as reflected in a Certificate of Service. Other documents are served on opposing counsel and are not filed with the court. For the purposes of this class, submit **one copy** of ALL documents you prepare to the professor. Document must be captioned and drafted as they would before filing in Court – Full signature blocks, Certificates of Service, Certification of Conference (if applicable) of Proposed Order, Request for Hearing and cover letter to the clerk.

FORMATTING your email and documents when submitting assignments:

The subject of the e mail will be the name of the documents you are submitting (e.g. “Plaintiff’s Original Petition”, “Defendant’s Answer”, etc.)

The document will contain a header or footer with your name and name of section (e.g. Carminati/Orlando).

You will receive oral and/or written evaluations, critiques and suggestions on work submitted and oral advocacy. You will compile your trial notebook and keep it up to date as the semester progresses and will submit a copy to your professor at the end of the semester.

Please use a footer with your name on the first page of your document. This is a departure from the format you would use in actual Court filings, but required for this class. Remember to have appropriate signature blocks on all documents with actual or electronic signature noted.

Documenting and collecting for the legal time you have invested in a case is an important part of law practice. Keep in mind quote ascribed to Abraham Lincoln: “A lawyer’s time is his stock and trade.” A sample billable hour form is posted on TWEN so that you can use it electronically. Submit your billable hour sheets on a weekly basis.

You will do three motion hearings at least one of which will be in court.

Textbooks: Required - Michol O’Connor, *O’Connor’s Texas Rules * Civil Trials* (latest edition) (“O’Connors”).

Rebecca Sitterly, et al (NITA), *Flinders Aluminum Fabrication Corp. v. Mismo Fire Insurance Company*, 9th edition. This case materials for your use will be provided to you electronically in the first weeks of class. Please pay for the materials at the Blakely Advocacy office (\$24.50) (“Flinders”). See Note on page one restricting your access to Flinders v. Mismo materials to those acquired through class.

(Suggested) - David M. Malone & Peter T. Hoffman, *The Effective Deposition*.

Course Materials: Posted on TWEN.

Case Materials: Supplied as the class progresses. See Note on page one restricting your access to Flinders v. Mismo materials to those acquired through class.

Recommended Software: Adobe Acrobat Standard or Pro

Access to Other Resources: WestLaw, Lexis,

TWEN: To access our class web page to <http://lawschool.westlaw.com/twen> and enter your Westlaw ID. If you do not have your Westlaw ID, contact the Westlaw representative, Chris Schmidt at CHRIS.SCHMIDT@thomson.com. Once logged in, click on add/drop a course and add the Pre-trial Lit., Spring 2014, Professor Buckley. The password is “RollingStoneRule”.

You should also have a Lexis student account for research and forms.

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 1, Thursday Jan 16	<p><u>Client Interview/Contracts</u></p> <p>Read <i>O'Connor's</i> Chapter 1.</p> <p>Register for access to TWEN available through Westlaw under Pretrial Lit, Fall 2010,</p> <p> Password: RollingStoneRule.</p> <p>The class will be divided into plaintiff and defense firms. Each of you will have “opposing counsel.” The jurisdiction for this class is Texas. Plaintiff’s attorneys will file the case in the 613th Civil District Court, Harris County, Texas. Consider whether you will choose to be a plaintiff or defense attorney.</p>	<p>General Session: Introduction to course on line forms & research tools Plaintiff/Defense perspective of case Client Communications</p> <p>Assignments Due: none</p> <p>Small Sections Activities: Small sections receive law office memorandum regarding new client assignment. Discuss case upon which we will focus our attention this semester and other pretrial considerations and upcoming client interview.</p> <p>Discuss litigation guides and form books: <i>Texas Pattern Jury Charge, Texas Civil Practice and Remedies Code, O'Connor's Texas Causes of Action, O'Connor's Texas Civil Forms, Dorsaneo's Texas Litigation Guide, West's Texas Practice Series vol. 47 Handbook on Texas Discovery Practice, etc.</i></p> <p>Class divides into plaintiff and defense law firms. Law firms will choose a managing partner. The managing partner will have such duties as keeping firm contact records, establishing a listserv and facilitating scheduling hearings. Law firms select managing partner and choose firm name. Professors choose litigation teams of opposing counsel.</p> <p>Begin to prepare billable hours statement.</p> <p>“Reel to Real”</p> <ol style="list-style-type: none"> 1) <i>Anatomy of a Murder</i> Scene 4 - Questioning to Marion (through both interviews); 2) <i>A Civil Action</i> Scene 4 - On the spot on the air (through Travolta’s walking up & down creek)

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 2, Thursday Jan 23	<p><u>Causes of Action/Plaintiff's Lawsuit/Jury Charge</u></p> <p>Research possible legal issues and prepare outline of questions for initial interview of client.</p> <p>Prepare written contract for services applicable for type of client (e.g., contingency fee contract, hourly fee agreement with or without retainer, fixed fee agreement).</p> <p>Begin reading <i>O'Connor's</i>, Chapter 2, Plaintiff's Lawsuit, sections B,E,F,G,H.</p> <p>Read <i>O'Connor's</i> Chapter 6, Subpart E "Requests for Disclosure".</p>	<p>General Session: Elements of initial pleadings and case strategies, Venue and jurisdiction, Jurisdiction of Texas and Federal Courts; Requests for Disclosure, Document Preservation.</p> <p>Assignments Due: <i>Client agreement/contract to Prof</i></p> <p>Small Session Activities: Client interview, communication and relations Conduct client interviews and discuss contract for services with client. Law firms receive materials from clients. Discuss jury charge, trial notebook, case strategy. Pleadings to set up Dilatory Pleas distributed.</p> <p>"Reel to Real" 1) <i>Erin Brokovich</i> Scene 27 – Erin and Ed plotting Strategy</p>
Week 3, Thursday Jan 30	<p><u>Investigation of Law and Facts/Responsive Pleadings</u></p> <p>Begin investigating facts and law, research of legal issues and elements of potential claims and defenses, elements of case.</p> <p>Research causes of action. Prepare working jury charge. See <i>Texas Pattern Jury Charge, Texas Civil Practice and Remedies Code, O'Connor's Causes of Action</i>, etc.</p> <p>Read <i>O'Connor's</i>, Chapter 3, "Defendant's Pleadings" Rule 91a and Expedited Jury Trial Rules.</p> <p><u>Plaintiffs</u> prepare original petitions and requests for disclosure for filing and serving on opposing counsel at the beginning of class.</p>	<p>General Session: 1. Responsive Pleadings, 2. Litigation plan and discovery (including Third Party Discovery)</p> <p>Assignments Due: <u>Plaintiffs file and serve original petitions and requests for disclosure.</u></p> <p>Small Session Activities: Law firms meet with professors or mentors to discuss case, determine theories and strategies. Responsive pleadings, special exceptions, jurisdiction and venue challenge, pleas in abatement.</p> <p><u>Defendants</u> will be assigned a Dilatory Plea to Brief and submit to opposing counsel.</p> <p>"Reel to Real"</p>

		<p>1) <i>A Civil Action</i> Scene 7 – A declaration of war (through phone call)</p>
<p>Week 4, Thursday Feb 6</p>	<p><u>Court Conduct & Discovery</u></p> <p><u>Defendants</u> prepare responsive pleadings and Dilatory Pleas, (special exceptions, motion to compel arbitration, motion to transfer venue, pleas in abatement) to file. Note: For the purposes of this class, answers must include both a general denial and specific denials. Review Texas Rules regarding pleadings, Plaintiff and Defendant elements of case.</p> <p><u>Defendants</u> will prepare brief on assigned dilatory plea.</p> <p>Read <i>O'Connor's</i>, Chapter 6, Discovery: Subpart A “General Rules for Discovery”; B “Scope of Discovery”; C “Electronic Discovery”; D “Securing Discovery from Experts”.</p> <p>HEARINGS WILL BE SET FOR Week 5. Hearings will be held in class as directed following TRCP. You must follow TRCP as far as serving the proper notice and documents on opposing counsel.</p>	<p>General Session: Courtroom protocols, demeanor and argument</p> <p>Assignments Due: <i><u>Defendants</u> file and serve responsive pleadings, dilatory motions and RFD.</i> <i><u>Defendants</u> dilatory plea brief</i></p> <p><u>Plaintiffs</u> must serve and file their responses to the dilatory pleas no later than three days before the hearing scheduled for Week 5. Email service of response on opposing counsel and professors is acceptable under Pretrial class “local rules.”</p> <p><u>Plaintiffs</u> assigned response to Defendant’s dilatory plea</p> <p>Small Session Activities:</p> <p>“Reel to Real”</p> <p>1) <i>A Civil Action</i> Scene 8 – Motion to Dismiss;</p> <p>2) <i>My Cousin Vinny</i> Scene 7 – Learning the procedure;</p> <p>3) <i>The Rain Maker</i> Scene 10 – Sworn in by a fool (through Judge Tyrone Kipler) Scene 11 – An offer to settle Scene 12 – Judge Tyrone Kipler</p>

Week	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 5 Thursday Feb 13	<p><i>Discovery</i></p> <p>Both parties will prepare a memo discussing the Elements of the Case Form analyzing what they will need to prove and defend against. The Elements of Case Form will include a description of the legal elements of each of the Claims asserted by Plaintiff's Pleadings, each of the Defenses to those claims raised by Defendant's Pleadings, and any anticipated claims or defenses that may need to be developed in discovery.</p> <p>Read <i>O'Connor's</i> Chapter 6 Discovery: Subpart G "Interrogatories"; H "Requests for Admissions"; I "Securing Documents & Things"; J "Medical Records; K "Entry on Land"</p> <p>Plaintiffs prepare brief in response to dilatory plea</p> <p>Read <i>O'Connor's</i>, Chapter 6, Discovery: Subpart; B § 12 "What is Discoverable"; Sec. 3 "What is Not Applicable Discoverable"</p>	<p>Assignments Due and Class Activities</p> <p>Discovery</p> <p>Assignments Due: Elements of Case</p> <p><u>Plaintiffs</u> Dilatory Plea Brief</p> <p>Small Session Activities:</p> <p>Hearings on Dilatory Pleas, discussion of Elements of Case and how it fits into discovery plan</p> <p>Discovery</p> <p>Firms meet to discuss initial discovery, including requests for disclosure, interrogatories, requests for production</p>
Week 6, Thursday Feb 20	<p><u>Discovery Responses/Client Communication</u></p> <p><u>Plaintiffs</u> and <u>Defendants</u> prepare interrogatories and requests for production (limit no more than 15 for each).</p> <p>Read <i>O'Connor's</i> Chapter 6, Subpart A § 18 "Resisting Discovery"; § 19 "Types of Objection to Discovery";</p> <p>Re-read/Review <i>O'Connor's</i> Chapter 6 Subpart B § 2 "What is Discoverable"; § 3 "What is Not Discoverable".</p>	<p>General Session: Discovery responses, Client Communications</p> <p>Assignments Due: <i><u>Plaintiffs</u> and <u>Defendants</u> file and serve interrogatories, requests for production and third party discovery.</i></p> <p>Small Session Activities Continue hearings as necessary, plan discovery responses</p> <p>"Reel to Real"</p> <ol style="list-style-type: none"> 1) <i>The Letter</i> Scene 7 – The letter Scene 8 – To save your neck 2) <i>Class Action</i> Scene 16 – Panel's report

		Scene 17 – The letter of the law (through truck on street)
Week 7, Thursday Feb 27	<p><u>Discovery Disputes</u></p> <p>Parties prepare responses to discovery requests.</p> <p>Read <i>O'Connor's</i>, Chapter 6 Subpart A, 20 “Motion for Protective Order”; 21 “Motion to Quash or Motion to Modify Subpoena”; 22 “Motion to Compel Discovery”; 23 “Spoliation”, 24 “Motion for Discovery Sanction”; 25 “Waiver of Sanctions, Discovery & Objection; 26 “Review of Discovery Orders</p>	<p>General Session: Discovery Disputes and Sanctions</p> <p>Assignments Due: <i><u>Plaintiffs and Defendants</u> file and serve discovery responses o</i></p> <p>Small Session Activities: Discovery Dispute Assigned</p> <p>Firms meet to review responses and discuss appropriate discovery disputes. Discuss continued investigation of case and appropriate motions. What facts do you need to proceed with the litigation? Do you need further discovery?</p>
Week 8, Thursday Mar 6		<p>General Session: Client and Witness Interview and Preparation Deposition and Deposition Skills</p> <p>Assignments Due: <i><u>Plaintiffs and Defendants</u> file and Discovery Dispute Briefs.</i></p> <p>Small Session Activities: Practice Deposition Skills.</p> <p>Discovery Dispute Hearings.</p> <p>Firms meet to discuss and prepare for depositions Week 8. Each law firm will divide topics among the firm’s attorneys covering the information deemed relevant by the firm. Plaintiffs and Defendants will conduct their depositions during class time. Rooms TBA.</p> <p>“Reel to Real”</p> <ol style="list-style-type: none"> 1) <i>My Cousin Vinny</i> Scene 17 - Questioning Sam Tipton Scene 17 – Mr. Crane & Mrs. Riley; 2) <i>Class Action</i> Scene 13 – Witness elimination;

		<p>(Continued on next page)</p> <p>3) <i>The Verdict</i> Scene 13 – Witnesses;</p> <p>4) <i>Erin Brokovich</i> Scene 4 – Court;</p> <p>5) <i>A Civil Action</i> Scene 10 – One father’s stay Scene 11 – Questioning Riley Scene 13 – A witness</p>
Week 9, Thursday Mar 13	<u>Sping Break</u>	No class assignments
Week 10, Thursday Mar 20	<u>Depositions</u> Prepare to depose Plaintiff and Defendant per previous instructions. <u>Plaintiffs</u> and <u>Defendants</u> prepare responses to motions to compel to file and serve no later than one day before the scheduled hearing.	<i>NO GENERAL SESSION – SMALL SESSION ONLY</i> Small Session Activities: Depositions. Opposing counsel prepare for hearings.
Week 11, Thursday Mar 27	<u>Summary Judgments</u> Research issues to find relevant case law. Read deposition texts and materials. <u>Defendants</u> should be preparing facts and law for motions for summary judgment. DO NOT WAIT ON DEPOSITION TRANSCRIPT TO BEGIN WORK ON MSJ. <u>Plaintiffs</u> should begin preparing evidence for responses taking into consideration defendant’s affirmative defenses and possible no evidence motions. No evidence summary judgment motions may only be filed in combination with traditional summary judgment motions. Read <i>O’Connor’s</i> , Chapter 7, Disposition Without Trial, Subpart B “Motion for Summary Judgment – General Rule”;	General Session: Motions for Summary Judgment Receive deposition transcripts. Assignments Due: Small Session Activities: Summary judgments Hearings on Discovery Disputes as necessary

	<p>C “Traditional Motion for Summary Judgment; D “No Evidence Motion for Summary Judgment”; E “Motion for Judgment of Agreed Statement of Facts.</p> <p>(Continued on next page) Read Malone & Hoffman, Chapters 16, 17, 18, 19.</p> <p>Begin preparation for summary judgment and response. Schedule or confirm MSJ hearings with court</p>	
<p>Week 12, Thursday Apr 3</p>	<p><u>Summary Judgments/Responses/Affidavits</u></p> <p>Attorneys should evaluate the evidence and the relevant law and form litigation strategy for Motion for Summary Judgment.</p> <p>Read Judge David Hittner and Lynne Liberato, <i>Summary Judgments in Texas</i> – 46 Hous. L. Rev. 1379 (2010).</p> <p>Review case file and prepare documents for summary judgment.</p>	<p>General Session: Responses to Motion for Summary Judgment; Disposition without Trial</p> <p>Assignments Due: <i>Defendant’s MSJ to be filed and served</i></p> <p>Small Session Activities: Responses to motions for summary judgment, affidavits and ethical considerations in responses to summary judgment motions</p>
<p>Week 13, Thursday Apr 10</p>	<p><u>Negotiations and Settlement</u></p> <p>Alternative Dispute Resolution</p> <p>Read O’Connor’s, Chapter 4, Alternative Dispute Resolution – Mediation, Subpart A “The ADR System”; B “Mediation”.</p> <p>Read Chapter 4, Mediation; Malone & Hoffman, Chapters 16, 17, 18, 19;</p> <p>Confirm summary judgment hearings with the court.</p>	<p>General Session: Negotiations and Settlement</p> <p>Assignments Due: <i>Plaintiffs Response to MSJ to be filed and served</i></p> <p>Small Session Activities: Law firms meet to discuss hearings, negotiation tactics at mediation, motions and responses.</p> <p>“Reel to Real”</p> <ol style="list-style-type: none"> 1) <i>Erin Brokovich</i> Scene 19 – PG&E sends over a flunky Scene 29 – Meeting PG&E lawyer; 2) <i>True Grit</i> Scene 4 – Horse trading

<i>Week</i>	<i>Class Preparation</i>	<i>Assignments Due and Class Activities</i>
Week 14, Thursday Apr 17	<u>Mediation of Claims</u> Prepare mediation memorandum.	General Session: <i>NO GENERAL SESSION – SMALL SESSION ONLY</i> Small Session Activity: Mediation of Claims Assignments Due: <i>Mediation memo</i>
Week 15 Thursday Apr 24	Complete case file.	<i>FINAL CLASS MEETING AT LOCATION TBA</i> Summary Judgment hearing
Week 16-17 Finals	You will be given a take home project. Case File and Take Home Project Last Day of Exams – Noon.	Take Home Project and Notebook due. Summary Judgment hearings