

University of Houston Law Center

PRE-TRIAL LITIGATION
SYLLABUS

Spring 2018

Thursday 6:00-9:00 p.m.

Room 111 TU2

Breakout Rooms TBA

THE ONLY ASSIGNMENT FOR THE FIRST CLASS IS TO REVIEW THE SYLLABUS. IF YOU HAVE QUESTIONS ABOUT THE SYLLABUS OR HOW THE COURSE IS STRUCTURED, ASK THE QUESTIONS IN CLASS. AFTER THE FIRST LECTURE, YOU WILL BE DIVIDED INTO SMALL SECTIONS ("LAW FIRMS"). ONCE IN YOUR LAW FIRM, YOU WILL BE PAIRED UP AGAINST ANOTHER STUDENT WHO WILL BE YOUR OPPOSING COUNSEL FOR THE SEMESTER. WE MAY OR MAY NOT ASSIGN YOU YOUR PREFERENCE BASED ON WHETHER WE HAVE EQUAL PREFERENCES FOR PLAINTIFF AND DEFENDANT IN THE CLASS. YOU WILL KEEP THAT LAW FIRM AND PARTY ASSIGNMENT FOR THE REST OF THE SEMESTER

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

DO NOT PURCHASE OR REVIEW THE CASE MATERIALS FROM 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 NEED 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.

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Sections & Break-out Rooms: TBA

John Buckley jbuckley@greerherz.com

Amy Hawk ahawk@central.uh.edu

Other professors TBA

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 Civil 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 during a portion of each class. The class then breaks into smaller sections where students 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 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, 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 research and draft pleadings and motions, such as original and amended petitions, original and amended answers, motions and discovery, including requests for disclosure, interrogatories and requests for production and other documents. You will advise your client for deposition preparation. 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, and argue motions before a sitting judge in a Texas state court. Your professor(s) will provide you with a list of courts conducting hearings. It is your responsibility to contact the court to submit the necessary paperwork for your hearing. As in actual practice, it is important that work be submitted when due unless your opposing counsel and/or professor has okayed an extension in advance.

You will also maintain a trial notebook and submit it at the end of the semester for a grade. During the course of the litigation, you will turn in billable hours statements each week of activities and charges you have performed. 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 "Resource Reference Materials" section on TWEN before each week's class. You do not need to review the PowerPoint presentations on TWEN before lectures.

ANY WEEKLY ASSIGNMENT DUE FOR THE CLASS IS TO BE SUBMITTED TO YOUR PROFESSOR BY NOON (12:00pm) ON WEDNESDAY, THE DAY BEFORE CLASS. PLEADINGS, MOTIONS AND DISCOVERY ARE LIKEWISE TO BE SERVED ON YOUR OPPOSING COUNSEL BY NOON (12:00pm) ON WEDNESDAY, THE DAY BEFORE CLASS. ALL ASSIGNMENTS ARE TO BE FILED ON TIME. ALL ASSIGNMENTS MUST

EITHER BE SIGNED OR HAVE A SIGNATURE OR A NOTATION OF ELECTRONIC SIGNATURE ABOVE YOUR SIGNATURE BLOCK.

YOU WILL ALSO SUBMIT WEEKLY BILLING STATEMENTS CONTAINING A DESCRIPTION OF SERVICES AND TIME WORKED ON THE ASSIGNED CASE AS THOUGH YOU WERE BILLING A CLIENT FOR YOUR TIME. THE WEEKLY BILLING STATEMENTS MUST BE SUBMITTED TO YOUR PROFESSORS (BUT NOT YOUR OPPOSING COUNSEL) BY NOON (12:00pm) ON EACH WEDNESDAY, THE DAY BEFORE CLASS. PLEASE NOTE THAT YOU MUST SUBMIT A WEEKLY BILLING STATEMENT EVERY WEEK, REGARDLESS OF WHETHER YOU HAVE A SPECIFIC ASSIGNMENT DUE THAT WEEK.

Weekly assignments are graded on a 4-point scale, with 4 being the highest grade available. Weekly billing statements are not graded on the 4-point scale, but failure to turn in one or more of the required billing statements may be reflected in your final Professionalism grade.

“GET-OUT-OF-JAIL-FREE” OPTION: During the semester, each student is entitled to one (1), 24-hour extension on a weekly assignment, no questions asked. Late assignments turned in without an approved extension may be docked as much as 1 point per day for every day past the deadline (beginning at 12:01pm on the scheduled due date). In order to obtain the extension, you must complete the following steps **PRIOR TO THE ORIGINAL DEADLINE FOR THE ASSIGNMENT:**

1. Get approval for the extension from your opposing counsel via an email request and affirmative response.
2. Forward the email chain (i.e., the request and approval) to your small group professors showing you have approval.
3. Then turn in your assignment no later than the next day (Thursday) before noon (12:00pm) as described above.

Professional dress is REQUIRED for all hearings and depositions unless otherwise noted. Law office casual is acceptable for daily class.

You should attend all class sessions and arrive on time. The UHLC attendance policy requires attendance at 80% of all scheduled (or makeup) classes, or a student risks being dropped from the course. Attendance may be taken at each class. Please note that you are responsible for managing your absences from class and ensuring that your total number of absences does not exceed 20%.

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 assignments. Your final grade will be based on the following:

- Weekly Assignments: 40%
- Oral Advocacy Skills: 30%
- Trial Notebook: 10%
- Class Participation and Professionalism: 20%

Pre-trial 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 only but are not filed with the court. For the purposes of this class, submit to your small group professor(s) **one (1) copy** of **ALL** documents that you prepare. Documents must be captioned and drafted as they would before filing in court, i.e., full signature blocks, certificates of service, certification of conference (if applicable), Proposed Order, Request for Hearing and cover letter to the clerk.

FORMATTING your email and documents when submitting assignments:

1. 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.)
2. The document will contain a header or footer with your name and name of section (e.g. Buckley/Hawk, etc.).
3. 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 is required for this class. Remember to have appropriate signature blocks on all documents with actual or electronic signature noted.

You will receive oral and/or written evaluations, critiques and suggestions on work submitted and on your oral advocacy skills. 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.

Documenting and collecting for the legal time you have invested in a case is an important part of law practice. Keep in mind the quote ascribed to Abraham Lincoln: “A lawyer’s time is his stock and trade.” Sample billable hour forms are posted on TWEN so that you can use them electronically. Update and submit your billable hour time sheets on a weekly basis. The time sheets should contain a running tally for the semester.

You will do several motion hearings during the semester, at least one of which will be in open court.

Textbooks:

Required - Michol O’Connor, *O’Connor’s Texas Rules * Civil Trials* (latest Edition – 2017 or 2018) (“O’Connors”) ISBN-978-1-59839-258-6

Case Materials - The 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 if necessary (we will discuss in class).

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

Course Materials:

Posted on TWEN.

Case Materials:

Supplied as the class progresses.

Recommended Software:

Adobe Acrobat Standard or Pro

Access to Other Resources:

WestLaw, Lexis

TWEN: To access our class web page, go to <http://lawschool.westlaw.com/twen> and enter your Westlaw ID. If you do not have your Westlaw ID, contact the UHLC library staff or the Westlaw representative. Once logged in, click on add/drop a course and add Pre-trial Lit., Spring 2018, Professor Hawk. The password is “RollingStoneRule”.

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

Week	Class Preparation	Assignments Due and Class Activities
Week 1, Thursday Jan. 18	<u>Initial Client Contact/Before Filing Suit</u> Read <i>O'Connor's</i> Chapter 1. Register for access to TWEN available through Westlaw under Pretrial Lit, Spring 2017. Password: RollingStoneRule. 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 would rather be a plaintiff or defense attorney.	General Session: Introduction to course, online forms & research tools Plaintiff/Defense perspective of case Client Communications 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> Discuss elements of Claim Charts. 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. Assignments Due: <i>None.</i> Small Sections Activities: Small sections receive law office memoranda regarding new client assignment. Discuss case upon which we will focus our attention this semester and other pretrial considerations. Discuss elements of the Claim Chart that will be due next week. Begin to prepare billable hours statement. "Reel to Real" 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)
Week 2, Thursday Jan. 25	<u>Causes of Action/Plaintiff's Lawsuit/Jury Charge</u> Research possible legal issues and prepare Claim Chart	General Session: Elements of initial pleadings and case strategies; Venue and jurisdiction; Jurisdiction

	with possible claims, defenses and counterclaims. Review written contract for services applicable for type of client (e.g., contingency fee contract, hourly fee agreement with or without retainer, fixed fee agreement). Begin reading <i>O'Connor's</i>, Chapter 2, Plaintiff's Lawsuit, sections B, E, F, G, H. Read <i>O'Connor's</i> Chapter 6, Subpart E "Requests for Disclosure". HEARINGS ON DILATORY PLEAS WILL BE SET FOR WEEK 3. 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.	of Texas and Federal Courts; Requests for Disclosure; Document Preservation. Assignments Due: <i>Plaintiffs and Defendants file Claim Chart with possible claims, defenses, counterclaims and elements of each.</i> Small Session Activities: Discuss client interview, communication and relations. Law firms receive additional materials from clients. Discuss Claim Chart, trial notebook, case strategy. Discuss Dilatory Pleas in this case. Topic(s) for Dilatory Pleas will be assigned. Pleadings (motions and responses) to set up Dilatory Pleas will be distributed. Professors will conduct a sample hearing for the students to observe. "Reel to Real" 1) <i>Erin Brokovich</i> Scene 27 – Erin and Ed plotting Strategy
Week 3, Thursday Feb. 1	<u>Investigation of Law and Facts/Responsive Pleadings</u> Continue investigating facts and law, research of legal issues. Research causes of action. Read <i>O'Connor's</i>, Chapter 3, "Defendant's Pleadings" Rule 91a and Expedited Jury Trial Rules. <u>Plaintiffs</u> prepare original petitions and requests for disclosure.	General Session: - Responsive pleadings, special exceptions, jurisdiction and venue challenge, pleas in abatement. - Litigation plan and discovery (including Third Party Discovery). Assignments Due: <i>Plaintiffs file and serve Original Petitions and Request for Disclosure (RFD).</i> Small Session Activities: Hearings on Dilatory Pleas. Law firms meet with professors to discuss case, determine theories and strategies. "Reel to Real" 1) <i>A Civil Action</i> Scene 7 – A declaration of war (through phone call)
Week 4, Thursday Feb. 8	<u>Discovery</u> Read <i>O'Connor's</i>, Chapter 6, Discovery: Subpart A "General Rules for Discovery"; B "Scope of Discovery";	General Session: Discovery

	C “Electronic Discovery”; D “Securing Discovery from Experts”; Subpart; B § 12 “What is Discoverable”; Sec. 3 “What is Not Applicable Discoverable” Read O’Connor’s, Chapter 6, Discovery: Subpart G “Interrogatories”; H “Requests for Admissions”; I “Securing Documents & Things”; J “Medical Records; K “Entry on Land”	Assignments Due: <u>Defendants</u> file and serve Answers, Counterclaims and RFD. Small Session Activities: Discuss Claim Chart and how it fits into discovery plan Discovery Firms meet to discuss initial discovery, including requests for disclosure, interrogatories, requests for production. Continue dilatory plea hearings as necessary.
Week 5 Thursday Feb. 15	<u>Discovery Responses/Client Communication</u> <u>Plaintiffs</u> and <u>Defendants</u> prepare interrogatories and requests for production (limit of 15 for each). Also prepare third party discovery requests. Read O’Connor’s Chapter 6, Subpart A § 18 “Resisting Discovery”; § 19 “Types of Objection to Discovery”; Re-read/Review O’Connor’s Chapter 6 Subpart B § 2 “What is Discoverable”; § 3 “What is Not Discoverable”.	General Session: Discovery responses Client communications Assignments Due: <u>Plaintiffs</u> file and serve Answer to Counterclaim <u>Plaintiffs</u> and <u>Defendants</u> file and serve Interrogatories, Requests for Production, Request for Disclosure (if not already done), and third party discovery. Small Session Activities Discuss discovery requests received and appropriate responses. “Reel to Real” 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 6, Thursday Feb. 22	<u>Discovery Disputes</u> Parties prepare responses to discovery requests. Read O’Connor’s, 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	General Session: Discovery Disputes and Sanctions Assignments Due: <u>Plaintiffs</u> and <u>Defendants</u> file and serve discovery responses to (1) ROGs, (2) RFPs, (3) RFD and (4) RFAs (if provided). Small Session Activities: Discovery Disputes Assigned Firms meet to review responses and discuss

	HEARINGS ON DISCOVERY DISPUTES WILL BE SET FOR WEEK 7 AND WEEK 11. 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.	appropriate discovery disputes. Discuss continued investigation of case. What facts do you need to proceed with the litigation? Do you need further discovery?
Week 7, Thursday Mar. 1	<u>Summary Judgments</u> Read <i>O'Connor's</i>, Chapter 7, Disposition Without Trial, Subpart B “Motion for Summary Judgment – General Rule”; C “Traditional Motion for Summary Judgment”; D “No Evidence Motion for Summary Judgment”; E “Motion for Judgment of Agreed Statement of Facts. Read Malone & Hoffman, Chapters 16, 17, 18, 19.	General Session: Motions for Summary Judgment Assignments Due: <i><u>Plaintiffs</u> and <u>Defendants</u> prepare and submit outline of specific evidence and testimony needed to prove or disprove COAs and/or affirmative defenses for your client.</i> <i><u>Plaintiffs</u> and <u>Defendants</u> file and serve supplemental discovery requests and responses as needed.</i> Small Session Activities: Discovery Dispute Hearings. Firms meet to discuss deposition outlines and to discuss summary judgments and how depositions can provide evidence for summary judgment motions.
Week 8, Thursday Mar. 8	<u>Deposition Skills & Witness Preparation</u> <u>Plaintiffs</u> prepare Deposition Outline for Defendant’s deposition and submit to professors. <u>Defendants</u> prepare Deposition Outline for Plaintiff’s deposition and submit to professors. Parties prepare to argue motions to compel and responses in class. Read <i>O'Connor's</i>, Chapter 6, Subpart F “Depositions”. Read Malone & Hoffman, <i>The Effective Deposition</i>, Chapters 5-11.	General Session: Client and Witness Interview and Preparation Deposition and Deposition Skills Assignments Due: <i><u>Plaintiffs</u> and <u>Defendants</u> prepare and submit Deposition Outlines for opposing party’s deposition (respectively).</i> <i><u>Plaintiffs</u> and <u>Defendants</u> prepare to argue motions to compel in class.</i> Small Session Activities: Professors will conduct sample deposition excerpts for the students to observe. Practice Deposition Skills. Firms meet to discuss and prepare for depositions in Weeks 9 and 10. 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 times. Rooms TBA.

		“Reel to Real” 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; 3) <i>The Verdict</i> Scene 13 – Witnesses; 4) <i>Erin Brokovich</i> Scene 4 – Court; 5) <i>A Civil Action</i> Scene 10 – One father’s stay Scene 11 – Questioning Riley Scene 13 – A witness
SPRING BREAK: MARCH 12-16		
Week 9, Thursday Mar. 22	<u>Depositions</u> Prepare to depose Plaintiff per previous instructions.	NO GENERAL SESSION – SMALL SESSION ONLY Small Session Activities: Plaintiff’s and Defendant’s Deposition(s). Assignments Due: <u><i>Plaintiffs and Defendants prepare and submit Notice of Deposition for opposing party.</i></u>
Week 10, Thursday Mar. 29	<u>Depositions, continued</u> Prepare to depose Defendant per previous instructions.	NO GENERAL SESSION – SMALL SESSION ONLY Small Session Activities: Plaintiff’s and Defendant’s Deposition(s). Assignments Due: <i>None.</i>
Week 11, Thursday Apr. 5	<u>Summary Judgments Responses</u> Attorneys should evaluate the evidence and the relevant case law, research issues, and form litigation strategy for Motion for Summary Judgment. Read deposition texts and materials. <u>Defendants</u> should file draft even if deposition transcripts are not back yet. Specific excerpts can be inserted into final draft. <u>Plaintiffs</u> should begin preparing evidence for MSJ responses, taking into consideration defendant’s affirmative defenses and counterclaims. <u>All MSJs must be traditional MSJs (no evidence MSJs are not allowed).</u> Read Judge David Hittner and Lynne Liberato, <i>Summary</i>	General Session: Responses to Motion for Summary Judgment; Disposition without Trial Receive deposition transcripts. Assignments Due: <i>Defendants MSJ rough drafts to be turned in to professors for comments and rewrites.</i> <i>Due by: 12:00pm, Monday, April 9</i> Continue Hearings on Discovery Disputes as necessary.

	<i>Judgments in Texas</i> – 46 Hous. L. Rev. 1379 (2010). Review case file and continue preparing documents for summary judgment and response.	Small Session Activities: Responses to motions for summary judgment, affidavits and ethical considerations in responses to summary judgment motions
Week 12, Thursday Apr. 12	<u>Courtroom Conduct and Protocols</u>	General Session: Courtroom protocols, demeanor and argument Assignments Due: <u>Defendants</u> MSJ final drafts to be filed and served. Due by: 12:00pm, Monday, April 16 “Reel to Real” 1) <i>A Civil Action</i> Scene 8 – Motion to Dismiss; 2) <i>My Cousin Vinny</i> Scene 7 – Learning the procedure;
Week 13, Thursday Apr. 19	<u>Negotiations and Settlement</u> Alternative Dispute Resolution Read O’Connor’s, Chapter 4, Alternative Dispute Resolution – Mediation, Subpart A “The ADR System”; B “Mediation”. Read Chapter 4, Mediation; Malone & Hoffman, Chapters 16, 17, 18, 19; Schedule or confirm MSJ hearings with court.	General Session: Mediations, Negotiations and Settlement Assignments Due: <u>Plaintiffs</u> Response to MSJ rough drafts to be turned in to professors for comments and rewrites. Due by: 12:00pm, Monday, April 23 Small Session Activities: Responses to Summary Judgments “Reel to Real” 1) <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 2) <i>Erin Brokovich</i> Scene 19 – PG&E sends over a flunky Scene 29 – Meeting PG&E lawyer; 3) <i>True Grit</i> Scene 4 – Horse trading
Week 14 Thursday Apr. 26 LAST CLASS	<u>Final Class</u> Class wrap-up and discussion about MSJ hearings and case notebook.	General Session: Class Wrap Up Assignments Due: <u>Plaintiffs</u> Response to MSJ final drafts to be filed and served. Due by: 12:00pm, Monday, April 30 Small Session Activities: Law firms meet to discuss tactics and strategy for MSJ hearings.

Week 15	Case Notebook Due: Noon (12:00pm), Wed., May 2 (To be turned in at the Blakely Office, 101BLB) You will also argue a Summary Judgment hearing downtown.	No class Case Notebook due. Summary Judgment hearings (as scheduled).
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