

**SYLLABUS FOR PRETRIAL PROCEDURE  
PROFESSOR SCHWARTZ**

**SPRING 2020**

Welcome to Texas Pretrial Procedure! This is a valuable course, but it is full of detail that simply has to be learned. Nevertheless, you will be much more capable as a lawyer than you would be without it.

The successful practice of law requires a variety of skills. Not all of us have the skills to successfully practice law. I have seen some of the smartest people I have ever encountered fail at the law. The most basic skill set is knowing the language of the law. Procedure is the structure of the law. No idea, no matter how powerful, will ever become the law unless it is presented in a way courts decide cases. That is procedure.

Below is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings, and it may at times become necessary to deviate from the syllabus. I will let you know sufficiently in advance if this occurs.

**BOOK(S)**

Dorsaneo, Thornburg, Carlson & Crump, Texas Civil Procedure: Pretrial Litigation, 2018-2019  
ISBN 978-1-5310-1242-7  
e-ISBN 978-1-5310-1243-4

Texas Rules of Civil Procedure; Michigan Legal Publishing Ltd., 2018 Edition  
ISBN-10: 1640020284  
ISBN-13: 978-1640020283

If you do not want to buy a rule book, you can download the rules from the internet:

<http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-january-1-2018.pdf>

I have also attached to this syllabus a handout titled, “Texas Pretrial Procedure – Texas Rules” for Spring 2020. These are some of the most important rules that we will discuss.

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**MY POLICIES FOR CONDUCTING CLASS  
PROFESSOR SCHWARTZ**

**NOTE:** Some of you may be tempted to scan over the below policies, or simply skip them altogether. This is inadvisable, and may put you at a disadvantage when it comes to your final exam.

1. Welcome to the course in Texas Pretrial Procedure! This is an important subject to study; it isn’t always fascinating, but it is among those in which your hard work is most likely to be rewarded when you practice law. Unfortunately, most of this class will be lecture, but I encourage class participation because one of the values of a law school is that it teaches you to “think like a lawyer.”
2. Consider carefully before taking this course. This is the fourth year that I am teaching this course. Each year I strongly solicit candid evaluations. I earnestly want to learn what I am doing right and what I can do to improve my teaching. Unfortunately, my evaluations have been mixed. I have received some extremely flattering and exceptional evaluations, and I have received some very negative comments. Have you ever wondered why Southwest

Airlines is so highly rated even though they provide little in the way of exceptional service? The answer, I think, is that SWA fulfills customer expectations. I think the same of the negative responses I have received is due to my failing to meet certain expectations. So, let me address that now. If you want a PowerPoint presentation in class, drop this course. If you think the professor should stick strictly to the book and the reading assignments, drop this course. If you think the professor should not talk about Federal Civil Procedure because this course is about Texas Civil Procedure, drop this course.

3. You are responsible for knowing everything that is covered in class, and everything in the assigned reading materials. If you feel that it is wrong to teach that the Federal Rule of intervention is different from the Texas Rule of intervention because this is a class on Texas Procedure, you should drop this course. If you believe it is unnecessary to know that California employs an entirely different approach from Texas regarding the release of unknown claims, you should drop this class (and get the best malpractice policy available to you once you start your practice). If you think being told that aggressive and unprofessional tactics are sometimes called “Rambo tactics” (a term that comes from the lead character in four movies starring Sylvester Stallone) is inappropriate, good luck to you – but please do not take this course.

I have been a lawyer for over 40 years, and I have had the opportunity to enjoy much success and suffer many failures. During this time, I have learned one fundamental truth about the practice of law: it is not for everyone. If it is not for you, this is an excellent time to find out and do something that is fulfilling to you personally. You would be wise to read and re-read the paragraphs above and decide if you want to be in this class and if you want to practice litigation in the State of Texas. By the way, there are 254 counties in Texas. If you plan on practicing law in Texas you should know this fact.

In my class, we will approach litigation issues like a real-world lawyer. Real law does not come in PowerPoints, outlines to memorize, and bullet points. A guy with a pretty good reputation in the law once said, “The life of the law has not been logic; it has been experience.” If you want to live your life as a professional, you ought to know who that guy was. In my class we talk about why we have certain rules, where the rules come from, and what the consequences (good and bad) of a particular rule are.

4. It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items. My longtime personal opinion is that law schools fail to teach professionalism. Law schools might teach you law and even teach you legal ethics, but they utterly fail, in my view, to teach you how to be a respected and professional lawyer. You may hear lawyers talk in military terms and invoke medieval battle tactics to describe their role. This talk makes my heart sink; this is not the middle ages. Litigation is a modern dispute resolution mechanism that has justice as its aim; it replaces trial by combat. Accordingly, (1) you are free to criticize any idea, you are free to destroy any argument, and you are encouraged to prove the professor wrong, but (2) you are never free to criticize another person or to act unprofessionally in this class. You should consider this class as the first day of your professional life.
5. You need not communicate with me concerning the reasons for your absences. If you are absent, I always assume you have a good reason. As long as you comply with the law school’s attendance requirements, I do not need to know the reason. The university requires

me to record attendance and I will. But, you should know that missing class will place you in a severe disadvantage at exam time because the exam is heavily weighted toward the matters discussed in class.

6. You need not communicate with me concerning your unpreparedness. It is your responsibility to read forward in the casebook according to the syllabus so as to be prepared for class. Unless I indicate otherwise, we shall go straight through the syllabus. I personally think the class will be worthless to you without preparation, but you paid for this class. I will tell you frankly that my experience regarding class preparation has been very disappointing. If you want to waste your money, that is your choice. I am not going to yell at you if you don't read the assignment. I am not even going to call you out. But, before you make the choice not to prepare for class, I encourage you to watch the Academy award winning film, The Paper Chase. In that movie (made long before cell phones), Professor Kingsfield tells Mr. Hart, "Mr. Hart, here is a dime. Take it, call your mother, and tell her there is serious doubt about you ever becoming a lawyer."
7. Final Examination; Grading. Your grade for the course will be determined by an anonymous final examination, except if you are disrespectful to another student in my class, in which case your grade will be adjusted downward. The exam will be short answer. I have determined not to use the long essay format because I have come to the unfortunate conclusion that there is too high a correlation between typing skills and scores. At the exam, I will provide you with a fresh copy of the rules you will need during the examination. No other materials are allowed. The exam will be closed book.  
  
Anything covered in class or in the assigned reading (or even in this syllabus) is fair game. (And, that includes things I mention in class that are necessary for cultural literacy as a lawyer.) The exam will be short answer and will probably be around 200 questions (give or take). The final grades are based on a curve. Last year, it was fairly easy to identify the A to B+ exams, the middle performing exams, and the unacceptable exams.
8. Attendance. It is required that you comply with the law school's attendance requirements, which mandate 80% attendance. In order to encourage class attendance and participation, I will include questions on the examination about matters we discussed in class that are not in the book. I will also include the following question on your examination: "Did you submit a written evaluation for this course? Yes or No."
9. Seating Chart. Please pick a seat on the first day of class and sit in that seat for the remainder of the semester.
10. Cell Phones and Computers. I hate them. One of the biggest disappointments of teaching this course has been looking at the class and seeing a sea of laptop computers staring back at me. I am a Life Member of the American Law Institute. I am a Fellow of the American College of Trial Lawyers. I was the Chairman of the Board of the State Bar of Texas. I served for six years on the Commission for Lawyer Discipline. I have seen some things. Do you really want to stare at a computer screen in preference to talking to me about the law? Most judges will allow computers in their courtroom, but almost all jurors hate seeing a lawyer's face in a computer while they are being told to listen to the testimony. Your choice.
11. How to contact me. I am not on Facebook, LinkedIn, or Twitter. If you need to contact me about a class matter, my email address is: [schwartz@skadden.com](mailto:schwartz@skadden.com)

12. Disability. Any student with a disability requiring accommodation should let me know (except as to the exam, for which accommodation is to be arranged through the law school administration).
13. SEXUAL ASSAULT AND HARASSMENT POLICY. The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource and may not maintain a complainant's confidentiality.

14. CAPS. 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](http://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](http://www.uh.edu/caps/outreach/lets_talk.html)

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## **READING ASSIGNMENTS**

<b>CLASS DATE</b>	<b>CHAPTER AND SECTION</b>	<b>PAGES</b>
1. Mon 1/13	§1.01 Overview of the Pre-Trial Process	3-6
	§1.02 Initiating the Attorney-Client Relationship; Notes and Questions	6-9; 16-20
	§1.03 Case Evaluation, Acceptance, and Settlement	24-27
2. Wed 1/15	§1.04 Pre-Litigation Fact-Gathering: Investigation and Interviewing	27-35
	§1.05 When to File the Lawsuit: Compliance With Preliminary Procedural Requirements Imposed by Statute	35-40
	§1.06 When to File the Lawsuit: Statutes of Limitations and Statutes of Repose	40-55
3. Wed 1/22	§2.01 Temporary Restraining Orders and Injunctions	63-68
	§2.02 Interim Relief for Secured Creditors and Other Claimants	69-76
	§2.03 Interim Relief for the General (Unsecured) Creditor	76-82
	§2.04 Wrongful Use of Special Remedies	82-89
4. Mon 1/27	§3.01 An Overview of the Texas Court System	91-92
	§3.02 Constitutional and Statutory Provisions: An Overview	92-111
5. Wed 1/29	§3.03 Amount in Controversy	111-123
	§3.04 Competing Jurisdictional Grants: Particular Controversies	124-134
6. Mon 2/03	§4.01 General Principles Governing Jurisdiction	153-157
	§4.02 Personal Jurisdiction in Texas	157-174; 188-199
7. Wed 2/05	§4.03 Other Long-Arm Statutes: The Family Code	205-217
	§4.04 Service of Process	217-218; 221-234; 237-242
8. Mon 2/10	§4.05 Challenges to Jurisdiction by Nonresidents	243-248; 258-260
	§4.06 The Doctrine of Forum Non Conveniens	261-265
9. Wed 2/12	§5.01 The Basic Venue Scheme	277-297
	§5.02 Exceptions to the General Rule	297-313

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10. Mon 2/17	§5.03 Litigating Venue Rights	313-334
	§5.04 Contracting for Venue	334-336
11. Wed 2/19	§5.05 Change of Venue Because Impartial Trial Cannot Be Had	336-338
	§5.06 Multidistrict Litigation	338-343
12. Mon 2/24	§6.01 Historical Background	351-353
	§6.02 An Overview of Texas Pleadings and Their Functions	353-355
13. Wed 2/26	§6.03 Sample Pleadings	355-358
	§6.04 Plaintiff's Petition	359-395
14. Mon 3/02	§6.05 Motions to Dismiss Baseless Causes of Action	395-399
	§6.06 Defendant's Answer	399-436
15. Wed 3/04	§6.07 Amended and Supplemental Pleadings	436-446
	§6.08 Specialized Pleading Forms	446-464
16. Mon 3/16	§7.01 Permissive Joinder of Claims	465-466
	§7.02 Permissive Joinder of Parties by the Plaintiff	466-474
17. Wed 3/18	§7.03 Joinder of Claims by the Defendant	474-488
	§7.04 Permissive Joinder of Parties by the Defendant	488-493
18. Mon 3/23	§7.05 Intervention; Voluntary Joinder of New Parties	493-499
	§7.06 Interpleader	499-506
19. Wed 3/25	§7.07 Compulsory Joinder of Parties	506-511
	§7.08 Class Actions	512-533
20. Mon 3/30	§8.01 Preclusion	535-552
	§8.02 Parties Bound by Prior Adjudications	552-556
21. Wed 4/01	§8.03 Election of Remedies	556-565
	§8.04 The Law of the Case Doctrine	565-568
22. Mon 4/06	§9.01 An Introduction to the Purposes and Scope of Discovery	569-575
	§9.02 Discovery and Attorney Obligations	575-580

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23. Wed 4/08	§9.03 The Scope of Discovery: “Relevant” Information, “Not Privileged”	580-605
	§9.04 Preservation and Waiver of Privileges	636-649
24. Mon 4/13	§10.01 The Individual Discovery Devices: An Introduction	655-660
	§10.02 Discovery Devices	660-682
25. Wed 4/15	§10.03 Amendment and Supplementation of Discovery Responses	711-719
	§10.04 Sanctions for Failure to Provide Discovery	719-728
26. Mon 4/20	§11.01 Judgment by Default	739-745
	§11.02 Summary Judgment	745-777
27. Wed 4/22	§12.01 Settlement and Its Effects	779-801
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**FINAL EXAM: Wed 5/06 9:00AM - 12:00PM**

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