

# TAKING AND DEFENDING DEPOSITIONS

## COURSE SYLLABUS SUMMER 2024

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PROFESSOR DAW OFFICE PHONE: (713) 266-3121  
PROFESSOR DAW CELL PHONE: (713) 824-0151 (use this one)  
CLASS HOURS: Monday, Tuesday 6:00 p.m. - 8:20 p.m.

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### A. LEARNING OBJECTIVES/OUTCOMES/GOALS

*Taking and Defending Depositions* is a two credit-hour course that focuses exclusively on the methods, techniques, and usage of depositions in the civil litigation setting. This class will focus on preparing for and taking depositions in State Courts of Texas and will also cover depositions in Federal Court. The specific goal of the class is that by the conclusion of the course, students will be able to take and defend a civil deposition from start to conclusion.

### B. REQUIRED READINGS

- Malone, David, and Hoffman, Peter (2012) *The Effective Deposition: Techniques and Strategies that Work*, **Fourth Edition**;
- *Dixon v. Providential Life Insurance* Case File, **Seventh Edition**;
- Texas Rules of Civil Procedure (through the Texas Supreme Court's website); and
- Selected Course Handouts.

## **C. COMMUNICATION**

Because this class is taught exclusively by adjuncts, there are no office hours for this course. Students are encouraged to ask questions about the nature of the course and course expectations in the classroom or by email. As attorneys, the adjunct professors' capabilities of answering phone calls, especially during business hours, is extremely limited. Accordingly, email is strongly encouraged as the primary method of out of class communication with adjuncts.

## **D. STRUCTURE OF THE COURSE**

All classes will be on campus.

The class will be composed of nine (9) lectures and six (6) "break-out" sessions in which each student will be expected to practice the skills discussed during the previous lectures. Students are encouraged to ask questions during lecture sessions. The first class period will be comprised solely of a lecture and discussion. Each class thereafter will begin with a break-out session followed by a lecture, with the exception of class number 6, which will consist of a Mid-term instead of a break-out session. Students are required to attend each lecture and participate in each break-out session.

Prior to each class period, each student is expected to complete the assigned reading and prepare for each break-out session. Each student will be evaluated/graded during each break-out session, and the performance of each student will contribute to their respective final grades.

Students will also be expected to attend one deposition and prepare a paper describing the process, the techniques utilized by the deposing counsel, the actions of the defending attorney, and any other observation that is relevant to the experience. The deposition should be either a complete deposition or the first two hours of a deposition. Students will be provided a list of depositions that are available to attend or they can make their own arrangements. The attended deposition and observation must occur while the class is ongoing. It cannot be something the student observed prior to the first day of class.

All four professors attend Zoom deposition on a regular basis. If you do not know someone who can allow you to observe a deposition via Zoom, you can attend one being conducted by one of the professors or an attorney at our firms.

## **E. GRADING**

Your grade will be determined by adding up your scores in 5 separate categories; with those totals being applied to a predetermined curve required by the law school. The 5 categories represent 4 "tasks" and one overall professionalism grade. Below is a detailed description of the tasks to be performed.

Break-out Sessions - Students will participate in taking simulated depositions using the specifically assigned portions of the *Dixon v. Providential Life Insurance* case file, or other specific and provided assignments. Each break-out session will consist of a small group of students which will remain constant throughout the class. Each student will be given a letter

designation as either an “A” or “B.” The deponent for each session is determined by the student’s letter designation. For each exercise, one student will act as the attorney taking the deposition and one student will be acting as opposing counsel. Witnesses will be provided. Students will be expected to have complete understandings of the problem/case file which is the subject of the break-out session. Students will be graded on their performance in each session. A student’s participation in the break-out sessions will also be a consideration in the professionalism portion of the final grade. Students are expected to prepare approximately 10 minutes of questioning for each break-out session. The break out session grades will comprise 35% of the final grade.

Mid-term – The Mid-term exam will comprise 20% of the final grade.

Professionalism – Each student will be expected to act in a professional manner, which involves zealous advocacy in conjunction with giving the witness, opposing counsel, court reporter and videographer the courtesy and respect that is appropriate. Also, the level of preparedness of each student for each class will impact the professionalism grade. Professionalism will make up 10% of the final grade. (Every student starts with full credit for professionalism.)

Deposition Observation paper – Each student is required to attend one deposition and write a three page paper describing the process, the techniques utilized by the deposing counsel, the actions of the defending attorney, and any other observation that is relevant to the experience. Students who are unable to attend a live deposition have the option of watching video depositions which will be provided by faculty upon request. The deposition observation paper will comprise 5% of the final grade.

Final – Each student will have 30 minutes to take a deposition of an assigned witness and will have to defend a deposition conducted by their “opposing” counsel. The final exam will comprise 30% of the final grade. The final examination will take place over two days, which will be the final class day and the day provided for the final. On day one of the final, the student will either take or defend a deposition. On day two, the students will switch roles.

## **F. ATTENDANCE**

Participation in break-out sessions is the primary tool in this course for developing deposition techniques. Accordingly, attendance will be closely monitored. Absences may be (and will be freely) excused with good cause, which would include but is not limited to legitimate familial, medical, or work-related complications. It is imperative that the student communicate the necessity of being absent before the class. Failure to notify the adjuncts prior to class, even if excused, **will** have a significant effect on the professionalism portion of the grade. Un-excused absences will not be tolerated; students with un-excused absences will receive a score of 0 for the break-out session which they missed as a result of the un-excused absence AND a 50% reduction in the professionalism portion of the grade.

## G. COURSE OUTLINE AND SCHEDULE

CLASS	TOPIC	READING ASSIGNMENTS
1	<p>Monday, July 8</p> <p>Lecture 1: Goals and Purpose of the Course Background and Mechanics of Depositions Beginning the Deposition Introduction to Funneling</p>	<p>Chapters 1, 2, 3, 4, 6</p> <p>pp. 4-64, 91-116</p>
2	<p>Tuesday, July 9</p> <p><b>Break-out- Beginning a Deposition</b> <b>A - Sheriff Altair Khouri</b> <b>B - Norman F. Crowe</b></p> <p>Lecture 2: Funneling and other Deposition Techniques Style and Organization of a Deposition Preparing for a Deposition</p>	<p>Chapters 5, 7, 8</p> <p>pp. 65-90, 117-195</p>
3	<p>Monday, July 15</p> <p><b>Break-out- Obtaining Information Using Funneling</b> <b>A - Sheriff Altair Khouri</b> <b>B - Norman F. Crowe</b></p> <p>Lecture 3: The Usage of Exhibits at Deposition Foundations as Applied to Depositions</p>	<p>Chapters 9, 10</p> <p>pp. 197-260</p>

4	<p>Tuesday, July 16</p> <p><b>Break-out- Laying the Foundation and Usage of Exhibits in deposition</b>  <b>A - Sheriff Altair Khouri</b>  <b>B - Norman F. Crowe</b></p> <p>Lecture 4:  Defending a Deposition  Texas Rules of Civil Procedure and Depositions  Federal Rules of Civil Procedure and Depositions  Objections During a Deposition  Reviewing and Supplementing the Deposition Transcript</p>	<p>Chapters 14, 15</p> <p>pp. 327-371</p>
5	<p>Monday, July 22</p> <p><b>Break-out- Defending a Deposition</b>  <b>A - Sheriff Altair Khouri</b>  <b>B - Norman F. Crowe</b></p> <p>Lecture 5:  Deposing a Corporate Representative</p>	<p>Chapter 19</p> <p>pp. 429-444</p>
6	<p>Tuesday, July 23</p> <p><b><u>MID-TERM</u></b></p> <p>Lecture 6:  Handling Obstructive Opposing Counsel  Deposition Follies and Pitfalls</p>	<p>None</p>
7	<p>Monday July 29</p> <p><b>Break-out- Deposition of Corporate Representatives A and B - Cross-Examination of Robert/a Wilson</b></p> <p>Lecture 7:  Deposing an Expert Witness</p>	<p>Chapter 20</p> <p>pp. 447-489</p>

8	<p>Tuesday, July 30</p> <p><b>Break-out- Deposition of Expert Witnesses A and B - Cross-Examination of Allister/Allison E. Upchurch, MD</b></p> <p>Lecture 8: Preparing the Witness Use of Depositions at Trial Concluding the Deposition</p>	<p>Chapter 11, 13, 16, 18, 21</p> <p>pp. 261-280, 296- 326, 375-399, 407-428, 489-498</p>
9	<p>Monday, August 5</p> <p><b>No Break-out exercise</b> (report directly to main classroom)</p> <p>Lecture 9: Zoom/Team Depositions Final Review</p>	None
10	<p>Tuesday, August 6</p> <p><b><u>FINAL EXAMINATION</u></b></p> <p>NITA Liquor Problem “A” group deposes Dan Jones “B” group deposes Officer Bier</p>	None

## H. Diversity, Inclusion, and Wellness:

This is an inclusive learning space.

At UHLC, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided the equitable opportunity to participate, to contribute, and to succeed.

In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status and other diverse identities that we each bring to class. Our class is richer for this diversity.

Inclusive learning spaces facilitate the innovation and creative thought that enhance student success. This success arises from the participation, support, and understanding of you and your

colleagues. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage

respectfully and with regard to the dignity of all others.

If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Student Services is an excellent resource: 713-743-2182. Finally, I encourage you to bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Law Center's Diversity and Inclusion committee. The D&I committee's charge includes "[building] on the Law Center's strengths as a diverse and inclusive environment." You can contact the committee directly at UHLCD&I@uh.edu.

Your suggestions are encouraged and appreciated. Please let me know ways to improve the effectiveness of this course for you personally, or for other students or student groups.

## **I. Sexual Misconduct 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](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d7.pdf) (antidiscrimination)

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d8.pdf](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. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

## **J. Accessibility and Accommodations:**

UHLC is committed to ensuring that all students enjoy equal access and full participation. If you anticipate or experience barriers based on a disability (including any chronic or temporary medical health conditions) or require any support services, you may contact Ms. Samantha Ary,

Academic Records Coordinator. Ms. Ary is located in room 44A TU-II in the Office of Student Services suite, and she can be reached at [sary@central.uh.edu](mailto:sary@central.uh.edu) or 713-743-7466. Requests for accommodation that involve graded assignments must be directed to Ms. Ary and should be made as soon as possible to allow adequate time to document and to process the request.

If you observe religious or cultural holidays that will coincide with synchronous class sessions or other activities, please let me know as soon as possible, so that we may make arrangements.

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact the Justin Dart Jr. Student Accessibility Center (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU).

## **K. Counseling and Psychological Services:**

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)

The Texas Lawyers' Assistance Program (“TLAP”) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.



The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

### **Preferred Name/Pronoun:**

I want to address each of you in a manner that corresponds to your identity. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. Feel free to reach out to me if this should change any time during the semester or if you have concerns about how I or your classmates address you. I will try my best to honor your preferences.

### **Honor Code:**

The UHLC Honor Code applies to all aspects of my class. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please ask me if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to my course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

### **AI Generated Text:**

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as "generative" large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking "intelligence" and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term "assessment" means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments

include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an

exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course unless specified as an exception below.

The following activities are exceptions to the immediately preceding paragraph; the intent of these exceptions is to allow use of AI Generated Text for specifically and narrowly defined activities in relation to this course:

- There may be some situations in which AI GT would be acceptable in creating content for your scholars – please discuss your idea with me prior to instituting it
- “conversing” with the AI Generated Text software system to create hypotheticals to better understand course content, alone or with others
- checking text drafted by you for misspellings, grammar and punctuation errors, strength and clarity of prose, verbosity, effective transitional language and thesis sentences, word choice, excessive passive voice, and like things

### **Recording of Class:**

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. Instructor’s recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

### **Resources for Online Learning:**

The University of Houston is committed to student success and provides information to optimize the online learning experience through our Power-On website. Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, and Blackboard; requesting a laptop through the Laptop Loaner Program; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact [UHOnline@uh.edu](mailto:UHOnline@uh.edu).

## **Syllabus Changes:**

The instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through an email notification of the updated syllabus on OneDrive.

## **UH Email:**

Email communications related to this course will be sent to your Exchange email account which each University of Houston student receives. The Exchange mail server can be accessed via Outlook, which provides a single location for organizing and managing day-to-day information, from email and calendars to contacts and task lists. Exchange email accounts can be accessed by logging into Office 365 with your Cougarnet credentials or through Access UH. They can also be configured on IOS and Android mobile devices. Additional assistance can be found at the Get Help page.

Please check and use your Cougarnet email for communications related to this course. To access this email, login to your Microsoft 365 account with your Cougarnet credentials.

## **Webcams:**

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on. Please notify the instructors if you have a technical issue.

## **Security Escorts and Cougar Ride:**

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. Our Security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called Cougar Ride that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.