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MASSACHUSETTS SCHOOL OF LAW at ANDOVER

**PRETRIAL ADVOCACY - SYLLABUS AND CLASS EXPECTATIONS**

**Mondays/Summer 2020**

**6:00 – 9:00 p.m.**

Welcome to Comprehensive Pretrial Advocacy. This syllabus contains the book list, grading policy, attendance requirements, reading, and assignments for this class. Please read syllabus carefully. I hope you will enjoy the classes and benefit from taking the course. If necessary, ***I will make changes to this syllabus throughout the summer.***

**BOOKS AND READING**

Required Text: Berger, Mitchell, and Clark, *Pretrial Advocacy: Planning, Analysis and Strategy* (“*Pretrial Advocacy*”), 5th Edition

**WEB SITE**

The *Pretrial Advocacy* text is supplemented by this www.aspenadvocacybooks.com, a Web site that contains such things as documents and links to other useful advocacy sites. The password for student access is **PreTrOtKD$**.

**VIDEO**

Some of your pretrial performances will be video-taped because you are your own toughest critic. If you are video-taped, you must watch your performance before the next class.

**COMPUTERS**

When a student is performing, you will close all laptops unless you are instructed otherwise. You can benefit from not only hearing but also watching your classmate perform. Also, you may be called upon to critique the student’s performance, and what you observe normally is as important as what you hear.

**SUBJECT MATTER OF CLASS**

This course concentrates upon pretrial advocacy in the context of the pretrial phase of case preparation for civil and criminal litigation. Subjects, among others, include interviewing, counseling, negotiation, plea bargaining, drafting of legal documents, discovery, pretrial motions, and alternative dispute resolution. Assignments for each class are noted in this syllabus and will be based on Assignments from the *Pretrial Advocacy* text.

**ATTENDANCE**

The class meets once a week and is devoted largely to mock performances, small group discussions and mini-lectures. Because your grade is based on class participation, you are expected to attend each class through ZOOM or be excused. Please email me in advance if you are going to miss a class and the reason for your absence. If you have a significant part to play in class and you are unable to attend, you are responsible for arranging for another student to take your place. Unexcused absences will affect your grade. You must be available (dates) for performance in a mock motion hearing after 4:00 p.m. and into the evenings.

**COURSE ASSIGNMENTS**

***Written Work***

You will be expected to complete four formal written assignments. Your first two written assignments will be to draft a complaint and an answer along with a motion to dismiss. Then, you will prepare discovery documents, including interrogatories, requests for production and requests for admissions. You will be permitted to revise and resubmit the complaint assignment in an effort to improve your work product and your grade. This opportunity to improve is in line with my commitment to your development of effective advocacy skills. I expect that both your initial work and revisions will be your best efforts, and I will take overall effort and performance into consideration in grading.

The fourth and major writing assignment will be to prepare either a pretrial motion for summary judgment, a criminal suppression motion, or a response to one of these motions. You will not have an opportunity to revise this work on the final three assignments. You will also present oral argument on your motion or opposition.

***Class Participation***

Class participation will be composed of pre-assigned and impromptu performances, discussion and witness and attorney role-play. The witness profile and witness instructions for each Assignment will be distributed during the course. View your classroom as a laboratory where you can explore, create, and experiment with pretrial techniques. In turn, organized preparation, effort, creativity, and growth in abilities through hard work will be recognized in grading. In addition to the assignments in this syllabus you will also receive Assignment Sheets detailing assignments for a particular class. Should you have any questions about the assignments or Assignments Sheets, ask me to clarify.

***Pretrial Motion Argument***

Performance in the final mock pretrial motion will be graded and will be worth 20% of your grade.

***Deadlines for Assignments and Where to Submit Them***

Missing a pretrial-preparation (or worse a court) deadline can have severe repercussions, and one goal of this class is to teach the importance of meeting deadlines. The grades on assignments handed in late will be adjusted downward by one letter grade for each day the assignment is late. For example, an assignment due at 6:00 p.m. but handed in at the end of class will be graded B- rather than B. Your formal written work is to be submitted in class at the beginning of class (unless you are instructed otherwise). You should file the final motion and response at the front office by a time and date certain to be announced.

***Exceptional Circumstances***

I know that exceptional circumstances sometimes occur which may affect your attendance, performance, or preparation in the class. Please speak with me if you are experiencing difficulties meeting your obligations in this class. Class assignments should be treated as you will treat your obligations and responsibilities to your clients, the court, and fellow lawyers in practice.

**PREPARATION FOR CLASS**

Do *not* prepare any of the written assignments in the text for submission to the instructor unless specifically instructed to do so in the syllabus. Additional written work is required as part of pretrial advocacy preparation. The class requires student participation to ensure an educationally worthwhile class experience. The class will require substantial outside class preparation: one to three hours and more in some cases.

Assignments for this class may be preassigned to selected students. However, *all students should be prepared to perform each assignment*, unless told otherwise, and to discuss and critique the work of their fellow students. I will try to distribute the assignments in an equitable manner so that interference with other classes will be minimal.

**GRADING**

Your grade will be based 40% on the final motion/opposition/memorandum (20% for your written work and 20% for oral presentation) and 15% for each of the other three written assignments. Additionally, the midterm will count 15% towards the final grade for the course.

**OFFICE HOURS**

Before or after class by arrangement, or by telephone at any reasonable time. Communication by e-mail works very well: kolson@mslaw.edu

**SYLLABUS**

**Date: Monday, June 1, 2020**: Welcome, Course Overview, and Orientation; Case Theory: Review of Case File, Role of the Advocate, and ADR.

**Class Discussion**: Assignment 1, page 641: Be prepared to discuss the answers to questions 1-3 on that page.

**Reading**: *Pretrial Advocacy* – Preface & Introduction, pages xxxix-xliv and the materials cited on page 627-34 & 641 (i.e., Pretrial Case File Entry 64; Chapters 1 and 13) and an initial review of the Case Files located on the *Pretrial Advocacy* web site (access code for students: **PreTrOtKD$**). *As you will see, the Case Files contain a wealth of information about the case you will handle throughout the semester; the more familiar you become with this information, the more prepared you will be for the class.* You must complete all reading assignments before the class in which they are assigned; we will discuss the reading assignment in class. Failure to complete the assigned reading and to participate in the Firm Assignments on TWEN will result in a grade reduction.

***NOTE:* You will be assigned to either Firm A, B, C, or D for the purpose of later assignments.**

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**Date: Monday, June 8, 2020**:Case Theory, State and Defendant – Criminal; Case Theory, Plaintiff and Defendant – Civil

**Class Discussion**: Assignments 2 and 3 (pages 641-43); Assignments 4 and 5 (pages 643-46)

**Reading**: *Pretrial Advocacy*, readings for Assignments 2 and 3; readings for Assignments 4 and 5

**Assignment and Additional Instructions:**

Firm A handles Assignment 2, representing the state (Bruno Summers is dead, and you are the prosecutor and need to make a filing decision.); Firm B handles Assignment 3, representing the criminal defendant (You are defense counsel for Ed Hard and have been informed that Bruno Summers is dead. You need to develop a defense case theory.); Firm C handles Assignment 4, representing the plaintiff in a civil suit (You select whom [one or more] of the multiple potential plaintiffs.); Firm D handles Assignment 5, representing the defendant in a civil suit (You select whom among the defendants you wish to represent [wouldn’t that be nice if you could choose.]).

• Oral Assignment: Be prepared to informally discuss your case theory or theories with other students in the class.

• Discussion: The four firms will brainstorm legal theories, depending on their client.

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**Date: Monday, June 15, 2020**:Client Interview (Civil and Criminal); Drafting the Complaint

**Class Performance**: Assignment 11 – Hard (pp. 651-52)(**Firm A**); Assignment 12 – Hard (p. 652) (**Firm B**); Assignment 13 – Summers (p. 653)(**Firm C**); & Assignment 15 – Hard (pp. 654-55)(**Firm D**).

**Reading**: Chapters 4-7 & 11 and readings for Assignments 11, 12, 13, 15 & 41

**Class Discussion**: Drafting the Complaint & Assignment 41 (p. 679)

Web Site: View sample complaints.

***NOTE*: 1. The Complaint - due June 15th, 2020; all firms must draft a complaint (each student drafts his or her own complaint, but you can discuss your complaints with firm members and other colleagues). Firm A will serve Firm C, Firm B will serve Firm D, Firm C will serve Firm A, and Firm D will serve Firm B.**

**Complaint Assignment and Additional Instructions:**

• Document to Draft – the Complaint

**–** No more than 8 pages

**–** Prepare and file one with me and serve one on opposing counsel (electronically through TWEN)

**•** Parties in the Complaint are as follows:

**–** Plaintiff – Deborah Summers as an individual and as the Personal Representative of the estate (***do not name any other plaintiff***)

**–** Defendant – Garage Tavern, which you may assume is a corporation doing business in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Massachusetts, (if you wish you may also name the owners of the Garage Tavern and Apple and Donaldson as defendants)

**•** Massachusetts court rules apply (locate on Westlaw and Lexis) and general research in the case file (on the CD with the *Pretrial* *Advocacy* book)

**•** Drafting must be done independently

**•** Zero tolerance for typos and factual mistakes

**•** Do not model after the *Summers v. Hard* complaint in the book because it contains numerous errors.

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**Date**: **Monday, June 22, 2020**: Witness Interviews (Civil & Criminal)

**Class Performances**: Witness Interviews: Assignment 29 – Prosecutor interview of Jack Waters (pp. 667-68)(**Firm A**) & Assignment 34 – Defense Attorney interview of James Raven (Polygrapher) (pp. 672-73)(**Firm B**); Assignment 36 – Plaintiff Attorney’s Interview of Dr. Brett Day (pp. 674)(**Firm C**) & Assignment 39 – EKKO Attorney for Defendant Davola: Interview of Roberta Montbank (p. 677) (**Firm D**).

**Reading**: *Pretrial Advocacy*, readings for Assignments 29, 34, 36 & 39; readings for Assignment 42.

**Class Discussion**: Assignment 42

**Web Site**: View sample answer

**Class Discussion**: Drafting the Answer

**Web Site**: View sample answer

***NOTE*: 2. The Answer - due (June 22, 2020) Answer Assignment and Additional Instructions: All firms must draft an answer, a 12(b)(6) motion, and an accompanying memorandum. Firm C will respond to firm A, Firm D will respond to Firm B, Firm A will respond to Firm C, and Firm B will respond to Firm D.**

• Document to Draft – the Answer

**–** No more than 8 pages

**•** Respond to the Complaint served on you in class

**•** Massachusetts Rules of Court apply (locate on Westlaw *and* Lexis) and general research case file (on the CD with *Pretrial Advocacy* book)

**•** Drafting must be done independently

**•** Counterclaims and cross-claims are ok – be consistent – don’t deny and then make the same claim

**•** Remember to include affirmative relief

**•** No third party practice

**•** Zero tolerance for typos and factual mistakes

**Efile and serve through TWEN.**

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**Date: Monday, July 6, 2020**: Discovery Planning/Discovery Requests; Preparing for Depositions

**Class Discussion**: Assignment 43 (pp. 681-82-14)(**Firms A&B**); Assignment 44 (pp. 682-83) (**Firms C&D**). All Firms: Assignment 45 (pp. 683-84).

**Class Discussion & Performance**: Assignment 46 – Deborah Summers (p. 685)

**Reading**: *Pretrial Advocacy*, readings for Assignments 43, 44, and 45; readings for Assignment 46

**Web Site:** View sample discovery documents

**DVD**: View Taking a Deposition and Using Deposition in Court on pretrial advocacy web site.

***NOTES***: 1. Sign up with opposing counsel for oral argument on either Assignment 69 (pp. 710-11 – Criminal Suppression Motion) or Assignment 72 (pp. 715-17 – Civil Summary Judgment Motion). For more on the motion assignments, consult the instructions at the end of the syllabus.

***2.* Following assignments are due (July 6, 2020)**

***Plaintiff’s Counsel* (Firms A & B**):

Do a set of discovery directed to Defendant Davola: 12 Interrogatories, 3 Requests for Production, and 5 Requests for Admission.

***Defendant’s Counsel* (Firms C & D):**

Do a set of discovery directed to Plaintiff Deborah Summers: 12 Interrogatories, 3 Requests for Production, and 5 Requests for Admission. **Efile and serve through TWEN.**

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**Date: Monday, July 13, 2020**:Scene Visit and Analysis – Time to go to the scene. Meet you at the Garage; Deposition Preparation

Preparation of Clients for Depositions; Preparation of Expert Witnesses for Deposition

**Class Performance**: Assignment 46 – Summers’s Preparation (p. 685)(**Firm A**); Assignment 47 – Davola’s Preparation (p. 686)(**Firm B**); Assignment 48 – Monday’s Preparation (pp. 686-87)(**Firm C**); Assignment 49 – Day’s Preparation (pp. 687-88)(**Firm D**).

**Reading**: *Pretrial Advocacy*, readings for Assignments 46-49; DVD: Watch Tour of the Garage Tavern on DVD accompanying text.

***NOTES:* Discovery assignment – efile your Discovery Responses - due before the beginning of class. Firm A responds to Firm C’s discovery requests, Firm C responds to A’s requests, Firm B responds to D’s requests, & Firm D responds to Firm B’s discovery requests.**

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**Date: Monday, July 20, 2020**:Depositions

**Class Performance**: Assignment 52 – Attorney for Defendant Hard: Taking the Deposition of an Adverse Expert (Dr. Bruce Hann, Plaintiff’s Economist)(pp. 697-99)(**Firm B**); Assignment 56 – Defendant Davola’s Attorney: Taking the Deposition of an Adverse Expert Witness (Dr. David Bowman, Plaintiff’s Behavioral Psychologist)(pp. 696-97)(**Firm D**); Assignment 59 – Defendants’ Attorneys: Taking the Deposition of an Adverse Expert Witness (Hao Tredwell, Firearms Expert)(pp. 700-01)(**Firm A**); Assignment 61 – Plaintiffs’ Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Ennis Martinez, Psychologist) (pp. 702-03)(**Firm C**).

**Reading**: *Pretrial Advocacy*, readings for Assignments 52, 56, 59, 61, 70, & 71.

**Motion/Opposition/Memoranda - (e-file, one hard copy for the judge, & e-service of another copy on opposing counsel - due no later than 4:00 p.m. and filed with the court clerk - judge’s copy) (see further instructions at the end of this syllabus).**

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**Date: Monday, July 27, 2020**: Oral Argument – Check Docket Sheet on court room door for your assigned times.

***NOTE*: Motion written assignment (e-file, one hard copy for the judge, & e-service of another copy on opposing counsel - due no later than 5:00 p.m. and filed with the court clerk - judge’s copy (see further instructions at the end of this syllabus).**

**LAW AND MOTION ARGUMENTS**

You and your opponent should choose one of the below assignments: Assignment 69 - Criminal Suppression or Assignment 72 - Summary Judgment

The details of this Assignment are as follows:

**A. IN GENERAL**

1. If you are doing Assignment 72 and you represent the plaintiffs, you represent all of the plaintiffs (they have signed an informed consent letter waiving any potential and actual conflicts of interest). Only the defendant Davola (not Hard) brings the motion.

2. Each of you should prepare your motion papers and oral argument independently. Sign up with an opponent for a half-hour time slot. Your opponent is the person upon whom you serve motion papers.

3. Your motion should be based on the facts found in your case file and the assigned Assignment materials. In particular, you may assume that the complaint involved is the complaint found in the case file. Do not rely on information or pleadings from students who took the class in the past.

4. Page limit for the motion/supporting memorandum is 12 pages.

**B. FORMAT AND LEGAL AUTHORITY**

Use Massachusetts Rules of Court and specifically Superior Court Rule 9 for drafting the motion or response. For criminal motions, refer to the relevant Massachusetts Rules of Criminal Procedure and Superior Court Rules. Use only legal authority provided in *Pretrial Advocacy*’s General Research Case File or Mass. cases/statutes.

**C. ORAL ARGUMENTS AND CRITIQUE**

The moving party may have up to 10 minutes, including any rebuttal. The responding party may have up to 10 minutes. Arguments will be followed by critique.

**D. COURT CLERK**

File your Motions and Oppositions on TWEN. TWEN will date/time stamp your documents to ensure timely submission.

**E. FILING DEADLINES**

1. The moving party must file by serving his or her opponent and the instructor no later than (**July 20, 2020**)

2. Responding party’s response must be filed by (**July 27, 2020**), by serving the moving party and the instructor.

**F. CONFIDENTIALITY**

To preserve the interest and integrity of this motion Assignment, please treat your client’s facts confidentially, except as you choose to reveal them in your motion papers or oral argument.