

# Motions & Litigation Practice

Wednesday 4:00 - 5:50 P.M. AND 6:00 - 7:50 P.M.

Welcome to Motions & Litigation Practice. This syllabus contains the book list, grading policy, attendance requirements, reading, and assignments for this class. Please read the syllabus carefully. I hope you will enjoy the classes and benefit from taking the course.

## WEB SITE

The *Pretrial Advocacy* text is supplemented with [student resources](#) that contain such things as documents, articles, links to other useful advocacy sites, and PowerPoint presentations and other useful information. You can find the student resources at the bottom of the web page.

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**Pretrial Advocacy: Planning, Analysis, and Strategy, Sixth Edition**

Book length: 816 pages | Publication Date: 09-15-2022 | Edition: Sixth Edition

**DESCRIPTION** | TABLE OF CONTENTS

Buy a **new version** of this textbook and receive access to the Connected eBook with Study Center on Casebook Connect, including lifetime access to the **online eBook** with highlight, annotation, and search capabilities. Access also includes **practice questions**, an **outline tool**, and other **helpful resources**. Connected eBooks provide what you need most to be successful in your law school classes.

**Pretrial Advocacy: Planning, Analysis, and Strategy, Fifth Edition** provides an excellent conceptual and practical foundation for pretrial litigation for both teachers and students. **Pretrial Advocacy** covers both criminal and civil pretrial practice, with a focus on federal and state litigation. Professional responsibility and civility are emphasized.

**Authors**

- Marilyn J. Berger
- John B. Mitchell
- Ronald H. Clark

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## REQUIRED TEXT

*Pretrial Advocacy: Planning, Analysis and Strategy* ("Pretrial Advocacy"),  
**6th Edition**  
Berger, Mitchell, and Clark

ASPEN COURSEBOOK SERIES

M. Berger • J. Mitchell • R. Clark

**Pretrial Advocacy**

Planning, Analysis, and Strategy

SIXTH EDITION

4.3 ★★★★★ Google Customer Reviews

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## VIDEO

Some of your pretrial performances will be videotaped because you are your own toughest critic. If you are videotaped, 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 civil and criminal litigation. Subjects, among others, include interviewing, counseling, negotiation, plea bargaining, drafting of legal documents, discovery, taking and defending depositions, 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 or be excused. Additionally, I expect all students to participate collaboratively on the TWEN site; failure to participate in this way **will result** in your grade being lowered. Please tell 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 (on Wednesday, November 26<sup>th</sup> for performance in a mock motion hearing at 4:00 p.m. or 6:00 p.m.; these performances may run until 5:50 p.m. or 7:50 p.m.

## 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. Then, you will prepare discovery documents, including interrogatories, requests for production, and requests for admissions. You will be permitted to revise and resubmit the first of these three assignments 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 revision 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 written motion or response. 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. If you have any questions about the assignments or Assignment 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 4:00 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. 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, such as interviewing a witness, will 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 25% on the final motion/opposition/memorandum (12.5% for your written work and 12.5% for oral presentation),  
18.75% on each of the first four written assignments.

**Total: Five (5) written assignments & One (1) oral argument.**

## OFFICE HOURS

Before or after class by arrangement, or by telephone at any reasonable time. Communication by e-mail through TWEN works very well.





# COURSE schedule



WEDNESDAY, AUGUST 20, 2025

Welcome, Course Overview, and Orientation; Case Theory: Review of Case File, Role of the Advocate, and ADR

## CLASS DISCUSSION:

Assignment 1, page 676: Be prepared to discuss the answers to questions 1-3 on that page

## READING:

*Pretrial Advocacy* – Preface & Introduction, pages xxxix-xlii and the materials cited on page 572 (i.e., Pretrial Case File Entry 64; Chapters 1 and 13) and an initial review of the Case Files located on the *Pretrial Advocacy* website.

*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 Discussion Fora 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.**

WEDNESDAY, AUGUST 27, 2025

Case Theory, State and Defendant – Criminal; Case Theory, Plaintiff and Defendant – Civil

## CLASS DISCUSSION:

Assignments 2 and 3 (pages 676-78); Assignments 4 and 5 (pages 678-80)

## 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 charging 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 the DA or general counsel/senior partner.

## DISCUSSION:

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





WEDNESDAY, SEPTEMBER 3, 2025

Motion or Response &amp; Witness Interviews: Lecture and Discussion

**CLASS DISCUSSION:**

Drafting the Complaint

**READING:**

Chapters 4-7 &amp; 11 and readings for Assignment 41

**WEBSITE:**

View sample complaints.

WEDNESDAY, SEPTEMBER 10, 2025

Client Interview (Criminal)

**CLASS PERFORMANCES:****(Firm A)** Assignment 11 – Hard (pp. 683-84)**(Firm B)** Assignment 12 – Hard (p. 684)**READING:***Pretrial Advocacy*, readings for Assignments 11 & 12.**(Firm C)** Assignment 13 – D. Summers (pp. 684-85);**(Firm D)**. Assignment 15 - Hard (p. 686)*Pretrial Advocacy*, readings for Assignments 13 & 15.

**NOTE:** 1. The Complaint - due September 10<sup>th</sup>, 2025; all firms must draft a complaint. 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 6 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.



WEDNESDAY, SEPTEMBER 17, 2025

Witness Interviews

## CLASS PERFORMANCES:

(Firm A) Assignment 29 – Prosecutor interview of Jack Waters (pp. 694-95)

(Firm B) Assignment 34 – Defense Attorney interview of James Raven (Polygrapher) (p. 698)

## READING:

Chapters 4-7 &amp; 11 and readings for Assignment 41

## WEBSITE:

View sample complaints.

WEDNESDAY, SEPTEMBER 24, 2025

Witness Interview

## CLASS PERFORMANCES:

(Firm C) Assignment 36 – Plaintiff Attorney's Interview of Dr. Brett Day (p. 699)

(Firm D) Assignment 39 – EKKO Attorney for Defendant Davola: Interview of Roberta Montbank (p. 701)

## READING:

*Pretrial Advocacy*, readings for Assignments 36 and 39; readings for Assignment 42.

## CLASS DISCUSSION:

Assignment 42

NOTE: The Answer - due September 24<sup>th</sup>, 2025; all firms must draft an answer.Firm C will respond to Firm A  
Firm D will respond to Firm BFirm A will respond to Firm C  
Firm B will respond to Firm D

Drafting the Answer

## ANSWER ASSIGNMENT AND ADDITIONAL INSTRUCTIONS:

- Document to Draft – the Answer
  - No more than 6 pages
  - Efile your answers in the TWEN Drop Box; be sure to serve your opposing counsel through TWEN as well
- Respond to the Complaint served on you in class
- You **must** file a 12(b)(6) or another Rule 12 motion in addition to the answer, and you must comply with Rule 9 of the Superior Court and all applicable civil procedure rules.
- 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



## WEDNESDAY, OCTOBER 1, 2025

Discovery Planning/Discovery Requests; Preparing for Depositions

### CLASS DISCUSSION:

(Firms A&B) Assignment 43 (pp. 703-04)

(Firms C&D) Assignments 44 (pp. 704-05) and 45 (pp. 705-06)

### READING:

*Pretrial Advocacy*, readings for Assignments 43, 44, and 45.

### WEBSITE:

View sample discovery documents

View Taking a Deposition and Using Deposition in Court on Website accompanying text



### Following assignments are due October 1<sup>st</sup>, 2025

**PLAINTIFF'S COUNSEL (FIRM A)** Do a set of discovery directed to Defendant Davola (Firm C): 12 Interrogatories, 5 Requests for Production, and 3 Requests for Admission. **Efile and serve through TWEN.**

**PLAINTIFF'S COUNSEL (FIRM B)** Do a set of discovery directed to Plaintiff Deborah Summers (Firm D): 12 Interrogatories, 5 Requests for Production, and 3 Requests for Admission. **Efile and serve through TWEN.**

**FIRM C & D** draft discovery to **FIRMS A&B**

## WEDNESDAY, OCTOBER 8, 2025

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 PERFORMANCES:

(Firm A)  
Assignment 46 – Summers's Preparation (p. 706)

(Firm B)  
Assignment 47 – Davola's Preparation (pp. 706-07)

(Firm C)  
Assignment 48 – Monday's Preparation (p. 707)

(Firm D)  
Assignment 49 – Day's Preparation (pp. 707-08)

Tour of the Garage Tavern on DVD accompanying text.

**NOTES:** Discovery assignment – efile your Discovery Responses - due before the beginning of class.

Firm C responds to Firm A's discovery requests

Firm D responds to Firm B's discovery requests.

## WEDNESDAY, OCTOBER 15, 2025

Depositions

### CLASS PERFORMANCES:

(Firm B) Assignment 50 – Attorney for Defendant Hard: Taking the Deposition of an Adverse Party (Tom Donaldson) (pp. 708-09);

(Firm D) Assignment 56 – Defendant Davola's Attorney: Taking the Deposition of an Adverse Expert Witness (Dr. David Bowman, Plaintiff's Behavioral Psychologist (p. 713).

### READING:

*Pretrial Advocacy*, readings for Assignments 52, 56.



## WEDNESDAY, OCTOBER 22, 2025

Depositions (continues)

### CLASS PERFORMANCES:

**(Firm A)** Assignment 59 – Defendants’ Attorneys: Taking the Deposition of an Adverse Expert Witness (Hao Tredwell, Firearms Expert) (pp. 715-16)

**Firm C)** Assignment 61 – Plaintiffs’ Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Ennis Martinez, Psychologist) (p. 717)

### READING:

*Pretrial Advocacy*, readings for Assignments 59 & 61

### CLASS DISCUSSION:

Motions for Summary Judgment and Motions to Suppress



## WEDNESDAY, OCTOBER 29, 2025

Depositions of Adverse Witnesses

### CLASS PERFORMANCES:

**(Firm A deposes; Firm B defends)**

Assignment 57 – Defendant’s Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Bruce Hann, Plaintiff’s Economist) (p. 714)

**(Firm D deposes; Firm C defends)**

Assignment 60 – Defendants’ Attorneys: Taking the Deposition of An Adverse Expert Witness (Dr. Pat Gage, Psychiatrist) (pp. 716-17)

### READING:

*Pretrial Advocacy*, readings for Assignments 57 and 60

### NOTES:

Sign up with opposing counsel for oral argument on either Assignment 69 (p. 722 - Criminal Suppression Motion – your motions and oppositions should also consider suppression of the statements (Assignment 71))(Firms A&B) or Assignment 72 (pp. 723-25 - Civil Summary Judgment Motion)(Firms C&D).

For more on the motion assignment, consult the instructions at the end of the syllabus.

Due dates: Moving party – (November 19<sup>th</sup>, 2025); Responding party – (November 26<sup>th</sup>, 2024)

## WEDNESDAY, NOVEMBER 5 2025

Oral Argument Discussion and Practice

### CLASS PERFORMANCES:



## WEDNESDAY, NOVEMBER 12 2025

Negotiation and ADR and /plea bargains resolutions on court house steps.

### NOTE:

Motion written assignment (one original filed with court clerk, one efiled with me, and one served through TWEN on opposing counsel) – due no later than 4:00 p.m. (or 6:00 p.m.) and filed with the court clerk (see further instructions at the end of this syllabus)



WEDNESDAY, NOVEMBER 19, 2025

More Oral Argument Practice

WEDNESDAY, NOVEMBER 26, 2025

Oral Argument (Check Docket Sheet on New Court Room Door for Assigned Times)

**NOTE:** Motion written assignment - oppositions (one efiled with me, and one e served through TWEN on opposing counsel) – due no later than 11:00 a.m. and filed with the court clerk (see further instructions at the end of this syllabus).

## LAW AND MOTION ARGUMENTS

Your firms will be assigned one of these assignments:

Assignment 69 (& 71) - Criminal Suppression or Assignment 72 - Summary Judgment.

The details of the Assignments follow

### 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 twenty-minute time slot. You will oppose the same attorney whom you've opposed throughout the semester. Your opponent is the person upon whom you serve motion papers through TWEN.
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 one filed earlier in the semester. 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. Use legal authority provided in *Pretrial Advocacy's* General Research Case File or in your own independent research in Massachusetts statutes, administrative regulations, or cases.

### C. ORAL ARGUMENTS AND CRITIQUE

The moving party may have up to 8 minutes, including any rebuttal.  
The responding party may have up to 8 minutes.



# LAW AND MOTION ARGUMENTS

Continues

## D. COURT CLERK

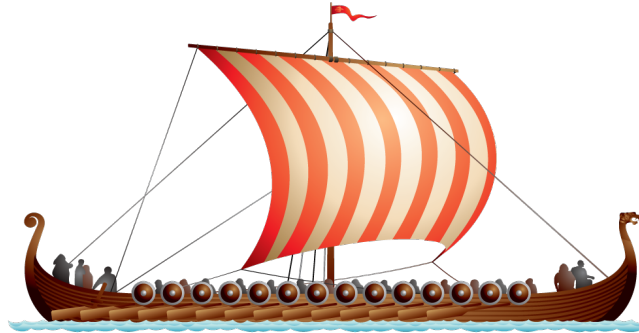
File your Motions and Oppositions in the appropriate TWEN Assignments & Quizzes Dropbox.

## E. FILING DEADLINES

1. The moving party must file by serving (service on other party through TWEN and paper filing with the court clerk) his or her opponent and the instructor no later than **(November 19<sup>th</sup>, 2025)**.
2. Responding party's response must be filed by **(November 26<sup>th</sup>, 2025)**, by serving (service on other party through TWEN and paper filing with the court clerk) 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.



## FALL 2025

Official Semester Start Date	August 11, 2025
First Day of Class for <i>Comparison</i> Students	August 11, 2025
Orientation	August 11, 13, 14 & 23, 2025
First Day of Classes for All Other Students	August 18, 2025
Labor Day - No Classes	September 1, 2025
Indigenous Peoples' Day - No Classes	October 13, 2025
Thanksgiving - No Classes	November 27 & 28, 2025
Last Day of Class, 1st Semester	December 1, 2025
Study Week	December 2 – December 7, 2025
Registration for New & Returning Students	December 8, 2025 <b>(8 A.M. - 7 P.M.)</b>
Exams	December 8 – 18, 2025
Level 1, Level 2 & Level 3 Assessment Tests	December 18, 2025