

LITIGATION PROCESS

SPRING 2017

PROFESSOR JOSÉ F. ANDERSON

(410) 837- 4398
Angelos Law Office Room 1107

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CLASS: Wednesday 1:30p.m. – 4:15pm.

TEXT: Pretrial, Thomas A. Mauet (9th Ed.)

SUPPLEMENTS: Printed materials to be distributed throughout the course

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| <u>Class</u> | <u>Assignment</u> | <u>Topic</u> |
|---|---|--|
| (First class assignment - Read Mauet, Pretrial pp 1-55) | | |
| 1 | Text Chapter I, pp. 1-18 | Introductions |
| 2 | Text Chapter II, pp. 19-56 | Informal fact investigation (advocacy exercise) |
| 3 | Printed materials | Informal fact investigation cont'd; perspective on the litigation process. |
| 4 | Text Chapter III, pp. 57-83 (distributed materials) | Legal investigation, developing theories, perfecting claims |
| 5 | Text Chapter IV, pp. 87-119 (distributed materials) | Case evaluation pre-filing matters |
| 6 | Text Chapter V, pp. 123-193 (Distributed materials) Complaint drafting exercise | Pleadings, complaint drafting |
| 7 | Brief and argument on motion | Advocacy exercise |

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| 8 | Text Chapter VI, pp. 195-280 (distributed materials) | Discovery/interrogatories |
| 9 | Text Chapter VI, pp. 281-344 (distributed materials) | Discovery/depositions |
| 10 | Text Chapter VII, pp. 345-392 (Distributed materials) | Motions practice |
| 11 | Text Chapter VIII, pp. 393-436 (distributed materials) | Pretrial conferences and settlements |
| 12 | Brief and argument on motion for summary judgment; negotiation exercise. | Advocacy exercise |
| 13 | Preparation for final trial | Team meetings |
| 14 | Final presentations | Case assessments |

NOTE: *The Professor reserves the right to alter the syllabus to facilitate the proper presentation of the course material.*

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This course in Litigation Process is designed through simulation and discussion to provide a lawyer in training with a basic understanding of the pretrial preparation required in trial litigation. The primary format is the use of group decision making with special emphasis on ethical and practical consequences of the decision making process. Although the course focuses on civil litigation, many of the skills learned will be equally transferable to criminal proceedings as well. The objectives of the course are to provide a sense of the importance of complete preparation, precision of written documents, and clarity of oral presentation advancing an advocate toward the best possible result in litigation. Special attention will be directed to interviewing, client relationships, ethical matters, and risk assessment. Role playing and colleague critique will be an important feature of developing the skills needed to become a confident and effective advocate. Since this is a simulation course. There will be a requirement that students do more independent thinking than in most law school courses. Guidance from the professor will often be intentionally withheld in the student decision making process so that professional judgment can be developed.

## **Learning Objectives**

- Understand discovery (interrogatories, requests for admission, and requests for documents; relevance; privilege; work-product protection; protective orders; discovery of testifying and consulting experts; physical and mental examinations; and sanctions for discovery misconduct)
- Understand pretrial adjudication (dismissal, default, and summary judgment)
- Understand the purpose for pretrial conferences
- Understand right to civil trial by jury
- Understand trial and post-trial motions for judgment as a matter of law and for a new trial and the civil appellate process

### ***Additionally the course will help lawyers in training:***

- Appreciate the use of procedural rules to advance client goals and solve litigation problems, including making strategic decisions about selection of a forum, how to frame a pleading or motion, whether to seek sanctions, how to gain information from opponents in discovery, and how to present or respond to pretrial and trial stage motions
- Appreciate the ethical limitations on pleadings, motions, and discovery devices in civil litigation, including prudential judgments about how positions advocated will be received by the court
- Recognize that creation of and revisions to a procedural system, even with the best of intentions, require difficult choices that may advantage some and disadvantage others, given finite resources for investigation, advocacy, and adjudication, so that students come to appreciate the real-life consequences, especially for the disadvantaged, of procedural problems, limitations, and changes
- Understand Professor Anderson's 80% - 20% rule of Litigation Risk Management (What you can control versus what you cannot predict and control)

## **Learning Outcomes**

- Learn to establish and understand an attorney/client relationship through client interviews and preparation of attorney engagement agreements.
- Learn to work in a team setting that leads to an agreed upon common result in the interest of the client
- Learn to draft concise, coherent, legally sufficient pleadings (Summons, Complaint, and Answer).
- Learn to draft legal memoranda in support of motions (Motion to Dismiss, Motion to Compel, and Motion for Summary Judgment).
- Learn to prepare and argue pretrial motions.
- Learn to create and respond to written discovery (Interrogatories, Requests for Production of Documents, and Requests for Admissions).

-Learn to take and defend depositions and conduct direct and cross-examination of deponents

## **Administrative Matters**

### **Formative Assessment**

Formative assessment provides opportunities for students to evaluate their knowledge, check their understanding, and practice applying what they are learning and then receive feedback from your professor — before the entire semester’s grade is on the line. During the course of the semester, you will receive my feedback on your work in at least three ways:

First, a limited form of formative assessment will occur on a daily basis in class as I ask questions of students who are called on and the class as a whole, thereby giving one of you at a time a chance to participate directly. Through our exchange, those who are participating will get the immediate feedback of seeing whether their contributions are moving the discussion forward or not. Thus, one more reason to volunteer in class is the opportunity to gain that immediate feedback. Second, written comments on drafting exercises. Third, group feedback from the professor of former students on litigation exercises.

### **Graded Assessment**

The course will be graded as follows:

|                                                         |     |
|---------------------------------------------------------|-----|
| <u>Written exercises:</u>                               | 75% |
| Group and individual letters, pleadings, motions, etc.  |     |
| <u>Oral Presentations:</u>                              | 25% |
| Arguments on motions, role playing,<br>class discussion |     |

### **Course Expectations:**

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work each week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

ARTICULATE ANY ADDITIONAL EXPECTATIONS FOR CLASS PREPARATION, PARTICIPATION, AND PROFESSIONALISM (e.g., You are expected to complete all reading assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the issues raised in the assignment.)

### **Attendance:**

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as

illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

| Regular Semester Hours |                   |            |
|------------------------|-------------------|------------|
| Credit Hours           | Meetings Per Week |            |
|                        | 1                 | 2          |
| 2                      | 2 absences        | 5 absences |
| 3                      | 2 absences        | 5 absences |
| 4                      | --                | 5 absences |

**Class Cancellation:**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

**Academic Integrity:**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at [http://law.ubalt.edu/academics/policiesandprocedures/honor\\_code/](http://law.ubalt.edu/academics/policiesandprocedures/honor_code/).

**Title IX Sexual Misconduct and Nondiscrimination Policy:**

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

**Disability Policy:**

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or [lmetzger@ubalt.edu](mailto:lmetzger@ubalt.edu).

Professor Anderson's office hours for the fall semester will be Tuesday and Thursday: 11:00am-1:30 p.m. subject to meetings of the faculty and its committees. Other meeting times may be obtained by appointment. Regular and punctual attendance is expected. A student whose unexcused absences exceed three (3) classes may be compelled to withdraw from the course. Since other people are relying on your attendance and participation for the course to properly work, and since the course only meets once a week, it cannot be over emphasized that attendance is *critical*.