

University of Baltimore School of Law
Spring 2020

Course: Medical Malpractice Litigation Syllabus (Law 747.511)

Instructor: Andrew G. Slutkin, Esquire, Silverman Thompson Slutkin & White, 201 North Charles Street, Suite 2600, Baltimore, Maryland 21201; 410-385-2786 = direct dial at work; ASlutkin@MdAttorney.com. I do not have regular office hours at the University of Baltimore School of Law; however, I generally am available during regular work hours to speak with students. In the event I do not answer my direct dial number above, please leave me a voicemail or send an email and I will get back to you within 24 hours.

Class Days/Time: Mondays, 3:00 pm – 5:45 pm

Class Location: Room assignments are available through MyUB.

Course Description: This course will cover both the substantive and procedural aspects of medical malpractice litigation from the perspectives of both plaintiffs and defendants in medical malpractice litigation. Course coverage will include problems in discovery and evidentiary issues in medical malpractice litigation, as well as problems that arise in medical malpractice trials. The course also will cover problems in the use of medical evidence and medical expert testimony at trial.

Course Materials: Medical Malpractice Litigation course materials are on TWEN. You are responsible for self-enrolling in the TWEN page. **PLEASE MAKE SURE TO PRINT AND BRING TO EACH CLASS (1) ALL OF MR. SMITH'S MEDICAL RECORDS; (2) ALL STATUTES THAT HAVE BEEN COVERED IN CLASS TO DATE; AND (3) THE REQUIRED READING FOR THAT DAY.**

Course Objective: This course teaches Maryland medical malpractice litigation from start to finish. Strong emphasis will be placed on the practical aspects of medical malpractice litigation – as opposed to the theoretical – with a focus on strategy during the litigation process. Just like young associates in a litigation firm, students will work with a case from start to finish, beginning with initial client contact, progressing through pre-suit work-up, filing of the lawsuit, discovery and trial. This year, our class will be divided in half and work up opposite sides of a real medical malpractice case, culminating in a mock trial at the end of the semester. We also are scheduled to have several guest speakers throughout the semester including a current judge of the Circuit Court of Maryland, a Risk Manager for one of Maryland's top hospital and a medical malpractice defense attorney.

Grades: Grading will be based upon three activities: (1) class participation – 20%; (2) the mock trial – 10%; and (3) an end of the semester exam 70%.

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 per 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.

Assignments / Participation: Students are expected to complete all reading and other assignments that are due for each class and to consistently participate in class discussion, in order to contribute to discussions and demonstrate that you have read and reflected on the issues. Students also are expected to substantially contribute to the mock trial process as they would in a real trial.

Attendance: **CLASS ATTENDANCE IS REQUIRED, ESPECIALLY IN LIGHT OF THE RELATIVELY LIMITED NUMBER OF DATES ON WHICH THIS CLASS MEETS. IN THIS COURSE, STUDENTS GENERALLY ARE ALLOWED ONLY ONE ABSENCE. A STUDENT WHO IS ABSENT MORE THAN ONE TIME, WILL RECEIVE A LOWER GRADE THAN THE STUDENT OTHERWISE WOULD EARN. A STUDENT WHO IS PRESENT BUT UNPREPARED FOR CLASS WILL BE TREATED AS ABSENT.**

Computers: Students may use laptop computers for class related purposes; however, students may not engage in computer usage unrelated to class during class time.

Class Cancellation: If I 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 the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm.

Course Evaluations: It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

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 accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublawacadaff@ubalt.edu or (410) 837-4468.

Course Schedule:

1. January 13

- Topic: Medical Malpractice Law And Practice (introduction; what generally is medical malpractice; types of firms handling medical malpractice cases; economics of the practice of medical malpractice litigation; knowing your limitations; when to bring in a specialist; working with a client and a specialist; and contingency fee splitting;)
- Preparation for this class: Please read and be prepared to discuss in class the following materials in the Medical Malpractice Litigation Course Materials:
 - a. [Dashiell v. Griffith et ux., 84 Md. 363 \(1896\)](#) (Early Malpractice Case);
 - b. [Section 5-603](#) ("Liability for Emergency Medical Care") of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland; and
 - c. [Maryland Rule of Professional Conduct 1.5](#) (Fees) including the Comment and annotation to the Rule.
- Please also begin reviewing the easy to read (typewritten) pages of Mr. Smith's medical records to start to become familiar with what happened to Mr. Smith. These medical records are on TWEN under Course Materials;

NO CLASS FOR MLK Holiday (MONDAY, JANUARY 20)

2. January 27

- Topic: (Theories of Medical Malpractice Liability (standard of care; informed consent; wrongful birth; wrongful life; vicarious liability; causation; breach of contract; breach of warranty; and *res ipsa loquitur*)
- Preparation for this class: Please read and be prepared to discuss in class:
 - a. [Shilkret v. Annapolis Emergency Hosp. Assn., 276 Md. 187 \(1975\)](#) (Standard of Care);
 - b. [Section 3-2A-02\(c\)](#) ("Health Care Malpractice Claims" Act; "Standard of Care") Courts & Judicial Proceedings Article of the Annotated Code of Md;
 - c. [Sard v. Hardy, 281 Md. 432 \(1977\)](#) (Informed Consent);
 - d. [Stickley v. Chisholm, 136 Md.App. 305 \(2001\)](#) (Causation);
 - e. [Fennell v. Southern Md. Hosp. Ctr., Inc., 320 Md. 776 \(1990\)](#) (Causation)
 - e. [Jones v. Malinowski, 299 Md. 257 \(1984\)](#) (Wrongful Birth); and
 - f. [Mehlman v. Powell, 281 Md. 269 \(1977\)](#) (Apparent Agency).

3. February 3

- Topic: Introduction To The Smith Case (first contact; first interview; your expectations; client's expectations; the needy client; causes of action; valuing the case; beginning to develop a theory of the case)
- Preparation for this class: Please read and be prepared to discuss in class:
 - a. [Section 3-2A-01](#), [3-2A-2](#), [3-2A-3](#), [3-2A-3A](#), [3-2A-4](#), [3-2A-5](#), [3-2A-6](#), [3-2A-6A](#), [3-2A-6B](#), [3-2A-6C](#), [3-2A-6D](#), [3-2A-7](#), [3-2A-8](#), [3-2A-8A](#), [3-2A-9](#) and [3-2A-10](#) (“Health Care Malpractice Claims” Act) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland;
 - b. Non-Economic Damage Cap Spreadsheet (on TWEN under Course Materials)
 - b. [Section 3-904](#) (“Wrongful Death Actions”) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland;
 - c. [Maryland Rule 15-1001](#) (“Wrongful Death” regarding Use Plaintiffs)
 - d. [Section 5-109](#) (“Suits Against Health Care Providers”) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland: and
 - e. [Section 6-201](#) and [6-202](#) (“Venue”) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.
 - f. [Maryland Rule of Professional Conduct 7.3](#) (Direct Contact with Prospective Clients) including the Comment and Annotation to the Rule.
- Please also re-review the easy to read (typewritten) pages of Mr. Smith's medical records to start to become familiar with what happened to Mr. Smith.

4. February 10

- Topic: The Pre-Suit Investigation Of The Smith Case (checking out the client's story; obtaining documents and other evidence; interviews of fact witnesses; finding and retaining expert witnesses; legal research; refining the theory of the case)
- Preparation for this class: Please:
 - a. review and be prepared to discuss in class Mr. Smith's medical records;
 - b. use a highlighter to mark the information you feel is important in the medical records;
 - c. make a list of all of the medical specialties that you believe need to testify for the Plaintiffs in the Smith case in order to win the case; and
 - d. go online and for each such medical specialty find one potential person whom you could use in this case in each of the medical specialties you identified, and print out a few pages on each such expert to bring to class to discuss.

5. February 17

- Topic: Beginning The Litigation Process In The Smith Case (when to sue; who to sue; how to sue; Certificate of Qualified Expert)
- Preparation for this class: Please read and be prepared to discuss in class:
 - a. [DeAngelo v. St. Agnes, 157 Md.App. 631 \(2004\)](#) (Certificates of Qualified Expert);
 - b. [Walzer v. Osborne, 395 Md. 563\(2006\)](#) (Medical Reports); and
 - c. [Carroll v. Konits, 400 Md. 167 \(2007\)](#) (Certificates of Qualified Expert).

6. February 24

- Topic: Representing A Defendant In The Smith Case (who is your client; meeting with the defendant; drafting a defense plan; preliminary motions; filing an answer; cross-claims and counterclaims; protection against subrogation interests)
- Preparation for this class: Please
 - a. review Mr. Smith's medical records;
 - b. read Lambros, [Dealing With Liens, Trial Reporter Magazine](#), Spring 2001; and
 - c. read [Arkansas Dept. of Health and Human Serv. v. Ahlborn, 547 U.S. 269 \(2006\)](#).

7. March 2

- Topic: Written Discovery In The Smith Case (whether to first conduct written or oral discovery; interrogatories and answers to interrogatories; document requests and responses to document requests; requests for admissions and responses to requests for admissions)
- Preparation for this class: Please
 - a. read and be prepared to discuss in class the [Discovery Guidelines](#) of the State Bar;
 - b. read and be prepared to discuss in class [Maryland Rules 2-401 to 2-404, 2-421 to 2-424](#);
 - c. read and be prepared to discuss in class Maryland Rules Form Interrogatories [1, 2, 3](#) and [8](#); and
 - d. draft Interrogatories and Document Requests for the Defendants in the Smith case (one final set will be provided to the University of Baltimore's class this week).

8. March 9

- Topic: Oral Discovery of Parties, Fact Witnesses and Experts In The Smith Case (who to depose; preparation for direct examination; preparation for cross-examination; defending a deposition)
- Preparation for this class: Please
 - a. read and be prepared to discuss in class [Maryland Rules 2-411, 2-412, 2-413, 2-414, 2-415, 2-416, 2-417, 2-418 to 2-419](#);
 - b. prepare a list of the subjects on which to prepare your client for deposition;
 - c. prepare a list of the subjects you would like to ask the Defendants at their deposition;
 - d. prepare a list of the subjects on which to prepare your client's expert pulmonology and pathologist for deposition; and
 - e. prepare a list of the subjects you would like to ask the Defendants' expert pulmonologist and pathologist.

NO CLASS FOR SPRING BREAK (MONDAY, MARCH 16)

9. March 23

- Topic: Preparing For Trial Of The Smith Case (settlement strategies; bad faith letters; releases; motions *in limine*; exhibits; stipulations; preparing the file; evidence; streamlining the case for trial; preparing the Plaintiff's trial plan; jury instructions)
- Preparation for this class: Please read and be prepared to discuss in class
 - a. the [Maryland Law Encyclopedia](#) sections on Releases (found at [19 M.L.E. Release § 1](#), [§ 2](#), [§ 3](#), [§ 4](#), [§ 5](#); [§ 6](#))
 - b. Maryland's Uniform Contribution Among Joint Tort-Feasors Act and the annotations (found in [Section 3-1401](#), [3-1402](#), [3-1403](#), [3-1404](#), [3-1405](#), [3-1406](#), [3-1407](#), [3-1408](#) and [3-1409](#) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland); and
 - c. [Jacobs v. Flynn, 131 Md.App. 342 \(2000\)](#) (Joint Tortfeasors);
 - d. review the Maryland Pattern Jury Instructions and make a list of the numbers (with the subject names) that you believe are necessary in the Smith case.

10. March 30

- Assignments And Preparation For Trial (Plaintiff's obligations in bold)
 - a. **Plaintiff's opening statement;**
 - b. Defendant's opening statement;
 - c. **Direct examination of the Plaintiff;**
 - d. Cross examination of the Plaintiff;
 - e. **Voir Dir and Direct examination of the Plaintiff's pulmonology expert;**
 - f. Cross examination of the Plaintiff's pulmonology expert;
 - g. **Voir Dir and Direct examination of the Plaintiff's pathology expert;**
 - h. Cross examination of the Plaintiff's pathology expert;
 - i. Voir Dir and Direct examination of the Defendants' pulmonology expert
 - j. **Cross examination of the Defendants' pulmonology expert;**
 - k. Voir Dir and Direct examination of the Defendants' pathology expert;
 - l. **Cross examination of the Defendants' pathology expert (by the defense);**
 - m. **Plaintiff's closing argument;**
 - n. Defendants' closing argument; and
 - o. **Plaintiff's rebuttal argument.**

11. April 6

- Preparation For Trial

12. April 13

- Preparation For Trial

13. April 20
No Class in light of time spent in trial

TRIAL SATURDAY 4/25/20 OR SUNDAY 4/26/20

14. April 27
No Class in light of time spent in trial

STUDY PERIOD 04/30/20 – 05/03/20

EXAMS 05/04/20 – 05/13/20