

**SYLLABUS FOR PRETRIAL PROCEDURE
PROFESSOR SCHWARTZ**

SPRING 2022

NOTE: This course will be taught remotely. There will be no in-person instruction. The final exam will also be remote. The Zoom information, including user name and password, will be posted as soon as it becomes available.

Welcome to Texas Pretrial Procedure! This is a valuable course, but it is full of detail that simply has to be learned. Nevertheless, you will be much more capable as a lawyer than you would be without it.

The successful practice of law requires a variety of skills. Not all of us have the skills to successfully practice law. I have seen some of the smartest people I have ever encountered fail at the law. The most basic skill set is knowing the language of the law. Procedure is the structure of the law. No idea, no matter how powerful, will ever become the law unless it is presented in a way courts decide cases. That is procedure.

Below is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings, and it may at times become necessary to deviate from the syllabus. I will let you know sufficiently in advance if this occurs.

BOOK(S)

Dorsaneo, Thornburg, Carlson & Crump, Texas Civil Procedure: Pretrial Litigation, 2018-2019
ISBN 978-1-5310-1242-7
e-ISBN 978-1-5310-1243-4

Texas Rules of Civil Procedure; Michigan Legal Publishing Ltd., 2019 Edition
ISBN-13: 978-1640020528
ISBN-10: 1640020527

If you do not want to buy a rule book, you can download the rules from the internet:

<https://www.txcourts.gov/media/1443641/trcp-all-updated-with-amendments-effective-febraury-26-2019.pdf>

I have also attached to this syllabus a handout titled, “Texas Pretrial Procedure – Texas Rules” for Spring 2022. These are some of the most important rules that we will discuss.

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MY POLICIES FOR CONDUCTING CLASS

PROFESSOR SCHWARTZ

NOTE: Some of you may be tempted to scan over the below policies, or simply skip them altogether. This is inadvisable, and may put you at a disadvantage when it comes to your final exam.

1. Welcome to the course in Texas Pretrial Procedure! This is an important subject to study; it isn't always fascinating, but it is among those in which your hard work is most likely to be rewarded when you practice law. Unfortunately, most of this class will be lecture, but I encourage class participation. I am sure you have heard that law school teaches you to "think like a lawyer." However, I think it is equally important to learn to question like a lawyer.
2. Consider carefully before taking this course. This is the sixth year that I am teaching this course. Each year I strongly solicit candid evaluations. I earnestly want to learn what I am doing right and what I can do to improve my teaching. It is apparent from some of the evaluations that I do not fulfill some students' expectations of the way this course should be taught. Have you ever wondered why Southwest Airlines is so highly rated even though they provide little in the way of exceptional service? The answer, I think, is that SWA fulfills customer expectations. So, let me set your expectations now. If you want a PowerPoint presentation in class, if you think the professor should stick strictly to the book and the reading assignments, and if you think the professor should not talk about Federal Civil Procedure because this course is about Texas Civil Procedure, then this course is not for you. I will also include the following question in your examination: "Did you submit a written evaluation for this course? Yes or No."
3. You are responsible for knowing everything that is covered in class, and everything in the assigned reading materials. In my class, we will approach litigation issues like a real-world lawyer. Real law does not come in PowerPoints, outlines to memorize, and bullet points. A guy with a pretty good reputation in the law once said, "The life of the law has not been logic; it has been experience." In my class, we talk about why we have certain rules, where the rules come from, and what the consequences (good and bad) of a particular rule are.
4. It is necessary to implement policies or rules for such a class. Therefore, please understand the businesslike tone of the following items. My longtime personal opinion is that law schools fail to teach professionalism. Law schools might teach you law and even teach you legal ethics, but they utterly fail, in my view, to teach you how to be a respected and professional lawyer. Accordingly, (1) you are free to criticize any idea, you are free to destroy any argument, and you are encouraged to prove the professor wrong, but (2) you are never free to criticize another person or to act unprofessionally in this class. You should consider this class as the first day of your professional life.
5. You need not tell me why you are absent. If you are absent, I always assume you have a good reason. As long as you comply with the law school's attendance requirement, which mandates 80% attendance. I do not need to know the reason. In order to encourage class attendance and participation, I will include questions in the examination about matters we discussed in class that are not in the book.

6. You need not tell me that you are unprepared. It is your responsibility to read forward in the casebook according to the syllabus so as to be prepared for class. Unless I indicate otherwise, we will go straight through the syllabus. I personally think the class will be worthless to you without preparation, but you paid for this class. I will tell you, frankly, that my experience regarding class preparation has been very disappointing. If you want to waste your money, that is your choice. I am not going to criticize you if you don't read the assignment. I am not even going to call you out. But, before you make the choice not to prepare for class, I encourage you to watch the Academy award winning film, The Paper Chase. In that movie (made long before cell phones), Professor Kingsfield tells his student, Mr. Hart, "Mr. Hart, here is a dime. Take it, call your mother, and tell her there is serious doubt about you ever becoming a lawyer."
7. Pass/Fail. You may elect to take this course pass/fail. See page 17 of the Student Handbook regarding this election.
8. Final Examination; Grading. Your grade for the course will be determined by an anonymous final examination (to the extent possible), except if you are disrespectful to another student in my class, in which case your grade will be adjusted downward. The exam will not be a spot the issue exam. I have determined not to use the long essay format because I have come to the unfortunate conclusion that there is too high a correlation between typing skills and scores. The exam will be open book and open resource as long as you are solely responsible for the exam answers.

Anything covered in class or in the assigned reading (or even in this syllabus) is fair game. (And, that includes things I mention in class that are necessary for cultural literacy as a lawyer.) The final grades are based on a curve. In past years, it was fairly easy to identify the A to B+ exams, the middle performing exams, and the unacceptable exams.

9. How to contact me. I am not on Facebook, LinkedIn, or Twitter. If you need to contact me about a class matter, my email address is: schwartz@skadden.com
10. Syllabus Changes. Due to the changing nature of the COVID-19 pandemic, please note that I may need to make modifications to the course syllabus and may do so at any time. I will announce all changes as quickly as possible.
11. Synchronous Online Courses. Online class meetings will take place according to the class schedule. There is no face-to-face component to this course. This course will have a final exam per the University Schedule. The exam will be delivered electronically, at the specified date and time.
12. Remote Classes. For any student using the classroom's internet videoconferencing capability for synchronous distance education via remote presence, there are a number of requirements you must meet:
 - i. you must be connected to the internet videoconference when class starts;
 - ii. your computer must have a working video camera and quality audio capability, joining by audio-only due to your lack of video capability may be treated as an absence (you may need an external mic or headset for sufficient audio quality);
 - iii. if your computer is a laptop, you must not be distracted by traveling or other activities when you join the internet videoconference;
 - iv. you may not join the class session internet videoconference from a phone;

- v. you must listen closely and speak loud and clear, as hearing students speak in the classroom and classmates ability to hear the remote presence student may not be optimal;
 - vi. you must identify yourself with your class roll name in the internet videoconferencing software;
 - vii. you must present your face and upper body area professionally in the video stream, eating “on-camera” is not a professional presentation;
 - viii. you must be able to fulfill your responsibilities if called on to discuss a case or course materials; and
 - ix. you must manage the “mute button” when remote to keep a professional demeanor.
13. 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.
14. 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 Center for Students with Disabilities. 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. 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.
- You may consider this as my written consent to record the course.
15. 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.
16. Class Information by Email: Last year, the COVID pandemic made it necessary to share important class information via email. Please be advised that if I need to send important class information via email, it will be sent to your UH Email account. Acknowledgement of receipt is expected and appreciated, but you are charged with knowing any information that I send to you via email regardless of your acknowledgement.
17. Webcams. Access to a webcam is required for students participating remotely in this course. Webcams must be turned on in order to be credited with class attendance.
18. Honor Code Statement. Students will be asked to sign an honor code statement as part of their submission of any graded work including but not limited to projects, quizzes, and

exams: *"I understand and agree to abide by the provisions in the Law Center Honor Code. I understand that academic honesty is taken very seriously and, in the cases of violations, penalties may include suspension or expulsion from the University of Houston."*

19. Disability. Any student with a disability requiring accommodation should let me know (except as to the exam, for which accommodation is to be arranged through the law school administration).
20. SEXUAL ASSAULT AND HARASSMENT 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> (antidiscrimination)

<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. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource and may not maintain a complainant's confidentiality, even if requested to do so by the complainant.

21. CAPS. 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) 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

22. Helpful Information.

- COVID-19 Updates: <https://uh.edu/covid-19/>
- Coogs Care: <https://uh.edu/dsaes/coogscare/>
- Laptop Checkout Requests: <https://www.uh.edu/infotech/about/planning/off-campus/index.php#do-you-need-a-laptop>
- Health FAQs: <https://uh.edu/covid-19/faq/health-wellness-prevention-faqs/>
- Student Health Center: <https://uh.edu/class/English/lcc/current-students/student-health-center/index.php>

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READING ASSIGNMENTS

CLASS DATE	CHAPTER AND SECTION	PAGES
1. Wed 1/19	§1.01 Overview of the Pre-Trial Process	3-6
	§1.02 Initiating the Attorney-Client Relationship; Notes and Questions	6-9; 16-20
	§1.03 Case Evaluation, Acceptance, and Settlement	24-27
2. Mon 1/24	§1.04 Pre-Litigation Fact-Gathering: Investigation and Interviewing	27-35
	§1.05 When to File the Lawsuit: Compliance With Preliminary Procedural Requirements Imposed by Statute	35-40
	§1.06 When to File the Lawsuit: Statutes of Limitations and Statutes of Repose	40-55
3. Wed 1/26	§2.01 Temporary Restraining Orders and Injunctions	63-68
	§2.02 Interim Relief for Secured Creditors and Other Claimants	69-76
	§2.03 Interim Relief for the General (Unsecured) Creditor	76-82
	§2.04 Wrongful Use of Special Remedies	82-89
4. Mon 1/31	§3.01 An Overview of the Texas Court System	91-92
	§3.02 Constitutional and Statutory Provisions: An Overview	92-111
5. Wed 2/02	§3.03 Amount in Controversy	111-123
	§3.04 Competing Jurisdictional Grants: Particular Controversies	124-134
6. Mon 2/07	§4.01 General Principles Governing Jurisdiction	153-157
	§4.02 Personal Jurisdiction in Texas	157-174; 188-199
7. Wed 2/09	§4.03 Other Long-Arm Statutes: The Family Code	205-217
	§4.04 Service of Process	217-218; 221-234; 237-242
8. Mon 2/14	§4.05 Challenges to Jurisdiction by Nonresidents	243-248; 258-260
	§4.06 The Doctrine of Forum Non Conveniens	261-265
9. Wed 2/16	§5.01 The Basic Venue Scheme	277-297
	§5.02 Exceptions to the General Rule	297-313

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10. Mon 2/21	§5.03 Litigating Venue Rights	313-334
	§5.04 Contracting for Venue	334-336
11. Wed 2/23	§5.05 Change of Venue Because Impartial Trial Cannot Be Had	336-338
	§5.06 Multidistrict Litigation	338-343
12. Mon 2/28	§6.01 Historical Background	351-353
	§6.02 An Overview of Texas Pleadings and Their Functions	353-355
13. Wed 3/02	§6.03 Sample Pleadings	355-358
	§6.04 Plaintiff's Petition	359-395
14. Mon 3/07	§6.05 Motions to Dismiss Baseless Causes of Action	395-399
	§6.06 Defendant's Answer	399-436
15. Wed 3/09	§6.07 Amended and Supplemental Pleadings	436-446
	§6.08 Specialized Pleading Forms	446-464
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Wed 3/16	SPRING BREAK	No Class
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	§7.02 Permissive Joinder of Parties by the Plaintiff	466-474
17. Wed 3/23	§7.03 Joinder of Claims by the Defendant	474-488
	§7.04 Permissive Joinder of Parties by the Defendant	488-493
18. Mon 3/28	§7.05 Intervention; Voluntary Joinder of New Parties	493-499
	§7.06 Interpleader	499-506
19. Wed 3/30	§7.07 Compulsory Joinder of Parties	506-511
	§7.08 Class Actions	512-533
20. Mon 4/04	§8.01 Preclusion	535-552
	§8.02 Parties Bound by Prior Adjudications	552-556
21. Wed 4/06	§8.03 Election of Remedies	556-565
	§8.04 The Law of the Case Doctrine	565-568

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22. Mon 4/11	§9.01 An Introduction to the Purposes and Scope of Discovery	569-575
	§9.02 Discovery and Attorney Obligations	575-580
23. Wed 4/13	§9.03 The Scope of Discovery: “Relevant” Information, “Not Privileged”	580-605
	§9.04 Preservation and Waiver of Privileges	636-649
24. Mon 4/18	§10.01 The Individual Discovery Devices: An Introduction	655-660
	§10.02 Discovery Devices	660-682
25. Wed 4/20	§10.03 Amendment and Supplementation of Discovery Responses	711-719
	§10.04 Sanctions for Failure to Provide Discovery	719-728
26. Mon 4/25	§11.01 Judgment by Default	739-745
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FINAL EXAM: TBD

TEXAS PRETRIAL PROCEDURE

TEXAS RULES

SPRING 2022

PROFESSOR SCHWARTZ

SYNCHRONOUS ONLINE COURSE

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