

Pretrial Practice

Course Syllabus

Summer, 2009

Meeting Mondays & Wednesdays 6-7:50pm

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Course Materials

Material will be assigned each class, and may change from time to time. The following resources will play a role in the class, though they are not meant to be a complete list of cases and resources.

Case Law

Zubulake v. UBS Warburg, 2004 WL 1620866 (S.D.N.Y. July 20, 2004).

Zubulake v. UBS Warburg, 220 F.R.D. 212 (S.D.N.Y. 2003).

In re Priceline.com Inc. Sec. Litig., 2005 WL 3465942 (D. Conn. Dec. 8, 2005)

Residential Funding Corp. v. DeGeorge Home Alliance, Inc., 2002 U.S. App. LEXIS 20422 (2nd Cir. Sept. 2002).

Anti-Monopoly, Inc. v. Hasbro, Inc., No. 94CIV.2120 (LMM)(AJP), 1995 WL 649934 (SDNY Nov.3, 1995):

Williams v. Sprint/United Mgmt. Co., 2005 US Dist. LEXIS 21966 (D. Kan. Sept. 29, 2005).

Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc., 2005 Extra LEXIS 94 (Fla. Cir. Ct. Mar. 23, 2005).

Metropolitan Opera Ass'n v. Local 100, Hotel Empl. & Rest. Empl. Int'l Union, 2003 US Dist. LEXIS 1077 (SDNY, Jan. 28, 2003).

Rules and Standards

Federal Rules of Civil Procedure (26-35, 45 mostly)

Federal Rules of Evidence (we may touch a few of these)

Virginia Rules (Rule 4.0-4.15)

Sedona Principals (I will provide)

Course Coverage & Objectives

The students will work through litigation pre-trial process in order to gain appreciation for litigation tools, tactics, and strategies. The students will be introduced to discovery issues and discovery problems commonly occurring in Virginia State and Federal Courts. The students will be introduced to concepts letting students appreciate handling of complex litigation – with a focus on the types of assignments most first and second year litigators might get at a law firm.

This is a practical skills class. We will work through real issues and real questions just as if the students were associates working with a partner on a new piece of litigation.

We will discuss overall litigation tactics and strategies – and how those tactics and strategies might apply to a given case. This will include considering client business decisions, and other client considerations. (Real life!)

We will formulate discovery, consider the types and timing of discovery, work on and refine discovery. We will consider and formulate possible motions – and discuss the strategies and tactics of motions' practice. Why and when to file discovery – as well as why and when not to file.

This class will focus on building the evidentiary blocks essential to supporting or defending a cause of action. We will look at and consider that standards for such proof, the type of evidence we have and need, and means of procurement of helpful evidence.

This class will focus on e-discovery, computer forensics, and electronic evidence, as well. **No – you need no technical background!** You need, however, to understand how electronic discovery and electronic evidence play a central role in building and defending a case – particularly in a pre-trial setting. As a new associate working on commercial litigation – you will be tasked to handle e-discovery issues. As a lawyer in a competitive market – you will need to understand, as many lawyers currently do not – the role of electronic evidence in building and defending cases.

Below is a **preliminary** Syllabus. Like real litigation, what we do from week to week may well change. Like real litigators – you will change and move as the demands of the litigation require.

Why take this class?

- 1. You actually want to learn how to litigate**
- 2. You plan on being a litigator**
- 3. You recognize that 95% of cases never go to trial – and therefore are litigated to conclusion through pre-trial strategy and discovery**
- 4. You want to be one of only a hand-full of classes nationally in any law school to discuss and learn about e-discovery and electronic evidence**
- 5. You need two credits and you want a fun class with a great Professor**
- 6. All or any of the above**

Grading

Each student will be assigned litigation tasks throughout the semester. These may be a short 3-5 page motion, draft discovery, including admissions, requests for documents, or interrogatories. Each student will participate in litigation strategy class discussions on filing of answer, counter-claims, dispositive motions, discovery, etc.

Grading will be as follows:

Discovery assignment – 30%

Final assignment – Motion – 30%

Homework assignments 10%

Class participation 30%

(Class participation will be broken down into two components, attendance 30% and participation 70%) (the ceiling on attendance is an A)

Classes

Monday, May 18, 2009

Introductions. Discussion of class format and introduction to litigation and pre-trial issues and concepts. First meeting of Kelsey and Associates. Distribute and discuss new complaint just arrived from registered agent for client. Outline client needs and circumstances.

Wednesday, May 20, 2009

Strategy meeting of Kelsey and associates to discuss response to complaints, possible discovery, motions, cross and counter-claims, and other tactics.

Monday, May 25, 2009

This is a legal holiday – it's called Memorial Day. Because we are a small firm – and our answer is not due – we will be off. If we were a large firm – paying you 160K to start – I would not plan any barbeques.

Wednesday, May 27, 2009

Review proposed strategies and tactics for complaint. Discuss who to depose, why, and what we want from that person. Discuss order of possible discovery – types of discovery, and what we may want to do in coordinating with co-defendants? Can we do that?

Monday, June 1, 2009

Discuss state court tactics and discovery issues. Address motions' practice and compare and contrast Federal Courts with Virginia Courts. Discuss "knowing your Court" and "Knowing your Judge." Strategies and tactics – and rules for filing motions. Consider how complaint might be handled in State Court.

Wednesday, June 3, 2009

Depositions? Who to depose – when, why, how? Short mock deposition. View tape on preparing clients for depositions. Discuss deposition strategies. Limits on depositions! Choose carefully. Strategies on getting more depositions in our case. Deposition war stories – and how to handle the impossible opposing counsel – and the absurd deponent.

Monday, June 8, 2009

E-discovery and Electronically-stored Evidence ("ESI") What role is e-discovery in current litigation. What are the costs? How to handle it. What is new in the law? New Federal Rules -- What are the high's and lows? What must you know as a Lawyer? How can you guide your client? How to you actually find the ESI you need – and your Partner has charged you to locate?

Wednesday, June 10, 2009

Discussion of e-discovery case law and changes to Federal Rules of Civil discovery involving production of ESI. Consider privilege issues in production of ESI. Discuss merits and needs for counsel consultation.

Monday, June 15, 2009

Your assignment is due before class. We will have a guest speaker and presentation on Electronic Evidence and cyber-fraud. Chris Williams or Trevor Reschke, experts in computer forensic work will speak. Mr. Reschke is a renowned forensic expert. His forensic findings were used in the 9/11 report. Mr. Williams is a former member of the Cyber-crimes unit for the United States Secret Service. He was also a member of the incident response team for the White House. You will not be tested on this – but this presentation and discussion on the application of these issues will serve you well in your practice

Wednesday, June 16, 2009

The Sedona principals! Choosing an electronic vendor – preserving evidence, addressing the storing, collection, and preservation of ESI. Oh – and what happens if you destroy ESI – or paper evidence relevant to a case. Spoliation – Yuck! Woe be unto the junior associate who gets blamed for this! Review of Spoliation Case law.

Monday, June 22, 2007

Assignment of final project and motion. Discuss motion and project. General discussion on strategy and appearance before the Court – any Court – and specific Courts on discovery conferences. Assignment will be made by e-mail prior to scheduled class time. Use class time to begin assignment. No class.

Wednesday, June 24, 2007

Discuss Motion and motion's practice. Answer inevitable questions of junior associates concerned that they do not understand the scope of the assignment. Discuss drafting of motion and effective techniques to actually win your motion – which is done on your brief and not in oral argument.

Monday, June 29 2009

Your Partner has reviewed your Motions and discovery and has called a meeting to check the status of the case. We will bear down on strategy issues on discovery, look at where would be in a real case at this point, and discuss – using the Socratic method, how we should proceed and what we might have missed on discovery. We will look at the Federal Rules and discuss discovery plan requirements, consultation with counsel, and the mechanics of a discovery conference

Wednesday, July 1, 2009

Your Partner will discuss final questions on final assignment. We will focus on motion strategy, research tips, and formulating your arguments.

Saturday, July 4, 2009

No class. In fact, no class for us if even scheduled this date. However, please take time to thank your god – or your parents, or just some dumb luck, that you were born and raised in the greatest Country the world has ever known – and that some very brave men got together in the ultimate pre-trial decision, and wrote one hell of a writ – know as the Declaration of Independence.

Monday, July 6, 2009

Final class. Discuss practice tips, experience, and observations as lawyer and law clerk. Address litigation tips for both strategy, and for working with clients and opposing counsel. Discussion of expectations on junior associates, and working with and for multiple senior lawyers.

Friday, July 10, 2009. Your final assignment is due to me via e-mail before 6PM. Late assignments will be marked down at 6:01 PM.