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LEG 270.01: Civil Litigation

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MISSOULA COLLEGE UNIVERSITY OF MONTANA
BUSINESS TECHNOLOGY DEPARTMENT

COURSE NUMBER AND TITLE: LEG 270-AU18-Stanton, Civil Litigation

ACADEMIC MISCONDUCT STATEMENT:
All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or disciplinary sanction by the University.

All students need to be familiar with the Student Conduct Code. The code is available for review online at http://life.umt.edu/vpsa/student_conduct.php.

PREREQUISITES:
U 185T Introduction to Paralegal Studies and/or consent of instructor.

COURSE DESCRIPTION:
Introduction to rules governing civil litigation involving the general nature of how lawsuits arise including client interviews and data gathering, pleading and practice from the filing of suit to file preparation for trial, and core considerations of ethics and professionalism.

CREDITS AWARDED UPON SUCCESSFUL COMPLETION:
3 Credits

REQUIRED TEXT AND MATERIALS:
Title: Fundamentals of Litigation for Paralegals, current edition.
   Author(s): Mauet and Maerowitz
   Publisher: Aspen Law & Business

SUPPLEMENTAL MATERIALS: As announced and/or distributed by the instructor.

COURSE OBJECTIVES AND SKILLS DEVELOPMENT:
1. Identify sequence and nature of the rules governing civil litigation.
2. Synthesize the reasons for and the nature of the differences between various jurisdictions.
3. Become familiar with the nature of the client interview and the necessary considerations for case evaluation and strategy.
4. Draft pleadings and motions.
5. Explore the nature, scope and importance of discovery.
6. Review the reasons behind and the operation of the rules of evidence.
7. Develop litigation file organization skills.

INSTRUCTIONAL METHODS:
Lecture, Interactive topic discussion, Chapter question answer and discussion
METHODS OF VALUATION:
Students will be graded in these general areas:
   Drafting exercises/practical assignments
   Class participation
   Mid-Term Examination and/or Periodic Subject Mastery Quizzes
   Final Examination.

The categories will be graded in an objective manner. The categories will be computed into a final grade using a point allocation system and weight factoring formula. Attendance may be considered when a student falls on the borderline between grades.

GRADING SCALE
A: 100-93%
B: 92-85%
C: 84-77%
D: 76-70%
F: below 70%

PRACTICAL ASSIGNMENTS TO DEVELOP PARALEGAL COMPETENCIES:
The purpose of this course is to have students learn the process of civil litigation. This is a knowledge building course whose lessons will be put to use in the companion course TRIAL PREPARATION. Students will be required to learn and develop methods for remembering aspects of the civil litigation process. The instructor will lead students in memorizing the order and aspects of the civil litigation process through development of charts, rules reading and analysis, and practical diagram development to aid in the memorization task.

DETAILED OUTLINE OF SUBJECT AREAS WITH TIME INCREMENTS FOR EACH:
The following is an outline created from the instructor’s notes. The outline covers the substantive chapters in the text but is not exhaustive of the material we will cover. Generally, the content of the chapter material will be covered in one class session and the supplemental questions from the course materials will be answered, analyzed, and discussed in the following class period. This outline is accurate but should only be used as a study guide once the student has created their notes within the outline or, better has created their own outline and uses this one for comparison. Some of the content will vary from year to year. The instructor will keep the outline current to the best of his ability.

Week 1
Chapter 1- Discussion: Syllabus/Drafting Assignment/Nature of Course (80 minutes)
   Sources of Law (80 minutes)

Week 2
Chapter 2-Process of Civil Litigation Diagram (80 minutes)
   Paralegals Role in Civil Litigation (80 minutes)
Week 3

Chapter 3 – Case Evaluation and Strategy

A. Introduction (15 minutes)

B. Establishing the Terms of the Attorney-Client (15 minutes)
   1. Work covered
   2. Lawyer’s fee
   3. Retainers
   4. Costs – things outside the fees
   5. Billings
   6. Authorization to file suit
   7. Next steps

C. Declining Representation(15 minutes)

D. Planning the Litigation (15 minutes)
   1. Reevaluate the client’s objectives, priorities, and cost constraints
   2. Define the client’s litigation objectives
   3. Develop a “theory of the case”
   4. Plan the pleadings
   5. Plan the discovery
   6. Plan the Dispositive motions
   7. Plan the settlement approach
   8. Develop a litigation timetable

E. Example of Litigation Planning: Novelty Products, Inc. v. Gift Ideas, Inc. (15 minutes)

F. Pre-filing Requirements(15 minutes)
   1. Statutory notice requirements
   2. Contract requirements
   3. Mediation, arbitration, and review requirements
   4. Administrative procedure requirements
   5. Appointment of legal guardian
   6. Discovery before suit
   7. Demand letters

In-class discussion of initial drafting exercise (80 minutes)
Including: examination of form Demand Brochure, determination of pertinent research plan and investigation plan, discussion of format, discussion of evidence concerns, location of similar forms and templates, identification of purpose of demand brochure, discussion of timing of demand brochure, application of form demand brochure to hypothetical litigation scenarios, in class drafting (time permitting)

Week 4 and 5

Chapter 4 Outline–Parties and Jurisdiction

A. Introduction (15 minutes)

B. Parties to the Action (15 minutes)

C. Joinder of Parties and Claims (15 minutes)
   1. Real Party in Interest
2. Capacity to Sue
3. Required Joinder of Parties
4. Permissive Joinder of Parties
5. Special Pleading Rules
6. Joinder of Claims

D. Subject Matter Jurisdiction (15 minutes)
   1. Case or Controversy
   2. Federal Question Jurisdiction
      a. “Arising Under”
      b. Specific Grants of Jurisdiction
      c. Pendent Jurisdiction
      d. The United States as a Party
   3. Diversity Jurisdiction
      a. “Citizenship” requirement
      b. Complete Diversity requirement
      c. Jurisdictional Amount Requirement
   4. Ancillary Jurisdiction
   5. Removal Jurisdiction

E. Personal Jurisdiction (15 minutes)
   1. Due Process Requirements
   2. Service-of-Process Requirements

F. Federal Versus State Court (15 minutes)

G. Venue (15 minutes)
   1. Determining Venue
   2. Change of Venue

H. Choice of Court Based on Choice of Law (15 minutes)

In class discussion of Complaint and Summons drafting assignments (80 minutes)
Including examination of form Complaints, examination of form Summons (local examples), discussion of format, discussion of FRCP 8 and FRCP 9 vis a vis MRCP 8 and MRCP 9, parties, jurisdiction, location of similar forms and templates, identification of purpose of demand Complaint and Summons, discussion of timing and statutes of limitation, application of form Complaint and Summons to hypothetical litigation scenarios, in class drafting (time permitting).

Week 6 and 7

Chapter 5 Outline–Pleadings

A. Introduction (15 minutes)
B. General Pleading Requirements (15 minutes)
   1. General “notice” requirements for claims
   2. Alternative and inconsistent pleadings
   3. Format Requirements
   4. Rule 11
   5. Service and Filing
C. Complaints (15 minutes)
   1. Subject Matter Jurisdiction
   2. Statement of Claims
   3. Prayer for Relief
   4. Jury Demand
   5. Filing and Service of Summons
D. Rule 12 Responses (15 minutes)
   1. Motion to Strike
   2. Motion for a more definite statement
   3. Motion to dismiss under Rule 12(b)
E. Answers (15 minutes)
   1. Timing
   2. General Requirements
   3. Responses
   4. Rule 12(b) defenses
   5. Affirmative Defenses
F. Counterclaims (15 minutes)
   1. Compulsory Counterclaims
   2. Permissive counterclaims
   3. The United States as Plaintiff
   4. Statutes of Limitation
   5. Waiver and Amended Pleadings
   6. Practice Approach
G. Replies (15 minutes)
H. Cross-Claims (15 minutes)
   1. Discretionary Pleading
   2. Subject Matter
   3. Timing
   4. Jurisdiction, Venue, and Joinder
   5. Cross-claims against the United States
   6. Practice Approach
   7. Responses to Cross-Claims
I. Third-Party Practice (Impleader) (15 minutes)
   1. Discretionary Pleading
   2. Subject Matter
   3. Jurisdiction and Venue
   4. Statutes of Limitation
   5. Practice Approach
   6. Third-Party Defendant Responses
   7. Original Plaintiff Responses
J. Interpleader (15 minutes)
   1. Rule 22 Interpleader
   2. 28 U.S.C. §1335 Interpleader
   3. Practice Approach
K. Intervention (15 minutes)
   1. Intervention of Right
   2. Permissive Intervention
   3. Timing
   4. Jurisdiction
   5. Practice Approach

L. Class Actions (15 minutes)
   1. General Class Requirements
   2. General Facts Requirements
   3. Jurisdiction
   4. Procedure

M. Amendments of Pleadings and Supplemental Pleadings (15 minutes)
   1. Amendments by Right
   2. Amendments by Leave of Court
   3. Statutes of Limitation and “Relation Back”
   4. Supplemental Pleadings
   5. Practice Approach

Week 8
Midterm Review (80 minutes)
Midterm Examination (80 minutes)

Week 9
Review Answers (40 minutes)
Including purpose of Answers, timing of Answers, contents of Answers, response to allegations in Complaint, Affirmative defenses, pertinent FRCP and MRCP, defense case research, development of defense theory of case, overview of defense litigation strategy, anticipated initial discovery review

In class discussion of Answer drafting assignments (40 minutes)
Including examination of form Answer (simple and complex), discussion of applicable FRCP and MRCP, multiple party practice, location of similar forms and templates, identification of purpose of Answer in hypothetical litigation scenarios, in class drafting (time permitting)

In class drafting exercise review (80 minutes)
Litigation teams will use this class period to discuss status of team litigations privately with instructor and each other to determine future course of litigation.

Week 10

Chapter 6 Outline – Law and Motions
A. Introduction (25 minutes)
B. General Requirements for Motions (45 minutes)
   1. Form
   2. Notice, Service and Filing
3. Content of the Motion
4. Responses to Motions
5. Hearing and Argument
6. Order
C. Extensions of Time and Continuances (30 minutes)
D. Substitution of Parties (30 minutes)
E. Removal (30 minutes)
   1. Should you remove?
   2. Want are the Procedural Requirements for Removal?
      a. Timing
      b. Notice of Removal
      c. Filing a Notice in State Court
      d. Further Proceedings

Week 11

Chapter 7 Outline – Motion Practice
A. Introduction (25 minutes)
B. Judgment on the Pleadings (30 minutes)
C. Summary Judgment (45 minutes)
   1. When made
   2. Standards and matters considered
   3. Hearing, order and appealability
   4. Practice Approach
   5. Opponent’s Responses
D. Dismissals and Defaults (45 minutes)
   1. Voluntary dismissals
   2. Involuntary dismissals
   3. Defaults
E. Consolidation and Separate Trials (30 minutes)
   1. Consolidations
   2. Separate Trials

Week 12

Review of Motion Practice (80 minutes)
Including types of motions, purpose of motions, timing of motions, contents of motions (including standard of review, facts, argument, conclusion sections), briefs in support of motions, responses to motions, replies to motions, orders relating to motions, service of motions, and format of motions.

In class discussion of Motion to Dismiss drafting assignments (40 minutes)
Including examination of form Motion to Dismiss, Response to Motion to Dismiss, Reply to Response to Motion to Dismiss, discussion of applicable FRCP and MRCP, multiple party practice, location of similar forms and templates, identification of purpose of Motion to Dismiss, Response, Reply, application of form Motion to Dismiss,
Response, Reply to hypothetical litigation scenarios, in class drafting (time permitting)

Week 13

Chapter 8 – Provisional Remedies
A. Introduction (25 minutes)
B. Temporary Restraining Orders and Preliminary Injunctions (45 minutes)
   1. Temporary Restraining Orders
      a. Law
      b. Practice Approach
         i. Complaint and Summons
         ii. Application for TRO and preliminary injunction
         iii. Attorney’s certificate regarding service
         iv. Witness affidavits
         v. Security for Costs
         vi. Order and Service
   2. Preliminary Injunctions
      a. Law
      b. Practice Approach
C. Writs of Attachment (30 minutes)
   1. Law
   2. Practice Approach
D. Writs of Possession (30 minutes)
   1. Law
   2. Practice Approach
E. Lis Pendens (30 minutes)

Week 14

Chapter 9 Outline – Evidence
A. Introduction (15 minutes)
B. The Paralegal’s Role (30 minutes)
C. Relevance (30 minutes)
   1. Character Traits
   2. Habit Evidence
   3. Policy Exclusions
D. Hearsay (45 minutes)
   1. Is it a “statement”?
   2. Was the statement made “out of court”?
   3. Is the out-of-court statement “offered to prove the truth of the matter asserted in the statement”?
E. Hearsay Exceptions (45 minutes)
   1. Admission of a party opponent Fed. R. Evid. 804(d)(2).
5. Present sense impressions Fed. R. Evid. 804(1)
6. Excited utterances Fed. R. Evid. 804(2)
7. Statement of present or past conditions for medical diagnosis Fed. R. Evid. 804(4)
8. Statement of present state of mind Fed. R. Evid. 804(3)
10. Records Exceptions Fed. R. Evid. 803
   a. Recorded Recollections Fed. R. Evid. 803(5)
   c. Public Records Fed. R. Evid. 803(8)
11. Other Exceptions (Catch-All) Fed. R. Evid. 807
F. Witnesses, Exhibits, Judicial Notice, and Objections(15 minutes)
1. Witnesses
   a. Competency Fed. R. Evid. 601
   b. Impeachment Fed. R. Evid. 607
2. Expert Witnesses Fed. R. Evid. 702, 706
3. Exhibits Fed. R. Evid. 901
   a. Real Evidence
   b. Demonstrative Evidence
   c. Writings
   d. Business Records
   e. Public Records
5. Judicial Notice Fed. R. Evid. 201
G. Privileges(15 minutes)
1. Attorney-client privilege
2. Work product privilege
3. Physician-patient privilege
4. Marital Privileges

Week 15

Chapter 10 Outline – Discovery
a. Introduction(15 minutes)
b. Discovery Overview(15 minutes)
   1. Types of Discovery
   2. The Paralegal’s Role
   3. Computerized Litigation Support
      a. Conducting Research
      b. Locating information about parties and witnesses
      c. Organizing discovery
c. Scope of Discovery(15 minutes)
   1. Relevance
   2. Insurance agreements
   3. Statements
   4. Experts
   5. Privileges
1. What privilege law applies?
2. What is the applicable federal or state privilege law?

6. Trial Preparation Materials
d.
   Discovery Strategy: A Seven-Step Process (15 minutes)
   1. What facts are needed in order to establish a winning case on the client’s claims (or
defeat the opponent’s claims)?
   2. What facts already have been obtained through informal fact investigations?
   3. What “missing” facts must still be obtained through formal discovery?
   4. What discovery methods are most effective for obtaining the missing facts?
   5. What facts and witnesses, already identified through informal investigation, must be
      pinned down by formal discovery?
   6. What restrictions does the client’s litigation budget place on the discovery plan?
   7. In what order should the discovery proceed?
      a. When should discovery start?
      b. In what order should discovery be carried out?

e.
   Interrogatories (15 minutes)
   1. Law
   2. Practice Approach
      a. Topics: what information should I seek?
      b. Drafting the Interrogatories
      c. Responses to Interrogatories

f.
   Requests to Produce Documents and Subpoenas (15 minutes)
   1. Law
   2. Practice Approach
      a. Timing
      b. Organization
      c. Drafting Requests to Produce
      d. Responses to Requests to Produce
   3. Document requests and subpoenas to nonparties
   4. Document Productions

g.
   Depositions (15 minutes)
   1. Law
      a. Timing
      b. Notice
      c. Location
      d. Persons Present
      e. Recording
      f. Signing, Correcting, and filing
      g. objections
   2. Practice Approach
      a. Scheduling the deposition
      b. Preparing for the Deposition
      c. Preparing the Client for Deposition
      d. Taking notes at the deposition
      e. Summarizing the Deposition
         i. Chronological summary
ii. Subject matter summary

iii. Topic Index

iv. Narrative summary

h. Physical and Mental Examinations (15 minutes)
   1. Law
   2. Practice Approach

i. Requests for Admissions (15 minutes)
   1. Law
   2. Practice Approach
      a. Timing
      b. What to Request
      c. Drafting the Requests
      d. Choosing a response
      e. Requesting party’s responses

j. Discovery Motions (15 minutes)
   1. Protective Orders
   2. Orders compelling discovery
   3. Sanctions for Abuse

Finals Week
Final Exam Review (60 minutes)
Final Exam (180 minutes)

RESOURCES:
Missoula County District Court – Local Rules
http://www.co.missoula.mt.us/distcourt/Local%20Rules.htm

Montana Supreme Court – Rules of Court -
http://www.lawlibrary.state.mt.us/dscgi/ds.py/View/Collection-79

SYLLABUS REVISION DATE:
August 2018
Note: Instructor reserves the right to modify syllabi and assignments as needed for any reason.

ATTENDANCE POLICY:
An attendance sheet will be distributed at the beginning of every class. All students are expected to attend every class unless excused by the instructor prior to class. A note to the student: Civil Litigation simply cannot be learned in a short period of time. If you skip class, your grade will suffer. If you cannot be present for class regularly, withdraw.

CLASS MEETING TIME AND PLACE:
Tuesdays and Thursdays, 9:40 AM to 11:00 AM in Room MC 240

DISABILITY ACCOMMODATION STATEMENT:
If any student requires special consideration for any reason, it is the responsibility of the student to contact the instructor to discuss the matter prior to any situation that might give rise to the
special consideration requested. Please be prepared to provide a letter from your DSS coordinator. For more information, visit the Disability Services website at http://www.umt.edu/dss/ or call 406.243.2243 (voice/text).

INSTRUCTOR CONTACT INFORMATION:
Name: Thomas H. Stanton, email: Tom.Stanton@umontana.edu, Telephone: (406) 243-7850, Office and Meeting times: AD 11 Faculty Office Suite, (North-East corner Business Administration Building, East Campus), before, between and after classes, or by appointment (see schedule on office door).

MISSED/LATE COURSE WORK POLICY:
Missed or late course work can be turned in within 24 hours of the assignment due date for 50% credit. Missed or late course work turned in after 24 hours of the assignment due date will be awarded no credit. This policy can be amended at the discretion of the instructor upon proof of adequate justification.

TESTING POLICY:
Make up tests or quizzes will not be given unless the instructor is contacted at least one hour prior to the scheduled time for the test or quiz. It is the student's responsibility to contact the instructor either in person or in writing regarding an anticipated missed test or quiz.

CELL PHONE POLICY
Please turn off cell phones before class begins as they are distracting to faculty and other students. NOTE: The instructor reserves the right to physically disable offending communicating devices.