

# DISCOVERY PRACTICUM

Spring 2015

LP PROFESSOR DAVID THOMSON

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Office 415G

Office Hours: Tu 1:00 – 2:30 (or by appt.)

303-871-6467

## CLASS

Friday, 1:30 – 4:00 p.m.

Room 255

### Course Overview and Learning Objectives

This course is a practice-oriented introduction to the discovery phase of litigation. Most “trial lawyers” spend most of their time in discovery for the various cases they manage, and this is why such lawyers more often refer to themselves as *litigators* – because they rarely try cases in court.

Discovery is the heart of civil litigation, and yet most law schools do not have many such courses. As a result, law school graduates often enter law firms thinking they want to be litigators, but have only taken trial practice courses, and they find themselves unprepared to create the “bread and butter” documents of litigation: discovery documents. This course seeks to remedy that problem, and to prepare students for the bulk of the work they will do as litigators, as well as to understand the law, policy, and strategy involved in the discovery phase of litigation.

To be more specific, the learning objectives for this course are that, by the end of the course, you will be able to:

- Recognize and apply the twelve Federal Rules of Civil Procedure that pertain to discovery
- Recognize how and when to use the most common litigation documents
- Prepare such documents in a simulated litigation
- Interpret discovery responses from opposing counsel
- Develop and adjust litigation strategy based on what you have learned
- Identify and evaluate ethical dilemmas that arise in the discovery context
- Consider the complexities of, and developing law surrounding, electronic discovery
- Synthesize your case knowledge at specific points in the litigation
- Take and defend a deposition
- Compare options and negotiate a settlement with opposing counsel



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- Agree upon terms for a settlement agreement, and draft it collaboratively.
- Use these opportunities to reflect intentionally on the formation of your professional identity.

### **The Skills & Values Textbook**

The text for this course is Thomson, *Skills & Values: Discovery Practice* (LexisNexis/Matthew Bender 2010). This is a new kind of law school textbook that has a number of features making it different from the typical text. First, it is a “hybrid” textbook – the print portion is only a part of the book, and the rest is online. You will find general background information about the book at this location on the web: [www.discoveryskills.com](http://www.discoveryskills.com), but the online portion of the text is not generally available because it is located on LexisNexis Webcourses, and you will need to enroll in the course to access this additional part of the text. (Note: the “Enrollment code” is: Disco23DU) Second, because less of the text is printed and much more is online, the books in the series are significantly cheaper, and easier to carry around. Third, the online text includes a great deal of additional reading and supporting information, including cases and rules to read before class, and examples of the documents you will be drafting in the course. Please note that each assigned chapter of reading in the textbook also includes reading the corresponding online materials for the chapter as noted in the detailed class schedule provided here:

Required Reading	Thomson, <i>Skills &amp; Values: Discovery Practice, 2<sup>nd</sup> Edition</i> (LexisNexis/Matthew Bender 2014); <b>AND</b> cases and materials for each chapter in the <i>Discovery Practice</i> Web Course materials online.	Available in the DU Bookstore.  Sign up at: <a href="http://bit.ly/u4oVmh">http://bit.ly/u4oVmh</a>
Recommended Reading	Stern, <i>The Buffalo Creek Disaster</i> (Vintage, 2008).  Harr, <i>A Civil Action</i> (Vintage, 1996).	<a href="http://amzn.to/u16abW">http://amzn.to/u16abW</a>  <a href="http://amzn.to/s8ILRt">http://amzn.to/s8ILRt</a>

<b>INTRODUCTION TO DISCOVERY</b>		
<b>Date</b>	<b>Reading and Assignments</b>	<b>Class # and Subject(s)</b>



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January 16, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Introduction &amp; Chapter 1.</li> <li>□ Online: Introduction to the Online Site; Chapter 1 materials.</li> </ul>	1. Introduction to Course and Problem set. Importance of Discovery; Litigation Planning; CaseMap.
January 23, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Appendix &amp; Chapter 2; DBA Principles of Professionalism.</li> <li>□ Online: Rule 26 and <u>Seroquel</u>.</li> <li>□ Assign: Litigation Plan &amp; Spreadsheet of projected discovery costs.</li> </ul>	2. Litigator's Toolbox; Review Complaint & Answer from Appendix. Initial Disclosures under Rule 26.
<b>DISCOVERY DOCUMENTS</b>		
January 30, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapter 3.</li> <li>□ Online: Rules 33; Quiz on Rule 33.</li> <li>□ Due: Litigation Plan &amp; Spreadsheet of projected discovery costs.</li> <li>□ Assign: Interrogatories</li> </ul>	3. Scope of Discovery; Interrogatories.
February 6, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapter 4.</li> <li>□ Online: Rules 26 and 33; <u>Hickman</u> and <u>Upjohn</u>; Quiz on Answers to Interrogatories.</li> <li>□ Due: Interrogatories</li> <li>□ Assign: Answers to Interrogatories</li> </ul>	4. Privileges and Objections; Answers to Interrogatories.
February 13, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapters 5 &amp; 6.</li> <li>□ Online: Rule 34; Quiz on Document requests. Rules 29 and 35.</li> <li>□ Due: Answers to Interrogatories</li> <li>□ Assign: Document Requests</li> </ul>	5. Request for Production of Documents; Examinations; eDiscovery. Student Presentations on Rules 29 and 35.
February 19, 2015	<i>Decade of Discovery</i> (movie event)	(3:00 – 5:30 p.m.)



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February 20, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapters 7 &amp; 8.</li> <li>□ Online: Rules 37 and 31. ABA Rule 3.4</li> <li>□ Due: Document Requests</li> <li>□ Assign: Response to Request for Production of Documents</li> </ul>	6. Response to Req. for Production; Protective Orders; Motions to Compel, Sanctions. Discovery Dispute Hearing (student argued). Student Presentation on Rule 31.
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<b>DEPOSITIONS AND EXPERTS</b>		
February 27, 2015	<ul style="list-style-type: none"> <li><input type="checkbox"/> Thomson, Chapter 10.</li> <li><input type="checkbox"/> Online: Rules 30, 27, and 28.</li> <li><input type="checkbox"/> Due: Response to Request for Production of Documents</li> <li><input type="checkbox"/> Assign: Begin prep of your Deposition</li> </ul>	7. Document Management; Depositions I: Notices, Limits, Types, Strategies. Student Presentations on Rules 27 & 28.
March 6, 2015	<ul style="list-style-type: none"> <li><input type="checkbox"/> Online: Example deposition outline; Witness Prep info; Video clips of depositions. Expert Witness Reports in <u>Hartman</u> case.</li> </ul>	8. Depositions II: Conduct, Objections, Ethics, Video, Exhibits, Stipulations, Experts.
March 13, 2015  <b>(Spring Break)</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Thomson, Chapter 9.</li> <li><input type="checkbox"/> Online: FRE 702; Rule 26 (a)(2); <u>Daubert</u> and <u>Kumho Tire</u>.</li> <li><input type="checkbox"/> Due: Deposition Outline <i>is due on March 26</i>.</li> <li><input type="checkbox"/> Assign: Expert Disclosure</li> </ul>	9. Expert Discovery, Disclosures. Student Presentations on FRE 702 and Rule 32.
March 27, 2015	<ul style="list-style-type: none"> <li><input type="checkbox"/> Online: Review video clips of depositions (in Ch. 10 materials).</li> <li><input type="checkbox"/> Due: Expert Disclosure (<i>due on March 24</i>); Deposition Outline (<i>due on March 26</i>).</li> </ul>	10. Deposition Day. (Take, Defend, and act as a witness, from 12:30 – 4:30 p.m., as scheduled).
<b>FINAL DISCOVERY AND SETTLEMENT</b>		
Between March 13 and March 27, 2015	<ul style="list-style-type: none"> <li><input type="checkbox"/> Assign: Memo re Discovery issues in the movie; CALI Lesson: <i>Woburn: A Game of Discovery</i> (conducted with your opposing counsel – link in Webcourse).</li> </ul>	11. Watch the Movie “A Civil Action” (on your own or through the Webcourses site).



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April 3, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapters 11 &amp; 12.</li> <li>□ Online: Rule 36 and 26(f). Quizzes on Requests for Admission and Responses to Req. for Admission.</li> <li>□ Due: Memo re Discovery issues in “A Civil Action.”</li> </ul>	12. Requests for Admissions; Responses. Pretrial Conferences.
April 10, 2015	<ul style="list-style-type: none"> <li>□ Thomson, Chapters 13 &amp; 14.</li> <li>□ Online: FRE 402 and 403.</li> <li>□ Due: Requests for Admission; Printed results of CALI Discovery game.</li> </ul>	13. Motions in Limine; Settlement Strategy and Settlement Agreements.
April 17, 2015	<ul style="list-style-type: none"> <li>□ Due: Responses to Requests for Admission (<i>Due on April 13 at 5 p.m.</i>); <i>Settlement Authority email to Prof. Thomson due on April 16 by 5 p.m.</i>)</li> <li>□ Assign: Settlement Agreement (T); CaseMap data file (I). <i>These items, and your complete case file, are due in my office on Wednesday, April 22 by 5:00 p.m.</i></li> </ul>	14. Settlement Meetings with opposing counsel; conclusion of the course.

## **Course Policies, Procedures, and Grading**

### **Communication**

Questions are always welcome in my class. Additionally, I am happy to speak with you outside of class. This fall, my office hours will be Tuesdays between 1:30 p.m. and 3:00 p.m. You can also fairly dependably find me in the office on Monday and Wednesday mornings, after 9. You are always welcome in my office – it is just good to find a mutually convenient time so we can both be focused on the discussion.

Of course, a good way to contact me is via E-mail. My office E-mail address is [dthomson@law.du.edu](mailto:dthomson@law.du.edu). Outside of class, I will often communicate with you through the LexisNexis Webcourse that is a companion to the textbook, either as an announcement on the site or by E-mail. All mass E-mail messages to the entire class will be made via the Webcourses site. You may learn more about this class, and me, by visiting my faculty web site: <http://www.law.du.edu/index.php/profile/david-thomson>

### **Attendance**



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Class meets on Fridays from 1:30 to 4 p.m. in Room 255. We will take a 10-minute break at approximately 2:45. Attendance is mandatory at all scheduled classes and all course conferences or activities outside of class time. Under ABA and DU College of Law standards, excessive absences, whether excused or unexcused, may result in penalties. **More than three absences may result in penalties to your final course grade, and you may fail the course if you miss more than twenty percent of our class time.** If you are unable to attend class, *you must advise me – in writing via E-mail* – well before class. If you must miss a class, please make an appointment with me catch up, and get any handouts that you may have missed. We will have one class online this semester, and this should give you more flexibility in your schedule, but when we have a class meeting, it is important that everyone attend. This is a fast-paced course, so falling behind does not work well. Fortunately, when it is over, it is over - there is no final examination.

### **Deadlines**

The course syllabus above indicates the due dates for all assignments. Unless otherwise noted, all assignments are due **at the beginning** of class on the date indicated. Lawyers must meet deadlines imposed not only by courts but also by clients, partners in law firms, and supervising attorneys. Associates need to learn to handle several matters at one time and to manage time while researching and writing. Schedule research and writing to leave sufficient time both to prepare for and attend other classes and to proofread and revise your written product carefully. A need to complete an assignment for another class is not an acceptable excuse for a lack of preparation in this class, nor should you use my assignments as an excuse for lack of preparation in other classes. But in addition to all those important reasons, for the purposes of this class being late with any of your documents puts a fellow classmate (your opposing counsel) at a disadvantage.

I can impose penalties for any assignment turned in after a deadline and I have discretion to determine whether a failure to submit any assignment on time is excused or unexcused and whether it will be penalized. I will grant extensions for any cause I deem reasonable (i.e., a cause a court would consider acceptable for an extension; please note most Colorado judges do not consider “press of other business” good cause), but such a request must be made in advance of the due date.

### **Collaboration**

**The Law School’s Honor Code applies to all work done for this course.** All students should be familiar with the provisions of that Code. There will be some assignments that involve collaborative work, but I will be clear about those. **To be clear, all written work is to be solely your own product unless I provide an**



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## **exception to this rule in the assignment.**

Giving or receiving assistance in proofing, editing, or writing assignments – except during in-class exercises – violates the Honor Code. You may not submit for credit any work or portion of that work that has been prepared or reviewed by any other person. Furthermore, using any materials that I have declared “off limits” violates the Honor Code. **If you have any questions about what constitutes collaboration or a violation of the Honor Code, please speak with me about it first.**

### **Case File**

I will provide each student with a file folder that will become your Case File. **For the entire semester, you should keep all completed assignments inside this Case File.** I will ask you to turn in most of your assignments with your case file. The assigned litigation document should be attached to the right side of the folder, and the assigned memo to me - see below - should be attached to the left side of the folder. Maintaining your file allows us both to see your progress over the course of the semester, and it is good practice for being a lawyer. All lawyers must be good at managing their case files; even if they delegate this to paralegals from time to time, it is still ultimately their responsibility. You may also want to keep a separate file with extra materials relating to the case and our course, such as this one.

This semester we will be filing all documents electronically to your opposing counsel via email. All documents should be completed by *1:00 p.m. on the due date* and emailed by that time (or before). Please also print one copy and bring it to class to include in your case file.

In addition to the litigation document you serve on opposing counsel, each of these documents must be accompanied by a memo to the professor (only) indicating your goals for the document, your thought process in preparing it, any ethical issues or concerns that you identified and how you addressed them, and a description of what you learned in preparing the document. In the case of some documents (such as interrogatories and document requests – as well as the answers you prepare to these documents which you receive from opposing counsel) these memos need to specifically describe what your goals are for each interrogatory or document request – or group of requests - and your answers.

In addition to these documents, you will be using software called CaseMap to keep track of Facts, Documents, and Research for the problem we will work with during the semester. At the end of the semester, you will hand in your CaseMap file, which will be evaluated as part of your final grade. If you don't already have CaseMap, you may download directly from LexisNexis through this link:



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<http://www.lexisnexis.com/lawschool/content.aspx?articleid=125&topicid=32>

We will need to have a different plan for our Mac users, since CaseMap only works on the PC. I will discuss options for an alternate to CaseMap in class.

### **Class Participation and Involvement**

This class will be highly interactive. While in class, out of respect for your fellow students, please turn off your cell phones, pagers, and text messagers, and *do not use your laptop for non-class related purposes. **Surfing the 'net during class is disruptive to the class, disrespectful to your teacher and classmates, and will not be allowed.***

You are responsible for all reading assignments. To acquire strong analytic and communication skills, your active participation in class and at conferences will be critical. We will conduct workshops in class, often in small groups, and participation is vital.



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## **Grading**

The whole point of a “Practicum” class is to provide you with practical experience that you will be able to use in the practice of law. Accordingly, nearly all of our assignments are drafting actual litigation documents in a simulated litigation, and there are twelve total written assignments (with accompanying memo for each). Consequently, there is no final exam for this course. Instead, your grade will be based on your class participation and on the various written assignments, as summarized below. Each student must successfully complete all assignments in order to pass the course. In addition, although I may not give separate evaluation sheets for all assignments, I will still evaluate them based upon quality and effort and they will all count toward your final grade for the semester. Scores earned for the various assignments accumulate throughout the semester, and I assign a final letter grade at the end of each semester. The weight for each category of assignments is as follows:

**Litigation Documents (and the accompanying memos) = 60% of the semester grade.**

**Deposition = 15% of the semester grade.**

**All other assignments, including class participation (including any online forums), the assigned class presentation, and your CaseMap (or similar) file = 25% of the semester grade.**



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