



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

TEXAS PRACTICE
Law 903 / Section 1
SPRING 2018

PROFESSOR ANA M. OTERO

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THE PROFESSOR

NAME: Ana M. Otero

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LOCATION: Room 236A

OFFICE HOURS: Monday – 11:00 pm – 12:00 pm; 2:00-3:30 pm.
Wednesday 11:00 pm – 12:00 pm; 2:00-3:30 pm.
(All other times by appointment only)

MY TEACHING PHILOSOPHY:

My teaching philosophy has evolved during my thirty years of teaching in the legal profession. It is partly grounded on the words of the Lebanese poet, Khalil Gibran: *“The teacher who is indeed wise does not bid you to enter the house of his wisdom but rather leads you to the threshold of your mind.”*

I am thoughtful and passionate about my teaching. I teach by example, so I strive to be diligently prepared and to challenge students to excel. I am mindful that each student learns differently, so my teaching style evolves to meet the needs of my students. I believe that repetition and reinforcement of the legal concepts are pivotal in learning the law, so I provide different teaching tools to accomplish this goal. Above all, I strive to ensure that students fully understand the foundational principles so that their learning is meaningful and effective.

As I reflect on my years of teaching, I find that my mission is rooted on three principles: to spark enthusiasm for learning, to create a positive learning environment, and to infuse professionalism and compassion in my students. But in this class in particular, my goal is to ensure, above all, that you are prepared for the first day of the bar.

Through the years, I have learned much from my students. I am humbled by their determination to succeed and their dedication to the task. I care about my students, and I believe that each of them can become a successful lawyer. But being a lawyer is a huge responsibility and I strive to ensure that my students will be ethical and competent practitioners.



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COURSE BOOKS & MATERIAL

1. *Texas Rules of Court* (State) (Latest Edition) West Publishing; or, *O'Connor's Texas Rules*
Civil Trials, -McClure Publishing (or latest edition).
2. *Texas Code of Criminal Procedure* – (Latest Edition)- West Publishing.
3. *Texas Rules of Evidence* (Included in the volumes listed in #1, above).

Please note that failure to have your books and be prepared will count against your grade.

COURSE DESCRIPTION & OBJECTIVES

DESCRIPTION:

Texas Practice is a three-credit third-year course which covers civil and criminal pre-trial practice. It covers the Texas Rules of Civil Procedure, and the Code of Criminal Procedure. In addition, it familiarizes the students with other pertinent laws such as the Texas Constitution, the Government Code, the Texas Civil Practice and Remedies Code, and local court rules. The rules will be covered through numerous exercises in class that provide ample opportunity to apply the rules to specific scenarios. Class discussion will be enhanced by practice problems on topic areas posted on TWEN, and extensive practice of past Texas bar exams. In addition, students will be assigned the drafting of numerous motions and pleadings utilizing and applying the rules of procedure.

This course is a highly intensive, rule-based course that requires understanding and application of complex rules and legal concepts as they are applied to anecdotal situations and case-based hypotheticals. **Accordingly, student participation and attentiveness is imperative.** Students will have ample opportunity to test their understanding of the civil and criminal rules of procedure through specially constructed exercises and a multitude of bar exam problems.

OBJECTIVES:

There is an “Objectives and Competencies” section specific to each topic. While this is not an exhaustive list of what you will be able to know and understand after coverage of the material, it is a good guide post and should guide your reading and aid in your understanding of the material. Generally, however, the objective of this class is to familiarize you with fundamental principles of civil and criminal litigation, to familiarize you with the Texas Rules of Civil Procedure, and the Code of Criminal procedure so that you can apply the rules to any given scenario. Finally, this course will provide you with ample practice opportunities with both the Multistate Performance Test, as well as the Procedure & Evidence Exam. We will do numerous practice tests in class and you will receive individual feedback.

STUDENT LEARNING OUTCOMES

After the civil and criminal procedure exercises and lectures, you will be able to:

- 1) Identify and understand numerous rules of civil and criminal procedure; understand legal terminology; know the timelines for specific filings; understand pre-trial motions; understand the criminal discovery process, jury selection, and the mode of trial.
- 2) Demonstrate knowledge of the procedure applicable to each of the various forms of discovery.
- 3) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.

Please see the learning outcomes section after each topic.

GRADING

There will be a number of in-class, closed-book quizzes throughout the term, a midterm, and a cumulative comprehensive final examination including the Code of Criminal Procedure. Most of the questions on the quizzes will derive from the pre-chapter exercises posted on TWEN, lectures, and assigned material. The final letter grade is based on the following.

Quizzes	20%
Midterm	20%
Writing Assignments	20%
Final (Cumulative)	40%

Assignments: There will be two writing assignments which will include the drafting of pertinent motions, pleadings, and discovery requests. Assignments will be done in teams of two.

TWEN Quizzes: There will be a number of quizzes posted on TWEN during the semester. **These will be announced in class or by email. Quizzes are mandatory.** Points may be earned towards the final grade.

Tutorials: There will be at least 3 four-hour tutorials where Procedure & Evidence exams will be administered, graded, and reviewed.

Multistate Performance Test (MPT):

You will do at least 3 practice MPT's in this class and will earn 1 point each towards your final grade. I will grade the MPTs and offer individual feedback applying the grading template used by the Texas bar examiners.

TWEN

I use TWEN extensively to post course materials, handouts, class announcements, and the mandatory quizzes.

To use TWEN, you need a WESTLAW password and access to the WEB. Whenever you access TWEN, make sure to have the technical support number available so you can contact them with any problems you may have. That number is 1.800.486.4876.

I will send reminders and notifications by email through TWEN. Please check your email regularly.

EXAM NUMBERS

You should only use three exam numbers in my class. Please use exam numbers as follows:

- 1. The same exam number for MPTs, quizzes, and the midterm.**
- 2. A different exam number for both written assignments. However, use the same exam numbers for each assignment.**
- 3. A different exam number for the final exam.**

ACCOMMODATIONS

An “accommodation” is defined for these purposes as any student request for deviation from the time, date, or circumstances under which scheduled graded assignments are administered. Students must apply to and be granted WRITTEN accommodation by the DEAN’S OFFICE if he/she will not be in attendance for any graded assignment or test (e.g., midterm/final exams). Once granted, the professor must receive official confirmation from the DEAN’S OFFICE of any ALTERNATIVE DATES or accommodated changes that have been granted to the student. All requests for ACCOMMODATIONS must be handled by the Dean’s office rather than by the professor. ORAL CONVERSATIONS made with EITHER the professor or the DEAN’s OFFICE ARE NOT BINDING.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

CLASS PARTICIPATION

I expect you to be prepared for class. There will be a number of exercises that should be reviewed before coming to class. We will cover the exercises in class. Points will be earned or deducted based on preparation and class participation.

ATTENDANCE

Class attendance is mandatory. (See Students Rules of Matriculation for details on absences and grade reductions.) You should be at your seat when class begins at 8:00 a.m.

PROFESSIONALISM

Naturally, you are all bound by the Thurgood Marshall School of Law Student Rules and Regulations of Texas Southern University (available at <http://www.tsulaw.edu/life/rr0910.pdf>), Thurgood Marshall School of Law's Honor Code, and my rules. But more important than adhering to the rules, professionalism implies a respect and courtesy for others in the classroom. In keeping with the professional school environment, students should remember to respect their fellow classmates and the Professor at all times. Please refrain from side conversations or other distracting conduct. Also, please refrain from coming to class late or departing during class instruction. It can be very disruptive. Unless there is an emergency, I do not expect anyone to leave the classroom during class. I expect all students to maintain the highest standards of professionalism in the classroom, in the university community, and in related public settings. All that you do and say, and the way you present yourself visually either elevates or diminishes your professional image in the eyes of others. In addition, what each of us does affect the way all of us are viewed.

The **Texas Lawyer's Creed** is a declaration of professionalism and civility issued in 1989 by the Texas Court of Criminal Appeals and the Texas Supreme Court. I am attaching a brief excerpt. The full document will be posted on my TWEN page.

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such

behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY ACADEMIC CALENDAR 2017 – 2018

FALL SEMESTER 2017 (SEVENTY DAYS OF CLASSES)

Orientation	Monday-Friday	August 14-18, 2017
First Day of Class	Monday	August 21, 2017
Last Day to ADD/DROP	Friday	August 25, 2017
Labor Day (NO CLASSES)	Monday	September 4, 2017
<i>Purge of all unpaid course selections</i>	Thursday	September 20, 2017
Mid Term Examinations	Mon – Fri	October 16-20, 2017
VETERANS DAY (NO CLASSES)	Friday	November 10, 2017 (tentative)
Thanksgiving Holiday	Thurs – Fri	November 23-24, 2017
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
First Year Professors' Grades due	Thursday	November 30, 2017
Reading Period (NO CLASS)	Friday - Sunday	December 1-3, 2017
Final Examinations	Mon –Fri	December 4 -Dec. 15, 2017
Commencement	Saturday	December 16, 2017

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
Last Day to ADD/DROP	Friday	January 12, 2018
M L K Holiday (No Classes)	Monday	January 15, 2018
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
President's Day Holiday (No Classes)	Monday	February 19, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
Good Friday (No Classes)	Friday	March 30, 2018
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period (No Classes)	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

Please note that the calendar events and /or dates are subject to change.

TMSLAW REGISTRAR
Approved 5/31/2017

POLICIES & PROCEDURES

CLASS ETIQUETTE

No laptops in the classroom

A 2006 study conducted by Winona State University found a negative relationship between laptop use and student learning. “Recently, a debate has begun over whether in-class laptops aid or hinder learning. While some research demonstrates that laptops can be an important learning tool, anecdotal evidence suggests more and more faculty are banning laptops from their classrooms because of perceptions that they distract students and detract from learning. The current research examines the nature of in-class laptop use in a large lecture course and how that use is related to student learning. Students completed weekly surveys of attendance, laptop use, and aspects of the classroom environment. Results showed that students who used laptops in class spent considerable time multitasking and that the laptop use posed a significant distraction to both users and fellow students. Most importantly, the level of laptop use was negatively related to several measures of student learning, including self-reported understanding of course material and overall course performance.”

<https://www.winona.edu/psychology/media/friedlaptopfinal.pdf>

Cell phones

The use of cell phones in the classroom during class is strictly prohibited.

No make-up for in-class quizzes

There will be a number of in-class quizzes. I will drop the lowest grade. Unless you have a family or medical emergency, I will not allow making up a missed quiz. Please let me know about any emergencies prior to the exam.

INTRODUCTION:

Texas Practice will be covered through the review of exercises that discuss the most pertinent rules and offer practice of previous Texas bar exam problems. For the most part, the exercises will be sent to you by email, or will be posted on TWEN. You must review these exercises in preparation for class and make an attempt to answer the questions pertinent to the rules. Having the rule books available while reviewing the assignments is imperative.

The Criminal Procedure Walkthrough (Walkthrough) is divided into two parts: Part I – Overview of Criminal Procedure and Pre-trial Matters. Part I examines a criminal proceeding from beginning to pre-trial motions. Part II – The Process of a Criminal Trial – will explore the selection of the trial jury, and key trial proceedings, such as the “invocation of the rule,” “the jury shuffle,” and Batson challenges.

The Walkthroughs include numerous questions from past Texas bar exams in the areas most heavily tested.

Week 1: Overview of the Texas Bar Exam, with emphasis on the Procedure and Evidence Exam. In-depth review of the Code of Criminal Procedure.
January 8

- Introduction to the Texas Criminal Justice System.
- Overview of the proceedings in a criminal case.
- Review of glossary of criminal terms.
- Review of key penal code rules.
- Discussion of double jeopardy and ineffective assistance of counsel.
- Walkthrough, Part I- Articles 1-13.

Week 2:

January 15 **Monday, Martin Luther King, Jr. Holiday – No Class**

- Walkthrough, Part I- Articles 14-15.

Week 3:

January 22

- Walkthrough, Part I- Articles 16-20.
-

Week 4:

January 29

- Walkthrough, Part I- Articles 21-31.
-

Week 5

February 5

- Walkthrough, Part II- Key Concepts of Trial.
- Articles 33-42.

► **Objectives and Competencies:** Criminal procedure in Texas is governed primarily by the Code of Criminal Procedure. This portion of the class will be covered by examining a comprehensive Criminal Walkthrough that includes questions on numerous procedural rules and prior Texas bar exam questions in the pertinent areas. As the various rules are analyzed, this section will identify and explain pertinent criminal legal terminology. It will cover specific aspects of procedure including Constitutional guarantees incorporated into the Code, arrests with or without warrants, search warrants, bail, habeas corpus, arraignments, formation of the grand and petit jury, grand jury indictments and informations, examining trials, pretrial motions, discovery, jury selection and voir dire, and trial issues.

► **After these exercises you should:**

- 1) Understand the process of criminal litigation in Texas.
- 2) Know the rules of criminal procedure that govern pre-trial practice, including proceedings from arrest to trial, and pre-trial motions.
- 3) Understand constitutional concepts such as double jeopardy, ineffective assistance of counsel, and the rights of the accused.
- 4) Understand the rules of criminal procedure that govern the selection of the jury, the jury trial, the verdict, and post-trial motions.
- 5) Understand how the rules of criminal procedure are tested on the Texas bar.

Week 6: INTRODUCTION TO CIVIL PROCEDURE.

February 12 Overview - Pre-litigation phase of a civil dispute

- Exercise #1 – Overview of the litigation process and computation of time rules. Texas Rules of Civil Procedure 1-21; Texas Government Code; Texas Civil Practice & Remedies Code.

Week 7:

February 19

- Continue discussion Exercise #1.

Objectives and Competencies: Most court systems in the American Justice System are patterned after the three-tier Federal system of courts: trial courts at the lower level, intermediate appellate courts, and a court of last resort at the highest level. However, each state may differ in the precise subject matter jurisdiction assigned to each court, and the sources of law from which these derive. In Texas, the subject matter jurisdiction of the various courts is derived primarily from the Texas Constitution and the Texas Government Code. Texas lawyers must be familiar with the complex composition of the courts, and fully understand the subject matter jurisdiction of each of the courts.

After Exercise #1, you will be able to:

- 1) Demonstrate knowledge of pretrial practice and procedure including the seven stages of litigation: investigative, pleading, discovery, pre-trial, trial, post-trial, and appeal.
- 2) Calculate time lines in responding to documents served, and know the applicable rules.
- 3) Know the composition of the Texas Court System including subject matter jurisdiction, calculating amount in controversy, procedure for raising lack of subject matter jurisdiction, criticism of the system, and professionalism in Texas courts.
- 4) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.

Week 8:

February 26

- Motion Practice Exercise.
- Begin Exercise 2- Service of Process.

Objectives and Competencies: In order to adjudicate over a case, a court needs to have both subject matter jurisdiction and personal jurisdiction over the defendant. Although the topic of personal jurisdiction was widely covered in Civil Procedure, the procedure to challenge the court's jurisdiction over a defendant in Texas is different than in its federal counterpart.

After Exercise 2, you will be able to:

- 1) Demonstrate knowledge of service of process under Texas practice; citation; methods of service; service on the Secretary of State; and the consequences of failing to properly serve the defendant.
- 2) Demonstrate knowledge of how to make preliminary challenges to the petition, including the Special Appearance, motions to transfer venue, and special exception.
- 3) Demonstrate knowledge of Texas methods to set aside a default judgment: motion for new trial; bill of review; and, restricted appeal.
- 4) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.

Week 9:

March 5

- Complete discussion Exercise 2.
- Discuss Motion Practice Exercise.

Midterm exam – Thursday, March 8, 2018

Week 10: Exercise #3 - Venue

March 12 **Texas Rules of Civil Procedure: Rules 86, 87, 257-259 - Venue**
Texas Civil Practice & Remedies Code: Chapter 15 - Venue

Objectives and Competencies: While subject matter jurisdiction determines which court in the Texas hierarchy of courts can hear the case, and personal jurisdiction determines whether the

court has power over a particular defendant, venue determines which of Texas's 254 counties should be the location for the litigation.

Venue in Texas is determined by a number of statutes, many of which were drastically revised in 1983 and again in 1995. It is imperative for Texas lawyers to fully understand the hierarchy of venues established by the Texas statutory scheme.

After Exercise 3, you will be able to:

- 1) Identify the Texas venue statutory scheme and understand its application.
- 2) Know the difference between the mandatory and permissive provisions, and the general venue statute.
- 3) Understand the procedure for challenging venue in Texas.
- 4) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.

Week 11:

March 12-16 SPRING BREAK

Week 11:

March 20

Conclude Exercise #3.
Begin Exercise #4
Texas Rules of Civil Procedure: Pleading Rules 45-51; Pleadings of Plaintiff –Rules 78-82; Defendant's Pleadings Rules 83-98.

Objectives and Competencies: Whether you represent the plaintiff or the defendant, pleadings play a pivotal role in litigation. "Pleading is the art of composing the written instruments that set forth the litigants' contentions that are at issue in litigation." Pleadings have a number of purposes, but primarily to inform the court and the opponent about the facts and legal theories at issue in the lawsuit and to define the lawsuit.

After Exercise 4, you will be able to:

- 1) Demonstrate knowledge of Texas plaintiffs' and defendants' pleadings, including the petition, the answer, general denial, affirmative defenses, the various pleas, exceptions, etc.
- 2) Understand what constitutes pleading defects and the procedures to challenge these.
- 3) Know the importance of drafting meritorious pleadings, and the consequences of filing frivolous or groundless pleadings.
- 4) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.

Week 12:

March 26 **Conclude Exercise #4 and begin Exercise #5.**
Texas Rules of Civil Procedure: Permissive Joinder – Rules 37, 38, 40, 41, 43, 51, 60, 61, and 97.

Objectives and Competencies: When there are only two parties to a lawsuit, all claims may be joined, but when there are multiple parties, Texas rules limit joinder of claims substantially. Texas joinder of claims varies from the procedure you learned in federal practice. To practice law in Texas, you must be very familiar with the joinder rules and their proper application.

After Exercise 5, you will be able to:

- 1) Understand the rules that govern joinder of claims in multiple-parties suits.
 - 2) Know the difference between severance, separate trials, and consolidations.
 - 3) Understand compulsory joinder of claims and parties.
 - 4) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.
-

Week 13: Continue Exercise #5.

April 2

Week 14:

April 9
Continue Exercise #5.

Exercise # 6 - Discovery
Texas Rules of Civil Procedure: Rules 190-205.

Objectives and Competencies: Discovery, the various methods by which parties exchange information and documents regarding the lawsuit, is a pivotal stage of litigation. The purpose of discovery is to allow the parties to obtain full knowledge of the issues and acts of the lawsuit before trial. Discovery in Texas is effectuated through a system of party-initiated requests and responses. The most recent discovery rules made substantive changes and encourage a spirit of civility, professionalism, and cooperation. “The objective of Texas discovery rules is to prevent trial by ambush.”

After Exercise # 6, you will be able to:

- 1) Identify and understand the numerous rules of Texas discovery: the purpose and objective of the 1999 rules; the control plans with their pertinent limitations; the various forms of Texas discovery (depositions, interrogatories, requests for admissions, etc); serving and responding to written discovery; the scope of discovery; privileges; expert witnesses, and sanctions.
 - 2) Understand the procedure applicable to each of the various forms of discovery.
 - 3) Know how to answer specific Procedure and Evidence Texas bar questions pertinent to this section.
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Week 14:

April 16 Continue Exercise #6.

Week 15:

April 23 Continue Exercise #6.

Overview of Summary Judgment and Jury Selection.

Last Day of Classes – Wednesday, April 25, 2018

PLEASE MARK YOUR CALENDARS:

**THERE WILL BE A FULL TUTORIAL ON
SATURDAY, APRIL 21, 2018 FROM 1-4:00 PM.**

OTHER TUTORIALS TO BE ANNOUNCED