



**HAMLINE UNIVERSITY**  
 School of Law  
 COURSE SYLLABUS

Faculty: **Professor Susan Stephan (Adjunct)**

Course: **Deposition Practice**

Semester: **Summer 2010**

Meeting Schedule: **9:00 a.m.– 4:30 p.m. on Saturday, June 20 and Sunday, June 21, 2010.** (Lunch breaks each day 11:45 a.m.-12:15 p.m.)

Room: **240A**

Textbook	Primary Text	Primary Text	Recommended not required
Author	Thomas A. Mauet		
Title and edition of text	Pretrial		
Publisher/year	7th ed., (2008)		
ISBN	978-0-7355-7203-4		

***Learning Outcomes for the Course:***

The primary objectives of this course are to provide information and skills training on how to take and defend effective depositions. Students will learn the basics of preparing and performing depositions of lay and expert witnesses including obtaining and developing facts, objections, preserving testimony, and using depositions at trial. The course will also cover how to deal well with depositions involving documents and techniques for deposing a difficult witness.

***Course Expectations:***

***HUSL Policies on attendance, lateness and preparation***

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor’s specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

**Attendance Policies in this Course:**

The Registrar's attendance sheet will be circulated for initialing during each class. Missing two or more hours in this course is regarded as excessive absence.

**Punctuality/Preparation Policies in this Course**

Please make every effort to attend class and to arrive at class on time, fully prepared to engage in class discussion and assignments.

**Policy on Laptop Use in Class:**

Laptops may be used at any time for class-related purposes only.

***Grading Components***

Final examination:

Date/Time: The final exam will be administered during the last hour of the scheduled class time, from 3:30 – 4:30 p.m., on Sunday, June 21.

Component(s) of your grade: The final exam will constitute 90% of the final grade

Written Assignments:

Dates/Times: June 21, due in class.

Requirements: You are the attorney for the plaintiff, John Jones. Based on the portion of the *Jones v. Smith* litigation file set forth on pp. 425-458 and your knowledge from class 1, outline the deposition of Susan Smith.

Please think through your goals for the deposition and the areas of questioning you want to focus on, and prepare a written outline of your questions. Plan to *use at least six documents during your questioning of the witness.*

Component(s) of your grade: 5%

Participation/Other Grade Components

Requirements: Active engagement and participation in class is expected.

Component(s) of your grade 5%

## **Initial reading assignments (first two weeks):**

### **Class 1: June 20**

#### **Readings:**

##### *Pretrial:*

- Preface: pp.xxiii - xxiv
- Chapter I: pp. 3-18
- Chapter IV: pp. 100
- Chapter VI: pp. 185-219; §6.9 on Depositions, pp. 269-307

#### **Written Assignment for June 20:**

None.

#### **Class Discussion:**

1. Deposition Practice: an Overview
2. Introduction to Litigation Planning
  - a. Attorney-client relationship
  - b. Elements of potential claims, remedies, defenses and counterclaims
  - c. Sources of proof
  - d. Formal discovery methods
    - i. Initial disclosures
    - ii. Interrogatories
    - iii. Requests for production of documents and tangible things
    - iv. Depositions
    - v. Physical and mental examinations
    - vi. Requests for admission of facts
3. Litigation Evaluation and Strategy
  - a. Developing a litigation strategy
    - i. Costs and timing of litigation
  - b. Planning the discovery
4. Discovery Basics
  - a. Rules and ethics
  - b. Scope of discovery
  - c. Experts
  - d. A privileges overview
    - i. Attorney-client
    - ii. Spousal
    - iii. Doctor-patient
    - iv. Other
  - e. Discovery strategy
    - i. The facts
    - ii. The purpose of a deposition
    - iii. Costs and other important considerations
    - iv. The discovery plan

- v. Disclosures
- f. Stipulations

5. Depositions, Part One

- a. The law - an overview
  - i. The Federal Rules of Civil Procedure and deposition practice
  - ii. Minnesota's Rules of Civil Procedure - a brief discussion
  - iii. Notice and limits
- b. Deposition preparation for you and your client
- c. Admonitions
- d. Forms of questions
- e. Using documents

**Class 2: June 21**

**Readings:**

*Pretrial:*

- Chapter VIII: pp. 379-399
- Practice Appendix: pp. 425-458

Also:

- Review Federal Rules of Civil Procedure related to discovery (skim discovery rules 26-37 and read rules 30, 31, 32 and 37 on depositions more closely). Federal rules can be found at: <http://www.law.cornell.edu/rules/frcp/>
- Review Minnesota Rules of Civil Procedure related to discovery (skim Discovery Rules 26-37 and read Rules 30, 31, 32 and 37 on depositions more closely). Minnesota's rules can be found at: [http://www.courts.state.mn.us/Documents/0/Public/Rules/Civil\\_Rules\\_effective\\_01-01-2009\\_\(current\).pdf](http://www.courts.state.mn.us/Documents/0/Public/Rules/Civil_Rules_effective_01-01-2009_(current).pdf).

**Written Assignment for June 21 (as noted above):**

**Due in class:** You are the attorney for the plaintiff, John Jones. Based on the portion of the *Jones v. Smith* litigation file set forth on pp. 425-458 and your knowledge from class thus far, outline the deposition of Susan Smith.

Please think through your goals for the deposition and the areas of questioning you want to focus on, and prepare a written outline of your questions. Plan to *use at least six documents during your questioning of the witness*.

**Class Discussion:**

1. Depositions, Part Two
  - a. Objections
    - i. Why object
    - ii. The usual suspects - waivable
      1. assumes facts not in evidence
      2. mischaracterizes the testimony
      3. calls for privileged information

4. counsel attempting to intimidate the deponent
5. compound question
6. vague
7. leading
8. calls for narrative answer
9. argumentative
- iii. The usual suspects - probably preservable
  1. irrelevant
  2. probative value outweighed by undo prejudice
  3. improper opinion
  4. lack of foundation/calls for speculation
  5. lack of authentication/foundation for document
  6. hearsay
- iv. objections to improper answers
  1. moving to strike
- v. Objecting wrongly
- vi. Responding to objections
- b. When a deponent can refuse to answer
  - i. Claiming a privilege
    1. attorney-client
    2. spousal
    3. work product
    4. self-incrimination
    5. private information
  - ii. Responding to instructions not to answer
  - iii. Motions to compel
    1. by phone
    2. in court
  - iv. Terminating a deposition
    1. protective orders
- c. The hostile/evasive witness
- d. The "friendly" witness
- e. Deposing expert witnesses
  - i. What makes an expert
  - ii. The reliability standard
  - iii. Pre-deposition disclosures
  - iv. Expert deposition questioning
  - v. The bias concern
- f. Videotaped depositions
  - i. Why tape it
  - ii. Whose deposition would you tape
  - iii. Advantages and disadvantages of videotaping
  - iv. Defending the videotaped depo
- g. Deposition summaries

## 2. Guide to Using Depositions

- a. Trial strategy planning
- b. Using depositions before trial

- i. Summary judgment motions
    - ii. Settlement negotiations
      - 1. How depositions affect settlements
      - 2. Pretrial settlement conferences
  - c. Witness preparation
  - d. Using depositions at trial
    - i. Substitute for live testimony
    - ii. Impeachment
    - iii. To refresh a witness' recollection
- 3. Deposition Outline Evaluation
  - a. Deposition simulation using your prepared outline
  - b. In-class written self-review of your outline of the deposition of Susan Smith addressing the following:
    - (1) Identification of your goals for the part of the deposition that you addressed, noting how effective you were in achieving those goals. What factors hindered your ability to achieve your goals? What could you have done differently to be more effective?
    - (2) Identification of three questions you asked that could have been improved. For each such question, write out the question and answer in full, then describe the problem with the question (e.g. seeks privileged information; compound; confusing) and explain how the question should have been rephrased.
    - (3) Identification and a brief description of the strongest and weakest part of the deposition outline. Explain why the strong part went well and what you would do differently for the weak part.
- 4. The Rules, Redux
  - a. Federal Rules of Civil Procedure
  - b. Minnesota Rules of Civil Procedure
- 5. Wrap-up and Miscellaneous Information
  - a. The ever-present issue of ethics
  - b. Review of key deposition tips and pitfalls
  - c. True stories highlighting the importance of being thorough but not ridiculous
  - d. About the final exam