

CHAPTER 15

THE CASES AND ASSIGNMENTS

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“I hear and I forget. I see and I remember. I do and I understand.”

— Confucius (551-479 B.C.)

“What one has not experienced one will never understand in print.”

— Isadora Duncan (1878-1927)

“We learn by example and by direct experience because there are real limits to the adequacy of verbal instruction.”

— **Malcolm Gladwell**, *Blink: The Power of Thinking Without Thinking* (2005)

I. EXPERIENTIAL LEARNING

The chapters in this book correspond to the skills you will need to do pretrial work. You will learn how to effectively engage in the pretrial activities covered in the book by experiencing them in hands-on activities based on two case files that include the documents and mock law you will need to perform. Your instructor will select which assignments you will perform.

Each of the chapters in this book has a corresponding set of checklists and performance exercises, called assignments, which will give you experience in the chapter’s activity. The checklists are at the end of the chapters. The assignments for all the chapters are listed in this chapter, starting at page 676. For example, the chapter on depositions has corresponding performance assignments in which you will take and defend depositions. All the assignments are in this chapter. Each assignment contains a description of the factual situation facing the participants, assigned reading necessary to perform the assignment, and a statement of the assignment itself. Further, the assignments and also discussion questions for the assignments are on the companion CasebookConnect.com website (open the book, then click on the “**Resources**” link on the navigation bar and then click on the “**Assignments**” tab).

Additionally, this chapter provides a factual summary of both a civil and a criminal case that arises out of a series of incidents. The factual situations that lead to pretrial activities for criminal litigation, civil litigation, or both. Your professor will assign you *State v. Hard* and/or *Summers v. Hard*, and you will learn by performing the assignments — developing a case theory and theme, interviewing, pleading, engaging in discovery, negotiating, creating persuasive visuals, researching and arguing a motion, and so on.

II. FACTUAL SUMMARY

The factual summary provides an overview of the events in *Summers v. Hard* and *State v. Hard*. It is a composite of highlights of what some of the witnesses claim occurred. For specifics and greater detail, refer to the documents in the Case Files, which are contained on the companion CasebookConnect.com website (open the book, then click on the “**Resources**” link on the navigation bar and then click on the “**Case Files**” tab).

As the pretrial process in the *Summers v. Hard* and/or *State v. Hard* cases evolve during case development and discovery exercises you will uncover many facts in addition to this summary.

A Brief Summary of Facts

During the evening of August 20 of last year, Bruno Summers and his fiancée, Deborah Miller, were in the Garage, a tavern in the city of Ruston, State of Major. The Garage has both a bowling alley and pool hall on different sides of the building. Bruno and Deborah were seated in the bar area adjacent to the pool hall.

The Garage is owned by M. C. Davola and his wife.

Edward Taylor Hard also was in the tavern that day. Ed Hard, allegedly intoxicated and boisterous, approached the Summers-Miller table and began making advances toward Deborah Miller, his former girlfriend.

Bruno Summers and Deborah Miller rose to pay the bill and leave. Ed Hard grabbed Bruno Summers around the neck and a struggle ensued. Bruno Summers knocked Hard to the floor, splitting Hard’s lip and chipping a tooth. Bartender Tom Donaldson ordered both men to leave the tavern. Tavern patrons overheard the exchange between Summers and Hard and saw what happened.

At the time of the August 20 incident, Bruno Summers was 30 years old and the owner of University Fitness Center. He also was a member of a neo-Nazi organization. Ed Hard was 29 years of age, and he worked as a housepainter.

On August 22, Ed Hard went to the American Gun Shop located in Neva, Major, and he purchased a .22-caliber revolver. On August 27, after the statutory five-day waiting period had passed, Hard paid for and received the gun and bought some ammunition. On the same day—the 27th—Bruno Summers married Deborah Miller. This was Bruno Summers’s second marriage. His first marriage

lasted six years, and he was awarded custody of his two children by that marriage, Ronnie, age 8, and Amanda, age 12.

On September 3 of last year, at approximately 8:00 p.m., Ed Hard and two friends, John Gooding and Rebecca Karr, were in the Garage Tavern seated at the bar. They had several drinks before arriving at the tavern. Bartender Donaldson served them rounds of drinks. They were talking loudly.

Bruno Summers, his new wife, Deborah Summers, and their friend Peter Dean entered the pool hall side of the Garage Tavern at approximately 9:00 p.m. Previously, they had spent a few hours on the bowling side of the Garage Tavern, where they bowled and drank. The three walked to the entrance of the bar area and saw Hard sitting at the bar. Hard was overheard making a comment about the presence of the Summerses in the tavern. Deborah wanted to leave, but Bruno said that instead, they would sit in a booth near the front of the tavern, some distance away from Hard.

Roughly five minutes after the Summers and Peter Dean entered the pool hall side of the Garage, Bruno got up from the booth and went to the restroom near the front door of the tavern. Hard confronted Bruno Summers as he left the restroom. An exchange took place. Hard produced a gun and shot Bruno Summers. Deborah ran to her husband, who lay bleeding on the tavern floor. The bartender called 911. Hard immediately left the Garage.

Peter Dean called Hans Summers, Bruno Summers's father, who along with his wife Gretchen were at Bruno and Deborah's house taking care of their two grandchildren, Ronnie and Amanda. The grandparents loaded the two children into the car and drove to the Garage and parked on the street in front of the pool hall side of the tavern. Hans Summers went to the front door of the tavern, where he was stopped by a Ruston police officer, who told him that he would have to wait while the EMTs took care of his son. Hans Summers could see his son's bleeding body from the doorway. His daughter-in-law was standing near Bruno's body, and she was crying and screaming. Hans Summers looked down to find that his grandson had left the car and was standing at his side. When Ronnie saw his father, he also began screaming and crying.

Bruno's parents and children followed the ambulance to Mercy Hospital, where Bruno was treated. Ruston police officers were dispatched to Hard's residence, where they entered without a warrant,

arrested Hard, and seized a revolver that later a firearms expert was able to match with the slug recovered from Bruno's body. The officers took Hard to the precinct, where detective Russell Tharp took a statement from him. In that statement, among other things, Hard said that he had feared for his life and shot Summers by accident. A breathalyzer test was administered, and Hard's blood-alcohol level was .16.

Both Deborah and the eight-year-old Ronnie Summers suffered emotional disturbances from witnessing what happened to Bruno Summers. They both saw a psychologist, who after administering a battery of tests, opined that they suffer from post-traumatic stress disorder.

Bruno Summers at first seemed to be recovering from the gunshot wound. However, he contracted pneumonia and died on September 7. As you first enter the criminal case, Ed Hard, who had originally been charged with first-degree assault, may now be charged with homicide. As you enter the civil case, you will have just been retained and will engage in plaintiff and/or defense case theory development.

III. CASE FILES ON CASEBOOKCONNECT.COM

On the companion CasebookConnect.com website (open the book, then click on the “Resources” link on the navigation bar and then click on the “Case Files” tab), you will find Case Files for *Summers v. Hard* and *State v. Hard*, the civil and criminal cases, respectively.

The Case Files include diagrams, documents, expert reports, jury instructions, pleadings, research memoranda, statutes, and witness statements. The research memoranda are a special feature. The memoranda are composed of fictional appellate decisions in a fictional jurisdiction, the State of Major. The memos provide all the research you need to deal with the legal issues in the problems. On the other hand, your instructor may prefer that you instead research and use appropriate real cases from your jurisdiction.

You can print out portions of the Case Files from the companion website, such as a diagram and photographs, for use during the deposition. A Table of Contents for the Case Files is on the website and is also on pages 734.

IV. VIDEOS ON CASEBOOKCONNECT.COM

The videos and slideshows that can be streamed from the CasebookConnect.com website are inextricable companions to this book and are designed to further enrich your experience of studying pretrial advocacy. The website contains these videos:

- **Video of the scene** — The prosecutor’s investigator will walk you through the Garage Tavern, where the central events of the civil and criminal cases take place.
- **Video of depositions** — By watching excerpts of depositions you can learn firsthand how to take and defend a deposition.
- **Video of settlement documentary** — Watch a settlement documentary that was utilized in ADR.
- **Computer slideshow** — Using computer software, such as PowerPoint, litigators create dramatic pretrial presentations — for settlement — and trial presentations — for an opening statement. The website offers examples of what other software can produce.
- **Computer animation** — The website contains examples of computer animation, the type of demonstrative evidence that can be created pretrial.

V. RULES OF THE “GAME”

A. Jurisdiction

These two fictitious cases take place in the jurisdiction of the State of Major. The specific setting encompasses the adjoining counties of Jamner and Neva. The city of Ruston is within the County of Jamner. Neva City is the main city in Neva County.

The jurisdiction of the State of Major was chosen for several reasons. Its laws reflect, although they are probably not identical with, current law on the various issues raised in the cases. The memorandum opinions in the jurisdiction of Major are short and to the point, replacing what would be hundreds of pages in other jurisdictions. The opinions, nevertheless, require careful reading and interpretation; they provide a foundation for a series of assignments whose purpose is to teach you how to think

about a body of law in an active adversary context, rather than to teach you substantive criminal and civil procedure and doctrine. Do not do *any* outside research unless your instructor tells you to do so.

B. The Procedural and Professional Responsibility Rules

The State of Major Court Rules and Rules of Criminal and Civil Procedure are in most instances identical to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. The Major Evidence Code is identical to the Federal Rules of Evidence. The standards of professional responsibility in the State of Major are based on the ABA Model Rules of Professional Conduct. These rules are intended to provide a legal structure against which you can analyze the ethical situations in the assignments. Of course, your instructor may instead ask you to deal with the ethical situations under the current rules in your jurisdiction.

C. Dates

The fictitious incidents take place in the following years:

20XX Last year — the year that the shooting took place.

20XX + Years after last year (20XX + 1 is this year).

20XX – Years prior to the incident (20XX – 2 is three years ago).

To give the cases a feeling of reality, the dates in the Case Files should be converted into actual dates, so that “20XX + 4” is changed to four years after last year’s date.

D. Civil Case

Whenever you deal with the civil case of *Summers v. Hard*, you should assume that the criminal case has been disposed of in such a manner that the main character, Ed Hard, cannot legitimately resist answering in the civil case by claiming that he will incriminate himself.

E. Cultural Competency

Your instructor may change the racial, ethnic, or cultural background of any character, in which case you will be given all pertinent background information.

F. Your Responsibilities

As a class member or as an attorney assigned to conduct a particular performance, your good sense and the directions of your instructor will make your responsibilities clear. Your responsibilities when role-playing a witness, however, are a different matter. The quality of your effort in preparation, and in the subsequent performance of your role, can make or break the class. The effort put into your role-playing can make an interview come alive by challenging the planning and performance skills of the student who is playing the attorney. Lack of effort and enthusiasm can result in an unrealistic, fragmented, boring shambles.

As a witness, you have two responsibilities:

- 1. Preparation.** You should prepare for your witness performance by reviewing the Assignment and readings, the confidential witness information from the Actors' Guide, the pretrial Case File documents listed for the Assignment for which you are playing the role of a witness, special documents provided by your instructor, and any specific witness instructions for the Assignment. Be certain to bring to class all your witness information.
- 2. Innovation.** Although we have tried to make the materials as complete as possible, there may be circumstances in which the factual materials furnished to you are insufficient. Therefore, you will have to be somewhat innovative at times. If you are asked questions on matters not covered by the facts you have been furnished, you may add any facts that are consistent with the supplied facts. You may also add details that provide color and reality to your character. You should not add a fact, however, that would be so important that it could determine the outcome of the lawsuit. If in doubt, ask your instructor.

Depending on the actual selection and sequence and performance of the Assignment in your class, you may encounter gaps in information or may fail to make the acquaintance of some of the witnesses who figure in the principal cases. It has been our experience that such potential gaps in information will not seriously impair your case preparation. If the gaps do present any difficulties, however, consult your instructor.

G. The “Game”

We have just discussed the rules of the game for the performance assignments because it is a game. No clients will go to prison for life. No one will lose a home or business or be denied access to their children. So, feel free to play, because, ironically, the more you play, the better you will do when you enter the real world of pretrial. Work hard at your play. Your clients are awaiting you in the next few years, and they are completely and totally dependent on you and on your having learned your lessons well.

We hope you enjoy using this book and the accompanying materials and living with the characters as much as we enjoyed creating them. If any character or situation reminds you of someone you know, so much the better for the game to seem real. It is not our intention, however, to represent any real person or situation; this is a work of fiction.



Students, below you will find the assignments. These assignments may also be found on CasebookConnect.com (open the book, then click on the “**Resources**” link on the navigation bar and then click on the “**Assignments**” tab).

Instructors, teaching materials associated with these assignments are available on the book’s product page at <http://www.aspenpublishing.com> and on CasebookConnect.com under *Resources*.

VI. PRETRIAL ADVOCACY ASSIGNMENTS

Chapter 1. The Pretrial Advocate's World — Assignments

ASSIGNMENT 1: The Role of an Attorney in the Adversary System

You are about to be totally immersed in the world of a practicing attorney. To maximize this experience, these materials will place you in a variety of roles (plaintiff, defense, government, and private counsel) and legal arenas (civil and criminal litigation and alternative dispute resolution). But always you will be an advocate.

This environment, however, is more than an amalgam of skills and tactical decisions. It is a human, flesh-and-blood world in which a clear understanding of your role as an attorney is a vital predicate to your effectiveness. But what is your role?

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entry 64; (2) Chapters 1 and 13.

Assignment for Class: Discussion

Be prepared to discuss the following questions:

1. What is the theory behind our adversary system?
2. What is your role as an attorney in this system?
3. Do you have ethical or other obligations to anyone or anything other than your client?

Chapter 2. Formulating the Case Theory — Assignments

Criminal Case Assignments

ASSIGNMENT 2: Prosecutor: Initial Development of a Case Theory (Homicide)

You are employed in the criminal division of the prosecutor's office for Jamner County, State of Major. The local police sent over their reports of a shooting at the Garage Tavern for your review and filing decision. A man named Edward Taylor Hard is being held in custody for shooting Bruno Summers at the Garage Tavern on

September 3, 20XX. Summers survived the shooting and was in intensive care. You charged Hard with assault in the first degree.

It is now September 8, 20XX, and you just received a telephone message from Detective Tharp, the case detective. The Edward Hard case has changed: Bruno Summers, who everyone thought would recover from his gunshot wound, took a sudden unexpected turn for the worse over the weekend. He died last night at 7:00 p.m. in Mercy Hospital.

You must now consider filing a new complaint. A man is dead as the result of Hard's conduct and the charge of assault no longer reflects this reality. Yet you must think carefully whether the charge should be first-degree premeditated murder, felony murder, second-degree murder, voluntary manslaughter, or involuntary manslaughter. The wrong charging theory at the inception could affect the ultimate success of the prosecution.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4-6, 10, 14, 15, 17, 19, 26, 29, 30, 32, 33, 61, 65, 71; (2) Chapters 1 and 2.

Assignments for Class: *Performance*

In class, meet with your supervising attorneys to brainstorm your theory of the case and to determine further tasks and investigation to be done.

ASSIGNMENT 3: Defense Attorney: Initial Development of a Case Theory (Charge of Premeditated First-Degree Murder)

You are employed at a small private firm specializing in criminal defense. It is September 8, and the prosecutor has just telephoned you. Bruno Summers died last evening in Mercy Hospital. Your client is no longer facing the original charge of assault in the first degree for shooting Summers in the Garage Tavern; instead, the prosecutor informed you that Edward Hard will be charged with first-degree murder, based on premeditation. You must, therefore, begin again to develop a tentative legal and factual theory for the defense. The Jamner County Prosecutor's Office has a policy of providing police reports to defense counsel shortly after counsel's entrance into the case without a formal discovery request or motion and you have received that report.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 4, 5, 14, 17, 61, 65; (2) Chapters 1 and 2.

Assignment for Class: Performance

In class, meet with the senior partners to think about and develop theories of the case and to develop a list of further tasks and investigation to be done.

Civil Case Assignments

ASSIGNMENT 4: Plaintiffs' Attorney: Theorizing About *Summers v. Hard*

You received a telephone call from a law school classmate who told you she referred Deborah Summers to you for consultation. You recall reading about a shooting and death involving Deborah Summers's husband, Bruno. After interviewing Deborah Summers, you also met with Gretchen and Hans Summers, Bruno Summers's surviving parents. Deborah, Gretchen, and Hans Summers have asked you to investigate possibilities for obtaining a monetary recovery for themselves and Bruno's minor children, Ronnie and Amanda. You obtained signed retainer agreements and consent forms to act on behalf of the Summers family.

You have subpoenaed and received the criminal file, *State v. Hard*, from the prosecutor's office. (For purposes of the entire civil case, assume that the prosecutor has dismissed the criminal case against Ed Hard and will not be filing it again.) Your law clerk completed a preliminary legal memorandum that you requested.

You are now ready to theorize about legal and factual theories for *Summers v. Hard*. Theorizing at this stage of a case is a creative process because you have many potential defendants — Ed Hard, M. C. Davola, the Garage Tavern owner and his employees, Mary Apple and Tom Donaldson, Dr. Brett Day, and others.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 62, 63, 66, 85; (2) Chapters 2 and 7.

Assignments for Class: Performance

In class, meet with the senior partners and present the case of the death of Bruno Summers at the law firm's weekly session for discussing cases.

**ASSIGNMENT 5: Attorney for Defendant
Hard: Theorizing About *Summers v. Hard***

Ed Hard received a complaint naming M. C. Davola, Tom Donaldson, Mary Apple, and Ed Hard as defendants in the *Summers v. Hard* lawsuit. You are an associate in a law firm retained by Ed Hard because of the possibility of a judgment in excess of his insurance coverage. (Ed Hard has a homeowner's insurance policy with SAPO Insurance Company.)

You have agreed to represent Ed Hard in the civil lawsuit brought by Deborah Summers and her family. You have explained fully in writing to Ed Hard that he may be entitled to be represented by the SAPO Insurance Company, but that there may be a conflict between SAPO and Hard because of the possibility of a judgment in excess of the insurance policy. The SAPO Insurance Company has indicated to you that it is still evaluating the Hard case. You and Ed Hard have decided that, as Ed's private attorney, you should proceed with Ed's defense while awaiting SAPO's decision.

You have interviewed Ed Hard, researched the law, and your investigator prepared a report for you. You obtained the *State v. Hard* file from the prosecutor's office.

You plan to discuss the *Summers v. Hard* lawsuit with your partners. The meeting with your partners will be a planning, theorizing, and brainstorming session.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 43, 62, 63, 66, 85; (2) Chapters 2 and 7; (3) Notes of your interview with Ed Hard. Furthermore, in theorizing about Ed Hard's defense to *Summers v. Hard*, refer to the civil complaint (Case Files Entry 37) solely for critique purposes.

Assignment for Class: Performance

In class, meet with the senior partners and present the case of the death of Bruno Summers at the law firm's weekly session for a planning, theorizing, and brainstorming session.

ASSIGNMENT 6: Attorney for Defendant Davola: Theorizing About *Summers v. Hard*

M. C. Davola received a complaint naming M. C. Davola, Tom Donaldson, Mary Apple, and Ed Hard as defendants in a lawsuit, *Summers v. Hard*. You are an associate in a law firm on retainer to the EKKO Insurance Company, which is representing Davola, Donaldson, and Apple according to Davola's EKKO insurance policy. Davola also retained a private attorney because of the possibility of a judgment in excess of his insurance coverage. The necessary disclosures in writing were made to Davola concerning possible conflicts of interest.

You interviewed Davola, Donaldson and Apple, researched the law, and your investigator D. Dapple prepared a report for you. You obtained the *State v. Hard* file from the prosecutor's office.

You plan to discuss the *Summers v. Hard* lawsuit with your partners. The meeting with your partners will be a planning, theorizing, and brainstorming session.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 42, 49, 62, 63, 66, 85; (2) Chapters 2 and 7. Furthermore, in theorizing about Davola's defense to *Summers v. Hard*, refer to the civil complaint (Case Files Entry 37) solely for critique purposes.

Assignments for Class: Performance

In class, meet with the senior partners and discuss *Summers v. Hard*.

ASSIGNMENT 7: Attorneys for Defendants Hard and Davola: Meeting and Theorizing About *Summers v. Hard*

Defendants Hard and Davola received a complaint naming M. C. Davola, Tom Donaldson, Mary Apple, and Ed Hard as defendants

in the *Summers v. Hard* lawsuit. Ed Hard has a homeowner's insurance policy with SAPO Insurance Company. He retained a private attorney to represent him because of the possibility of a judgment in excess of his insurance coverage.

The SAPO Insurance Company indicated that it is still evaluating the Hard case. Ed Hard's private attorney decided to proceed with Ed's defense while awaiting SAPO's decision.

Davola is represented by the EKKO Insurance Company. Both Hard's and Davola's attorneys have interviewed their clients, researched the law, and obtained the *State v. Hard* file from the prosecutor's office.

Ed Hard's attorney telephoned Davola's attorney to discuss coordinating the defendants' defenses to the *Summers v. Hard* lawsuit. Before this meeting, both Davola's attorney and Ed Hard's attorney individually discussed the lawsuit with their partners.

Now it is time to think about coordinating the defense case.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 42, 43, 62-64, 66, 85; (2) Chapters 2 and 7; (3) Notes of interviews with respective clients.

Assignment for Class: Performance

In class, Davola's and Hard's attorneys meet, discuss, and plan strategies for defending the *Summers v. Hard* lawsuit.

Chapter 3. Developing and Managing the Case — Assignments

Criminal Case Assignments

ASSIGNMENT 8: Prosecutor and Defense

Attorney: Case Fact Development Overview

You have developed tentative legal and factual theories regarding the current charge of first-degree murder against Edward Taylor Hard. Those theories, when placed in the context of your case strategy, will serve as guides for your investigation to find additional evidence supporting your case theory. Conversely, the results of your investigation may lead you to alter your current case theory. You have many methods available to you to obtain information. At this point, you should think broadly about their use.

For this problem, defense counsel may assume that the *only* information you have received from the pretrial Case Files at this point is the police reports.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 5, 7, 10, 14, 15, 17, 19, 26, 29, 30, 61, 65, 74; (2) Chapters 2 and 3.

Assignment for Class: Performance

In class, discuss your case development plan from the perspectives of the prosecutor and the defense attorney.

Civil Case Assignments

ASSIGNMENT 9: Plaintiffs' and Defendants' Attorneys: Case Fact Development Overview

You have developed tentative legal and factual theories regarding *Summers v. Hard*. Those theories, when placed in the context of your tentative representational strategies, will serve as guides for your factual investigation. Conversely, the results of your factual investigation may lead you to alter your current case theory. You have many methods available to you to obtain information. At this point, you should think broadly about their use.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 61, 63, 65, 85; (2) Chapters 2 and 3.

Assignment for Class: Performance

In class, discuss your case development plan from the perspective of both plaintiff(s) and defendant(s).

ASSIGNMENT 10: Plaintiffs' and Defendants' Attorneys: Utilizing Case Analysis and Management Software

You have concluded that the *Summers v. Hard* case is complex enough that your pretrial organization, management, and analysis of the case may be aided by utilizing computer software. Your law office does not own any case management software, and you

would like to explore what is available and whether it would be helpful both in this case and in future cases. You have learned that companies offer potential customers an opportunity to test their software for trial periods. You decide to explore the potential use of software to assist you in the case.

For this assignment, visit and explore one or more of the websites mentioned in Chapter 3, such as the following: Concordance at <http://www.lexisnexis.com/litigation/products/ediscovery/concordance-desktop/>; AccessData at <http://accessdata.com/>; TrialDirector at <http://www.indatacorp.com/TrialDirector.html>; Prolumina at <http://promotionholdings.com/prolumina/>; or a website selected by your instructor.

Preparation

Read and Visit Websites: (1) Read Chapters 2 and 3; and (2) visit websites offering software for case management and analysis that can be found at the websites listed in the previous paragraph.

Assignment for Class: Performance

In class, discuss your experience with the software, the feasibility of purchasing the software, and what it can do for your case and future cases handled by your office.

Chapter 4. Forging the Attorney-Client Relationship — Assignments

Criminal Case Assignments

ASSIGNMENT 11: Defense Attorney: Interviewing Ed Hard Regarding a First-Degree Murder Charge (the Formation of an Attorney-Client Relationship)

It is mid-morning, September 8. Things have been moving fast since your initial interview with Edward Taylor Hard a few days ago in the county jail where you met him and then represented him at the bail hearing. At that time Hard was charged with assault in the first degree, as the result of his alleged shooting of Bruno Summers in a tavern. As a result of that appearance on Hard's behalf, you have received the police report on the assault case.

Since your first brief contact with Hard, Summers has died, and Hard now faces a charge of premeditated first-degree murder. You

are now on your way to county jail for an extensive interview with Hard considering these new charges.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 3-7, 10, 14, 15, 17, 19, 61, 64, 65; (2) Chapters 4, 6, and 7.

Assignments for Class: *Performance*

In class, interview your client Edward Taylor Hard. Either (1) assume he is indigent and imagine you are a public defender, or (2) assume he has money, and you are retained private counsel. Your instructor will tell you which option to choose.

ASSIGNMENT 12: Defense Attorney: Interviewing Ed Hard for a Bail Reduction Motion (Charge of First-Degree Murder)

Your client has been sitting in jail on a \$30,000 bail that he can't make. That bail was set when Bruno Summers was still alive and Hard was facing charges of assault in the first degree. Your client is now facing a first-degree murder charge. As your research has indicated, unlike many jurisdictions, bail is available in the State of Major even in capital cases. You still want to try to reduce bail (or at least limit the amount it may be raised in light of the new charges), and thus you will need to obtain information for a bail reduction motion.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entry 68; (2) Chapter 4.

Assignments for Class: *Performance*

In class, be prepared to meet with Hard and obtain the necessary information for your bail reduction motion.

Civil Case Assignments

ASSIGNMENT 13: Plaintiffs' Attorney: Interview of Deborah Summers

You are an associate attorney in a law firm. Deborah Summers was referred to you by your law school classmate Casper Corey

Williams, an assistant prosecutor. The receptionist has scheduled an appointment for you to meet with Ms. Summers. When making the appointment, Ms. Summers stated: “I need help in obtaining money owed to my late husband, Bruno Summers.”

You have heard and read about Bruno Summers being shot and killed by Edward Taylor Hard. You are also aware that the prosecutor decided not to prosecute Ed Hard for the shooting. The criminal case, *State v. Hard*, has been dismissed.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 2, 62; (2) Chapters 4, 6, and 7.

Assignment for Class: Performance

In class, interview Deborah Summers.

ASSIGNMENT 14: Plaintiffs’ Attorney: Interview of Ronnie Summers

A few weeks have passed since Bruno Summers’s death. Deborah, Gretchen, and Hans Summers have retained you as their attorney. You are considering whether to file a wrongful death lawsuit. As plaintiffs’ attorney, you have wanted to interview Ronnie (age 8), because Ronnie is one of Bruno Summers’s minor children and he saw his father bleeding after he had been shot. You refrained from interviewing Ronnie because of the emotional trauma Ronnie might have experienced upon his father’s death.

Ronnie has been living with his grandparents, Gretchen and Hans Summers, since September 4 of last year. Gretchen Summers, although not happy with your request to interview Ronnie, has reluctantly agreed.

Gretchen Summers and Ronnie will be at your office at 4:00 p.m.

Preparation

Read and CasebookConnect: Read Chapters 2-4 and on CasebookConnect: read Pretrial Case Files Entries 1-33, 62, 63, 66, and 85. Note, however, that this problem can be assigned at any time, whether before or after a lawsuit has been filed. If assigned after the lawsuit is filed, your reading should include Case Files Entries 1-37, 40-41, 62, 63, 66, 85, and Chapters 2-6.

Assignments for Class: Performance

In class, interview Ronnie Summers.

ASSIGNMENT 15: Attorney for Defendant Hard: Client Interview

Ed Hard has told your receptionist he would like to talk to a lawyer about a civil lawsuit brought against him for shooting and killing someone at the Garage Tavern. You are quite familiar with the shooting incident referred to by Hard from reading newspaper articles, and your friend represented Hard in the criminal case. Ed Hard has left the complaint for *Summers v. Hard* and his SAPO insurance policy with your receptionist. An appointment has been scheduled with Ed Hard for later in the week at 9:00 a.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 2, 34, 35, 43, 62-64, 82, 85; (2) Chapters 4, 6, and 7.

Assignment for Class: Performance

In class, interview Edward Hard.

ASSIGNMENT 16: Attorney for Defendant Davola: Client Interview

M. C. Davola has told your receptionist that he would like to talk to a lawyer about a lawsuit brought against him as the owner of the Garage Tavern. He has left the *Summers v. Hard* complaint with your receptionist. He also muttered something about “slashed seats in his tavern.”

Mr. Davola has been scheduled for an appointment later in the week at 9:00 a.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 2, 34, 35, 62-64, 85; (2) Chapters 4, 6, and 7.

Assignment for Class: Performance

In class, interview M. C. Davola.

ASSIGNMENT 17: Attorney for Defendant Davola: Interview of Mary Apple

You have interviewed M. C. Davola and read the criminal file that you obtained from the prosecutor's office. You are interviewing clients and witnesses before drafting a response to the plaintiffs' complaint in *Summers v. Hard*. You have arranged to interview Mary Apple, who has been named as a defendant in the lawsuit filed by the Summers family.

You have heard that a patron in the tavern, Bert Kain, claims he overheard Mary Apple say: "Oh God, I shouldn't have served them." Be sure you obtain the facts about the circumstances surrounding this statement directly from Ms. Apple.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-35, 42, 62-64, 85; (2) Chapter 4 and 6; (3) Notes of interview with M. C. Davola.

Assignments for Class: *Performance*

In class, along with your investigator, interview Mary Apple.

Chapter 5. Counseling the Client — Assignments

Criminal Case Assignments

ASSIGNMENT 18: Prosecutor: Counseling a Witness Whether to Talk to Your Adversary (Peter Dean)

Peter Dean telephoned you at your office to tell you that Ed Hard's investigator is at his home and wishes to interview him. Peter Dean wants your advice regarding what to do. You are aware that the guiding rule in such cases is that a witness has the right to talk with any attorney (or agent of the attorney) and no other attorney (or agent) can interfere with this right. On the other hand, a witness has no obligation to talk with anyone, except when testifying in court proceedings.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entry 64; (2) Chapter 5.

Assignments for Class: *Performance*

In class, discuss this matter with Peter Dean on the telephone.

ASSIGNMENT 19: Prosecutor: Counseling a Key Witness Who Is Threatening to Leave Town (Deborah Summers)

Deborah Summers just telephoned you on her cell phone and told you that she is leaving town and will not testify in the *Hard* case. “This case is tearing me apart. I feel so guilty, so responsible. I think I’m going crazy. You understand; I just must leave. I just have to.”

Too bad — the day was going well. Well, this is not the first time Deborah has balked at testifying. Earlier in the month she was in your office crying, but somehow you convinced her that it was her duty to testify.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 64, 75; (2) Chapters 4 and 5.

Assignments for Class: *Performance*

In class, discuss the matter with Deborah on the phone.

ASSIGNMENT 20: Defense Attorney: Counseling the Defendant Concerning a Drinking Problem and Testifying at a Suppression Motion

It is now a few months since criminal charges were filed. Your client Ed Hard is out on bail. You are preparing a motion to suppress the gun Hard used to shoot Summers, the statement Hard made to Yale, and the statement Hard gave to Tharp. Your arguments range from attacking the lack of an arrest warrant and the lack of valid consent to enter Hard’s home, to Hard’s failure to waive his *Mintz* rights when questioned by Detective Tharp. As you are discussing these motions with Hard, he says, “I want to testify at the hearing. Those cops are liars. They kicked in my door and that Tharp never gave me any warnings. I know I signed something after I talked to the cops, but I didn’t read the fine print on the form because I was so upset.”

As pretrial preparation has proceeded, you have noticed that Hard has appeared intoxicated the last two times you met. According to his friend, John Gooding, Hard has been drinking

a great deal since the shooting of Bruno Summers. You are concerned that he will become even more difficult to work with, make a bad appearance before a court and jury, will be less effective in his testimony, and will reinforce the view that he was drunk on the night of the shooting. Although you know it will be difficult to discuss Ed's "drinking problem" with him, you have decided to meet with him because you can no longer ignore it.

Preparation

Read: On CasebookConnect (1) Pretrial Case Files Entries 5, 19, 28, 64, 69; (2) Chapters 4, 5, and 7.

Assignments for Class: Performance

In class, meet with your client and advise him regarding testifying at the suppression hearing. Assume that you have decided to dissuade him from testifying. Also, during the meeting, try to deal with his drinking problem. (Note: This is likely to be a very difficult and uncomfortable confrontation with your client. Nevertheless, you must carry through to some resolution.)

Civil Case Assignments

ASSIGNMENT 21: Plaintiffs' Attorney: Counseling Client to See a Psychologist (Deborah Summers)

You have completed informal discovery in *Summers v. Hard*. You interviewed witnesses, filed a complaint, and received the defendants' responses.

One of the claims you assert on behalf of Deborah Summers is that she has suffered emotional distress. It would be helpful to obtain a psychologist's evaluation of Deborah's emotional condition.

Since your initial meeting with Deborah in September 20XX, you have suggested that she obtain professional help, but your suggestion was not acted on. You have made an appointment for December 1, 20XX, for Deborah Summers to come to your office to discuss this matter.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 50, 51, 57, 62-64, 66, 67, 85; (2) Chapter 4 and 5.

Assignments for Class: Performance

In class, meet with Deborah Summers about going to a psychologist.

ASSIGNMENT 22: Plaintiffs' Attorney: Counseling Client Concerning Remarriage (Deborah Summers)

Approximately five months have passed since Bruno Summers died. Deborah Summers has consulted you concerning her desire to marry her boyfriend, Gary Korn. Deborah told you:

I may have a better chance in the future to obtain custody of the Summers children and make something of my life if I get married and have some money. But I don't want to mess up the *Summers v. Hard* lawsuit. What should I do?

After Bruno died, Gretchen and Hans invited Deborah and the children to move in with them. Every time you have talked with Deborah, she has been vague about her plans. The last time you talked to Gretchen she expressed concern that Deborah was still living with them. Gretchen said, "Surely Deborah should think of going to work, moving out on her own, or at least going to her own parents."

Then Gretchen and Hans consulted a lawyer about obtaining custody of Amanda and Ronnie. Deborah immediately moved out of the Summers's house and moved in with her parents. The children remained with Gretchen and Hans.

With Deborah's permission, you have discussed the issue of her remarriage with the attorney representing Deborah in the child custody dispute. Her child custody attorney assured you that the child custody matter was settled. (Deborah voluntarily agreed that Hans and Gretchen retain custody of the children.) Your instructor will inform you whether to consider the child custody dispute and its effect on *Summers v. Hard*.

You have scheduled an appointment with Deborah on February 1, 20XX + 1 to discuss the issue of her remarriage.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 57, 59, 62-64, 66, 67, 84, 85; (2) Chapters 4, 5, and 7.

Assignments for Class: *Performance*

In class, be prepared to discuss your counseling objectives. Meet with Deborah Summers concerning the issue of her remarriage.

ASSIGNMENT 23: Plaintiffs' Attorney: Counseling Client Concerning Granddaughter's School Truancy (Gretchen Summers)

Three months have passed since Bruno's death. A complaint on behalf of the Summers family, Deborah, Gretchen, Hans, Ronnie, and Amanda, was filed on November 1, and the defendants responded seven days later. Gretchen Summers has taken over the care of Amanda, age 12, and Ronnie, age 8, the children of Bruno from his prior marriage. The children are currently receiving social security, supplemented by welfare.

Gretchen has been plagued by personal and financial problems and by coping with two children. Because you are her attorney, Gretchen has unburdened herself to you, telling you of some of her distress and inability to cope. She claims that she has no one else to talk to whom she respects. She telephones you at least three times a week. In fact, you have just spoken with her concerning her most recent upset — Amanda's school truancy. You have made an appointment with Gretchen to discuss Amanda's truancy.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 64; (2) Chapters 4, 5, and 7.

Assignments for Class: *Performance*

In class, meet with Gretchen Summers.

ASSIGNMENT 24: Attorney for Defendant Hard: Counseling Client Concerning His Objections to Deposition of Adverse Witness (Deborah Summers)

You were just planning to notice the deposition of Deborah Summers when Ed Hard calls you and he sounds upset. Suddenly he says, "Look, I love her, and I've caused her enough pain. You're

just not going to bother her or make her look like a liar. I won't let you!" Ed Hard insists that you refrain from deposing Deborah Summers.

You have made an appointment to talk with Ed Hard at your office tomorrow September 20, 20XX (only 13 days after the shooting at the Garage Tavern), so you can discuss this matter with him.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 43, 62-64, 66, 81, 85; (2) Chapters 4, 5, and 7.

Assignments for Class: *Performance*

In class, meet with Ed Hard.

ASSIGNMENT 25: Attorney for Defendant

Davola: Counseling Client About the Litigation

Plaintiffs filed a complaint naming Ed Hard, Mary Apple, Tom Donaldson, and M. C. Davola as defendants. Defendants responded. Discovery has been conducted by both plaintiffs and defendants. A year has passed and M. C. Davola contacts you as his attorney and requests to speak with you concerning a problem he is having. He does not say anything else and sounds too upset to question further over the telephone.

You have scheduled an appointment to see M. C. Davola.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 43, 62-64, 66, 81, 85; (2) Chapters 4, 5, and 7.

Assignments for Class: *Performance*

In class, meet with your client M. C. Davola.

ASSIGNMENT 26: Plaintiffs' and Defendants'

Attorneys: Counseling Clients to Accept Settlement

During the meeting with opposing counsel, plaintiffs' counsel made a demand within the range agreed to by the plaintiffs. Defense counsel countered that they were not yet authorized to settle and what they were about to propose did not constitute an offer

(because it was the clients' decision to make an offer). However, if it would settle the case, the defense counsel would go to the clients and recommend that the defendants accept the following (which is lower than the first number mentioned by plaintiffs' counsel):

Hard: Payment of \$80,000 (the limit of his SAPO insurance policy is \$100,000). The \$80,000 to be distributed as follows: \$10,000 to Deborah Summers; \$70,000 to be divided equally between two trusts to be established for Ronnie and Amanda.

Davola: Payment by EKKO insurance company of \$450,000 (the limit of the policy is \$600,000). This amount will be paid to the estate of Bruno Summers.

It is now time to discuss the settlement with your client(s) to see if the client(s) will agree to the settlement. You have an appointment to meet with your client(s) on February 1, 20XX + 2.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-60, 62-64, 66, 82, 84, 85; (2) Chapter 4 and 5; (3) Fed. R. Civ. P. 68.

Assignments for Class: *Performance*

For this problem, your instructor may advise you to negotiate a settlement and to use your own settlement figures instead of those in this problem.

In class, attorneys for plaintiffs Gretchen, Hans, Ronnie, Amanda, and Deborah Summers and defendants Davola and Hard meet individually with your respective client(s) to discuss the settlement.

Chapter 6. Witness Interviewing and Preparing a Witness — Assignments

Criminal Case Assignments

ASSIGNMENT 27: Prosecutor: Interview of Dr. L. H. Jackson (Medical Examiner)

You have filed a first-degree murder charge in *State v. Hard*. You still have some questions, however, about Summers's death. After all, one minute Summers was supposed to be fine; the next, he was dead. You have an appointment with the medical examiner who did the autopsy and wrote the pathologist's report, Dr. L. H. Jackson.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 7, 8, 18, 22, 61, 65; (2) Chapter 6; (3) Fed. R. Evid. 701-705.

Assignments for Class: Performance

In class, meet with the medical examiner. You should discuss and assess with the medical examiner the question of Bruno's death from pneumonia and the legal element for murder of "proximate cause."

ASSIGNMENT 28: Prosecutor: Interview of Peter Dean

Prepare for an interview with Peter Dean in the *State v. Hard* murder case. Mr. Dean was a close friend of the deceased, Bruno Summers. He was with Bruno at the Garage on September 3, and at Bruno's parents' home on August 22 when Hard allegedly telephoned and threatened Bruno.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 14, 15, 26, 29, 30, 64; (2) Chapter 6; (3) Fed. R. Evid. 803(2), 901.

Assignments for Class: Performance

In class, you and your investigator interview Peter Dean. Bring the diagram and/or photographs of the Garage Tavern (Case Files Entries 28, 31, 32) with you to the interview.

ASSIGNMENT 29: Prosecutor: Interview of Jack Waters

You are about to interview Jack Waters as part of your pretrial investigation for the *State v. Hard* murder case. Waters, who has a significant criminal history, is currently in jail on charges of receiving stolen property.

Waters came to your attention through a somewhat circuitous route. Waters contacted police officers a few days ago while in jail, claiming he had valuable information in the Hard case. The police brought him to you, where Waters asked for full immunity in return for his information. You refused. After further negotiations, however, you agreed to ask for leniency from the sentencing judge in Waters's current case (after Waters pleads guilty) in return for Waters's information and testimony in Hard's case.

Waters claims that he was at the Garage on September 3, 20XX, and that, just before the shooting, he heard Hard tell Summers, “You asked for it and now you’re going to get it.” To which Summers allegedly responded, “Don’t do it. I’m not armed.”

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 10, 14-16, 64; (2) Chapter 6; (3) Fed. R. Evid. 801(d)(2), 803(2)(3).

Assignments for Class: *Performance*

In class, you and your investigator interview Jack Waters.

ASSIGNMENT 30: Prosecutor: Interview of Detective Tharp (Investigating Officer for the Case)

Detective Tharp is sitting in the waiting room outside of your office. Detective Tharp directed the investigation in the *State v. Hard* murder case, and thus will sit by you at the counsel table during the trial as your investigating officer. At this point, you are interested that Detective Tharp:

1. Directed the taking of photographs at the scene of the shooting on September 3,
2. Took measurements at the scene and made a rough sketch,
3. Supervised the preparation of a detailed diagram of the scene,
4. Authored the initial suspect information report and the follow-up report,
5. Took the statement of Deborah Summers the day after the shooting,
6. Took the statement of Tom Donaldson on the night of the shooting, and
7. Took Ed Hard’s statement.

In approaching this interview, keep in mind that Hard’s grounds for suppression will likely be:

1. That he was too intoxicated to either voluntarily give a statement or to knowingly waive his constitutional rights, and/or
2. That his *Mintz* (identical to *Miranda*) rights were not respected.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 5, 14, 15, 17, 26, 29, 30; (2) Chapter 6; (3) Fed. R. Evid. 401, 801(d)(1).

Assignments for Class: Performance

In class, meet with Detective Tharp, the investigating officer on the *Hard* case. Unless your instructor directs you otherwise, interview Tharp regarding the seven areas noted.

ASSIGNMENT 31: Defense Attorney: Interview of John Gooding

You plan to seek discovery from the prosecution as part of your case development for the *State v. Hard* murder case. At the same time, you must continue your own investigation. You and your investigator are therefore about to interview John Gooding.

Mr. Gooding is a friend of the defendant who was with Hard (1) at the Garage Tavern on August 20, and (2) at the Garage Tavern again on September 3. Further, according to your client, Mr. Gooding is also willing to speak about Hard's good, nonviolent character and Summers's violent character.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 5, 14, 15, 17, 26, 29, 30, 64; (2) Chapter 6; (3) Fed. R. Evid. 404, 405, 608.

Assignments for Class: Performance

In class, you and your investigator interview John Gooding. Take notes. Be sure to assess Mr. Gooding as a character witness for Hard and against Summers.

ASSIGNMENT 32: Defense Attorney: Interview of Cindy Rigg

As part of your investigation in the *State v. Hard* murder case, it is now time to plan your interview with Cindy Rigg. Ms. Rigg is an eyewitness to the August 20 fight between Hard and Summers at the Garage Tavern. She does not seem to be friends with either Summers or Hard.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 14, 17, 26, 29, 30, 64; (2) Chapter 6.

Assignments for Class: *Performance*

In class, be prepared to discuss your objectives and strategies for your interview and any ethical concerns you may have. Then, you and your investigator do the interview.

ASSIGNMENT 33: Defense Attorney: Interview of Marty Saunders (Witness for a Suppression Motion)

A few hours after the shooting of Bruno Summers at the Garage Tavern, police, led by Officer Yale, went to Hard's home. According to the police, Hard agreed to let the police into his home, where the gun was found and seized. In planning a suppression motion (a motion to keep the gun out of evidence), you have been developing a two-fold legal attack.

First, you are prepared to argue that the police needed an arrest warrant to enter Hard's home before seizing the gun.

Second, you will take the position that there existed neither exigency nor valid consent as could obviate the need for an arrest warrant because, among other grounds, Hard's consent was a mere submission to authority.

A discussion with your client this morning has added a totally new dimension to this search issue. According to Hard, the police report is "a bunch of nonsense! Consent nothing! They just kicked my door in, and I had a guest there who was a witness — Marty Saunders."

Hard's story is legally significant because such an action by the police would also undermine any government attempt to use consent as a theory that could circumvent the need for an arrest warrant.

You have made plans to meet with Marty Saunders.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 19, 20, 28, 76, 77; (2) Chapters 6, 8; (3) Notes from all the interviews you have seen and done in class.

Assignments for Class: *Performance*

In class, you and your investigator interview Marty Saunders.

ASSIGNMENT 34: Defense Attorney: Interview of James Raven (Polygrapher)

Ed Hard has consistently maintained his innocence to the first-degree murder charge in *State v. Hard*. You are now considering giving Hard a polygraph. As such, you have set up a meeting with polygrapher James Raven. You have obtained Mr. Raven's resume before the interview.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 5, 15, 17, 24, 75, 86; (2) Chapter 6; (3) Fed. R. Evid. 701-705.

Assignments for Class: *Performance*

In class, interview James Raven. Be prepared to discuss with your supervisor whether Hard should take a polygraph.

Civil Case Assignments

ASSIGNMENT 35: Plaintiffs' Attorney: Interview of Bert Kain

You have interviewed Deborah Summers, reviewed the criminal file that you obtained from the prosecutor's office, and researched the law. Deborah, Gretchen, and Hans Summers have retained you as their attorney concerning the death of Bruno Summers. You plan to informally investigate the incidents at the Garage Tavern and Ed Hard's role in the shooting to assess whether to file a lawsuit.

Peter Nye, your investigator, located three potential eyewitnesses to the August 20 incident and the September 3 shooting—Bert Kain, Tom Donaldson, and Peter Dean. Bert Kain has agreed to be interviewed by you and Peter Nye at your office at 9:00 a.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 62-64, 66, 85; (2) Chapter 6.

Assignments for Class: *Performance*

In class, conduct the interview of Bert Kain.

ASSIGNMENT 36: Plaintiffs' Attorney: Interview of Dr. Brett Day

You have interviewed Deborah Summers, reviewed the criminal file that you obtained from the prosecutor's office, researched the law, and obtained Bruno Summers's hospital records. Deborah, Gretchen, and Hans Summers have retained you as their attorney concerning the death of Bruno Summers. You plan to informally investigate the incidents at the Garage Tavern and Ed Hard's role in the shooting to assess whether to file a lawsuit.

According to Peter Nye, your investigator, Dr. Brett Day was the surgeon who operated on Bruno Summers the night of the shooting and attended Bruno until he died. Dr. Day has agreed to see you at his office at 5:30 p.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 2, 4, 5, 7, 8, 11, 21, 22, 33, 38, 39, 62-64, 66, 67, 85; (2) Chapter 6; (3) Fed. R. Civ. P. 26(b)(4), 35.

Assignments for Class: *Performance*

In class, conduct the interview of Dr. Day.

ASSIGNMENT 37: Plaintiffs' Attorney: Interview of Karen Sway

Deborah, Gretchen, and Hans Summers retained you as their attorney concerning the death of Bruno Summers. It is a few months since the shooting and death of Bruno Summers, and Deborah still appears to be upset about Bruno Summers's death. You would like to explore Deborah's emotional condition more fully.

You have just received a telephone call from Deborah Summers. She has told you that she has retained an attorney to represent her in a child custody matter. It seems that Bruno Summers's parents have filed for legal custody of Ronnie and Amanda, Bruno's children by his prior marriage. Deborah may contest the petition filed

by Gretchen and Hans Summers. Deborah's child custody attorney has interviewed Karen Sway, who is a close friend of Deborah.

A few months ago, you spoke with Karen Sway by telephone to confirm her willingness to be a potential witness in a wrongful death case. Karen Sway has agreed to be interviewed by you and Peter Nye, your investigator. She will be at your office at 9:00 a.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 38, 39, 62, 64, 66, 67, 79, 85; (2) Chapter 6.

Assignments for Class: Performance

In class, conduct the interview of Karen Sway.

ASSIGNMENT 38: Attorney for Defendant Hard: Interview of Rebecca Karr

You interviewed Ed Hard, reviewed Ed Hard's homeowner's insurance policy with SAPO Insurance Company, read the criminal file that you obtained from the prosecutor's office, and researched the law. Ed Hard's rich cousin has paid your fee. You have agreed to represent Ed Hard in the *Summers v. Hard* lawsuit.

Ed Hard went to the Garage Tavern on August 20 and September 3 with John Gooding and Rebecca Karr. During the past few weeks, Ed has asked you, as his attorney, to speak with Rebecca. On three occasions, you had appointments with Rebecca, but each time she did not call or appear for her appointment. You have not told Ed that Rebecca has not been a cooperative witness.

You have scheduled one last appointment to speak with Rebecca concerning the Bruno Summers-Edward Hard incidents.

Rebecca has agreed to be interviewed by you and your investigator. She will be at your law office at 2:00 p.m.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-35, 62-64, 66, 85; (2) Chapter 6.

Assignments for Class: Performance

In class, conduct the interview with Rebecca Karr.

ASSIGNMENT 39: EKKO Attorney for Defendant Davola: Interview of Roberta Montbank

You have received and reviewed the Summers complaint. Before responding to the Summers complaint, you plan to informally investigate the incidents alleged.

The EKKO insurance investigator located another patron, Roberta Montbank, who claims to have been at the Garage Tavern on September 3. (It seems that the police had inadvertently written down Robin Luntlebunk as being a patron at the Garage Tavern instead of Roberta Montbank. Therefore, the police never located her for the criminal case, *State v. Hard*.) As Davola’s insurance company attorney, you have arranged to interview Ms. Montbank at the Stillwater Retirement Home at the beginning of October 20XX.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-35, 42, 62-64, 66, 85; (2) Chapter 6; (3) Fed. R. Evid. 601, 612.

Assignments for Class: *Performance*

In class, along with the EKKO investigator, interview Roberta Montbank.

Chapter 7. Strategic Pleading — Assignments

Criminal Case Assignments

ASSIGNMENT 40: Prosecutor: Drafting a Criminal Pleading

You have already filed a charging pleading (a criminal complaint) accusing Ed Hard of first-degree premeditated murder in *State v. Hard*. Your pleading embodied your legal theory and formed a part of your representational strategy. That pleading also began the formal criminal judicial process and constituted the charge to which Hard pleaded “not guilty.” Your supervisor has now asked you to draft three additional complaints — one charging Hard with unpremeditated, intentional second-degree murder, one charging second-degree extreme recklessness murder, and one charging voluntary manslaughter. “We need these on hand in the event of a possible plea bargain,” your supervisor said. “The deal would be that we’d file the new charge we agreed on (if any) with defense

counsel, and the defendant would plead to the new charge. Then we'd dismiss the first-degree murder charge."

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 3, 4, 61, 65; (2) Chapter 7.

Assignments for Class: *Performance*

Outside of class, draft a separate complaint charging Hard with second-degree unpremeditated intentional murder.

Civil Case Assignments

ASSIGNMENT 41: Plaintiffs' Attorney: Planning and Drafting Pleadings

You have interviewed the Summers family (Deborah, Gretchen, Hans, and the children, Amanda and Ronnie); reviewed the criminal file you obtained from the prosecutor's office; obtained medical records, bills, and other documents; researched the law; theorized about the case; and interviewed some witnesses.

The Summers family has requested that you represent them. They requested that you contact the potential defendants in the case to see if the defendants will settle. You have done so but were not successful in settling the case. The Summers family has requested that you pursue litigation; that means you should draft a complaint.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 38, 39, 62-64, 66, 82, 85; (2) Chapter 7; (3) Fed. R. Civ. P. 7-21; (4) read sample pleadings at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

Outside of class, draft a summons, an affidavit of service, and a complaint seeking redress for Bruno Summers's death. Your instructor will discuss the format to follow in preparing your complaint and will assign your opposing counsel. Serve your complaint on opposing counsel, who will draft an answer to the complaint.

ASSIGNMENT 42: Defendants' Attorneys: Planning and Drafting Responsive Pleadings

You have reviewed the summons and complaint in *Summers v. Hard*, interviewed your respective clients (Ed Hard, M. C. Davola, Mary Apple, and Tom Donaldson), reviewed the criminal file you obtained from the prosecutor's office, obtained some of the relevant documents (medical records of Bruno Summers), researched the law, informally interviewed some witnesses, and theorized about defenses to the lawsuit.

Informal discovery has concluded. Of course, there are additional witnesses and documents to examine, but you have enough information to respond to the *Summers v. Hard* complaint.

A major problem that is still unsettled is whether the SAPO Insurance Company lawyer or Ed Hard's own lawyer will be representing Ed Hard. Ed Hard's insurance company has agreed that it will draft the appropriate responsive pleadings invoking its reservation of rights clause in the insurance contract to protect the issue of "duty to defend." M. C. Davola and his employees, Mary Apple and Tom Donaldson, are represented by both EKKO Insurance Company and a private lawyer.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 42, 43, 62-64, 66, 82, 85; (2) Chapter 7; (3) sample pleadings at CasebookConnect.com under Additional Materials.

Assignments for Class: Performance

Outside of class, draft an answer and affidavit of service to the complaint that a student served on you. Hand in your answer and affidavit of service to your senior partner.

Chapter 8. Creating a Coordinated Discovery Plan — Assignments

Criminal Case Assignments

ASSIGNMENT 43: Defense Attorney: Seeking Discovery from the Government

Ed Hard finally obtained bail. A wealthy relative provided the cash premium and even threw a nice little party to celebrate Ed's

release. You know, however, that unless you can obtain ultimate vindication for Ed or something less than total victory, if that is all that is reasonably possible, there is little cause for celebration. So back to work. Fact-finding in the context of your tentative case theory is now your dominant concern. You want to learn more about the prosecution's case, including its strengths and weaknesses, and to discover evidence that you may want to use should you choose to present a case. While organizing your approach to witness interviews, you are simultaneously planning a formal discovery motion to obtain all the information that is in the possession of the government.

For this assignment, assume that the only documents you have received from the Case Files at this point are the police reports.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 75; (2) Chapter 8.

Assignments for Class: *Performance*

In class, be prepared to meet with your supervisor to discuss discovery planning for the defense of Ed Hard, including the specific information that you would seek in a discovery motion.

Civil Case Assignments

ASSIGNMENT 44: Plaintiffs' and Defendants' Attorneys: Discovery Planning

Summers v. Hard progressed through theorizing, informal interviewing, pleading, and response. Plaintiffs and defendants even had extensive discussions concerning arbitrating or mediating the case. But, alas, no agreement was reached. The settlement also was rejected because the facts are not entirely evident. Therefore, it appears that the parties will proceed with the pretrial process.

The next stage of the pretrial process involves formal discovery. It is important to plan what discovery devices will be used, to whom they will be directed, and what items, things, and facts need to be discovered. Discovery planning is particularly important because many courts, to control the discovery process, require that each party submit a discovery plan.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 62, 63, 66, 81, 85; (2) Chapters 8 and 9; (3) Fed. R. Civ. P. 26-37; Fed. R. Evid. 502; (4) sample discovery documents at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

In class:

1. Be prepared to discuss the discovery plans for the plaintiffs and defendants Hard and Davola.
2. Meet with your opposing counsel to work out an agreeable discovery plan to present to the judge in a scheduling conference conducted (unless directed otherwise by your instructor) in conformance with the Federal Rules of Civil Procedure.

ASSIGNMENT 45: Plaintiffs' and Defendants' Attorneys: Initial Disclosure and Written Discovery Requests

Summers v. Hard has progressed through theorizing, informal interviewing, pleading, and response. The parties are proceeding with the litigation process and discovery.

You drafted a discovery plan for *Summers v. Hard* that sets forth the discovery you need to complete. It is time to commence written discovery. Plaintiffs' and defendants' attorneys have prepared a list of written discovery requests that should be drafted. Because discovery appears to be extensive, you will have to be careful in selecting which written discovery to pursue.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 62, 63, 66, 81, 85; (2) Chapters 8 and 9; (3) Fed. R. Civ. P. 26-37 and 45; (4) sample discovery documents at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

Outside of class, draft discovery requests as follows: 12 interrogatories, 3 requests for production, and 2 requests for admissions

(subparts to interrogatories and requests for production do not count separately).

You may choose to represent any party in the *Summers v. Hard* case. Give your senior partner a copy of your discovery requests.

Chapter 9. Taking and Defending Depositions — Assignments

Civil Case Assignments

ASSIGNMENT 46: Plaintiffs' Attorney: Preparing a Client for a Deposition (Deborah Summers)

Summers v. Hard has progressed through theorizing, informal interviewing, pleading, and response. Attorneys for plaintiffs and defendants are proceeding with formal discovery.

As Deborah's attorney, you received a notice from defendants pursuant to Fed. R. Civ. Proc. 30(b)(1) to take the oral deposition of your client Deborah Summers on October 30, 20XX + 1. It will be necessary for you to prepare Deborah for her deposition.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 51, 57, 62-64, 66, 67, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: Performance

In class, prepare your client, Deborah Summers, for her deposition

ASSIGNMENT 47: Attorney for Defendant Davola: Preparing a Client for a Deposition (M. C. Davola)

Plaintiffs and defendants are proceeding with the pretrial process and formal discovery.

As M. C. Davola's attorney, you received a notice from plaintiffs pursuant to Fed. R. Civ. Proc. 30(b)(1) to take the oral deposition of one of your clients, M. C. Davola, on October 25, 20XX + 1.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 42, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class, prepare your client, M. C. Davola, for his deposition.

ASSIGNMENT 48: Attorney for Defendant Davola: Preparing an Expert Witness for a Deposition (Dr. Thomas Monday, Economist)

Plaintiffs' and defendants' attorneys have agreed that all experts who will testify at trial can be deposed without a court order. Defendant Davola hired an expert witness to present the valuation of Bruno Summers's life and refute the opinion of the plaintiffs' economist, Dr. Bruce Hann. The deposition of the defendant's economist has been scheduled to be taken at the law office of plaintiffs' attorney at 9:00 a.m. on November 13, 20XX + 1.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 40, 41, 53, 56, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class, prepare your economist, Dr. Thomas Monday, for his deposition.

ASSIGNMENT 49: Plaintiffs' Attorney: Preparing an Expert Witness for a Deposition (Dr. Brett Day, Treating Physician)

Plaintiffs' and defendants' attorneys have agreed that all experts who will testify at trial can be deposed without a court order. Dr. Brett Day was the surgeon who operated on Bruno Summers the night of the shooting and attended and treated Bruno until he

died. You have previously interviewed Dr. Day briefly at the outset of the case and decided not to pursue a medical malpractice case. Currently, you intend to call the doctor to testify at trial, among other things, about Bruno Summers's treatment, statements, and his pain and suffering before he died.

Defendants' attorney has scheduled Dr. Day for a deposition on November 10, 20XX + 1 at 9:00 a.m.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 61-63, 66; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class, prepare the treating physician, Dr. Brett Day, for his deposition.

ASSIGNMENT 50: Plaintiffs' Attorney: Taking the Deposition of an Adverse Party (Tom Donaldson)

Plaintiffs' attorney sent a notice to take the deposition of Tom Donaldson.

Plaintiffs' attorney served written interrogatories on Tom Donaldson. In response to an interrogatory requesting information about Ed Hard's appearance, demeanor, or drinking the night of September 3, Donaldson refused to answer the interrogatories, claiming that to answer would incriminate him. Plaintiffs' attorney has decided to depose Donaldson instead of compelling answers to the interrogatories.

Defendant Davola's attorney, representing Donaldson, has prepared Donaldson for this deposition. The deposition is scheduled for November 6, 20XX + 1, at 9:00 a.m. at the law office of plaintiffs' attorney. Attorneys for defendants Hard and Davola will be attending the deposition. They may examine the deponent if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 42, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26,

29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Plaintiffs' attorney: Conduct the deposition of Tom Donaldson.
2. Attorneys for defendants Davola and Hard: Attend the deposition, and, if desired, examine Tom Donaldson.

**ASSIGNMENT 51: Attorney for Defendant
Hard: Taking the Deposition of an Adverse Party
(Deborah Summers)**

Summers v. Hard has progressed through theorizing, informal interviewing, pleading, and response. Attorneys for plaintiffs and defendants are in the midst of the litigation process and formal discovery.

Defendant Ed Hard's attorney sent a notice to take the deposition of Deborah Summers. The deposition is scheduled for October 30, 20XX + 1, at 9:00 a.m. at the law office of Hard's attorney. Attorneys for plaintiffs and Davola will be attending the deposition. They may examine the deponent if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 38, 39, 62-64, 66, 81, 84, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendant Hard: Conduct the deposition of Deborah Summers.
 2. Attorneys for plaintiffs and defendant Davola: Attend the deposition and, if desired, examine Deborah Summers.
-

**ASSIGNMENT 52: Attorney for Defendant
Hard: Taking the Deposition of an Adverse Party
(Gretchen Summers)**

Gretchen Summers, Bruno's mother, can be a key witness for plaintiffs as to damages and Bruno's reputation for violence. She is taking care of Bruno's children and presently has custody of Amanda and Ronnie. She also might be knowledgeable about Bruno's neo-Nazi activities.

You sent a notice to take the deposition of Gretchen Summers. The deposition is scheduled for November 2, 20XX + 1, at 9:00 a.m. at your law office. Attorneys for plaintiffs and defendant Davola will be attending the deposition. They may examine if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendant Hard: Conduct the deposition of Gretchen Summers.
2. Attorneys for plaintiffs and defendant Davola: Attend the deposition and, if desired, examine Gretchen Summers.

**ASSIGNMENT 53: Attorney for Defendant
Hard: Taking the Deposition of a Neutral Witness
(Roberta Montbank)**

You sent a notice to take the deposition of Ms. Roberta Montbank. The deposition is scheduled for November 7, 20XX + 1, at 9:00 a.m. at the law office of defendant Hard's attorney. Attorneys for plaintiffs and defendant Davola will be attending the deposition. They may examine the deponent if time permits.

The deposition may be critical to establish Ed Hard's defenses. A little history of this witness is important.

Ms. Montbank, 78 years of age, was a patron at the Garage Tavern on the night Bruno Summers was shot. The police incorrectly listed

Robin Luntlebunk as a witness instead of Roberta Montbank, so no statement was taken from her until November 3 (after the criminal case was dismissed). The police claim they could not locate Ms. Montbank because they were given the name Robin Luntlebunk instead of Roberta Montbank.

Plaintiffs sent written interrogatories to defendant Davola on May 15, 20XX + 1. Attorney for defendant Hard learned from those interrogatories that the EKKO Insurance Company interviewed and received a signed statement under oath from Ms. Roberta Montbank on October 26. Ms. Montbank declined to give either plaintiffs' attorney or Ed Hard's attorney a copy of her statement. Plaintiffs' written request for the document has been the subject of an unsuccessful plaintiffs' motion to compel Davola to produce the Montbank statement. The court tentatively ruled the statement work product. This ruling is for purposes of this Assignment only. See the motion, Assignment 73.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 48, 60, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendant Hard: Conduct the deposition of Roberta Montbank.
2. Attorneys for plaintiffs and defendant Davola: Attend the deposition and, if desired, examine Ms. Roberta Montbank.

ASSIGNMENT 54: Attorney for Defendant Davola: Taking the Deposition of a Neutral Witness (Bert Kain)

Bert Kain was a patron at the Garage Tavern on both August 20 and September 3, 20XX. You have heard that he spoke to the plaintiffs' attorney, but he has not answered your telephone calls.

You sent a notice to take the deposition of Bert Kain. The deposition is scheduled for November 8, 20XX + 1, at 9:00 a.m. at your law

office. Attorneys for plaintiffs and defendant Hard will be attending the deposition. They may examine the deponent if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

Your instructor may select which attorneys will examine the deponent and the topics to be covered in the deposition.

In class:

1. Attorney for defendant Davola: Conduct the deposition of Bert Kain.
2. Attorneys for plaintiffs and defendant Hard: Attend the deposition and, if desired, examine Bert Kain.

ASSIGNMENT 55: Attorney for Defendant Davola: Taking the Deposition of Neutral Witness (Betty Frank, Nurse)

Nurse Frank, the attending nurse for Bruno Summers in the intensive care unit when he was admitted to Mercy Hospital shortly after the shooting at the Garage Tavern. In a previous visit to the hospital, your investigator reviewed portions of Summers's hospital records to evaluate the alleged cause of death and saw a hospital record in which a statement was recorded that was attributed by Nurse Frank to Summers: "I should have left when I saw him."

You have subpoenaed Nurse Frank to take her deposition. The deposition is scheduled for November 9, 20XX + 1, at 9:00 a.m. in your law office. Attorneys for the plaintiffs and other defendants will be attending the deposition. They may examine the deponent if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 4, 7; (2) Chapter 9; (3) Fed. R. Evid. 803(2)(6), 804(6)(2)(3), 901; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com; (5) review notes from all the interviews you have seen and done in class.

Assignments for Class: Performance

In class:

1. Attorneys for defendant Davola: Conduct the deposition of Nurse Frank.
2. Attorneys for plaintiffs and defendant Hard: Attend the deposition and, if desired, examine Nurse Frank.

ASSIGNMENT 56: Defendant Davola's Attorney: Taking the Deposition of an Adverse Expert Witness (Dr. David Bowman, Plaintiffs' Behavioral Psychologist)

The parties have proceeded with the litigation process and formal discovery. Plaintiffs' and defendants' attorneys have voluntarily provided each other with copies of the reports submitted by their expert witnesses. Defendant Davola's attorney has learned through answers to interrogatories that the plaintiffs' behavioral psychiatrist, Dr. David Bowman, will testify that a reasonable person familiar with the tavern/pub environment could have predicted a shooting between Ed Hard and Bruno Summers at the Garage Tavern. Defendant Davola's counsel sent a subpoena to take the deposition for Dr. Bowman.

The deposition is scheduled for November 20, 20XX + 1, at 9:00 a.m. at Dr. Bowman's office. Attorneys for plaintiffs will be attending the deposition. They may examine the deponent if time permits. Preparation to take a deposition and preparation of the deponent for a deposition are important. As the attorney for defendant Davola, to prepare to take an adverse expert witness's deposition, it is usually advisable to consult with an expert to educate yourself about the specialty. You have retained Dr. Hollis Lufkin, a clinical psychiatrist, who believes "that there is no reliable methodology in the psychological discipline that would permit an opinion like Bowman's." Dr. Lufkin is available to consult with the defendant's attorney.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 50, 54, 62-64, 66, 67, 81, 85, 86; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: Performance

In class:

1. Defendant Davola's attorney: Depose plaintiffs' behavioral psychiatrist, Dr. Bowman.
2. Plaintiffs' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

ASSIGNMENT 57: Defendants' Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Bruce Hann, Plaintiffs' Economist)

Plaintiffs' and defendants' attorneys have provided each other with copies of the reports submitted by their expert witnesses. Defendants' attorneys scheduled a deposition of plaintiffs' economist, Dr. Bruce Hann, for November 3, 20XX + 1, at 9:00 a.m. at the law office of defendant Davola's attorney. Attorneys for both defendants and plaintiffs will be attending the deposition.

Preparation to take a deposition and preparation of the deponent for a deposition are important. To prepare to take an adverse expert witness's deposition, it is usually advisable to consult with an expert to educate yourself about the specialty. Defendants have retained Dr. Thomas Monday, an economist who believes "the economic loss for the wrongful death of Bruno Summers is substantially less than the amount calculated by plaintiffs' economist, Dr. Bruce Hann." Dr. Monday is available to consult with defendants' attorneys.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-41, 53, 56, 62-64, 66, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: Performance

In class:

1. Attorneys for defendants Davola and Hard: Prepare to take the deposition of Dr. Hann.
2. Plaintiffs' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

**ASSIGNMENT 58: Attorney for Defendant
Hard: Taking the Deposition of an Adverse Expert
Witness (Dr. Brett Day, Plaintiffs' Medical Expert)**

Plaintiffs' and defendants' attorneys have agreed that all experts who will testify at trial can be deposed without a court order. In addition, the plaintiffs' attorney has voluntarily provided defendants with copies of the hospital records of Bruno Summers. Defendant Hard's attorney sent a subpoena to take the deposition of one of plaintiffs' medical experts, Dr. Brett Day. The deposition is scheduled for November 10, 20XX + 1 at 9:00 a.m. at the law office of defendant Hard's attorney. Attorneys for plaintiffs and defendant Davola will be attending the deposition. They may examine the deponent if time permits.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 51, 57, 62-64, 66, 67, 81, 85; (2) Chapter 9; (3) Fed. R. Civ. P. 26, 29-32, 37; (4) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendant Hard: Depose Dr. Brett Day.
2. Attorneys for plaintiffs and defendant Davola: Attend the deposition and, if desired, examine Dr. Day at the deposition.

**ASSIGNMENT 59: Defendants' Attorneys: Taking the
Deposition of an Adverse Expert Witness
(Hao Tredwell, Firearms Expert)**

Defendants' attorneys scheduled a deposition of firearms expert, Hao Tredwell, for November 9, 20XX + 1, at 9:00 a.m. at the law office of defendant Davola's attorney. Tredwell is an employee of the Major State Patrol Crime Laboratory, whom the plaintiffs have indicated that they will call as an expert witness at trial. Attorneys for both defendants and plaintiffs will be attending the deposition.

In preparation for taking the deposition of Tredwell, you have reviewed his Crime Laboratory Report (Case File Entry 15); Tredwell's curriculum vitae; and available literature on firearms

comparison, trigger pull, and gunshot residue and the determination of proximity of the firearm's barrel to the impacted target.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files 1-33, 61, 63; (2) Chapter 9; (3) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendants Davola and Hard: Take the deposition of Tredwell.
2. Plaintiffs' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

ASSIGNMENT 60: Defendants' Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Pat Gage, Psychiatrist)

Dr. Pat Gage has been scheduled to be deposed by defendants' attorneys at 9:00 a.m. on November 15, 20XX + 1, at the office of counsel for defendant Davola. Attorneys for both defendants and plaintiffs will be attending the deposition.

As defendants' attorney, you have already received Dr. Pat Gage's pertinent files and reports, stating in essence that Deborah and Ronnie Summers suffer from post-traumatic stress disorder (PTSD) because of the shooting of Bruno Summers on September 3, 20XX. Also, in preparation for the deposition you have examined Dr. Gage's curriculum vitae.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-41, 44, 45, 52, 86; (2) Chapter 9; (3) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for defendants Davola and Hard: Take the deposition of Dr. Gage.

2. Plaintiffs' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

ASSIGNMENT 61: Plaintiffs' Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Ennis Martinez, Psychologist)

As plaintiffs' counsel, you have scheduled Dr. Ennis Martinez to be deposed in your office at 9:00 a.m. on December 11, 20XX + 1. Attorneys for both defendants and plaintiffs will be attending the deposition.

You have already reviewed Dr. Martinez's expert witness report, stating in essence that Deborah and Ronnie Summers did not suffer from post-traumatic stress disorder as a result of the shooting of Bruno Summers on September 3, 20XX. Also, in preparation for the deposition you have examined Dr. Martinez's curriculum vitae. Further, you have conferred with your expert, Dr. Gage, and (if you did Assignment 60) attended the defendants' deposition of your expert on November 15, 20XX + 1.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-41; 44, 45, 55, 86; (2) Chapter 9; (3) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Attorney for plaintiffs Ronnie and Deborah Summers: Take the deposition of Dr. Martinez.
2. Defendants' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

ASSIGNMENT 62: Plaintiffs' Attorneys: Taking the Deposition of an Adverse Expert Witness (Dr. Dale Thompson, Hotel Management)

As plaintiffs' counsel, you have scheduled Dr. Dale Thompson to be deposed in your office at 9:00 a.m. on November 22, 20XX + 1.

Attorneys for both defendants and plaintiffs will be attending the deposition.

You have reviewed Dr. Thompson's expert witness report to the effect that the management of the Garage Tavern on September 3, 20XX, was consistent with tavern practice and standards in the tavern/restaurant industry. This defense expert contradicts the expert, Ben Kaplan, who you have employed and who concluded that the operation of the Garage Tavern on September 3 was not in accord with standards for the industry. You have conferred with your expert and read your expert's file and report in preparation for taking Dr. Thompson's deposition.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-44, 46, 47, 58; (2) Chapter 9; (3) watch the demonstration videos of taking a deposition and using it at trial on CasebookConnect.com.

Assignments for Class: *Performance*

In class:

1. Plaintiffs' attorney: Take the deposition of Dr. Thompson.
2. Defendants' attorney: Attend the deposition and, if desired, examine the expert at the deposition.

Chapter 10. Persuasive Visuals and Modern Technology — Assignments

Criminal Case Assignments

ASSIGNMENT 63: Prosecutor and Defense Attorney: Planning and Visiting the Scene

Prepare to visit the scene of the shooting. You have seen photographs and diagrams of the Garage Tavern, but going there provides an entirely different feeling and perspective.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 4, 14, 15, 17, 26, 29, 30; (2) Chapter 10; (3) view the video of the tour of the Garage Tavern on CasebookConnect.com that is a companion to this text or, alternatively, your instructor may direct you to visit a tavern that will be designated as your Garage Tavern for the performance exercise.

Assignments for Class: *Performance*

In class, be prepared to visit and discuss the Garage Tavern scene.

**ASSIGNMENT 64: Prosecutor and Defense Attorney
Prepare Exhibits and Other Visuals**

You are preparing for trial, and you want to bring the case to life visually for the jury. You plan to do that with your exhibits, which include real, documentary, and demonstrative evidence. It is time for you to organize and prepare your exhibits, and most of all, to use your imagination to create persuasive demonstrative evidence and other visuals for the *State v. Hard* case.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 26-32; (2) Chapter 10; (3) on CasebookConnect.com view settlement and trial visuals by going to links.

Assignments for Class: *Performance*

In class, be prepared to display and discuss a visual you have created for the *State v. Hard* case. The visual you create may be either demonstrative evidence (such as a scene diagram) or an illustrative one (for instance, an argument visual). Your instructor will designate whether you are a prosecutor or defense counsel.

Civil Case Assignments

**ASSIGNMENT 65: Plaintiffs' and Defendants'
Attorneys: Planning and Visiting the Scene**

You should prepare to visit the scene of the shooting. You have seen photographs and diagrams of the Garage Tavern, but going there provides an entirely different feeling and perspective.

Preparation

Read and Watch: (1) On CasebookConnect Pretrial Case Files Entries 1-33, 62, 63, 66, 85; (2) Chapter 10; (3) view the video of the tour of the Garage Tavern on CasebookConnect.com or, alternatively, your instructor may direct you to visit a tavern that

will be designated as your Garage Tavern for the performance exercise.

Assignments for Class: *Performance*

In class, be prepared to visit and discuss the Garage Tavern scene.

ASSIGNMENT 66: Plaintiffs' and Defendants' Attorneys Prepare Exhibits and Other Visuals

You are preparing for trial, and you want to bring the case to life visually for the jury. You plan to do that with your exhibits, which include real, documentary, and demonstrative evidence. It is time for you to organize and prepare your exhibits, and most of all, to use your imagination to create persuasive demonstrative evidence and other visuals for the *Summers v. Hard* case.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 26-32; (2) Chapter 10; (3) Visit CasebookConnect.com to view settlement and trial visuals by going to links.

Assignments for Class: *Performance*

In class, be prepared to display and discuss a visual you have created for the *Summers v. Hard* case. The visual you create may be either demonstrative evidence (a scene diagram) or an illustrative one (an argument visual). Your instructor will designate whether you are plaintiffs' or defendants' counsel.

Chapter 11. Pretrial Motion Advocacy — Assignments

Criminal Case Assignments

ASSIGNMENT 67: Defense Attorney: Planning Constitutionally-Based Pretrial Motions

You have already raised several common law and statute-based pretrial motions (discovery and bail motions). Later, you will bring motions before the trial judge, that is, in limine, to resolve a variety of evidentiary issues. Now is the time to begin to plan

constitutionally based pretrial motions. Such motions can exclude evidence vital to the prosecution's case, resolve procedural matters in your favor (change of venue), or incidentally provide you with additional discovery for your case at trial through evidentiary hearings associated with the motions. Motions can also be part of a case strategy, because by putting constant pressure on the prosecution they may lead to a fairer disposition of the case.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1, 2, 4, 5, 15, 19, 32; (2) Chapter 11; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

In class, be prepared to discuss and justify your selection.

ASSIGNMENT 68: Prosecutor: Planning Responses to Constitutionally-Based Pretrial Motions (Suppression Motions)

In pretrial and trial work you must plan for every eventuality, good or bad. There are potential defense pretrial motions that, if successful, will exclude evidence in your case. It is important that you now assess the consequences of this possibility.

Do an item-by-item analysis of the effect on the presentation of your case theory to the jury if the defense is successful in its motion to suppress each such item (such as the gun).

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4-6, 15, 19, 32; (2) Chapter 11; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

In class, be prepared to discuss your analysis taking these pieces of evidence one at a time. Analyze how you would then alter or restructure your case to achieve your objectives considering the loss of the particular piece of evidence.

ASSIGNMENT 69: Defense Attorney and Prosecutor: Constitutionally-Based Pretrial Motion (Suppression of Ed Hard's Gun)

Defense counsel will move to suppress the gun seized at Ed Hard's house. To successfully bring the suppression motion, defense counsel must develop the legal basis for the motion. The first step in this endeavor is to develop the chain of relevant events that led to the seizure of the evidence. If the defense can break the chain by finding illegal or unsupportable government (police) conduct at any link, the evidence can be suppressed. The prosecution will respond to the defense suppression motion.

Unless your instructor tells you otherwise, your analysis of this problem should be based solely on Officer Yale's version of the search as described in his report and statement to the prosecutor (Case Files Entries 20, 21).

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 19, 20, 28, 76, 77; (2) Chapter 11; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

1. Outside of class, draft either the defense motion and memorandum of law supporting the motion or the prosecution's response to the motion. Your instructor will indicate who will represent the parties.
2. In class, be prepared to argue your motion or response to the motion.

ASSIGNMENT 70: Defense Attorney: Constitutionally-Based Pretrial Motion (Evidentiary Hearing: Suppression of Statements to Officer Yale)

You now wish to suppress the defendant's false exculpatory statement to Officer Yale ("I was home watching TV.") that Hard allegedly made when the police came to his home. The court has reserved a ruling on your motion to suppress the gun. Unless your instructor tells you otherwise, your analysis of this problem should be based solely on Officer Yale's version of the search as described

in his report and statement to the prosecutor (Pretrial Case Files Entries 19, 20).

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 19, 20, 28, 73, 76, 77; (2) Chapter 11; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

In class: Imagine that Officer Yale is testifying at the evidentiary hearing regarding the defense motion to suppress the false exculpatory statements (made at the door). Unless your instructor tells you otherwise, you will not actually put on the testimony of the witness.

1. **Prosecutor:** Determine the points you would want to bring out in Yale's testimony to support your legal position, if applicable. Be certain to consider how you would want Yale to characterize the relevant events, particularly those that are problematic for you.
2. **Defense attorney:** Determine the points you would want to present in Yale's testimony at the evidentiary hearing in support of the defense motion to suppress the false exculpatory statements (made at the door).
3. **Prosecutor and defense attorney:** Be prepared to argue your respective positions to the trial judge concerning the suppression of the false exculpatory statement.

ASSIGNMENT 71: Defense Attorney and Prosecutor: Constitutionally-Based Pretrial Motion (Suppression of the Statement Given to Detective Tharp)

The defense will move to suppress Hard's statements to Detective Tharp, and the prosecution will resist the motion. Be careful. Do not confuse: (1) an involuntary statement, which violates due process; and (2) a violation of the defendant's rights under *Mintz* (failure to give proper warnings, ineffective "waiver").

You recall that, according to the police report, Ed Hard was interviewed by Detective Tharp at 11:00 p.m. at the police station.

In that interview, Hard allegedly told Tharp that at approximately 9:00 p.m. Hard and two friends, John Gooding and Rebecca

Karr, went to the Garage Tavern for a drink. Hard was sitting at the bar, got up, and went to the restroom. As he approached the restroom, Bruno Summers came out of the restroom and confronted him. Hard stated that he was surprised to see Summers and had been unaware of the fact Summers had been in the tavern before the confrontation. Hard said he had not looked around the tavern; he had been drinking and conversing with his friends. Hard stated that Summers threatened and shoved him and then reached into his pocket. Hard stated that, in response, to protect himself he pulled a .22-caliber revolver from his coat pocket, cocked it, and pointed it at the wall. But the gun accidentally discharged, hitting Bruno Summers.

Tharp confronted Hard with the fact that (1) Hard had to have been aware of Summers in the tavern before meeting him coming out of the restroom, and (2) it would have been impossible to misjudge the aim at such a short distance. The following conversation then occurred:

Hard: I think I'd better get an attorney. Don't you think I'd better get an attorney?

Tharp: If you want an attorney, I can't ask you any further questions.

Hard: Do you think an attorney could help me?

Tharp: That's up to you to decide. Do you want an attorney?

Hard: I want to tell you what happened. That guy is a Nazi. Yes, I knew he was there. He deserved what he got. I couldn't continue to be afraid.

Tharp: Do you want an attorney?

Hard: Yes, I probably better get one.

At the hearing, Hard's oral and written statements will be offered by the prosecution. The defense will call no witnesses.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 4, 5, 15, 73, 76, 77; (2) Chapter 11; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: Performance

1. Outside of class, draft either the defense motion and memorandum of law supporting the motion or the prosecution's

response to the motion. Your instructor will indicate who will represent the parties.

2. In class, prosecutor and defense attorney, be prepared to argue your respective positions to the trial judge concerning the suppression of the statement.

Civil Case Assignments

ASSIGNMENT 72: Defendants' and Plaintiffs' Attorneys: Defendants' Motion for Summary Judgment and Plaintiffs' Response (Mental Distress)

Plaintiffs' complaint in *Summers v. Hard* was filed on November 1, 20XX. Plaintiffs and defendants sent written interrogatories, requests for documents, requests for admission, and completed depositions. It is now December 20, 20XX + 1. Discovery in *Summers v. Hard* is completed and a trial date has been set.

Defendants' attorneys believe the sixth claim for relief for intentional and negligent emotional distress asserted by plaintiffs Deborah, Amanda, Ronnie, Gretchen, and Hans Summers is particularly vulnerable for summary judgment. Attorneys for defendants Hard and Davola plan to file a motion for summary judgment.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-39, 51, 57, 59, 62-64, 66, 67, 85; (2) Chapter 11; (3) Fed. R. Civ. Proc. 5-7, 11-12, 56; (4) read sample motions at *CasebookConnect.com* under Additional Materials.

Assignments for Class: Performance

1. Outside of class:
 - a. Defendants' attorney: Prepare a written motion for summary judgment.
 - b. Plaintiffs' attorney: Prepare a response to the motion.
2. In class, plaintiffs' and defendants' attorneys argue or discuss the motion.

ASSIGNMENT 73: Plaintiffs' Attorney and Defendant Davola's EKKO Attorney: Plaintiffs' Motion to Compel Production of Documents and Defendant Davola's Response

Before filing a complaint for wrongful death, plaintiffs obtained the prosecutor's file in *State v. Hard*, which contained the police witness statements from Deborah Summers, Tom Donaldson, and Officers Yale and West. The police incorrectly listed Robin Luntlebunk instead of Roberta Montbank as a witness, so no statement was taken from her until November 3, 20XX (after the criminal case was dismissed). The police claim that they could not locate Ms. Montbank because they were given the name Robin Luntlebunk instead of Roberta Montbank. Plaintiffs' complaint, *Summers v. Hard*, was filed on November 1, 20XX. Defendants responded to the complaint on November 8, 20XX.

Plaintiffs sent written interrogatories to defendant Davola on May 15, 20XX + 1. In response to the plaintiffs' written interrogatories, plaintiffs learned that the EKKO Insurance Company interviewed and received a signed statement under oath from Roberta Montbank on October 26, 20XX. Ms. Montbank, 78 years of age, was a patron at the Garage Tavern on the night Bruno Summers was shot. Plaintiffs contacted Ms. Montbank on June 1, 20XX + 1. They asked her for the statement she gave to EKKO. Ms. Montbank declined to give it to the plaintiffs' attorney. Ms. Montbank explained that she was still a patron at the Garage Tavern and did not want to anger Mr. Davola.

Plaintiffs sent defendant Davola a written request for documents on July 15, 20XX + 1, requesting the witness statement of Roberta Montbank. Defendant Davola refused to produce the statement. Defendant Davola responded:

PLAINTIFFS' REQUEST TO PRODUCE DOCUMENTS DIRECTED TO DEFENDANT DAVOLA: REQUEST NO. 4. Witness statement of Roberta Montbank, taken by EKKO Insurance Company on behalf of defendant Davola shortly before *Summers v. Hard* was commenced on November 1, 20XX.

Answer: Work Product.

After receiving defendant Davola's response, plaintiffs' attorney met with defendant Davola's attorney on August 12, 20XX + 1, but they were unable to resolve the matter. The plaintiffs' attorney

plans to file a motion to compel Davola to produce the Montbank statement. Defendant Davola's attorney will resist plaintiffs' motion. Davola is represented by a private attorney and the EKKO Insurance Company. For this assignment, the EKKO Insurance Company is handling the entire motion.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 48, 50, 54, 60, 62-64, 66, 81, 85; (2) Chapter 11; (3) Fed. R. Civ. P. 11-12, 26-37; (3) read sample motions at CasebookConnect.com under Additional Materials.

Assignments for Class: *Performance*

1. Outside of class:
 - a. Plaintiffs' attorney: Prepare a written motion or a written outline of a motion to compel production of documents on Request No. 4. If you believe you should not proceed with a motion compelling discovery, draft a memorandum to your senior partner explaining your reasons for not proceeding.
 - b. Attorney for defendant Davola: Prepare a written response or a written outline of a response to plaintiffs' motion to compel production of documents on Request No. 4.
2. In class: Argue or discuss your written motion, memorandum, or response.

Chapter 12. Negotiating the Best Disposition — Assignments

Criminal Case Assignments

ASSIGNMENT 74: Defense Attorney and Prosecutor: Negotiation (Plea Bargaining)

The judge has denied all defense motions. The prosecutor and defense attorney bumped into each other at the courthouse, and the prosecutor suggested that they might explore a plea agreement. Although both attorneys believe they have a very triable case, as a matter of thoroughness they must give some consideration to the possibility of a plea bargain.

Counsel agree to meet and discuss a possible plea agreement.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 3-6, 8, 10, 14, 15, 17, 26, 61, 64, 65; (2) Chapter 12.

Assignments for Class: *Performance*

In class, you will be designated either to be a prosecutor or defense attorney and you will engage in plea negotiations with opposing counsel.

Civil Case Assignments

ASSIGNMENT 75: Attorney for Plaintiff Deborah Summers: Draft a Demand Letter

You are an associate attorney in a law firm. Deborah Summers was referred to you by a law school classmate. You did the initial interview with Ms. Summers. Your firm has taken the case that involves Edward Taylor Hard shooting Ms. Summers's husband Bruno Summers to death in the Garage Tavern. The Garage Tavern is owned by M. C. Davola. Your firm has conducted a preliminary investigation and research, including hiring Dr. Bruce D. Hann to prepare an economic loss report and Dr. Pat Gage, a psychiatrist, to evaluate emotional damage as a result of the shooting to Ms. Summers and her stepson Ronnie. Your firm's investigator has spoken with key witnesses and visited the scene.

Based on the investigation, the senior partner with whom you are working is contemplating filing a lawsuit if the matter cannot be settled promptly. The senior partner has asked you to draft a demand letter directed to EKKO Insurance Company, which represents Davola. Deborah Summers has authorized the firm to demand the amount of loss determined by Dr. Hann.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-35, 40, 44, 62-64, 78, 85; (2) Chapter 12.

Assignments for Class: *Performance*

1. Outside of class, draft a demand letter to defendant Davola.
2. In class, be prepared to discuss your demand letter.

ASSIGNMENT 76: Attorneys for Defendant Hard and SAPO Insurance Company: Negotiation Concerning Duty to Defend

Plaintiffs Deborah, Hans, Gretchen, Ronnie, and Amanda Summers filed a complaint on November 1, 20XX, naming Ed Hard, Mary Apple, Tom Donaldson, and M. C. Davola as defendants. Plaintiffs allege that defendants are responsible for the wrongful death of Bruno Summers. Ed Hard contacted an attorney to represent him in this case, *Summers v. Hard*.

Ed Hard has a homeowner's insurance policy with the SAPO Insurance Company. Ed Hard's attorney contacted the SAPO Insurance Company and requested that SAPO defend Ed Hard in *Summers v. Hard*, a civil lawsuit. SAPO's position is that it does not have a duty to defend Ed Hard because the shooting by Ed Hard was a premeditated, willful act and therefore not covered by the insurance contract. Ed Hard asserts the shooting was not an intentional or willful act and that the insurance company has a duty to defend him.

A meeting between Hard's attorney and the attorney representing SAPO Insurance Company is scheduled. The purpose of the meeting is to try to reach a settlement of this issue. Planning and preparing for the negotiation are critical.

Unless your instructor informs you otherwise, this negotiation occurs before an answer is filed in *Summers v. Hard*.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-35, 43, 62-64, 66, 82, 85 (2) Chapter 12; (3) 28 U.S.C. §2072.

Assignments for Class: Performance

In class, the attorneys for Ed Hard and the SAPO Insurance Company meet and negotiate on the issue of duty to defend under the SAPO Insurance contract.

ASSIGNMENT 77: Plaintiffs' and Defendants' Attorneys: Negotiation Between Plaintiffs and Defendants

Bruno Summers was shot by Ed Hard at the Garage Tavern on September 3, 20XX, and died on September 7, 20XX. A criminal case for first-degree murder, *State v. Hard*, was brought and

subsequently dismissed on October 1, 20XX. The Summers family filed a wrongful death and emotional distress case against Ed Hard, Mary Apple, Tom Donaldson, and M. C. Davola on November 1, 20XX. Defendants responded on November 8, 20XX. Discovery has been completed in *Summers v. Hard*. The trial has been scheduled to begin on April 1, 20XX + 2. The plaintiffs' attorney has requested a meeting to discuss settlement.

Attorneys for plaintiffs and defendants Hard and Davola have met with their respective clients before this meeting. This settlement discussion is scheduled for January 20, 20XX + 2, at 9:00 a.m. in the law offices of plaintiffs' attorney.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-60, 62-64, 66, 67, 81-85; (2) Chapter 12; (3) Fed. R. Civ. P. 16, 68.

Assignments for Class: Performance

In class, attorneys for defendants Hard and Davola and plaintiffs conduct settlement discussions in accordance with their clients' instructions. Hard is represented by an attorney with SAPO.

Chapter 13. Alternative Dispute Resolution Advocacy — Assignments

ASSIGNMENT 78: Plaintiffs' and Defendants' Attorneys: Arbitration and Mediation

Plaintiffs and defendants have been pursuing litigation to resolve the wrongful death and emotional distress claims brought by plaintiffs in *Summers v. Hard*. Formal discovery has been completed by the parties. The discovery process has been time-consuming and expensive. However, as new attorneys, your experience with litigation was limited. Now that you have experienced pretrial preparation, you can imagine how time-consuming and costly actual trial litigation in the *Summers v. Hard* case will be.

The plaintiffs' attorney has decided to investigate the possibility of mediation. The plaintiffs' attorney telephoned the defendants' attorneys and suggested a meeting to discuss mediation as an alternative.

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-37, 62-64, 66, 85; (2) Chapter 13.

Assignments for Class: *Performance*

In class:

1. Plaintiffs' and defendants' attorneys meet and discuss mediation and arbitration and their specific use in *Summers v. Hard*.
2. Your instructor may ask you to mediate this case.

Chapter 14. Pretrial Readiness Conferences — Assignments

ASSIGNMENT 79: Plaintiffs' and Defendants' Attorneys: Pretrial Readiness

Summers v. Hard is assigned to Judge Marci Armstrong's court for trial. Judge Armstrong has her bailiff, John McCarthy, contact counsel and ask them to complete items on her checklist to ensure the parties' readiness for trial. Judge Armstrong is convinced that the case will be ready for trial on the scheduled trial date if the attorneys answer her questions and complete the tasks on her checklist. It is five weeks from the trial date, and Judge Armstrong's bailiff just sent both plaintiffs' and defendants' attorneys the following email containing a checklist of questions to be answered and information to be provided:

Greetings, Counsel!

Your case, *Summers v. Hard*, Jamner County Cause Number 20XX012349, is scheduled for trial in Judge Armstrong's courtroom five weeks from today. At this time, the Court is assessing the readiness of this case for trial. Your assistance in providing us with the necessary information would be appreciated. Please respond as soon as possible, by answering the following questions:

- Is this a jury trial?
- How many days (5 hours per day) will the trial take? (Please consider the total length of the trial — motions in limine, voir dire, opening and closing arguments, examination of witnesses, and so on.)
- How many motions in limine do the parties intend to present to the Court? How much court time do the parties anticipate needing to address the motions in limine?
- Have the parties participated in ADR (*ADR is required in all cases, even trials de novo)? If not, why not?
- Will there be expert witnesses? If so, what type of expert?

- Out-of-town witnesses? If so, where will they be traveling from?
- Is an interpreter needed for this trial? If so, for whom and which language?
- Are there any other special circumstances the Court should be aware of about this case or trial scheduling?

Please make sure that you adhere to the most recent case scheduling order for all pre-trial deadlines for filing and submitting working copies to the Court. Your trial briefs and other working papers are due to the Court on Monday two weeks from today's date.

Below is additional information that Judge Armstrong requires by the deadline of two weeks from today's date.

WITNESS TIME FORM: Judge Armstrong requires that this Witness Time Form be completed for all her cases. We ask that the parties cooperate in attempting to make an accurate estimate of the time needed for witness examination during trial. I have attached an electronic copy of the witness time form. Please feel free to adapt it to the needs of this case by adding sections for additional defendants' witnesses, adding cross-examination columns for additional parties, or adding rows for additional witnesses.

JOINT NEUTRAL STATEMENT: Please work together to prepare a brief (one paragraph or less) Joint Neutral Statement about the case, which Judge Armstrong will read to the jury at the beginning of voir dire.

PROPOSED VOIR DIRE QUESTIONS: I have attached a copy of Judge Armstrong's general voir dire for civil cases. Please review this and provide any additional questions that you instead believe would be appropriate for the judge to ask, before counsel begin their voir dire. For example, general questions like "Do you, any of your close friends, or relatives work in the medical profession?" provide a good base for the attorneys to use for individual follow-up.

Thank you for your assistance in completing this information. If you have any further questions regarding trials in Judge Armstrong's courtroom, feel free to contact me.

With kind regards,

John

John McCarthy

Bailiff to Judge Marci P. Armstrong

ATTACHMENT — ESTIMATE OF WITNESS EXAMINATIONS —
Judge Armstrong's Estimate of Witness Examinations is identical to Judge John P. Erlick's Witness Examinations chart on pages 652-653

ATTACHMENT — COURT’S PROPOSED VOIR DIRE QUESTIONS

Court’s Proposed Voir Dire Questions

Honorable Marci Armstrong

Jamner County Superior Court

If you would answer “yes” or “probably” to any of the questions addressed generally to all the prospective jurors, please raise your hand until the lawyers and I have made a note of the response. At this time, I will ask all of you a few questions touching on your qualifications to sit upon this jury. Please do not relate any specific thing you may have heard concerning this case.

- (a) Have you heard of the case _____ v. _____ before?
- (b) Do any of you know any of the parties to this case, whether it be the plaintiff or defendant? Has anyone ever expressed to any of you an opinion concerning this case?
- (c) Have any of you had any business dealings with either the plaintiff or the defendant companies?
- (d) The plaintiff is represented by _____ of the law firm _____. Do any of you know or have any of you had any contact with any members of his/her law firm?
- (e) The defendants _____ are represented by _____ of the firm. Do any of you know _____ or have any of you had any contact with any members of his/her law firm?
- (f) Do any of you know any of the following individuals who may be called as witnesses in this case: (joint statement of evidence: witnesses)?
- (g) Do any of you have any ethical, moral, or philosophical views which may cause you to feel uncomfortable sitting as a juror in a case where one party is asking for a money judgment against another?
- (h) Do you or any of your relatives or close friends have any connection in any way with the court system or the administration of justice?
- (i) Have any of you been a witness in a court proceeding?
- (j) How many of you have sat as jurors on a criminal case?
- (k) How many of you have sat as jurors on a civil case?
- (l) Has any juror ever studied or practiced law, medicine, or _____?

- (m) Are there any of you who will not follow the law as given to you by the court regardless of what you personally believe the law is or ought to be?
- (n) This case involves an_____. Have any of you or a close friend or relative had any experience with a similar or related type of case or incident?

Preparation

Read: (1) On CasebookConnect Pretrial Case Files Entries 1-92, 96, 98-100, 102; (2) Chapter 14.

Assignments for Class: *Performance*

1. During preparation for class, plaintiffs' and defendants' attorneys answer Judge Armstrong's questions and complete the assigned pretrial preparation tasks for *Summers v. Hard*. Some of these matters will require that you confer with opposing counsel, such as formulating the joint neutral statement of the case. Your instructor may advise you who your opposing counsel is for this assignment. In class, submit your answers to the judge's questions along with the Joint Statement, Witness Time Form, and Proposed Jury Selection Questions to your instructor.
2. In class, discuss the answers you gave to the judge's questions and the information requested for her Joint Statement, Witness Time Form, and Proposed Jury Selection Questions.
3. In class, your instructor may have you attend a pretrial readiness conference hosted by a real judge.

VII. TABLE OF CONTENTS FOR CASE FILES ON CASEBOOKCONNECT.COM

The documents listed in this Table of Contents can be located on CasebookConnect.com.

Criminal Case File Entries: *State v. Hard*

Media Information

- E-1. Newspaper Articles
- E-2. Television and Radio Log Pleadings

Pleadings

E-3. Information

Police Reports

E-4. Ruston Police Report File
Ruston Police Department Report
Ruston Police Department Report: Follow-up Report
Witnesses
Evidence Record

Documents, Letters, and Reports

E-5. Alcohol Influence Report
E-6. Firearm Materials for Ed Hard
State of Major Application to Transfer Pistol Photocopy of
Ed Hard's Check
Department of the Treasury Firearms Transaction Record
E-7. Letter, Medical Examiner Autopsy Report, and Toxicology
Report
E-8. Death Certificate of Bruno Summers
E-9. Dental Record of Ed Hard
E-10. FBI Criminal Records
E-11. Letter and Hospital Records of Bruno Summers
E-12. Neo-Nazi Survivalist Organization Card (enlarged)
E-13. Crime Laboratory Report

Statements

E-14. Tom Donaldson
E-15. Ed Hard (Explanation of Rights)
E-16. Robin Luntlebunk
E-17. Deborah Summers
E-18. Officer F. West
E-19. Officer M. Yale
E-20. Officer Yale Interview Transcript

Curriculum Vitae

E-21. Dr. Brett Day, Attending Doctor
E-22. Dr. L. R. Jackson, Medical Examiner
E-23. Dr. T. A. Loopman, Pharmacologist
E-24. James Raven, Polygrapher
E-25. H. Tredwell, Firearms Examiner

Diagrams

E-26. Scale Diagram, Garage Tavern
E-27. Scale Diagram, Gull Gas Station
E-28. Diagram (not to scale), Edward Hard's House

Photographs

E-29. Garage Tavern Photos

- Garage Tavern (Garage Exterior Photo A)
- Garage Tavern (Garage Exterior Photo B)
- Garage Tavern (Garage Exterior Photo C)
- Garage Tavern (Garage Interior Photo D)
- Garage Tavern (Garage Interior Photo E)
- Garage Tavern (Garage Interior Photo F)
- Garage Tavern (Garage Interior Photo G)
- Garage Tavern (Garage Interior Photo H)
- Garage Tavern (Garage Interior Photo I)
- Garage Tavern (Garage Interior Photo J)
- Garage Tavern (Garage Interior Photo K)
- Garage Tavern (Garage Interior Photo L)
- Garage Tavern (Garage Interior Photo M)
- Garage Tavern (Garage Interior Photo N)
- Garage Tavern (Garage Interior Photo O)
- Garage Tavern (Garage Interior Photo P)
- Garage Tavern (Garage Interior Photo Q)
- E-30. Photos After Shooting of Bruno Summers
 - Photos After Shooting of Bruno Summers, 09.03.20XX (Photo A)
 - Photos After Shooting of Bruno Summers, 09.03.20XX (Photo B)
- E-31. Photos of Bruno, Deborah, and the Summers Children
 - Photos of Bruno, Deborah, and the Summers Children (Photo A)
 - Photos of Bruno, Deborah, and the Summers Children (Photo B)
 - Photos of Bruno, Deborah, and the Summers Children (Photo C)
 - Photos of Bruno, Deborah, and the Summers Children (Photo D)
 - Photos of Bruno, Deborah, and the Summers Children (Photo E)
 - Photos of Bruno, Deborah, and the Summers Children (Photo F)
 - Photos of Bruno, Deborah, and the Summers Children (Photo G)
 - Photos of Bruno, Deborah, and the Summers Children (Photo H)
 - Photos of Bruno, Deborah, and the Summers Children (Photo I)
 - Photos of Bruno, Deborah, and the Summers Children (Photo J)

- E-32. Photos of Gun and Bullets
 - Gun (Photo A)
 - Bullets (Photo B)
- E-33. Knife (Photo)

**Civil Case File Entries: *Summers v. Hard*
(Includes Criminal Pretrial Case File, Entries 1-33)**

Pleadings

- E-34. Summons
- E-35. Complaint (for critique only)
- E-36. Ed Hard Answer (for critique only)
- E-37. Davola, Donaldson, and Apple Answer (for critique only)

Deborah Summers's Medical Records

- E-38. Jamner County Health Department
- E-39. Neva County Medical Services

Economic Reports and Photographs

- E-40. Dr. Bruce Hann Report and Photos
 - Dr. Bruce Hann Report
 - University Fitness Photos (Photo A)
 - University Fitness Photos (Photo B)
 - University Fitness Photos (Photo C)
- E-41. Dr. Thomas Monday

Insurance Company Policies

- E-42. EKKO Insurance Policy
- E-43. SAPO Insurance Policy

Psychologists' Reports and Files — Emotional Distress

- E-44. Report and Files of Dr. Pat Gage, Doctor for Deborah and Ronnie Summers
- E-45. Report of Dr. Ennis Martinez

Tavern Management Reports

- E-46. Dr. Dale Thompson, Operations Practices Report
- E-47. Dr. Ben Kaplan, Assessment of Operations
- E-48. Letter to Roberta Montbank from Plaintiffs' Attorney
- E-49. Garage Tavern Economic Statements
 - Letter
 - Profit and Loss Statement
 - Balance Sheet

Curriculum Vitae

- E-50. Dr. David Bowman, Psychologist
- E-51. Dr. Sherman Croup, Doctor for Deborah Summers
- E-52. Dr. Pat Gage, Psychiatrist
- E-53. Dr. Bruce D. Hann, Economist
- E-54. Dr. Hollis Lufkin, Psychiatrist

- E-55. Dr. Ennis Martinez, Psychologist
- E-56. Dr. Thomas Monday, Economist
- E-57. Dr. Edward Risseen, Doctor for Deborah Summers
- E-58. Dr. Dale Thompson

Deposition Excerpts and Statement

- E-59. Dr. Sherman Croup
- E-60. Roberta Montbank

General Research Case File

State of Major Statutes

- E-61. Criminal Statutes (excerpts)
- E-62. Civil Statutes (excerpts)

State of Major Civil Administrative Regulations

- E-63. State of Major Civil Administration Regulations

State of Major Professional Responsibility Code

- E-64. State of Major Professional Responsibility Code

State of Major Jury Instructions

- E-65. State of Major Criminal Jury Instructions
- E-66. State of Major Civil Jury Instructions

Medical Glossary

- E-67. Medical Glossary

Research Memoranda Criminal

- E-68. Bail
- E-69. Suppression Hearing Testimony
- E-70. Equal Protection and Right of Indigent to Offset Economic Imbalance
- E-71. Felony-Murder and “Merger”
- E-72. Fifth Amendment
- E-73. Police Interrogation
- E-74. Prosecution Discovery and the Work-Product Privilege
- E-75. Prosecution’s Duty to Provide Defendant with Exculpatory Evidence
- E-76. Search and Seizure
- E-77. “Taint” Cases

Research Memoranda Civil

- E-78. Automobile Negligence
- E-79. Child Custody
- E-80. Consumer Actions
- E-81. Discovery
- E-82. Duty to Defend
- E-83. Motion to Strike
- E-84. Remarriage
- E-85. Wrongful Death; Emotional Distress
- E-86. Expert Witnesses; Methodological Reliability

The Garage Tavern

A visit to the Garage Tavern is on the CasebookConnect.com website that is a companion to this book.

VIII. TABLE OF CONTENTS FOR EXEMPLARY FORMS ON CASEBOOKCONNECT.COM

The documents listed in this Table of Contents can be located on the CasebookConnect.com. CasebookConnect is periodically updated, and additional exemplary forms will be found on the website.

Chapter 4: Forging the Attorney-Client Relationship

- 4.1 Initial Contact Intake form
- 4.2 General Authorization to Release Information form
- 4.3 Employment and Contingency Fee Agreement form
- 4.4 Flat Fee Agreement form
- 4.5 Fee Agreement for Defense in Criminal Proceedings
- 4.6
 - a. Non-Engagement Letter
 - b. Non-Engagement Letter (After Review)
 - c. Non-Engagement Letter (Follow-up to Initial Interview)
 - d. Non-Engagement Letter (After Research)
 - e. Awaiting Further Instructions Letter
 - f. Disengagement Letter (Unpaid Fees)
 - g. Declining Further Representation Letter
 - h. Closing Letter

Chapter 8: Creating a Coordinated Discovery Plan

- 8.1 Order Requiring Joint Scheduling Report
- 8.2 Spoliation Letter to Opposing Counsel
- 8.3 Civil Discovery Motion
- 8.4 Criminal Motion to Compel Discovery

Chapter 9: Taking and Defending Depositions

- 9.1 Subpoena Duces Tecum

Chapter 11: Pretrial Motion Advocacy

- 11.1 Notice for Civil Motion
- 11.2 Motion Memorandum of Law

- 11.3 Exhibit — Evidence Relied Upon
- 11.4 Proposed Order
- 11.5 Declaration of Service

Chapter 12: Negotiating the Best Disposition

- 12.1 Demand Letter
- 12.2 Settlement Agreement
- 12.3 Dismissal

Chapter 13: Alternative Dispute Resolution Advocacy

- 13.1 Mediation Brief

Chapter 14: Pretrial Readiness Conferences

- 14.1 Omnibus Application by Plaintiff and Defendant

IX. TABLE OF CONTENTS FOR ADDITIONAL MATERIALS ON CASEBOOKCONNECT.COM

The documents listed in this Table of Contents can be located on CasebookConnect.com. CasebookConnect is periodically updated and additional materials beyond those listed here will be found on the website.

Preparing and Managing the Case

Working in Teams

Client Folder

- Client Instructions
- Advice to Clients Regarding Social Networking Sites
- Contingency Fee Agreement
- Hitch Act Medical Records Request
- Authorization for Release of Information
- Client Matter Short Form (Non-Auto PI)
- Client Matter Short Form (Auto PI)

Complaints

- Complaint Jawbone v. Fitbit CA '15
- Complaint 594
- Complaint U-Haul

Federal Amended Complaint
Wrongful Death Complaint – State – Steinberg

Discovery

Electronic Discovery Plan
Interrogatories and Requests for Production – Federal
Pattern Interrogatories – Defendant to Plaintiff Auto Tort KC Bar
Pattern Interrogatories – Plaintiff to Defendant Auto Tort KC Bar
Requests for Admissions – State- Moomba

Declaration

Declaration – U-Haul

Demand Letter

Manziel

Deposition

Prep Witness for Deposition

Jury Verdicts

Northwest Personal Injury Litigation Report

Motions

Writing and Arguing Motions – Judge John Erlick
Motion Compel Discovery
Motion in Limine – Neuheisel
Motion for Summary Judgment – U-Haul

Mediation

Mediation the Right Way – Charles Burdell
Mediation Preparation Checklist

Appellate

Appellate Advocacy Justice Faith Ireland