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## Practice Court Rules

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UNIVERSITY OF MICHIGAN  
LAW DEPARTMENT

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# PRACTICE COURT RULES

PUBLISHED BY THE UNIVERSITY

## INTRODUCTORY.

### THE PURPOSE AND ORGANIZATION OF THE COURT

The purpose of the Practice Court is to afford to students of this department practical instruction in pleading both at law and in equity, under the common law system and the "reformed" or "code" procedure, and actual experience in the commencement and trial of cases through all their stages.

The Practice Court is a part of the Department. It sits in one or more sections as the exigency of the work requires. A Supreme Court sits at stated times for the review of errors committed by the trial courts.

The officers of the court are the presiding judge, the clerk and the sheriff, and such deputies as may be necessary. The sheriff, deputy clerk and deputy sheriffs are appointed from the students, and perform their duties as part of the work of the Department. The clerk is clerk *ex officio* of the Supreme Court, and of all sections of the Practice Court.

Two classes of cases are presented:

*First.* Cases arising upon given Statements of Fact, prepared and assigned by the presiding judge, upon which pleadings are to be framed and the cause conducted to an issue, when it will be argued and disposed of as a question of law upon the facts admitted. This class of cases will afford the student practical experience in the commencement of suits, and the preparation of pleadings and the argument of the questions of law arising upon the facts. The practice and pleadings will be

under the common law or the code procedure, as the student may elect. The process, pleadings and other papers filed in the case will be examined and criticised, and shall be rewritten and revised until they are satisfactory in substance and form. The case will then be set for hearing upon the question of law.

*Second.* Actual controversies will be arranged and assigned for trial as issues of fact. The course will involve the entire conduct of an actual case from its beginning to a final judgment in the Supreme Court. This will involve the issue of proper process, the preparation and filing of appropriate pleadings, the subpoenaing of the witnesses, the impaneling of the jury, the examination and cross-examination of witnesses, the arguments to the court and jury, and all the other incidents of a contested trial.

For the purpose of this work the class is divided into sections, and the work of attorneys, witnesses, jurors and the like is performed by the students. These trials are conducted with all the dignity and decorum of actual practice.

Every member of the Senior class who is a candidate for a degree is required to take part in both courses, and to perform all the incidental duties which may be required of him. Satisfactory completion of both courses and of all incidental work required is a condition precedent to a degree.

## **Rule 1.**

### **ASSIGNMENT OF ATTORNEYS.**

Four students will be assigned as attorneys to each case. Any four students wishing to be grouped together for work in either course 1 or course 2 will be so assigned, subject to the discretion of the presiding judge. The grouping of attorneys made for course 1 may be con-

tinued for course 2, or new groupings may be formed, at the students' option. But in either case separate grouping blanks, obtainable at the clerk's office, must be made out and filed for each course. Students not able to group themselves will be assigned to groups by the presiding judge.

## **Rule 2.**

### **SELECTION OF FORUM**

The students who constitute each group may choose the state in which venue shall be laid, subject to the control of the presiding judge. The venue adopted for course 1 may be changed for course 2, if the attorneys elect.

## **Rule 3.**

### **AUTHORITIES CONTROLLING IN MATTERS OF PROCEDURE.**

Except as modified by these rules, the questions as to the proper court and form of action and questions of practice, pleading and evidence, shall be governed by the rules of practice of the State in which the venue of the action is laid. This rule applies to both courses.

## **Rule 4.**

### **AUTHORITIES CONTROLLING IN MATTERS OF SUBSTANTIVE LAW**

All questions of substantive law shall be decided according to the general weight of authority, the decisions of the courts of the state of venue being given no authoritative force exceeding those of other jurisdictions. Weight of authority does not necessarily mean number of authorities. This rule applies to both courses.

## **Rule 5.**

### **WRITS OF PROCESS.**

The summons, notice, or other form of process shall be prepared by the attorneys representing the plaintiff in the action, together with the requisite number of copies, and they will be issued by the clerk. The statutes and court rules of the state of venue shall be exactly followed in respect to the time within which the defendant is commanded to appear, or plead, or within which the sheriff is commanded to make his return, but the actual service and return must be made within five days from the date of issuance of the writ or notice, and actual appearance must be made within fifteen days from the date of actual service. Default in either of these regards will be deemed to be default under the terms of the writ or notice. This rule applies to both courses.

## **Rule 6.**

### **SERVICE OF PROCESS.**

Process for course 1 shall be served by the attorneys representing the plaintiff upon one of the attorneys representing the defendant, but the return must be correct on its face and must show actual service upon the defendant by the sheriff or other person authorized by the law of the state of venue to serve process. For this purpose the attorneys serving process may sign the return or certificate of service with a fictitious name, and may employ such fictitious names as are necessary in the body of the return or certificate.

Process for course 2 shall be served by the duly appointed sheriff of the court upon the actual defendant, but the attorneys who prepare the process shall endorse upon the original a suitable return which will indicate to the sheriff how service is to be made, and which he will date and sign after service in accordance therewith.

## **Rule 7.**

### **TIME OF PROCEEDINGS.**

All steps and proceedings in any cause, not otherwise herein provided for, shall be taken within the time fixed therefor by the rules and practice applicable to the action as determined by the practice of the State in which the venue is laid, except that more than fifteen days shall not be allowed in any case. If the fifteenth day falls on Saturday or Sunday, the time will be deemed to expire on the last preceding day on which the clerk's office is open. This rule applies to both courses.

## **Rule 8.**

### **COMMENCEMENT OF ACTIONS.**

Action in course 1 shall be commenced within fifteen days from the day upon which the Statement of Facts is assigned.

Action in course 2 shall be commenced within the time announced on the court bulletin board, and the same rule of limitation shall apply as in actions in course 1.

## **Rule 9.**

### **COMPUTING TIME.**

In determining the time within which any proceeding must be taken, all days shall be counted, including Saturday and Sunday, unless the time limited is less than three days, in which case Saturday and Sunday shall be excluded. Vacation days, and regular department examination days at the close of the first semester, including the day upon which examinations begin, and all days thereafter prior to the day upon which classes are resumed, shall not be counted in estimating time. The word "within", as applied in these rules, means "not exceeding".

## **Rule 10.**

### **DEMURRERS AND MOTIONS.**

In course 1, all demurrers, except those going to the merits of the case, all motions and all other interlocutory matters shall be brought on for determination at the next regular motion day, provided that two days' notice be given in writing to the opposite party and to the clerk. A party entitled to such notice may, however, waive the same, and upon the filing of such waiver the clerk will docket the matter for hearing.

In course 2, the same rule applies as above, except that any defects that are deemed fatal may be left until the trial, at the option of the party wishing to avail himself of the same, provided a memorandum of the defects and the contemplated objections thereto be filed with the clerk before the case is called for trial. A case disposed of upon a fatal objection being raised at the trial will not be re-tried.

## **Rule 11.**

### **REGULAR MOTION DAY.**

The court will sit each week for the purpose of determining questions of pleading and practice, on a day to be announced on the bulletin board. Additional motion days will be announced if the business brought before the court requires it. This rule applies to both courses.

## **Rule 12.**

### **FILING JOURNAL ENTRIES.**

After the determination of any matter brought on to be heard on motion day, the attorneys representing the successful party shall, within forty-eight hours, file with the clerk an order or journal entry embodying the ruling of the court. Blank forms may be obtained in the clerk's office. This rule applies to both courses.



### **Rule 13.**

#### **SERVING COPIES OF PAPERS.**

A copy of each pleading or other paper filed in the cause, except note of issue, practice brief, law brief and such papers as have been served by the sheriff and the same evidenced by his return, shall be served upon the attorney of the opposite party within one day after the filing of the original. Failure to observe this rule will entitle the opposite party to a default upon reasonable application to the court. An affidavit of service shall in each instance be endorsed upon the original after such service. This rule applies to both courses.

### **Rule 14.**

#### **FILING OF PAPERS.**

Every pleading or other paper filed in the cause must be neatly and legibly written on one side of the paper only, and enclosed in a regular practice court cover, properly endorsed. Covers should not be attached by *removable* clips. No paper will be filed which does not conform with this rule. Typewritten papers are required in all cases except when special leave is obtained. This rule applies to both courses.

### **Rule 15.**

#### **NOTICES OF ISSUE AND OF TRIAL.**

Within five days after a cause is at final issue on the pleadings, each party shall file with the clerk a notice of issue. Where the practice of the state of venue requires a notice of issue, the form there approved should be followed. In other cases the Michigan form may be used, and blanks in this form may be obtained in the clerk's office. A notice of trial is necessary only when required by the practice of the state of venue, and, when neces-

sary, shall be filed with the notice of issue. This rule applies equally to course 1 and course 2.

### **Rule 16.**

#### **PRACTICE BRIEF.**

Within five days after final issue is reached on the pleadings, each party shall file a practice brief. This shall consist of a detailed statement of every step taken by the party in the prosecution of the cause, with a citation of authority (statute, form, rule of court, decision or text-book) for each such step. It should be full enough to support the substance and form of each paper filed, and the reason and time of filing the same; but should not deal with the substantive law of the case. This rule applies equally to course 1 and course 2. No practice brief is required from the attorneys representing the defendant in a criminal case.

### **Rule 17.**

#### **CRITICISM OF PLEADINGS.**

As soon as practicable after a case in course 1 is at final issue and all the requisite papers are filed, it will be posted for criticism of the pleadings, at which all the attorneys connected with the case must be present. All pleadings and other papers will be critically examined, and the attorneys will be called upon to defend the papers they have filed. If it appears that any pleadings or other papers are defective in substance or form, such papers will be required to be rewritten, and no papers will be finally accepted until they are correct both in substance and in form. The time within which such amended papers shall be filed shall be fixed by the court.

### **Rule 18.**

#### **ARGUMENTS.**

In the argument of any cause to the court thirty min-

utes shall be consumed by each side unless, on the opening of the argument, different time is asked for and allowed. When the nature of the cause will permit, the attorneys on each side shall divide the question for argument in such a manner that each will discuss different propositions. They shall also divide the time between them as equally as practicable, and each attorney will be required to participate in the argument.

In presenting authorities to the court, the attorneys shall cite those cases only which they deem most directly in point, and they must be prepared to state the facts and rulings of the cases cited *without reading from the book*. Extended readings from cases will not be allowed.

### **Rule 19.**

#### **BRIEF ON THE LAW OF THE CASE.**

The attorneys for each party in course 1 will be expected to prepare a full and accurate brief upon the law of their case, with careful analyses of the leading cases and ample citation of authorities, accompanying each case cited with the date when it was decided. This brief should be enclosed in the regular practice court cover, properly endorsed, and should be left with the judge at the close of the oral argument. Each brief will be carefully examined and graded.

### **Rule 20.**

#### **JUDGMENT IN COURSE 1.**

At the close of the law argument in each case, the copies of the statement of facts, upon which the case was founded, are to be handed to the judge, and the attorneys shall at the same time arrange with the judge to meet him at some future time, not exceeding two weeks from the day of the law argument, at which time he will render his judgment and give his reasons for the same.

## **Rule 21.**

### **COURSE 1 MUST PRECEDE COURSE 2**

No student will be allowed to take up course 2 until he shall have received credit for course 1, except upon cause shown and consent obtained from the presiding judge.

## **Rule 22.**

### **MATTER TO BE SUPPLIED BY THE PLEADER**

In course 1, names of towns, counties or States omitted or designated by letter, and names of companies or corporations designated by letters, *shall* be supplied by the pleader, and so shall any matter of recital or description of property, or matter by way of inducement, place or person, necessary to good pleading; but the facts as stated must not be altered thereby. The manner in which any accident, injury or other event happened shall be supplied by the attorneys where not described in the Statement of Facts furnished, but it must not be inconsistent therewith. If any pleading alleges facts inconsistent with the statement furnished, a motion should be made to strike out or correct the inconsistent allegation.

In course 2 such matter of description and matter by way of inducement necessary to good pleading may be supplied by the pleader, but no facts shall be stated in the pleading inconsistent with the case as arranged. Nor shall any facts be supplied which are manifestly beyond the scope of the case as arranged. If the pleading be deemed to offend against this rule, the question may be raised by a motion to strike, but this shall be done before the trial.

In criminal cases in course 2, all necessary steps prior to the filing of the indictment or information will be deemed to have been properly taken, but the

indictment or information must be complete in every respect, both as to form and substance.

### **Rule 23.**

#### **FILING LIST OF WITNESSES**

The grouping blanks for attorneys in course 2 have spaces for the names of twelve witnesses, which the attorneys must fill out before the blanks are filed. The selection of witnesses is left wholly to the attorneys, but no case will be arranged unless the full number of witnesses has been secured, six witnesses to represent each side.

### **Rule 24.**

#### **ARRANGEMENT OF CASES FOR COURSE 2.**

In course 2 actual controversies are arranged so as to develop issues of fact. Notice of the arrangement of each case will be posted on the bulletin board, and the attorneys and witnesses will be expected to attend promptly at the time indicated. The attorneys will be expected to notify their own witnesses, and if for any reason a witness cannot attend, the attorney which secured such witness must obtain a substitute and notify the clerk at least 24 hours before the time set for the arrangement. This is necessary in order that the case may be properly prepared for arrangement.

### **Rule 25.**

#### **JURIES.**

Panels of twenty-four jurors will be posted on the bulletin board from day to day during the trial of cases in course 2. Jury service is part of the regular work of the department, and no student will be entitled to credit in the course who has not satisfactorily performed this duty. Each student will serve during four trials. Jurors

are expected to give strict attention to the evidence, to endeavor seriously and in good faith to reach conclusions warranted by the instructions and the evidence, and both in the jury box and in the jury room to maintain the purpose and dignity of their position.

### **Rule 26.**

#### **ATTENDANCE OF JURORS, ATTORNEYS, AND WITNESSES.**

Court will open for the trial of cases promptly at the time announced, and jurors, attorneys and witnesses will be expected to be on hand punctually. If the attorneys wish to use books from the library, these should, if possible, be brought in before the court opens. A student whose name appears upon a jury panel *must* either be present himself or procure a substitute, but when a substitute serves, he and not the person originally posted shall be entitled to credit.

### **Rule 27.**

#### **WITNESSES.**

Except as to those matters assumed to be true for the purpose of trial causes, witnesses in such cases will be expected to testify to the exact occurrence as they understand it without addition or alteration.

The facts assumed may be testified to as though they were actual facts and are not to be varied without the previous consent of both parties, nor shall they be subject to cross-examination or contradiction upon the trial. As to the other facts and occurrences enacted, the knowledge of the witness may be tested by cross-examination. Any witness may, however, supply evidence as to his assumed age, residence or occupation in any manner consistent with his assumed character, and not inconsistent with the real or assumed facts, and as to the evi-

dence so supplied he shall not be subject to contradiction. Upon the trial, the transaction is to be treated as an actual transaction, and all reference to the feigned nature of the case, and all controversies as to the facts agreed upon, are to be avoided. No witness should be put upon the stand until the party calling him has ascertained what his testimony will be and it is found to be consistent with the facts.

Unless some cause to the contrary appear, the examining counsel will stand during the examination and cross-examination of witnesses: one counsel only shall examine or cross-examine a witness, and only one counsel on a side will be heard in the argument of questions arising during the trial.

Not more than two witnesses shall be called upon any one point in dispute, unless for cause shown, and no more than six different witnesses shall be called by either side.

## **Rule 28.**

### **PREPARATION AND FILING OF INSTRUCTIONS.**

Each party must prepare complete and proper instructions for the jury. These should be based upon the special facts of the case and should embody the law applicable to those facts as represented by the weight of authority. Upon a separate sheet of paper, but enclosed in the same cover as the instructions, should be given sufficiently full citations of authority to support the instructions asked. Instructions must be filed at least twenty-four hours before the case is to be called for trial. A careful study of the proper practice in drawing instructions is recommended, as the instructions prepared will be carefully and critically examined and students will be graded upon the showing made.

## **Rule 29.**

### **THE COURT FILES.**

The files in all cases are open to the inspection of the attorneys whenever the clerk's office is open, but files and papers shall not be removed from the clerk's office except for use in court.

## **Rule 30.**

### **OFFICE HOURS OF THE JUDGE AND CLERK.**

The clerk's office shall be open at least one hour each working day of the department, at a time posted in the bulletin board.

The judge shall have regular office hours which will be announced in the bulletin board.

## **Rule 31.**

### **TERMS OF COURT.**

Term time will be deemed to extend over the entire period of the college year, including vacation periods. The name of the term may be First Semester or Second Semester Term, as the case may be, or may be in accordance with the local rules of the county of venue.

## **Rule 32.**

### **ERROR AND APPEAL.**

A Supreme Court, consisting of two or more members of the faculty, will sit whenever necessary for the hearing of appeals and the correction of errors.

In course 2, when no stenographer is provided, attorneys desiring a review of the case in the Supreme Court shall take at the trial such notes of the proceedings as will enable them to present the matter alleged as error. Bills of exception may be made and settled from such notes and those taken by the presiding judge.



### **Rule 33.**

#### **SHERIFFS.**

For cases in course 2 sheriffs are appointed from the members of the class to serve for limited terms. They will serve all papers and process, and will be present at the sessions of the court. Students appointed as sheriffs will be excused from jury duty.

### **Rule 34**

#### **SUBPOENAS.**

Subpoena blanks for witnesses may be obtained at the clerk's office. It is not necessary to issue subpoenas if the attorneys prefer to rely on their own personal notice to the witnesses, but in case a witness fails to appear, a subpoena duly issued and served will constitute conclusive evidence of diligence on the part of the attorney.

### **Rule 35.**

#### **METHOD OF EMPANELLING JURY.**

Each group of attorneys in course 2 will be required to prepare and file at least twenty-four hours before their case is called for trial, a detailed statement of the precise method of empanelling a jury according to the rules obtaining in the state of venue, with citation of authorities for the same.

### **Rule 36.**

#### **STIPULATIONS OR AGREEMENTS OF COUNSEL.**

Stipulations or agreements as to any matter connected with the conduct of the trial, mutually entered into by the respective attorneys, must be in writing, signed by the attorneys, or they will not be considered by the court.

### **Rule 37.**

#### **BOOKS TAKEN FROM LIBRARY MUST BE RETURNED.**

Whenever books are taken from the library for use in the court room or for law arguments, they must be returned as soon as the users are through with them. If the library is closed when the books are ready to be returned they should be left in the room where used until the library is next opened, when a key to the room may be obtained from the librarian so that the books may be returned. This rule is imperative and must be observed strictly.

### **Rule 38.**

#### **THE BULLETIN BOARD.**

The Practice Court bulletin board shall be the regular channel of communication with the students, who must take notice of its contents. The excuse of a failure to observe any notice there posted will not be accepted.

### **Rule 39.**

#### **ADMINISTERING OATHS.**

The oath administered in the Practice Court shall be "you do promise," etc., or "you do assert," etc.; and any person who shall have promised or asserted shall be deemed to have been "duly sworn."

### **Rule 40.**

#### **BASIS OF CREDIT.**

In determining the credit to be given for the work done in these courses, special reference will be made to, and separate markings given upon, the following matters: 1. Form of Process; 2. Return of Process; 3. Pleadings, as to Form and Substance; 4. Oral Law Argument; 5.

Briefs Filed; 6. Alertness Shown in Detecting Faults in Adversary's Pleadings; 7. Empanelling Jury; 8. Opening Statement; 9. Examination of Witnesses; 10. Oral Argument to Jury; 11. Preparation and Character of Instructions; 12. Promptness in Attendance.

### **Rule 41.**

#### **DECORUM.**

The most perfect decorum and order must be observed in all proceedings. All levity of conduct must be entirely avoided. In trial causes, all reference to the fictitious character of any part of the proceedings, and all disputes as to the facts assumed, must also be avoided. Attorneys shall stand while addressing the court or examining witnesses. Loud talking or disorder in the court room or adjoining hall is strictly forbidden. On account of the proximity of the court room to the lecture room, students going to and from lectures must pass through the halls quietly.

Any student, though not engaged in the cause on trial, is encouraged to attend the sessions of the court; but while so attending must remain quietly seated, and refrain from passing in or out of the room during the examination of witnesses, the charge of the court, or other exercises likely to be disturbed by so doing. Lounging, putting of feet on tables, rails or seats, or any other undignified attitude must not be indulged in.