1. **Course Overview.**

The law of evidence certainly forms the core of the adversarial trial system. No cause of action, however just, can prevail at trial unless an advocate presents admissible evidence to and persuades a finder of fact that her side should win. The rules of evidence used in American courtrooms have evolved over centuries to provide a workable framework for the introduction of testimony and exhibits at trial. Understanding evidence is the first step in mastering the courtroom. The purpose of this course is to teach you evidence within the context of the trial process. To that end, we will learn the background and theory behind each rule of evidence, then apply the rule in a trial setting.

Please understand, however, that this is NOT a trial preparation class. While I am hopeful you will learn how to use the rules of evidence in a trial, I am equally hopeful that you will learn to use the rules in other settings as well. For example, I believe a successful transactional lawyer must understand the rules of evidence in order to negotiate an enforceable contract and the estate planning lawyer must understand the rules in order to draft a valid will. Why? Because in the end, whether the contract is enforceable and whether the will is valid are determined in a courtroom, and that determination will be guided, if not dictated, by the rules of evidence. Therefore, EVERY lawyer must understand the rules of evidence, not merely to pass the bar exam, but to practice law successfully.

2. **Learning Objectives.**

At the end of this course, students will be able to:

- Understand the common law and statutory bases for the Federal Rules of Evidence and use that knowledge to frame arguments for the application, interpretation, extension, and modification of the Rules.
- Correctly identify evidentiary issues, in the context both of problems and of courtroom trial and appellate exercises.
- Demonstrate competence in solving evidentiary issues in the context both of problems and of courtroom trial and appellate exercises.
- Draft an evidentiary *motion in limine* in a civil, personal injury case, combining rule interpretation, case application and analysis, and policy arguments.

3. **Class Meetings.**

This class meets Monday and Wednesday from 9:00 AM-10:50 AM., starting Wednesday, January 20, 2016 and ending Wednesday, April 27, 2016.

From time to time, I may cancel class to attend conferences, moot court tournaments or other professional obligations. I will do my best to provide advance notice to assist in your planning. To make
up for these missed classes, I may use a combination of out-of-class assignments, podcasts and physical
make-up classes. I will also use this method to make up the class we miss due to Dr. Martin Luther
King’s birthday.

We will have a seating chart. On Monday, January 25, sit in the seat that you intend to occupy
the entire semester. Otherwise, I may never learn your names.

4. **Course Materials.**

As I indicated above, I will use Dean Behan’s textbook for this course, entitled EVIDENCE AND
THE ADVOCATE: A CONTEXTUAL APPROACH TO LEARNING EVIDENCE (LexisNexis/Matthew Bender
2012). Lexis provides two hardcopy versions of the book: hardbound (ISBN 978-1-4224-8193-6) and
looseleaf (ISBN 978-1-4224-9058-7). Please note that the looseleaf version sells for considerably less
money than the hardbound version. I highly recommend buying used books when they are available. I
also highly recommend buying a used book this semester because the second edition of the book will
be coming out in January 2016. This semester is the last time we will likely use the first edition.

If you prefer e-books, electronic versions of the book for Kindle, IPad and other electronic
readers are available at either Amazon.com or Lexis’s website at:
http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?prodId=prod16080469#.

There are two optional supplementary resource materials that I recommend. The first is Goode
for objections and evidentiary foundations. It is an excellent resource for preparing for application
exercises. It also contains digests of leading evidence cases to help illustrate the rules of evidence in
practice. This is the kind of reference book you will take into the courtroom with you when you go into
practice.

The second is the advisory committee notes for each rule. Both Lexis and Westlaw publish the
advisory committee notes, but they are also available online for free on Westlaw and Lexis and at many
websites, including http://federalevidence.com/node/1335. **The advisory committee notes are extremely
useful in understanding the rules of evidence and I expect you to read them.**

5. **Contact Information.**

a. **General.** My office is Room 211. Telephone number is 453-8744. E-mail address is
mabritt@siu.edu.

b. **Office Hours.** I don’t keep formal office hours because I am nearly always here Monday
through Thursday. If I am here, please feel free to stop by. Tuesday & Thursday mornings are difficult
because I teach at 11:00 a.m., so please try to avoid that period. You may also make an appointment to
see me if you prefer. Contact Paula Hartsock at 618-453-8730 if you cannot reach me. Her email address
is p.hartsock@siu.edu.

c. **Electronic Communication.** TWEN. I will use the TWEN page to post reading materials and
assignments. I will also use it to communicate with you. You MUST sign up for the TWEN page. School
of Law has adopted a rule requiring students to use their assigned siu.edu email address for law school-
related business. Thus, excuses such as, “well, I use my gmail account and that’s why I never got your
email,” are unacceptable.

d. **Problems and Issues.** Despite the best efforts of professors and students, class is not always
perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please see me so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems I had not previously been aware of.

6. **Class Structure**

We will follow a predictable class structure as follows:

(1) **Before Class**

(a) **Reading Assignment.** There is a reading assignment for each class session. You are expected to read the assignment, understand the cases, and work out the problems on your own prior to class.

(b) **Podcast Lecture.** I may post a podcast lecture that covers the evidentiary rule and the cases in the textbook prior to each class. For Monday, it will be posted no later than midnight on the Saturday immediately preceding class. For Wednesday classes, it will be posted no later than midnight on the Monday immediately preceding class. You are responsible for the material in the podcast lecture.

(c) **Occasional Quizzes.** From time to time, I may post quizzes on the TWEN page or some other electronic system such as D2L. These quizzes are based on the reading assignments and podcast lectures and must be completed prior to the class in which the material is covered. If you fail to take the quiz by the deadline, you will not be permitted to make it up. I will give you more information on how this works during the semester.

(2) **During Class**

(a) **Assigned Problems.** Every chapter in the book contains assigned problems. Everyone must be prepared to discuss these problems in class. Litigation teams (discussed in paragraph 5, below) are assigned in advance to prepare adversarial arguments for both sides of the problems.

(b) **Application Exercises.** Every chapter in the book contains an application exercise. Some application exercises are assigned to every *individual* in the class. If so, the reading schedule indicates this with the bolded word **Everyone.** Some exercises are assigned to every *team* in the class. If so, the reading schedule indicates this with the bolded words **Every Team.** The remaining exercises are assigned to teams by number. For exercises involving teams, the exercises occur in the courtroom, presided over by student judges. From time to time, I may send supplementary material to assigned teams and judges to assist in clarifying an exercise or adding additional elements to it.

(c) **In-Class Problems.** In addition to the problems in the book, I will distribute additional problems for discussion in class. I will usually distribute these problems via the TWEN page. Everyone in the class is on call to participate in class discussions of these problems.

7. **Class Participation**
Class participation is not only a key to successful learning, it is an integral part of this course. I intend for you to thoroughly learn evidence, and the best way to accomplish that is through frequent class participation.

Students must form 4-person litigation teams by 9:00 am on Monday, January 25. We will have a total of 11 teams in the class. Each litigation team must select a name and turn in a 3x5 index card to Paula Hartsock in room 212A with the following information: (1) team name; (2) individuals on the team; (3) for each individual on the team, your hometown, undergraduate school and degree, and an interesting (must actually be interesting; nothing dull) fact about you.

In most of our class sessions, students will participate in one of two primary roles: problem/case counsel, application exercise advocate and/or role player. Each of those roles is explained below:

**Problem Counsel.** Each chapter in the text contains a number of problems. I will cold-call on teams randomly to participate in class. You will not know in advance whether you’ll be called on in class. If you are unprepared to participate, or if your performance indicates substandard preparation, you will be assessed a penalty of 5 raw points from the class preparation portion of your grade (see below).

**Application Exercise Advocate Role Player.** Each chapter in the text contains one or more application exercises. Most application exercises take place in a courtroom environment and include counsel, witness and judge roles. Assigned teams must prepare for every single role in the application exercise except the judge role, which I will play. If you need additional people to serve as witnesses, it is your responsibility to recruit them from the class and ensure they are ready to participate. Thorough preparation is paramount.

Application exercises are graded on a team basis. Each team must prepare a written version of the application exercise, using a template that will be provided. In addition, the team will be graded on its preparation and performance as role players in the courtroom. If the team needs additional role players for its exercise, it may recruit them from the class, or, in the alternative, team members can play multiple roles.

8. **Listening, Note-Taking, Computers and the Internet.**

I expect you to listen and be mentally engaged in class. Active, sustained listening is an absolutely critical skill for lawyers. This is especially true in evidence and trial work. In order to make and respond to objections, you must listen closely to everything that is being said in the courtroom.

Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold conversations with others during class. If it is absolutely necessary for you to leave the classroom while class is in session, please minimize the disruption when entering or exiting the room.

Please understand that I typically do not allow students to bring computers or cell phones to class. However, due to the nature of this class, you may use computers in class to perform assigned tasks, take notes and access the Advisory Committee Notes. Those are the authorized uses and there are no others. If this is abused on an individual or group basis, I reserve the right to ban laptops from the classroom.

**ANY STUDENT WHO I FIND IS USING A CELL PHONE OR IS USING A COMPUTER FOR SOME PURPOSE OTHER THAN THAT DESCRIBED ABOVE WILL BE ASKED TO LEAVE CLASS AND WILL BE CONSIDERED ABSENT ON THAT DAY.**
9. **Policy on Recording Class.**

Links to all pre-class podcasts will be made available, and you may freely access them at any time after they are posted. The School of Law will not be making either audio or video recordings of this class.

You are not authorized to make your own audio or video recordings of my classes.

10. **Attendance Policy.**

Attendance is required. In accordance with law school rules, you may miss no more than six (6) class sessions during the semester (for a 4-credit hour class meeting twice a week, this is the maximum number of possible absences under our rules) without having to withdraw from the class or face the grade penalty under the School of Law rules. You are responsible to manage your own absences and, as an adult and a professional, should realize that if you take all absences early in the semester and run into a problem later in the semester, you will have created a problem for yourself from which no one else is obligated to rescue you. Regardless of your reason for doing so, if you miss class on a day when your team is assigned a presentation or application exercise, you will receive a zero for that assignment.

I will pass around an attendance sheet every day at the beginning of class. Your original, genuine signature on the attendance sheet certifies two things: (1) you are physically present at the beginning of class; and (2) you are prepared for class.

Make a habit of coming to class on time. It is a tremendous distraction to everyone when someone strolls in after class has begun.

I do not permit noting out in my classes. At student request, I recently experimented with it in a class and remembered why I have prohibited it in the past.

However, I do permit one “pass” for the semester for each person. It’s a get-out-of-jail free card in case you aren’t prepared. If you roll the dice and I call on you when you are not prepared, you can say “pass,” and I will move on. You can’t use this more than once in the semester. If you try, you will receive an automatic .2 reduction on your final grade (for instance, a 4.0 would be reduced to a 3.8, and so forth.)

11. **Workload.**

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 4-credit hour class, meaning that we will spend four 50-minute blocks of time together each week (a 100-minute block each Tuesday and Thursday). The amount of assigned reading and out of class preparation should take you about 4 hours for each class session and 8 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 12 hours per week (4 in class and 8 preparing for class) on course-related work.

12. **Grading and Evaluation:**

I will evaluate your work in several ways:
a. Classroom preparation and participation (20% of your final grade). This consists of three components:

(1) Written and verbal performance as a team on group presentation exercise, as per assignment memo (5% of final grade). There are five possible grades for your combined written work and verbal performance: Superior (15 points), Exceeds Standards (12.5 points), Meets Standards (10 points), Below Standards (5 points), Unsatisfactory (0 points). **Please note: this is a team requirement. You are only allowed to turn in one document, as a team, with a certificate of equal contribution signed by all team members. If you turn in an individual document, you will receive a zero on it. If your signature does not appear on the certificate, you receive a zero on the assignment (and as a team member, you absolutely should not stand for a non-contributing individual signing the certificate). If your signature appears on the certificate, but you demonstrate a lack of preparation during the exercise that indicates you haven’t actually worked with the team, or I otherwise find out you did not contribute to the team effort, the entire team receives a zero on the exercise for permitting you to sign the certificate.**

(2) Individual performance on problems in class (5% of final grade). Although I will call on teams, I will grade you individually on your preparation and participation. You cannot hide behind your team members and receive credit for their preparation and participation. You can be expected to be called on multiple times during the semester. For the semester as a whole, there are five possible grades for your individual preparation and performance: Superior (15 points), Exceeds Standards (12.5 points), Meets Standards (10 points), Below Standards (5 points), Unsatisfactory (0 points). **Please note: if I call on you and you are unprepared or inadequately prepared, you will receive an automatic 5 point reduction from the final score you would otherwise have received. This could result in a negative score.**

(3) Written and verbal performance as a team in team application exercises (10% of final grade; there are two team application exercises, each worth 5% of final grade). There are five possible grades for your combined written work and verbal performance: Superior (15 points), Exceeds Standards (12.5 points), Meets Standards (10 points), Below Standards (5 points), Unsatisfactory (0 points). **Please note: this is a team requirement. You are only allowed to turn in one document per exercise, as a team, with a certificate of equal contribution signed by all team members. If you turn in an individual document, you will receive a zero on it. If your signature does not appear on the certificate, you receive a zero on the assignment (and as a team member, you absolutely should not stand for a non-contributing individual signing the certificate). If your signature appears on the certificate, but you demonstrate a lack of preparation during the exercise that indicates you haven’t actually worked with the team, or I otherwise find out you did not contribute to the team effort, the entire team receives a zero on the exercise for permitting you to sign the certificate.**

b. Quizzes (combined, 15% of final grade). These quizzes will be timed multiple choice quizzes on the D2L page. They must be completed before the class in which the material is discussed.

c. Motions Assignment (15% of final grade). One of the application exercises is a graded motion under Federal Rule of Evidence 412. You’ll receive a separate assignment memorandum with a fact pattern and instructions.
d. **Final examination (50%).** Exam will be closed-book, with the exception of a single-sheet handout that I will provide to you before the exam, and upon which you can add anything that will fit in your own handwriting. The examination will be a combination of multiple choice questions and three short-essay questions. Two of the three short-essay questions will be problems we cover during the course (remember, there are problems in the book and problems that I will distribute separately).

13. **Emergency Procedures.**

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on the BERT’s website at [www.bert.siu.edu](http://www.bert.siu.edu), Department of Public Safety’s website [www.dps.siu.edu](http://www.dps.siu.edu) (disaster drop down) and in the Emergency Response Guidelines pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The BERT will provide assistance to your instructor in evacuating the building or sheltering within the facility.

14. **Students with Disabilities.**

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. [http://disabilityservices.siu.edu/](http://disabilityservices.siu.edu/). Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

15. **Students with Physical, Emotional, Mental, or Financial Needs.**

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or [siucares@siu.edu](mailto:siucares@siu.edu). [http://salukicares.siu.edu/index.html](http://salukicares.siu.edu/index.html). At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is [judiray@siu.edu](mailto:judiray@siu.edu), and her phone number is 618-453-3135.