EVIDENCE – PROFESSOR SCHROEDER
COURSE OUTLINE – Spring 2014

Texts


Make up class: Class held on Martin Luther King’s birthday, Monday, January 20, will be made up on a date to be determined. This information will be posted on TWEN.

Class recordings: Classes will be recorded and will be available for viewing in the Computer Lab for two weeks afterwards. Students may not create audio or visual recordings of class sessions. Any recordings or materials posted on TWEN may not be copied, duplicated or disseminated outside the course without express authorization from the professor.

S/U grading: The grades of students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course.

Final Exam: The final exam will be held on Wednesday, April 30 at 8:15 a.m.

First Week

For the first week you should skim through Pages 1 thru 131 in L & S and read carefully pp.132-138. We will refer to those pages throughout the week.

Various problems in the book are referenced in this outline. You should review all the cited problems but we will not do all of them in class.

Outline

I. TAKING EVIDENCE

Day 1: Introduction - Structure of a Trial
Skim L & S, pp 1-131
FRE 102 and 611(a)

L & S Ch. 2, Sec 1; pp.132-138
Probs. II-1 and II-2 on L & S p.138
B. Production of Witnesses and Evidence – L & S, pp. 194-207

Day 3: A. Interrogation of Witnesses – FRE 401, 402, 403, 611, and 614
Direct, L & S, pp. 138-141 & 145-46; p. 27 et seq; p. 32, n. 24; p. 33,n. 26
Cross, L & S pp. 141-45 & p. 34-35, nn. 28 & 29
B. Refreshing Recollection – FRE 612
C. “The Rule” on Witnesses – FRE 615
   L & S, pp. 18 & n.9

D. Objections – FRE 103
   L & S, pp. 147-161
   Prob II-4 on p. 161

Day 4:  
A. Preliminary Issues of Admissibility – FRE 104
   L & S pp. 162-171

B. Limited Admissibility – FRE 105
   L & S, pp. 171-74.

C. The Rule of Completeness – FRE 106

D. More on objections – FRE 103
   L & S – pp. 174-181

E. Review: Probs. in L&S: II-8, p. 181; II-10, p. 182 & II-14 & II-15 on p. 183

II. RELEVANCE and LIMITATIONS on the ADMISSION OF RELEVANT EVIDENCE

Days 5-6:  
A. Introduction to Relevance – FRE 401; 402
   L & S pp. 210-217
   Prob III-1 on p. 216 (all parts)

B. Conditional Relevance, L & S, pp. 222
   Prob III-2

C. More on Relevance – FRE 403, 702
   L & S, pp.223-228;
   Probs. III-3; III-4; pp. 248-260,
   Prob III-9

D. Stipulations & Judicial Admissions; L&S, pp. 1311-1317

Days 7-8:  
A. Grounds for Excluding Relevant Evidence – FRE 403
   L & S pp. 228-236
   Probs. III-5, -6 on p. 236; Probs. III-11, -14, -15, -16, -20, -23, -24, -25, -28 on pp. 262-272

B. Relevant but Inadmissible: Categorical Balancing – FRE – 407-411
   L & S, pp. 277-284

Day 9:  
A. Subsequent Remedial Measures – FRE 407
   L & S pp. 284-292
   Prob. IV-1

B. Compromises and Offers to Compromise – FRE 408
   L & S, pp. 293-299
   Prob. IV-3, IV-4

C. Pleas and Plea Discussions – FRE 410
Day 10:
A. Payment of Medical and Similar Expenses – FRE 409
   L & S, p. 306-07
   Prob. IV-8

   B. Liability Insurance – FRE 411
   L & S pp. 307-09
   Probs. IV-9, IV-10

Day 11:
A. Similar Happenings, – FRE 401, 402, 403
   L & S, pp. 309-313
   Probs. IV-11, -12, -13

   B. Thoughts and Problems on FRE 407-415, p. 313 et seq.
   Probs. IV-16; -19; -22; -23; -25; -26; -29; -39; and -40

Days 12-13:
A. Character Evidence – FRE 404, 405
   L & S, pp. 331-346
   Probs. V-1; V-2 & V-3

   B. Other Crimes, Wrongs and Acts – FRE 404(b)
   L & S, pp. 346-364
   Probs. V-4, V-5, V-6, V-7, V-8, V-9, V-10, V-11, V-12, V-14

Day 14:
Habit and Routine Practice – FRE 406
   L & S, pp. 364-371
   Probs. V-15; V-16, V-17, V-18, V-19

Days 15-16:
More on Character Evidence – L & S, pp. 372-379; Prob. V-20

   Exceptions to the Propensity Rule – FRE 404(a)-405
   L & S, pp. 365-394
   Probs. V-21, V-22; V-23

Day 17:
A. Rape Shield Laws – FRE 412
   L& S, pp. 458-478; Probs. V-38, V-39, V-40; V-41
   FRE 413, 414, and 415
   L& S, pp. 478-491; Prob. V-41

   B. Additional Character Problems beginning on page 490
III. IMPEACHMENT

Day 18:  
A. Generally – **FRE 607**  
   L & S, pp. 394-397  
   Prob. V-24

B. Bad Character – **FRE 608(a)**  
   L & S, pp. 397-402  
   Prob. V-25

Day 19:  
A. Specific Bad Acts – **FRE 608(b)**  
   L & S, pp. 402-407  
   Prob. V-26

B. Prior convictions – **FRE 609**  
   L & S, pp. 407-421  
   Probs. V-27, 28

Day 20:  
(Midterm Exam given out)  
Bias, Prejudice and Interest  
L & S pp. 422-428  
Probs. V-29, V-30

Day 21:  
A. Contradictory Testimony and the Collateral Issue Rule – **FRE 410-403**  
   L & S, pp. 428-431  
   Prob. V-31

B. Prior Inconsistent Statements – **FRE 613**  
   L & S pp. 431-440  
   Prob. V-32 on p.419

Day 22:  
A. Mental or Physical Defects – **FRE 601, 602, 603**  
   L & S pp. 440-445  
   Probs. 30 & 31

B. Religious Belief – **FRE 610**  
   L & S, pp. 446-47  
   Prob. V-35

Day 23:  
A. Corroboration & Rehabilitation  
   L & S, pp. 447-451  
   Prob. V-36

B. Ethics of Impeachment  
   L & S pp. 452-457  
   Prob. V-37

C. Constitutional Issues in Impeachment  
   L & S, pp. 811-820
IV. REAL & DEMONSTRATIVE EVIDENCE: EXHIBITS

Days 24-25: Midterm Exam due to be returned

A. Introduction – FRE 401, 403
   L & S, pp. 1193-1199

B. Authentication – FRE 901 & 902
   L & S, pp. 1199-1211
   Prob., X-2 on p. 1205 (skip Prob. X-3 on p. 1161)
   Probs. X-4 and X-5 (all parts on pp. 1214-1215)

Day 26:

A. Chain of Custody
   L & S, pp. 1216-1222
   Prob. X-6 on p.1222

B. Attesting Witnesses – FRE 903
   L&S, 1221-1222

V. WRITINGS and the ORIGINAL DOCUMENT or BEST EVIDENCE RULE

Day 27: The Best Evidence Rule – FRE 1001 thru 1008
   L & S, pp.1223-33
   Probs. X-7 & X-8 on pp. 1232-33

VI. PARTICULAR TYPES OF DEMONSTRATIVE EVIDENCE – FRE 401,402,403

Day 28:

A. Views – L,G,& L, pp. 1235-1237
   Prob. X-9

B. Demonstrations and Experiments Generally,
   L & S, pp. 1237-1239
   Probs. X-10, X-11

C. Photographs and Recordings
   L & S, pp. 1240-1245
   Probs. X-12 (p. 1247), and X-13 (p. 1247)
Day 29:
A. Videotapes and other Motion Pictures
   1. Videotapes etc. – pp. 1250-1255
   2. Computer Generated Exhibits, L, G & L, pp. 1248-1250
   4. Reconstructions, Re-enactments, 1260-1268; prob. X-15

B. Review: Additional Demonstrative and Best Evidence Problems
   L & S 1266-72

VII. HEARSAY

Day 30:
A. Introduction – FRE 801, 802
   L & S, pp. 521-530

B. Definitions, L & S, pp.530-547; Wright v. Doe dem. Tatham, 751-757

C. Other Hearsay-Related Considerations
   L & S, pp. 547-561
   Probs. VI-3 (all parts), VI-5, VI-10, VI-11, VI-17

Day 31:
A. Exceptions generally, L & S, pp. 561-62

B. Prior statements of a Witness – FRE 801(d)(1)

Day 32:
A. Admissions – FRE 801(d)(2)
   L & S, pp. 566-590
   Probs. VI-22, VI-23, VI-27, VI-30, VI-35, 25, 28

B. Other Exceptions, L & S, pp. 592-601

Day 33:

B. Present Sense Impressions – FRE 803(1)
   L & S, pp. 601-603

C. Excited Utterances – FRE 803(2)
   L & S, pp. 603-607
   Prob. VI-42

Day 34:
   Probs. on pp. 621-629, including VI-46, VI-48, VI-50, VI-51, VI-53, VI-54, VI-56, VI-62, VI-63

B. Recorded Recollection – FRE 803(5)
   L & S, pp. 629-633
   Prob. VI-65
Day 35:  
A. Business Records and other Regular Entries – **FRE 803(6), 803(7)**  
L & S, pp. 633-639  
Probs. VI-66

B. Public Records – **FRE 803-(8)(9)(10)**  
L & S, pp. 640-656  
Probs. VI-69, VI-70, VI-71

Day 36:  
L & S, pp. 656-666  
Prob. VI-79

Day 37:  
A. Unavailability of Witness – **FRE 804(a)**  
L & S, pp. 667-671

B. Former Testimony – **FRE 804(b)(1)**  
L & S pp. 672-679  
Probs. VI-80

Day 38:  
A. Dying Declarations – **FRE 804(b)(2)**  
L & S, pp. 680-683  
Prob. VI-82

B. Statements Against Interest – **FRE 804(b)(3)**  
L & S, pp. 683-690  
Prob. VI-83, VI-84

Day 39:  
A. Statements of Pedigree – **FRE 804(b)(4)**  
L & S pp. 690-691  
Prob. VI-85

B. Forfeiture by Wrongdoing – **FRE 804(b)(5)**  
L & S pp. 691-693  
Prob. VI-86

C. Catchall Exceptions – **FRE 807**; Prob. 87

D. Multiple Hearsay – **FRE 805**  
L & S pp. 548-49

E. Impeachment of Hearsay Declarants – **FRE 806**  
L & S pp. 693-695  
Prob. VI-87
VIII. EXPERT TESTIMONY

Day 40:  
A. Introduction; Obtaining and Preparing Expert Witnesses — FRE 701  
L & S, pp. 1058-1066  
Prob. IX-1

B. Qualifications of Experts — FRE 702  
L & S pp. 1067-1068  
Prob. IX-2 (p. 1068), Prob. IX-3 (p. 1072)

Day 41:  
A. Expert Opinion Evidence — FRE 703, 704, 705  
L & S, pp. 1073-1078  
Prob. IX-4(p. 1077-78)

B. Presenting Expert Testimony  
L & S, pp. 1078-1087, pp. 1117-1121  
Prob. 5 (p. 1086)

Day 42:  
Scientific Evidence  
L & S pp. 1088-1107; 1172-1184

Day 43:  
A. Court Appointed Experts — FRE 706  
L & S, pp. 1107-1116; prob. IX-10

B. Review material and problems  
L & S, pp. 1121-1158  
Probs. IX-12 and IX-17 on pp. 1185-1189

IX. PRIVILEGES

Days 44-45  
A. Non-Constitutional Privileges — FRE 501  
L & S, pp. 874-883

B. Attorney-Client Privilege  
L & S, pp. 884-924  
Probs. VIII-2, VIII-3

Day 46:  
A. Attorney Work-Product  
L & S, pp. 931-958  
VIII-8, VIII-9, VIII-24

B. Health Care Providers  
L & S, pp. 958-980  
Probs. VIII-39

Day 47:  
A. Marital Privileges  
L & S pp. 973-984  
Probs. VIII-41
B. Parent Child Privileges  
L & S, pp. 984-985  
Probs. VIII-42

Day 48:  
A. Government Privileges; L & S, pp. 988-1000
B. Informer Privilege,  
L & S, pp. 1000-1007
C. Other Privileges,  
L & S, pp. 1007-1028
D. Newspersons Privileges  
L & S, pp. 1028-1051

Additional Problems  
L & S, pp. 1051-1054

X. JUDICIAL NOTICE

Day 49:  
A. Adjudicative Facts: Generally – FRE 201  
L & S, pp. 1317-1331  
B. Legislative Facts, L & S pp. 1331-1352  

XI. BURDENS of PROOF and PRESUMPTIONS

Day 50:  
A. Burdens of Proof: Production and Persuasion  
L & S pp. 1286-1311  
Probs. XI-1, XI-IV, XI-10
B. Presumptions – FRE 301 and 302  
L & S pp. 1352-1390  
Prob. XI-33, XI-34, XI-36, X-37

Emergency Procedures

SIUC 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 BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in the Emergency Response Guideline 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 Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.