

SYLLABUS - EVIDENCE (LAW 536) – FALL 2019

INSTRUCTOR: Prof. Jennifer Brobst, SIU School of Law; Office 244, jbrobst@siu.edu, 618-453-8702

CLASS TIME/ROOM: T/Th 1:30 – 3:10 pm / Room 202

OFFICE HOURS: Monday 1:00 – 1:45 pm; and Thursday 3:15 – 4:00 pm; walk-ins if door open

COURSE DESCRIPTION: This four credit required upper division course is a survey of the law and underlying theories governing the admission, exclusion, and sufficiency of evidence in court proceedings, emphasizing the Federal Rules of Evidence. Specific topics include witness competency, relevance, credibility, authentication, hearsay, confrontation clause issues, privileges, lay and expert witnesses, substitutes for evidence, and real and demonstrative evidence. Whether or not you intend to be a trial lawyer, learning the Rules of Evidence is key to both trial practice and non-litigation practice, because out of court matters such as giving legal advice, drafting a contract, or engaging in settlement negotiations all involve identifying and controlling potential evidence that may ultimately be considered in litigation if all does not go as planned. Note that this is a substantive law course, not a trial advocacy course.

LEARNING OBJECTIVES: Students will learn to correctly apply the Federal Rules of Evidence when arguing for and against the admissibility of evidence in civil and criminal litigation. Specifically, students will learn to identify the purpose for which evidence is offered and the applicable rule for that purpose. They will also be able to critically assess the strategic risks of admitting or excluding such evidence. In addition, students will learn to apply several federal constitutional provisions in criminal cases that impact the admissibility of evidence, such as the right to confrontation and the right to present a defense.

WORKLOAD EXPECTATIONS: According to the American Bar Association guidelines, a student should study and prepare for approximately 2 hours before each 50 minute class. This includes taking time *after* each class to re-read and clarify in-class notes and update outlines. Thus, as each class in Evidence this semester is the equivalent of 100 minutes, a student should prepare for approximately 4 hours before each class. Each week, as this is a 4 credit course, this would total approximately 8 hours of class preparation, in addition to 4 hours of class time. That is, to be successful, you are expected to set aside the equivalent of an entire 8-hour work day to learn Evidence *every week*.

REQUIRED BOOKS:

- GEORGE FISHER, EVIDENCE (3d ed., Foundation Press 2013) [2019 rules provided in class]
- DAVID P. LEONARD & PAUL GIANNELLI, QUESTIONS & ANSWERS: EVIDENCE (4th ed., Carolina Academic Press 2018) (hard copy or e-book)

ATTENDANCE: In accordance with [SIU School of Law Rules III.5\(f\)-\(g\)](#), students may miss up to a maximum of four (4) classes. There is no excused or unexcused absence policy at SIU. Students who exceed the maximum number of absences at any time, including the last week of class, will be referred to the Associate Dean with the recommendation that the student be withdrawn from the course. Late arrival should be rare and may be counted as an absence at the professor's discretion and/or students may be asked to leave class if they cause a significant interruption in the class for any reason. Failure to bring the course textbook (Fisher) and Federal Rules of Evidence to class each day will constitute an absence.

GRADED ASSIGNMENTS:

- **Quizzes (20%)** - bar exam style multiple choice (closed book) [there is no midterm in this course]
- **WAC assignments (10%)** – bar exam style essay questions
- **Final exam (70%)** – 3 hour closed book bar exam style multiple choice and essay (comprehensive)

INTERNET, LAPTOP, AND PERSONAL DEVICE POLICY: No laptop or other electronic device use is permitted in this course. This course is interactive and requires concentration and focus.

CLASS RECORDINGS: Unauthorized recording or distribution of class lectures, discussions, assignment and/or exam materials is prohibited.

CLASS EMAIL AND TWEN: Per the law school regulations, students must regularly check and be responsive to email communications with faculty. Students are also expected to regularly check the TWEN course page/

STUDENT SERVICES: SIU has multiple resources through the law school and Saluki Cares for students with personal needs for support, including mental health, medical and other disability needs, as well as anti-discrimination, financial, legal, and other services (see <http://www.law.siu.edu/about/student-experience/support-services.html>). These support services are subsidized by your tuition dollars for a good reason. Law school is renowned for being academically difficult, but law students are also adults who frequently have other demands on their time, such as outside employment and family. It is a professional strength, not a weakness, to seek additional support to cope with law school if you need. 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, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help you access university resources at judiray@siu.edu, or 618-453-3135.

DISABILITY DISCLOSURE STATEMENT: Students with disabilities are entitled to reasonable accommodations and academic adjustments (see <http://disabilityservices.siu.edu>). Disability Support Services (DSS) 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. 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.

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 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.

WEEKLY TOPICS	DATE	READING ASSIGNMENT (subject to revision)
WEEK ONE Intro to Trial; Form Objections; Substitutes; Relevance; Conditional Relevance; Rule 403 to Exclude Evidence	T 8/20	<i>People v. Tapia</i> , 2019 WL 1440800 (N.Y. Ct. App. 2019); Fisher pp. 1-5; 22-42 (Problem 1.6, not rest of probs)
	Th 8/22	<i>State v. Steele</i> , 817 S.E.2d 487 (N.C. Ct. App. 2018); pp. 42-54; 58-63; 80-94
WEEK TWO Policy Rules	T 8/27	pp. 95-113 (Probs 2.2-2.3)
	Th 8/29	pp. 113-122; 127-132 (Prob 2.7); 137- 140
WEEK THREE Character; 404(b) Non-Propensity	T 9/3	pp. 145-180 (Prob. 3.1 and 3.5)
	Th 9/5	pp. 201-218 (not the problems)
WEEK FOUR Character; Habit; Impeachment of Witnesses	T 9/10	
	Th 9/12	
WEEK FIVE Character/Impeachment by Conviction; Rape Shield	T 9/17	
	Th 9/19	
WEEK SIX Rape Shield; Competency of Witnesses	T 9/24	
	Th 9/26	
WEEK SEVEN Defining Hearsay	T 10/1	
	Th 10/3	
WEEK EIGHT Hearsay Exemptions (Rule 801(d))	T 10/8	
	Th 10/10	
WEEK NINE Hearsay Exceptions (Rule 804 Unavailable Witness)	T 10/15	
	Th 10/17	
WEEK TEN Hearsay Exceptions (Rule 803 General Exceptions)	T 10/22	
	Th 10/24	
WEEK ELEVEN Hearsay Exceptions (Rule 803 Residual Exception); Sixth Amendment (Right to Confrontation, Right to Present a Defense)	T 10/29	
	Th 10/31	
WEEK TWELVE Lay and Expert Opinion	T 11/5	
	Th 11/7	
WEEK THIRTEEN Privileges; Rule of Completeness	T 11/12	
	Th 11/14	
WEEK FOURTEEN Authentication; Best Evidence Rule; Role of Judge and Jury; Appellate Standard of Review; Applicability of Rules of Evidence	T 11/19	
	Th 11/21	
FINAL EXAM	F 12/6	1:15 pm (3 hour comprehensive closed book exam)