

Evidence Fall 2022

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Syllabus & Course Outline

Course Overview:

Students will study the history and application of the Federal Rules of Evidence. Students can expect to participate not only in traditional classroom interactions, but they will also be conducting several short trials to help cement the Evidence concepts. In addition, students will be expected to draft at least one trial document, most likely a memorandum of law in support of or in opposition to a motion to fulfill the Law School's "Writing Across the Curriculum" Requirement.

Learning Objectives:

Students who successfully complete this course should be able to complete the following tasks:

- Students will memorize the Federal Rules of Evidence and understand the policies and precedent that underlie the Rules.
- Students will be able to appreciate how a trial proceeds in federal court.
- Students will be able to apply the Federal Rules of Evidence through simulated trials, motion-drafting, written assessments, and offers of proof.

Required Texts:

EVIDENCE UNDER THE RULES (by Mueller, Kirkpatrick & Richter) (9th ed. 2018)
2022 Federal Rules of Evidence Supplement (by Mueller, Kirkpatrick & Richter)

Attendance:

Our class meets twice a week on Tuesday and Thursday afternoons. As specified in the Rules of the Southern Illinois University School of Law, "regular attendance to class meetings in all courses is expected and required of all students in accordance with the rule to be announced by the professor at the beginning of each course. Attendance will be taken in class and attendance records will be kept. Violation of this rule shall subject the student to penalties"

It is your responsibility to ensure that you sign the attendance sheet during class. You should also note that the School of Law Honor Code states that it is academic misconduct to sign another student's name to an attendance sheet for a class that the other student did not attend. Students may have no more than a maximum of six absences (partial or total) for any reason (other than jury duty, the student's hospitalization, birth or adoption of the student's child, or a death in the student's immediate family – any of which shall be proven by documentation). Students with more than six absences will be referred to the Associate Dean and will be given the lowest possible grade – a failing grade – for the course.

Office Hours:

My door is always open to you and I am available to meet with you anytime I am in the building; however, I have set aside Mondays from 10:30-11:30am and 2:00-3:00pm just for the purpose of meeting with Evidence students. I am also available to meet with students by appointment. Email is a very useful tool, but it does not compare to face-to-face conversations. Please come see me during my office hours or email me to schedule another time if my office hours are not convenient for you.

Class Participation:

As a law student, I expect that you will come to class having read the material for the day and ready to participate in class discussion. Students will be divided into law firms consisting of four students each; you will be encouraged to establish your own firms. Each firm will be assigned (in advance) to be principally-responsible for helping me explain evidence concepts, but everyone is expected to participate in class discussion. You are always free to raise your hand and volunteer an answer, offer a helpful observation, or ask a question. Law school is a learning laboratory, and we can all learn from each other.

Grading/Scoring of Assignments:

To successfully complete this course, you will have to complete a midterm and a final exam. Those assessments will be graded. We will learn the Rules of Evidence using a practice-approach; students will work in law firms of four students each and firms will take turns being responsible each hour to help me teach the material to the class. We will use a Continuing Legal Education (CLE) model, which means that you may have to demonstrate a skill (e.g., how to move a photograph into evidence or how to impeach a witness) or you may have to lecture your classmates about a particular topic from the front of the room.

To satisfy the law school's "Writing Across the Curriculum" Requirement, students will prepare a Memorandum of Law in Support of (or in Opposition to) a Motion to Exclude Evidence. The Memorandum will be limited to five, double-spaced pages, and it will be assigned at or near Week #10 in the semester.

To facilitate learning the Rules, we will conduct five trials (one witness each side) during the semester and each law firm will participate in at least two trials. Each student will be expected to participate in two trials in teams of two. Your classmates and I will award each team of advocates a score for their trial performances on a 1-5 scale. The scores from everyone in the class will be averaged and the average will be the score for each pair of advocates. Students must have an average score of at least 3.0 for the pair's performance. If the pair's average score for any performance is below 3.0, that pair will have an opportunity to participate in additional trials (to be scheduled outside of class time) to have the opportunity to earn a score of 3.0. (For average scores that do not end in a .5 or .0, I will round up those scores to the next score that ends in .5 or .0.)

The midterm will occur in class, and it will consist of 20 multiple-choice questions, using MBE-style questions. The final exam will take place during the final-exam period. The exam will consist of multiple-choice questions (MBE) and short essay questions (MEE), just as you might be expected to write for the bar exam.

The midterm is worth 20% of the final grade; the Memorandum of Law is worth 20%; and the final exam is worth 50%. The trial performances are worth 10%. The midterm and final exams will be scored anonymously; the trial performances and Memorandum will not be scored anonymously. The final grade for the course will be calculated anonymously.

Class Recording:

For the benefit of students who are unable to attend a particular class because of an unavoidable circumstance, class sessions will be recorded and made available for viewing.

Assignments:

Week #1

8/23 Introduction to the Course and to Evidence Concepts

Reading: Ch. 1 (skim pp. 1-13 and read pp. 13-51)

8/25 Burdens and Presumptions

Reading: Ch. 10 (read pp. 703-732 and prepare Problem 10-A)

Week #2

8/30

Judicial Notice [A]

Reading: Ch. 11 (read pp. 753-778 and prepare Problems 11-A through 11-D)

9/1

Laying a Foundation [B]

Reading: Ch. 13 (read pp. 867-902 and prepare Problems 13-B, 13-E, and 13-J)

Week #3

9/6

Best Evidence Rule [C]

Reading: Ch. 14 (read pp. 905-921; 924-930 and prepare Problems 14-A, 14-B, 14-C, and 14-E)

9/8

Relevance, Part 1 [D]

Reading: Ch. 2 (read pp. 53-70 and prepare Problems 2-A, 2-B, and 2-C)

Week #4 Relevance, Part 2

9/13 [E]

Reading: Ch. 2 (read pp. 70-107 and prepare Problems 2-F, 2-G, and 2-J)

9/15 [F]

Trial #1 [A, B, C, D]

Reading: Ch. 5 (read pp. 421-450 and prepare Problems 5-A, 5-B, and 5-C)

Week #5

9/20 Character Evidence, Habit, Remedial Measures, and Settlements

Reading: Ch. 5 (read pp. 450-487 and prepare Problem 5-J, 5-O, and 5-R) [G]

9/22 Competence

Reading: Ch. 6 (read pp. 489-516 and prepare Problems 6-A, 6-C, and 6-D) [A]

Trial #2 [D, E, F, G]

Week #6 Hearsay, Part 1

9/27 [B]

Reading: Ch. 3 (read pp. 111-133 and prepare Problem 3-A)

9/29 [C]

Reading: Ch. 3 (read pp. 133-161 and prepare Problems 3-C and 3-F)

Week #7 Hearsay, Part 2

10/4 [D]

Reading: Ch. 4 (read pp. 165-189 and Prepare Problem 4-A)

10/6 [E]

Reading: Ch. 4 (read pp. 189--227 and Prepare Problems 4-G and 4-H)

Week #8 Hearsay, Part 3

10/11 [F]

Reading: Ch. 4 (read pp. 227-261 and prepare Problem 4-K)

10/13 Midterm Exam

Reading: Ch. 4 (read pp. 261-285 and prepare Problem 4-L) [G]

Week #9 Hearsay, Part 4

10/18 [A]

Reading: Ch. 4 (read pp. 285-323 and prepare Problem 4-N)

10/20 [B]

Reading: Ch. 4 (read pp. 324-368 through Note 6 and prepare Problem 4-O)

Week #10 Hearsay, Part 5

10/25

Trial #3 [B,F,A,C]

Reading: Ch. 4 (read pp. 373-383 and prepare Problem 4-O) [D]

10/27

Reading: Ch. 4 (read pp. 350-368, through Note 7, and pp. 373-383) [E]

Week #11

11/1

Reading: **Lay and Opinion Witness Testimony** [C]

Reading: Ch. 9 (read pp. 625-654 and prepare Problems 9-A and 9-B)

11/3 Expert Testimony [F]

Reading: Ch. 9 (read pp. 655-684)

Week #12

11/8 Confrontation Clause (This is Election Day, which is a University holiday. I will record a lecture and post it to TWEN.)

Reading: Ch. 4 (read pp. 383-420)

11/10

Week #13 Impeachment

11/15 [G]

Reading: Ch. 8 (read pp. 535-550 and prepare Problem 8-A)

11/17 [A]

Reading: Ch. 8 (read pp. 550-578 and Prepare Problem 8-B)

Week #14

11/29 Impeachment, Repairing Credibility, and Privileges

Trial #4 [E,F,G,D]

Reading: Ch. 8 (read pp. 578-610) [B]

12/1

Reading: Ch. 8 (read pp. 610-624 and prepare Problem 8-G) [C]

Ch. 12 (read pp. 779-818 and prepare Problems 12-B and 12-C) [G]

I will prepare a handout for everyone on the final material on Privileges. This is the reading that goes with the handout:

Reading: Ch. 12 (read pp. 847-866 and prepare Problem 12-H)

We will conduct Trial #5 outside of class at times to be announced: [C,B,E,G/A]