

Evidence Fall 2023

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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 in order 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, memorandum-drafting, written assessments, and offers of proof.
- Students will be able to critique structures of power and institutions from the standpoint of embedded privilege and social norms.
- Students will be able to identify and critically reflect upon the various aspects of one's identity.
- Students will be able to apply one's self-awareness of their biases to enact strategies to respond to unconscious and conscious biases.
- Students will be able to effectively employ strategies of active listening, empathy and effective allyship during classroom discussions and group work.

- Students will be able to critically reflect on their professional identity, recognizing the impact of internal and external factors on their identity.

Required Texts:

EVIDENCE UNDER THE RULES (by Mueller, Kirkpatrick & Richter) (9th ed. 2018)
2022 or 2023 Federal Rules of Evidence Supplement (by Mueller, Kirkpatrick & Richter) or
another version of the Federal Rules that contains the Advisory Committee Notes

Attendance:

Our class meets three times each week on Monday and Wednesday afternoons and Friday mornings. 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 five absences (partial or total) for any reason (other than jury duty, the student’s hospitalization, religious observances, 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 five 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 3:00-4:00pm just for the purpose of meeting with Evidence students. I’m also available to meet with students by appointment. We can meet in person or via Zoom. Please arrange to meet with me during my office hours or suggest another time if my office hours are not convenient for you.

Saluki Cares:

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) 453-2461, or siucares@siu.edu, <https://salukicare.siu.edu>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Please email her at judiray@siu.edu, or call 618- 453-3135.

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 called on in class, often without advance notice, so be prepared to be principally responsible for helping me explain tort concepts and cases. Everyone is expected to participate in class discussion, and 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.

Class Recording:

For the benefit of students who are unable to attend a particular class due to an unavoidable circumstance, and for students who wish to review a particular class to better facilitate comprehension of the learning objectives, it is my hope that class sessions will be recorded and made available for viewing. I will post the class PowerPoint slides each week to TWEN.

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 practical 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. The paper will be graded.

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 three trials. Each student will be expected to participate in two trials in teams of two. The purpose of the trials is to force you to review the Rules of Evidence every three weeks or to help you internalize the rules and not wait until the end of the semester to memorize everything! Trials will take place on Fridays and, on those class days when we have trials, our class will divide into three subsections and the trials will run from 9:30-10:30am, 10:30-11:30am, and 11:30am-12:30pm so that everyone is guaranteed to have at least two opportunities to participate in trials. I will mix up the Friday trial pairings so that no one is assigned the same time on Friday for all five trials.

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 essay questions (MEE) of varying lengths.

The midterm is worth 25% of the final grade; the "Writing Across the Curriculum" ("WAC") assignment is worth 25%; and the final exam is worth 50%. The midterm and final exams will be

scored anonymously; the WAC assignment will not be scored anonymously. The final grade for the course will be calculated anonymously.

Disability Policy:

SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations.

Safety Awareness Facts and Education:

Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here:

<http://safe.siu.edu>

Covid-19 Information:

SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send email to pandemicinfor@siu.edu.

Emergency Procedures: We ask that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

Covid-19: SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send email to pandemicinfor@siu.edu.

Assignments:

Week #1

8/21 Introduction to the Course and to Evidence Concepts

Reading: Ch. 1 (skim pp. 1-13 and read pp. 13-43)

8/23 Burdens and Presumptions

Reading: Ch. 1 (read pp. 43-51)

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

8/25 Judicial Notice [L]

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

Week #2

8/28 Laying a Foundation [M]

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

8/30 Best Evidence Rule [N]

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

9/1 Relevance, Part 1 [O]

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

Week #3

9/4 LABOR DAY (this class will be recorded)

Relevance, Part 2

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

9/6 Relevance, Part 3 [P]

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

9/8	Trial #1	
	10:30-	A, B, C, D
	11:30-	E, F, G, H
	12:30-	I, J, K, L

Week #4

9/11 Character Evidence, Habit, Remedial Measures, and Settlements [G]

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

9/13 Competence [H]

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

9/15	Trial #2	
	10:30-	M, N, O, E
	11:30-	B, C, D, I
	12:30-	F, A, J, P

Week #5

9/18 Hearsay, Part 1 [K]

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

9/20 Hearsay, Part 2 [A]

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

9/22 Hearsay Review

Week #6

9/25 Hearsay, Part 4 [B]

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

9/27 Hearsay, Part 5 [C]

Reading: Ch. 4 (read pp. 189-214 and prepare Problem 4-D)

9/29 Hearsay, Part 6 [D]

Reading: Ch. 4 (read pp. 216-235 and prepare Problem 4-G)

Week #7

10/2 Hearsay, Part 7 [E]

Reading: Ch. 4 (read pp. 235-254 and prepare Problem 4-J)

10/4 Hearsay, Part 8 [F]

Reading: Ch. 4 (read pp. 254-285 and prepare Problem 4-K)

10/6 Hearsay, Part 9 [G]

Reading: Ch. 4 (read pp. 285-304)

Week #8

10/9 Hearsay, Part 10 [H]

Reading: Ch. 4 (read pp. 304-323 and prepare Problem 4-N)

10/11 Midterm Exam

10/13 Hearsay, Part 11 [I]

Reading: Ch. 4 (read pp. 324-327)

Week #9

10/16 Hearsay, Part 12 [J]

Reading: Ch. 4 (read pp. 328-347 and prepare Problem 4-O)

10/18 Hearsay, Part 13 [K]

Reading: Ch. 4 (read pp. 347-370)

10/20 Hearsay, Part 14 [L]

Reading: Ch. 4 (read pp. 373-383)

Week #10

10/23 Confrontation Clause, Part 1 [E]

Reading: Ch. 4 (read pp. 383-403)

10/25 Confrontation Clause, Part 2 [F]

Reading: Ch. 4 (read pp. 404-420 and prepare Problem 4-R)

10/27 Trial #3

10:30- L, M, N, C

11:30- P, O, B, D

12:30- A, K, H, G

Week #11

10/30 Lay and Opinion Witness Testimony [I]

Reading: Ch. 9 (read pp. 625-645 and prepare Problems 9-A and 9-B)

11/1 Expert Testimony, Part 1 [J]

Reading: Ch. 9 (read pp. 645-667)

11/3 Expert Testimony, Part 2 [G]

Reading: Ch. 9 (read pp. 668-684)

Week #12

11/6 Impeachment, Part 1 [A]

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

11/8 Impeachment, Part 2 [B]

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

11/10 Trial #4

10:30- E, F, G, H

11:30- I, J, K, L

12:30- M, N, O, P

Week #13

11/13 Impeachment, Part 3 [C]

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

11/15 Repairing Credibility [D]

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

11/17 Privileges, Part 1 [M]

Reading: Ch. 12 (read pp. 779-803 and prepare Problems 12-B and 12-C)

Thanksgiving Break (11/20-11/24) – No Classes!

Week #14

11/27 Privileges, Part 2 [N]

Reading: Ch. 12 (read pp. 803-818; 820-828 and prepare Problem 12-E)

11/29 Privileges, Part 3 [O]

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

12/1 Trial #5

10:30- B, J, M, P

11:30- C, O, A, H

12:30- D, L, E, G