

Law 536: Evidence
Course Memorandum
Spring 2026

Professor Chris Behan
M-W-F, 11:00-12:10
Room 108 (Courtroom)

Course Overview

The law of evidence forms the core of the adversarial trial system. No cause of action, however just, can prevail at trial unless advocates present admissible evidence to and persuade a finder of fact that their 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.

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.
- Engage and consider non-dominant perspectives on the law of evidence with respect and empathy.
- Develop ability to critique the adversarial system and Federal Rules of Evidence for their ability to provide equitable access to justice.
- Identify and critically reflect upon the various aspects of their courtroom persona and identity.
- Demonstrate competence in solving evidentiary issues in the context both of problems and of courtroom trial and appellate exercises.

Class Meetings

This class meets Monday, Wednesday, and Friday from 11:00-12:10 AM, starting Monday, January 12, 2026 and ending Friday, April 24, 2026. Each class session is 70 minutes, a total of 210 minutes each week. Because of the extra 10 minutes per week, we will not need to make up the class missed from the Martin Luther King, Jr., holiday.

Class meetings this semester will be held live in the classroom. Class meetings will be recorded and made available to students with genuine emergencies, such as documented illnesses, quarantines, and the like.

From time to time, I may cancel class to attend conferences, or other professional obligations. I will provide plenty of advance notice to assist in your planning. To make up for these missed classes, I will use a combination of MS Team classes, out-of-class assignments, podcasts, and if necessary, physical make-up classes.

Course Materials

Along with my co-author, Professor Tony Kolenc, I wrote the textbook for this course, entitled EVIDENCE AND THE ADVOCATE: A CONTEXTUAL APPROACH TO LEARNING EVIDENCE (2d Edition, Carolina Academic Press, 2018).

There are two optional supplementary resource materials you might consider, although they are not required. The first is Goode & Wellborn's COURTROOM EVIDENCE HANDBOOK STUDENT EDITION. The current edition is the 2025-2016 edition, but you can use any edition from the last seven years. This book contains sample scripts 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 the Federal Rules of Evidence. As you will see, the textbook contains excerpts from these notes, but if you would like to read the complete Notes for each rule, they are available online for free on Westlaw and Lexis and at many websites, including <https://www.law.cornell.edu/rules/fre>. The advisory committee notes are extremely useful in understanding the rules of evidence and I highly recommend that you read them. I have included a link to the Rules with Advisory Committee Notes on the course D2L page.

Contact Information & Office Hours

- a. *General.* My office is Room 254. The telephone number is 453-8722. The e-mail address is cbehan@siu.edu. If you need to reach me and I am not in the building, leave a text at 618-521-1849. I prefer text messages to calls. If you text, identify yourself in the text (you'd be surprised at how many students don't do that).
- b. *Office Hours.* Office hours are Tuesdays from 2-4 pm or by appointment. I also have an open-door policy, under which you are welcome to drop by anytime I am in the office and my door is open. You can also text or email to set up a time for a telephone or MS Teams consultation.
- c. *Teaching Assistant.* My teaching assistant is Christa Langdon. She will post her contact information and availability on the D2L page.
- d. *Electronic Communication.* Check your e-mail regularly. I will use D2L to send messages pertaining to class. Make sure you are checking the email address you used to register for D2L. The 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.

- e. *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 come 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 of which I had not previously been aware.

Workload, Class Structure and Rhythm

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. 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.**

We will cover the entire book. I expect you to be prepared for class, turn in all assigned materials, and keep up with class.

We will not leave issues of workload compliance to chance. The class follows a predictable structure and rhythm:

(1) Pre-Class Preparation (critical to your success in this class)

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.

Problems. Every chapter contains several problems. Prior to class, you are expected to work through the problems and prepare written solutions to them. On several random occasions throughout the semester, I will require you to turn your problems by announcing at the beginning of class that you need to turn the in for that day. Upon receiving the announcement, you must turn them in immediately; no late submissions will be accepted. All problems will be run through the university plagiarism and AI-content detector. The problems will be graded and count as part of your final grade. I will drop your lowest problem set grade from the final grade calculation.

Also, you should know that any of these problems are fair game for the final examination; there will be a short-answer section that includes at least two or three of the problems from class.

In-Class Activities. Each chapter has an assigned in-class activity. Some require advance preparation before class, although this is typically relatively minimal preparation. You must be prepared to participate in these activities in class, as per the reading schedule below.

Application Exercises. Each unit has at least one application exercise, a more in-depth project that requires advance preparation, including written materials and in-class performances. Each litigation group will participate in two application exercises. After you have formed your litigation teams, I will post sign-up sheets on the D2L page.

(2) During Class.

Reading and Problem Days. On these days, we cover the assigned reading for each day, including cases and problems. I cold-call students at random to discuss cases and work through problems.

Synthesis Days. On synthesis days, we work through the classroom activities at the end of each chapter. We also conduct the unit application exercises. These activities and exercises are important in synthesizing your understanding of evidentiary doctrines and principles. Take note: the principles we discuss related to these exercises are testable and will be tested.

Attendance, Preparation and Class Participation.

Attendance is required. In accordance with law school rules, you may miss no more than six (6) class sessions during the semester without facing a penalty under the School of Law rules. You are responsible for managing your own absences. As an adult and a professional, should realize that if you take all absences early in the semester and need more later in the semester, you will have created a problem for yourself from which no one else is obligated to rescue you. Also, if you are assessed an absence for inadequate preparation or not paying attention when off-camera, that absence counts towards your total absences. If you exceed the number of absences (including absences assessed for inadequate preparation), you are subject to penalties in School of Law Rule 5(g). These include involuntary withdrawal from the course, a grade reduction, or failing the class.

I will take roll verbally at the beginning of class. If you aren't present when I call your name, you'll be assessed as absent.

Class participation is not only a key to successful learning, but also 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 class time on Friday, January 16. Each litigation team must select a name and turn in a completed information sheet using the template provided on D2L.

I cold-call on litigation teams, using a spreadsheet that randomly generates an order for cold-calling. It is possible to be called on multiple sessions in a row. I expect you to be prepared for class. If it becomes evident during our discussion that you are not prepared or have not been paying attention to class, I will announce that you have been assessed as absent for the day. I call on teams, but I expect every member of the team to participate in the discussion; you cannot coast by on the work of other team members.

In addition to participating in class when called on, I expect you to listen respectfully to others. Attempts to dominate classroom discussions, interruptions of myself or others, eye-rolling or disruptive body language and behavior, or other unprofessional classroom behaviors will result in class participation grade reductions and/or assessed absences.

When I call on a team in class, I am focused on that team and the dialogue we are having. I will entertain questions from other class members after those discussions but not during them. Furthermore, I do not call on every student who raises their hands, every time. Frequently, you may hear me say something such as, “We are moving on. I am not calling on you at this time.” This is not personal, but rather a reflection of my judgment that it is time to move to another topic. If questions remain about a subject after I have moved on, you may approach me after class or during office hours to discuss.

Listening and Note-Taking

I expect you to listen and be mentally engaged in class. Active, sustained listening is a critical skill for lawyers. I use a minimal number of slides in the class; they do not substitute for good note-taking practices by students. All slides used in class will be posted to D2L eventually.

MS Teams Video Protocol

We will hold several class sessions via MS Teams this semester.

I expect the following from anyone attending class via MS Teams:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is using MS Teams or streaming movies or video at that time. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your MS Teams connection will be much better than simply using wifi.
- Attempting to attend class while driving somewhere else does not count as class attendance. Should it become apparent that is what you're doing, I'll assess an absence for the day.
- Turn off all programs on your computer except MS Teams and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.

- Do not use your cellphone during this class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- If you are speaking, your video camera must be on. When your camera is on please ensure the area around you is free from distractions, including pets and people. Remember, your MS Teams presence is intended to substitute for your personal presence in the classroom as much as possible.
- When your camera is off, you are still part of the class. This means you are required to listen and to participate when called on, without me having to repeat the question or summarize the classroom discussion up to that point because you were not listening. If I call on you and you are not available to respond, ask me to repeat the question, or indicate in any way that you were checked out of class with your camera off, you'll be assessed an absence for the day.
- A few things to consider when your camera is on.
 - You are free to use a virtual background if you'd like, provided it is not overly distracting.
 - If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.
 - The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
 - The light source in the room should be in front of you, not behind you.
 - Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear.
 - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function on MS Teams to indicate this.

- If something happens to your internet connection during class, turn MS Teams off and on and log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).

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.

Policy on Recording Class

You are not authorized to make your own audio or video recordings of my classes. The class will be recorded by the School of Law IT department. Generally, I do not make recordings available unless necessary to accommodate a disability or unless you request and receive my approval.

Grading and Evaluation.

I will evaluate and assess your work in several ways:

- **No-Notice Problem Turn-In (5% of final grade).**

On at least ten occasions throughout the semester, I will announce at the beginning of class that you must turn in your written problems for the day. They must be turned in immediately. The problems will be run through the university plagiarism and AI-content detector before being graded. Any plagiarized or AI-generated problems will receive a 0 and will further be addressed under the Honor Code. The problems will be graded on a 5-point scale, as follows:

- 5 points. Problem demonstrates a full grasp of the issues and a diligent and thorough effort to reach a conclusion. Conclusion does not have to be correct but must be supported by reasoning and logic.
- 2.5 points. Problem demonstrates a partial grasp of the issues, but minimal effort in reaching a conclusion. Conclusions are not supported by sound arguments and reasoning.
- 0 points. Problem demonstrates minimal understanding of the issues and insufficient effort in reaching a conclusion.

- **In-Class Activity Prep Assignments (5% of final grade)**

When the syllabus indicates that your group must turn in preparation materials for the day on D2L, these will be graded on a 5-point scale. If a member of the group does not participate in preparing the assignment, the other members of the group should so indicate on the certificate of joint participation. The nonparticipating member(s) will receive no credit for the assignment.

- 5 points. A full grasp of the issues and a diligent and thorough effort to understand the assignment and prepare for the classroom learning activity.
- 2.5 points. A partial grasp of the issues, but a less than diligent and thorough effort to understand the assignment and prepare for the classroom learning activity.

- 0 points. Minimal effort that demonstrates little to no grasp of the issues or preparation for the classroom learning activity.

- **Class Preparation Quizzes (5% of final grade).**

Throughout the semester, there will be several no-notice multiple-choice quizzes that cover the assigned reading material for the day. These will be graded. If you are absent on a quiz day, you cannot make up the quiz. The lowest quiz score will be dropped.

- **Application Exercises (15% of final grade)**

Each litigation group will be assigned one application exercise on the D2L page. Each exercise requires significant out-of-class preparation, including the submission of written materials. The rubric for evaluating these application materials will be posted to D2L. The written component of the application exercises counts as your WAC requirement for this course.

- **Final examination (70%).**

The final examination consists of a combination of multiple-choice questions, short answers, and essays. I will provide more information about it later.

Other Important Information on Support and Resources. Please see the Law School and Provost Syllabus attachments, available on the D2L page in the Syllabus folder.

Reading & Assignment Schedule.

The reading schedule for the semester is below. The schedule is subject to change if I feel we need more time to cover a topic in class. There may be times when reading, discussions, and/or In-Class Activities or Application Exercises spill over to the next class. This does not change your obligation to be prepared for the material that is listed for a class and day. Think of the reading schedule as akin to an airline schedule. You must show up at the airport on time, even if the flight might be delayed a bit. As you will see in the reading schedule, I have built a few “flex days” into the schedule to ensure we catch up and cover all material before moving on to a new topic.

Week	Class	Date	Topic	Assignments
Unit One: Introduction to Adversary Trial System				
	1	12 Jan	Chapter 1: Adversary Trial Intro	EA, pages 3-29 Problems 1-1 to 1-4
	2	14 Jan	Chapter 2: Basic Evidentiary Procedures	EA, 33-61 Problems 2-1 to 2-6
	3	16 Jan	Synthesis	Chapter One In-Class Activity, page 30

Week	Class	Date	Topic	Assignments
				<ul style="list-style-type: none"> Option One (turn in prep materials on D2L) Chapter Two In-Class Activity, page 62 (turn in prep materials)
2	4	19 Jan	MLK Jr. Holiday. No class this day. Makeup already programmed into class schedule.	
	5	21 Jan	Chapter 3: Establishing Facts at Trial	EA, 63-84 Problems 3-1 to 3-3
	6	23 Jan	Synthesis	Classroom Court #1 (no materials turned in for any classroom court) Unit One Application Exercise. Page 89. All Groups turn in.
Unit Two: Relevance				
3	7	26 Jan	Chapter 4: Intro to Relevance	EA, 93-106 Problems 4-1 to 4-6
	8	28 Jan	Chapter 5: Rule 403	EA 111-126 Problems 5-1 to 5-4
	9	30 Jan	Synthesis	Classroom Court #2, pages 106-111 Chapter 5 In-Class Activity, pages 128-131. Turn in prep materials. <ul style="list-style-type: none"> Groups 1-5. Criminal Case Groups 6-10. Civil Case
4	10	2 Feb	Chapter 6: Rules 407-411	EA, 131-158 Problems 6-1 to 6-6
	11	4 Feb	Chapter 7: Rule 412 (Rape Shield)	EA, 161-179 Problems 7-1 to 7-3
	12	6 Feb	Synthesis	Chapter 6 In-Class Activity (no turn-in prior to class) Chapter 7 In-Class Activity (no turn-in prior to class)
5	13	9 Feb	Chapter 8: Privileges	EA 183-207 Problems 8-1 to 8-2
	14	11 Feb	Synthesis	Chapter 8 In-Class Activity (each litigation group identifies a privilege)

Week	Class	Date	Topic	Assignments
				from any state jurisdiction and turns in prep materials) Unit Two Application Exercise (Groups 1 and 12)
	Unit Three: Character Evidence			
	15	13 Feb	Chapter 9: Intro to Character Evidence	EA, 215-240 Problems 9-1 to 9-4
6	16	16 Feb	Chapter 10: Evidence of Other Crimes, Wrongs, Acts	EA 243-270 Problems 10-1 to 10-6
	17	18 Feb	Synthesis	Chapter 9 In-Class Activity (no advance preparation required) Classroom Court #3 Unit Three Application Exercise (Group 2 and 11)
	Unit Four: Law of Witnesses and Impeachment			
	18	20 Feb	Chapter 11: Witness Competency	EA 279-301 Problems 11-1 to 11-3
7	19	23 Feb	Chapter 12: Refreshing Recollection & Past Recollection Recorded	EA 305-323 Problems 12-1 to 12-3
		25 Feb	Chapter 13: Intro to Impeachment	EA 325-351 Problems 13-1 to 13-4
	20	27 Feb	Chapter 14: Impeachment by Prior Inconsistent Statements	EA 353-370 Problems 14-1 to 14-3
	Unit Five: Exhibits: Authentication & Best Evidence			
8	21	2 March PODCAST NO CLASS	Chapter 15— Authentication	PODCAST EA, 377-402 Problems 15-1 to 15-8
	22	4 March PODCAST NO CLASS	Chapter 16— The Best Evidence Rule	EA 405-424

Week	Class	Date	Topic	Assignments
	23	6 March	Synthesis	Do NOT prepare Chapter 11 or Chapter 13 In-Class Activity Chapter 12 In-Class Activity (plan in advance with litigation group; bring materials to class) Chapter 14 In-Class Activity (no advance planning needed) Unit Four Application Exercise (Group 3 and 10)
Spring Break March 7-15				
9	24	16 March	Synthesis	Chapter 15 In-Class Activity (be generally prepared; volunteers in class; no written assignment) Classroom Court #4 Unit Five Application Exercise (Groups 4 and 9)
	Unit Six: Hearsay			
	25	18 March	Chapter 17: Intro to Hearsay	EA 433-445 Problems 17-1 to 17-5
	26	20 March	Chapter 17, finish Chapter 18, Rule 805	EA 445-470 Problems 17-6 to 17-9 Problem 18-1
10	27	23 March	Chapter 18: Res Gestae Exceptions	EA 470-490 Problems 18-1 to 18-5
	28	25 March	Synthesis	Chapter 17 In-Class Activity (identify objections and responses on transcript, which will be provided on D2L) Chapter 18 In-Class Activity (identify objections and responses on transcript, which will be provided on D2L)
	29	27 March	Chapter 19, Business and Public Records	EA 495-526 Problems 19-1 to 19-6
11	30	30 March	Synthesis	Chapter 19 In-Class Activity

Week	Class	Date	Topic	Assignments
				Unit Six Mid-Unit Application Exercise (Groups 5 and 8)
	31	1 April	Chapter 20: Rule 804 Exceptions	EA 533-561 Problems 20-1 to 20-4
	32	3 April	Chapter 20 concluded	Problems 20-5 and 20-6
12	33	6 April	Chapter 21, Hearsay Finale	EA 567-584
	34	8 April	Synthesis	Problems 21-1 to 21-4 Classroom Court #5 Chapter 21 In-Class Activity (submit written prep materials)
	35	10 April	Chapter 22, Confrontation Clause, Part One	EA, 587-607 Problems 22-1 to 22-4
13	36	13 April	Chapter 22, Confrontation Clause, Part Two	EA, 607-219 Problem 22-5 to 22-6
	Unit Seven: Opinion Testimony			
	37	15 April	Synthesis	Chapter 22 In-Class Activity (identify objections and responses on transcript, which will be posted on D2L; turn in) Unit Six End-of-Unit Application Exercise (Groups 6 and 7)
	39	17 April	Chapter 23, Intro to Lay and Expert Opinion Testimony	EA 633-653 Problems 23-1 to 23-4
14	40	20 April	Chapter 24, Expert Opinion Testimony	EA 655-685 Problems 24-1 to 24-4
	41	22 April	Synthesis	Chapter 23 In-Class Activity (turn in prep materials) Chapter 24 In-Class Activity (turn in prep materials) Unit Seven Application Exercise (Group 5 and 6)

Week	Class	Date	Topic	Assignments
	42	24 April	Final Class	<p>Read Pages 695-696</p> <p>No advance preparation required</p> <p>Winning litigation group gets Quatro's Pizza!</p>