Evidence
Professor Holley
Fall 2020
Syllabus

Office: 236F    Office Hours: M., W., F. 3-4:30 & By Appointment

COURSEBOOKS:
2. 2020-2021 Federal Rules of Evidence: West 2020

ONLINE COURSE OPERATION

The class sessions will be held at the time(2 p.m. M., W., & F,) identified in the law school course schedule. The class will be conducted on Blackboard. The content for the class discussions will be provided prior to class on TWEN.

BASIS of GRADE:

1. Twenty percent (20%) of the grade will be based on class performance. Class performance evaluations will focus YOUR ABILITY TO ACCURATELY STATE & RESTATE THE EVIDENCE RULES & ATTENDANT POLICIES, and the use of your RESTATEMENTS to solve the assigned problems and perform on quizzes.

Problem solutions have a “PROTOCOL”; that protocol is described next.

1. ID The Theories of The Case = Factual Allegations & ID Cause(s) of Action (or crimes)/Defenses
   a. Note: Have you read the “McCrate Report”?
   b. Note: Editors assertion that you must know substantive law to be good at evidence evaluations.
2. ID who is seeking to admit the evidence, the nature of that evidence, and how that evidence goes to prove the theory of the case of the proponent, or disprove the theory of the case of the opponent.

3. ID who objected to admission/requested exclusion, and the specific basis(or bases) for the objection.

4. What is the Proper Ruling(s)?

EXAMPLE: Using Problem III-1 at pp. 221

Civil Cause of Action - Res Ipsa Loquitur as tort cause of action but only suing the bottling company and not the manufacturer when P was injured by Kola bottle. Tossed bottle explodes in mid-air.

(1) The plaintiff offered testimony by P and friend related to circumstances of accident and injury are related to elements of theory of case - re product dispersal from D’s vending machine

(2) P’s mom’s testimony re family vacation ruined, and ability of D to catch is irrelevant given P’s theory of case - re res ipsa and bottle exploded upon being tossed - unless res ipsa in jurisdiction permits theory of contributory or comparative negligence by use of product in a manner not within scope of its normal use, or defendant’s theory is that injury occurred when P missed bottle.

(3) Janitor’s testimony re findings in aftermath of accident re glass shard, and bottle fragment ID bottling company are pertinent to basics of theory of the case.

2. Forty percent (40%) of the grade will be based on student performance on two (20% each) interim exams.

3. Forty percent (40%) of the grade will be based on student performance on a comprehensive final examination.

COURSE DESCRIPTION AND ASSIGNMENTS:

Evidence focuses on the rules regulating the threshold, fundamental question of whether testimony or exhibits will be admitted at trial. The course also studies secondary rules establishing
further conditions for the admission of various types of facts/things which have satisfied the threshold requirements. In this course we also identify the important pre-trial steps that set the stage for the introduction of facts at trial.

Key evidence policy themes are relevance, reliability, fair trial concerns, and unfair prejudice. There are also policy perspectives, some constitutional principles, and evidence procedural rules which you will learn to identify and appropriately employ. Our classes will focus on problems that test your understanding of the rules and the policy identification, evaluation, and reconciliation that underlie them.

Class day Assignments

1-2 Distribution of Syllabus and Administration of Course Pretest and debriefing as Course overview.
Note: Chapter 1 is long and for the most part is a transcript of an actual trial. You should begin reading this chapter during the first week of class, and complete reading it by Monday, August 24th. The point of the transcript is to demonstrate how evidence rules are employed in an actual trial. In that context, it provides an overview of the course, and I will begin making reference to it on that date.
   See the C.B. pp. 1-140 – The Tellez transcript

3-4 Chapter 2 Evidence procedures and perspectives: 141-193
   Day 3 141-163; Day 4 164-193

Core Evidence Rules – Substantive and Procedural Core Evidence Rules

Step 1

Core Substantive Rules re Admissibility
FRE 401-403

Core Procedural Rules – Regulations of Steps to Prove - How to Prove
Admissibility
FRE 101-105 General Procedural Evidence Rules
FRE 601-607, 611 Procedural Rules Qualifying and Presenting Witnesses
FRE 701-704 Opinion Testimony by Lay Witnesses & Limits, Expert Witnesses & Limits

Step 2
Integrate into Study of these rules by reading the parts of the Casebook that addresses these rules by overview for the core substantive admission evidence rules(401-403), and in more detail for the procedural rules identified above.


Core Procedural Rules – C.B. Chapter 2 – 141-193
FRE 601-607, 611 – C.B. 141-142, 145-149
FRE 701-704 – C.B. 142-145 Opinions
FRE 603 Oath – C.B. 145-146
FRE 601, 605, & 606 Competence – C.B. 146-147
FRE 611(c) - Interrogation of Witnesses – On Direct – 148-151
FRE 611(b) - On Cross – 151-154 – Scope Rule
FRE 607 – impeachment General Rule – Scope – 155-156
FRE 611(c)(2) – Leading questions used against “Adverse” Witnessed called; 155
FRE 611(a) General Guidelines for Judge’s Authority to Control Interrogation of Witnesses, and admission of Exhibits and relation to why American Evidence Rules rely on array of Exclusionary rules – 15-161
FRE – 102, at 163(n. 31) – purpose of the Rules
FRE - 103, at 165-167 - Objecting to Evidence & 103(b) at `189-191
FRE – 104 at 174-183
FRE – 105 at 184-186

Step 2
Problems - Finally integrate into Study of these rules – the pertinent C.B. problems.
FRE 601, 605, & 606 Competence – C.B. 146-147 – Problem II-1 & II-2 at
5. Begin Chapter 3
   The Critical Role of “Relevance” & The Common Law Concept of Materiality.

The Significance of the Plaintiff’s/Prosecutor’s & Defendant’s Theories of the Case; “Conditional” Relevance; Witness Credibility and Other Evidence Deficiencies
   C.B. Chp. 3, pp. 215-233 FRE 401-402
   Chp. 3 - Problems: III-2-4

   Also a first look at:
   - Explanatory or Subjective Relevance
   - Eyewitness Experts, DNA Experts, and Admitting Opinions
   - Narrative Relevance and Demonstrative Evidence

   Reading & Evaluation
   Chp. 3 contd., pp. 234-243, 249-269, FRE & Texas 403
   Chp. 3 Problems: III-5-9, 12, 22. & 25.

7-8. Exhibit Evidence & The Application of the Basic Relevance Requirement to Exhibit
   Evidence via Authentication
   C.B.: Chp. 10, pp. 1269-1292 FRE: 901-905
   Problems: X-1-6, & 19
   C.B.: Chp. 10, pp. 1292-1312
   FRE: 1001-1008
   Chapter 10 Problems: X-7-8, 17-18, 20, 25, and 27

10. Exam interim 1 2020 - F. September 11