

EVIDENCE
LAW 600 SECTION 3
FALL 2021

PROFESSOR DANNYE HOLLEY

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THE PROFESSOR

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LOCATION: Room 236F

OFFICE HOURS: Monday, Wednesday and Friday

2:30 p.m. – 4:00 p.m. & By Appointment

COURSE BOOKS & MATERIAL

1. Lempert, Gross, et. al.: A Modern Approach to Evidence 5th ed., 2014, Thompson/West
PLEASE CRITICALLY READ THE SECTION ON “USING THIS BOOK”
2. 2021-2022 Federal Rules of Evidence: West 2021

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

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.

OBJECTIVES

Students will learn how to critically read, interpret, and apply to a multiple matching problem set core Evidence procedural rules.

Students will learn how to critically read, interpret, and apply to a multiple matching problem set all major Evidence substantive rules.

Students will learn the coverages and content of the MBE's testing of Evidence and practice accurately answering MBE simulated and released questions.

STUDENT LEARNING OUTCOMES

Students will learn the skill of formulating a lawyer’s litigation plan; a THEORY OF THE CASE. Students will learn how that theory determines core issues of admissibility of evidence, including “Relevance”.

Students will learn the reasons and interrelationships of the rules of evidence as exemplified by the federal evidence rules.

BASIS OF THE 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.

ACCOMMODATIONS

**PLEASE REFER TO THE STUDENT ACCOMMODATIONS
HANDBOOK FOR SPECIFIC PROCEDURES.**



THURGOOD MARSHALL SCHOOL OF LAW

COVID-19 INFORMATION SHEET

HEALTH AND SAFETY ON CAMPUS

1. The University does not require COVID-19 vaccination as a condition for attending school. As a protective measure, students are encouraged to get vaccinated. The St. Luke's vaccination clinic, located on campus in the Nabrit Science Building, is open and accessible to the entire University community, Monday-Friday, 9 a.m. – 7 p.m. There is no cost for the vaccination.
2. Students are expected to continuously self-screen for the symptoms of COVID-19. If you have symptoms and are not fully vaccinated, you should call the Student Health Center at (713) 313-7173. Please remember to exercise caution and be courteous of your fellow students.
3. Students who experience a medical emergency on campus should call (713) 313-7000. If off campus, call 911. Please inform the dispatch operator if you are experiencing shortness of breath, difficulty breathing, coughing, or have a fever.
4. Students who are unable to attend classes for health reasons, including those relating to COVID-19, should immediately contact the Associate Dean of Student Services, Amy Ratra (miami.ratra@tsu.edu), for further guidance.
5. Students who contract the COVID-19 virus must report the information to the Associate Dean of Student Services, Amy Ratra, and the Student Accessibility Services Office (SASO), by phone at 713-313-4210 or by email at disabilityservices@tsu.edu.
6. Students who contract the COVID-19 virus will be required to quarantine under the advice of Student Accessibility Services Office (SASO). Such students are required to submit Release of Care documentation from a licensed health care professional to SASO and notify the Associate Dean of Student Services, Amy Ratra, before they return to the law school.
7. While on campus and in classrooms, students are encouraged to conduct themselves in a manner conducive to the health and safety of the entire TSU community.
 - a. Students should practice hand hygiene, cough etiquette, and general cleanliness.
 - b. Face coverings (over the nose and mouth) are not required as per the guidelines from the State of Texas. However, students are strongly encouraged to wear face coverings (over the nose and mouth) while in the law school building.

- c. Students should wash or disinfect their hands before each class and after physical interaction with other persons in the classroom.
 - d. Students should maintain classroom cleanliness. Students should create a clean classroom environment by putting away unnecessary personal items and cleaning their seating area intermittently.
 - e. Students who do not conduct themselves on campus in a manner conducive to the health and safety of those with whom they come in contact may be subject to discipline up to expulsion from law school.
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ATTENDANCE POLICY

8. Law school classes will be fully in-person this fall. The law school attendance policy will be strictly enforced.
 9. Students who contract the COVID-19 virus will be barred from attending in-person classes until submitting Release of Care documentation from a licensed health care professional to Student Accessibility Services Office (SASO). Such students will be required to study and keep up with the prescribed readings.
 10. Students that are excused from in-person class attendance because they contracted the COVID-19 virus should designate a student in each of their classes to make audio recordings of the lectures. Professors are required to allow such recordings to be made. Furthermore, professors are required to meet with such students to answer questions about the materials covered during their COVID-19-related absence.
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UNIVERSITY RESOURCES

11. COVID-19 TESTING
Location: H&PE 109
Hours of Operation: No appointments are necessary. Tuesday – Thursday 8 a.m. – 11:30 p.m.
Results will be available within 24 hours if the test is taken by 11:30 a.m.
12. The St. Luke's vaccination clinic is open and accessible to all University personnel and community, Monday – Friday, 9 am – 7 pm in the Nabrit Science Building.
13. STUDENT HEALTH SERVICES
 - a. Student Health Services is open 8:00 a.m. – 5:00 p.m. Monday – Friday by appointment only.

- b. A nurse is available at (713) 313-7173, Monday – Friday, from 8:00 a.m. – 5:00 p.m. to schedule appointments.
- c. Appointments will be scheduled virtually and in-person, as needed.
- d. If you are currently enrolled and need a copy of your immunization record go to <https://tsu.medicatconnect.com>.
- e. If you are off campus but in the local area and need assistance contact the Harris County Health Department COVID-19 hotline: www.ReadyHarris.org. If you don't have the internet, call (832) 927-7575 or Houston Health Department COVID-19 Call Center: (832) -393-4220.

14. UNIVERSITY COUNSELING CENTER

- a. The University Counseling Center (UCC) is providing convenient Telemental Health Services to all students.
- b. Students may call 713-313-7800 to request an appointment. If someone does not answer, please leave your T-Number, name, and a contact number. Students may also complete this form to request an appointment, and someone will contact them during business hours:
https://forms.office.com/Pages/ResponsePage.aspx?id=ViJL72KUK0Su4urH7Z-1ZFNJ2YNoWsVPstLk4r8W_X1UOUk2SUxMRVoyVEdQTVkzV09YRVBLNU5OTy4u.
- c. Students may receive a call from a blocked or private number, please answer, as it may be your counselor trying to contact you.
- d. If a student experiences a crisis outside of regular business hours, the student can call 833-848-1765.
- e. Other resources for support outside of the UCC include:
 - i. Crisis text line – Text Steve to 741-741.
 - ii. National Suicide Hotline - 800-273-TALK (8255).

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

Class Attendance:

Class attendance is required. As per Article III, §9 of the Student Rules of Matriculation, if you miss more than eleven (11) classes you may have your grade reduced up to two (2) letter grades, depending how far you exceed the limit. A dismissal from class for lack of proper preparation will count as a missed class. You are required to arrive at class on time and remain until dismissal. Those who arrive late, leave early, or who take restroom breaks during the class, disrupt the rest of us. It is, therefore, expected that you will arrive on time, remain until class is over and take restroom breaks before or after class. **The class attendance rule will be strictly enforced.**

Class Preparation:

Prior to each class you are required to prepare written briefs for each case included in the Reading assignment and to develop a complete understanding of the cases, and the notes that follow each case. All briefs must be in your own hand writing. No printed materials will be allowed in class. The class discussion will center on your understanding of the cases and the area of law covered by the cases. It is expected that you will completely understand the assigned cases and the textual materials in the casebook when you enter the classroom.

Class is not a place for me to explain the cases and the textual materials to you. The classroom is, instead, the place for us to take what you learned from the cases and the textual materials to the next level. That is, we do not ask the question “what?” It is not helpful for me to ask “what if” unless you already know “what.”

Class Participation:

The classroom experience is not designed to provide an opportunity for me to demonstrate the depth of my knowledge about the subject matter. In fact, the classroom experience is designed to provide for you, the student, an opportunity to demonstrate to me the depth of your knowledge base. I will pose a series of questions to you based on the reading assignment. You will be expected to correctly answer all questions posed by me. If you are unable to properly respond to my questions, it says to me that you are not adequately prepared for class. Any student not adequately prepared will immediately be excused from class and will be registered as not present. One point will also be deducted from your total points when all of your examinations are combined.

Lawyers are most often expected to think and respond on their feet. You are, therefore, required to stand in class whenever you speak. You will notice that I also stand when I speak. If you have some physical problems that make it difficult for you to stand you must see me during the first week of class.

Title IX Information

Texas Southern University is committed towards encouraging and supporting a welcome inclusive university community where all community members enjoy a community free from sex discrimination, harassment and violence. As a result, you should know that university faculty members and staff are required to notify the University Title IX Coordinator of any instances of sex discrimination and harassment, sexual violence, dating violence, domestic violence, or stalking. Sharing this information ensures that those harmed are provided support resources. What this means is that as your professor, I am required to report any incidents that are directly disclosed to me, or of which I am somehow made aware. The University's Counseling Center is available to you if you want to speak with someone confidentially. Please visit the University's Counseling Center's website www.tsu.edu/ucc for additional information.

POLICIES & PROCEDURES

Student Rules:

It is the responsibility of each student to know the rules and regulations of Thurgood Marshall School of Law. You can access the Rules and Regulations Handbook on TMSL's website, www.tsulaw.edu, and clicking on the "Students" tab, then "Student Affairs," "Student Rules and Regulations," and finally "Student Rules and Regulations 2018-2019."



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY ACADEMIC CALENDAR 2021 – 2022

FALL SEMESTER 2021

Orientation	Mon-Fri	August 9 – 13, 2021
First Day of Class	Monday	August 16, 2021
Last Day to ADD/DROP	Wednesday	August 18, 2021
Labor Day (NO CLASSES)	Monday	September 6, 2021
<i>Purge of all unpaid course selections</i>	Wednesday	September 15, 2021
Mid Term Examinations	Mon – Fri	October 11-15, 2021
Last Day to Drop a Class with grade of “W”	Friday	November 5, 2021
Last Day of Classes	Tuesday	November 23, 2021
First Year Professors’ Grades due	Tuesday	November 23, 2021
Reading Period	Wed	November 24, 2021
Thanksgiving Holiday	Thurs-Fri	November 25-26, 2021
Reading Period (NO CLASS)	Sat- Sun	November 27-28, 2021
Final Examinations	Mon – Fri	Nov. 29 – Dec. 10, 2021
Commencement Exercises	Saturday	December 11, 2021

SPRING SEMESTER 2022

****TBA****

READING ASSIGNMENTS

Class Day	Assignments
1-2	<p>Distribution of Syllabus and Administration of Course Pretest and debriefing as Course overview.</p> <p>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 16th. 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.</p> <p>See the C.B. pp. 1-140 – The Tellez transcript</p>
3-4	<p>Chapter 2 Evidence procedures and perspectives: 141-193 Day 3 141-163; Day 4 164-193</p> <p>Core Evidence Rules – Substantive and Procedural Core Evidence Rules</p> <p>Step 1 Begin study by critically reading – evaluating core substantive and procedural rules in the Federal Rules of Evidence (2021 edition)</p> <p>Core Substantive Rules re Admissibility FRE 401-403</p> <p>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</p> <p>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.</p> <p>Core Substantive Evidence Rules FRE 401-403 – C.B. 215-216 & 163</p> <p>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</p>

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” Witness 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 3

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 147
FRE 611(b) - Problem II-3 at 157
FRE 103 – Problem II-4, at 172-173 Basis of Objection
FRE 103 – Problem II-5 at 173 Basis of Objection
FRE 104(a) vis a vis 104(b) Problem II-6 at 181
FRE 103(b) and 105 Problem II-7 at 191

- 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
 Date: Wed. August 18, 2021

- 6 An Introduction to Fundamental Evidence Exclusion Policies - Unfair Prejudice,
 Unreliability, & Fair Trial Concerns.

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.

Date: Fri. August 20, 2021

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
Dates: Mon. & Wed. August 23rd & 25th 2021

9 The Chain of Custody Rule, The “Best Evidence” Rule & The “Parole Evidence” Rule

C.B.: Chp. 10, pp. 1292-1312
FRE: 1001-1008
Chapter 10 Problems: X-7-8, 17-18, 20, 25, and 27
Date: Fri., August 27th 2021

10 Exam interim 1 2021 - Mon. August 30th 2021