

EVIDENCE
Course Policies and Syllabus
MWF 4:00-4:50
Professor Sanders

SYLLABUS

Course Description: This course is about the rules governing the introduction and use of evidence in civil and criminal trials. More particularly, it is about the rules governing the testimony of witnesses, the introduction of evidence and out-of-court statements into evidence at trial, and the threshold standards determining the admissibility of all evidence. The course will concentrate on the Federal Rules of Evidence.

Grading.

Pop Quizzes	25%
Midterm	25%
Final (Cumulative)	50%

Class Structure: Most of our class time will be spent reviewing cases and applying the rules of evidence to various factual scenarios through problem sets and hypotheticals.

Contact Info: Office: 236D
E-Mail: docksanders@gmail.com

Office Hours: MWF: 2:00-3:30, 5:00-6:00

Required Materials: George Fisher, *Evidence* (3ed.)

Recommended Materials: Arthur Best, *Evidence: Examples and Explanations*. David L. Faigman, *The Federal Rules of Evidence Map*; A Pocket Edition of the Federal Rules of Evidence.

TWEN. This class will use the TWEN webcourse. You must register for the TWEN Webcourse so you can receive emails from me. Once registered, you are responsible for logging on to TWEN to access handouts, problems, quizzes, assignments, and announcements.

Assignments. An outline of tentative reading assignments (syllabus) is provided below. However, reading assignments for upcoming classes will be adjusted based on progress and need. Students should bring the required materials listed above and all handouts with them to class. You may also regularly be given questions, problems, quizzes, and other assignments to work on outside of class.

Attendance, Preparation and Participation. You should come to class on time and be prepared to discuss the assignments for that class. You will be quizzed frequently on reading assignments as well as on any material covered in the two-week period preceding the day of the pop quiz. This means, in preparation for each class, you should not only read the cases, you should study, understand, memorize and be able to apply the rules announced in each case. Furthermore, you should review and study notes and rules (student notes and any notes I have provided) from the prior class. Also, before the beginning of each class week, you should review and study all notes and rules from the prior week.

You should bring an internet accessible device to each class. Occasionally, quizzes will be given using the turning point software which requires internet access.

A failure to attend class regularly, or to be prepared in class, will adversely affect your grade. Students must miss no more than 5 classes over the course of the semester in order to receive credit for the course. Moreover, because quizzes will be given on a regular basis, missing classes also means missing quizzes. This will directly affect your grade.

In the event of an absence, any request to make up a quiz, exam or other assignment should be made only after an excuse is obtained from Dean Mouton in the Dean of Student's office.

Class Discussions. All students will be on call each and every class period. Each student should be prepared to be orally examined on the assigned cases, problems, and materials. Students should also be prepared to answer hypotheticals designed to test their understanding of the rules and rationales underlying the rules as well as to engage in court-room style debates with other students concerning the admissibility of evidence. Students who are called upon to brief cases or to debate rules should stand up and remain standing until the completion of the exercise.

Each student is awarded four (4) passes that he or she may use at his or her discretion. Thereafter, half of a percentage point (.5) will be deducted from your final grade total for each instance of un-readiness.

Technology. The use of laptops is limited to course-related activity. Other unauthorized uses will result in point deductions. Internet usage is not allowed during class for any purpose unless under the express direction of the professor. The audio or video recording of the lecture and/or class discussion is not allowed.

Professionalism. You are expected to treat your colleagues like you want to be treated. You are also expected to be respectful of the teaching process and to abstain from any activity that might detract from the learning environment, included but not limited to engaging in distracting side-conversations and not waiting to be acknowledged before you speak. You are expected to be in class on time and to remain in class throughout the class period, barring an emergency such as a restroom need.

READING ASSIGNMENTS

- **Relevance: Probative and Materiality; Conditional Relevance**
FRE: 401, 402
READING: 22-35, 35-42
CASES: *United v. James, Cox v. State*
PROBLEMS: 1.1, 1.2, 1.3, 1.4, 1.6, 1.7

- **403 Balancing; Stipulations**
FRE: 403
READING: 42-58, 80-96
CASES: *State v. Bocharski, Commonwealth v. Serge, United States v. James, United States v. Jackson, Old Chief v. United States*
PROBLEMS: 1.8

- **Witnesses**
 - FRE 601, 602 603, 610
 - READINGS: 371-373
- **Impeachment**
 - Modes of Impeachment
 - READING: 257-260
 - Impeachment by Opinion, Reputation, and Cross-Examination about Past Lies
 - FRE: 404(a)(3), 607 & 608
 - READING: 261-275
 - CASES: *United States v. Whitmore*
 - PROBLEMS: 4.1, 4.2
 - Impeachment with Past Convictions
 - FRE: 609
 - READING: 276-299
 - CASES: *United Sates v. Brewer*
 - PROBLEMS: 4.3, 4.4, 4.5.
 - Rehabilitation
 - READING: 307-311
 - PROBLEMS: 4.6, 4.7
 - Inconsistent Statements Offered to Impeach
 - FRE: 613
 - READING: 435-452
 - CASES: *United States v. Barrett*
 - PROBLEMS: 7.17, 7.18
 - Use of Extrinsic Evidence
 - READINGS: 311-317
 - PROBLEMS: 4.8, 4.9
- **Character Evidence and the Propensity Ban Character**
FRE: 404(a), 405
READING: 145-165
CASES: *People v. Zackowitz*
- **Character Evidence of Other Crimes, Wrongs, or Acts**
FRE: 404(b)
READING: 165-207
PROBLEMS: 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13
- **Proof of the Defendant's and the Victim's Character**
FRE: 404(a)(2)(A), 404(a)(2)(B), and 405
READING: 234-252
CASES: *Michelson v. Untied States*
PROBLEM: 3.15, 3.16, 3.17, and 3.18
- **Habit Evidence 252-256 (Habit Evidence)**
FRE: 406
CASES: *Halloran v. Virginia Chemicals Inc.*
PROBLEM: 3.19
- **Propensity Evidence in Sexual Assault Cases; Rape Shield Law**
FRE: 412, 413, 414, 415, 406
READING: 207-234, 318-320, 322-332, 339-346

CASES: *Lannan v. State*, *State v. Kirsch*, *United States v. Guardia*, *United States v. Mound*

- **Introduction to Hearsay and Hearsay Definition**
FRE: 801, 802
READING: 374-396
PROBLEMS: All
- **Hearsay Definition and Utterances and Conduct that are Not Hearsay**
FRE: 801, 802
READING: 396-406
PROBLEMS: All
- **Hearsay Exemptions for Admissions (Statement of Party Opponent)**
FRE: 801, 104
READING: 406-429
CASES: *Mahlandt v. Wild Canid Survival & Research Center, Inc*
Bourjaily v. United States
PROBLEMS: 7.11, 7.12, 7.13, 7.14, 7.15, 7.16
- **Hearsay Exemption for Prior Statements**
FRE: 801
 - Prior Inconsistent Statements
READING: 452-454
PROBLEMS: 7.19, 7.20
 - Prior Consistent Statements
READING: 454-465
CASES: *Tome v. United States*
 - Statements of Identification
READING: 465-474
CASES: *Commonwealth v. Weichell*, *United States v. Owens*
PROBLEMS: 7.21
- **803 Exceptions (Present Sense Impression, Excited Utterance, State of Mind, Statements for Medical Diagnosis)**
FRE: 803(1)-803(4)
 - Present Sense Impressions and Excited Utterances
FRE: 803(1), 803(2)
READING: 510-515
PROBLEMS: 7.29, 7.30, 7.31, 7.32
 - State of Mind (Statements of Then-Existing Condition)
FRE: 803(3)
CASES: *Mutual Life Insurance Co. v. Hillmon*, *Shepard v. United States*,
READING: 515-531
PROBLEMS: 7.33
 - Statements for Medical Diagnosis or Treatment
FRE: 803(4)
READING: 531-542
CASES: *United States v. Iron Shell*
PROBLEMS: 7.34, 7.35, 7.36, 7.37

- **803 Documentary Exceptions (Recorded Recollection, Business Records, Public Records)**

FRE: 803(5)-803(8), 612

- Recorded Recollection

FRE: 803(5), 612

READING: 542-548

CASES: *Johnson v. State*

PROBLEMS: 7.38

- Business Records

FRE: 803(6)-803(7)

READING: 548-562

CASES: *Palmer v. Hoffman, United States v. Vigneau*

PROBLEMS: 7.39, 7.40

- Public Records

FRE: 803(8), 803(10)

READING: 562-574

CASES: *United States v. Oates, United States v. Hayes, United States v. Weiland*

- **Hearsay Exceptions under FRE 804 (Former Testimony, Statements Against Interest, Dying Declarations)**

FRE: 804

- Former Testimony (Past Testimony)

FRE: 804(a), 804(b)(1)

READING: 474-488

CASES: *United States v. Duenas, Lloyd v. American Export Lines Inc.*

PROBLEM: 7.22, 7.23

- Statements Against Interest

FRE: 804(b)(3)

READING: 488-497

CASES: *Williamson v. United States*

PROBLEM: 7.24, 7.25, 7.26, 7.27

Dying Declarations

FRE: 804(b)(2)

READING: 497-505

CASES: *Shepard v. United States*

PROBLEM: 7.28

- **The Confrontation Clause**

READING: 586-625, 627-660

CASES: *Mattox v. United States, Crawford v. Washington, Michigan v. Bryant, Bullcoming v. New Mexico.*

FRE: none

CONSTITUTION: 6th Amendment

PROBLEMS: 8.1, 8.2, 8.3

- **The Confrontation Clause Continued**

READING: 674-681, 694-718

CASES: *Bruton v. United States, Cruz v. New York, Gray v. Maryland*

FRE: none

CONSTITUTION: 6th Amendment

PROBLEMS: 8.4, 8.5, 8.6, 8.7, 8.8, 8.9

- **Lay Opinion &**
 FRE: 701
 READING: 735-748
 CASES: *United States v. Ganier*
 PROBLEMS: 9.1, 9.2, 9.3, 9.4
- **Expert Opinion (Who is an Expert; Proper Topics)**
 FRE: 702
 READING: 748-783
 CASES: *United States v. Ganier, United States v. Johnson, Jinro America, Inc. v. Secure Investments, Inc., Hygh v. Jacobs, State v. Batangan, State v. Guilbert*
 PROBLEMS: 9.5, 9.6, 9.7, 9.10, 9.11, 9.12
- **Expert Opinion (Proper Basis; Reliable Methods)**
 FRE: 702-706
 READING: 783-793, 793-822, 847-858
 CASES: *Frye v. United States, Daubert v. Merrell Dow Pharmaceuticals, Inc, Daubert v. Merrell Dow Pharmaceuticals, Inc.,*
 PROBLEMS: 9.13, 9.14
- **Privileges; Attorney Client Privilege**
 FRE: 501, 502
 READING: 930-934, 974-1010
 PROBLEMS: 12.1, 12.2, 12.4, 12.5, 12.7
- **Spousal Privileges**
 FRE: 501, 505
 READING: 1043-1065
 PROBLEMS: 12.8, 13.1

