

Evidence
Professor Holley
Fall 2019
Syllabus

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

COURSEBOOKS:

1. Lempert, Gross, et. al.: A Modern Approach to Evidence 5th ed., 2014, Thompson/West
2. 2019 Federal and Uniform Rules of Evidence: West 2019

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 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. Discussion of Chapter 1 of C.B. pp. 1-140 and significance of Tellez transcript
3	Chapter 2 Evidence procedures and perspectives: 141-170 Problems: II-1, II-2(147); & II-3(157)
4	Chapter 2 contd., pp. 171-198 Problems: II-4(172); II-5(173); II-6(181); II-7(191); II-8(194)
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
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 Evidence 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
- 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
- 10 Exam interim 1 2019 - TS- F. September 13