

EVIDENCE
Spring 2020

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This course will examine the rules governing the admission, exclusion, and presentation of evidence in judicial proceedings. The focus of the course readings and discussion will be on the Federal Rules of Evidence.

Course Learning Outcomes

By the end of the semester, you should be able to:

1. *Use and apply the federal rules of evidence.*

Students will demonstrate knowledge of the substance and application of the federal rules of evidence. Students will refine skills identifying legally significant facts and applying relevant rules, including synthesizing multiple relevant rules. Students will learn how to formulate solutions around factual and legal uncertainty.

2. *Recognize and become familiar with lawyering roles and relationships.*

Students will practice applying the rules of evidence in conjunction with how lawyers deal with clients, witnesses, judges and jurors in a trial setting.

3. *Bar exam preparedness and skills.*

Students will practice strategies to answer bar style multiple-choice questions.

Required Reading:

- 1) Learning Evidence: From the Federal Rules to the Courtroom, 4th Edition, 2018, Deborah Jones Merritt & Ric Simmons (“M&S”).
 - a) This textbook comes with an online eBook and digital resources (see inside the front cover of the textbook for registration instructions on West Academic). If you have a used textbook, you should purchase the digital resources by following [this link](#). It is important that you follow the instructions in your textbook to sign up for the digital resources right away, as I will assign some of these materials to supplement your textbook reading.
- 2) Federal Rules of Evidence (“FRE”). Although the textbook contains an appendix with the Rules for quick reference, **you will need the latest version of the FRE (2019 Edition) that**

includes the Advisory Committee's Notes. Please make sure you bring to class an annotated copy of the rules assigned for that class.

Recommended Reading:

- 1) Goode, S & O. Willborn, Courtroom Evidence Handbook, Student Edition 2018-2019, West Academic 2018.

Lab:

This course has a mandatory lab component, which accounts for 15% of the grade. Please make sure you leave room in your schedule to register for one of the available lab sessions. If you have questions about enrollment in the lab, please contact the Registrar, Maureen Moriarty.

Class Meeting Time:

MWF 12:45-2:00, Oakes Hall, Classroom 012

Dean Rushlow Drop-In Office Hours:

Wednesdays and Fridays 2:00-3:00

Teaching Assistants:

This is a large class and we want to answer all of your questions efficiently. We are fortunate to have three teaching assistants for this course: Drew Brandies, Megan Noonan, and Dayna Smith. **If you have a question outside of class, your first step should be to seek the help of a TA.** Do not feel shy about reaching out to the TAs for help. They are a key resource to help you succeed in the course - that is why we have three of them! The TAs will hold regular office hours (details TBA). TAs will also conduct review sessions throughout the semester (dates TBA) to help you master sets of topics and prepare for the midterm and final exam; you are strongly encouraged to attend.

Course expectations:

Students must be prepared for class, be prompt in attendance, and be professional in all interactions. (See below under grading policy for additional information.) There is a significant amount of material in this course, which can be mastered through careful reading of the materials.

Participation:

Class attendance is required. Absences will affect your grade. Unexcused absence from three classes will result in a written warning and a significant deduction from your final grade. Unexcused absence from two additional classes will result in a grade of FWd. (See Academic Regulations XI.A.1.a.). Make-up classes will not be counted for purposes of calculating your attendance history.

Absences resulting from religious observance, serious illness, and personal emergency are excused if notice is given to the Professor within a reasonable time (the same day if possible) of

the absence. However, informing the Professor of anticipated absences does not automatically convert those absences into “excused” absences unless the aforementioned criteria are met and approved by the Professor. Excused absences may affect your grade if they are excessive because you are not present and cannot contribute to class discussion.

Unexcused absences may affect your grade even if they do not exceed three regularly scheduled classes. Unexcused absences are to be used for job interviews, attendance at conferences, and similar activities. If you inform the Professor of the reason for your absence by email either before or shortly after your absence and the Professor deems your reason sufficient, that unexcused absence will not affect your Professionalism grade. Again, informing the Professor of the reason for your absence does not convert your absence into an excused absence.

Being late for class may be treated as an unexcused absence if you are significantly or frequently late. Leaving in the middle of class will also negatively affect your grade. Class begins promptly at 12:45 P.M. If an emergency or other valid reason causes you to be late, let the Professor know.

You are expected to be prepared and to participate in class when called on. If you are not prepared, please pass. However, passing can have a detrimental effect on your grade, so preparation for class is essential. Class participation is measured primarily by its meaningfulness and utility to the classroom discussion. While frequency of participation matters, it is the substance of your contribution that matters more.

You are not expected to fully understand the material completely before class. If you have prepared, you should participate. If you are uncertain, you are expected to ask questions when you do not understand. You can ask questions during class, after class, during office hours or appointments with the TAs or with me, and by email.

Respect, Civility, and Understanding:

You are expected to show respect for the Professor and your classmates. Please raise your hand to be called on and do not engage in side conversations or make comments about the contributions of your classmates. Please respect the differing contributions of other students. If you are a frequent contributor to class discussion, you might not always be called on to speak.

A Note on Difficult Topics:

By necessity, the topics covered in this course may be uncomfortable at times. For instance, we will read about and discuss cases involving violent acts that may disturb you or your classmates - and may be more disturbing for some than others based on personal life experiences.

Please maintain an awareness of the possibility that any of the topics covered in our discussions could potentially be sensitive for your classmates, and you should thus be mindful of your classmates’ experiences and perspectives. We are all responsible for working at maintaining an environment that facilitates learning.

If you are incapacitated by discomfort over a particular topic due to personal experiences, you are welcome to let me or Dean McCormack know so that we can try to find a workable solution. Keep in mind, however, that Evidence is covered on the Bar, and so a full understanding of the issues covered in this class is critical.

Electronics:

Computers, cell phones, and electronic devices are an enormous help in our daily lives but also an enormous distraction. I welcome laptop users in my class, but please realize that it is fairly obvious whether you are taking notes and engaged in class or are absorbed by some computer distraction like email, social media, etc. The latter is a discourtesy to me and your classmates, and I will address it in your participation score. Please turn your phones off while in class; texting in class is prohibited.

Grading:

30% of the course grade will be based on a midterm, and 40% of the course grade will be based on a final exam. Lab performance will account for 15% of the grade. Professionalism counts for 15% of your grade and will be based on attendance, class preparation and participation, civility, respect, and meeting all course obligations.

Assignments:

The reading assignments must be completed before attending class. The assignments listed as “M&S” reference chapters from the Merritt & Simmons text (“M&S”). The Rules listed as FRE [#] refer to the Federal Rules of Evidence, 2019 Edition. In addition to the text reading, reading the rules and associated committee notes is required (and essential). Reading the committee notes is required because they provide important context and explanation of the rules. From time to time, I will assign additional readings and post them on TWEN.

I will regularly assign quizzes to help you integrate your learning after doing the reading. The quizzes are to be done after you complete your reading but before class. The quizzes are not graded but are important to your learning. Unless noted otherwise, the quizzes are available through the digital resources that come with the M&S textbook (see information in the above Required Reading section). The M&S digital resources are incredibly useful and include: multiple-choice quizzes, simulations, additional video mini-classes, study aids, and practice exam questions.

Some assignments may also be paired with problems that will be available on TWEN. Where applicable, please submit your answers by the assigned due date via TWEN. Other assignments are group assignments that we will solve in class.

The syllabus may be updated periodically. You will always be able to find the most up-to-date syllabus on the course TWEN site.

The schedule of assignments is as follows:

	TOPICS	READING
	Rules of Evidence in Context. Relevance	
1	<u>Monday, January 13</u> Types of Evidence; Raising and Resolving Objections. Intro to Relevance.	M&S Chapters 1-5 M&S c.5 quiz FRE 101, 103, 105
2	<u>Wednesday, January 15</u> Relevance - Balancing probative value against prejudicial effect.	M&S 6 M&S c.6 quiz FRE 401, 402
3	<u>Friday, January 17</u> Relevance - Balancing probative value against prejudicial effect. (cont.)	M&S 7, 8 M&S c.7 quiz FRE 403
4	<u>Wednesday, January 22</u> Subsequent Remedial Measures; Liability Insurance	M&S 9,13 M&S c.9, 13 quizzes FRE 407, 411
5	<u>Friday, January 24</u> Medical Expenses; Settlements and Offers to Compromise	M&S 10, 11 M&S c.10, 11 quizzes FRE 408, 409
	Reliability of Documentary and Physical Evidence	
6	<u>Monday, January 27</u> Authentication; Best Evidence.	M&S 69, 70 (pages 938 only) M&S c.69, 70 quizzes FRE 901, 902, 1001, 1002, 1003 (and other rules cross-referenced in committee notes)
	Witnesses	
7	<u>Wednesday, January 29</u> Witness Examination; Refreshing Recollection	M&S 14,15 (pages 183-195 only), 16 M&S c.15, 16 quizzes FRE 601, 602, 603, 605, 606(a), 611, 612
8	<u>Friday, January 31</u> Impeachment; Prior Statements	M&S 17, 18 M&S c.18 quiz FRE 607, 613
9	<u>Monday, February 3</u> Examining the witness' character for truthfulness or untruthfulness:	M&S 19 FRE 608
10	<u>Wednesday, February 5</u> Impeachment with Criminal Convictions	M&S 20 M&S c.20 quiz FRE 609

11	<u>Friday, February 7</u> Character witness: Reputation, and Opinion Evidence of Untruthful character.	M&S 21, 22 M&S c.22 quiz FRE 608
Character Evidence		
12	<u>Monday, February 10</u> Character Evidence / Propensity in Criminal Cases	M&S 27-29 FRE 404(a); 405(a)
13	<u>Wednesday, February 12</u> Crimes, Wrongs, or Other Acts.	M&S 30 M&S c.30 quiz FRE 404(b), 403
14	<u>Friday, February 14</u> Crimes, Wrongs, or Other Acts (cont.) Habit	M&S 31 M&S c.31 quiz FRE 406
15	<u>Monday, February 17</u> Rape Shield; Sexual Assault Propensity	M&S 32-33 M&S c.32, 33 quizzes FRE 412-15
16	<u>Wednesday, February 19</u> Midterm	

Hearsay		
17	<u>Friday, February 21</u> Hearsay (intro) Truth of the Matter Asserted; Hearsay Statements	M&S 35, 36 M&S c.36 quiz FRE 801 (a)-(c)
18	<u>Wednesday, February 26</u> Hearsay intro (cont.) Truth of the Matter. What is “out of court”. What is a Statement.	M&S 36, 37
19	<u>Friday, February 28</u> Admissible Hearsay; Hearsay Exemption: Prior Statements by Witnesses	M&S 38-39 M&S c.39 quiz FRE 801, 801(d)(1)
20	<u>Wednesday, March 4</u> Statements by Opposing Party; Multiple parties	M&S 53, 54 M&S c.53 quiz FRE 801(d)(2)

21	<u>Friday, March 6</u> Co-conspirators	M&S 55 M&S c.55 quiz FRE 801 (d)(2)
	<i>March 9-15 SPRING BREAK</i>	
22	<u>Wednesday, March 18</u> Hearsay Exceptions. Present Sense Impressions; Excited Utterances; State of Mind;	M&S 40, 41 M&S c.40, 41 quizzes FRE 803(1), (2), (3)
23	<u>Friday, March 20</u> Medical Treatment; Recorded Recollection;	M&S 42, 43 M&S c.42, 43 quizzes FRE 803(4), (5)
24	<u>Wednesday, March 25</u> Multiple Levels of Hearsay; Business Records;	M&S 44, 45 M&S c.45 quiz FRE 803 (6), 805
25	<u>Friday, March 27</u> Unavailability; Former Testimony	M&S 48, 49 M&S c.49 quiz FRE 804(b)(1)
26	<u>Wednesday, April 1</u> Dying Declarations, Statements Against Interest, Forfeiture	M&S 50-51, 52 M&S c.50, 51, 52 quizzes (p.659-661 only)
27	<u>Friday, April 3</u> The Confrontation Clause	M&S 58 M&S c.58 quiz
28	<u>Wednesday, April 8</u> Hearsay Review	
	Expert Opinions and Lay Opinions	
29	<u>Friday, April 10</u> Expert Opinions. Expert Qualifications;	M&S 60-61 M&S c.60, 61 quizzes FRE 201, 701, 702

30	<u>Wednesday, April 15</u> Bases of Opinions. Confrontation Clause and Expert Testimony	M&S 62-63 M&S c.62, 63 quizzes FRE 702-705
31	<u>Friday, April 17</u> Limitations on Opinion and Expert Testimony	M&S 64 M&S c.64 quiz FRE 701, 702, 704, 403
Privileges		
32	<u>Wednesday, April 22</u> Attorney-Client Privilege;	M&S 66-67 M&S c.67 quiz FRE 501
33	<u>Friday, April 24</u> Other Privileges	M&S 68 M&S c.68 quiz
34	Review or make up	TBA
35	Exam Review	TBA