

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.

Required Readings:

- **Learning Evidence: From the Federal Rules to the Courtroom**, 4th Edition, Deborah Jones Merritt & Ric Simmons
- **Federal Rules of Evidence**. I have posted in our Teams Materials a link to **the FRE that includes the Advisory Committee's Notes**. No need to buy a supplement.

Strongly recommended:

- Goode, S & O. Willborn, **Courtroom Evidence Handbook, Student Edition 2015-2016**, West Academic 2015.

Lab: This course has a mandatory lab comp. Please make sure you leave room in your schedule to register for one of the available lab sessions.

Required technology:

To use Teams, you need a computer with a webcam, speakers and a microphone. Before our first class, you should access Teams. You may want to open the program and familiarize yourself with it.

COURSE EXPECTATIONS

Attendance: Attendance is mandatory for this class.

- **You are required to be logged in to Teams at the start of class with your VIDEO ON.** You also must remain logged in and active for the duration of the class.
- If you need to step away from your computer, send me a private chat message on Teams so I will not call on you at that time. Teams provides a detailed account of when a student logs in and uses the course. I will use that function to take attendance.
- 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 serious illness, religious observance, and/or significant personal emergency may be considered excused if you give notice prior to the class you must miss. If you do not feel well, do not come to class. You will be able to watch the Teams recording. However, if you are not coming to class, you must let me know in advance. Whether an absence is excused will be assessed on a case by case basis.

Participation and engagement: We are living an extraordinary time; we are all learning to adapt to the circumstances the best way we can. I appreciate everyone's effort to make this class as engaging and participative as technology allows.

Your final grade will include an assessment of your class participation. The participation grade is based on evidence of your preparation for each class, on the quality of your analysis of the assigned problems, your participation in group assignments, and on your contributions to class discussion.

Online participation rules:

- Cameras ON during entire class (ok to turn off if you need to step aside BRIEFLY to address a something that could be a distraction to other students.
- Stay logged in and active for duration of class
- Mute microphone when not speaking
- If you step away from computer, private message me and I will not call on you
- Raise your hand if you have a question
- Be prepared and ready to go, I call on several people each class

Assignments

The **reading assignments** must be completed before attending the class discussion. The assignments listed as "M&S" reference chapters from the Merritt & Simmons text ("M&S"). The Rules listed as FRE __ refer to the Federal Evidence Rule. In addition to the text reading, **reading the rules is required (and essential)**. From time to time, I will assign additional readings and post them on our course materials

Each assignment is paired with **problems**, which are available in our course materials. Please submit your answers by the due date. Other assignments are group assignments that we will solve during class time.

Grading:

- Midterm: 20%
- Lab 15%
- Participation 15%
- Final Exam 15%

	TOPICS	READING
	Rules of Evidence in Context. Relevance	
1 8/24	Types of Evidence; The Structure of a Trial; Raising and Resolving Objections.	M&S Chapters 2, 5. FRE 101, 103, 105
2 8/26	Relevance. Balancing probative value against prejudicial effect.	M&S 6-7. FRE 401, 402, 403
3 8/28	Subsequent Remedial Measures; Liability Insurance	M&S 9,13; FRE 407, 411
4 8/31	Medical Expenses; Settlements and Offers to Compromise	M&S 10, 11 FRE 408, 409
	Reliability of Documentary and Physical Evidence	
5 9/2	Authentication; Best Evidence.	M&S 69, 70 (pages 885-85 only); FRE 901, 902, Skim Article X.
	Witnesses	
6 9/4	Witness Examination; Refreshing Recollection	M&S 14,15 (A-C only), 16 FRE 601, 602, 603, 605, 606(a), 611, 612
7 9/9	Impeachment; Prior Statements	M&S 17, 18. FRE 607, 613,
8 9/11	Examining the witness' character for truthfulness or untruthfulness: Conduct, Reputation, and Opinion	M&S 19, 21. FRE 608
9 9/14	Impeachment with Criminal Convictions	M&S 20; FRE 609
	Character Evidence	
10 9/16	Character Evidence / Propensity in Criminal Cases	M&S 27-29; FRE 404(a); 405(a)
11 9/18	Crimes, Wrongs, or Other Acts.	M&S 30; FRE 404(b), 403
	<i>Labs start this week. No Friday class except if necessary for a make up</i>	
12 9/21	Crimes, Wrongs, or Other Acts (cont.) Habit	M&S 31; FRE 406,
13 9/23	Rape Shield; Sexual Assault Propensity	M&S 32-33; FRE 412- 15
14 9/28	Midterm Practice	

	Hearsay	
15 9/30	Hearsay (intro)	M&S 35, 36, 37; FRE 801 (a)-(c)
16 10/05	Hearsay Statements. Truth of the Matter Asserted;	M&S 35, 36, 37; FRE 801 (a)-(c)
17 10/07	Admissible Hearsay; Prior Statements by Witnesses	M&S 38-39; FRE 801; 801(d)(1)
	October 10-13 FALL BREAK NO LABS THIS WEEK	
18 10/14	Present Sense Impressions; Excited Utterances;	M&S 40, 42 FRE 803(1), (2), (4)
19 10/19	State of Mind. Medical Treatment;	M&S 41; FRE 803(3),
20 10/21	Recorded Recollection;	M&S 43, 44; FRE 803 (5), 805
21 10/26	Multiple Levels of Hearsay; Business Records and Public Records.	M&S 45; 46; 47 FRE 803 (6), (8).
22 10/28	Hearsay/non hearsay and 803 review. Other 803 exceptions.	M&S 47 FRE 803
23 11/02	Unavailability; Former Testimony	M&S 48-49; FRE 804(b)(1)
24 11/04	Statements by Opposing Party; Multiple parties	M&S 53, 54; FRE 801(d)(2)
25 11/09	Co-conspirators	M&S 55; FRE 801 (d)(2)
26 11/11	The Confrontation Clause	M&S 58; FRE 806;
	Expert Opinions and Lay Opinions	
27 11/16	Expert Opinions. Expert Qualifications;	M&S 60-61; FRE 201, 701, 702
29 11/18	Bases of Opinions. Confrontation Clause and Expert Testimony	M&S 62-63; FRE 702-705

30 11/23	Limitations on Opinion and Expert Testimony	M&S 64; FRE 701, 702, 704, 403
	Privileges	
31 11/25	Attorney-Client Privilege;	M&S 66-67; FRE 501
32 11/30	Other Privileges TBA -Problems	M&S 68
33 12/02	Exam Review	