

SYLLABUS for Professor Parker’s EVIDENCE, Fall 2005 (Law 222, §§ 1&2)

Course Materials and TWEN site. The required materials for this course are (1) the Waltz and Park casebook entitled *Evidence* (Updated 10th ed. 2005: Foundation Press)(cited below as “CB”) (to be published on August 10, 2005); and (2) a softbound pamphlet entitled *Federal Rules of Evidence 2005-2006 Edition* (West Group) (cited below as the “Rules Pamphlet”). There also is a recommended but optional book available at the Arlington campus bookstore, which is the Mueller & Kirkpatrick hornbook on *Evidence* (3d ed. 2003: Aspen).

Additional required and optional materials (including sample examinations from previous offerings of this course) will be posted to the course’s TWEN site. For this reason among others, registration at the TWEN site is required of all enrolled students.

Class Meetings. This is a three-hour course that will meet twice weekly, on Tuesdays and Thursdays at 4:00-5:15 P.M. (day section; Room 225) and 8:00-9:15 P.M. (evening section; Room 332), in one 75-minute session without a break. Given the importance of oral advocacy in Evidence, student participation in class discussions (usually by advocating or ruling on a point of evidence law in a hypothetical case, taken from the casebook hypotheticals or from a variation on one of the assigned cases from the casebook) will be stressed. A seating chart will be distributed at the first class meeting, and will be used as the definitive indicator of students’ presence and location throughout the semester.

Reading Assignments. The following reading assignments are assigned tentative dates for class discussion. Inevitably, there will be some slippage in the pace of class discussions, and the student is responsible for remaining prepared until the materials are reached, like an advocate waiting to be heard by a court. In connection with all reading assignments to the Casebook, you should review and study the pertinent provisions of the Federal Rules of Evidence (in the Rules Pamphlet), which will be our primary model of evidence law throughout the semester, and the California Evidence Code (also in the Rules pamphlet), which will be used as a secondary example of codified evidence rules.

Topics and Reading Assignments	Dates
Introduction to Evidence: Introductory Lecture (TWEN site); Review the Rules Pamphlet, with particular emphasis on the Federal Rules of Evidence; independently read Casebook chapter 1, CB1-70, with particular emphasis on the examples of objections at CB62-70	8/23
Relevance and Inference: CB 71-95; full text of <i>Sherrod v. Berry</i> , 856 F.2d 802 (7 th Cir. 1988) (en banc), at CB80 (or edited version of the case at TWEN site)	8/25
Hearsay Defined I: CB 96-114 (through the hypotheticals preceding <i>Zenni</i>)	8/30

Topics and Reading Assignments	Dates
Hearsay Defined II; First-Hand Knowledge Compared: CB 114-37; CB795-97	9/1
Hearsay Exceptions—Dying & Contemporaneous Declarations: CB 137-59	9/6
Hearsay Exceptions—Admissions: CB 160-88	9/8
Hearsay Exceptions—Former Testimony; Declarations Against Interest: CB188-210	9/13
Hearsay Exceptions—State of Mind: CB 210-34	9/15
Hearsay Exceptions—Medical Diagnosis, Prior Identification, Past Recollection Recorded: CB 234-53	9/17
Hearsay Exceptions—Business and Public Records I: CB 254-77	9/22
Hearsay Exceptions—Business and Public Records II: CB277-92	9/24
Hearsay Exceptions—Miscellaneous and Residual: CB 292-315 (through Hypotheticals preceding <i>Ohio v. Roberts</i>)	9/29
Constitutional Dimensions of the Hearsay Rule: CB315-66	10/4-10/6
[no class on 10/11, due to “Fall Recess”]	
Advanced Relevance I: Probabilistic Evidence: CB368-84	10/13
Advanced Relevance II: Introduction to Character Evidence: CB 384-98, 402-06	10/18
Advanced Relevance III: Character versus Prior Bad Acts; Habit and Custom Distinguished: CB406-39	10/20
Advanced Relevance IV: The Unraveling of the Law of Character Evidence: CB 439-63	10/25
Advanced Relevance V: Similar Happenings; Subsequent Measures; Settlement and Pleas: CB 463-84	10/27

Topics and Reading Assignments	Dates
Witnesses—Competency, Cross-Examination, and Impeachment: <i>Class discussion:</i> CB 499-540 <i>Outside reading:</i> CB485-99; 700-33	11/1
Witnesses—Impeachment II: CB541-72	11/3
Writings—Authentication and Best Evidence: CB 685-99	11/8
Judicial Notice: CB 734-48	11/8
Proof and Presumptions: <i>Class discussion:</i> Introductory Lecture, Part II. B <i>Outside reading:</i> CB 757-93	11/10
Privileges I: Professional: CB 573-627	11/10-11/15
Privileges II: Personal and Miscellaneous: CB 628-55	11/27
Privileges III: Governmental: CB 656-84	11/22
[no class on 11/24; Thanksgiving]	
Opinions and Expertise I: CB 795-800, 821-31, 838-62	11/29
Opinions and Expertise II: CB 862-95, 917-35	12/1

Academic Policies

1. Class attendance is required in order to earn academic credit, in accordance with the academic policies of the School, for which see the current School of Law Academic Regulations, or inquire with the Recorder’s office. Under those policies, excessive absences may result in denial of residence credit and/or reduction of the course grade. There is no need to notify the instructor regarding inability to attend, either before or after the class. All absences from class will be deemed excused by the instructor for purposes of the School’s attendance policies. No absences from class will be deemed excused for purposes of assigning class participation grades. However, a single absence when called upon ordinarily will not produce a negative mark.

2. Making audio or video recordings of class sessions is prohibited, and will not be considered as a substitute for attendance.

3. A seating chart will be distributed at the first class meeting. Subscription of the seating chart is mandatory, and students are required to remain in their assigned seats. Students are

responsible for assuring that their actual location corresponds with the information on the seating chart. Absence from that location will be considered absence from class. Students also are required to complete index cards which will be used when calling upon students in class and for recording students' class performance marks. Failure to submit a completed card in the appropriate section (day or evening) will result in a negative class performance mark. Each student must choose to attend either day or evening classes, and may not alternate, and the student is responsible for assuring that their registration status (day or evening section) corresponds with their actual attendance habits.

4. Student participation in class discussions is mandatory when called upon the instructor, and will be graded based upon the instructor's contemporaneous judgment. Failure to respond when called upon (whether due to absence or other reasons), lack of preparation, or simply poor performance, will result in negative evaluations, though of course not equally negative. Evaluations of class performance may be considered in assigning final grades for the course. The relative weighting of class marks and written examination grades will be determined by the instructor at the end of the semester, and may vary by student, depending upon the nature and quality of class performance or lack thereof.

5. There is a TWEN site for the course, accessible to all students having a Westlaw password and an email address, which should be all students. Registration on the TWEN site is mandatory for all students. Please assure that the registered email address is functional and remains so throughout the semester; experience has shown that gmu.edu addresses are more likely to be satisfactory for this purpose. Please note that registration of your email address on the University class-registration system is not the same thing and will not substitute for registration at the TWEN site, which must be done separately. If any student has difficulty accessing the TWEN site, please see our library staff, University computing services, or our school's Westlaw representatives in the first instance, and contact the instructor only if unable to solve the problem by those paths. E-mail notices to students will be sent through the TWEN site. Both mandatory and optional materials (e.g., this Syllabus and any subsequent changes, supplementary materials) are available to students through the TWEN site. Participation in the discussion fora at the TWEN site is optional, although students are encouraged to participate, and to post their comments or questions publicly, as the typical student's concerns are likely to be shared by classmates. The TWEN site also may be used to send private emails to the instructor, if public discussion is inappropriate.

6. The instructor's office is Room 421. Office hours will be on Tuesdays and Thursdays at 5:30-6:30 P.M. Weather permitting, office hours will be held on the outside veranda of the Law School, overlooking the parking lot. If visits outside of office hours are necessary, please email in advance (jparke3@gmu.edu) to arrange an appointment, or see Ms. Charite Murchison on the Fourth Floor. When leaving messages, please indicate what days and hours would be convenient, and give a telephone number where you may be reached and the appropriate hours to call.

7. In addition to class marks, there will be a final examination, which may be either an essay or short-answer type, or both types combined, and may be either open-book or closed-book.

Typically, this instructor's examinations are open-almost-everything, in that students may bring and use anything they wish (e.g., custom or commercial outlines, hornbooks, nutshells, etc.), with the exceptions of (1) another person, (2) a communications device, and (3) a computer, a PDA, or similar device, when used as an information-retrieval device. Provided that the use is supported by the Records office, computers may be used as typing devices only. Students must bring the Rules Pamphlet or equivalent with them to the exam. Unexcused absence from the final examination will result in a failing grade. Absence from the final examination excused by the instructor will result in the administration of a make-up examination that may differ substantially from the regular examination. The regular final examination is scheduled for 6 P.M. on Tuesday, December 6, 2005. Students should bring any examination scheduling conflicts first to the attention of the Recorder, and then to the attention of the instructor, at the earliest possible time.