

SYLLABUS for Professor Parker’s EVIDENCE, Fall 2009 (Law 222, §§ 1&2)

Course Materials and TWEN site. The required materials for this course are (1) the Waltz and Park casebook entitled *Evidence* (11th ed. 2008: Foundation Press)(cited below as “CB”); and (2) a softbound pamphlet entitled *Federal Rules of Evidence 2009-2010 Edition* (West Group) (cited below as the “Rules Pamphlet”). For recommendations of optional collateral reading, see the Introductory Lecture posted at the course TWEN site.

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 4-5:15 P.M. (day section; Room 225) and 8:00-9:15 P.M. (evening section; Room 225), 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. Most of 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
Overview of Evidence: Introductory Lecture (TWEN site); <i>DA v. Osborne</i> (TWEN site). As background, independently read Casebook Chapter 1, CB1-70, and review the contents of the Rules Pamphlet, with particular attention to the Federal Rules of Evidence	8/20
Relevance and Inference: CB 71-94; in lieu of the note at CB 80, read the edited version of <i>Sherrod v. Berry</i> , 856 F.2d 802 (7 th Cir. 1988) (en banc), in the Course Materials section of the TWEN site	8/25
Hearsay Defined I: CB 184-98 (through the hypotheticals preceding <i>Zenni</i>)	8/27

Topics and Reading Assignments, continued	Dates
Hearsay Defined II; First-Hand Knowledge Compared: CB198-221; CB742-44 (in Chapter 12)	9/1
Hearsay Exceptions—Spontaneous & Contemporaneous Declarations; Preliminary Determinations: CB221-35, plus FRE 104	9/3
Hearsay Exceptions—Admissions I-personal and vicarious: CB235-54	9/8
Hearsay Exceptions—Admissions II-co-conspirator statements: CB254-64	9/10
Hearsay Exceptions—Former Testimony; Declarations Against Interest: CB264-87	9/15
Hearsay Exceptions—State of Mind: CB288-311	9/17
Hearsay Exceptions—Medical Diagnosis, Dying Declaration; Prior Identification, Past Recollection Recorded: CB 311-37	9/22
Hearsay Exceptions—Business and Public Records I: CB338-62	9/24
Hearsay Exceptions—Business and Public Records II: CB362-77	9/29
Hearsay Exceptions—Miscellaneous and Residual: CB 377-98 (through Hypotheticals)	10/1
Constitutional Dimensions of the Hearsay Rule I-Confrontation: CB398-424; <i>Melendez-Diaz</i> (to be posted as a TWEN supplement)	10/6
Constitutional Dimensions of the Hearsay Rule II-Due Process Right to Present A Defense; Forfeiture of Objection: CB424-446	10/8
[no class on 10/13, due to “Fall Recess”]	
Advanced Relevance I: Introduction to Character Evidence: CB94-106, 111-35	10/15
Advanced Relevance II: Character versus Habit or Custom; Character In Flux	10/20
Advanced Relevance III: Similar Happenings; Subsequent Measures; Settlement and Pleas: CB165-82	10/22

Topics and Reading Assignments, further continued	Dates
Witnesses—Competency, Cross-Examination, and Impeachment: <i>Class discussion:</i> CB 457-95 (through the hypos preceding <i>Green</i>)	10/27
<i>Independent reading:</i> CB448-57; 650-83	
Witnesses—Impeachment II: CB495-526	10/29
Writings—Authentication and Best Evidence: CB 634-49	11/3
Judicial Notice: CB 685-703	11/3
Proof and Presumptions: CB 705-40	11/5
Privileges I: Professional: Attorney-Client: CB 528-54	11/10
Physicians and Psychotherapists: CB554-79	11/12
Privileges II: Personal and Miscellaneous: CB 579-606	11/17
Privileges III: Governmental: CB 607-32	11/19
Opinions and Expertise I: CB 742-44 (review); CB744-47; CB760-78; CB785-808	11/24
[no class on 11/26; Thanksgiving]	
Opinions and Expertise II: CB 814-39; CB901-17; TWEN supp. (to be posted)	12/1

Academic Policies

1. Class attendance is required in order to earn academic credit, in accordance with the academic policies of the School. Under those policies, students certify their own attendance. 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. For purposes of assigning class participation grades, absences naturally will reduce the opportunity for the instructor to form an impression. However, one or two absences when called upon ordinarily will not produce a negative mark, and need not be explained.
2. Making audio, video, or voice-recognition recordings of class sessions is prohibited, and will not be considered as a substitute for attendance.

Academic Policies, continued:

3. A seating chart will be distributed at the first class meeting. Subscription of the seating chart is mandatory. Students are responsible for assuring that their actual location corresponds with the information on the seating chart. 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. The instructor reserves the right to adjust the final grade by more than one gradation, in either direction, based upon a student's class performance or lack thereof.

5. There is a TWEN site for the course, accessible to all students. Registration on the TWEN site is mandatory for all students. Both mandatory and optional materials (e.g., this Syllabus and any subsequent changes, supplementary materials) will be made available to students through the TWEN site. Notices to students will be emailed through the TWEN site. Each student must assure that the registered email address remains correct and functional. Incorrect or obsolete addresses, or over-quota mailboxes, will prevent delivery of essential notices. Participation in the discussion forum at the TWEN site is optional. Students with substantive questions are encouraged to post their comments or questions publicly on the discussion forum, 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 at 6:00-7:00 P.M., beginning on August 25. Office hours will be held either in the instructor's office, or, weather and construction conditions permitting, on the veranda outside the Hazel Hall atrium. If visits outside of office hours are necessary, please email in advance (jparke3@gmu.edu) to arrange an appointment, or see the faculty secretaries on the Fourth Floor. When emailing or 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.

Academic Policies, further continued:

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., in addition to the course materials), with the exceptions of (1) another person, (2) a communications device, and (3) a computer, a PDA, I-phone, or similar device, when used as an information-retrieval device. Any use of such a person or device, whether within or outside the examination, is prohibited during the administration of the examination. Provided that the use is supported by the Records office, computers may be used as typing devices only. Students *must* bring the current Rules Pamphlet 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 Monday, December 7, 2009. Potential scheduling conflicts must be brought to the attention of the Records Office, and then the instructor, at the earliest possible time.