

EVIDENCE & TRIAL PROCEDURE—LAW 222 (001)

SYLLABUS

Fall Semester 2021

Professor Michael L. Davis

Goals and Learning Outcomes

Evidence is an important subject for anyone who ventures into a courtroom. Even the most minor cases involve evidentiary issues. This class will be interactive and all students are expected to be prepared each day and will participate in the learning of this very important subject. Together we shall succeed!

Evidence is not an easy subject and each rule has its pros and cons. We will be learning evidence using the federal rules. Each state has its own code of evidence or evidence based upon case law. Most are very similar to the federal rules; however, each set of rules do vary by state. Although knowing each rule is important, it is essential that the student thoroughly reads the assigned cases in order to understand the history and context of the rule.

The following is a non-exclusive list of specific outcomes for this course:

1. Broadly learn and know the federal rules of evidence.
2. To learn and know the different types of evidential categories.
3. To be able to “issue spot” an evidentiary matter in factual situations.
4. To be able to understand the legal reasoning and logic behind each rule.
5. To be able to argue a rule of evidence from all sides of a case.
6. To be able to logically apply a rule of evidence in order to achieve a positive outcome for your client.
7. To learn when and how to timely object to an evidentiary matter in order to preserve your objection for appeal.

Class Format

This class is interactive and successful learning is dependent upon preparation and class participation. This is not a “lecture” course. The amount of time and preparation each student puts into this class will affect the learning outcomes for all of your student colleagues. We will follow the syllabus and assignments as closely as possible.

In addition to class discussion students will be given additional assignments shortly into the semester. The students will be placed on several “three person teams” and assigned a specific rule to discuss in class as set forth below (see “Student Responsibilities”).

Course Materials

Required materials for this class are:

- 1). *Evidence- Cases and Materials* (13th Edition 2019),
Park and Friedman (Foundation Press)
- 2). *Courtroom Evidence Handbook* (2021-22 Student Edition),
Goode and Wellborn (West Academic Publishing)

Final Exam

The final exam will consist of multiple-choice questions and short answer essays.

Student Responsibilities

Students are required to attend classes and to be timely at all times. If a student knows that he/she cannot attend a class or that he/she will be late for class, or must leave class early, it is the responsibility of that student to contact the professor beforehand by phone or email.

Students shall read all of the rules and assignments for each day in advance and shall be prepared to be called upon to discuss the rules and/or a case in that day's reading assignments, per the syllabus.

Part way into the semester, the professor will assign each student to a "three person" team. That team will create a factual hypothetical fact pattern demonstrating the use of any such rule, sub-rule or exception to the professor one week in advance of the assigned class. The team will then lead a class discussion about their assignment using the hypothetical. One team member will discuss the factual hypothetical; another will raise and discuss any proper evidentiary objection to an issue in the fact pattern and discuss the applicable rule, sub-rule or exception; and the third team member will act as a "judge" and will set forth the likely legal ruling a court would make on any objection or the rule as used in the hypothetical setting forth sound legal reasoning. Class interaction should be encouraged by the teams in discussing the hypothetical.

Prohibited Class Activities

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device, laptop, phone, or camera. Any exceptions to this policy must be expressly permitted in writing by the professor.

During class sessions, no student shall access any outside resources unrelated to class topics or issues. Any access to or participation in social media, websites, emails, texts, or other electronic communications during class is strictly prohibited. This includes any intra-class communications as well as external communications. If a student has an urgent or emergent situation, he/she may excuse him/herself from the classroom to make answer such a communication.

Office Hours

There are no formal in-person office hours. Any student who wishes to discuss any matter with the professor should contact the professor personally at mdavis4@gmu.edu or by phone (703) 993-8039. The professor will make every effort to assist every student in this class.

Covid Health & Safety Requirements

Please note that this class will follow current University health and safety protocols. Any student who has a covid or other health related issue should immediately contact the administration for assistance and advice.

Covid Instructional Contingency Plan

In the event that the administration requires this class to transition to a remote format, the professor will inform the students as to the manner and type of instruction by which the class will be operated.

Daily Syllabus and Reading Assignments

Please note the assignments below:

“**CB**” refers to the *Evidence* casebook. “**R**” or “**PR**” refers to the Federal Rule of Evidence or the Proposed Rule, respectively. “**HB**” refers to the *Courtroom Evidence Handbook*. In addition to the “**CB**” reading assignments, students are to read the materials in the “**HB**” that pertain to the rules of that day’s assignment.

Monday, August 23

Introduction---General Rules

CB 1-74

R 101-106, 611, 614, 615, 1101

HB (correlating rules and materials)

Wednesday, August 24

Introduction---General Rules (continued)

Monday, August 30

Relevance

CB 75-109

R 401-403

HB (correlating rules and materials)

Wednesday, September 1

Hearsay—General—What is it?

CB 193-219

R 801, 802, 805

HB (correlating rules and materials)

Monday, September 6

No Class (Labor Day)

Wednesday, September 8

Hearsay---General----Confrontation

CB 219-248

R 803

HB (correlating rules and materials)

Monday, September 13

Hearsay—Admissions, Declarations Against Interest

CB 249-280, 353-367

R 801(d)(2), 804

HB (correlating rules and materials)

Wednesday, September 15

Hearsay—Spontaneous/Contemporaneous Statements

CB 280-312

R 803

HB (correlating rules and materials)

Monday, September 20

Hearsay---State of Mind, Medical Diagnosis

CB 312-342

R 803(3), 803(4)

HB (correlating rules and materials)

Wednesday, September 22

Hearsay---Former Testimony, Prior Identification
Past Recollection Recorded

CB 342-353, 385-399
R 801 (d) (1), 803(5), 804(b)(1)
HB (correlating rules and materials)

Monday, September 27

Hearsay---Business/Public Records

CB 399-463
R 803(6)-(18)
HB (correlating rules and materials)

Wednesday, September 29

Hearsay---Dying Declarations, Forfeiture,
Miscellaneous

CB 367-385, 463-468
R 804(b)(2), 804(b)(6)
HB (correlating rules and materials)

Hearsay---Residual Exception, Future Reform

CB 468-484
R 807
HB (correlating rules and materials)

Monday, October 4

Character---General

CB 109-132
R 404(a), 405
HB (correlating rules and materials)

Wednesday, October 6

Character---Bad Acts

CB 132-151
R 404(b)
HB (correlating rules and materials)

Monday, October 11

No Class (Mid-semester break)

Tuesday, October 12

Character---Habit

CB 151-172
R 406, 412-415
HB (correlating rules and materials)

Wednesday, October 13

Character---Subsequent Measures, Pleas, etc.

CB 172-192
R 407-411
HB (correlating rules and materials)

Monday, October 18

Witness Competency

CB 699-729
R 601-606
HB (correlating rules and materials)

Wednesday, October 20

Impeachment ---Methods

CB 485-534
R 607-610
HB (correlating rules and materials)

Monday, October 25

Impeachment---Rehabilitation

CB 534-562
R 611, 612, 613, 806
HB (correlating rules and materials)

Wednesday, October 27

Writings---Best Evidence Rule

CB 669-679

R 901-903

HB (correlating rules and materials)

Monday, November 1

Authentication---Original Documents
Judicial Notice

CB 679-687, 731-744

R 1001-1008, 201

HB (correlating rules and materials)

Wednesday, November 3

Burden of Proof and Presumptions

CB 749-780

R 301, 302, PR 303

HB (correlating rules and materials)

Monday, November 8

Privilege---Attorney/Client

CB 563-593

R 501, 502, PR 503

HB (correlating rules and materials)

Wednesday, November 10 Privilege---Medical/Marital/Clerical/Etc.

CB 593-635

PR 504-507

HB (correlating rules and materials)

Monday, November 15 Privilege---Inadvertent Waiver and Trade Secrets

CB 635-640

PR 508-513

HB (correlating rules and materials)

Wednesday, November 17 Opinion Testimony---Expert

CB 781-840

R 701-706

HB (correlating rules and materials)

Opinion Testimony ---Scientific

CB 840-873

Monday, November 22 Review for Exam

END OF SYLLABUS