

GEORGE MASON UNIVERSITY ANTONIN SCALIA LAW SCHOOL
Evidence, Summer 2023
Professor Charles C. Lemley

Contact Information:

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Class Information:

Tuesday & Thursday
6:00 - 8:40 pm

WHY WE TAKE THIS CLASS: You have taken many courses, such as Contracts, Torts, Property, etc., in which you learned the substantive law of the United States. In Civil Procedure and/or Criminal Procedure, you learned a great deal about how courts in the US provide litigants with the procedural safeguards and process due to them under the Due Process Clauses of the US Constitution. In this class, you will learn the kinds of evidence that courts deem reliable enough to use in adjudicating civil disputes and in determining the guilt or innocence of individuals charged with crimes. You'll also begin learning how to build credible arguments from solid evidence and to how to use evidentiary objections to prevent others from using unreliable evidence to gain an unfair advantage in legal proceedings.

LEARNING OUTCOMES: By the end of the course students should be able to:

- Answer questions that demonstrate the ability to identify common evidentiary issues and the Federal Rules of Evidence or other legal authorities that govern resolution of the issues.
- Identify and explain the principles and policies that inform the law of evidence, including the hearsay doctrine, the right to confront witnesses, and others.
- Analyze factual scenarios of the kind that often arise in connection with litigation and
 - identify the key evidentiary questions or issues presented by the facts;
 - determine the evidentiary rules or other legal principles needed in order to answer the questions or resolve the issues presented; and
 - Apply the rules or legal authorities to the factual scenario and determine the most appropriate resolution or course of action to be followed in resolving the issues or answering the questions in accordance with applicable authorities.

Required and Recommended Books: Note that the textbook has been around for a few years, so copies seem to be readily available on the used and rental markets. Likewise, the Glannon Guide might be available on the used market, although I'm not sure the price warrants you spending much time looking.

Textbook (Required): *Evidence*, 13th ed. 2019, Park & Friedman (Foundation Press) ISBN: 9781634603423

Study Guide (strongly recommended): *The Glannon Guide to Evidence*, 3d ed. 2022 (Aspen Publishing) ISBN: 9798886140637 (Glannon Guides got me through Civ Pro in law school, and when my daughter went to law school a few years ago, my main advice was “get the Glannon books on Civ Pro and Evidence”)

Assignments (for the first class meeting, just read the materials quickly and have access to the rules when you come to class – we’ll discuss the reading assignments further in class):

Tuesday, May 23

Introduction- General Rules

Casebook: 1-74

Rules: 101-106, 611, 614, 615, 1101

Thursday, May 25

Hearsay - General

Casebook: 193-219

Rules: 801, 802, 805

Tuesday, May 30

Hearsay – Confrontation

Casebook: 219-248

Rules: 803

Hearsay – Admissions, etc.

Casebook: 2249-280; 353-67

Rules 801(d)(2), 804

Thursday, June 1

Hearsay – State of Mind, Medical
Diagnosis

Casebook: 312-342

Rules: 803(3), 803(4)

Hearsay – Prior Testimony, Prior
ID, Past Recollection Recorded

Casebook: 342-353, 385-399

Rules: 801(d)(1), 803(5), 804(b)(1)

Tuesday, June 6

Hearsay – Spontaneous/Contemporaneous Statements

Casebook: 280-312
Rules: 803

Hearsay – State of Mind, Medical Diagnosis

Casebook: 312-342
Rules: 803(3), 803(4)

Thursday, June 8

Hearsay – Prior Testimony, Prior ID, Past Recollection Recorded

Casebook: 342-353, 385-399
Rules: 801(d)(1), 803(5), 804(b)(1)

Hearsay – Business/Public Records

Casebook: 399-463
Rules: 803(6) – (18)

Tuesday, June 13

Hearsay – Dying Declarations, Forfeiture, Residual Exception, Miscellaneous

Casebook: 367-385, 463-484
Rules: 804(b)(2), 804(b)(6), 807

Thursday, June 15

Character - General

Casebook: 109-132
Rules: 404(a), 405

Character – Bad Acts

Casebook: 132-151
Rules: 404(b)

Tuesday, June 20

Character – Habit

Casebook: 151-172
Rules 406, 412-415

Character – Subsequent Measures, Pleas, etc.

Casebook: 172-192
Rules: 407-411

Thursday, June 22

Witness Competency

Casebook: 699-729
Rules: 601-606

Impeachment - Methods

Casebook: 485-534
Rules: 607-610

Tuesday, June 27

Impeachment - Rehabilitation

Casebook: 534-562
Rules: 611-613, 806

Writings – Best Evidence Rule

Casebook: 669-679
Rules: 901-903

Thursday, June 29

Authentication

Casebook: 679-687, 731-744
Rules: 1001-1008, 201

Burden of Proof and Presumptions

Casebook: 749-780
Rules: 301, 302

Tuesday, July 4 – HOLIDAY

Thursday, July 6

Attorney/Client Privilege

Casebook: 563-593
Rules: 501, 502

Privilege – Inadvertent Waiver, etc.

Casebook: 635-640
Rules: 407-411

Tuesday, July 11

Expert Testimony

Casebook: 781-873
Rules: 701-706

Final Exam – July 18, 2023 at 6 pm