Prof. Jonathan Cohen Spring 2018

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Evidence

(Law 6330, Section 11HB --4 credits)

**I. Course Objectives and Learning Outcomes**

This course has two main goals. The first is to help students develop a working knowledge of evidence law. By a working knowledge, I mean the ability to apply the evidence rules and related doctrines to specific examples. To this end, much of the course will be problem-based with classroom discussion generated by analyzing problems. The second is to foster students’ independent thinking about our evidentiary system, including the policies it embodies and the social context in which it functions. Along with the discussion of rules and cases, students will be required to make group presentations toward this latter goal. For information concerning assessment, see Part IV (“Grading”) below.

**II. Course Materials**

The course textbook is Christopher B. Mueller and Laird C. Kirkpatrick, *Evidence under the Rules: Text, Cases, and Problems* (8th ed., Aspen Pub., 2015). It is available in both paper and digital formats. Students should also have access to a current version of the Federal Rules of Evidence. These are available from many sources in print and online (e.g., <http://www.law.cornell.edu/rules/fre/>).

For students seeking secondary sources, I recommend the classic treatises *McCormick on Evidence* (Kenneth S. Broun, ed.) and *Federal Evidence* by Mueller and Kirkpatrick. For those especially interested in Florida evidence law, I recommend *Florida Evidence* by Charles W. Ehrhardt. All of these are on reserve in the library and can also be accessed digitally via Westlaw.

**III. Attendance, Participation & Preparation, Academic Honesty, Disability Accommodations, Recording & Use of Electronic Devices**

Attendance. A sign-in sheet will be distributed each class. You are responsible to sign-in. Each student is permitted to miss up to eight, 50-minute class units. (If you are absent for both class units on a Monday, this counts as missing two, 50-minute class units. If you are present for only one class unit on a Monday, please sign the attendance sheet putting “1/2” next to your initials.) Please note: I do not draw any negative inference from your use of your permitted absences. I do not need or wish to know your reason for using them. However, if you exceed this number, your grade may be lowered for excessive absences or you may be dropped from the course at my discretion. You will not be counted absent for observing religious holidays. If you are unsure whether I am aware of a religious holiday you observe, let me know the date.

Participation & Preparation. Voluntary participation is welcomed from all students each day, and, unless circumstances so require, I do not plan to “cold call” students. I will, however, distribute a sign-up sheet seeking volunteers to help begin the discussion each day. Whether or not I call upon you, all students are expected to come prepared to class each day. This course meets for four, fifty-minute class hours each week. Under ABA standards, you are expected to prepare approximately 2 hours out of class for every fifty-minute class. There will naturally be some variation from class to class, and I am mindful that your student presentations also require significant outside-of-class preparation. If you consistently find yourself spending more than two hours outside of class preparing the material, please come discuss this with me.

Academic Honesty. Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code available at <http://www.dso.ufl.edu/students.php>.

Disability Accommodations. Students requesting classroom accommodation should register with the Office of Disability Resources.  The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. For further information, see <https://www.dso.ufl.edu/drc/>.

Recording. No recording of class in any form is allowed without my prior written permission.

Computers. Students are welcome to use laptop computers and similar devices for class-related purposes (e.g., note-taking, referencing relevant statutes or cases). Using computers for other purposes, such as games, web surfing, emailing and messaging (even to “discuss” what we are discussing aloud in class) is prohibited. Additionally, during our student group presentations, unless I specifically instructed otherwise, all use of electronic devices is prohibited.

**IV. Grading**

The course will be letter graded in accordance with the law school’s standard grading practices. The grading scale for the course is:

Grade Point Grade Point Grade Point

A (Excellent) 4.0 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.0

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

Grades will be determined by a closed-book final examination. Generally speaking, class participation will not be used as a factor in grading. The main exception to this is as follows. As discussed below, students are required to make group presentations. At the end of the semester, there will be a class vote to determine which two group presentations were most pedagogically effective given the selected topic. Members of those groups will have two bonus points added to their final exam scores. In many cases, these bonus points will not affect a student’s final letter grade; however, for some students on the cusp between two grades, the points may result in the higher grade being awarded. For questions about grading and other academic policies, please refer to the law school’s academic policies, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>.

**V. Assignments**

Readings. Attached is a list of projected assignments for the first two weeks. Subsequent assignments will be distributed later. Assignments may be modified as the course progresses. It is your responsibility to keep informed of any subsequent modifications. To save paper, I will not distribute hard copies of most assignments. Rather assignments and other course materials will be available electronically via TWEN ([lawschool.westlaw.com](http://lawschool.westlaw.com/)), and students should register for the course on TWEN. The course password is “gators”. Additionally, from time to time I may make announcements via the email list the university has created for the course. For this reason, all students should have a valid “@ufl.edu” email address.

Student Group Presentations. Students are required to make group presentations concerning different subjects related to evidence law. A short description of this process and a list of topics are attached.

**VI. Student Course Evaluations**

Students can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will receive notice of the specific times when they are open. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

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**Projected Assignments**

***Assignments are subject to modification. Below are the general topics we shall cover as well as assignments for the first two weeks. Subsequent assignments will be distributed in class and posted on TWEN. Modifications may be made as the course progresses, and students are responsible for keeping informed of such changes.***

*The general topics we shall cover are:*

*OVERVIEW*

*RELEVANCE*

*HEARSAY*

*HEARSAY EXCEPTIONS*

*CHARACTER EVIDENCE*

*IMPEACHMENT*

*EXPERT TESTIMONY*

*SCIENTIFIC EVIDENCE*

*JUDICIAL NOTICE & BEST EVIDENCE*

*The first five assignments are:*

Read Problem(s)

1. *Tanner v. United States* 510-515

Structure of Trial 1-31 1-A

2. Objections, Errors 31-51 1-B

3. Probative Value 53-71 2-A, 2-B

2-C, 2-D

4. Prejudice 71-84 2-E, 2-F

5. Limiting Instructions, 84-91 2-G, 2-H

Conditional Relevancy (skip 2-I)

Student Group Presentations

While our course is principally devoted to studying evidence law doctrine, that doctrine functions within a social context. The main goal of the student group presentations is to explore the interplay between evidence law and the social context in which it functions.

Students will work in small groups, and later students will sign up for their groups. Each group will be responsible for (a) conducting independent research about their topic, (b) making a presentation in some form to the class as a whole, and (c) preparing a handout of not more than four pages concerning their topic. Each group is required to bring hard copies of their handout to their presentation and also to email me ([cohenjr@law.ufl.edu](mailto:cohenjr@law.ufl.edu)) a digital copy so that I can post it on TWEN. If you send me your handout by 9:00 a.m. on the Friday before your presentation date, I will make the hardcopies to bring to class, otherwise your group is responsible for making those copies.

My hope is that presentations will be both educational and enjoyable. They should also be conducted in keeping with the standards of legal professionalism. I encourage you to be creative in thinking about what form you want your presentations to take. For example, along with didactic presentations, students in prior years have performed skits, composed songs, shown video clips, drawn comic strips and in some cases even created movies for their presentations.

Presentations will typically take place during the second hour of our Monday class. Presentations *should last no more than thirty minutes*, after which we will spend time on questions and comments. Additionally, while you are welcome to consult with whomever you wish when preparing your presentations, I ask that you not invite outside speakers as part of your presentations.

A few words about working with your classmates may be of help. Much legal work is conducted in groups, and learning to work effectively with others is an important legal skill. I suggest that each group think seriously about how it wants to organize itself. It is my expectation that all students will conduct themselves professionally.

Below are the topics and presentation dates. Dates are subject to change. As you proceed with your research and with developing your presentation, do not feel narrowly constrained by the title of the topic. Go with what material looks thought-provoking. The title topics below are starting points. If you discover interesting material not strictly within the topic title, that is fine – indeed probably good!

*Group 1. Before There Were Juries: Trials by Ordeal, Trials by Battle, etc. (2/5)*

*Group 2. Selecting Juries & Judges (2/12)*

*Group 3. DNA Testing & Innocence Projects (2/19)*

*Group 4. Prejudice and Bias in the Courtroom (2/26)*

*Group 5. Police & Prisons: Courts as a Part of the Criminal Justice System (3/12)*

*Group 6. Trials as Tales: The Art of Legal Storytelling (3/19)*

*Group 7. Spouses, Priests, and More: An Overview of Privileges (3/26)*

*Group 8. International Approaches to Evidence (4/2)*

*Group 9. What We Learned from Watching Real Trials This Semester (4/19)*

*Group 10. Evidence and Cyberspace (4/16)*