

EVIDENCE
LAW 6330 (#14371)
COURSE INFORMATION AND SYLLABUS
Spring 2023

INSTRUCTOR'S CONTACT INFORMATION:

Professor Sarah H. Wolking

Office Location: Bruton-Geer Hall

Office Phone: (352) 273-0815 Cell: (510) 376-7837

Email: wolking@law.ufl.edu

Office Hours: Tuesdays and Wednesdays 1:30-2:30pm. If these times do not work for you, feel free to email me to set up a meeting at another time, or just drop by my office. Students are welcome to contact me via email, text, or phone. Feel free to ask questions about law school (e.g., career advice, course selection, accommodation needs, work/life balance) as well as the course material.

CLASSROOM AND CLASS TIME:

Mondays, Tuesdays, and Thursdays 10:45am – 12:00pm; Room 180 Holland Hall

COURSE OBJECTIVES AND GOALS:

Welcome to Evidence! The goal of this course is to help students develop a working knowledge of Evidence law. This means developing the ability to apply the rules of evidence and related doctrines to specific problems. To this end, much of the course will be example-based with classroom discussion generated by analyzing problems. I believe Evidence is the most important course you will take in law school and your grasp of these concepts will make you an exceptional attorney in whatever practice area you choose.

LEARNING OUTCOMES:

At the conclusion of this course, students should be able to:

- Determine, when faced with a problem involving admissibility of evidence, whether such evidence is admissible and why, using the Federal Rules of Evidence as well as related constitutional and common law doctrines;
- Explain and articulate the policy assumptions and theoretical framework underlying the rules, so you can think creatively about how to interpret, reform, or completely rethink them;
- Pass the Evidence section of the multiple-choice Multistate Bar Exam after graduation.

Note: Although this is not a trial advocacy or clinical course, I intend to give you a sense of how the Rules of Evidence actually work in legal practice and in the courtroom. I encourage you to participate in a Clinic or Externship during law school to further develop these skills.

REQUIRED READING MATERIALS:

- Merritt and Simmons, *Learning Evidence* (5th ed. 2022). This text contains the Federal Rules of Evidence as an Appendix so there is no need for you to purchase a separate rule book. You will need to have access to the Digital Learning Library that accompanies the course book.
- Supplemental materials will be posted on Canvas and students are expected to regularly check for updates. Unless otherwise noted, students are expected to read the entire chapter(s) assigned and read any supplemental material posted on Canvas. Please stay up to date with the reading even if we don't discuss it in class on the assigned day.
- For students especially interested in Florida evidence law, I recommend *Florida Evidence* by Charles W. Ehrhardt.

Additional readings will be posted in Canvas throughout the semester and students are encouraged to draw the attention of the class to current events involving issues discussed in our class.

CLASS ATTENDANCE AND PARTICIPATION:

You must of course attend and participate in class. Simply doing the readings will not get you very far. It is your responsibility to sign in for each class and affirm that you are physically present for the entire class period. If you were not present for the entire period, you must note that on the sign-in sheet. It will be considered a violation of the course rules and Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation. I will allow up to five (5) absences, which you may take for any reason, including but not limited to personal (e.g., going to Spain), professional (e.g., interviewing for a job), or religious reasons. ***Each absence above the allotted number, regardless of reason, may lower your grade by half a letter.*** I may count tardiness (i.e., not being in your seat when class begins) as an absence. It is the policy of UF Law to excuse absences for religious observances and to provide, without penalty, the rescheduling of required work that may fall on religious holidays. I do so exclusively through the above allotment of five absences.

I will bring my very best effort to every class, and I expect you to do the same. So, arrive for class on time, be prepared and ready to begin, and remain for the duration. Colleagues do not walk out on each other, and an attorney who walks out on a judge

during a hearing will find the state providing room and board at the local jail. Therefore, if you leave during class for any amount of time, you will be marked absent. There are of course rare occasions on which you must leave during class and likewise rare occasions on which you must arrive late to class. This is why I provide a generous allotment of absences. As a matter of professional courtesy, let me know the reason for such behavior, either before or after, as appropriate.

You may use an absence to attend class but “pass” when called upon (at a rate of one absence per pass). I will also let you pass two other times without using an absence. However, your total number of passes (from whatever source) cannot exceed four. If you fail to notify me before class, in person or by email, of your desire to take a pass, you will lose two passes. You will also disappoint me. I will debit first from your freestanding passes; if none remain, I will deduct from your number of allowed absences.

Please bring the insights you have gained from assigned readings/recordings, and be prepared to share these. *My goal in cold calling is to ensure that you are prepared and to maximize and evenly distribute everyone’s opportunity to participate in class. You will be graded for effort and participation, but you won’t be graded on the content of your response. By cold calling, I do not intend to increase anxiety or cause distress. This is a rule-based class and it’s vital to your professional development that you read and learn to apply the rules.* You’re always encouraged to volunteer answers when I seek volunteers, and to ask questions throughout class. Sometimes I’ll have to postpone an answer for timing or pedagogical reasons. Please feel free to bring any lingering questions to me during office hours. Further information about UF Law’s attendance policy is available [here](#).

ASSIGNMENTS/GRADING:

You will be evaluated based upon:

- In-class fully closed book multiple choice Quiz #1 - 20%
- In-class fully closed book multiple choice Quiz #2 - 20%
- Fully closed book multiple choice Final Exam - 50%
- Take-home Practice Quizzes, Hearsay Bracket Writing Assignment, and Class Participation - 10%

Final Exam: You’ll have a 3-hour, fully closed book multiple choice question exam on Thursday, May 4, 2023.

Practice Quizzes (mandatory but ungraded): Each week you will take at least one practice quiz which we will review in class. These quizzes are listed as “graded” in

Canvas, but that setting is enabled only so that I can see common oversights or points for improvement. These quizzes are mandatory, but will not be graded.

Class Participation: Other than days where I call on you, additional class participation is not graded *per se*, but I will use it in determining whom to bump up/down on the margins after anonymously considering the Final Exam.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICES:

Information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>. This information is also posted on the Student Resource Canvas page.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Our weekly class time is approximately 4 hours in length, requiring at least 8 hours of preparation outside of class including reading the assigned materials, completing the take-home quizzes and submitting your hearsay bracket. Articles relating to current events, recordings, and other materials will be added to your assignments periodically throughout the semester.

COMMUNICATION COURTESY AND CIVILITY:

Please follow rules of common courtesy in all email messages and class discussions. *Turn off your cell phone during class.* I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

INTERNET USE DURING CLASS:

Use of the Internet during class is not permitted, unless directed by me. You may not check social media sites, may not check email (even Clinic or career related emails), and may not check news sites. Think of class as an important client meeting, and schedule your emailing needs accordingly. Your internet use, even for a noble purpose, is a violation of the standards of professionalism. If you have concerns about this policy, please feel free to discuss them with me.

SENSITIVE ISSUES:

Evidence is a course that, like many other courses, can raise difficult and deeply felt issues, some of which may particularly affect you for personal reasons. We will be discussing criminal cases, including homicide, sexual assault, and other emotionally charged topics. Please feel free to speak with me prior to class if you are having trouble

of any kind. Also, please let me know if you have other personal concerns that require accommodation.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change. Specific assignments and supplemental reading may be announced in class and/or in Canvas.

Date/Class #	Class Topic(s)	Reading Assignments
WEEK ONE	INTRODUCTION & OVERVIEW	
1/17 #1	Why Take This Course?; Types of Courtroom Evidence; Four W’s of the FRE	Study Guide, Chapters 1-3
1/19 #2	Structure of a Trial; Objections; Relevance	Chapters 4-6
WEEK TWO	RELEVANCE; BALANCING	
1/23 #3	Prejudice, Confusion or Waste of Time; Fitting the Rules Together; Subsequent Remedial Measures	Chapters 7-9
1/24 #4	Settlements & Offers to Compromise; Medical Expenses	Chapters 10-11
1/26 #5	Criminal Plea Bargaining; Liability Insurance	Chapter 12-13
WEEK THREE		
1/30 #6	Putting a Witness on the Stand; Examining Witnesses	Chapters 14-15
1/31 #7	Refreshing a Witness’s Memory; Impeaching Witnesses	Chapters 16-17
2/2 #8	Using Prior Statements to Impeach; Revealing Untruthful Character on Cross Examination	Chapters 18-19
WEEK FOUR		
2/6 #9	Using Criminal Convictions to Impeach; Reputation or Opinion Evidence of Untruthful Character	Chapters 20-21
2/7 #10	Cross-Examining the Character Witness; Religious Beliefs and Impeachment	Chapters 22-23
2/9 #11	Rule of Completeness; Character Evidence and the Rules; Evidence to Prove Character as an Element	Chapters 24-26
WEEK FIVE		
2/13 #12	Using Character Evidence to Prove Propensity; Showing Propensity in Criminal Prosecutions	Chapters 27-28

2/14 #13	Methods of Proving Propensity in Criminal Cases; Other Crimes, Wrongs, or Acts	Chapters 29-30
2/16 #14	IN-CLASS CLOSED BOOK QUIZ #1	
WEEK SIX		
2/20 #15	Habit and Quiz 1 Review	Chapter 31
2/21 #16	Rape Shield Law; Propensity in Sexual Assault and Child Molestation Cases	Chapters 32-33
2/23 #17	Preliminary Questions; What Is Hearsay and Why Don't We Like it?	Chapters 34-35
WEEK SEVEN	HEARSAY	
2/27 #18	The "Truth of the Matter Asserted" (TOMA); What Is a Statement?	Chapters 36-37
2/28 #19	Admissible Hearsay; Hearsay Exemption—Prior Statements by Witnesses	Chapters 38-39
3/2 #20	Present Sense Impressions and Excited Utterances (HJ)	Chapter 40
WEEK EIGHT	HEARSAY	
3/6 #21	State of Mind	Chapter 41
3/7 #22	Medical Treatment; Recorded Recollection	Chapters 42-43
3/9 #23	Rule 405-Hearsay Within Hearsay; Business Records	Chapter 44-45
UF LAW SPRING BREAK		
WEEK NINE	HEARSAY	
3/20 #24	Public Records; Other 803 Exceptions	Chapters 46-47
3/21 #25	FRE 804 Intro—What Is Unavailability?; Former Testimony	Chapters 48-49
3/23 #26	Dying Declarations; Statements Against Interest; Forfeiture	Chapters 50-52
WEEK TEN		
3/27 #27	IN-CLASS CLOSED BOOK QUIZ #2	
3/28 #28	Hearsay Exemption—Statements by an Opposing Party; Multiple Parties	Chapters 53-54
3/30 #29	Statements of Co-Conspirators; Residual Exception	Chapters 55-56
WEEK ELEVEN		
4/3 #30	Attacking a Declarant's Credibility; The 6th Amendment and Hearsay	Chapters 57-58

4/4 #31	Judicial Notice; Lay Opinions	Chapters 59-60
4/6 #32	What Subjects Are Appropriate for Expert Testimony?	Chapter 61
WEEK TWELVE		
4/10 #33	Qualifying Experts; Bases of Expert Opinion	Chapters 62-63
4/11 #34	Limits on Opinion and Expert Testimony; Court-Appointed Experts	Chapters 64-65
4/13 #35	Introduction to Privileges; Attorney-Client Privilege	Chapters 66-67
WEEK THIRTEEN		
4/17 #36	Other Privileges; Authentication	Chapters 68-69
4/18 #37	Best Evidence; Presumptions	Chapters 70-71
4/20 #38	The Role of the Jury	Chapter 72
WEEK FOURTEEN		
	REVIEW	
4/24 #39		REVIEW
5/4	IN-CLASS CLOSED BOOK 3-HOUR FINAL EXAM	