Evidence

***LAW 6330***

***—Section 02BB***

***—Class Number 14780***

***Professor Pedro A. Malavet (http://www.law.ufl.edu/faculty/pedro-malavet)***

***Fall 2021***

***Monday & Wednesday***

***1:15 to 3:15 p.m.***

***LCOL HH-285B***

## Fall 2021: First Reading Assignments & Class Materials

* The basic materials for the course such as assignment sheets and the course syllabus will be posted on my new webpage: [http://plaza.ufl.edu/malavet](http://plaza.ufl.edu/malavet%20)
	+ The assignments for the class sessions for our first weeks of the fall 2021 are be posted below as well as in the more complete notes page.
	+ Future assignments will be posted in the [Assignments and Notes Page](http://plaza.ufl.edu/malavet/evidence/notes/evnotes.shtml) of the course webpage and another on the course canvas page.
		- The calendar and lesson plans for the semester will be posted and updated regularly on this page. Only assignments with dates between **Monday, August 23, 2021, and ending on Monday, November 22, 2021**, will reflect updated information.
* **The required class materials are:**(1) Christopher B. Mueller, Laird C. Kirkpatrick and Liesa L. Richter, EVIDENCE UNDER THE RULES (***9th.*** ed., Aspen Law & Business **2019**; ISBN: 978-1-5438-0544-4); (2) Mueller, Kirkpatrick & Richter, **2021**: Federal Rules of Evidence: With Advisory Committee Notes and Legislative History (Aspen Law & Business ***2021***; ISBN: 978-1-5438-4467-2).
	+ **DO NOT PURCHASE A USED SUPPLEMENT: The Rules Supplement is the 2021 edition, newly-issued in the summer of 2021. You are allowed to annotate the supplement with your own outline and no other supplement will be allowed in the examination room. You must purchase a print version of the supplement if you want to use it in the exam. Electronic copies will not be allowed.**
	+ **Open-Rules: If the College of Law again opts for online-only examinations, the exam will be open book. However, if we are able to have in-room exams, we will follow the Open-Rules system. “Open-Rules”** means that you may have with you during the examination your required 2021 Mueller, Kirkpatrick & Richter, Federal Rules of Evidence supplement. No substitutions will be allowed. Your supplements may be annotated with handwritten notes, but shall not have any attachments other than tabs to mark the location of specific material (the tabs may have on them numbers and the short titles of the referenced material and nothing more). Only handwriting may cover the blank spaces and the original printing on the supplements. The use of stick-on labels or paper, white-out or any other method to eliminate any of the original printing is prohibited. Other than the addition of handwritten notes and tabs, the supplements shall be in their original condition, no material may be added nor may any material be removed in any way. The supplements must be in their original bound form at the start of **and throughout** the examination. Violations of the University Student Code of Conduct, the College of Law Honor Code or of the exam rules should be reported to me before or during the examination. Violation of these rules shall result in a failing grade and in my referring the matter to the pertinent university or college authorities.

***Online-Only Exam Will be Open Book*** *If the college opts once again to have online-only exams at the end of the fall 2021 term, I will use Examplify as the electronic platform for the exam and it will be open book. Examplify will not lock you out of your computer and you are allowed to use any materials available to you except the assistance of another person. The exam will still be time-limited and there will be a character limit for essay question(s).*

## Week One: August 23-25, 2021

* **PRIOR To the Start of Classes**
	+ Please visit the course Canvas page (which will be published no later than Tuesday, August 17, 2021) and complete:
		- The Syllabus Quiz
		- The Preferred Prefix (Ms/Mr/Mrs/Other) Survey
* **Chapter:**[**1.0 Evidence Law and the System**](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchor1611463)
* **Monday, August 23, 2021**
* **Class Participation Sign Up (1) opens**
	+ **Session 1-A**
		- Class rules, testing, grading and administrative matters.
		- See the [Syllabus](http://plaza.ufl.edu/malavet/evidence/evsyll.shtml).
		- [[Click here for my list of "Recommended Readings"](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchorrecommendedreadings)]
	+ **Session 1-A continued**
		- 1.1 [Introduction: Why Evidence & The Trial](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchor1617066), 1-19
			* An introduction to the American Oral Jury Trial
		- Pay special attention to [What is the Record?, 13-19](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchorecommendedreadings)
		- [1.2 Making the Record & Admitting Evidence, 20-31](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchorecommendedreadings)
			* [Problem 1-A: *How did it happen?* (p. 25-26)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchor1675196)
	+ **Session 1-B**
		- [1.3 How Evidence is Excluded, 31-43](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchor1407434)
			* Consequences of Evidential Error, 43-50
		- Obtaining Review of Evidence Points, 50-51
			* [Problem 1-B: *He didn't object!* (p. 46)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes01.shtml#anchor1883350)
* [**Chapter: 2.0 Relevance**](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1531470)
* **Wednesday, August 25, 2021**
	+ **Session 2-A**
		- [2.1 Defining Relevance Under the Rules](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1532131), 53-56, 56-60 (case lecture), 60-61 (Notes), 62-70 I will lecture on Old Chiefat page 56, and Problem 2-A. Too Much Wax on the Floor, at page 66, as to how they illustrated the liberality of the Relevance Standard.
			* Problem [2-B: *Was he going too fast?*(p. 67)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1534707);
			* [Problem 2-C: Boys on the Bridge](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchorproblem02-bnew) (p. 68).
		- [FRE 401 (Annotated)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1300060)
	+ **Session 2-B**
		- [2.2 Excluding or Limiting Relevant Evidence: Pragmatic Relevance](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1535559), 69-79, 79-82
			* Problem: [2-D: Flight and Guilt (p. 69)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1534963).
			* Case: [State v. Chapple (p. 71)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1151173)
			* ***Please be advised that I will show real crime-scene and autopsy photos to illustrate the issues in State v. Chapple.***
				+ **This material is quite disturbing and anyone who does not wish to see the images is certainly welcome to look away and even leave the classroom while they are being shown.**
			* I will again lecture on Old Chief II,pp. 74-79, to discuss what it stands for under FRE 403.

## Week Two: August 30-September 1, 2021

* + [**Chapter: 2.0 Relevance**](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1531470)
	+ **Monday, August 30, 2021**
		- **Session 3-A**
			* [2.3 Excluding or Limiting Relevant Evidence (continued)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor02.4), 82-95
				+ Problem [2-E: The battered wife went to the shelter (pp. 82)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1544469)
				+ [Problem 2-F: The exploding gas tank and the guilty plea (p. 83).](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1544149)
				+ Problem [2-G: *My insurance will cover it:* Why saying "I'm sorry may cost you (p. 85).](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1543711);
		- **Session 3-B**
			* [2.4 Excluding or Limiting Relevant Evidence (continued)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor02.4), 82-95
				+ [Problem 2-H: Completeness: *Power rollback caused the crash* (p. 87-88)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchor1587364);
				+ [Problem 2-I: Raid on the Cedar Woods Apartment](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#Problem_02_1), 91-93
				+ [[Click here to see the notes on 104(a) (Bourjaily) and 104(b) (Huddleston) and "Conjunction" (combined probability) vs. "Coincidence" (overlap of Judge/Jury fact-finding)](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#anchorFRE104(a)(b)).]
				+ [[Click here to see the notes for conditional relevance in the 7th Edition](http://plaza.ufl.edu/malavet/evidence/notes/evnotes02.shtml#conditionalupdate)]
	+ **Review: Standard FRE 403 Balancing & Reverse 403 & Automatic Admissibility Preview**
	+ *Starting with Wednesday, September 1, 2021, assignments will be posted in the*[*Assignments and Notes Page*](http://plaza.ufl.edu/malavet/evidence/notes/evnotes.shtml)*of the course webpage.*