

(<http://www.law.ufl.edu/>)



## Evidence Syllabus

***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***

***(UPDATED 9 August 2021 for FALL 2021)***

## *A Note About The COVID–19 Pandemic Response at UF*

**In-Person Teaching and Learning.** The University of Florida has mandated in-person teaching and student attendance for the fall semester.

**Masks.** "Faculty, staff, and students may wear masks at any point while on campus, including during class or office hours. However, as of now, no one may require or ask students to wear masks in any location on campus. Faculty and staff may not otherwise pressure students to wear, or not wear, masks."

**Vaccines.** Are not being required by the university but you are hereby "directly encourage[d] ... to become vaccinated."

**On Friday, August 6, 2021, the University of Florida issued the following statements:**

1. **Effective immediately, in light of new guidance from the Centers for Disease Control and Prevention, we expect everyone to wear a mask at all times when inside any UF facility, even if you are vaccinated. This includes our students, faculty, staff, vendors and visitors. Recent studies and guidance from the CDC state that both unvaccinated and vaccinated individuals can transmit the current COVID-19 variant to unvaccinated persons.**
2. **If you are not vaccinated, get vaccinated. If possible, students should aim to be fully vaccinated but if unable, should strive to have at least one shot of the Pfizer or Moderna vaccine no later than August 22. ...**

**Please Exercise Good Judgment.** When it comes to the challenges of in-person teaching in the middle of a pandemic, we are all in this together. It is very important that we all exercise good judgment and have consideration for others in order to have a healthy and productive semester.

**Virtual Participation.** Whenever feasible, I will enable ZOOM participation into my classroom, especially for those students who may become ill or be placed in contact-tracing protocols. However, the availability of ZOOM may depend on how the Mediasite recordings of every class that will be managed by the Office of Student Affairs are to be produced.

**Physical Distancing from Me.** The current state of affairs that mandates high-density in-person classes but forbids mask or vaccine requirements is highly irresponsible given the surge in COVID-19 cases, especially in our state and region, and the most recent advice from the CDC (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>) that we should all wear masks in settings such as classrooms even when fully-vaccinated as recently ordered by some Florida Courts (<https://jud12.flcourts.org/news/Details/1954>). **I will wear a face mask whenever I am at the College of Law, including the classroom, even though I am fully-vaccinated. Since I will not know your vaccination status, students WILL maintain physical distancing from me at all times in and outside of my classroom, especially if you are not wearing a face mask.**

## ()Course Description, Teaching and Expected Outcomes

**Course Description.** A general course on the Federal Rules of Evidence and related common law rules, as well as constitutional provisions applicable in this field, with special emphasis on recent Supreme Court rulings on the Sixth Amendment Confrontation Clause and its effect on the admissibility of hearsay. Four (4) Credits.

**Prerequisite Knowledge and Skills.** Students must have completed the first year curriculum and developed the skills required to analyze legal problems and to advocate effectively.

**Purpose of the Course.** To prepare students to apply evidence law in practice as well as to prepare you to successfully answer the usual questions about evidence law found in typical bar examinations.

**Instructional Methods.** I try to present information in different ways so as to reach students with different learning styles (visual, oral, etc.). I use technology in and outside of the classroom in order to accomplish this goal. I will lecture only very occasionally. Most of our classroom time will be dedicated to problem-solving either through case-analysis or the authors' casebook problems. I will generally assign a role to each panel member as the offering party or the objecting party and ask that

they advocate their respective positions as permitted by the Federal Rules of Evidence, applicable common law principles, constitutional provisions and cases. I will gladly spend much more time explaining matters related to the course to individuals or study groups during office hours. I will also use short videos, available on demand on the website (</malavet/evidence/evmain.shtml#EvidenceVideos>), to provide background information and to review important concepts.

**My Basic Approach in the Classroom.** I seek to train *advocates* because very few of us will be judges, rather, most legal professionals will use the Rules of Evidence to promote the interests of their clients. Accordingly, most of our time in the classroom will be spent learning advocacy skills particular to the field of Evidence. I will focus on teaching you the *structure* of legal arguments under the Rules and applicable caselaw and constitutional provisions. Do not look for “*the answer*,” instead look for the proper *argument* to be made given your frame of reference. Most of the time, I will ask you to justify *knowledgeably why* the objection should be sustained or overruled.

**Classroom and Study Time-Management.** We are scheduled for 26 twice-per-week 120-minute slots that will each be broken down into two 55-minute sessions with a ten-minute break between them, for a net time of instruction of 110 minutes per session day, 220 minutes per week. That should allow us to complete the 2,800 minutes required by ABA standards over our now thirteen-week semester, with about one hour to spare.

In addition to the usual 220-minutes of classroom time each week, you should plan to allocate about eight (8) hours per week to class preparation and review throughout the semester as well as during the examination period.

The Assignments and Notes (</malavet/evidence/notes/evnotes.shtml>) page provides you the units that we will cover, organized by session, week and chapter.

Preparation time should initially be spent reading the assigned text as well as related rules and committee notes or constitutional provisions pertinent to the day's discussion prior to the class session.

You should also regularly review your notes and the materials that I post on the website and the course Canvas on eLearning (<http://elearning.ufl.edu>) page.

In general, the materials on the website that are linked to each assignment are designed to prepare you for class discussion and the materials on Canvas are designed to supplement our class discussion and your related notes.

### ***This Advocacy Course is NOT Totally IRAC-Focused***

*IRAC is an extremely useful system for deconstructing legal problems. That is precisely why we teach and emphasize it in so very many of our courses at the Levin College of Law. However, evidence is about learning to provide effective assistance of counsel in the American adversarial oral jury trial and thus, fundamentally, about advocacy and client representation within the applicable rules. Accordingly, in my class, you will have to engage in approaching problems from a partisan, client-duty perspective.*

**By the end of this course, I expect you to:**

- display a basic understanding of how evidence is gathered, presented, argued over and ultimately admitted or excluded from the American Oral (Jury) Trial;
- identify the proper rule(s) of evidence, common law rules, constitutional provisions and applicable caselaw relevant to the resolution of a particular problem;
- effectively advocate, orally or in writing, the solution to the problem from the perspective of the party whom you represent (prosecution or defense in a criminal case, plaintiff or defendant in a civil action) or the role that you are otherwise instructed to play (few of us will ever be judges);
- follow the structure of analysis that I will spend the entire semester developing and teaching;
- know what a motion *in limine* is, and have completed one using the fact-pattern from last-year's exam;
- write an essay answer to my examination explaining a given result to an evidence problem using the proper structure, applicable rules and in appropriate detail;
- be able to conduct basic research in the field of evidence;
- understand changes in the rules and applicable caselaw as those develop throughout your careers, initially by studying the rules of the state where you will seek admission to the bar and identifying how they are similar to or different from the Federal Rules of Evidence;
- be prepared to use these skills in your future practice.

**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).

I have adopted the latest 9th Edition of Mueller, Kirkpatrick and Richter's textbook and their updated rules supplement for the Fall of 2021.

**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 Exemplify as the electronic platform for the exam and it will be open book. Exemplify 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).*

**Course Schedule and Assignments.** I will post assignment with specific assignments in the Assignments & Notes (/malavet/evidence/notes/evnotes.shtml)page on the course website. If the servers should become unavailable, which is unlikely given that I have just moved to the new university web hosting platform, I will use the course canvas page. I will attempt to structure assignments by class session. Students, especially those who sign-up for a particular class, should check with me to make sure what material will be covered. Students must read the assigned pages in the text as well as the pertinent Federal Rules of Evidence in your Supplement. The Notes and Comments in the Rules are extremely helpful and should likewise be included in your reading.

## (Q)Testing, Participation and Grading

### Testing:

**5% Pass Fail Syllabus Quiz.** 5% of your testing grade will require you to complete the Syllabus Quiz that will be posted in the course Canvas page. You will have to post a perfect score by the given deadline. Prior to the deadline, you will be able to take the quiz multiple times until you reach the perfect score.

**5% Pass Fail Hearsay Quiz, Part I.** I will post three hearsay quizzes. The first will count 5% of your testing score. In order to pass, you must post a complete score. The actual score does not matter, you simply have to complete the quiz once. The other quizzes will be available simply for self-assessment and will be strictly voluntary.

**10% Pass Fail Practical Project.** You will have to complete a practical project that will consist of drafting a motion in limine based on a fact pattern that I will design. This project will be assigned during the second half of the semester and will account for 10% of your testing score and it will be graded on a pass/fail basis.

**80% Graded Exam.** If pandemic conditions allow it, the remaining 80% of your testing score will be a points-graded, open-rule, proctored, written, in-room final exam will be given on the date set by the administration.

**Examsoft.** I will allow (and indeed encourage) the use of Examsoft for the exam. Please be sure that the software works properly on your laptop as early in the semester as possible. If you experience any problems, please visit the College of Law Technology Services Office.

**Exemplify and Open Book if online-only.** If conditions require the College of Law to opt for online-only exams in the spring, I will again use the Exemplify platform and that exam will be fully open-book, but time- and character-limited.

**Exam Make-up and accommodation.** Exam accommodation is managed by the Levin College of Law's Office of Student Affairs. Please visit the Office of Student Affairs (<http://www.law.ufl.edu/student-affairs>)' page to review the College's policies in this regard: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#11> (<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#11>). Exam make-ups will be as authorized by the Professor Malavet in coordination with the Office of Student Affairs.

**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 Would be Open Book

*If the college opts once again to have online-only exams at the end of the spring 2021 term, I will use Exemplify as the electronic platform for the exam and it will be open book. Exemplify 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).*

**Grading and Class Participation:** When determining your final grades, I will consider class participation, to adjust your testing score, in two ways:

- 1. Minimum participation.** (20% of the overall grade). Each student will be required to participate in class discussion, probably at least two to three times during the semester -the exact number depends on the size of the class, and will be announced early in the semester- in order to meet *minimum* participation requirements. My basic system for class participation requires that you sign-up to participate in the discussion during an upcoming class, using a calendar item that will be posted on the course CANVAS page; sign ups will be available for each class session. Signing up should be done during the entire semester. Students may not sign up more than once during each calendar sign-up cycle. The advantages of this system are that you know you are "on call," the material that we will be covering, and it only happens a few times during the semester. Students who sign-up, are called upon, and answer correctly, get a participation credit, if they are unprepared, they will suffer an automatic deduction. **I may "cold-call" upon students at random as well, but these will not be counted in**

**the minimum class participation requirement; you must sign-up to earn any credit for those.** Additionally, you may raise your hand (in person or via ZOOM) and offer to ask or to answer questions at any time. But you must still comply with the minimum participation requirements, unless I instruct you otherwise. **Minimum Class Participation further includes:**

1. Completing any quizzes, surveys or polls that I may assign from time to time on Canvas, in person class or through the ZOOM environment.
2. Regularly accessing the class materials made available online both in my web page or in the class Canvas page.
  1. The notes in my website will give you major discussion points for which you should prepare. All students should review them before class, especially those who have signed up to participate on a particular date.
  2. All students must regularly access the Canvas page. Please note that Canvas analytics log each student's use of the course pages in great detail and I will use that to show your compliance with this requirement.
  3. Review one of the videos on US Courts and the American Oral Jury Trial that are posted on Canvas.
2. **Quality of Participation.** I will consider the quality of student participation and conduct to further adjust final grades, as I deem appropriate.
3. **Current Grading Scale.** The University of Florida follows a letter grade and grade point average system with a maximum letter grade of "A" and a maximum GPA of 4.0. Please visit the University Registrar's site for information on the current grade scale.  
[<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx> (<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>)]

Letter Grade	Point Equivalent
A	4.00
A-	3.67
B+	3.33
B	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
E (Failure)	0.00

4. **College of Law Grading Policy.** The College of Law's grading policies are published in the Student Handbook (<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>). The faculty at the College of Law voted to approve a new grading policy that became effective for the Fall 2020 term.
5. **Grading Scale, Adjusted to the College of Law Mandatory Curve.** This is my personal assessment of and advice about how you should interpret your grades at the Levin College of Law.

Letter Grade	Point Equivalent
A (Excellent)	4.00
A- (Good)	3.67
B+ (Above Average)	3.33
B (Below Average)	3.00
B-	2.67
C+ (Poor)	2.33
C	2.00
C- (Very Poor)	1.67
D+	1.33
D	1.00
D-	0.67
E (Failure)	0.00

## General Information and Policies for the Course

### Office Hours.

**Schedule.** I will have regular office hours on **Tuesdays from 2:00 to 4:00 p.m. via ZOOM** and, as mandated by the university, **in person in our classroom on Wednesdays from 3:15 to 4:15 p.m.**, starting on Wednesday, August 25, 2021.

**ZOOM Link.** I will post a link for the ZOOM office hours in the course CANVAS page for easy access.

**Appointment Scheduler.** I will also post a scheduler that will allow students to sign up for the Tuesday office hours on the CANVAS calendar, but you are not required to sign up for office hours, you may attend as long as the meeting is open to all students.

**Virtual Office Hours:** I have found that these virtual office hours work quite well and even encourage better participation from the entire class. ZOOM is especially conducive to having small group discussions of the material we cover in class in a more relaxed but very pedagogically useful setting. Accordingly, office hours as well as appointments will be held virtually in the ZOOM platform.

**Purpose of Office Hours.**

Take advantage of office hours as early as possible in the semester. Do not wait until the end of the course to review material and bring your questions to me. Review material regularly, at least as we finish different sections. Additionally, if you feel lost, or if you have doubts that cannot be resolved during class or during the period immediately following it, please do not hesitate to come and see me. Office time is also a good opportunity to explore matters that are not directly related to the material being discussed in class.

Office hours are also an opportunity for you to become more comfortable with my mandatory class-participation policy. You are encouraged to come by and talk to me during office hours before you sign up to participate in class, or in anticipation of your turn, to chat with me about the material. In the past, I have been pleased to see that students who dread class-participation have really done well by simply "talking it through" with me beforehand.

**Private Discussions**

When we need to have a private discussion, I will schedule individual meetings with the student, which will be held via ZOOM. If we need to have a private discussion during virtual office hours, I will close the ZOOM meeting. Private discussions will naturally not occur during the in-person office hours in the classroom.

**University Mandate**

**"Office Hours:** The university and state require professors to designate at least two hours of office hours per week for each course. The time of these weekly office hours must be publicized, and office hours may not be restricted to "by-appointment only". In addition, each professor must designate at least one office hour a week for in-person meetings. In-person office hours may take place in a professor's office, outside, or in larger indoor spaces, such as the student commons area, so long as the exact location is clearly identified in advance."

**E-mail.** You may communicate with me by E-mail, but only for administrative matters. My address is MALAVET@LAW.UFL.EDU (mailto:malavet@law.ufl.edu). E-mail messages from students must include the student's full name, so that I may ensure that I am communicating with a member of the class. I rarely answer substantive questions by E-mail because I find it a very inadequate medium to discuss course content. However, given the current state of affairs, you are welcome to send questions via email, but I will likely schedule a private ZOOM meeting to answer them properly instead of sending the a substantive reply. I rarely reply to attendance-related messages, since I check that at the end of the semester.

**Web Page, eLearning on Canvas.** This Syllabus and the currently-available weekly Assignment Sheets will be posted on my web site (<http://plaza.ufl.edu/malavet> (<http://plaza.ufl.edu/malavet>)). Additionally, I have created an area in the site for extensive evidence notes and will update these class materials during the semester, as I deem appropriate. I have also created a Canvas course page in which I have posted printouts of the Power Point slides that I used last semester and I will update these printouts as I make changes to the current pages. I do not place materials on reserve in the library and I will not print out the material posted on the web site. It is your responsibility to review the website and the Canvas on eLearning (<https://lss.at.ufl.edu>) course page regularly for updated class information; this is considered as part of your class participation for my course.

If you have any problems accessing the course website, please contact me directly via email.

If you have any problems accessing the course Canvas page, please contact the UF Helpdesk:

Available 24 hours a day, 7 days a week

(352) 392-HELP (4357)

[helpdesk@ufl.edu](mailto:helpdesk@ufl.edu) (mailto:helpdesk@ufl.edu)

**Class Attendance and Conduct:** Attendance is mandatory and the university is mandating that it be in person. Additionally, students arriving late or leaving the room during class are an undue distraction. Roll will be taken electronically using the CANVAS attendance system that is described below. Please note that Part A and B of our 220-minute sessions are treated as separate "hours" for attendance purposes. I will allow four (4) unexcused hours of absences per semester on a no-questions-asked basis (provided however that none of them may occur during the last six class days of the semester); Additionally, I am willing to be flexible about allowing a few excused absences, late arrivals or early departures, for good cause —such as a doctor's appointment, child-care problem or job interview— *provided* that the good cause is brought to my attention beforehand or as soon as possible thereafter in the case of unanticipated occurrences. Excuses must be submitted in writing or via E-mail. Students will have no more than seven days after the time of the unanticipated occurrence to bring excuses to my attention, ***unless I send you a specific message about the absence via email or CANVAS message in which case failure to respond within 24 hours will result in my deeming the absence to be unexcused***, and provided that I will not accept any excuses offered after our last session of the semester. If we do a sitting chart for the classroom, students will be required to remain in that seat throughout the semester. If participating via ZOOM, students are required display their first and last name on screen using the ZOOM profile settings (this is also critical as a backup to the attendance system). In the classroom, I encourage you to continue to use the printed nameplates provided by the Office of Student Affairs, in order to help me to see and call upon each of you.

Absences due to not being cleared will only be treated as excused if the student is sick or experiencing symptoms or in mandatory contact-tracing. Not cleared for failing to fill out the form as required will not be treated as an excused absence even though you MAY NOT BE ON CAMPUS.

If possible, I will allow ZOOM attendance by students who have a valid excuse and treat it as regular attendance.

**Law School "Class Recording Policy:** All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected." **Please note that there is separate language regarding HB-233 class recordings below.**

### Attendance System On Canvas

*I have created a Canvas survey to take attendance. The survey was quite successful last term. Each day of class I will show you a specific Attendance Code. If you enter the CaSe sensitive access code incorrectly the assignment disappears and you must reload it. When the access code is entered correctly, you will see a simple survey that allows you to select in-person and online attendance. After clicking "Submit Quiz", you see a confirmation of your selection and a thank you message. (ZOOM analytics serve as a backup by showing each student in online attendance and exactly how long they remained in the meeting; within 24 hours, CANVAS analytics will show even failed attempts to access the survey).*

*The survey will be available for twenty (20) minutes at the start of each session. I will only take attendance once during each session, even though each hour is treated separately. If you fall ill or otherwise need to leave the classroom at the break, simply send me an email indicating why. That is the better practice over waiting for me to contact you.*

*Any failure to enter attendance on the survey will be marked as "Absent" in the Canvas Attendance tracker and assignment. I will then use the specific survey to note whether or not the absence is excused for cause or because of a justifiable human or technical failure to complete the survey. I will add a note about the matter in the assignment as a record that will be available to me and to any individual students concerned within the Canvas environment.*

*The survey will look something like this (naturally, it will be have to be updated for the current term and our current classroom).*

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Question 1

1 pts

Are you present?

☒ Yes, in person in HH-180.

☐ Yes, online via ZOOM.

No new data to save. Last checked at 11:54am

Submit Quiz

### ()Using ZOOM Technology:

I will use ZOOM for most office hours and appointments during the semester. Medical or other practical needs may also require that students be able to attend via ZOOM at least occasionally.

UF ZOOM Quick-Start ([https://elearning.ufl.edu/zoom/#zoom\\_quick\\_start](https://elearning.ufl.edu/zoom/#zoom_quick_start))

How to Join A ZOOM Meeting on eLearning on Canvas (pdf) (<https://elearning.ufl.edu/media/elearningufledu/zoom/How-to-Join-a-Meeting.pdf>)

How to Join A ZOOM Meeting on eLearning on Canvas (video) (<https://elearning.ufl.edu/media/elearningufledu/zoom/How-to-Join-a-Zoom-Meeting.mp4>)

## *No Reasonable Expectation of Privacy but Confidentiality Rules Apply*

*Please be advised that all of our sessions will be recorded and they will automatically become available as determined by the Office of Student Affairs. ZOOM records audio and video of the instructor and anyone who participates in the class will also be heard. It also records your device screen if you share it. The recordings will only be accessible through the Mediasite environment that requires Gatorlink authentication and is available only to students registered in the course, and of course to me.*

*There are also "confidence monitors" displaying ZOOM participants in the classroom, at least for the instructor, and perhaps for students in the classroom as well. I may also use an iOS device to provide an additional "confidence ZOOM view" of the student area of the classroom for those attending via ZOOM.*

*You are hereby warned that you do not have a reasonable expectation of privacy in the ZOOM environment relative to having your likeness, voice or the general vicinity of your seat and your device's screen when shared captured by the video and audio devices that are used for these purposes, whether that is "live" during an in-room class or recorded virtual environment.*

*I strongly encourage you to use virtual backgrounds during ZOOM sessions in order to protect your privacy from even accidentally-prying eyes. The College of Law has created some very nice ones that are free to download here: [Go To LCOL Virtual Backgrounds Page (<https://www.law.ufl.edu/zoom-backgrounds>)].*

*HOWEVER, the video and sound of classes whether "live" during the synchronous class or recorded, are subject to confidentiality laws and regulations including, but not limited to, FERPA. Accordingly, it is inappropriate to share screen or sound "grabs" of any kind produced by any means, or the recordings of the sessions in total or in part, in any way, with anyone outside the class, without the express written consent therefor of everyone participating in the session, including me.*

*It is also inappropriate to use ZOOM, whether "live" or as recorded, to bully or to disparage other students in any way within or outside those registered for the class.*

When you join the Zoom meeting, please use the following rules of video conferencing etiquette:

- Choose a stationary location (meaning you must Zoom in from a computer, not from your phone).
- Choose a location where there are minimal disruptions (e.g. roommates talking and pets jumping on you).
- Dress appropriately for video conferencing.
- Turn off any cell phones and other electronic devices (if you must be "on call" for emergencies, set devices to vibrate).
- Unless specifically related to class, close any computer programs, websites, and email so you can give your classmates and speakers your full attention as well to ensure your personal privacy.
- Do not Zoom in the same room as someone else in the class.
- Unfortunately, Zoom "parties" create horrible feedback noises, so I highly recommend that you wear a headset during the sessions.
- Attendance, now via ZOOM, remains mandatory and you must remain visible on the video screen throughout the class in order to earn attendance credit (you may mute your video or walk away for class breaks, as well as short breaks as needed for personal comfort or if you should be interrupted, or need to assist or attend to someone else, during the class).
- In order to ensure that attendance is tracked properly, you must set your display name on ZOOM to show your first and last name; **you may not use anything else, including but not limited to, numbers or nicknames.** Failure to be properly identified during a ZOOM session will be treated as an unexcused absence.

**Electronics During Class.** Pagers and cellular telephones should be turned off during class (unless you need to be "on call" for serious matters; in such cases, however, please put the phone or pager on "vibrate only" mode).

**Laptop or Tablet Use.** Laptop computers and tablets are wonderful tools for class-related note-taking and reference, however, during class time it is inappropriate to use electronics for any other purpose.



**Professionalism During Class.** Naturally, you are all bound by the Regulations of the University of Florida, University Student Code of Conduct, the College of Law Honor Code and my rules. But more than obeying rules, classroom/ZOOM behavior is about showing proper professionalism. Proper conduct during class is intended to encourage everyone to participate in, to derive benefit from, and ultimately to enjoy the class. It is perfectly acceptable, and indeed professionally required, that you demand professional behavior of your classmates in and out of class. If you see conduct that is unprofessional and that affects your quality of life in the real or virtual classroom or at the college of law, you should privately approach the offending student and ask that they modify their behavior. If private discussion is impractical or unsuccessful, you should bring the matter to the attention of the instructor or an appropriate official at the College of Law or the University of Florida. You should do so privately, though not anonymously, but you are strongly encouraged to bring serious matters to my attention, or that of other pertinent authorities, as soon as possible, so that I, or they, may take appropriate measures.

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

**Sanctions.** Absences, tardiness and any other unprofessional conduct will be initially dealt with on a case-by-case basis as a matter of course grading, at the discretion of the instructor. The imposition of disciplinary measures will follow the process provided in the Regulations of the University of Florida, University Student Code of Conduct and the College of Law Honor Code. Serious class disruptions may result in expulsion from the disrupted session. Excessive absences -even if an excuse is offered\*- may result in administrative removal of the offending student from the course or in a reduction of his/her grade. Absent waiver, other matters will be referred to the pertinent committee or administrative hearing, without prejudice to the instructor's normal grading discretion.

\* While I would not reduce someone's grade for excessive **excused** absences, I might administratively remove them from the course, although I would ensure that this was done on a "passing" basis. I would do this if, in my judgment, the person has missed so much of the semester that he or she cannot really benefit from the course.

## Other University and College of Law Policies

**Religious Holy Days.** Absences due to observance of a religious holy day shall be treated as excused absences. Please inform me via email.

**The College of Law's Policy on Religious Holy Days states:** The College of Law respects students' observance of major religious holidays. If an instructor has an attendance policy limiting the number of absences, reasonable alternative means shall be established by the instructor to satisfy the attendance policy and accommodate the religious obligations of the student.

**The University of Florida Policy on Religious Holy Days is as follows:** Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence. Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances. If a faculty member is informed of or is aware that a significant number of students are likely to be absent from his or her classroom because of a religious observance, a major exam or other academic event should not be scheduled at that time. A student who is to be excused from class for a religious holy day is not required to provide a second party certification of the reasons for the absence.

**University Policy on Classroom Accommodation for Students with Disabilities.** Students requesting classroom accommodation must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations. Students are strongly encouraged to communicate with their professor and with the College of Law's office of student affairs (<http://www.law.ufl.edu/student-affairs>) to ensure that they receive proper accommodation.

**GatorEvals.** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.ua.ufl.edu/students/> (<https://gatorevals.ua.ufl.edu/students/>). Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluer.com/ufl/> (<https://ufl.bluer.com/ufl/>). Summaries of course evaluation results are available to students at <https://gatorevals.ua.ufl.edu/public-results/> (<https://gatorevals.ua.ufl.edu/public-results/>).

**HB-233 Class Recordings.** The university has issued the following language regarding this statute:

"Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

"A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture **does not** include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

"Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code."

## Etiquette and Netiquette

## *When communicating electronically you should always:*

Treat the instructor and your classmates with respect, even in email or in any other online communication

Always use your professors' proper title, which in law school is "Professor," not "Mr.," "Mrs.," "Ms." or "Miss," followed by last name

Avoid the generic use of "professor" without a last name

Unless specifically invited, don't refer to a member of the faculty by first name.

Use clear and concise language

Remember that all college of law level communication should have correct spelling and grammar

Avoid slang terms such as "wassup?" and texting abbreviations such as "u" instead of "you"

Use standard fonts such as Times New Roman and use a size 12 or 14 pt. font

Avoid using the caps lock feature AS IT CAN BE INTERPRETTED AS YELLING

Limit and possibly avoid the use of emoticons like :)

Be cautious when using humor or sarcasm as tone is sometimes lost in an email or discussion post and your message might be taken seriously or offensive

Be careful with personal information (both yours and other's)

Sign your e-mail message with your full name (first and last names) and return e-mail address

## *When participating in class discussion:*

Take what you are about to say seriously

Be as brief as possible while still making a thorough comment

Always be respectful of others' opinions even when they differ from your own

When you disagree with someone, you should express your differing opinion in a respectful manner

Do not make personal or insulting remarks

Do not disparage, bully or otherwise abuse your classmates in any way, including electronically, especially in the ZOOM environment and its related content

Be open-minded

## *We Discuss Sensitive Topics*

*The most difficult cases under the Federal Rules of Evidence and the Constitutional Doctrines that we must discuss often involve serious criminal offenses. Many of our most important cases and problems will address subjects such as murder, sexual assault, child-abuse and intimate partner violence. We must discuss these topics as part of any reasonable coverage of the field of Evidence.*

*However, please keep in mind that there will be among us victims, or friends and family of victims, of such crimes. This of course requires particular care and sensitivity during class discussion.*

*If you ever feel that a particular discussion will be too difficult, please communicate with me privately so that I may excuse you from the class or make arrangements for alternate participation methods.*

*If, however unintended it may be, discussion during our class should upset you as a victim, or for some other reason, please let me know privately or please seek assistance as discussed below.*

## *() Are you in distress? Please Ask for Help*

*If you are having real-life problems that are affecting your general well-being or your studies, please let someone know. You are most welcome to come to me if you wish to talk about it. Additionally, the Office of Student Affairs (<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs>), the University Counseling and Wellness Center (<http://www.counseling.ufl.edu/cwc/>) and UMatterWeCare (<http://www.umatter.ufl.edu>) are good places to start.*

### *Florida Bar Mental Health and Wellness Center*

*The Florida Bar, to its credit, is taking proactive steps to help improve the mental health and wellness of its members. In their own words:*

*The Florida Bar's Special Committee on Mental Health and Wellness of Florida lawyers will work to destigmatize mental illness, recommend best practices and remedies, and help bring more balance into members' daily professional lives.*

*<https://www.floridabar.org/member/healthandwellnesscenter/>  
(<https://www.floridabar.org/member/healthandwellnesscenter/>)*