

# EVIDENCE

Professor Mae C. Quinn  
University of Florida Levin College of Law  
**Syllabus - Spring 2019 - Section B**

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## **Contact Information:**

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Office Hours: Wednesday 2-5:30pm and by appt.

## **Class Meetings:**

Days: Tuesday & Thursday  
Time: 2:30-4:20pm  
Classroom: HH-285C  
Final Exam: Monday, April 29 at 1pm

## **Course Description and Goals:**

This is a survey course covering the Federal Rules of Evidence (FRE). The FRE serve as the underlying standards for the introduction, use, and consideration of evidence during federal court and other proceedings. Because the FRE have been adopted in whole or part by many jurisdictions, your studies this semester will also help you understand how evidence may be introduced, used, and considered in legal proceedings in state courts across the country – including in Florida.

Beyond surveying and learning the current FRE in a general way, students will learn to carefully parse the FRE's provisions and language, sharpening their statutory interpretation skills. Further, students will master specialized vocabulary relating to evidence and evidentiary principles, used by attorneys and judges around the country. This will include terminology for characterizing, defining, or admitting certain different types of evidence, as well as specific objections and arguments in support thereof.

Students in this course will also fine-tune their analytical abilities by applying the FRE to different fact-patterns and litigation-related scenarios. In this way, students will improve their ability to engage with the law in action, including by grappling with litigation strategy concerns, appropriately lodging and responding to objections, considering and responding to court rulings, and ensuring an adequate record is made for purposes of appellate review.

Through presentations, practice problems, role-playing exercises, and simulations you will enhance your public speaking skills and advocacy abilities on behalf of a case, client, or cause. Students will also develop their professional identities by weighing ethical, constitutional and other considerations while addressing evidentiary issues. They will also improve their ability to collaborate by working in groups.

Finally, students in this course will come away with an understanding of underlying policy preferences, goals and values intended to be advanced by the FRE and potential critiques of those preferences, goals, and values. For instance, we will consider how FRE law and policy may or may not reflect the interests of different stakeholders in the justice system and society at large. In doing so, students will develop an appreciation for how politics, class, race, gender, and other factors may be at play in the FRE as an historic document, body of law, and set of shared practices and assumptions that shape and impact litigation decisions, case outcomes, and the lives of individual people and communities.

## **Required Texts, Readings, and TWEN:**

The casebook for this course is DEBORAH JONES MERRITT & RIC SIMMONS, *LEARNING EVIDENCE: FROM THE FEDERAL RULES TO THE COURTROOM* (7<sup>th</sup> Edition). Additional assigned/supplemental readings, as well as various study aids, will be provided throughout this course. Some will be provided as in-class handouts while others will be made available through UF's electronic course platform, CANVAS.

You are welcome to use any study aids that may help you better understand and apply the materials in this course. I do not endorse any particular study aid or believe that you need to access outside resources to do well. However, some students have found that WEINSTEIN'S EVIDENCE MANUAL – STUDENT EDITION is helpful for clarifying confusing concepts (I should also disclose that I clerked for the Honorable Jack B. Weinstein, the lead author of this text).

Our casebook authors also provide several online study aids and assessment materials. I will use some of these in class, selecting those supplements I believe to be most helpful and appropriate. You are, of course, welcome to refer to any of the other online materials – including those we do not use in class - to improve your understanding of the FRE. However, for reasons that I will further explain, I do not necessarily endorse or recommend all of these materials.

### **Specific Learning Outcomes:**

By completing this course, among other things, students will:

- ✓ Know about the history, establishment, and development of the Federal Rules of Evidence (FRE), including types of proceedings where they apply;
- ✓ Develop facility with specialized vocabulary relating to evidentiary rules and principles, including terminology used to characterize certain types of evidence and objections;
- ✓ Possess a working knowledge of the FRE including its provisions relating to relevance, witness examination, expert testimony, hearsay, and character-related evidence;
- ✓ Enhance their ability to parse, interpret, and apply rules and statutes to different factual situations and while “in action”;
- ✓ Be able to identify and resolve constitutional and related issues that may arise in connection with trial evidence, including legal privilege and Confrontation Clause concerns;
- ✓ Understand their roles and develop their identities as legal professionals with ethical and other duties to clients and others even while seeking to collect, admit, or object to evidence.
- ✓ Improve their skills as public speakers, courtroom advocates, legal strategists, and collaborative partners; and
- ✓ Appreciate the role that race, poverty, gender, power, privilege and other factors may play in the FRE as written and applied.

## **Attendance Policy and Professionalism:**

This is a professional school. At all times, including in this class, you should conduct yourselves as professionals. Consistent with the requirements of the American Bar Association, the entity that helps regulate our profession, “regular and punctual class attendance” is mandatory. It will be monitored by way of a sign-in sheet and falsifying the sheet in any way will be considered an Honor Code violation.

If you are absent without valid excuse (illness or religious observance counts as valid excuse) or on a day you are assigned to be “on call” for “law firm duty day” (see below), your class participation and professionalism points (also described below) will be reduced accordingly. Otherwise, students are permitted to miss up to five hours of class without any penalty (each class session counts as two hours of course time). If you miss more than five hours of class without excuse, you will be referred to student affairs and may face grade reduction or dismissal from the course.

Without seeking special prior permission, students should not be late to class or leave their seats once the class session has begun (except in connection with exercises, group work, or true emergencies). As a matter of professionalism, you should take care of all personal needs before class, after class, or during the break between the first part and second part of each class session (a ten minute break will be provided between the first and second part of each class session). Violations of these professional norms can also impact your course grade.

For a range of reasons and as a matter of long-standing generally practice, I do not record class. Instead, I like to meet one-on-one with any student who, with valid excuse, misses class. During that meeting I take the time to walk the student through my class notes, review hypotheticals and exercises we might have discussed, and answer any questions the student might have. If you wish to schedule a one-on-one session after missing a class with valid reason, please email me to schedule an appointment.

## **Electronic Device Policy and Professionalism:**

To further provide a professional and respectful environment without distractions where we can engage in meaningful conversations, simulations, and the like, the use of laptop computers is permitted in class ONLY for note taking or referring to materials you have prepared for class (although I would urge you to consider printing out your preparation materials – for reasons that will soon become obvious). Similarly, all cellular telephones should either be turned off or turned to silence mode so that they do not disturb anyone during class.

Violation of these electronic device policies – for instance, by responding to emails in class, surfing the web, recording class, allowing your cell phone to ring, or engaging in other unprofessional conduct - can result in loss of credit toward your semester’s grade for class participation and professionalism. Depending on the nature of the violation, may also face possible disciplinary action under the Honor Code.

## **Office Hours and Availability Outside of Class:**

I love talking with students about evidence law, legal practice, careers, and other matters that may help you succeed in this course or the legal profession. I am available to meet during my office hours, Wednesdays from 2:00-5:30 pm, and by appointment. Just send an email to confirm a time slot. In person conversation is my strong preference over email exchanges, which sometimes can be misinterpreted or lead to confusion. However, you may send substantive course-related questions to me by email at [mae.quinn@law.ufl.edu](mailto:mae.quinn@law.ufl.edu) (do not use CANVAS for this purpose).

Before any question is emailed to me, I expect you to make every effort, on your own, to grapple with the concept about which you are inquiring. In addition, I may respond to your question with further questions to help push you to engage further with the material. I also reserve the right to share your question and my response with the entire class if I feel it would be helpful to the group. I will withhold the name of the inquiring student from any such shared exchanges.

As the end of the semester approaches, I will share more details about how to schedule one-on-one or study group meetings with me during the final exam study period. To help maintain your well-being and mine, I will not respond to any questions – by email or otherwise – once the exam period begins. Therefore, make sure to have all your course-related questions answered before that time.

### **Student Participation, Assessment, and Grading:**

Your grade in this course will be based primarily on your final examination, which is likely to be three (3) hours long and consist of three (3) essay questions (which will contain subparts). Assuming the exam is structured in this way, each essay question (including its subparts) will be worth up to thirty-one (31) points, for a total possible raw score of **ninety-three (93) points** on the final exam.

During the final exam you will be permitted to refer to all assigned course materials (textbook, CANVAS materials, handouts, and the FRE), your class notes, and any outlines or study aids you have prepared yourself or in cooperation with other students in this course. You may not consult any other sources, such as the textbook's online study guides, hornbooks, commercial outlines, or the Internet.

Up to **five (5) points** towards your final raw score in this course will be awarded based on your in-class participation and professionalism during your "law firm duty days" and otherwise. The day-to-day calendar for the course allows students to know in advance when their "law firm" is "on call." When "on call" as part of the assigned "law firm," you will need to be prepared to discuss, apply, explain, or otherwise grapple with the reading assignment for that day. This also might mean being called upon to serve in role as lawyer, client, trial court, appellate judge, etc.

When you are on call as part of the "duty day law firm," please keep in mind that your job is not just to "be right," but to demonstrate professionalism and facilitate your classmates' understanding of the materials. In addition, if you are part of a "law firm" that is on call, you may not simply "pass" when called upon. If you do, your participation and professionalism points will be docked accordingly. If there is an emergency or other valid excuse that will absolutely prevent you from serving as an expert on a given day, you should let me know in advance so that I can shift your coverage to another day.

Although I will primarily utilize the "law firm" model to cover course materials, every student is expected to read every assignment, to be prepared for class, and to bring the assigned readings to class every day. This is a difficult course. You will not do well if you do not stay up to date with your readings and periodically assess your comprehension of the materials covered. In addition, I will often seek input and participation from students who are not the designated "law firm" and reserve the right to call on any student on any day, whether or not their "law firm" is on call.

As we will further discuss, all students are also required to participate in a "Experiencing Evidence Exercise" to further enhance understanding of the FRE and their implications. Your highly satisfactory completion of the "Experiencing Evidence Exercise" will can earn up to **two (2) points** toward your final raw score grade for the course. More details will follow regarding this course requirement.

Therefore, in all, you can earn up to **one hundred (100) raw score points** in this class over the course of the semester:

FINAL EXAM:	Up to 93 points
CLASS PARTICIPATION/PROFESSIONALISM:	Up to 5 points
EXPERIENCING EVIDENCE EXERCISE:	Up to 2 points

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**TOTAL: 100 Raw Score Points**

Once final raw scores are computed for the entire class based on (1) final exam scores (2) professionalism and participation, and (3) law firm CLE presentation, the “curve” or mandatory distribution for the class will be determined.

The Levin College of Law’s mandatory distribution rules are posted on the College’s website and this class adheres to that posted grading policy. The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

However, the following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

**Further Assistance and Preparation for the Final Exam:**

Throughout the semester I will do my best to help you succeed in this course. First, I will offer small group “law firm” meetings to check in with students to see how they are doing with the materials and course. Second, throughout the semester we will work on multiple choice questions to both assist you in mastering the materials and expose you to bar exam question format.

Third, you will be given the opportunity to take an ungraded one-hour practice exam about mid-way through the semester. I will return the practice exams with individualized feedback and go over a model sample answer in class. You are encouraged to visit with me one-on-one to discuss your practice exam, my comments, and ways you might improve moving forward.

Towards the end of the semester I will provide a packet of additional sample essay questions that you may find helpful to use and review as you prepare for the final exam. I am happy to discuss these questions with you in general terms during my office hours. I will not provide written feedback on written responses to these questions.

Finally, I will hold a review session at the end of the semester to provide an overview of all materials covered. Ground rules for that session, including how to provide me with your questions in advance, will be provided towards the end of the semester.

## **Accommodations:**

The Levin College of Law is committed to ensuring all students are provided equal opportunity to participate fully in the law school and University community. Students seeking disability accommodations should register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter that must be presented to the College of Law's Assistant Dean for Student Affairs (Dean Mitchell) to request accommodations at the Law School. I would recommend students begin this process as early as possible in the semester to ensure their needs are met properly and promptly.

## **Code of Academic Conduct:**

All students who enter the Levin College of Law are governed by its Honor Code, found here:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

They must also comply with the University of Florida's Student Conduct and Honor Codes, found here:

<https://sccr.dso.ufl.edu/students/student-conduct-code/>.

These documents describe the rights and duties of students and provide the procedures to be followed in case of an alleged violation. Work for this course should be undertaken in full compliance with both the spirit and letter of these Codes. However, you may wish to remind yourself of the following provisions of the Levin College of Law's Honor Code:

### **VIOLATIONS OF THE HONOR CODE AND SANCTIONS:**

...(a) Conduct Prohibited by the Honor Code. Students are prohibited from engaging in conduct that violates the Academic Honesty Guidelines (6C1-4.017). Actions identified in the Academic Honesty Guidelines are violations of the Honor Code.

(b) Consequences of Honor Code Violation. The following shall be consequences of an Honor Code violation:

1. Imposition of Sanctions. If a student is adjudicated responsible for a violation of the Honor Code or accepts responsibility for a violation, the student becomes subject to the sanctions authorized by 6C1-4.016(3).
2. Bar Notification. If a student is adjudicated responsible for an Honor Code violation or accepts responsibility for a violation, the College of Law shall provide this information to any state or federal bar to which the College of Law becomes aware that the student has applied.
3. Flagging of Student's Records. If a student adjudicated responsible for an Honor Code violation or accepts responsibility for a violation, College of Law Student Affairs shall include this information and make a record of the proceedings against the student a permanent part of the student's file....

## Course Materials and Coverage:

What follows is the tentative list of assigned readings, found in the main text of Merritt and Simmons' EVIDENCE LAW (denoted by chapter number) and in the Federal Rules of Evidence ("FRE"). You should also check CANVAS each day to see if there are any supplemental materials for you to read and/or prepare for class. You can find the Federal Rules of Evidence as an Appendix at the end of the textbook.

You should bring your textbook, including the Federal Rules of Evidence, to class every day. You should also bring any supplemental readings from CANVAS with you to class, too. Here, again, I recommend printing them out rather than trying to access them in class from your computer.

You will note the readings are laid out in an anticipated day-by-day calendar. At the end of each class I will confirm the chapters/materials to be covered during the next class, usually based upon the day-by-day calendar of readings. If for some reason I do not tell you, please follow the day-by-day calendar of readings.

We may not cover the entire reading list below and I reserve the right to modify the reading list as needed. Rest assured that you will be tested only on the subject areas covered. But you are responsible for everything you are assigned to read, whether we talk about it in class or not. Keep in mind that, pursuant to American Bar Association Standards, for every hour of class time you are expected to spend at least (2) hours outside of class reading and preparing.

We will primarily cover the assigned readings through classroom conversations, problems and exercises, and simulations. As noted, although everyone needs to be prepared every day, I will rely heavily on the "law firm duty day" system. You will see below that each firm will be on call a total of two (2) times during the semester. Make sure to note these dates in your calendar NOW to avoid any potential scheduling conflicts later in the term.

## Tentative Assigned Reading List as Day-by-Day Calendar:

Week	Tuesday	Thursday
<b>1</b>	1/8 - Class 1 <b>Class &amp; System Overview: Ch. 1-4</b> FRE: 101; 102; 1101 Everyone on call today	1/10 - Class 2 <b>Intro to Objections &amp; Exhibits: Ch. 5 &amp; 69</b> FRE: 103-105; 901-902; 1001-1004 Law Firm 1: Allen & Bergman
<b>2</b>	1/15 - Class 3 <b>Relevance: Ch. 6, 7 &amp; 8</b> FRE 401; 402; 403 Law Firm 2: Bilirakis & Cabeza	1/17 - Class 4 <b>Relevance: Ch. 9 &amp; 10</b> FRE 407; 408 Law Firm 3: Cahill & Deng
<b>3</b>	1/22 - Class 5 <b>Relevance: Ch. 11, 12 &amp; 13</b> FRE 409; 410; 411 Law Firm 4: DiClemente & Franca	1/24 - Class 6 <b>Catch-up/Review/EEE Time</b>

<b>4</b>	1/29 – Class 7 <b>Witnesses/Gen: Ch. 14 &amp; 15</b> FRE 601-606; 611; 614; 615 Law Firm 5: Galyer & Hoisington	1/31 – Class 8 <b>Ws/Privs: Ch. 66, 67-68 (867-84; 900-08)</b> FRE 501; 503* Law Firm 6: Johnson & Lohmann
<b>5</b>	2/5 – Class 9 <b>Ws/Refresh &amp; Impeach Gen: Ch. 16, 17</b> FRE 612; 607 Law Firm 7: Macarages & Moulton	2/7 – Class 10 <b>Ws/Impeach/Untruthful Char: Ch. 18, 24 &amp; 19</b> FRE 613; 611; 106; 404(a); 608(b)(1) Law Firm 8: Nordman & Pope
<b>6</b>	2/12 – Class 11 <b>Ws/Impeach/Untruthful Char: Ch. 20, 21 &amp; 22</b> FRE 609; 608(a); 608(b)(2) Law Firm 9: Rocha & Silva	2/14 – Class 12 <b>Catch-up/Review/EEE Time</b>
<b>7</b>	2/19 – Class 13 <b>Issue/Character-Gen: Ch. 25, 26 &amp; 27</b> FRE 405; 404(a) Law Firm 10: Slayton & Vidi	2/21 – Class 14 <b>Issue/Character-Crim: Ch. 28 &amp; 29</b> FRE 404(a) Law Firm 11: Walker & Windisch
<b>8</b>	2/26 – Class 15 <b>Other Bad Acts &amp; Habits/Routines: Ch 30-31</b> FRE 404(b); 406 Law Firm 1: Allen & Bergman	2/28 – Class 16 <b>Lay v. Expert Opinions: Ch. 60 &amp; 61</b> FRE 701-04 Law Firm 2: Bilirakis & Cabeza
Spring Break: March 4 through March 8, 2019		
<b>9</b>	3/12 – Class 17 <b>Intro to Hearsay: Ch. 34 &amp; 35</b> FRE 104; 403; 801; 802 Law Firm 3: Cahill & Deng	3/14 – Class 18 <b>Statements and TOMA: Ch. 36 &amp; 37</b> FRE 801; 802 Law Firm 4: DiClemente & Franca
<b>10</b>	3/19 – Class 19 <b>Non-Hearsay: Ch. 38 &amp; 39</b> FRE 801(d)(1) Law Firm 5: Galyer & Hoisington	3/21 – Class 20 <b>Hearsay – 803: Ch. 40 &amp; 41</b> FRE 803(1); 803(2); 803(3) Law Firm 6: Johnson & Lohmann
<b>11</b>	3/26 – Class 21 <b>Hearsay – 803: Ch. 42, 43 &amp; 44</b> FRE 803(4); 803(5); 805 Law Firm 7: Macarages & Moulton	3/28 – Class 22 <b>Hearsay – 803: Ch. 45, 46 &amp; 47</b> FRE 803(6-8); 803(10); 803(16-18) Law Firm 8: Nordman & Pope

<b>12</b>	4/2 – Class 23 <b>Catch-up/Review/EEE Time</b>	4/4 – Class 24 <b>Hearsay – 804: Ch. 48, 49 &amp; 50</b> FRE 804(a); 804(b)(1-2) Law Firm 9: Rocha & Silva
<b>13</b>	4/9 – Class 25 <b>Hearsay – 804: Ch. 51, 52 &amp; 53</b> FRE 804(b)(3); 804(b)(6); 801(d)(2) Law Firm 10: Slaton & Vidi	4/11 – Class 26 <b>Hearsay – Other: Ch. 55 &amp; 56</b> FRE 801(d)(2)(E); 807 Law Firm 11: Walker & Windisch
<b>14</b>	4/16 – Class 27 <b>Hearsay/Other incl. 6<sup>th</sup> Amend: Ch. 57 &amp; 58</b> FRE 806 Everyone on call today	4/18 – Class 28 <b>Catch-up/Review/EEE Time</b>
<p style="text-align: center;">Optional Final Review Session to be scheduled  Final exam period scheduled to begin Friday, April 26  <b>Final Exam: Monday, April 29 at 1pm</b></p>		