

# EVIDENCE

Professor Mae C. Quinn  
University of Florida Levin College of Law  
**Syllabus - Spring 2020**

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## **Contact Information:**

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Office Hours: Weds. 3-5:00pm and by appt.

## **Class Meetings:**

Days: Mon/Tues/Weds  
Time: 9:00-10:15am  
Classroom: HH-355C  
Final Exam: Thurs., April 30 at 8:30am

## **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 the 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 practice problems, role-playing exercises, simulations and otherwise students will enhance public speaking skills and advocacy abilities on behalf of a case, client, or cause. They will also develop their professional identities by weighing ethical, constitutional and other considerations while addressing evidentiary issues. Students will improve collaboration abilities through group exercises.

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 CANVAS:**

The casebook for this course is DEBORAH JONES MERRITT & RIC SIMMONS, *LEARNING EVIDENCE: FROM THE FEDERAL RULES TO THE COURTROOM* (4<sup>th</sup> Edition). Additional assigned materials, including problems we will cover in class, will be made available for each Course Unit through CANVAS. Please complete all assigned CANVAS readings and problems for each class, in addition to your assigned textbook readings.

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 and do not 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 four classes without any penalty. If you miss more than four classes 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 or after class. 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 allow general access to class recordings, which are created for accommodation purposes. 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, 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 profession. I am available to meet during my office hours, Wednesdays from 3:00-5:00 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 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 – after **April 26**.

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

### **(1) Final Exam – 90 Points**

Your grade in this course will be based primarily on your final examination, which will be three (3) hours long and consist of three (3) essay questions. Each essay question (including its subparts) will be worth up to **thirty (30) points**, for a total possible raw score of **ninety (90) 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.

### **(2) Participation and Professionalism – 4 Points**

Up to **four (4) 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. Your “law firm duty day” will either be Monday, Tuesday, or Wednesday, depending on where your name falls in the alphabet. 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 and any problems for that day. This could mean being called upon to serve in role as lawyer, client, trial court, appellate judge, etc.

If you are part of the “law firm” 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 valid excuse that will prevent you from serving as duty day lawyer on a given day, you should let me know in advance. And although I will primarily utilize the “law firm” model to cover course materials, every student is expected to read every assignment, to do all assigned problems, to be prepared for class, and to bring the assigned materials 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 part of the “duty day law firm.”

### **(3) Mock Mid-Term – 4 Points**

Up to **four (4) additional points** are available based upon your completion a “Mock Mid-Term” problem. This exercise is intended to give you an opportunity to answer an exam-like question under test conditions using only the materials permitted during the exam. While I will not score your answer exactly as I would a final exam question, I will provide you with written feedback and guidance to assist as you prepare for the final exam. And points will be awarded based upon effort, form, and analysis.

### **(4) Experiencing Evidence Exercise – 2 Points**

Finally, as we will further discuss, all students are also expected to submit an “Experiencing Evidence” document. Due dates will be based upon your assigned “law firm subgroup” and the project is intended to be a fun way to further our understanding of the FRE together. For your highly satisfactory completion of the “Experiencing Evidence” exercise you can earn up to **two (2) points** toward your final raw score grade for the course. More details will follow for the EE exercise.

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 90 points
CLASS PARTICIPATION/PROFESSIONALISM:	Up to 4 points
MOCK MID-TERM/SAMPLE EXAM QUESTION:	Up to 4 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, (3) Mock Mid-Term, and (4) Experiencing Evidence exercise, 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 (Fail)	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 informal “law firm sub group” gatherings 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 the Mock Mid-Term, which will consist of a one-hour practice exam question. I will return your answers to the Mock Mid-Term 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 UF 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.

## **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 can find the Federal Rules of Evidence as an Appendix at the end of the textbook. You must also complete the designated CANVAS readings/problems that correlate to each class.

You should bring your textbook, including the FRE, to class every day. You should bring any supplemental materials from CANVAS with you to class, too. Here, again, I recommend printing out documents 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. If I do not otherwise instruct 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.

## Tentative Course Schedule and Calendar of Assignments:

	Monday	Tuesday	Wednesday
<b>1</b>	1/13 – Class 1 <b>Course &amp; FRE Overview</b> <b>Study Guide, Ch. 1, 3-4, 72</b> FRE: Skim all rules/formatting + Read 101-02, 606(b) & 1101 Everyone on call today	1/14 – Class 2 <b>Exhs, Objections &amp; Prelim Qs</b> <b>Ch. 2 &amp; 5</b> FRE: 103-105 Everyone on call today	1/15 – Class 3 <b>Authentication &amp; Best Evidence</b> <b>Ch. 69 + 70</b> FRE: 901-02; 1001-04 Everyone on call today
<b>2</b>	No Class – Holiday	1/21 – Class 4 <b>Relevance &amp; Prejudice/Limits</b> <b>Ch. 6 -8</b> FRE 401-03 <i>*Begin Law Firm Duty Days</i>	1/22 – Class 5 <b>Relevance &amp; S/R Measures</b> <b>Ch. 9</b> FRE: 407
<b>3</b>	1/27 – Class 6 <b>Relevance &amp; Negotiate/Med Cost</b> <b>Ch. 10-11</b> FRE: 408-09	1/28 – Class 7 <b>Relevance &amp; Crim Pleas/Insurance</b> <b>Ch. 12-13</b> FRE: 410-11 <i>*EE Due for Law Firm Group M-A</i>	1/29 – Class 8 <b>Unit I – Wrap-Up</b>
<b>4</b>	2/3 – Class 9 <b>Witnesses Generally</b> <b>Ch. 14-15 (1<sup>st</sup> part)</b> FRE: 601-606; 611	2/4 – Class 10 <b>Ws/Refreshing Recollection</b> <b>Ch. 15 (2d part)-16</b> FRE: 612; 614; 615	2/5 – Class 11 <b>Ws/Impeach &amp; PI Statements</b> <b>Ch. 17-18 + 24</b> FRE: 607; 613
<b>5</b>	2/10 – Class 12 <b>Ws/Impeach &amp; Character Acts</b> <b>Ch. 19</b> FRE: 404(a); 608(b)(1)	2/11 – Class 13 <b>Ws/Impeach &amp; Prior Convix</b> <b>Ch. 20</b> FRE: 609	2/12 – Class 14 <b>Ws/Impeach &amp; Character Op, etc</b> <b>Ch. 21-23</b> FRE: 608(a); 608(b)(2); 610 <i>*EE Due for Law Firm Group M-B</i>
<b>6</b>	2/17 – Class 15 <b>Unit II – Wrap Up</b>	2/18 – Class 16 <b>Issue/Character Gen &amp; Element</b> <b>Ch. 25-26</b> FRE: 405	2/19 – Class 17 <b>Issue/Character &amp; Propensity</b> <b>Ch. 27-28</b> FRE: 404(a)(1); 404(a)(2)

7	2/24 – Class 18 <b>Issue/Character &amp; Propensity</b> <b>Ch. 29-30 (1<sup>st</sup> part)</b> FRE: 405(a); 404(b)	2/25 – Class 19 <b>Other Bad Acts &amp; Habit</b> <b>Ch. 30 (2d part) + 31</b> FRE: 404(b); 406 <i>*W Firm On-Call Today</i> <i>*EE Due for Law Firm Group T-A</i>	2/26 – Class 20 <b>Unit III – Wrap-Up</b>
SPRING BREAK – Monday, March 2 – Friday, March 6			
8	3/9 – Class 21 <b>Intro to Hearsay &amp; TOMA</b> <b>Ch. 35-36 (1<sup>st</sup> part)</b> FRE: 801-02	3/10 – Class 22 <b>TOMA &amp; Statements</b> <b>Ch. 36 (2d part) +37</b> FRE: 801-802	3/11 – Class 23 <b>Overcoming H/S &amp; Prelim Q</b> <b>Ch. 38 &amp; 34</b> FRE: 104 & skim 803-04; 807
9	3/16 – Class 24 <b>Non-Hearsay Intro/Exemptions</b> <b>Ch. 39</b> FRE: 801(d)(1)	3/17 – Class 25 <b>H/S 803: PSI &amp; Excited Uts.</b> <b>Ch. 40</b> FRE: 803(1); 803(2)	3/18 – Class 26 <b>H/S 803: State of Mind</b> <b>Ch. 41</b> FRE: 803(3)
10	3/23 – Class 27 <b>H/S 803: Med &amp; RecRecs</b> <b>Ch. 42-43</b> FRE: 803(4) ; 803(5)	3/24 – Class 28 <b>H/S Layers &amp; Business Records</b> <b>Ch. 44-45</b> FRE: 805; 803(6)	3/25 – Class 29 <b>H/S 803: Pub Rec &amp; Misc.</b> <b>Ch. 46-47 (1<sup>st</sup> part)</b> FRE: 803(8) + 803(7), (10), (16), (17), (18) AND (*21) <i>*EE Due for Law Firm Group T-B</i>
11	3/30 – Class 30 <b>Unit IV –Wrap Up</b>	3/31 – Class 31 <b>H/S 804: Avail/Former Testimony</b> <b>Ch. 48-49</b> FRE: 804 gen & 804(b)(1) <i>*M Firm On-Call Today</i>	4/1 – Class 32 <b>H/S 804: DD &amp; Against Interest</b> <b>Ch. 50-52</b> FRE: 804(b)(2) &(3) & (6)
12	4/6 – Class 33 <b>H/S 801 – Opposing Party/CoCo</b> <b>Ch. 53 &amp; 55</b> FRE: 801(d)(2)	4/7 – Class 34 <b>H/S – Residual &amp; 6<sup>th</sup> Amend Issues</b> <b>Ch. 56 (online version) &amp; 58</b> FRE: 807 & <i>Crawford</i> <i>*EE Due for Law Firm Group W-A</i>	4/8 – Class 35 <b>Unit V – Wrap- Up</b>



<p><b>13</b></p>	<p>4/13 – Class 36  <b>Lay vs. Expert Ops Generally</b>  <b>Ch. 60-61</b>  FRE: 701; 702 &amp; <i>Frye v. Daubert</i></p>	<p>4/14 – Class 37  <b>Experts: Qualifying &amp; Limits</b>  <b>Ch. 62 &amp; 64</b>  FRE: 704</p>	<p>4/15 – Class 38  <b>Privileges</b>  <b>Ch. 66, 67 (p. 867-84)</b>  <b>&amp; 68 (p. 900-07)</b>  FRE: 501 &amp; 503*  <i>*EE Due for Law Firm Group W-B</i></p>
<p><b>14</b></p>	<p>4/20 – Class 39  <b>Final Class, Wrap-Up &amp; Review</b></p>	<p>*** As a reminder, the final exam is <b>Thursday, April 30 at 8:30 am.</b>***  If after the last day of class you wish to discuss course materials, please make an appointment. From Monday, April 27 until the exam I will be unavailable for questions. A sign-up list with my open appointments will be circulated in class on Monday, April 20.</p>	