**EVIDENCE**

*LAW 6330 (#14739)*

**COURSE INFORMATION AND SYLLABUS**

***Spring 2022***

**INSTRUCTOR’S CONTACT INFORMATION:**

Professor Sarah H. Wolking

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***Office Hours:***Tuesdays and Wednesdays 12-1pm. If these times do not work for you, feel free to email me to set up a meeting at another time, or just drop by my office. Students are welcome to contact the professor via email, text, or phone. Feel free to ask questions about law school (e.g., career advice, course selection, accommodation needs, work/life balance) as well as the course material.

**CLASSROOM AND CLASS TIME:**

Mondays, Tuesdays, and Thursdays 10:45am – 12:00pm; Room 355C Holland Hall

**COURSE MATERIALS:**

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

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

**COURSE OBJECTIVES AND GOALS:**

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

**LEARNING OUTCOMES:**

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

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

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

**CLASS ATTENDANCE AND PARTICIPATION:**

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

I will bring my very best effort to every class, and I expect you to do the same. So, arrive for class on time, be prepared and ready to begin, and remain for the duration. Colleagues do not walk out on each other, and an attorney who walks out on a judge during a hearing will find the state providing room and board at the local jail. Therefore, if you leave during class for any amount of time, you will be marked absent. There are of course rare occasions on which you must leave during class and likewise rare occasions on which you must arrive late to class. This is why I provide a generous allotment of absences. As a matter of professional courtesy, let me know the reason for such behavior, either before or after, as appropriate.

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

Please bring the insights you have gained from assigned readings/recordings, and be prepared to share these. ***My goal for calling on people is to maximize and evenly distribute everyone’s opportunity to participate in class. You will be graded for effort and participation, but you won’t be graded on the content of your response. Put another way, it’s okay if you give an incorrect answer, but I will expect you to be prepared to give some answer. It should be fun, not frightening! You’re always encouraged to volunteer answers when I seek volunteers, and to ask questions throughout class.*** Sometimes I’ll have to postpone an answer for timing or pedagogical reasons. Please feel free to bring any lingering questions to me during office hours or via email. Further information about UF Law's attendance policy is available [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies).

**ASSIGNMENTS/GRADING:**

Your final grade will be a combination of the following:

* + Final Exam — 90%
  + Quizzes and Participation — 10%

**Final Exam**: You’ll have a 3.5 hour, fully open book exam on Monday, May 9, 2022.

* You may consult any materials in any format, including electronic, hard copy, or online.
* The exam will have two parts. Part One will consist of 60 multiple choice questions, and Part Two will consist of a single essay question. I suggest that you try to spend 2 hours 40 minutes on Part One (this works out to a little over 2.5 minutes per question) and about 50 minutes on Part Two. This time allocation roughly corresponds to the relative weight I’ll give the two parts of the exam in grading (75%/25%).
* There will *either* be a rough recommended word count range of 1000-1500 as a guideline or a hard cap of 1400 words. Either way, you will get no points for either length or brevity *per se*. Instead, focus on making your answer substantively thoughtful and accurate, on supporting your claims with argument, and on making your writing well-organized and structured.

**Practice Quizzes** **(mandatory but ungraded)**: Each week you will take at least one practice quiz which we will review in class. These quizzes are listed as “graded” in Canvas, but that setting is enabled only so that I can see common oversights or points for improvement. These quizzes are mandatory, but will ***not*** be graded.

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

For this course, you will earn four (4) total credits. This course follows the grading policies at the Levin College of Law, available [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The law school recognizes the following grades:

|  |  |
| --- | --- |
| A 4.00 (excellent) | C 2.00 (satisfactory) |
| A- 3.67 | C- 1.67 |
| B+ 3.33 | D+ 1.33 |
| B 3.00 (good) | D 1.00 (poor) |
| B- 2.67 | D- 0.67 |
| C+ 2.33 | E 0.00 (failure) |

The law school policy on exam delays and accommodations can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**COMMUNICATION COURTESY AND CIVILITY:**Please follow rules of common courtesy in all email messages, threaded discussions and chats. Do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. ***I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.***

**CLASS PREPARATION:**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has four (4) “classroom hours” of in-class instruction each week, requiring at least eight (8) hours per week of preparation outside of class. Assignments will be posted in Canvas prior to the start of class. Current events articles, recordings, and other materials will be added to your assignments periodically throughout the semester.

**INTERNET USE DURING CLASS:**

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

**SENSITIVE ISSUES:**

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

**UF LAW HONOR CODE:**  
Academic honesty and integrity are fundamental values of the University community. The University of Florida College of Law Honor Code represents a commitment by students to adhere to the highest degree of ethical integrity. Teaching and learning flourish best in an environment where mutual trust and respect form the bedrock of relationships. The Honor Code helps create a community in which students can maximize their intellectual and academic potential. Students are bound by the UF Honor Code, which may be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code).

**LEARNING ENVIRONMENT AND PREFERRED NAME:**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL.  The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison."   To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom.  This change may take up to 24 hours to appear in Canvas.   This does not change your legal name for official UF records.

**GETTING HELP:**

For technical difficulties with E-learning in Canvas, please contact the UF Help Desk at:

* [helpdesk@ufl.edu](mailto:helpdesk@ufl.edu) or 352-392-HELP
* <http://elearning.ufl.edu/> (See “Message Us” at the top of the page)

**DISCOURSE, INCLUSION, AND THE CLASSROOM ETHOS:**

I consider this classroom to be a place where you will be treated with respect, and I welcome individuals of all ages, backgrounds, beliefs, ethnicities, genders, gender identities, gender expressions, national origins, religious affiliations, sexual orientations, ability – and other visible and non-visible differences. All members of this class are expected to contribute to a respectful, welcoming, and inclusive environment for every other member of the class. As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution which can be found at <https://www.law.ufl.edu/law-news/support-the-uf-law-anti-racism-resolution>.

**STATEMENT RELATED TO ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES:**Students requesting accommodations for disabilities should first register with the Disability Resource Center (352-392-8565, [**https://disability.ufl.edu/**](https://disability.ufl.edu/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Asst. Dean Brian Mitchell). Students with disabilities are encouraged to follow this procedure and to share their accommodation letter with me as early as possible in the semester.

**STATEMENT REGARDING ONLINE COURSE EVALUATION:**

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.aa.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.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**HEALTH AND WELLNESS RESOURCES:**

***U Matter, We Care:*** If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.

***Counseling and Wellness Center:*** Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis services as well as non-crisis services.

***Student Health Care Center:*** Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.

***University Police Department:*** Visit UF Police Department website or call 352-392-1111 (or 9-1-1 for emergencies).

***UF Health Shands Emergency Room/Trauma Center:*** For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; Visit the UF Health Emergency Room and Trauma Center website.

**SYLLABUS**

This syllabus provides an overview of the major topics and readings we will cover during the course of this semester. This syllabus is subject to change at any time, depending on the material covered and class interest. We may cover more than one unit in a single class session, and we may take more than one session to cover a single unit. We may add or delete topics to account for the pace of our discussions, new developments in the law, etc. Specific assignments and supplemental reading may be announced in class and/or in Canvas.

| Date/Class # | Class Topic(s) | Reading Assignments |
| --- | --- | --- |
| WEEK ONE | INTRODUCTION & OVERVIEW |  |
| 1/18 #1 |  | Study Guide, Chapters 1-2 |
| 1/20 #2 |  | Chapters 3-5 (first half) |
| WEEK TWO | RELEVANCE; BALANCING |  |
| 1/24 #3 |  | Chapters 5 (second half)-6 |
| 1/25 #4 | Prejudice, Confusion or Waste of Time | Chapters 7-8 |
| 1/27 #5 | Subsequent Remedial Measures | Chapter 9 |
| WEEK THREE |  |  |
| 1/31 #6 | Settlements & Offers to Compromise; Medical Expenses | Chapters 10-11 |
| 2/1 #7 | Plea Bargaining; Liability Insurance | Chapters 12-13 |
| 2/3 #8 | Competence; Witness Examination | Chapters 14-15 (first half) |
| WEEK FOUR |  |  |
| 2/7 #9 | Refreshing a Witness’s Memory | Chapters 15 (second half)-16 |
| 2/8 #10 | Impeaching; Using Prior Statements | Chapters 17-18 |
| 2/10 #11 | Character Evidence | Chapter 19 |
| WEEK FIVE |  |  |
| 2/14 #12 | Using Criminal Convictions to Impeach | Chapter 20 |
| 2/15 #13 | Reputation or Opinion Evidence; Religion | Chapters 21-23 |
| 2/17 #14 | Rule of Completeness; Character & the FRE | Chapters 24-26 |
| WEEK SIX |  |  |
| 2/21 #15 | Propensity | Chapters 27-28 |
| 2/22 #16 | Other Crimes — MIMIC Rule | Chapters 29-30 (first half) |
| 2/24 #17 | Habit | Chapters 30 (second half)-31 |
| WEEK SEVEN |  |  |
| 2/28 #18 | Rape Shield Law | Chapter 32 |
| 3/1 #19 | Sexual Assault/Child Molest; Preliminary Questions | Chapters 33-34 |
| 3/3 #20 | Hearsay | Chapters 35-36 |
| UF LAW SPRING BREAK |  |  |
| WEEK EIGHT | HEARSAY |  |
| 3/14 #21 | What is a Statement? & Admissibility | Chapters 37-38 |
| 3/15 #22 | Prior Statements | Chapter 39 |
| 3/17 #23 | Present Sense Impressions & Excited Utterances | Chapter 40 |
| WEEK NINE |  |  |
| 3/21 #24 | State of Mind | Chapter 41 |
| 3/22 #25 | Medical Treatment; Recorded Recollection | Chapters 42-43 |
| 3/24 #26 | Hearsay within Hearsay; Business Records | Chapters 44-45 |
| WEEK TEN |  |  |
| 3/28 #27 | Public Records & 803 | Chapters 46-47 |
| 3/29 #28 | Unavailability Exceptions & Former Testimony | Chapters 48-49 |
| 3/31 #29 | Dying Declarations; Statements Against Interest; Forfeiture | Chapters 50-52 |
| WEEK ELEVEN |  |  |
| 4/4 #30 | Statement of a Party Opponent | Chapters 53-54 (first half) |
| 4/5 #31 | Co-conspirators Statements | Chapters 54 (second half)-55 |
| 4/7 #32 | Residual Exception; Credibility | Chapters 56-57 |
| WEEK TWELVE |  |  |
| 4/11 #33 | Hearsay and the Confrontation Clause | Chapter 58 |
| 4/12 #34 | Judicial Notice; Lay Opinions | Chapters 59-60 |
| 4/14 #35 | Expert Testimony | Chapters 61-62 |
| WEEK THIRTEEN |  |  |
| 4/18 #36 | Bases & Limits of Expert Opinion | Chapters 63-64 |
| 4/19 #37 | Privileges; Attorney Client Privilege | Chapters 66-67 |
| 4/21 #38 | Other Privileges | Chapters 68-69 |
| WEEK FOURTEEN | REVIEW |  |
| 4/25 #39 |  | REVIEW |