

Course Syllabus

Fall 2017

Course: Law 605: Evidence, 3 credits

Class Meeting: Tuesdays and Thursdays, 10:35-12:00, Room 644

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Office Hours: Tuesdays and Wednesdays, 2:00-4:00

COURSE DESCRIPTION AND LEARNING OUTCOMES

The course provides an overview of evidence law in civil and criminal cases, including federal constitutional doctrines, policy, and a rules-based practice of law. Focus is on the Federal Rules of Evidence, their ambiguities and reasonable interpretations. We will study a rich array of topics such as relevance, hearsay and its exceptions, character evidence, privilege, the Confrontation Clause, impeachment, and expert testimony. The course employs a problem-based analysis of evidence, using both the text and other media, with doctrine and practice discussed in class. The theme of the course is distinctly pragmatic as evidence embodies the way in which lawyers conduct themselves when presenting information to a fact-finding tribunal. Getting the most out of this class will require substantial preparation and class participation on your part.

By the end of this course, you should be able to

- Identify when and how to assert appropriate objections based on the Federal Rules of Evidence;
- Articulate appropriate responses to evidentiary objections;
- Understand the policy reasons underlying the rules of evidence;
- Predict how courts are most likely to rule on evidentiary objections in a given factual scenario.

REQUIRED TEXT

We will be using the textbook Evidence (3rd Ed) by George Fisher (Foundation Press 2013). In addition, you will need to have with you at all classes and exams a current copy of the Federal Rules of Evidence with Advisory Committee Notes. You can purchase the 2017 Statutory and Case Supplement to the Fisher textbook (Foundation Press ISBN 9781683288039), which includes the Rules, however, this Supplement will not be available in the bookstores until September 1. You are not required to purchase the Supplement, however, you must have a hard copy of the rules and the advisory committee notes. The

rules can be accessed for free on the internet (this site includes Advisory Committee Notes: <https://www.law.cornell.edu/rules/fre>), and there are other print versions available. You will need a print version for exams, which are “open book,” but information accessed by or stored on electronic devices will not be available. I recommend you bring a print version to each class.

Supplemental readings may be posted on the Blackboard site for this class during the course of the semester. Such postings will be announced in class.

ATTENDANCE

This is a mandatory attendance class. You are expected to be prepared when called upon and to contribute productively to class discussions. In accordance with College of Law policy, your grade may be impacted negatively if you are absent or unprepared without a valid reason, and you may receive a failing grade if you miss more than three class sessions.

Per Section VI of the Statement of Student Policies,

Attendance at classes, seminars, and other offerings is an essential element in successful academic performance. An instructor in any law school course, seminar, or other offering may withdraw a student for excessive absence. Withdrawal for excessive absence in any course, seminar, or other offering may be recorded as a failing grade (E) or as a withdrawal (W), at the discretion of the instructor.

“Excessive absence” is defined as unexcused absence from more than 15% of class or other instructional time. This definition shall apply to all 500 level courses and 600 & 700 level courses with an enrollment of 20 or more students. An instructor in 600 or 700 level course or other offering with an enrollment of less than 20 may define “excessive absence” differently, with notice to students before the end of the first week of instruction.

Students should notify the instructor at the beginning of the semester about the need to be absent from class due to religious observances or due to university sanctioned events/activities pursuant to ASU’s Academic Affairs Manual §§ 304-04 and 304-02.

DISABILITY ACCOMODATIONS

Per College of Law and university policies,

The College of Law will provide reasonable accommodations for students with documented disabilities. College of Law accommodations can be made after the student requesting accommodations has met with the Disability Resource Center staff and eligibility has been established. Accommodations that fundamentally alter the prescribed course of studies must be approved by the College of Law. Students with disabilities that require accommodation(s) and/or adjustments should contact the College of Law Assistant Dean for Academic Affairs in order to make arrangements for reasonable accommodations.

CLASSROOM BEHAVIOR, RECORDING AND ELECTRONIC DEVICES

Respect for the thoughts, ideas, and speech of classmates and faculty is the foundation of the educational process. Threatening behavior in the classroom will be dealt with in accordance with SSM § 104-02, which requires that “all incidents and allegations of violent or threatening conduct by an ASU student (whether on- or off-campus) must be reported to the ASU Police Department and the Office of the Dean of Students.”

Recording my classes is allowed only for students who have received my advance approval or official approval for accommodation through the ASU Disability Resource Center. Please do not use electronic devices during classes for any purpose other than taking notes or for doing other class-assigned work.

QUIZZES, FINAL EXAM AND GRADING

This class will be graded in accordance with the College of Law’s grading policy for classes of more than 20 students. You will take two 30-minute quizzes during the semester and one comprehensive final exam at the end of the semester, all of which will be “objective” (i.e., using only true/false and multiple choice questions). You will be free to refer to your textbook, your copy of the rules of evidence and any hardcopy notes or outlines during the tests. You will not be permitted to access electronically stored information or use electronic devices during the tests. Your grade will be based primarily on your performance in these exams, weighted as follows:

Each mid-semester quiz	= 15%
Final Examination	= 70%

As explained above, your grade may be impacted by missing class without good cause or by being unprepared.

EXTRA CREDIT FOR COURT OBSERVATION

You may earn up to three extra points by observing an evidentiary issue addressed in a judicial proceeding and writing a short paper about what you observed. To earn the credits, you are expected to observe either a “motion in limine” hearing or a one hour (or more) segment of an evidentiary hearing or trial, followed by a 1-page reflective memo about your experience. These options will be addressed in the first class. Only one memo may be submitted for extra credit points during the semester, though you are encouraged to observe several proceedings, so that you can notice similarities and differences in how the rules of evidence are applied (or not) in real cases.

ACADEMIC INTEGRITY

Per Section XVII of the Statement of Student Policies,

The legal profession, a self-regulating association, depends on the integrity, honor, and personal morality of each member. Similarly, the integrity and value of an Arizona State College of Law degree depends on a reputation for fair competition. The College of Law Honor Code is intended as a measure to preserve the integrity of this school's diploma and to create an arena in which students can compete fairly and confidently. However, the execution of the Honor Code depends

on student participation. Students should actively discourage other students from committing an ethical or academic violation. Any student who has personal knowledge of a violation should report that violation to the Dean's designee. Any student with questions about possible violations may in confidence contact the Dean's designee, in person or in writing.

The College of Law's Honor Code lists the specific conduct that is prohibited, including plagiarism, and it is the obligation of all students to understand those rules.

SYLLABUS REVISIONS

Information in this syllabus, other than grading and attendance policies, is subject to change with reasonable notice.

CLASS SCHEDULE AND READING ASSIGNMENTS

To be prepared for class, students should read the pages from the textbook and the rules from the Federal Rules of Evidence listed below. I have also listed pages from the textbook in the “Suggested Reading” column. These excerpts are helpful to your understanding of the material, but are not critical for your class preparation or your performance on the quizzes or exam. The textbook includes numerous “Problems,” most of which are based on actual cases and are particularly helpful in understanding how the rules and doctrines might be interpreted and applied by the courts. The Problems we will be addressing during the classes are also listed below.

Class	Topic	Pages	Problems	Rules and Supplement
1 8/17	General Relevance	1-6, 22-38,	1.1, 1.3, 1.4, 1.7,	104, 401, 402
2 8/22	General Relevance, cont’d	42-58, 80-94	1.8	403
3 8/24	Specialized Relevance Rules	95-126	2.1, 2.2, 2.3, 2.4,	407, 408, 409
4 8/29	Specialized Relevance Rules; Intro to Propensity Evidence	126-144; 145-157	2.5, 2.6, 2.8	410, 411; 404(a)(1)
5 8/31	Character Evidence	157-161 165-188	3.1, 3.4, 3.6, 3.7, 3.8, 3.9	404(b)
6 9/5	Character Evidence, cont’d; Propensity Evidence in Sexual Assault Cases	189-194, 201-206; 207-222	3.10, 3.11, 3.13, 3.14	413, 414, 415
7 9/7	Propensity Evidence in Sexual Assault Cases; Defendant’s & Victim’s Character	224-251	3.15, 3.16, 3.17	404, 405
8 9/12	Habit; Impeachment/Character for Truthfulness	252-284	3.19; 4.2	607, 608, 609
9 9/14	Impeachment and Rehabilitation; Impeaching with Prior Inconsistent Statements	284-317; 435-439	4.4, 4.5, 4.9, 7.17	609, 613
10 9/19	Quiz 1 (first 30 minutes of class) The Rape Shield Law	318-323, 333-345,	5.3, 5.5	412

11 9/21	What is Hearsay?	376-406	7.1-7.10	801, 802
12 9/26	Hearsay Exceptions and “Nonhearsay:” Party Admissions, Opposing Parties’ Statements,	406-435,	7.11, 7.12, 7.13, 7.16,	801(d)(2)(A)-(E),
13 9/28	Prior Inconsistent statements and Past Consistent Statements	453-65, 469-74	7.19-7.23	613, 801(d)(1), and <i>U.S. v. Cisneros-Gutierrez</i> posted on Blackboard
14 10/3	“Declarant Unavailable” Exceptions under 804(b): Statements Against Interest, Dying Declarations, Forfeiture	475-510	7.24-7.28,	804(b)(2), (3), (6),
15 10/5	Hearsay exceptions under 803: Condition, Medical Treatment,	510-537, 541-542	7.29-7.35, 7.37,	803(1), (2), (3), and (4)
	FALL BREAK			
16 10/17	Hearsay Exceptions for Business Records and Public Records	548-574	7.39, 7.40	803(6), (7), (8) and (10)
17 10/19	The Confrontation Clause and Hearsay: <i>Crawford</i> to <i>Bryant</i>	594-608, 617-619 627-646	8.2, 8.3	U.S. Const. Amend. VI
18 10/24	The Confrontation Clause: <i>Bullcoming</i> , <i>Williams</i> , and <i>Clark</i>	646-68, 674-81	8.4, 8.5, 8.6	<i>Ohio v. Clark</i> (Supplement 518-525)
19 10/26	QUIZ 2 (first 30 minutes); Compulsory Process	718-734	none	
20 10/31	Lay and Expert Opinion Testimony;	736-39, 748-58, 783-85, 792-802	9.2, 9.3, 9.6, 9.7, 9.8, 9.14	701, 702, 703, 704, 705
21 11/2	Scientific Testimony post <i>Frye</i> and <i>Daubert</i> ; Non-Scientific Expert Testimony; Syndrome Evidence	803-17, 847-76	9.16, 9.17	702,703
22 11/7	Authentication, Identification, and the “Best Evidence” Rule	894-99, 904-10, 913-25	10.1, 10.2, 10.4-10.7, 10.9, 10.10	901, 902, 1001, 1002, 1003, 1004
23 11/9	Privileges	930-44, 959-70	11.1, 11.2	501, 502
24 11/14	Lawyer-Client Privilege	974-77, 983-97, 1010-17	12.1, 12.2, 12.3, 12.8	
25 11/16	Familial Privilege	1044-66	13.1, 13.2, 13.3	
26 11/21	REVIEW			

