

ATLANTA'S JOHN MARSHALL LAW SCHOOL

EVIDENCE (E-170)

Syllabus - Fall 2013

Professor Timothy R. Saviello

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Class meets Wednesdays from 6:15 p.m. to 8:15 p.m. in Room 304

OFFICE HOURS:

Tuesday: 3:00 – 4:00 p.m.
Wednesday: 10:00-11:00 a.m.
Thursday: 3:00 – 4:00 p.m.

Drop-ins (if my door is open), appointments for other days/times, telephone calls outside office hours and e-mail are all welcome. I encourage you to find answers to any questions you have during the term, either through me, your classmates or other resources. Mastering the Rules of Evidence is critical to the success of any legal career, regardless of the nature of practice.

REQUIRED TEXTS:

1. Friedland, Evidence Law and Practice, Cases and Materials, (LexisNexis 4th Ed.), ISBN: 978-1-4224-7702-1.
2. Federal Rules of Evidence with Map (West 2013-2014 Ed.) ISBN: 978-0-314-28890-5. This supplement contains the Advisory Committee notes (essential to a full understanding of the theory behind each Rule of

Evidence) and a very large flow chart of all of the rules. I find this chart to be a helpful addition to learning Evidence.

RECOMMENDED SUPPLEMENTAL TEXTS:

1. Best, Evidence: Examples and Explanations, (Aspen 7th Ed.), ISBN13: 9780735584792
2. Fishman, A Student's Guide to Hearsay, (LexisNexis 3rd Ed.), ISBN13: 9780820570310

ADDITIONAL INFORMATION:

Electronic Devices In Class:

Please turn off all audible tones on **all** electronic devices during class. Accessing the internet during class via any device is prohibited except when I permit it in relation to the class lesson.

Attendance:

You are responsible for knowing and complying with John Marshall Law School's attendance policy. Please be on time and remember to sign-in. Failure to sign the attendance sheet shall be conclusive evidence of absence. If you find that you attended class but forgot to sign in or missed the attendance sheet, please see me immediately.

Your attendance in class is expected, as is your preparation. *Exceptionally poor class attendance can lower your final grade by one grade-step, at my discretion.*

Class Participation:

Mastery of the Rules of Evidence is critical to a successful legal career. The best way to master the Rules of Evidence is by problem solving and discussion of the practical situations in which the Rules of Evidence are applied. Thus, I expect participation in class from all students. Extraordinary class participation may

result in a grade-step increase, at my discretion. I will not lower your grade for poor class participation. Please remember however, that there are very few legal career paths in which oral advocacy is not a skill critical to success.

Class Preparation:

The textbook used for this class is designed to teach the material through problem solving. Thus each assignment involves a number of problems that will be discussed in class. You are required to attempt to solve the problems **before** class, as doing so will enhance your learning both in and out of the classroom.

I strongly suggest you prepare your solution in writing prior to class. When called upon, you will be expected to provide your solution and analysis to the class orally. Preparing a written solution will make class participation much easier for you and much more instructive for your classmates.

During the term I will from time to time assign individual problems to individual students. I will also assign the creation of hypothetical problems to individual students, which will then be solved in class by way of discussion.

During the term I may also assign practice examination problems to the entire class, and each student will be required to prepare an answer in writing to be turned in to me. These will not affect your final grade, but will provide both you and me a periodic assessment of your progress in learning the material.

Suggested Problem Solving Tips:

- ✓ Read the FRE (Federal Rule of Evidence)
- ✓ Read the textbook problem carefully
- ✓ Identify the facts that apply to the components of the FRE
- ✓ Determine whether each component of the FRE has been satisfied by the facts
 - Write down your reasoning regarding whether there has been satisfaction
- ✓ Repeat for each component of the FRE
- ✓ Make a final conclusion based on your analysis of whether each component of the FRE has been met

TWEN:

Announcements, scheduling or assignment changes, additional materials and other relevant information will be posted on the class West Education Network (TWEN) site. This is accessible at www.lawschool.westlaw.com. You are responsible for checking this site for announcements and information; for maintaining an accurate email on TWEN; and for checking that email for class-related information.

Grading:

Your final exam will determine your course grade, *except that grades may be increased one grade-step for excellent class participation, or lowered by one grade-step for exceptionally poor class attendance.*

The final examination will be *closed book, no notes.*

Course Learning Objectives

The primary objectives of this course are to prepare you to:

1. Identify and respond to evidence-related questions presented on the Multi-State Bar Exam (MBE);
2. Enter legal practice with a basic knowledge of evidence law;
3. Articulate evidence law concepts and advocate on behalf of clients as necessary in practice;
4. Develop professionalism skills necessary for practice.

Accordingly, by the end of the semester you will be able to:

- Correctly identify and state the elements of the applicable Federal Rules of Evidence directed to the relevance and admissibility of an offered piece of evidence, including rules that serve to exclude otherwise relevant evidence.
- Correctly identify and state the elements of the applicable Federal Rules of Evidence directed to lay and expert witness interrogation and impeachment.
- For each Federal Rule of Evidence assigned, summarize the rationale supporting the enactment of the rule as set forth in the rule's legislative history (notably, the Advisory Committee's notes) and common law or other source from which the rule was derived.

- Given a hypothetical fact pattern, (1) successfully differentiate the evidentiary questions at issue, (2) identify the facts that are legally relevant to each evidentiary issue in dispute, and (3) correctly state and apply the applicable Federal Rule(s) of Evidence (incorporating legislative history and common law court rulings, as appropriate) to the given facts to produce a logical resolution to the dispute.
- Given a hypothetical fact pattern in which one of the parties to the dispute has been assigned to you as a client, accurately identify all possible evidentiary issues to the dispute and, on behalf of your client, argue (in class, orally) the merits of client's position on those evidentiary issues to opposing counsel and defend against opposing counsel's counterpoints.
- Given a fact pattern containing evidentiary disputes—including, but not limited to, on the final exam—draft a concise, well-organized written legal analysis that successfully identifies the evidentiary questions at issue, correctly states the Federal Rule(s) of Evidence applicable to the facts, and, applying the rules and all other relevant legal authority (e.g., legislative history, case law) to the facts of the hypothetical, evaluates the merits of the parties' respective arguments to the dispute and predicts the most logical outcome based on the current state of the law and any applicable public policy considerations.

Throughout the semester, you will also demonstrate professional behavior characteristic of well-regarded practicing attorneys by:

- Thoroughly preparing for class (e.g., by completing the assigned reading, briefing assigned cases, and drafting in advance proposed responses to assigned problems); submitting all requested written assignments on time and pursuant to provided instructions; and presenting thoughtful, nuanced oral arguments during in-class discussions and role-playing exercises.
- Respecting reasonable opinions of the professor and fellow classmates—even when those opinions run counter to the student's own understanding of the law—but respectfully offering legally supported, though contrary, viewpoints when you believe those positions are justified under the law or on the facts of a given dispute.

- Working collegially and in good faith with your classmates on group assignments to ensure each student performs a reasonable share of the work provided.

Syllabus:

This syllabus provides a general timeline for covering the material. I will try to stick fairly close to the syllabus, but reserve the right to adjust the pace to match the class. If we don't cover a topic in class as thoroughly as you'd like, I encourage you use the TWEN discussion feature to further discuss the topic with your classmates.

You also can see me during office hours or at another time, send me an email, or call me (between 9 a.m. or after 8 p.m., except in case of emergency).

All chapters identified in the syllabus refer to *Evidence Law and Practice*, 4th Edition. Each assignment includes the few cases at the end of each chapter. We will discuss these cases and work through how you can use case law to argue evidence issues.

For each referenced Federal Rule of Evidence ("FRE"), the assigned reading includes both the rule and the Advisory Committee Notes for the rule. Both can be found in the supplement, and both are equally important. The Advisory Committee Notes provide extremely valuable insight into the FRE, and will assist you greatly in solving the casebook problems.

The syllabus refers to relevant sections of *A Student's Guide to Hearsay*, which is not required, but a helpful additional resource.

You should read the first 2 chapters of the casebook on your own prior to the first class. They will aid your understanding of the Rules of Evidence as well as the problems in the casebook.

Week Of:

Assignment:

August 21, 2013	Relevance and Conditional Relevance <ul style="list-style-type: none"> • FRE 101, 102, 103, 104, 401, 402 • Chapter 3 • <i>Problems</i>: 3-2; 3-3; 3-4; 3-8; 3-9; 3-10; 3-12
August 28, 2013	Relevance and Conditional Relevance, cont. <ul style="list-style-type: none"> • <i>Problems</i>: 3-17; 3-19; 3-21; 3-22; 3-23; 3-24; 3-26; Review Problems 3-A, 3-B and 3-C.
September 4, 2013	Unfair Prejudice <ul style="list-style-type: none"> • FRE 402, 403 • Chapter 4 • <i>Problems</i>: 4-2; 4-4; 4-5; 4-6; 4-8; 4-9, 4-13; 4-14; 4-15; Review Problems 4-A; 4-B; 4-C.
September 11, 2013	Hearsay and the Right To Confront Witnesses <ul style="list-style-type: none"> • FRE 801, 802 • Chapter 10; [<i>A Student's Guide to Hearsay</i>, pp. 1-33, 85-94] • <i>Problems</i>: 10-2; 10-3; 10-5; 10-6; 10-7; 10-8; 10-9; 10-10; 10-12; 10-13; 10-14; 10-15; 10-17; 10-18;
September 18, 2013	Hearsay and the Right to Confront Witnesses, cont. <ul style="list-style-type: none"> • Chapter 10, continued • <i>Problems</i>: 10-22; 10-23; 10-24; 10-26; 10-27; 10-28; 10-29; 10-32; 10-33; 10-36; 10-37; 10-39; 10-40; 10-44; 10-46; 10-51; Review Problems 10-B and 10-D.
September 25, 2013	Non-Hearsay: (1) State of Mind; (2) Effect on Listener; (3) Independent Legal Significance; (4) Impeachment; (5) Context and Meaning <ul style="list-style-type: none"> • FRE 801, 802 • Chapter 11; [<i>A Student's Guide to Hearsay</i>, pp. 1-33] • <i>Problems</i>: 11-1; 11-2; 11-4; 11-7; 11-8; 11-9; 11-10 (Problem involves role-play. I will assign roles prior to this class, <i>hereinafter</i> RBTA); 11-11; 11-12; 11-13; 11-16; 11-17; 11-19; 11-21; 11-23; 11-26; 11-33 (RTBA); 11-34; 11-36; 11-38; 11-41; 11-43; 11-48 (RTBA); Review Problems 11-C and 11-E.

October 2, 2013	Consistent and Inconsistent Statements; Pretrial Identifications <ul style="list-style-type: none"> • FRE 801 • Chapter 12; [<i>A Student's Guide to Hearsay</i>, pp. 35-54] • <i>Problems</i>: 12-1 (RTBA); 12-2 (RTBA); 12-3; 12-4; 12-10; 12-11; 12-14; 12-15; 12-16; 12-17; 12-19 (RTBA); 12-20; 12-23 (RTBA); Review problems 12-A-D
October 9, 2013	Admissions <ul style="list-style-type: none"> • FRE 801(d) (2), 802 • Chapter 13; [<i>A Student's Guide to Hearsay</i>, pp. 55-80] • <i>Problems</i>: 13-1; 13-2; 13-5; 13-6; 13-9 (RTBA); 13-10; 13-11; 13-20; 13-27; 13-28 (RTBA); Review Problems 13-A-D. Contemporaneous Statements (aka Present Sense Impressions); Excited Utterances; State of Mind <ul style="list-style-type: none"> • FRE 803(1-5) • Chapter 14; [<i>A Student's Guide to Hearsay</i>, pp. 95-130] • <i>Problems</i>: 14-1; 14-2; 14-4; 14-5 (RTBA); 14-7; 14-8; 14-12; 14-13; 14-16; 14-19; 14-21 (RTBA); 14-22; 14-23.
October 16, 2013	Statements For Medical Treatment/Diagnosis; Forgetful Witnesses (Past Recollection Recorded and Refreshing Recollection); Business Records; Official Records; Misc. <ul style="list-style-type: none"> • FRE 612, 803(6)-(23), 902(11) • Chapt.14; [<i>A Student's Guide to Hearsay</i>, pp. 133-188] • <i>Problems</i>: 14-29; 14-31 (RTBA); 14-32 (RTBA); 14-33; 14-36; 14-37; 14-38; 14-39; 14-40; 14-41; 14-42; 14-43; 14-46; 14-48; 14-51; 14-52; Review Problems 14-A-C.
October 23, 2013	Unavailable Declarant Exceptions: (1) Former Testimony; (2) Dying Declarations <ul style="list-style-type: none"> • FRE 804, 807 • Chapter 15; [<i>A Student's Guide to Hearsay</i>, pp. 189-248] • <i>Problems</i>: 15-1; 15-3; 15-5; 15-6 (assigned group exercise);

	15-7; 15-8; 15-9; 15-11; 15-14; 15-15; 15-16; 15-18;
October 30, 2013	Unavailable Declarant Exceptions: (3) Statements Against Interest; (4) Forfeiture by Wrongdoing; (5) The Residual Exception <ul style="list-style-type: none"> • <i>Problems:</i> 15-20; 15-21; 15-22; 15-23; 15-24; 15-25; 15-27 15-28; 15-29; 15-30; 15-33; 15-37; Review problems 15-A, 15-D, 15-G, 15-H.
November 6, 2013	Catch Up – Hearsay Exceptions: Character Evidence; Rape Shield Rule; Similar Offenses; Prior Convictions; Habit <ul style="list-style-type: none"> • FRE 404, 405, 406, 412, 413, 415, 607 • Chapter 5 • <i>Problems:</i> 5-3; 5-4; 5-5; 5-6; 5-8; 5-9; 5-10; 5-12; 5-17; 5-18; 5-20; 5-21; 5-22; 5-23; 5-24; 5-25; 5-26; 5-27; 5-29; 5-30; 5-37; 5-38
November 13, 2011	Catch Up – Hearsay Exceptions: Impeachment; Similar Offenses; Prior Convictions; Habit <ul style="list-style-type: none"> • FRE 608, 609 • Chapter 5 • <i>Problems:</i> ; 5-44; 5-49; 5-51; 5-53; 5-55; 5-58; 5-60; 5-61; 5-63; 5-64; 5-67; 5-69; 5-71; 5-75; 5-76; 5-77; 5-79; 5-80; 5-81; Review Problems TBD
November 20, 2013	<ul style="list-style-type: none"> • <u>REVIEW SESSION</u>
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