EVIDENCE
Fall 2015
Tues. & Thurs. 10:30-11:45; Room 1002
Law 651/311

INSTRUCTOR:
Professor Michele Gilman
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Office Hours: Wed. 10-12 and by appointment

REQUIRED TEXTS:
(1) George Fisher, Evidence (3d ed.)
(2) George Fisher, Federal Rules of Evidence Statutory Supplement OR any other 2015 version of the Federal Rules of Evidence (FRE) with Advisory Committee Notes (ACN) included OR print out the FRE and ACN from Lexis, Westlaw, or The Legal Information Institute at http://www.law.cornell.edu/rules/fre. You must bring a printed copy of the FRE to class.
(3) Assigned supplemental readings posted on TWEN

CONCEPTS AND GOALS:
This course studies the rules that govern how facts are proved at trial. You will learn how the Federal Rules of Evidence are argued and applied in the courtroom. In addition, we will examine the policy choices underlying the Rules and how those policies affect interpretation of the Rules. The goals of the course are as follows: (1) to enable you to identify potentially admissible or inadmissible evidence; (2) to argue from an advocate’s perspective why the evidence should or should not be admitted at a trial; (3) to assess from a judge’s perspective whether or not the evidence is admissible. In turn, these skills will help you understand how questions regarding the admissibility of evidence affect a lawyer outside the courtroom, in gathering and investigating facts, assessing a client’s options, providing legal counsel to clients, drafting legal documents, and negotiating with opposing parties.

For many years, evidence law was not codified. However, the vast majority of states have now adopted evidence rules or codes. In 1975, Congress enacted the Federal Rules of Evidence, and they were restyled in their entirety in 2011. Maryland’s Rules of Evidence were enacted in 1994 and are based on the federal version, but differ in certain respects. Because of the prominence of the Federal Rules, and because the multistate bar examiners use these rules as the standard, we will focus primary attention on the Federal Rules. I will highlight significant Maryland differences as we move through the course, but you will not be tested on those differences.
ATTENDANCE:
Attendance is mandatory. You are responsible for signing the attendance sheet that I circulate during each class session. Per the ABA and law school policies, you may have no more than 5 absences. I do not distinguish between excused and unexcused absences, so you do not need to send me a note or email if you will be missing class. A student who has more than 5 absences will not be permitted to take the final exam and will automatically receive an F in the course. The practice of law also requires timeliness. Accordingly, you are expected to arrive to class on-time, and you may be penalized for repeated tardiness.

PARTICIPATION:
We will be working on many problems contained in the casebook and presented in film clips to help you engage with the rules. Accordingly, your preparation and participation are essential to your success in the course. These are professional norms as well. A lawyer who fails to show up in court or who shows up unprepared, can not only lose the case, but may also be fined, disciplined, or sued. Thus, I retain the discretion to reward strong class participation by raising your grade one-half step (e.g., A- to A); or to penalize weak class participation by reducing your grade by one-half step (e.g., A to A-). I also do not permit you to pass in class. If you get called upon and are unprepared, you are expected to do your best to answer the problem using the text of the Rules as your guide.

GRADES:
Your grade will be based on several short experiential assignments, a midterm, and a closed-book final examination, as adjusted by your class participation (see above). The mid-term will consist of 30 multiple choice questions based on the hearsay doctrine only. The final exam will be based upon all the Federal Rules of Evidence covered in the course. The final exam will consist of both multiple choice questions and essay questions. The experiential assignments give you a chance to apply the rules in a real-life context and to earn points toward your grade in a non-test setting.

ASSIGNMENT PROCEDURES:
The assignments for each class session are listed below. For each topic, you should first read the assigned FRE and their accompanying legislative history before you begin reading the casebook. This is a problem-based course that will require you to apply the FREs in a variety of settings. While we will read cases, the purpose will be to help you analyze the problems, not to discern legal rules. For each case, consider the following: (1) what is the disputed piece of evidence? (2) what are the arguments for and against admission? and (3) what is the court's ruling and why?

Several assignments also require you to do CALI exercises after class. CALI exercises consist of free, computerized multiple choice problems with explanatory materials. They provide an excellent vehicle for you to assess your progress in the course and to reinforce important concepts. The exercises are mandatory, and I will select some of the CALI questions for the multiple choice portion of the exams. There are links to the CALI lessons on the TWEN webcourse. They can also be downloaded from the CALI website: www.cali.org. Do not wait until the end of the semester to do the CALI exercises; if you wait, you will be overwhelmed.
COURSE WEB PAGE:
This course has a TWEN webcourse that links to this syllabus, announcements, course documents, and other class materials. You are responsible for self-enrolling in the webcourse.

LAPTOP POLICY:
Laptops should be used in the classroom only for course-related purposes, such as taking notes and reading materials from the course website. Any student who uses his or her laptop for other purposes will face a reduction in their final grade.

STUDY AIDS AND RECOMMENDED READING:
In addition to the required text, you may wish to consult some other study guides on evidence. Below are some recommendations.
Materials with practice questions:
1. Michael Graham, Evidence Exam Pro
2. David P. Leonard, Questions & Answers: Evidence
3. Law in a Flash, Evidence (flash cards also available as an app for your mobile device)
Study guides:
1. Arthur Best, Evidence: Examples and Illustrations (Aspen)
2. Graham Lilly, Principles of Evidence (West)
4. Paul Gianelli, Understanding Evidence (Lexis/Nexis)
5. Mueller & Kirkpatrick, Evidence Blackletter Outlines
Hornbooks:
3. McCormick, Evidence (5th ed. West)
4. Lynn McClain, Maryland Evidence: State and Federal (2d ed. West)

ADVICE FOR STUDYING:
Evidence law is fun, but complicated. It involves numerous rules, exceptions to rules, and exceptions to the exceptions. Thus, it is essential that you keep up with the material as we move through the semester. If you wait until the exams to learn the material, you will struggle. Moreover, it is not enough to know what the rules say. You need to be able to apply them in trial situations. Accordingly, the problems are designed to help you master the rules in a real-life context. My job is to help you learn; I will not “hide the ball.” However, you will not learn Evidence simply by listening to me or reading the casebook. Moreover, it is not enough to get the gist of the rules; you must understand them word for word. This will happen if you interact with the materials -- the rules, the casebook, and the CALI exercises -- and build your understanding one rule at a time. Keep in mind that this course teaches the doctrine of Evidence; it does not teach you to be a trial lawyer. To truly master evidence, you must use the Rules on a regular basis. Accordingly, if you plan to be a litigator, you should take Trial Advocacy and/or a Clinic after completing this course. You cannot truly understand Evidence without simulated or actual courtroom experience. This course, however, will give you a solid doctrinal foundation.
ASSIGNMENTS FALL 2015

INSTRUCTIONS: Reading assignments are from the Fisher casebook unless otherwise indicated. You do not have to read problems unless they are listed below, even if they fall within an assigned page range.

1. Assignment for Aug. 18
   TOPIC: The Process of Proof & Appellate Review
   FRE: 103
   READING: Casebook pp. 1-5 and Trial Basics Handout posted on TWEN
   PROBLEMS: Posted Questions for Discussion on TWEN

2. Assignment for Aug. 20
   TOPIC: Relevance; 403 Balancing
   FRE: 401, 402, 403
   READING: 22-24, 25-34, 42-58, and MD relevancy cases on TWEN (Banks v. State and Lucas v. State)
   PROBLEMS: 1.1, 1.3

3. Assignment for Aug. 25
   TOPIC: Conditional Relevance; Stipulations; Preliminary Questions of Fact
   FRE: 401, 402, 403
   READING: 36-top of 39, 82-94; Reading on Rule 104 on TWEN
   PROBLEMS: 1.7

4. Assignment for Aug. 27
   TOPIC: Authentication
   FRE: 901, 902
   READING: 894-897, 904-913, and MD electronic authentication cases on TWEN (Dickens v. State and Griffen v. State)
   PROBLEMS: 10.4

5. Assignment for Sept. 1
   TOPIC: Best Evidence Rule, Witness Competency, Personal Knowledge
   FRE: 1001-1008, 601-606
   READING: 913-926, 364-374, 8-19
   PROBLEMS: 10.9, 10.10

   AFTER CLASS: CALI Exercise, Best Evidence Under the Federal Rules by Robert Peterson

6. Assignment for Sept. 3
   TOPIC: Introduction to Hearsay and Hearsay Definition
   FRE: 801, 802
   READING: 374-396
   PROBLEMS: All, except for 7.7 and 7.8
AFTER CLASS:  CALI Exercise, Hearsay from Square One by Roger Park

7. Assignment for Sept. 8
TOPIC:  Hearsay Definition and Utterances and Conduct that are Not Hearsay
READING:  396-400; Readings on Truth of the Matter Asserted and Hearsay within Hearsay
(posted)
PROBLEMS:  Hearsay Quiz on pp. 403-405 (skip 14, 17, 18)
FRE:  801, 802

AFTER CLASS:  CALI Exercise, The Concept of Hearsay by Roger Park

8. Assignment for Sept. 10
TOPIC:  Hearsay Exemptions for Admissions
FRE: 801, 104
READING:  406-420
PROBLEMS:  7.11, 7.12, 7.13, 7.16

9. Assignment for Sept. 15
TOPIC:  Hearsay Exemption for Prior Statements
FRE:  801
READING:  430-432, 452-463, 465-473
PROBLEMS:  7.19, 7.20

10. Assignment for Sept. 17
TOPIC:  803 Exceptions (Present Sense Impression, Excited Utterance, State of Mind, Statements for Medical Diagnosis)
FRE:  803(1)-803(4)
READING:  510-538
PROBLEMS:  7.29, 7.33, 7.34

11. Assignment for Sept. 22
TOPIC:  803 Documentary Exceptions (Recorded Recollection, Business Records, Public Records)
FRE:  803(5)-803(8), 612
READING:  542-556, 561-569
PROBLEMS:  7.38, 7.39, 7.40

AFTER CLASS:  CALI Exercise, Four FRE 803 Hearsay Exceptions:  Availability Immaterial by Norman Garland

12. Assignment for Sept. 24
No class meeting – Motion in Limine Assignment
13. Assignment for Sept. 29
TOPIC: Hearsay Exceptions under FRE 804
FRE: 804
READING: 474-504
PROBLEMS: 7.22, 7.23

AFTER CLASS: CALI Exercise, Hearsay Exceptions Rules 803 and 804 by Richard Kling

14. Assignment for Oct. 1
TOPIC: 804 Continued and the Residual Exception
FRE: 804, 807
READING: 505-510, 574-585

MIDTERM PREPARATION: CALI Exercise, Hearsay and Its Exceptions by Roger Park

15. Assignment for Oct. 6
HEARSAY MIDTERM

16. Assignment for Oct. 8
TOPIC: The Confrontation Clause
READING: 594-608, 614-618, 627-646, Supplement 505-518 (on Ohio v. Clark), 674-678
FRE: none
CONSTITUTION: 6th Amendment
PROBLEMS: 8.4

AFTER CLASS: Cali Exercise, Confrontation Clause by Tom Lininger

17. Assignment for Oct. 13
TOPIC: Specialized Relevancy Rules (Subsequent Remedial Measures, Settlement Offers and Payment of Medical Expenses, Liability Insurance)
FRE: 407, 408, 409
READING: 95-113, 117-137
PROBLEMS: 2.1, 2.2, 2.3

18. Assignment for Oct. 15
TOPIC: Specialized Relevancy Rules (Pleas in Criminal Cases); Character Evidence and the Propensity Ban; Evidence of Defendant and Victim Character
FRE: 410, 404(a), 405
PROBLEMS: 3.15, 3.16

19. Assignment for Oct. 20
TOPIC: Character Evidence of Other Crimes, Wrongs, or Acts
FRE: 404(b)
READING: 155-161, 165-180, 193-201, 217-218
PROBLEMS:  3.1, 3.3, 3.4, 3.7, 3.11, 3.14

AFTER CLASS:  CALI Exercise, Character Evidence Under Federal Rules by Robert Park

20. Assignment for Oct. 22
TOPIC:  Propensity Evidence in Sexual Assault Cases; Rape Shield Law; Habit Evidence
FRE:  412, 413, 414, 415, 406
PROBLEM:  5.1, 5.5, 3.19

21. Assignment for Oct. 27
TOPIC:  Introduction to Impeachment; Impeachment of Witness by Capacity to Perceive, Bias, and Character for Truthfulness
FRE:  406, 412, 611
READING:  257-276
PROBLEMS:  4.1, 4.2

22. Assignment for Oct. 29
TOPIC:  Impeachment by Prior Conviction
FRE:  608, 609
READING:  276-298
PROBLEMS:  4.3, 4.5

23. Assignment for Nov. 3
TOPIC:  More Impeachment Topics & Lay Opinion
FRE:  608, 609, 613, 801(d)(1)(A) & (B)
READING:  307-317, 735-748
PROBLEMS:  4.6, 4.8, 9.2, 9.3

AFTER CLASS:  CALI Exercise, Impeachment and Examination of Witnesses by Roger Park

24. Assignment for Nov. 5
TOPIC:  Expert Opinion (Who is an Expert; Proper Topics)
FRE:  701, 702
READING:  748-771
PROBLEMS:  9.6, 9.7, 9.9, 9.10

25. Assignment for Nov. 10
TOPIC:  Expert Opinion (Proper Basis; Reliable Methods)
FRE:  702-706
READING:  771-785, 793-806, 818-819, 876-top 885, 822-847
PROBLEMS:  9.13

AFTER CLASS:  CALI Exercise, Expert and Opinion Evidence by Ronald Carlson
Assignment for Nov. 12
TOPIC: Privileges; Attorney Client Privilege
FRE: 501, 502
READING: 930-934, 974-976, 983-1010
PROBLEMS: 12.1, 12.2, 12.4, 12.5, 12.7

AFTER CLASS: CALI Exercise, The Attorney’s Duty of Confidentiality and the Attorney-Client Privilege by Barbara Glesner Fines (under the Professional Responsibility grouping)

Assignment for Nov. 17
TOPIC: Crime-Fraud Exception; Spousal Privileges
FRE: 501
READING: 1010-1017, 1043-1060
PROBLEMS: 12.8, 13.1

Assignment for Nov. 19
Review of Course and Course Conclusion

AFTER CLASS: CALI Exercise, Survey of Evidence by Roger Park

FINAL EXAM: TBA