

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW
FALL 2017**

Course: **EVIDENCE**
LAW 651
Section 311 (day); 412 (evening)

Instructor: Professor Michele Gilman
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Room 424 (in the Clinic Suite on floor 4 & 1/2; access is via the second floor
Clinic receptionist)
Office hours Tues. 5-6pm; Wed. 2-4pm and by appointment

Days/Time: Tuesdays and Thursdays 3:00-4:15 (day)
Tuesdays and Thursdays 7:45-9:00 (evening)

Location: Room assignments are available through MyUB.

REQUIRED COURSE MATERIALS:

- (1) George Fisher, Evidence (3d ed.)
- (2) George Fisher, Federal Rules of Evidence Statutory Supplement
- (3) Assigned supplemental readings posted on TWEN

STUDY AIDS AND RECOMMENDED READING:

In addition to the required text, you may wish to consult some other study guides on evidence. There are many practice materials, study guides, and even audio guides that are *free* with access to Westlaw (click here: <http://law.ubalt.edu/library/> and then click on West Academic Study Aids and then in the pull down menu for 2L/3L subjects click on Evidence).

STUDENT LEARNING OUTCOMES:

By the end of this course, the successful student will be able to:

1. List the elements of evidentiary rules.
2. Explain the policy rationales underlying the rules.
3. Contrast the role of the judge and jury in resolving evidentiary issues at trial.
4. Identify which evidentiary rules apply to a specific piece of evidence.
5. Construct arguments in favor of and against admissibility of a specific piece of evidence.
6. Determine the admissibility of evidence from the perspective of a judge.
7. Write a persuasive motion in limine using precedent to argue for or against admission of evidence.
8. Assess how the rules of evidence operate in a real courtroom setting.
9. Discuss 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.

SCOPE OF COURSE:

For many years, evidence law was not codified. Rather, it was contained in the common law. 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.

COURSE DESCRIPTION FROM CATALOGUE:

Rules of evidence governing the proof of facts in civil and criminal cases in state and federal courts; functions of the judge and jury; qualification and examination of witnesses; proof of writing; judicial notice; competence and credibility of witnesses; opinion evidence; hearsay; burdens of proof; presumptions and inferences; real evidence; demonstrative, experimental and scientific evidence. Emphasis is on the Federal Rules of Evidence and Maryland law.

COURSE EXPECTATIONS:

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class.

GRADES:

Your grade will be based on two short experiential assignments (15 points total), a midterm (30 points), and a closed-book final examination (90 points), as adjusted by your class participation (see below). 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.

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.

ATTENDANCE:

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to

the professor. A student who exceeds the maximum allowed FIVE absences (20% of class sessions) may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

COURSE WEBSITE:

This course has a TWEN webcourse that links to this syllabus, announcements, course documents, and other class materials. I use the TWEN platform to send emails to the class. You are responsible for self-enrolling in the webcourse and for checking the website regularly.

COMPUTERS:

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.

CLASS CANCELLATION:

If the instructor must cancel a class, notices will be sent to students via the email address in TWEN. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

ACADEMIC INTEGRITY:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/

TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

DISABILITY POLICY:

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

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.

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 (although I do not monitor your completion of the exercises), 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. The library can provide you with the password. Do not wait until the end of the semester to do the CALI exercises; if you wait, you will be overwhelmed.

ASSIGNMENTS FALL 2017

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.

DATE	TOPIC	FRE	READING	PROBLEMS
Aug. 22	Process of Proof and Appellate Review	103	Casebook pp. 1-5; pp. i-iv in Rules Supplement; Trial Basics on TWEN under Course Materials	Posted <i>Questions for Discussion</i> on TWEN
Aug. 24	Relevance; 403 Balancing	401, 402, 403	22-24, 25-34, 42-58, and MD Relevancy Cases on TWEN (<u>Banks v. State</u> & <u>Lucas v. State</u>)	1.1, 1.3
Aug. 29	Stipulations; Preliminary Questions of Fact; Conditional Relevance	401, 402, 403	82-94; Reading on Rule 104 on TWEN; 35-top of 39	1.7
Aug. 31	Introduction to Hearsay and Hearsay Definition	801, 802	374-396	All, except for 7.7 and 7.8 <i>AFTER CLASS: CALI Exercise, Hearsay from Square One by Roger Park (Part 1 only)</i>
Sept. 5	Hearsay Definition and Utterances and Conduct that are Not Hearsay	801, 802, 602	396-400; Readings on Truth of the Matter Asserted and Hearsay within Hearsay (posted)	Hearsay Quiz on pp. 403-405 (skip 14, 17, 18); <i>AFTER CLASS: CALI Exercise, The Concept of Hearsay by Roger Park</i>
Sept. 7	Hearsay Exclusions for Admissions	801, 104	406-427	7.11, 7.12, 7.13, 7.16

Sept. 12	Hearsay Exclusions for Prior Statements	801	430-432, 452-463, 465-473	7.19, 7.20
Sept. 14	803 Exceptions (Present Sense Impression, Excited Utterance, State of Mind, Statements for Medical Diagnosis)	803(1)-803(4)	510-536 (and first five paragraphs stating facts of <u>Shepard</u> case at 499-500)	7.29, 7.33, 7.34
Sept. 19	803 Documentary Exceptions (Recorded Recollection, Business Records, Public Records)	803(5)-803(8), 612	542-556, 561-569	7.38, 7.39, 7.40 <i>AFTER CLASS: CALI Exercise, Four FRE 803 Hearsay Exceptions: Availability Immaterial by Norman Garland</i>
Sept. 21	No class meeting – Motion in Limine assignment (available on TWEN)			
Sept. 26	Hearsay Exceptions under FRE 804	804	474-504	7.22, 7.23 <i>AFTER CLASS: CALI Exercise, Hearsay Exceptions Rules 803 and 804 by Richard Kling</i>
Sept. 28	804 Continued and the Residual Exception	804, 807	505-510, 574-585	<i>AFTER CLASS: MIDTERM PREPARATION-- CALI Exercise, Hearsay and Its Exceptions by Roger Park</i>
Oct. 3	HEARSAY MIDTERM			

Oct. 5	The Confrontation Clause	594-608, 614-top 617, 627-643, 674-678	No FRE – Read the 6 th Amendment of the Constitution	8.4 <i>AFTER CLASS: CALI Exercise, Confrontation Clause by Tom Lininger</i>
Oct. 10	Specialized Relevancy Rules (Subsequent Remedial Measures, Settlement Offers and Payment of Medical Expenses, Liability Insurance)	407, 408, 409	95-113, 117-137	2.1, 2.2, 2.3
Oct. 12	Specialized Relevancy Rules (Pleas in Criminal Cases); Character Evidence and the Propensity Ban; Evidence of Defendant and Victim Character	410, 404(a), 405	137-138, 141-144, 145-154, 234-252	3.15, 3.16
Oct. 17	Character Evidence of Other Crimes, Wrongs, or Acts	404(b)	155-161, 165-180, 193-201, 217-218	3.1, 3.3, 3.4, 3.11, 3.14 <i>AFTER CLASS: CALI Exercise, Character Evidence Under Federal Rules by Robert Park</i>
Oct. 19	Propensity Evidence in Sexual Assault Cases; Rape Shield Law; Habit Evidence	412, 413, 414, 415, 406	207-208, 218-234, 318-320, 322-326, 331-332, 339-341, 344-346, 252-256	5.5, 3.19

Oct. 24	Authentication	901, 902	894-897, 904-913, and <u>Sublet v. State</u> on TWEN	10.4
Oct. 26	Best Evidence Rule, Witness Competency	1001-1008, 601-606	913-926, 364-374, 8-19; Pena- Rodriguez v. Colorado (posted on TWEN)	10.9, 10.10 <i>AFTER CLASS:</i> <i>CALI Exercise,</i> <i>Best Evidence</i> <i>Under the Federal</i> <i>Rules by Robert</i> <i>Peterson</i>
Oct. 31	Introduction to Impeachment; Impeachment of Witness by Capacity to Perceive, Bias, and Character for Truthfulness	406, 412, 611	257-276	4.1, 4.2
Nov. 2	No class – Courtroom Observation Assignment			
Nov. 7	Impeachment by Prior Conviction	608, 609	276-298	4.3, 4.5
Nov. 9	More Impeachment Topics & Lay Opinion	608, 609, 613, 801(d)(1)(A) & (B), 701	307-317, 735-747	4.6, 4.8, 9.2, 9.3 <i>AFTER CLASS:</i> <i>CALI Exercise,</i> <i>Impeachment and</i> <i>Examination of</i> <i>Witnesses by Roger</i> <i>Park</i>
Nov. 14	Expert Opinion (Who is an Expert; Proper Topics)	701, 702	748-771	9.5, 9.6, 9.7, 9.9, 9.10
Nov. 16	Expert Opinion (Proper Basis; Reliable Methods)	702-706	771-785, 793-806, 818-819, 876-top 885	9.13 <i>AFTER CLASS:</i> <i>CALI Exercise,</i> <i>Expert and Opinion</i> <i>Evidence by Ronald</i> <i>Carlson</i>
Nov. 21	Privileges; Attorney Client Privilege	501, 502	930-934, 974-976, 983-1010	12.1, 12.2, 12.7 <i>AFTER CLASS:</i> <i>CALI Exercise, The</i> <i>Attorney's Duty of</i> <i>Confidentiality and</i> <i>the Attorney-Client</i> <i>Privilege by</i> <i>Barbara Glesner</i> <i>Fines (under the</i>

				<i>Professional Responsibility grouping)</i>
Nov. 23	No class – HAPPY THANKSGIVING			
Nov. 28	Crime-Fraud Exception; Spousal Privileges	501	1010-1017, 1043-1059	12.8, 13.1
Nov. 30	Review of Course and Course Conclusion			<i>AFTER CLASS: CALI Exercise, Survey of Evidence by Roger Park</i>
FINAL EXAM, DATE TBD				