

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SPRING 2019**

Course: Evidence
LAW 651
Section 321

Instructor: David Jaros
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410-837-4193

Office Hours: Tuesday. 10:30 am – 12:00 pm, or by appointment, or by pop-in
(Seriously, I get lonely... drop by).

Days/Time: Monday and Wednesdays, 1:30 pm– 2:45 pm

Location: Check the Law School class schedule for the room assignment

Course Materials:

- (1) Leonard, Gold, & Williams, Evidence: A Structured Approach, 4th ed. (Aspen)
- (2) Assigned cases and supplemental readings posted on webpage

Study Aids and Recommended Reading:

In addition to the required text, you may wish to consult some other works on evidence. Below are some recommendations.

Practice materials with 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. Graham Lilly, Principles of Evidence (West)
2. Michael Graham, Nutshell on the Federal Rules of Evidence (West)
3. Arthur Best, Evidence: Examples and Illustrations (Aspen)
4. Paul Gianelli, Understanding Evidence (Lexis/Nexis)

Hornbooks:

1. Mueller & Kirkpatrick, Evidence (3d ed. Aspen)
2. Weinstein & Berger, Weinstein's Evidence Manual Student Edition (6th ed. Lexis/Nexis)
3. McCormick, Evidence (5th ed. West)

Catalog Course Description:

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.

Scope of Course:

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.

Your book's Appendix contains the legislative history underlying the federal rules. You should pay close attention to both the rules and this legislative history, as we will often refer to the legislative history in class. Thus, any assignment that requires you to review a rule also requires that you read the accompanying legislative history.

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. Assess how the rules of evidence operate in a real courtroom setting.

Participation:

This class relies on everyone arriving fully prepared to participate in the day's discussion and exercises. Getting answers wrong is entirely forgivable. Failing to read and prepare the day's assignment is not.

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. 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-). FYI: 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 a midterm and a closed-book final examination, as adjusted by your class participation (see above). The midterm is worth 25 percent of your grade. The final exam is worth 75 percent of your grade. Both exams are closed book.

Course Expectations:

American Bar Association Accreditation Standards 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 per week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

The assignments for each class session are listed below. You are responsible for reading the assigned materials and analyzing the assigned problems. This is a problem-based course that will require you to apply the FREs to a series of Questions for Discussion. The problems can be downloaded at <http://faculty.ils.edu/structuredevidence/Students.html>. You can download them to your laptop and then fill in notes during our class discussions. **If the website doesn't work, you can download them from the class TWEN page.**

Several assignments also suggest you do CALI exercises after class. CALI exercises consist of 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. I often 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.)

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 five allowed absences 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. The practice of law also requires timeliness. Accordingly, you are expected to arrive to class on-time. We will discuss this further on the first day of class.

Course Web Site:

This course has a TWEN webcourse that links to this syllabus, announcements, course documents, overheads, and other class materials. You are responsible for self-enrolling in the webcourse. You should check the webcourse regularly.

Use of the Internet during Class (This is huge.):

Don't get me wrong-- wireless internet is amazing. Facebook is bringing people together... (mostly). I love my iPhone... but you absolutely cannot be on the internet during class. You are required to turn off your wireless internet before the start of class. We will discuss this more on the first day. Suffice to say- we will discuss a lot of objectionable activity this semester. This may be the biggest.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. 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 the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports.

Title IX Sexual Harassment and Sexual Misconduct Policy:

The University of Baltimore's Sexual Harassment and Sexual Misconduct policies are 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 via email at lmetzger@ubalt.edu.

Advice for Studying:

Evidence law is 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. You must interact with the materials -- the problems, the casebook, the CALI exercises, the rules, and the legislative history -- 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 doctrinal foundation.

ASSIGNMENTS SPRING 2020¹

INSTRUCTIONS: Unless otherwise noted, reading assignments are from the Leonard, Gold & Williams casebook. Reading assignments include the Questions for Discussion that accompany the readings, although we may not discuss every question.

1. Assignment for Jan. 13

TOPIC: The Process of Proof & Appellate Review

READING: 1-25

FRE: 103

2. Assignment for Jan. 15

TOPIC: Witness Competency and Authentication

READING: 25-34; 42-46; 47-53

FRE: 601, 602, 603, 605, 606, 901

Q for D: skip Qs on p. 29 and 46

No Class January 20th MLK Day

Optional Assignment: Watch <https://www.youtube.com/watch?v=smEqnklfYs>

3. Assignment for Jan 22.

TOPIC: Authentication and Judicial Notice

READING: 53-56; 60-63; Sublet v. State (on webcourse); 69-78

FRE: 901, 902, 903, 201

4. Assignment for Jan. 27

TOPIC: Best Evidence Rule, and Intro. to Relevance

READING: 63-69; Seiler v. Lucasfilm (on webcourse); 79-82; 83-92;

FRE: 1001 – 1008, 401, 402

Q for D: skip Qs starting on p. 93

Complete Assessment 79-82

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

5. Assignment for Jan. 29

TOPIC: Relevance Balancing and Undisputed Issues

READING: 95-98; 103-110; and Maryland 403 cases (on webcourse)

FRE: 401, 402, 403

6. Assignment for Feb. 3

TOPIC: Preliminary Questions of Fact and Introduction to Hearsay

¹ This syllabus is for informational purposes only. I reserve the right to change, amend, alter, modify, or otherwise mess with this syllabus... and your heads. We WILL fall behind in the syllabus and we WILL catch up.

READING: 122-133; 135-138; 139-150

FRE: 104, 801, 802

Q for D: skip p. 133-35

Assessment 135-138

7. Assignment for Feb. 5

TOPIC: Hearsay Definition

READING: 150-160

FRE: 801, 802

SUGGESTED AFTER CLASS: CALI Exercise, Hearsay from Square One by Roger Park

8. Assignment for Feb. 10

TOPIC: Utterances and Conduct that are Not Hearsay; Hearsay within Hearsay

READING: 160-168; 171-175

FRE: 801, 802, 805

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

9. Assignment for Feb. 12

TOPIC: Hearsay Exemptions for Admissions

READING: 181-198

FRE: 801

10. Assignment for Feb. 17

TOPIC: Hearsay Exemption for Statements of Prior Identification and 803 Exceptions

READING: 198-226

FRE: 803(1)-803(4)

11. Assignment for Feb. 19

TOPIC: 803 Exceptions Continued

READING: 227-246

FRE: 803(5)-803(8), 612

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

12. Assignment for Feb. 24

TOPIC: 803 Exceptions Continued and Unavailability under 804

READING: 246-255

FRE: 804

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

13. Assignment for Feb. 26

TOPIC: Hearsay Exceptions under FRE 804

READING: 255-270; 277(e) 272

FRE: 804

Q for D: p. 261-262 skip 6-10; p. 265 skip 4-7; p. 269-270 skip 3-4

14. Assignment for Mar. 2

TOPIC: Hearsay Exceptions under FRE 804 and the Residual Exception

READING: 277-294; skim 294-301

FRE: 804, 807

Q for D: p. 294 skip 3-4

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

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

15. Assignment for Mar. 4

TOPIC: The Hearsay Rule and the Constitution

READING: Cases posted on webcourse under Confrontation Clause

FRE: none

16. Assignment for Mar. 9

TOPIC: Character Evidence

READING: 331-355

FRE: 404, 405, 413, 414, 415

17. Assignment for Mar. 11

TOPIC: Character Evidence – Victim's Character Other Crimes, Wrongs, or Acts

READING: 355-379, “Nelson Clifford Article: Baltimore Man Acquitted of 3 Sexual Assaults” on TWEN

FRE: 404, 412



*** Spring Break March 16-22nd***

18. Assignment for Mar. 23

TOPIC: Character Evidence Continued; Habit Evidence and Similar Events

READING: 370-388; 396-398; 402-404

FRE: 406

COMPLETE Assessment 402-404

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

19. Assignment for Mar. 25

TOPIC: Policy Exclusions

READING: 405-428

FRE: 407, 408, 409

20. Assignment for Mar. 30

MIDTERM (Yes, I know this seems late in the semester, but there is a sound pedagogical reason for this. No, seriously, it's SOUND!)

21. Assignment for Apr. 1

TOPIC: Policy Exclusions and Introduction to Impeachment

READING: 428-433 (SKIP Mezzanato); 438-444; 444-446; 447-458; 460-468

“Plea Bargain Hypo” posted on TWEN

Also Read: “The Rules of Evidence: Are they Stupid or What?” posted on TWEN.

FRE: 410, 412, 611

Q for D: skip problems 8 & 9 on p. 425

Complete Assessment 444-446

22. Assignment for Apr. 6

TOPIC: Impeachment of a Witness's Character

READING: 468-486

FRE: 608, 609

23. Assignment for Apr. 8

TOPIC: Impeachment for Bias, Motive, or Interest; Contradiction

READING: 486-500

FRE: 609

24. Assignment for Apr. 13

TOPIC: Impeachment with Prior Statements

READING: 500-523; 529-531, and...

Kirkpatrick and Mueller, Prior Consistent Statements: The Dangers of Misinterpreting Recently Amended FRE 801(D)(1)(B) on TWEN

FRE: 801(d)(1)(A), 613, 806, 801(d)(1)(B)

Complete Assessment 529-531

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

25. Assignment for Apr. 15

TOPIC: Lay Opinion & Expert Opinion

READING: 533-553

FRE: 701, 702

26. Assignment for Apr. 20

TOPIC: Expert Opinion

READING: 566-579

FRE: 702-706

Complete Assessment 579-582

SUGGESTED AFTER CLASS: CALI Exercise, Expert and Opinion Evidence by Ronald Carlson

27. Assignment for Apr. 22

TOPIC: Privileges; Attorney Client Privilege

READING: 583-608; 614-618, also read *Michael Cohen & the Attorney-Client Privilege & the Crime-Fraud Exception* (Posted on TWEN)

FRE: 501, 502

Q for D: skip Qs on p. 564 and p. 571-572

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

28. Assignment for Apr. 27

TOPIC: Spousal Privileges & Conclusions

READING: 638-645

FRE: 501

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