

**UNIVERSITY OF BALTIMORE SCHOOL OF LAW
SUMMER 2020**

Course: Evidence
LAW 651
Section WB1

Instructor: David Jaros
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410-837-4193

Office Hours: By Zoom on Mondays 10 am or ask for an appointment at a convenient time!

Days/Time: Mondays and Wednesdays, 6:15 pm– 9:00 pm
Note: This is a LIVE class. You will have to be online and present. Pets are encouraged but not required. Small children should be seen *and* heard.

Location: Your house. (This is an online class).
We will use a recurring Zoom classroom.
Here's the link:

Join Zoom Meeting
<https://ubalt.zoom.us/j/915948491>

Meeting ID: 915 948 491
The password is: Objection

You MUST use your ubalt.edu email to sign on through Zoom. (This authenticates you and keeps attendance.)

Please review “Zoom Expectations” below.

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)

Zoom Expectations:

You should familiarize yourself with Zoom and its functions prior to our first class.

To be marked in attendance, you must use your **ubalt.edu** email address when you sign in through Zoom. Please enter class with your microphone muted. If you have a pet or a child, please encourage them to make an appearance. Obviously, this does not include snakes. Snakes are freaky. During class, the presumption is that your camera/video will be on. If you have a special circumstance that makes it inappropriate or uncomfortable to use video, please reach out to me offline.

Please do not share the password for the class with non-class members. Especially Professor Hubbard.

There will, inevitably, be technical problems that disrupt class. If you are knocked out of class because you lose your signal, please attempt to log back in. If I am knocked out or have a slow connection, I may be forced to end the meeting and restart it- PLEASE SIGN BACK IN AND CONTINUE THE CLASS. If things go completely off the rails- check your email for an update from me. On occasion I may be forced to simply record the class offline and upload it to Panopto for you to watch on your own. If this occurs, I will schedule a time for us to meet and answer questions.

Hand raising: I WANT you to ask questions. When (not if) you have a question, please raise your hand using the "hand raise button." Try to remember to put your hand down after you have been called on.

The Chat Window: I have heard that the chat window can be distracting during class. Therefore, please use chat solely to communicate with me if you need to tell me something and the hand raising function is not appropriate or helpful.

We will be figuring this technology and this means of learning together. Please be kind to your fellow classmates (and your professor) as we will all likely make mistakes and we will surely have to make adjustments as we go.

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.

We will discuss how to raise hands etc. in our first class. Before class, familiarize yourself with Zoom, the raise your hand feature, the chat feature, and the ‘how to make a cool background’ feature.

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.

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 the class TWEN page. THIS IS STRONGLY ADVISED.**

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.):

Obviously this is an online class. So this is a little different. Please don't split the screen between class and Netflix.

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. If it's snowing this summer, we're in trouble.

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 Kari Hickey, Director of Student Services at 410-837-5623 or via email at Imetzger@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 SUMMER 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. Be prepared to be asked the questions from the book in class. It's gonna happen. A lot.

1. Assignment for June 8

TOPIC: The Process of Proof & Appellate Review

READING: 1-25

FRE: 103

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

2. Assignment for June 10

TOPIC: Authentication and Judicial Notice

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

FRE: 901, 902, 903, 201

TOPIC: Best Evidence Rule, and Intro. to Relevance

READING: 63-69; Seiler v. Lucasfilm (on TWEN); 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

3. Assignment for June 15

TOPIC: Relevance Balancing and Undisputed Issues

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

FRE: 401, 402, 403

TOPIC: Preliminary Questions of Fact and Introduction to Hearsay

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

FRE: 104, 801, 802

Q for D: skip p. 133-35

Assessment 135-138

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.

4. Assignment for June 17

TOPIC: Hearsay Definition

READING: 150-160

FRE: 801, 802

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

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

5. Assignment for June 22

TOPIC: Hearsay Exemptions for Admissions

READING: 181-198

FRE: 801

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

READING: 198-226

FRE: 803(1)-803(4)

6. Assignment for June 24

TOPIC: 803 Exceptions Continued

READING: 227-246

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

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

7. Assignment for June 29

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

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

8. Assignment for July 1

TOPIC: The Confrontation Clause

READING: Cases posted on TWEN under Confrontation Clause

FRE: none

TOPIC: Character Evidence

READING: 331-355

FRE: 404, 405, 413, 414, 415

**** Midterm July 2-5th ****

9. Assignment for July 6

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

TOPIC: Character Evidence Continued; Habit Evidence and Similar Events

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

FRE: 406

COMPLETE Assessment 402-404

10. Assignment for July 8

TOPIC: Policy Exclusions

READING: 405-428

FRE: 407, 408, 409

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

FRE: 410, 412, 611

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

Complete Assessment 444-446

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

11. Assignment for July 13

TOPIC: Impeachment of a Witness's Character

READING: 468-486

FRE: 608, 609

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

READING: 486-500

FRE: 609

12. Assignment for July 15

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

TOPIC: Lay Opinion & Expert Opinion

READING: 533-553

FRE: 701, 702

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

13. Assignment for July 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

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. 586 and p. 593-594.

14. Assignment for July 22

TOPIC: Spousal Privileges & Conclusions

READING: 638-645

FRE: 501

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)

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

15. Final Exam: To be announced

Before:



After:

