

## Evidence

Professor Lillquist  
Spring 2007

The course aims at helping students acquire a working familiarity with the Federal Rules of Evidence and the constitutional law of evidence in criminal cases. In particular, the goal is for you to learn to identify evidence that is potentially inadmissible and to assess its admissibility. Along these lines, there are several critical types of restrictions on the admissibility of evidence: the rules relating to character evidence, hearsay, and the privileges (particularly the attorney-client privilege). Indeed, the hearsay evidence restriction and the attorney-client privilege are important not just to litigators but also to lawyers in transactional or government practice. Finally, where there are important differences, we will also discuss the provisions of the New Jersey Rules of Evidence.

The required textbook is RONALD J. ALLEN ET AL., EVIDENCE: TEXT, PROBLEMS, AND CASES (4<sup>th</sup> ed. 2006), and the required supplement is FEDERAL RULES OF EVIDENCE (Christopher B. Mueller & Laird C. Kirkpatrick, eds., 2006 ed.). I will also ask you to read several handout cases.

Our approach to learning the rules will be by frequent and extensive analysis of the problems found in the textbook. For this reason, class participation is very important, which means that class attendance and preparation are essential. To that end, I will call on students regularly. I reserve the right to adjust your grade upward for exceptional class participation and downward for class absences or poor class participation. In addition, this class will use the Law School's Class Attendance Policy, which requires students to attend a minimum of 75% of class sessions or be administratively withdrawn from the course. A class attendance sheet will be distributed during every class session, which you will be required to sign. Please note that under the Class Attendance Policy, I have **no** discretion to excuse absences from class. In addition, I reserve the right to adjust grades downward for poor class attendance even when the student has complied with the Class Attendance Policy.

The final examination will be 100% of your final grade and will contain both "objective" and essay questions. The exam will be closed book, except that you will be allowed to consult a handout that I will provide.

My office is in Room 409. My phone number is 642-8844. My email address is lillqure@shu.edu. I have an open-door policy and you are welcome to come and talk to me whenever I am in my office, or, for that matter, whenever you see me in the hallways or elsewhere. For those who wish for formal office hours, I have a coffee hour on Tuesdays starting at 2:30 p.m. In addition, you may of course schedule an appointment to see me at some other time.

## Course Syllabus

The following is the syllabus for the course. As a general rule, we will cover an average of 20 pages of text on each day. Please note that I may add or delete materials depending upon the progress that we make. Page references are to the Allen textbook, unless otherwise noted. At the end of the syllabus, please find the day-to-day assignments for the first five weeks.

I. Introduction and the Adversary Process

pp. 1-76 & 88-107

Rules 101, 102, 103, 607, 611, 614 & 1101

You should also read pp. 77-88 and 107-16 at some point. In particular, 115-16 contains a useful “Trial Objection Cheat Sheet” that will be of aid not just for this course, but also in your future practice, if you become a litigator.

II. Relevancy & Rule 403

pp. 117-61

Rules 401, 402 & 403

III. Foundation, Best Evidence & Preliminary Questions

pp. 167-226

Rules 104, 601, 602, 603, 605, 606, 901, 902, & 1001-1008

18 U.S.C. § 3509(a) & (c) (pages 361-66 of supplement)

IV. Character and Propensity Evidence – More on Relevancy

pp. 227-320

*Michelson v. United States*

Rules 404, 405, 406, 412, 413, 414 & 415

V. Other Relevancy Rules

pp. 321-43 & 348-50

Rules 407, 408, 409 & 411

VI. Hearsay: The Basics

pp. 413-50

Rules 801(a)-(c) & 802

VII. Hearsay: Exemptions

pp. 452-90

Rule 801(d)(1) & (2)

- VIII. Hearsay: Exceptions Not Requiring Unavailability
  - pp. 490-546
  - Mutual Life Insurance Co. v. Hillmon*
  - Rules 612, 803(1)-(6) & (22), 805 & 806
  
- IX. Hearsay: Exceptions Requiring Unavailability & The Residual Exception
  - pp. 547-82
  - Rules 804 & 807
  
- X. Hearsay & The Confrontation Clause
  - pp. 582-603
  - Handout on *Davis v. Washington & Hammon v. Indiana*
  
- XI. Impeachment & Rehabilitation
  - pp. 351-411
  - Rules 404(a)(3), 608, 609, 610, 611, 613 & 803(18)
  
- XII. Opinion & Expert Evidence
  - pp. 609-75
  - Rules 701, 702, 703, 704 & 705
  
- XIII. Judicial Notice
  - pp. 765-85
  - Rule 201
  
- XIV. Privileges
  - pp. 787-826 & 842-875
  - Rule 501; Proposed Rules 503, 504 & 505

## First Schedule

- 1/9: Read pages 1-40
- 1/10: Read pages 40-76 & 88-107 and Rules 101, 102, 103, 607, 611, 614 & 1101
- 1/12: Read pages 117-33 and Rules 401, 403 and 403; prepare Problems 3.1, 3.2, 3.3 & 3.4
- 1/16: No new assignment
- 1/17: Read pages 133-61 and review Rule 403; prepare Problems 3.5, 3.6, 3.7, 3.8 & 3.10
- 1/18: Prepare Problems 3.14 & 3.15
- 1/23: Read pages 167-187 and Rules 601, 602, 603, 605, 606 and 901 and 18 U.S.C. 3509(a) & (c); prepare Problems 4.4, 4.5, 4.7 & 4.8
- 1/24: Read pages 187-98 and Rule 902; prepare Problems 4.9, 4.11, 4.12, 4.13, 4.14, 4.15 & 4.17
- 1/26: Read pages 198-213 and Rules 1001-08; prepare Problems 4.21 & 4.24
- 1/30: Read pages 213-26 and Rule 104; prepare Problems 4.28 & 4.31
- 1/31: Read pages 227-44 and Rules 404 and 405; prepare Problems 5.1, 5.2, 5.5, 5.7, 5.8 & 5.9
- 2/2: Read pages 244-66, Rule 406 and review Rules 404 and 405; prepare Problem 5.13, 5.17, 5.19 & 5.20
- 2/6: Read pages 266-82 and review Rules 404, 405 and 406; prepare Problems 5.31, 5.32, 5.33, 5.34, 5.35 & 5.37
- 2/7: Read pages 283-95, review Rules 404(b) and 405(b) and *Michelson v. United States*; prepare Problems 5.39, 5.40, 5.42 & 5.44
- 2/9: Read pages 295-306 and Rules 413, 414 and 415; prepare Problems 5.46, 5.47 & 5.50
- 2/13: Read pages 306-20 and Rule 412; prepare Problems 5.51 (go back and read 5.48) & 5.53