

Course Syllabus

Spring 2022

Course: Evidence (Law 222-R02), 3 credits

Class Meeting: Mondays & Wednesdays, 6:35-8:00 p.m.
Online

Professor: John McNichols
Office Hours: by appointment
Email: jmcnich2@gmu.edu
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Course Materials: There are two required books for this course:

Title: Evidence, Cases and Materials
Edition: 13th
Author: Roger C. Park & Richard D. Friedman
ISBN: 9781634603423

Title: Federal Rules of Evidence
Edition: 2021-22
Author: Daniel J. Capra
ISBN: 9781636592527

Course Description and Learning Outcomes:

In this course, we will cover the common-law and statutory rules of evidence applicable in civil and criminal trials in the United States, focusing on the Federal Rules of Evidence. We will study practical matters such as burdens of proof, objections, motions *in limine*, and preservation of the record, as well as more specific doctrinal issues such as relevance and character evidence, hearsay and its exceptions, witness competency, and expert testimony.

The course is intended to be the first step toward a career in trial practice. During the course, students will gain experience thinking on their feet and navigating the various problems that emerge as evidence is taken in real time. By the end of the semester, students will be able to explain the origins and rationale for the rules of evidence and recognize the real-world situations that trigger the application of particular concepts. Most importantly, students will be able to apply the rules to the type of fact patterns that commonly emerge in civil and criminal trials in the same manner that experienced trial lawyers do.

Attendance, Participation, and Classroom Behavior: This is a mandatory attendance class. Evidence is an inherently interactive subject, and hence students must be prepared to participate actively in every class session. Use of laptops for note-taking is permitted but should not interfere with participation in classroom discussion.

Grading: There will be one comprehensive final exam at the end of the semester. The exam will be open book and consist of short-answer questions based on hypothetical scenarios similar to those covered in class. All student grades will be based on the exam, subject to a potential one-half grade adjustment for in-class performance.

Class Schedule and Reading Assignments: To be prepared for each class session, students should read the assigned pages from the Park & Friedman textbook as well as the assigned Rules from the Federal Rules of Evidence. Please note that assigned reading for a particular Rule includes the full Advisory Committee's Notes for that Rule.

Week One

Mon. 1/17 MLK Day – No Class

Wed. 1/19 Introduction: The Purpose of Evidentiary Rules and the Process of Admitting Evidence at Trial
Park & Friedman 1-74
Fed. R. Evid. 102-106, 611, 614 & 615

Week Two

Mon. 1/24 Relevance: Inference/Probative Value/Prejudice
Park & Friedman 75-108
Fed. R. Evid. 401-403

Wed. 1/26 Relevance: Character Evidence and the Propensity Rule
Park & Friedman 109-123
Fed. R. Evid. 404(a), 405, 608

Week Three

Mon. 1/31 Relevance: Character Evidence and Bad Acts
Park & Friedman 124-143
Fed. R. Evid. 404(b)

Wed. 2/2 Relevance: Habit, Rape Shield, and Similar Happenings
Park & Friedman 144-178
Fed. R. Evid. 406, 412-415

Week Four

Mon. 2/7 Relevance: Subsequent Remedial Measures, Offers of Compromise, Pleas.
Park & Friedman 178-192
Fed. R. Evid. 407-411

Wed. 2/9 Hearsay: Out-of-Court Statements Offered for the Truth of the Matter Asserted
Park & Friedman 193-238
Fed. R. Evid. 801, 802, 805

Week Five

Mon. 2/14 Hearsay: Confrontation Clause
Park & Friedman 238-248, 293-312

Wed. 2/16 Hearsay: Admissions, Declarations Against Interest
Park & Friedman 249-280, 353-366
Fed. R. Evid. 801(d)(2), 804

Week Six

Mon. 2/21 Hearsay: Spontaneous Statements, State of Mind
Park & Friedman 280-292, 312-337
Fed. R. Evid. 803, 803(3)

Wed. 2/23 Hearsay: Former Testimony, Issue Preclusion, Prior Judgments,
Park & Friedman 342-352, 463-466
Fed. R. Evid. 801(d)(1), 803(5), 803(22), 804(b)(1)

Week Seven

Mon. 2/28 Hearsay: Prior Identification, Past Recollection Recorded,
Medical Diagnosis
Park & Friedman 385-399, 337-342
Fed. R. Evid. 803(4)

Wed. 3/2 Hearsay: Business and Public Records
Park & Friedman 399-452
Fed. R. Evid. 803(6)-(8)

Week Eight

Mon. 3/7 Hearsay: Dying Declarations, Forfeiture, Residual Exception
Park & Friedman 367-385, 468-484
Fed. R. Evid. 804(b)(2), 804(b)(6), 807

Wed. 3/9 Witness Competency
Park & Friedman 699-730
Fed. R. Evid. 601-606

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Week Nine

Mon. 3/21

Impeachment & Rehabilitation: Prior Statements, Contradiction
Park & Friedman 485-500, 541-554
Fed. R. Evid. 607, 612, 613, 801(d)(1)(B), 806

Wed. 3/23

Impeachment & Rehabilitation: Character, Convictions, Bias
Park & Friedman 501-541 (+ re-read *Michelson* at 113)
Fed. R. Evid. 608-610, 806

Week Ten

Mon. 3/28

Writings: Best Evidence Rule
Park & Friedman 669-679
Fed. R. Evid. 1001-1008

Wed. 3/30

Authentication, Judicial Notice
Park & Friedman 679-697, 731-744
Fed. R. Evid. 201, 901-903

Week Eleven

Mon. 4/4

The Burden of Proof and Presumptions
Park & Friedman 749-780
Fed. R. Evid. 301, 302

Wed. 4/6

Privilege: Attorney/Client
Park & Friedman 563-593, 635-640
Fed. R. Evid. 501, 502, plus unenacted rules

Week Twelve

Mon. 4/11

Privilege: Medical/Marital/Clerical/Etc.
Park & Friedman 593-635

Wed. 4/13

Privilege: Governmental
Park & Friedman 641-668

Week Thirteen

Mon. 4/18

Opinion Testimony: Expert
Park & Friedman 781-839
Fed. R. Evid. 701, 703-06

Wed. 4/20

Opinion Testimony: Scientific, Demonstrative Evidence
Fed. R. Evid. 702
Park & Friedman 840-940

Week Fourteen

Mon. 4/25

Review