Course Syllabus Spring 2023

Course: Evidence (Law 222-001), 3 credits

Class Meeting: Tuesdays & Thursdays, 6:35-8:00 p.m.

Professor: John McNichols

Office Hours: by appointment Email: jmcnich2@gmu.edu
Phone: (202) 434-5043

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: 2022-23

Author: Daniel J. Capra ISBN: 9781685611804

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.

<u>Grading</u>: 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.

<u>Class Schedule and Reading Assignments</u>: 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 <u>full</u> Advisory Committee's Notes for that Rule.

Week One

Tues. 1/17 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

Thurs. 1/19 Relevance: Inference/Probative Value/Prejudice

Park & Friedman 75-108 Fed. R. Evid. 401-403

Week Two

Tues. 1/24 Relevance: Character Evidence and the Propensity Rule

Park & Friedman 109-123 Fed. R. Evid. 404(a), 405, 608

Thurs. 1/26 Relevance: Character Evidence and Bad Acts

Park & Friedman 124-143 Fed. R. Evid. 404(b)

Week Three

Tues. 1/31 Relevance: Habit, Rape Shield, and Similar Happenings

Park & Friedman 144-178 Fed. R. Evid. 406, 412-415

Thurs. 2/2 Relevance: Subsequent Remedial Measures, Offers of

Compromise, Pleas.

Park & Friedman 178-192 Fed. R. Evid. 407-411 Week Four

Tues. 2/7 Hearsay: Out-of-Court Statements Offered for the Truth of the

Matter Asserted

Park & Friedman 193-238 Fed. R. Evid. 801, 802, 805

Thurs. 2/9 Hearsay: Confrontation Clause

Park & Friedman 238-248, 293-312

Week Five

Tues. 2/14 Hearsay: Admissions, Declarations Against Interest

Park & Friedman 249-280, 353-366

Fed. R. Evid. 801(d)(2), 804

Thurs. 2/16 Hearsay: Spontaneous Statements, State of Mind

Park & Friedman 280-292, 312-337

Fed. R. Evid. 803, 803(3)

Week Six

Tues. 2/21 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)

Thurs. 2/23 Hearsay: Prior Identification, Past Recollection Recorded,

Medical Diagnosis

Park & Friedman 385-399, 337-342

Fed. R. Evid. 803(4)

Week Seven

Tues. 2/28 Hearsay: Business and Public Records

Park & Friedman 399-452 Fed. R. Evid. 803(6)-(8)

Thurs. 3/2 Hearsay: Dying Declarations, Forfeiture, Residual Exception

Park & Friedman 367-385, 468-484 Fed. R. Evid. 804(b)(2), 804(b)(6), 807

Week Eight

Tues. 3/7 Witness Competency

Park & Friedman 699-730 Fed. R. Evid. 601-606

Thurs. 3/9 Impeachment & Rehabilitation: Prior Statements, Contradiction

Park & Friedman 485-500, 541-554

Fed. R. Evid. 607, 612, 613, 801(d)(1)(B), 806

----- SPRING BREAK -----

Week Nine

Tues. 3/21 Impeachment & Rehabilitation: Character, Convictions, Bias

Park & Friedman 501-541 (+ re-read Michelson at 113)

Fed. R. Evid. 608-610, 806

Thurs. 3/23 Writings: Best Evidence Rule

Park & Friedman 669-679 Fed. R. Evid. 1001-1008

Week Ten

Tues. 3/28 Authentication, Judicial Notice

Park & Friedman 679-697, 731-744

Fed. R. Evid. 201, 901-903

Thurs. 3/30 The Burden of Proof and Presumptions

Park & Friedman 749-780 Fed. R. Evid. 301, 302

Week Eleven

Tues. 4/4 Privilege: Attorney/Client

Park & Friedman 563-593, 635-640

Fed. R. Evid. 501, 502, plus unenacted rules

Thurs. 4/6 Privilege: Medical/Marital/Clerical/Etc.

Park & Friedman 593-635

Week Twelve

Tues. 4/11 Privilege: Governmental

Park & Friedman 641-668

Thurs. 4/13 Opinion Testimony: Expert

Park & Friedman 781-839 Fed. R. Evid. 701, 703-06

Week Thirteen

Tues. 4/18 Opinion Testimony: Scientific, Demonstrative Evidence

Fed. R. Evid. 702

Park & Friedman 840-940

Thurs. 4/20 Review