

EVIDENCE

Law 222 (R03)

George Mason University

Antonin Scalia Law School

Mondays & Wednesdays

6:05 p.m. – 7:30 p.m.

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OFFICE HOURS: Taking questions after class. Otherwise, by appointment via Zoom

[<https://us02web.zoom.us/j/4434739938>].

Course Description: Examines legal rules governing the proof of disputed issues of fact in adversary proceedings. The emphasis is on rules determining the admissibility of various types of evidence, including testimonial evidence, hearsay rules and impeachment of witnesses, documentary evidence, and scientific and expert evidence. The course also considers judicial notice as a substitute for evidence, burdens of proof, and the effect of jury trials on rules of evidence.

Course Materials:

1. Capra & Saltzburg, Principles of Evidence, 9th Edition (West Academic Publishing 2022); ISBN: 9781636594606;
2. Capra, Federal Rules of Evidence, with Faigman Evidence Map, 2023-2024 Edition (West Academic Publishing 2023); ISBN: 9781647084936. **A printed copy of this paperback supplement is required for the course.**

Learning Outcomes: Unlike many fields of law, Evidence Law requires fast application without the luxury of prior research or the opportunity to consult a rule book in the heat of battle. Like a seasoned athlete, we must train every day to develop the "muscle memory" to employ these rules at the speed of trial. So while this course may entail less traditional reading than courses centered on the meticulous analysis of judicial opinions, we will flex our evidentiary muscle in exercises which test our knowledge in a multitude of scenarios. With proper class preparation and active participation, you will leave this class:

- Appreciating the strategic chess match confronting all trial lawyers in a battle of wits over the admissibility of various types of evidence.
- Learning how to overcome problems of proof to carry your evidentiary burden at trial.
- Able to spot evidentiary issues in the time it takes to yell, "Objection!"

You may not plan to go into litigation. Neither do many clients. But to protect them effectively *outside* of court, you must do so in a manner that will ultimately hold up *inside* the courtroom. Unlike trial lawyers, who cannot fabricate favorable evidence to prove their clients' cases, lawyers representing them long before disputes arise play a vital role in documenting the evidence needed to win at trial. That's why lawyers at all stages must learn the Law of Evidence.

Problem-Oriented Assignments: Beyond reading assignments, we will apply the rules through several exercises in class and at home. this course emphasizes exercises in class and in applying the rules to a range of challenging situations. Having tried several cases via Zoom, I will use this platform to simulate the courtroom and expect you to object as necessary augmented by several CALI exercises assigned as homework.

Class Attendance & Participation: This is an interactive course. Your active and consistent participation is critical to the quality of our learning experience. Having eliminated the need to travel for class, I expect everyone to log into every single class with cameras on by the time we start. While there may still be occasions where this is not possible, students with more than four unexcused absences (or more than six regardless of the reason), will not be permitted to complete the course. Just as trial lawyers must show up to court prepared, on time and ready to participate, I expect the same from you. If you do not believe you can meet this expectation, please do not register for this class.

Grading:

Grading Component	Percentage
Final Examination	100%* [3-hour closed book; multiple choice questions in format of the Multistate Bar Examination]
*Class Preparation & Participation	Much depends upon exam performance. But those who contribute to the quality of our class may merit an increase in the quality of their grades. At the instructor's discretion, students demonstrating strong preparation, class performance and timely/thorough completion of <i>all</i> assignments are eligible for a half-step increase to the next highest grade.

Class Recording Policy: Classes will be recorded on Zoom and posted to TWEN. Any materials projected in class will likewise be available on the video. In return, students agree not to post this material on other platforms where the instructor's embarrassing antics may go viral. Students must recognize that technical difficulties may lead to issues with recordings.

Course Web Site: This course has a TWEN page that links to this syllabus, announcements, assignments, CALI exercises and materials. You are responsible for self-enrolling in the TWEN page and for checking it regularly.

Course Outline: Using this outline, which I may modify with advanced notice, I will post assignments each Thursday for the following week. When referring to portions of the textbook, this outline shows page numbers on which a specified topic *starts*. Unless instructed to stop at a given page or line, your reading assignment will include all pages corresponding with that topic. Where applicable, line numbers are placed in [brackets] following the page number. In addition to the textbook and any materials posted on our TWEN page, you must read the rules cited.

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