

## EVIDENCE

Summer, 2009

M, W 9-11:50 a.m.

Professor Douglas McFarland

Assignments are in Kenneth S. Broun, Robert P. Mosteller & Paul C. Gianelli, *Evidence: Cases and Materials* (7<sup>th</sup> ed. 2007). For each day, read ahead 45-50 pages (depending on number of cases and nature of material covered in those pages); also study the applicable Federal Rule(s) of Evidence (including the Advisory Committee Note(s)) and other materials that apply to the cases for the day. Since approximately 650 pages are assigned we need to average 15.5 pages per hour, or 46.5 pages per three-hour class, and some classes--such as foundations of hearsay--will cover few pages.

The assignment for the first class is to prepare pages 30-46, 63-65, 213-237, and 250-261.

Chapter		Pages Assigned
1	Characteristics of the Adversary System	30-46, 63-65
7	The Concept of Relevancy	213-237
8	Formalized Applications of the Relevancy Concept	250-347
9	Judicial Notice	373-396
10	Real and Demonstrative Evidence	397-437
11	Writings and Related Matters	438-487
12	Testimonial Evidence	488, 493-515, 523-535, 547-593, 622-639, [ch. 6, 198-209], 646-706
13	Foundations of the Hearsay Rule and Confrontation	707-734, 748-756, 780-793, 806-856
14	Exceptions to the Hearsay Rule and Confrontation	857-883, 889 n. 3-898, 908-949, 959-992, 1008-1016
4	Burden of Proof	114-115
5	Presumptions	157-171
15	Private Privileges	1017-1020, 1030-1034, 1113-1114
2-3, 16		TBA

**Supplementary readings:**

Supplementary readings are not required, although additional readings will assist understanding of the law of evidence. Evidence is a popular subject; at least five hornbooks plus 15 manuals or commercial outlines are available for your choosing. The problems found in Kenneth S. Broun, Robert P. Mosteller & Louis D. Bilionis, *Problems in Evidence* (4<sup>th</sup> ed. 2001) are helpful; we will work through a few of them in class. In addition, several multi-volume treatises on the Federal Rules of Evidence are available in the library.

Evidence is probably the legal subject singly most appropriate for a computer-assisted exercise. Consequently, the Center for Computer-Assisted Legal Instruction (CALI) offers a large number of exercises on evidence. These are available either on CD, which may be available through the library, or on the CALI website [[www.cali.org](http://www.cali.org)].

**Course objectives and methodology:**

The objectives of this course are the following:

- 1) understanding issues behind the development of the common law of evidence;
- 2) familiarity with the Federal Rules of Evidence;
- 3) a nodding acquaintance with other evidentiary rules systems; and
- 4) introduction to trial tactics.

The classroom discussion will primarily be modified Socratic method based on the case method of legal instruction. We will also work through many hypotheticals and problems. Occasionally, students will be required to demonstrate a rule of evidence in a mock courtroom setting.

**Examinations and grading:**

The grade will be based entirely on the final examination, which in all likelihood will be a three-hour examination combining both traditional fact-pattern analysis questions and multiple-choice questions.

**Attendance:**

Attendance will be recorded by circulation of the attendance sheet provided by the registrar's office. Attendance is expected at every class. Excessive absences (defined as three absences for this three-credit class, since each absence is effectively three classes) will result in removal of the student from the class roster. No makeup work will be offered.

**TWEN website:**

A website for this class is created on The West Education Network [TWEN]. Changes to the syllabus, additional course materials, previous examinations, and appropriate CALI lessons will be posted on the TWEN site. Students should register on the TWEN site as soon as possible, and check the site regularly for announcements.