

Evidence
Fall 2003
Lawrence C. Mann

SYLLABUS AND COURSE DESCRIPTION

[Will be updated with additional information]

Required Texts

Friedman, *Elements of Evidence, 2nd Edition* (West, 1998).
Federal Rules of Evidence, 2003-2004 Edition (West)

You also may find it useful to consult an Evidence nutshell, such as Rothstein, Raeder, & Crump, *Evidence, State and Federal Rules, 3rd Edition* (West, 1997), or Graham, *Federal Rules of Evidence, 5th Edition* (West, 2001). Aspen publishes a commercial outline [The roadmap] that many students find helpful.

Office Hours

I will hold post office hours after the semester commences. Temporarily, I anticipate being available Monday – Wednesday from 11:00 –12:00 and Fridays from 12:00 – 1:00. I will adjust these hours and post them after the first week or two of class. I will also make myself available to answer quick questions before and after class. My office telephone number is (313) 577-5487 and my e-mail is ae0291@wayne.edu. My office is 3107 in the new building in the area above the auditorium. Please do not hesitate to stop by my office during office hours or to call or e-mail me at any time you have any questions or problems.

Taping and Electronic Devices

You are not permitted to tape class sessions unless there is a special reason for you to do so and I have given you permission in advance. Please turn off all cell phones, pagers, and any other noisemaking devices as soon as you enter the classroom.

Classroom/Attendance and Seating Chart

The course meets in room 1525 on Mondays and Wednesdays from 1:25-2:50.

Lawyers who do not show up on time for court appearances and other appointments cannot serve their clients. Therefore, punctual and regular attendance is a requirement of the Law School and of this course. Excessive unexcused absences may result in a lowering of your course grade or in denial of course credit. Please write your name legibly on the seating chart and stay in that seat for the remainder of the term.

Class Participation and Course Philosophy

I will teach this course using the problem method. Unlike most other core law school courses, Evidence is primarily a practical subject which lawyers and judges must be able to apply during the heat of courtroom battles. Therefore, a good Evidence course should teach the students, through practice and repetition, how to apply a set of very specific rules to realistic problems that could actually arise during litigation.

Since Evidence is about learning how to apply a specific set of rules in the courtroom, I believe that a traditional law school casebook, with its emphasis on lengthy appellate decisions, is the wrong way to teach this material. That is why I have selected Professor Friedman's book, which contains only one lengthy excerpt from an appellate case. Professor Friedman's book does contain hundreds and hundreds of problems, and those problems will be the focus of this course. Using those problems and similar problems I will make up during class, we will learn to apply the Federal Rules of Evidence.

The problem method requires both the students and the instructor to be well prepared for class. You are adequately prepared for class only if you have: (1) read the assigned Federal Rules of Evidence, including the notes and reports that follow each rule; (2) read the assigned pages from the Friedman book; and, most importantly, (3) diligently attempted to apply the rules and the readings to the problems so that you are ready to intelligently discuss the problems in class. It will be obvious to me that you have not prepared for class if you have to read the entire problem or the rule before attempting to answer the question.

Since the problem method requires the use of the Socratic method, I will call upon students, but I will always give notice to the students who will be called upon in the next week. **Unusually** good class participation will result in your grade being raised one-half step. If you cannot attend or cannot be prepared on a day on which you are scheduled to participate, you must explain this to me **in advance**, and I will call on you some other day. An unexcused absence or lack of preparation on a day on which you are scheduled to participate will result in your grade being lowered one-half step. A lawyer who, without advance notice and a good explanation, fails to show up in court or shows up unprepared may be fined, disciplined, sued, or even jailed. Such conduct is unacceptable in the profession, and it is unacceptable in my class because it unfairly shifts the burden to other students who are prepared and present.

Good class discussions are intellectually stimulating and can be a lot of fun. Therefore, I strongly encourage you to participate in discussions in which you have not been called upon. If you do not understand a point raised in class, please do not hesitate to ask a question, as you are almost certainly not the only one confused.

Final Examination and Grading

You will be allowed to bring your text, your notes, your outlines, and any other text, treatise, outline, or book that you can carry into the exam room. The exam will be entirely short answer, and may include multiple choice questions. The questions will be

similar to the problems assigned in class. You will be responsible for all assigned readings, including readings not specifically discussed in class, unless I explicitly exclude those readings from the scope of the exam. Your grade will be based on your performance on the final exam and may be adjusted upward or downward for class participation

Course Assignments

The assignments listed below are approximate and will depend upon our progress through the material. I will announce any changes to this syllabus in class. Assignments for a particular day should be read before class that day. All pages numbers refers to the Friedman text. “FRE” refers to the Federal Rules of Evidence found in the West Pamphlet. An assignment to read a particular FRE includes the text of the rule itself and the notes and reports that follow the rule.

Week of August 25-29 (to be read before first class)

Introduction:	1-9 [Background Material]
Relevance--in general:	FRE 401, 402 35-42
Relevance--countervailing considerations:	FRE 403 42-45
Relevance--analytical approaches:	45-56*

Wednesday, September 4

Competency—ability to testify	FRE 601, 603, 610 66-77
-------------------------------	------------------------------------

Week of September 8-12

Competency--personal knowledge requirement:	FRE 602 82-84
Competency--lay opinions:	FRE 701 84-88

* Don't worry if you have trouble understanding the mathematical discussion in this section. You will not be tested or questioned in class on your understanding of mathematics. However, you should be able to tackle all of the problems in this section without applying the mathematical discussion.

Experts--need for expert testimony: **FRE 702**
89-93

Experts--testimony on ultimate issues: **FRE 704**
93-97

Experts--the *Daubert* standard: **97-109**

Week of September 15-19

Experts—questioning, bases of knowledge: **FRE 703, 705**
112-115

Witnesses—proper questioning: **FRE 611(c), 614**
117-125

Witnesses—refreshing recollection: **FRE 612**
127-129

Witnesses—cross and redirect: **FRE 611(a)-(b)**
129-136

Presenting Other Evidence: **FRE 901, 902**
137-144

Week of September 22-26

Hearsay—the basic definition: **FRE 801(a)-(c), 802**
176-197

Week of September 29-October 3

Hearsay—witnesses' prior statements: **FRE 801(d)(1)**
198-217

Hearsay—double hearsay: **FRE 805**
217-218

Week of October 6-10

Hearsay—party admissions: **FRE 801(d)(2)**
219-247

Week of October 13-17

Hearsay—exceptions not requiring unavailability: **FRE 803**
249-281

Week of October 20-24

Hearsay—exceptions requiring unavailability: **FRE 804**
282-311
<![endif]>

Week of October 27-31

Hearsay—the residual exception: **FRE 807**
312-319

Privileges: **FRE 501**
340-358

Week of November 3-7

Privileges, continued: **358-365**

Categorical Exclusions—settlement offers, etc: **FRE 408, 409, 410**
367-377

Categorical Exclusions—remedial measures: **FRE 407**
377-383

Categorical Exclusions—insurance: **FRE 411**
383-385

Week of November 10-14

Character Evidence: **FRE 405**
386-390

Propensity Evidence: **FRE 404, 412, 413-415**
390-412

Week of November 17-21

Admissible Evidence of Uncharged Acts:	FRE 404(b) 412-426
Habit and Routine Practice:	FRE 406 426-429
Impeachment—who may impeach:	FRE 607 432-436
Impeachment—untruthfulness:	FRE 608(a) 436-438
Impeachment—other misconduct:	FRE 608(b), 609 438-445

Week of November 24-28

Impeachment—prior inconsistent statements:	FRE 613 445-456
Impeachment-bias:	456-459
Impeachment—constitutional issues:	462-468
Impeachment—rehabilitation:	FRE 608(a), 801(d)(1)(B) 468-474

Monday, December 1

Review Session

Final Examination ?