

**Elon University School of Law**

**EVIDENCE SYLLABUS**

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Office: Room 203  
Fall 2012

Tuesdays, 10:00 a.m. – 12:00 p.m. Room 105  
Thursdays, 10:00 a.m. – 12:00 p.m. Room 105

**I. REQUIRED COURSE MATERIALS**

- A. FEDERAL RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES (West Pub. Co. 2012-2013).
- B. Friedland and Sahl, EVIDENCE PROBLEMS AND MATERIALS (4th Ed. Lexis Pub. 2012)

**II. USEFUL OPTIONAL RESOURCES**

- A. *MCCORMICK ON EVIDENCE* (West Pub. Co. Hornbook Series, John Strong, Ed., latest Ed.).
- B. Weinstein and Berger, *Weinstein's Evidence Manual* (Mathew Bender).
- C. Lilly, *EVIDENCE* (West Pub. Co. Hornbook Series).
- D. Best, *Evidence: Examples and Explanations* (Aspen Press)

**III. COURSE REQUIREMENTS**

- A. Class Attendance, Preparation and Timeliness. Attendance, preparation and timeliness are crucial to creating the best opportunity to learn. Consequently, grade reductions at the instructor's discretion may result from a combined total of:
  - 1. More than two (2) unexcused absences; or
  - 2. More than two (2) failures to prep for class
  - 3. Being late to class more than two (2) times; or
  - 4. Using the Internet or email in class, unless instructed to do so by the Professor.

These requirements will operate in accordance with the applicable rules and regulations of the law school.

- B. Class Assignments. This is a problem-oriented course in which great



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emphasis is placed on understanding the rules of evidence through problem solving. Students are therefore required to *write out complete answers* to the problems assigned. The responses may be written in the book or elsewhere. Violation of this provision may result in a reduction of the final grade at the instructor's discretion.

- C. Posting. During some of the weeks, you will be required to post a written answer to one of the assigned problems on the course Blackboard site. This requirement will begin in week #2 and conclude well before the completion of the course. Failure to timely post may result in a reduction in the course grade.
- D. Trial Observation Assignment. You are required to observe a trial, hearing or other proceeding in which there is evidence, and then write about your observations in an on-line post of between 1/4 and one page. In lieu of this observation, you can judge one of the Elon undergraduate mock trials.
- E. Final Trial. You will be required to participate in a final trial. Those students who do an exemplary job can get extra credit for their performance.
- F. Final Exam. The final examination will count for the student's entire course grade. The examination will consist of one or more components, including multiple choice questions and short answer questions.
- G. Twenty Minute Rule. Please review the assigned materials for at least twenty minutes prior to the beginning of each class. This will enhance the class discussions and the opportunity to learn.

#### IV. **COURSE GOALS and LEARNING OUTCOMES**

##### A. GOALS

1. To understand and apply the rules of evidence.
2. To learn associated trial and lawyering skills.
3. To develop an ethical approach to lawyering.
4. To have fun.

##### B. LEARNING OUTCOMES

1. To develop a deep understanding of the individual Federal Rules of Evidence
2. To be able to synthesize the rules and use them in the context of a trial or other proceeding.



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3. To be able to apply the rules of evidence to a wide variety of fact situations.
4. To use the Protocols: (1) Rule/Meaning, Exception/Meaning; and (2) Rule/Application
5. To develop competent advocacy skills relating to evidence issues.

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## PREFACE

1. Assignment Schedule. The course assignment schedule provides a general plan for the course; deviations may occur.
2. “Text” refers to EVIDENCE PROBLEMS AND MATERIALS.
3. “FRE” refers to the FEDERAL RULES OF EVIDENCE.
4. All FRE assignments include: the associated ADVISORY COMMITTEE, SENATE AND HOUSE JUDICIARY COMMITTEE AND CONFERENCE REPORT NOTE, (these notes are very important since they often elaborate on the meaning of the FRE), as well as the introductions to these rules in the text.
5. “Read Chapter” assignments refer only to the portions of the Text introducing the subject matter and the accompanying illustrations. These assignments do not include the problems, which are assigned separately.
6. “Summary and Review” segments occur at the end of each chapter. While we might not cover these in class, these are useful tools for enhancing understanding of the materials.
7. Note: Any assigned material not completed in a class will carry over to the next class for completion at that time.
8. General Class format: (1) typical problem relating to the material to be covered. (2) Relevant Rules of Evidence. (3) Meaning of the Rules. (4) More Problems.
9. TWEN Posts. You will be asked to post answers to several of the questions assigned in the Text. These posts are required.

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## ASSIGNMENTS AND CLASS SCHEDULE

### CLASS #1

#### **THE TRIAL PROCESS; BURDENS OF PROOF – Rules 101-106, 401**

- A. The trial process - an overview
- B. What is evidence?
- C. The Roles of Attorney, Judge and Jury

#### Assignment:

- 1. Read the first eight series of the FEDERAL RULES OF EVIDENCE (FRE) and read Text, Chapters I and II.
- 2. Read FRE 101 – 106 and Rule 401
- 3. Write answer to Problem 1-4 (“Direct v. Circumstantial”)

### CLASS # 2

#### **THE GATEKEEPER: RELEVANCE - Rules 401 & 402**

- A. Significance
- B. Definition and Meaning

#### Assignment:

- 1. Read Chapter III.
- 2. Write answers to Problems 3-1, 3-2, and 3-4
- 3. Read FRE 401-402
- 4. Read *Knapp v. State*

### CLASS # 3

#### **UNFAIR PREJUDICE – RULE 403**

- A. The definition of unfair prejudice
- B. The meaning of this exclusion
- C. Common Themes

#### Assignment:

- 1. Read Chapter IV.
- 2. Write answers to Problems 3-13, 3-19, 4-5, 4-6, and 4-8  
Read FRE 403
- 3. Read *People v. Collins*

### CLASS # 4

#### **SIMILAR OCCURRENCES (RULE 403); CHARACTER EVIDENCE (RULES 404 & 405)**

- A. Similar Occurrences
- B. A Lack of Similar Occurrences
- C. The Exclusion of Character Evidence
- D. Exception: Criminal Defense Offers Evidence First

### & CLASS #5

#### Assignment:

- 1. Read Chapter V.
- 2. Write answers to Problems 4-13, 4-14, 5-1, 5-2, and 5-4, \*5-9, 5-10,



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- 5-12  
3. Read FRE 404, 405  
4. Read *People v. Zachowitz*, *Michelson v. United States*

CLASS # 6      **CHARACTER EVIDENCE CONTINUED**

- A. Character In Issue  
B. Rule 404(b) -- Other Acts Evidence  
C. *Res Gestae* Evidence

Assignment:

1. Read FRE 404(b)  
2. Write answers to Problems 5-13, 5-16, 5-23, 5-28, and 5-32, \*5-19, 5-20, \*5-30, 5-34  
3. Read *Huddleston v. United States*, *Dowling v. United States*

CLASS # 7      **HABIT EVIDENCE; THE EXCLUSION OF OTHER RELEVANT EVIDENCE – Rules 406-408**

- A. Definition and Meaning of Habit Evidence  
B. More Relevant Evidence Exclusions  
    1. Subsequent Remedial Measures  
    2. Offers to Compromise

Assignment:

1. Read Chapter VI.  
2. Write answers to Problems 5-36, 6-2, 6-4, 6-7, 6-8, 5-41, 5-42, 6-5, 6-6  
3. Read FRE 406-408

CLASS # 8      **MORE EXCLUSIONS OF RELEVANT EVIDENCE – Rules 409-415**

- A. Offers to Pay Medical Expenses  
B. Plea Bargaining  
C. Liability Insurance  
D. Prior History of Alleged Sexual Assault Victims  
E. Similar Sex Offense Crimes

Assignment:

1. Write answers to Problems 6-9, 6-12, 6-15, 6-16, 6-18, 6-19, and 6-



2. Read “*Date Rape and the Culture of Acceptance*” excerpt in Text
3. Read FRE 409-415

CLASS # 9

**DIRECT AND CROSS EXAMINATION OF WITNESSES;  
IMPEACHMENT – Rules 607-611**

- A. The Examination of Witnesses
- B. Impeaching a witness
  1. Intrinsic impeachment
  2. Extrinsic impeachment

Assignment

1. Read Chapter VII.
2. Write answers to Problems 7-1, 7-2, 7-3, 7-5, and 7-6
3. Read Evidentiary Objection Sheet
4. Read FRE 607-611

CLASS # 10

**IMPEACHMENT CONTINUED – rules 608-615**

Assignment

1. Write answers to Problems 7-10, 7-12, 7-13, and 7-14
2. Read FRE 608-615

CLASS # 11

**IMPEACHMENT and REHABILITATION – Rule 608**

Assignment

1. Write answers to Problems 7-17, 7-20, 7-21, and 7-22
2. Re-Read FRE 608, 609

CLASS # 12

**WITNESS COMPETENCY AND OPINIONS – Rules 601-606**

Assignment

1. Read Chapter VIII.
2. Read *Rock v. Arkansas*
3. Write answers to Problems 8-1, 8-8, 9-1, 9-3, and 9-5
4. Read FRE 601-606



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**CLASS # 13      **OPINIONS AND EXPERT TESTIMONY – Rules 701-702****

**Assignment**

Read Chapter IX.

1. Write answers to Problems 9-4, 9-5, 9-14, and 9-15
2. Read FRE 701-702

**CLASS # 14      **MORE EXPERT TESTIMONY****

**Assignment**

1. Write answers to Problems 9-20, 9-25, 9-28, 9-29, and 9-30
2. Read FRE 703-706
3. Read *Frye v. United States*, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, *Kumho Tire Co. v. Carmichael*

**CLASS ## 15      **INTRODUCTION TO HEARSAY****  
**& 16**

**Assignment**

1. Read Chapter X.
2. Write answers to Problems 10-1, 10-3, 10-5, 10-6, 10-10, 10-16, (parts 1-7)
3. Read FRE 801, 802 and Introduction to *Hearsay* in ACN
4. Read *Wright v. Tatham*

**CLASS ## 17      **STATUTORY NON-HEARSAY – RULE 801****  
**& 18**

**Assignment**

1. Write answers to Problems 10-16 (parts 8-17), 10-21, 10-24, 10-27, 10-31, and 10-33
2. Read FRE 801(d)(1) and 801(d)(2), 803(1)
3. Read *Bourjaily v. United States*

**CLASS # 19      **HEARSAY EXCEPTIONS – Rule 803****

**Assignment**

1. Write answers to Problems 10-45, 10-48, 10-50, 10-52, and 10-54
2. Read FRE 803(2)-(5)
3. Read *Mutual Life Ins. Co. v. Hillman*, *Shepard v. United States*



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**CLASS # 20 MORE HEARSAY EXCEPTIONS – Rule 803**

**Assignment**

1. Write answers to Problems 10-56, 10-62, 10-63, 10-64, and 10-66
2. Read FRE 803(5)-803(8)
3. Read *Palmer v. Hoffman*

**CLASS ## 21 & 22 MORE HEARSAY EXCEPTIONS – Rules 803- 804**

**Assignment**

1. Write answers to Problems 10-67, 10-68, 10-69, 10-71, 10-72, 10-74, 10-78, 10-79, 10-80, and 10-87
2. Read FRE 803(9)-(24); 804(a); 804(b), 806

**CLASS # 23 THE CONFRONTATION CLAUSE**

**Assignment**

1. Read Chapter XI.
2. Write answers to Problems 11-1, 11-2, 11-5, 11-11
3. Read FRE 805, 806, 807
4. Read *Crawford v. Washington, Hammon and Davis, Giles v. California, Melendez-Diaz v. Massachusetts; Bullcoming v. New Mexico, and Michigan v. Bryant*

**CLASS # 24 AUTHENTICATION**

**Assignment**

1. Read Chapter XIII.
2. Write answer to Problems 13-1, 13-2
3. Read FRE 901-902

**CLASS # 25: THE BEST EVIDENCE RULE; PRIVILEGES**

**Assignment**

1. Read Chapter XII.
2. Write answers to Problems 13-10, 13-13, 13-11, 13-20
3. Read FRE 1001-1006
4. Read *Seiler v. Lucasfilm, Ltd.*



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**CLASS # 26: PRIVILEGES**

Assignment

1. Write answers to Problems 12-1, 12-3, 12-12, 12-14, and 12-17
2. Read FRE 501, Proposed Rules 502-513

**\*\*\*\*\*TRIALS [United States v. O’Ruben, Chapter 15]**

**CLASS # 27 OVERVIEW OF JUDICIAL NOTICE AND PRESUMPTIONS; REVIEW**

Assignment

1. Read Chapter XIV.
2. Read FRE 201, 301,302

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