

SUBJECT TO REVISION

SYLLABUS FOR EVIDENCE CLASS **PROFESSOR DAVID CRUMP**

FALL 2014

The following is a list of readings from the casebook and other sources. We will take up these readings in approximately this order in the course.

It may become necessary to deviate from the syllabus at times. I will attempt to let you know sufficiently in advance if this occurs.

The syllabus is arranged by subject, not by classes. It will be your task to keep up with the reading so as to be ready for each class as it comes.

Certain readings are set out in CAPITAL letters. These cases or readings are to be emphasized. Others are in lower case; this indicates that our treatment of the case or other material will be short and summary, and it accordingly indicates that you should not concentrate on it as heavily as upon other readings.

INTRODUCTION AND OVERVIEW

- READ EVIDENCE REVIEW PROGRAM (in Supplement obtained from copy center, Parts Seven and Eight) and be prepared to analyze problems in class.
- Skim first page, Part Seven ("Evidence Rules on One Page")
- Study last page of Part Eight (Frequently Confusing Issues)

I. TRIAL PROCEDURE AND ITS RELATION TO THE RULES OF EVIDENCE

A. Objections and Offers of Proof

- FRE 103; NOTES AND QUESTIONS 1-3 (1)

B. Making the Record: Admitted and Excluded Evidence

- Notes (2-3); PROBLEM (med. mal. case offer of proof) (3)

C. Judge's Role and Jury's Role

- FRE 104(a)-(b) (this rule tends to confuse people!)

D. Limiting Instructions: The Problem of Evidence That Is Relevant Both for an Admissible and for an Inadmissible Purpose

- FRE 105; Note on Rule 105 (4); Problem (4) ("Prior Conviction")

Note: By now, you have figured out several things about the casebook and other materials, including—

- 1. Reading and absorbing the Rules is extremely important, as a first step.*
- 2. This is generally not a fast-changing subject.*
- 3. Actual practice in offering and excluding evidence is not taught by a casebook very well. The course will deal separately with actual practice.*

II. RELEVANCY AND ITS COUNTERWEIGHTS

A. Relevancy under Rules 401-02

- FRE 401-402; CRUMP EXCERPT (5); Notes and Questions about Logical Relevancy and Admissibility (6); Notes 1, 4, 5, 6 (8); PROBLEM ("Dream Evidence") (8)

B. Counterweights to Relevancy: Prejudice, etc. under Rule 403

- FRE 401, 402, 403; Carter v. Hewitt ("This is a set up") (7); Note on Rule 403 (10); Sprint/United Management Co. v. Mendelsohn (10) (different supervisors' acts of discrimination); UNITED STATES V. KNIGHT (14) (killing as evidence of perjury); PROBLEM ("Adamson v. CA") (16)

III. AUTHENTICATION: SHOWING THAT A THING PERTAINS TO THE CASE (A SPECIAL QUESTION OF RELEVANCE, UNDER SEPARATE RULES)

A. In General; Writings

- FRE 104(b), 901; UNITED STATES V. CARRIGER (201) (promissory notes)
- FRE 902 (self-authentication)

B. Chain of Custody(?)

- United States v. Coffman (202) (LSD blotter, fingerprinted first)

C. Tangible Objects, Photographs and the Like

- United States v. Thomas (203) (tangible objects); NOTE 1 (204) (photographs)

D. Electronic Records

- United States v. Lebowitz (204) (internet chat)

E. "Best Evidence" Rule; Summaries

- FRE 1001-1008; UNITED STATES V. GERHART (205) (photocopy of altered check); Note 1 (206) (original; duplicate)

First Hands-On Session: Offering and Opposing Six Common Kinds of Evidence

- READ AND STUDY EVIDENCE PRACTICE SUPPLEMENT PART ONE (pp. 1-13). BE READY TO OFFER OR OBJECT IN CLASS TO ALL OF THE SIX TYPES OF EVIDENCE COVERED.

Every student will offer one (1) of the six types, randomly assigned in class. It probably will be necessary to break the class into multiple sessions.

IV. THE SPECIFIC RELEVANCE-BALANCED EXCLUSIONS: CHARACTER, COMPROMISE, REMEDIAL MEASURES, INSURANCE

A. Character, Proved by "Specific Acts" Evidence

(1) Specific Acts Showing Character or Propensity, Offered to Prove "Action in Conformity": Generally Inadmissible

- FRE 404(b); Introduction (19); Questions 1-7 (19) (character vs. another purpose); United States v. Calvert (20) (policies)

(2) Specific Acts Offered for "Another Purpose" Such as Intent, Identity, etc.

- FRE 404(b); Jones v. State (20) (theft by pretext); HUDDLESTON V. UNITED STATES (similar stolen sales, to prove knowledge) (21) and NOTES 1, 5-7 (proof requirements, etc.) (24)
- Problem: Is the Similarity Distinctive Enough? (state's chart of similarities in two murders) (26)

(3) Specific Acts When Character Is Directly Related to an "Essential Element"

- OLD CHIEF V. UNITED STATES (27) (prior conviction as an element) and Notes 1-2; Problem (34) (possession with intent to distribute); PROBLEM SET (34) (what's a "status element"?)
- FRE 405; Carbo v. United States (35) ("the fearsome extortionist")

B. Admissible Propensity Uses of Character Evidence

(1) A Criminal Defendant's Use of a "Pertinent Trait"; Rebuttal

- FRE 404(a)(1)-(2); Preview (37); UNITED STATES V. YARBROUGH (39); Note 1 on Jackson Case (45)

(2) Reputation, Opinion and Cross ("Have You Heard")

- FRE 405(a); UNITED STATES V. BAH (41)

(3) Alleged Aggressor-Victims and Witness Credibility

- FRE 404(a)(2)-(3); UNITED STATES V. DRAPEAU (45)

C. In Sexual Assault and Related Cases

(1) Historical Practices Now Generally Rejected

- Historical Note (46) (unchastity reputation, corroboration, etc.)

(2) *The "Rape Shield": Protection for the Alleged Victim*

- FRE 412; Note 4 (46) (sexual orientation)

(3) *Broad Admissibility of "Similar Crimes" against Defendants*

- FRE 413-415; Introductory Note (46); UNITED STATES V. ROBERTS (47) (chief abused 9 women; new vs. old rules); Notes on Rule 403 (1st paragraph only) (48); Extending Admissibility (48)

D. *Habit and Business Routine ("Definitive" Propensity?)*

- FRE 406; NOTE 2 ON LEVIN V. UNITED STATES (49) (habit--common law); PROBLEM 4 (49) (who's the pilot?); PROBLEM 5 (50) (racial discrimination)

E. *Similar Occurrences; Others' Practices in the Industry*

- JOHN DEERE CO. V. MAY (50) (similar occurrences)

F. *Subsequent Remedial Measures*

- FRE 407 (209); ADAMS V. CHEVRON (51) (redesigned battery stand) and NOTES

G. *Settlement Negotiations, Compromise and Offers*

- FRE 408; RAMADA DEVEL. CO. V. RAUCH (53) (pre-negotiation report)

H. *Guilty Pleas, Nolo Pleas, Plea Negotiations*

- FRE 410; United States v. Mezzanatto (54) (defendant as witness against another required waiver)

I. *Liability Insurance and Medical Payments*

- FRE 411; CHARTER V. CHLEBORAD (56) (insurance co. witness); PROBLEM 4 (57) [first paragraph only] (ownership)
- FRE 409 ("medical, hospital or similar" expenses)

J. *Experiments, Reconstructions, and Demonstrative Evidence (earlier chapter)*

- Note 1 on American Nat'l Watermattress (16) (substantial similarity)

K. *Completeness Doctrines*

- FRE 106

Second Hands-On Session: Structuring Direct and Cross for Persuasion, Understanding, and Proof

- READ AND STUDY PART THREE OF THE EVIDENCE PRACTICE SUPPLEMENT (pp. 47-60) so that you are capable of using the techniques in class
- READ PROBLEM 1 IN PART SIX and consider how the techniques would apply.

Several groups of students will be assigned to perform the techniques in class. All students, however, will be responsible for knowing how to use the techniques.

V. *THE HEARSAY RULE OF EXCLUSION*

A. *The Basic Definition and Rationales*

- FRE 801(a)-(c); Introduction (121); LEAKE V. HAGERT (121) (taillights case)

B. *Statements That Are Not Hearsay (i.e., "Verbal Acts," or Statements That Are "Operative Conduct," and Other Statements Not Offered for the "Truth of the Matter Asserted")*

- FRE 801(c); CREAGHE V. IOWA HOME MUT. CAS. CO. (cancelled insurance) and Notes; TOMA EXERCISES, 1-5 (123)
- Bridges v. State (126) (Sharon's description of molester's house)

C. *What Is a "Statement"?: Non-Human Expressions, Inaction, Assertive Conduct, and Nonassertive Conduct*

- FRE 801 (a)
- UNITED STATES V. JACKSON ("Is this Kenny?") (124)
- ALTKRUG V. WILLIAM WHITMAN CO. (124) (noncomplaint)

VI. *EXEMPTIONS FOR PRIOR STATEMENTS AND ADMISSIONS, DEFINED AS "NON-HEARSAY"*

[Remember that hearsay exceptions (and these rules concern what really are exceptions, even though they define them as non-hearsay) rest on two rationales: (1) "trustworthiness" and (2) "necessity." These rationales generally are applied not to the specific item at issue, but rather to the overall category of utterance. "Trustworthiness" therefore refers to the circumstantial inferences of reliability that the category is thought to justify. "Necessity" refers to the improbability that better evidence can be found than these categories of evidence. Are there other rationales? Especially for these non-hearsay categories, you may find additional policies lurking in the background.]

A. Former Statements of Presently Testifying Witnesses

(1) Inconsistent, Offered to Impeach and as Substantive Evidence

- FRE 801(d)(1)(A); Introduction (129); UNITED STATES V. TRUMAN (129) (arson; dad told me to do it) and Notes 1, 2, 3, 5 (133)

(2) Consistent, Offered to Rebut Fabrication and as Substantive Evidence

- FRE 801(d)(1)(B)

(3) Identification

- FRE 801(d)(1)(C)

B. Admissions by a Party Opponent, Agent, or Co-conspirator

(1) The Basic Doctrine

- 801(d)(2)(A); Introduction (134); SUSEMIEHL V. RED RIVER LUMBER CO. (conclusionary, hearsay-based) (134)

(2) Adoptive Admissions, Including Adoption by Silence

- 801(d)(2)(B); UNITED STATES V. FLECHA (136) ("if we are caught"; silence after arrest)

(3) Admissions by Agents Authorized to Speak

- 801(d)(2)(C); Contractor Utility Sales Co. Inc. v. Certain-Teed Prods. Corp. (137) (superseded pleading)

(4) Admissions by Agents or Employees Concerning Matters within Scope

- 801(d)(2)(D); RUDZINSKI V. WARNER THEATRES, INC. (138) (janitor's statement); Problem (142) (lineman "dropped" object; claims agent)

(5) Co-conspirator Statements

- 801(d)(2)(E); reconsider FLECHA, above (post-arrest)

C. Hearsay Review

- HEARSAY QUIZ (142, items 1-20 only).

VII. HEARSAY EXCEPTIONS: AVAILABILITY OF DECLARANT IMMATERIAL

- Introduction (145)

A. Present Sense Impression

- FRE 803(1); HOUSTON OXYGEN CO. V. DAVIS (151) ("they must have been drunk") and Notes

B. Excited Utterance

- FRE 803(2); UNITED STATES V. FROST (146) (sexual-assault reports) and Notes (requirements)

C. Then-Existing Mental, Emotional, or Physical Condition

- FRE 803(3); Notes 2-3 (153) (Melton & Atkins cases)
- UNITED STATES V. PHEASTER (154) (present intention used under Hillmon doctrine to prove future conduct); Note 1 (158) (2 branches of Hillmon case); PROBLEM SET (158) (various formulations of intent & memory)

D. Statements for Purposes of Medical Diagnosis and Treatment

- FRE 803(4)

E. Recorded Recollection (and Present Memory Refreshed)

- FRE 803(5); Problem 3 (159) (multiple recorders)

F. Records of Regularly Conducted Activity ("Business Records")

- FRE 803(6); STATE V. BLAKE (160) (emails in murder case); PROBLEM SET G, 1 (poker club), 2 (one-shot report), 3 (doctor's letter) (162-63)

G. Absence of Entry or Record

- FRE 803(7), (10)

H. Government Records

- FRE 803(8); BEECH AIRCRAFT CORP. V. RAINEY (163) (conclusions, opinions) and Notes 3-4 (law enforcement exclusion; untrustworthiness)

I. Miscellaneous Exceptions (Ancient Documents, Commercial Publications, and Treatises, Reputation, Judgments)

- FRE 803(13)-(23); Text, Miscellaneous Exceptions (167)

VIII. HEARSAY EXCEPTIONS: DECLARANT MUST BE UNAVAILABLE

- FRE 804(a); Warren v. United States (169) (assault victims)

A. Former Testimony

- FRE 804(b)(1); LLOYD V. AMERICAN EXPORT LINES, INC. (172) (fighting sailors)

B. Statement under Belief of Impending Death ("Dying Declaration")

- FRE 804(b)(2); PLESSY V. STATE (176) ("Q" did it)

C. Statement against Interest

- FRE 804(b)(3); WILLIAMSON V. UNITED STATES (exception applies to "against" parts only) and Notes
- PROBLEM (184) (admitted heroin use)

D. Waiver or Forfeiture by Wrongdoing

- FRE 804 (b)(6)

E. The Residual Exception

- FRE 807; HUFF V. WHITE MOTOR CORP. (185) ("pants leg on fire") and Notes 7, 8, 9 (189)

F. Hearsay Exceptions Review

- HEARSAY EXCEPTIONS QUIZ 1-20 (190-92)

G. Confrontation Clause Issues Involving "Testimonial" Hearsay

- Crawford v. Washington (194); Note on Fallout from Crawford (Photocopied Supplement Part Nine); Note on Williams Case (Photo Supp. Part Nine)

Third Hands-On Session: Particular Performance Issues Involving More Complex Issues about Evidence Admissibility and Presentation

- READ EVIDENCE PROBLEM SET NO. 2 IN PART SIX OF THE EVIDENCE PRACTICE SUPPLEMENT, BUT ONLY PROBLEMS A, B, C, E, H, J, and L (pp. 82-84, 85, 87-90) AND consider how to handle each one.

Several groups of students will be assigned to perform solutions to each Problem. All students, however, will be responsible for understanding the issues and solutions.

IX. WITNESSES: COMPETENCY AND FIRSTHAND KNOWLEDGE

A. Competency

(1) In General; the Oath, etc.

- FRE 601, 603, 610

(2) Child Witnesses, Incompetents, etc.

- FRE 601-03; United States v. Allen (59) (child)

(3) Dead Man Statutes or Rules

- Note 1 (60) (explaining concept); Reinke v. Stewart (60) (inapplicable; federal)

(4) Judges and Jurors

- FRE 605, 606; *Tanner v. United States* (61) (partying jurors); NOTE 2 (62) (variations).

B. The Personal Knowledge Requirement

- FRE 602; Note 6 on *Strickland Trans. Co. v. Ingraham* (62) (witness "learned" fact)

X. IMPEACHMENT AND CREDIBILITY

- Notes 1-3 on Form of Questions (62); Note 1 on Scope of Cross-Examination (64); Notes 1, 3 on Impeachment: General Precepts (64)

A. Prior Inconsistent Statements (and the "Collateral Matter" Rule)

- FRE 607, 613; Note 1 on *The Queen's Case* (66) (historical rule); *UNITED STATES V. MEZA* (67) ("I lied when I said I sold it to him")

B. Bias

- *United States v. Abel* (Aryan Brotherhood) (72)

C. Nonconviction Conduct Probative as to Truthfulness

- FRE 608(b); *CARTER V. HEWITT* (75) (the "set up" letter); PROBLEM ON AMAECHI CASE (78) (tax, immigration records; terrible reasoning)

D. Prior Convictions

(1) Historical: The Luck Case and the FRE

- Note 1 on Luck Case (78)

(2) The Balancing Process and the Automatic Admit

- FRE 609(a)(1)-(2); *UNITED STATES V. SMITH* (79) (armed robbery: prior attempted robbery)

(3) What Is an Admissible Conviction?

- FRE 609(b)-(e); *UNITED STATES V. ESTES* (81) (remote conviction, impersonating public official); Notes 2-4 (81); PROBLEM 4B (impeaching the career criminal) (82)

E. Character of a Witness for Truthfulness

- FRE 608(a), 608(b)(2); *OSBORNE V. UNITED STATES* (83) (robbery co-conspirator's reputation; exclusion harmless error)

F. Repairing Credibility

(1) Rebutting Impeaching Attacks

- Opponent can contradict or rebut the impeachment (or the underlying fact)

(2) Prior Consistent Statements

- Reconsider this concept. We considered the hearsay aspects earlier (when they're admissible for truth); now, how can they be used as to credibility?

G. Sequestration of Witnesses

- Rule 615 (exclusion); Note 1 (84)

XI. LAY AND EXPERT OPINION EVIDENCE

A. Admissible Lay Opinions: (1) "Rationally Based on Perception" and (2) "Helpful to a Clear Understanding"

- FRE 602, 701; Note 1 on *Virginia Ry. case* (85) (common law; collective facts); NOTE 2 ON *BALTIMORE & OHIO RR. V. SCHULTZ* (85) (reasons for common law rule)

B. Expert Testimony

(1) Admissibility of the Opinion: When (1) "Specialized Knowledge" Will (2) "Assist" and the Witness Is (3) "Qualified" by (4) "Knowledge, Skill, Experience, Training or Education"

- FRE 702; *UNITED STATES V. JOHNSON* (86) (marijuana expert)

(2) The Three Permissible Factual Bases: Facts "Perceived," Facts "Made Known at" Trial, or Facts "Made Known before" Trial

- FRE 703, 704, 705; WILSON V. CLARK (88) (opinion based on medical records etc.) and Note (90); PROBLEM (90) (admissibility of "facts and data" under 703)

XII. SCIENTIFIC EVIDENCE (AND NON-SCIENTIFIC EXPERTS)

A. The Frye Test: "General Acceptance"--An Application That "Crosses the Line [from] Experimental [to] Demonstrable"

- Historical Notes 1-2 on Frye case (93) (to be covered by lecture)

B. Rule 702

(1) The Daubert Standard

- FRE 702, 403; DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC. (93) (the "fit" and "reliability" requirements)

(2) Technical, Behavioral, "Show-and-Tell," and Lay Experts

- Kumho Tire Co. v. Carmichael (98); Note 1 following Kumho (103)

(3) Applying Daubert and Kumho

- NOTES ON INTERPRETATION OF FIT AND RELIABILITY (104); PROBLEM 6A (polygraph) (105); Notes on Procedural Questions Raised by Daubert (107); FRE 1101(d) (when rules inapplicable)
- State v. Whitley (108) (admissibility of DNA results from PCR-STR method) (skim only) (Note: Court decisions about DNA methods include 3 major types: RFLP, PCR, and PCR-STR, the newest. We will return to DNA later in the course; for now, just read for the basic idea).
- POOSHS V. PHILIP MORRIS (112) (mental health expert) and Notes; Rule 704; Note (115); Notes on Syndromes (116)
- United States v. Scott (117) (even fingerprints require a Daubert-Kumho hearing); PROBLEM: HAAKANSON V. ALASKA (chapter end)

XIII. PRIVILEGES

A. Introduction

- Introduction (207)

B. The Attorney-Client Privilege

(1) Basic Conditions for Claiming Privilege

- AMERICAN NAT'L WATERMATTRESS CORP. V. MANVILLE (208) (lay investigator)

(2) Corporations, Other Entities, Multiple Parties

- FRE 501; UPJOHN CO. V. UNITED STATES (210) (rejecting control group test)

(3) Assertion and Waiver; Disclosure

- Notes on Disclosure 1-3, 5 (215); FRE 502 (skim Notes on Joint Defense (217))

(4) Confidentiality, Limits, Exceptions

- IN RE GRAND JURY (897) (identity; crime/fraud); California Statute (Note 4, 219); PROBLEM 1 (219) (divorce client); PROBLEM 2 (220) (get rid of the weapon); Problem 3 (220) (wrongful conviction); PROBLEM 4 (corporate privilege: what protection to individual?)

(5) The Texas Rules

- TEX. R. EVID. 503 (Photocopied Supp.)

C. The Marital or Spousal Privileges; The Three Types: Communication, Testimonial, and Adverse

- Trammel v. United States (221) (abolishing adverse privilege); TEX. R. EVID. 504 (photocopy); PROBLEM (224) (Warren Moon)

D. Psychotherapists and Social Workers: A Case Study in Defining Privileges

- JAFFEE V. REDMOND (225) (recognizing under 301); TEX. R. EVID. 501 (rules only); 510 (mental health info)

XIV. JUDICIAL NOTICE

- Introduction (233)

A. Adjudicative Facts in Civil Cases

- FRE 201; SHAHAR V. BOWERS (233) and Notes 1, 2 (235); PROBLEM (235) (E. coli)

B. In Criminal Cases

- United States v. Hernandez-Fundora (235) (criminal cases; U.S. "territory")

XV. BURDENS OF PROOF AND PRESUMPTIONS

A. Burdens

- Notes 1-2 (237)

B. Presumptions in Civil Cases

- FRE 301-302
- Notes 2-3 (238); McNulty v. Cusack (240) (mandatory presumption, rear-end collision); HINDS V. JOHN HANCOCK (241) (presumption vs. suicide--rebuttal); PROBLEM (245) (How Do Presumptions Work?)

C. In Criminal Cases

- Note 3 (246) (non-conclusiveness)

Fourth (and Final) Hands-On Session: More Problems Requiring Performance about Complex Evidence Issues

- READ EVIDENCE PROBLEM SET NO. 2 IN PART SIX OF THE EVIDENCE PRACTICE SUPPLEMENT, BUT ONLY PROBLEMS D, I, M, N, and O (pp. 84-85, 88, 89-92) and consider how to handle each one.

Several groups of students will be assigned to perform solutions in class. All students, however, will be responsible for understanding the issues and solutions.

XVI. TEXAS RULES THAT DIFFER IN IMPORTANT WAYS

- TEXAS RULES (photocopy)

XVII. ANALYZING PRETRIAL ISSUES IN ONE CASE

- READ PART TWO OF THE EVIDENCE PRACTICE SUPPLEMENT (pp. 15-46). Be ready to discuss the issues and arguments in class.

OBJECTIVES OF EVIDENCE COURSE (PROFESSOR CRUMP)*

I. PRIMARY OBJECTIVES

1. To give the student a firm working knowledge of the Federal Rules of Evidence, so that the student can use them in the courtroom or in other legal proceedings.
2. To give the student a knowledge of important differences between the Federal Rules and the Texas Rules of Civil Evidence or Texas Rules of Criminal Evidence.
3. To begin establishing familiarity with techniques for the effective presentation or exclusion of evidence.
4. To place evidence issues in context by illustrating other procedures in litigation, such as pleadings, discovery, summary judgment, jury selection, etc.

II. SECONDARY OBJECTIVES

5. To assist the student in understanding the policies that underlie the Rules and the ways in which appellate courts interpret them.
6. To establish an understanding of the constitutional restrictions on admittance and exclusion of evidence.
7. To help the student understand litigation and trial practice generally, by relating the evidence course to the courses in civil procedure and trial practice.

III. TERTIARY OBJECTIVES

8. To teach something about the way in which statutory materials are drafted and interpreted (i.e., how to interpret "rules" generally, as opposed to court opinions). [It is said that law school does not focus carefully enough on how to read statutes or rules.]

MY POLICIES FOR CONDUCTING CLASS -- PROFESSOR CRUMP

1. Welcome to the Course in Evidence! This is a wonderful subject: interesting, challenging, and practical. Four hours provides time to consider the subject thoroughly. Certain class policies are appropriate, however, to use our time effectively. Please understand that this is the purpose of the following policy statements and the reason for their business-like tone.

2. You Need Not Communicate With the Professor Concerning the Reasons for Your Absences. If you are absent, I always assume you have a good reason. As long as you comply with the law school's attendance requirements, I don't need to know the reason.

3. You Need Not Communicate With the Professor Concerning Your Unpreparedness. If you are unprepared on a given day when I happen to call on you, my approach is to go ahead and call on you. Actually, it is my request that you not inform me of unpreparedness, first because I cannot keep track of it, and second because the (relatively mild) sanction for occasional unpreparedness is that you must stand up and admit it. I assume (and I think your classmates assume) that even good students may be unprepared occasionally. I may call on you again in the near future. (I do begin to take unpreparedness more seriously if it occurs repeatedly.)

4. It Is Your Responsibility to Read Forward in the Casebook according to the Syllabus so as to Be Prepared for Class. Unless I otherwise indicate, we shall go straight through the syllabus. There will be a few occasions when we shall deviate, and I'll try to let you know about that well in advance.

5. Hold Up Your Hand Before Talking; Realize That the Professor Can't Always Recognize Everyone and Must Determine When We Must Move Along. I have to consider the need to cover the material and the need to bring a variety of students into the discussions. Therefore, please hold up your hand before speaking out. Please understand if we have to cut off discussion and move on.

6. SPEAK LOUDLY When You Are Called On. Every student must speak loudly enough for everyone else to hear. Conversely, one of the skills you should learn is how to speak extemporaneously and persuasively on difficult subject matter. Even if you're not sure of the answer, it's best if we all can hear you.

7. Evidence Practice Supplement. The course will begin with the "Baker & Botts Outline" in the Supplement. Then we shall take up the Casebook and Rules. From time to time we shall return to the Supplement for certain other matters, including individual assignments for the handling of various items of evidence. Specifically, each student will be assigned to perform two (2) hands-on exercises in class.

8. Syllabus; Assignments; Capitalized Readings. To cover the material effectively, I have distributed a syllabus and assignment sheet. The syllabus contains capitalized material, which is to be emphasized. Please come to class PREPARED particularly for the capitalized readings; you should find that the assignments of these capitalized readings, and the effort to be prepared on them, are not excessive.

9. Class Plan. You will find that I make strenuous efforts to keep close to the assignments I have planned. That is because if we do not cover the material in early classes, we will be forced to omit important material later.

10. Examination and Class Performance as Ingredients of Grade. The primary determinant of your grade will be your performance on the examination, which shall be subject to the professor's deduction of up to one grade increment (e.g., A to A-) for either failure to perform evidentiary predicates at a minimally satisfactory level or for chronic unpreparedness, or addition of up to one increment for particularly good contributions to the class. The examination will be closed book except for a clean photocopy of the Federal Rules of Evidence, which must be free of all other materials including highlighting or notes.

11. Attendance. You must comply with the law school's attendance requirements. A few students in the past have gotten the (erroneous) impression that there is no enforcement, and therefore (also erroneous) that it's all right to violate the policy. This is wrong; it misinterprets the honor system. THE HONOR CODE APPLIES TO THE ATTENDANCE RULE; you will be required to affirm compliance with the rule to take the examination. (Also, I have had to deal occasionally with students who I knew obviously had not complied because I saw that they never were present, and this is unpleasant for me as well as the student.)

12. Disability. Any student with a disability requiring accommodation should explain both to the professor (except as to the exam, for which accommodation is to be arranged through the law school administration).