

SYLLABUS AND CLASS PLAN FOR EVIDENCE

Prof. Janicke

Fall 2014

Description of the Course:

The course will concentrate on students obtaining a working understanding of the Federal Rules of Evidence. (Most states' rules, including those of Texas, are closely modeled on the Federal Rules; any significant differences in the Texas rules will be discussed in class.)

The syllabus and class plan are built around a combination of materials:

(1) The Mueller-Kirkpatrick 7th edition is largely a book of fact-pattern problems drawn mostly from actual litigations, plus some case opinions. It is in general a very fine book, but I think the “notes” are too detailed for an initial course in Evidence. My recommendation is that you save time by omitting the notes from your reading, unless you have trouble understanding the case or solving the problem.

(2) Exercises in the course packet are designed to illustrate the fundamentals of presenting evidence in an effective and non-leading way. I will be adding to these during the semester, and supplementing the below class schedule accordingly.

Day-to-day preparation is essential. The subject is too large, and moves too quickly, for cramming.

Quizzes

There will be a number of short multiple-choice quizzes during the semester, worth a total of 10% of the final grade.

Class Plan

The following class plan is correct for topics and materials but *approximate* as to dates. Number references are to pages of Mueller & Kirkpatrick (7th ed.) unless otherwise stated:

Section 1: Aug. 26 – Sept. 18

Chap. 1: Evidence Law and the System: PowerPoint only. You are not required to read Chapter 1 of Mueller & Kirkpatrick, which largely tracks my Introductory PowerPoint.

Chap. 2: Relevance: PowerPoint; State v. Chapple (69); Old Chief (72); Prob. 2E (79); Prob. 2F (79); Prob. 2G (80).

Chap. 3: Introduction to Hearsay: PowerPoint only. [We will postpone casebook materials from Chaps. 3 and 4 until later in the course]

Chap. 5: Relevance Revisited (special exclusions): PowerPoint; Prob. 5A (418); Prob. 5G (431); Prob. 5I (434); Prob. 5K (439); Prob. 5M (444); Prob. 5N (448); Prob. 5P (451); Tuer (453); Prob. 5Q (461); Prob. 5S (465); Prob. 5T (465).

Chap. 6: Competency of Witnesses: PowerPoint; Lightly (473); Fowler (475); Ricketts (476); Rock (479); Prob. 6A (490); Tanner (490); Prob. 6B (495); Prob. 6C (495); Prob. 6D (496); Prob. 6E (496); Prob. 6F (497).

Chap. 7: Direct and Cross Examination Revisited: PowerPoint; Baker (501); James Julian (506); Prob. 7B (519). Film clip: from *A Place in the Sun*, Direct and cross

Section 2: Sept. 23 - Oct. 28

Chap. 8: Impeachment: PowerPoint; Abel (523); Prob. 8A (530); Lipscomb (547); Prob. 8E (567); Exercise #7; Webster (569); Harris (572); Jenkins (578); Havens (589); Prob. 8G (595).

Chap. 9: Opinion evidence: Powerpoint; Prob. 9A (616); Prob. 9B (616); Prob. 9C (624); Daubert (638); DuPont v. Robinson [posted materials]; Prob. 9D (663); film clip from *My Cousin Vinny* on expert witness testimony.

[Omit Chapter 10]

Chap. 11: Judicial Notice: PowerPoint; Prob. 11A (733); Prob. 11B (733); Prob. 11D (734); Virgin Islands (734); Prob. 11G (741).

Chap. 12: Privileges: PowerPoint; Prob. 12A (759); Prob. 12B (761); Prob. 12C (763); Meredith (765); Prob. 12D (772); Suburban (774); Upjohn (778); Osterhoudt (787); Zolin (792); Prob. 12E (799); Exercise #9; Texas privilege rules (posted materials -- 500 series of rules); Prob. 12H (835); Griffin (837); Prob. 12I (841); Doe (842).

Chap. 13: Authentication: PowerPoint; Prob. 13B (860); Prob. 13E (868); Prob. 13J (872).

Chap. 14: Best Evidence Rule: PowerPoint; Prob. 14E (890); Prob. 14F (890); Meyers (891).

Section 3: Oct. 30 – Nov. 13

Return to the Hearsay Rule in Chap. 3: Review the PowerPoint on Introduction to Hearsay, from early in the semester.

Chap. 3: Hearsay (resumed). Chap. 3 PowerPoint. Prob. 3A (108); Prob. 3B (110); Cain (117); Check (119); Prob. 3C (124); Prob. 3D (124); Prob. 3E (125); Prob. 3F (126); Prob. 3G (126); Prob. 3H (128); Prob. 3J (139); Pacelli (142); Betts (147). M-K's Hearsay "Quiz" (non-graded) (pp. 150-152) – but omit ## 4, 6, 15, 18, 24, 25, 30, 34. Film clip: hearsay from sheriff in *To Kill A Mockingbird*.

Section 4: Nov. 18 – Dec. 4

Chap. 4: Definitional exceptions to hearsay: PowerPoint Chap. 4 Part 1; Smith (159); Prob. 4A (164); Motta (178); Prob. 4B (183); Prob. 4D (192); Hoosier (194); Doyle (196); Prob. 4F (202); Mahlandt (204); Prob. 4H (216).

For statements that ARE hearsay, basic Rule 803 exceptions to the rule excluding hearsay: PowerPoint Chap. 4 Part 2; Nutall (219); Arnold (224); Hillmon (240); Pheaster (243); Blake (252); Petrocelli (267); Melendez-Diaz (287).

Rule 804 -- exceptions to the rule excluding hearsay when the person who made the out-of-court statement is unavailable for trial: PowerPoint Chap. 4 Part 3; Prob. 4L (307); Prob. 4M (333). The catch-all exception (Rule 807): Weaver (355). Sixth Amdmt. confrontation clause as a bar against hearsay being used by prosecutors: Crawford (372).

CLASS PREPARATION

I will randomly call upon you in class. I will have the discretion to raise or lower any student's final grade by one grade level. This aspect of your grade is obviously not anonymous.

NOTE TO STUDENTS WITH DISABILITIES

The faculty, staff and administration of the Law Center want to provide every reasonable accommodation to students with disabilities, including learning disabilities. For detailed information, please obtain a copy of the disabilities handbook available at Student Services. If you have special needs, please contact Student Services or see me.