Course Description

This course aims to provide you with a working knowledge of the Federal Rules of Evidence as well as the Texas Rules of Evidence. Texas, like most states, has adopted a set of evidence rules based on the federal rules, so we will refer to the Texas rules only when they significantly differ from the federal rules.

The rules of evidence govern the introduction of all types of evidence (e.g., testimonial, tangible, documentary, photographic, demonstrative, or scientific). In order to fully comprehend the rules as applied during a trial it is essential to study them in the context of litigation. We will therefore study the application of the rules through a series of problems interspersed throughout the course. These problems call on you to play the role of an attorney who is handling an evidentiary issue in court. You may be required to lay the foundation for admission of evidence or to object to the attempt to admit evidence by opposing counsel. You may also be called upon to offer direct- or cross-examination of a witness or to object to such testimony.

Attendance Policy

Students must attend 80% of the classes taught. In other words, you may miss no more than six classes. An attendance sheet will be circulated at the beginning of each class. Since you may have to be absent due to illness, family emergency or other pressing matters, please use your absences carefully so as not to run into a problem abiding by this rule. It is not necessary to notify me if you will be absent.

Classroom Administration

You are expected to be prepared to discuss the lecture material that I assign for each day of class. I will call on you at random. Please be prepared to give a clear recitation of the facts of the case and the court’s decision or to offer an educated response to the practice problems in the book. If you will not be prepared for class, I ask that you let me know by email (sgthompson@Central.uh.edu) before class.

Study Guides
I often get questions about what study guides I recommend. Unfortunately, I cannot suggest a particular guide as being “best.” All study guides that cover the Federal Rules of Evidence should be helpful. You should try to find something that suits your style of studying. Some students like audio recordings. Others prefer flash cards. One student showed me a hearsay flowchart that she found helpful.

The library has other resources available as well. Treatises can be helpful as they explain in ordinary prose what casebooks teach through cases.

**Computer/Tablet/Cellphone Use in the Classroom**

During class, your computers, tablets, and cellphones must be used only for course-related purposes. Unless otherwise announced in class, you may use your computers to take notes and look up statutes, rules, and other materials that we are discussing.

**Non-course-related use of e-mail, texting, or the internet, including Twitter, Facebook, chat programs, or other comparable communication is not allowed.** Using your computer, tablet or cellphone for non-course purposes can be distracting to your fellow students. Sanctions for violating this provision can include adjusting a student’s final course grade downward or suspending a student’s right to use a computer in this class, and such sanctions may be imposed without warning at my sole discretion. If you have a genuine emergency that requires you to engage in non-course communication during class, please leave the room to do so.

**Final Examination**

The final examination will be a three-hour multiple choice and true/false exam. It will be an open-book exam. You will be expected to know the Federal Rules that we study in this course and only the Texas Rules that are highlighted in this course.

The exam will consist entirely of multiple choice and true-false questions. The questions will include approximately an equal number of civil and criminal law applications of the rules. Many of the rules apply equally to both civil and criminal, but there are some special rules that apply to criminal cases, mostly pertaining to certain constitutional rights.

Unfortunately, I am unable to provide you with a practice exam. The exam questions are hard to write and often require tweaking over the years. Thus, your exam will consist of many old questions that I’ve used in the past as well as many new ones. I simply don’t have an old test that I can share with you.

**“Open Door” Policy**

Please let me know if you would like to come by and see me, and I will happily make an appointment to see you. My office is located on the first floor of BLB in room 122, and the phone number is 713-743-2134 (office) and 713-851-4393 (home office). I can also be reached
by e-mail at sgthompson@Central.uh.edu. Feel free to ask me questions by email or phone if that is easier for you. If I am otherwise in the office, please feel free to stop by my office anytime.

I LOVE meeting with students outside of class and consider it an important part of my job. Please do not hesitate to come by and see me to discuss evidence issues, career plans, your course schedule, or whatever is on your mind.

**Course Materials**


2. “Supp.” refers to a supplementary collection of readings that will be provided electronically on Blackboard.

3. “FRE” refers to the **Federal Rules of Evidence** (Dec. 2017) found at: 

4. “TxRE” refers to the **Texas Rules of Evidence** (Jan. 2018) found at: 
   Note: The Texas Rules will be assigned whenever they significantly differ from the FRE.

5. “TxCCrProc.” refers to the Texas Code of Criminal Procedure found at: 

6. “TxRCiv.Proc” refers to the Texas Rules of Civil Procedure found at: 

7. “CALI” refers to the online practice tests on the CALI website at 
   UHLC has a subscription through the law library. Your authorization code is HOUSTUstu90, and you should use your UH e-mail as your logon ID. The password can be personalized. If you have trouble logging in, please consult a law librarian for assistance.

**Cautionary note:** Please use the latest versions of the rules as I have provided in the above URLs. Outdated versions may be found online, so please be check the publication dates before using them to study.
Preparing for Class

In class we will discuss the application of the rules to the various problems in the book. You should pay special attention to the language of the applicable rules. I will assign the Texas rules when they vary significantly from the Texas rules.

I will not call on you to recite the cases in the book. The cases are assigned to enable you to solve the problems. You may want to refer to the cases in explaining your answers to the problems.

The CALI exercises are assigned so that you can actively test your understanding of the materials as we go along. I have reviewed the exercises and have only assigned those that I believe will be helpful. (In future years, I may make the exercises mandatory and track each student’s performance. For this year, I am assigning them as recommended reading. I will request your feedback at the end of the semester to help me evaluate these exercises.)

Syllabus/Reading List

8/21
Relevance
T: 3-27; FRE: 102, 104, 401, 402, 403

8/23
Relevance
T: 28-68; FRE 105, 106, TRE 106, 107
Supp: “Problems to accompany pages 48-68”

8/28
Authentication
T: 69-107; FRE: 901, 902; TxRE: 902(10) (includes sample affidavit for self-authenticating business records).

In-class exercise: Be prepared to offer two types of evidence: a photograph and a gun into evidence. For guidance, see Supp.: “How to Offer Evidence: Basic Predicates.”

8/30
Relevance and Prejudice Refined—Character Evidence
T: 109-151 (skip Prob. 3-2 and 3-3(e)), FRE: 404, 405.

9/4
Relevance and Prejudice Refined—Character Evidence, cont’d
T: 151-198; FRE: 406-415; TxRE 407 (“recall letters” are admissible to prove product defect), 410 (different treatment of nolo contendere pleas and no provision for criminal perjury cases). Note: Texas counterpart to FRE 414 found in TxCCrProc. 38.37.

9/6
The Rule against Hearsay
The Concept of Hearsay—Please answer the “initial questions” at a minimum. You can proceed to the “average difficulty questions” and “difficult questions” if you want to reinforce your understanding of the basic concepts.

9/11

The Rule against Hearsay—What is an Assertion?

T: 473-498; TxRE: 801(c) (no federal counterpart; incorporates the reasoning of Wright v. Tatham); : Johnson v. State, Mosley v. State; Supp: Hearsay Quiz and Hearsay Quiz Answers.

9/13

The Rule against Hearsay—Statements that are called “Not Hearsay” (but that actually are hearsay)—801(d)(1) exceptions

T: 499-518; FRE 801(d)(1); TxRE: 801(e)(1)(A) (exception for grand jury testimony). We will discuss any questions you have from the Hearsay Quiz in your Supplement.

CALI: Federal Rule 801(d) and Multiple Hearsay—Test your understanding of this lesson by answering the questions under the heading “Federal Rule 801(d)(1)”.

9/18

The Rule against Hearsay—Statements that are called “Not Hearsay” (but that actually are hearsay)—Opposing Party Statements under 801(d)(2)

T: 518-544; FRE 801(d)(2), 104; TRE 601(b)

CALI: Federal Rule 801(d) and Multiple Hearsay—Test your understanding this lesson by answering the questions under the heading “Federal Rule 801(d)(2)”.

9/20

The Rule against Hearsay--Unrestricted Hearsay Exceptions

T: 544-578; FRE 803 (1)-(4); Supp: Texas Court Refines Exception for Statements Made for Medical Treatment.

9/25

The Rule against Hearsay--Unrestricted Hearsay Exceptions

T: 578-609, FRE 803 (4)-(8), 612; TxRE 61, 803(6) (self-authenticating business records); Supp: Problem 1

Note: Compare writings used to refresh memory under Rule 612 to offering past recollections recorded.

In-class Exercise: Please be prepared to offer the evidence at issue in Problem 1 in your Supplement. You may want to refer to Supp.: Basic Predicates and
Evidentiary Foundations--Past Recollection Recorded and Present Recollection Refreshed or Revived.

CALI: Four FRE 803 Hearsay Exceptions: Availability Immaterial—Test your understanding of 803 (1), (2), (3), and (6).

**9/27**

**The Rule against Hearsay—Unrestricted Hearsay Exceptions**

T: 609-640; FRE: review all of the exceptions in 803

In class Exercise: Assume that your opponent has just offered the testimony of an expert witness on direct examination, and the testimony is inconsistent with statements found in a learned treatise. How would you go about offering the statements from the learned treatise into evidence?

In-class Exercises: (1) offer a business record through the custodian of the records; (2) offer a business record as a self-authenticating document; (3) use a witness’s statement to refresh her recollection; and (4) when her recollection cannot be refreshed, offer the writing as a recorded recollection.

**10/2**

**Restricted Hearsay Exceptions**

T: 640-675, FRE 804

**10/4**

**Restricted Hearsay Exceptions**

T: 675-708; FRE 804, 807

CALI: The Hearsay Rule and Its Exceptions—Test your understanding of the hearsay exceptions.

Optional practice problems: Supp: Hearsay Exceptions Quiz; Hearsay Exceptions Quiz Suggested Answers.

**10/9**

**Hearsay and the Confrontation Clause**

T: 708-709, 712-745

**10/11**

**Hearsay and the Confrontation Clause**

T: 745-802

CALI: Confrontation of Hearsay Declarants

**10/16**

**Witness Qualification, Competency, and Examination**

T: 199-230; FRE: 601, 602, 603, 606; TxRE: 601 (insane may not testify; children and others who may lack intellect must be qualified by the court)
10/18  **Witness Qualification, Competency, and Examination**

T: 230-260; FRE: 602, 611, 612, 614, 701, TxRE: 611(b) (no limit on scope of cross-examination).

10/23  **Witness Qualification, Competency, and Examination—Expert Witnesses**


**CALI:** *Expert and Opinion Evidence*

10/25  **Witness Qualification, Competency, and Examination**

T: 299-323; FRE 615, 703-706; TxRE: 704 (unlike FRE, no prohibition on expert opinions regarding criminal defendant’s mental state). Note: TxCrProc allows expert testimony on criminal defendant’s state of mind in showing reasonableness of self-defense in murder case (38.36(a)) and if defendant was victim of family violence and deceased was the abuser (38.36 (b)(1-2).

10/30  **Impeachment and Rehabilitation of Witnesses**

T: 869-901; Supp: “What are Crimes of Moral Turpitude?”; FRE: 608, 609; TxRE: 608(b) (no cross-examination or specific instances of misconduct); 609(a) (must provide public record; also applies to crimes of “moral turpitude”), 609(c)(2) (no federal counterpart).

**Note:** I have developed my own understanding of the definition of “moral turpitude” as defined by the Texas courts. I call it “the drunken cowboy rule.” In effect, all the naughty things that a bunch of good ‘ol boys would do are not crimes of moral turpitude. In other words, “Aw, shucks, boys will be boys.” For example, these things are NOT crimes of moral turpitude: wranglin’ with other cowboys (disorderly conduct, assault), and having a few drinks with the boys (public intoxication, DUI). Crimes of moral turpitude consist of the acts that a cowboy’s mama would slap him upside the head for doin’. For example, lyin’ and cheatin’ (perjury, fraud, theft) and “hittin’ gals” or otherwise harming them (domestic violence, sexual crimes including prostitution).

**CALI:** *Character Evidence Under the Rules*—Test your knowledge of character evidence (studied earlier in the course) and ensure that you can distinguish it from witness impeachment.

11/1  **Impeachment and Rehabilitation of Witnesses**
T: 902-932; FRE 601, 607, 610, 613; TxRE: 613(a) (retains traditional rule requiring a foundation to be laid prior to use of prior inconsistent statement), 613(b), (c) (no federal counterparts).

**CALI: Impeachment and Rehabilitation of Witnesses—Review Questions.**
**CALI: Preliminary Factfinding Under Rule 104** (These are worthwhile questions to review materials from the first week of class. Having completed all the lessons in this course, you are now in a better position to try to tackle these questions.)

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<th>Topic</th>
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<td>11/6</td>
<td><strong>Privileges—Attorney-Client Privilege</strong>&lt;br&gt;T: 325-360; FRE: 501, 502; TxRE: 503, 511. Skim all of TxRE Article V.</td>
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<td>11/8</td>
<td><strong>Privileges—Spousal Privileges and Others</strong>&lt;br&gt;T: 360-406; TxRE 504, 510, 513</td>
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<td>11/13</td>
<td><strong>Judicial Notice</strong>&lt;br&gt;T: 803-827; FRE 201; TxRE 202-204; Supp.: “How to Offer Evidence: Basic Predicates,” Part IV</td>
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<td>11/20</td>
<td><strong>Presumptions and Burdens of Proof</strong>&lt;br&gt;T: 829-867.</td>
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