SYLLABUS AND CLASS PLAN FOR EVIDENCE

Prof. Janicke

Fall 2015

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 Federal Rules are used in the multistate bar exam.

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

(1) The Mueller-Kirkpatrick 8th 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 after-case or after-problem “notes” are more detailed than needed for an initial course in Evidence. My recommendation is that you save time by omitting these notes from your reading, unless you have trouble understanding the case or solving the problem.

(2) PowerPoints. There is at least one for each chapter. We will go through each PowerPoint in sections, with the Mueller-Kirkpatrick cases and problems interspersed where indicated.

Class Preparation

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

Quizzes

There will be three short multiple-choice quizzes during the semester, spaced through the semester at pre-announced dates, and in the aggregate worth 15% 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 (8th ed.) unless otherwise stated:

Section 1: Aug. 24 – Sept. 16

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; Old Chief (part 1) (56); Prob. 2A Too Much Wax (67); Prob. 2B Going Too Fast (68); Prob. 2C Boys On the Bridge (68); Prob. 2D Flight and Guilt (69); State v. Chapple (72); Old Chief (part 2) (75); Prob. 2E Battered Wife (83); Prob. 2F Exploding Gas Tank (84); Prob. 2G My Insurance (85); Prob. 2H Power Rollback (87); Prob. 2I Raid on Cedar Woods (89).

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 Red Dog part 1(425); Prob. 5B Red Dog part 2 (427); Prob. 5C Red Dog part 3 (429);
Prob. 5F Drug Sale (439); Prob. 5G He Came Running In (442); Prob. 5H Undercover Cop Trick (444); Prob. 5I It Was An Accident (446); Prob. 5J I Didn't Know They Were Stolen (448); Prob. 5K Ordeal of Leslie or Fred (452); Prob. 5M I Told Him (458); Prob. 5N Death On Highway (462); Prob. 5P Was He Served (465); Tuer (467); Prob. 5Q Two Potato (476); Prob. 5S I Used His Stuff (480); Prob. 5T Just Keep Them Out of It (482).

Chap. 6: Competency of Witnesses: PowerPoint; Lightly (490); Fowler (492); Ricketts (495); Rock (498); Prob. 6A Outside Influence (509); Tanner (510); Prob. 6B Refusal to Take the Stand (515); Prob. 6C The Jury View (515); Prob. 6D The Bomber (515); Prob. 6E $800,000 Error (516).

Chap. 7: Direct and Cross Examination Revisited: PowerPoint; Baker (519); James Julian (525). Film clip: from A Place in the Sun, Direct and cross

Section 2: Sept. 23 - Oct. 28

Chap. 8: Impeachment: PowerPoint; Abel (542); Prob. 8A Hired Gun (550); Lipscomb (547); Manske (557); Prob. 8B Hit the Deck; Prob. 8C History of Lying (572); Prob. 8D Faker Thug (575); Luce (577); Prob. 8E He's Trying to Sandbag Us (585); Webster (588); Harris (592); Jenkins (599); Havens (609); Prob. 8G Have You Ever Sold Narcotics Before (617); Medical Therapy Sciences (622).

Chap. 9: Opinion evidence: Powerpoint; Prob. 9A It Was My Impression (640); Prob. 9B Watchful Neighbor (642); Prob. 9C They Saw It the Same Way (651); Daubert (666); DuPont v. Robinson [posted materials]; Prob. 9D They Become Anxious (694); Prob. 9E We Found A Match (702); film clip from My Cousin Vinny on expert witness testimony.

[Omit Chapter 10]

Chap. 11: Judicial Notice: PowerPoint; Prob. 11A Dry Pavement (765); Prob. 11B
Subpoena (765); Prob. 11D Football Fan (766); Prob. 11E Delayed Shipment (766); Virgin Islands (767); Prob. 11G Deadly Weapon (774).

Chap. 12: Privileges: PowerPoint; Prob. 12A Bum Rap (794); Prob. 12B Bail Jumper (796); Prob. 12C Tipsy Client (798); Meredith (799); Prob. 12D Failed Venture (807); Suburban (809); Upjohn (813); Osterhoudt (823); Zolin (828); Prob. 12E Reluctant Lawyer (836); Texas privilege rules (posted materials -- 500 series of rules); Trammel (859); 12G Hit-and-Run (866); Montgomery (869); Prob. 12H Non-cooperative Driver (877); Griffin (879); Prob. 12I He Claimed the Fifth (883); Prob. 12J Inculpatory Diary (884); Doe (884).

Chap. 13: Authentication: PowerPoint; Johnson (898); Bagarich (901); Prob. 13B Land-Sale Contract (903); Prob. 13C Wizard and Incriminating Email (904); Prob. 13E Photograph (912); Prob. 13J Death Certificate (916).

Chap. 14: Best Evidence Rule: PowerPoint; Prob. 14E XXX Rated Movies (939); Prob. 14F Surveillance Photograph (940); Meyers (940).

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 full PowerPoint. Prob. 3A Three See a Robbery (114); Prob. 3B Kenworth and Maserati (116); Cain (125); Check (128); Prob. 3C Blue Car (134); Prob. 3D Any Way You Like It (135); Prob. 3E Whose Corn (136); Prob. 3F I'm From the Gas Company (137); Prob. 3G Eagle's Rest (138); Prob. 3H Anna Sofer's Will (140); Prob. 3J My Husband Is in Denver (148); Betts (158). M-K’s Hearsay “Quiz” (non-graded) (pp. 161) – 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 (167); Prob. 4A I Got Amnesia (172); Motta (183); Prob. 4B Fire In the Warehouse (190); Prob. 4D His Master's Car (200); Hoosier (204); Doyle (207); Prob. 4F Couldn't He See the Boy (213); Mahlandt (218); Prob. 4H Drugs Across the Border (231).

For statements that ARE hearsay, we now treat Rule 803, the exceptions to general Rule 802 (the one that excludes hearsay: PowerPoint Chap. 4 Part 2; Nutall (238); Arnold (242); Hillmon (261); Pheaster (264); Blake (276); Petrocelli (291); Norcon v. Kotowski (296); Prob. 4N You Can't Offer a Police Report (318).

Rule 804 -- more exceptions to the rule excluding hearsay, usable only when the person who made the out-of-court statement is unavailable for trial: PowerPoint Chap. 4 Part 3. Barber v. Page (330); Prob. 4L The Govt. Let Her Go (334); Prob. 4M He Had Nothing To Do With It (358). The catch-all exception (Rule 807): Weaver (372). Sixth Amdmt. confrontation clause as a bar against hearsay being used by prosecutors: Crawford (389); Davis (404).