

# Evidence – Spring 2024

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Office Hours t/b/a

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**Course Objectives:** At its core, evidence refers to the things that a judge or jury may consider when making a decision, either at trial or in preliminary motions or hearings. Oral testimony from witnesses, recordings, pictures, email and text messages, written documents, and information from social media websites are all examples of these things, but this list is not exhaustive. As a practitioner, you want to either get evidence in or to keep it out. In order to do so, you need to be competent with the rules.

In this course you will learn when and how to interpret and apply the Federal Rules of Evidence (and the Texas Rules of Evidence when they differ from the federal rules). At the end of the course, you will be confident in your ability to interpret and apply these rules in practice, as well as on the MBE and MEE portions of the bar examination.

**Textbook:** Rent or buy Deborah J. Merritt and Ric Simmons, *Learning Evidence: From the Federal Rules to the Courtroom* (5th ed. 2022) (ISBN: 978-1-68467-578-4).

**Assessment.** You will be assessed based on your completion of the following assignments:

Assignment	Percent of Final Grade	Date
Interim Assessment 1 Relevance   Prejudice   Character Evidence	15%	February (date t/b/a)
Interim Assessment 2: Hearsay and Hearsay Exceptions	15%	April (date t/b/a)
Cumulative Final Exam	70%	May (date t/b/a)

The course is graded anonymously and pursuant to Law Center grading policies set forth in the [UHLC Student Handbook](#). The UHLC Honor Code applies.

**Attendance, Class Recordings, and Class Management.** Class will meet twice each week, face-to-face, and is governed by the Law Center attendance policy. We meet Tuesdays and Thursdays from 6 – 7:30pm. I will record each class on Zoom. Students may attend class virtually up to four times during the semester.

Whether you attend class in person or virtually, please be prepared to discuss the lecture material that I assign each day. I will call on you at random. That said, if you will not be prepared for class one evening, just send an email to me before class to let me know and I'll let you off the hook.

## Inclusion:

- **Preferred Pronouns.** I want to address each of you in a manner that corresponds to your identity. Feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronouns, or if you have concerns about how your classmates or I address you.
- **Reasonable Academic Adjustments/Auxiliary Aids:** The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic

adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES) and Samantha Ary, Academic Records Coordinator at the Law Center. Ms. Ary's office is in the Office of Student Services suite on the second floor of the John M. O'Quinn Law Building. She can be reached at [sary@central.uh.edu](mailto:sary@central.uh.edu) or (713) 743-7466. *Requests for accommodation that involve graded assignments should be directed to Ms. Ary as soon as possible to allow adequate time to process the request.*

### University Syllabus Provisions:

- **Wellness Resources:** The University of Houston offers Counseling and Psychological Services (CAPS) to help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service available at convenient locations and hours around campus: [www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).
- The Texas Lawyers' Assistance Program (TLAP) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to resources about mental health that are of interest to law students: [www.tlahelps.org/law-students](http://www.tlahelps.org/law-students). Check it out!
- **Class Recordings:** I will record classes and post links to these recordings on the class web course as soon as they are available. You may use these recordings for your own studying and notetaking purposes, but please do not share them with anyone without my prior written permission. University procedures require that your failure to comply with these requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.
- **COVID-19:** If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [Student Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19. Students are encouraged to visit the University's [COVID-19](#) website for important information including diagnosis and symptom protocols, on-campus testing, and vaccine information. Please check the website throughout the semester for updates.
- **Vaccinations:** Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](#) and to consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

**Syllabus:** Please consult the course syllabus I will provide on the first day of class for reading assignments and assessment deadlines. By way of example, I expect the class will follow the attached syllabus quite closely.

I look forward to seeing you in class.

Warmest regards,

*Professor Brem*

Week	Class Topic   Reading
1	<p>Introduction to the Study of Evidence</p> <ul style="list-style-type: none"> <li>➤ What are the Federal Rules of Evidence? Where do they come from, when do they apply?</li> <li>➤ Categories of Evidence</li> <li>➤ Admissibility: Raising and Resolving Evidentiary Objections (FRE 101, 1101, 103, 105)</li> <li>➤ Determining Relevance (FRE 401 – 402, 406)</li> </ul> <p style="text-align: center;"><b>Read Chapters 2 – 6</b></p>
2	<p>Relevance &amp; Unfair Prejudice (FRE 403, 407-411, 601 – 606, 607, 611 – 615)</p> <ul style="list-style-type: none"> <li>➤ Excluding Relevant Evidence Based on Policy (FRE 407 – 411)</li> <li>➤ Discretionary Exclusion of Relevant Evidence (FRE 403)</li> </ul> <p style="text-align: center;"><b>Read Chapters 7 – 13</b></p>
3	<p>Putting a Witness on the Stand   Impeachment</p> <ul style="list-style-type: none"> <li>➤ Competence (FRE 601)</li> <li>➤ Personal Knowledge (FRE 602)</li> <li>➤ Miscellany (FRE 603-606)</li> <li>➤ Examining (Lay) Witnesses (FRE 611, 612 – 615)</li> <li>➤ Impeaching a Witness (FRE 607, 611, 613)</li> </ul> <p style="text-align: center;"><b>Read Chapters 14, 16 – 18</b></p> <p>Impeachment   Character Evidence</p> <ul style="list-style-type: none"> <li>➤ Character Evidence &amp; Criminal Convictions (FRE 404(a), 608(b)(1), 609)</li> <li>➤ Miscellany (FRE 608(a), 608(b)(2), 610)</li> <li>➤ Reputation or Opinion Evidence of Untruthful Character</li> </ul> <p style="text-align: center;"><b>Read Chapters 19 &amp; 20, 25 – 27</b></p>
4	<p>Character Evidence   Crimes, Wrongs, and Other Acts</p> <ul style="list-style-type: none"> <li>➤ Character Evidence to Show Propensity (FRE 404(a)(2); 405(a))</li> <li>➤ Crimes, Wrongs, and Other Acts (FRE 404(b))</li> </ul> <p>Relevance   Prejudice   Character Wrap-Up</p> <p style="text-align: center;"><b>Read Chapters 28 and 30</b></p>
<b>Feb</b>	<b>In-Class Interim Assessment</b>
5	<p>Habit   The Rape Shield Law   Sexual Assault &amp; Child Molestation Cases</p> <ul style="list-style-type: none"> <li>➤ Habit (FRE 406)</li> <li>➤ Rape Shield Law (FRE 412)</li> <li>➤ Propensity in Sexual-Assault and Child-Molestation Cases (FRE 413-415)</li> </ul> <p style="text-align: center;"><b>Read Chapters 31 – 33</b></p>
6	<p>Authentication   Judicial Notice</p> <ul style="list-style-type: none"> <li>➤ Authentication (FRE 901, 902)</li> <li>➤ Judicial Notice (201, 901, 902)</li> </ul> <p style="text-align: center;"><b>Read Chapters 59 &amp; 69</b></p> <p>The Rule Against Hearsay (FRE 801(a) – (c) &amp; 802)</p> <ul style="list-style-type: none"> <li>➤ What is Hearsay and Why Don't We Like It?</li> <li>➤ What Do We Mean by "The Truth of the Matter Asserted"?</li> <li>➤ What is an Assertion?</li> <li>➤ What is a Statement?</li> </ul> <p style="text-align: center;"><b>Read Chapters 35 – 38</b></p>
7	<p>The Rule Against Hearsay: Statements That are Called "Not Hearsay" (but actually <i>are</i> hearsay) Under Rule 801 Exemptions (FRE 801(d)(1) and 801(d)(2))</p>

	<ul style="list-style-type: none"> <li>➤ Admissible Hearsay – Chapter 38 Continued</li> <li>➤ Hearsay Exemption: Prior Statements by Witnesses</li> <li>➤ Hearsay Exemption: Statements by an Opposing Party</li> <li>➤ Hearsay Exemption: Statements of Coconspirators</li> </ul> <p style="text-align: center;"><b>Read Chapters 39, 53 and 55</b></p>
8	<p>The Rule Against Hearsay: Unrestricted Hearsay Exceptions (FRE 803(1) – (24); 612)</p> <ul style="list-style-type: none"> <li>➤ Hearsay Exceptions: Present Sense Impressions and Excited Utterances</li> <li>➤ Hearsay Exception: State of Mind</li> <li>➤ Hearsay Exception: Medical Treatment</li> <li>➤ Hearsay Exception: Recorded Recollection</li> <li>➤ Hearsay Exception: Business Record</li> <li>➤ Hearsay Exception: Public Record</li> </ul> <p style="text-align: center;"><b>Read Chapters 40 – 43; 45 – 46 (including chart on page 478)</b></p>
<p><b>SPRING BREAK</b> <b>Mar 11 – Mar 16</b></p>	
9	<p>The Rule Against Hearsay: Restricted Hearsay Exceptions (FRE 804, 807)</p> <ul style="list-style-type: none"> <li>➤ Hearsay Within Hearsay</li> <li>➤ Rule 804 Introduction: What is Unavailability?</li> <li>➤ Hearsay Exception: Former Testimony</li> <li>➤ Hearsay Exception: Dying Declarations</li> <li>➤ Hearsay Exception: Statement Against Interest</li> <li>➤ Hearsay Exception: Forfeiture</li> </ul> <p style="text-align: center;"><b>Read Chapters 44, 48 – 52</b></p>
10	<p>Final Thoughts on Hearsay</p> <ul style="list-style-type: none"> <li>➤ The Residual Exception</li> <li>➤ The Sixth Amendment and Hearsay</li> </ul> <p style="text-align: center;"><b>Read Chapters 56 &amp; 58</b></p>
<b>Apr</b>	<b>Second In-Class Interim Assessment</b>
11	<p>Opinion Testimony</p> <ul style="list-style-type: none"> <li>➤ Lay Opinions</li> <li>➤ What Subjects Are Appropriate for Expert Testimony</li> <li>➤ Qualifying Experts</li> </ul> <p style="text-align: center;"><b>Read Chapters 56, 58 &amp; 60 – 61</b></p>
12	<p>More on Expert Testimony</p> <ul style="list-style-type: none"> <li>➤ Qualifying Experts</li> <li>➤ Bases of Expert Opinion</li> <li>➤ Limits on Opinion and Expert Testimony</li> </ul> <p style="text-align: center;"><b>Read Chapters 62 – 64</b></p>
13	<p>Privileges (FRE 501; TRE 503 – 505, 507 – 513)</p> <ul style="list-style-type: none"> <li>➤ Introduction to Privileges</li> <li>➤ Attorney-Client Privilege</li> <li>➤ Other Privileges</li> </ul> <p style="text-align: center;"><b>Read Chapters 66 – 68</b></p>
14	<p>The Best Evidence Rule   Exam Review</p> <ul style="list-style-type: none"> <li>➤ Rule of Completeness (FRE 106)</li> <li>➤ Best Evidence (FRE 1001 – 1008)</li> </ul> <p style="text-align: center;"><b>Read Chapters 24 &amp; 70</b></p>