

Evidence Spring 2026 | Warren

Office Hours. By Appointment. Contact me via email (jwarren@uh.edu/jwarren@qeo.com), or by call or text (281.732.6121).

Class Sessions. Class is held twice each week for 1.5 hours via Microsoft Teams from 6:00-7:00 pm.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 229 840 292 349 50

Passcode: PZ2RY9aG

Class Webpage. See Canvas.

Course Objectives. Rules of Evidence govern the use of testimony, documents, and physical objects as proof in legal proceedings. These rules determine what can be introduced in court and the extent to which what is introduced can be used to prove a litigant's case. At trial, your objective as the lawyer is to either get evidence in or keep it out. Understanding these rules and the policies that underlie them will enable you to do so.

This semester, expect to master the following:

- Competency
- Relevance
- Prejudice
- Impeachment
- The Use (and misuse) of Character Evidence
- Authentication and the Best Evidence Rule
- Opinion Testimony (from lay and expert witnesses)
- Hearsay (including exemptions and exceptions to the rule against hearsay)
- Complications related to the Confrontation Clause
- Privileges

Along the way, expect to gain a deeper understanding of the nexus between the rules of evidence, procedure, and ethics so that you can perform well on the bar exam and in practice.

Assessment. Your grade will be calculated based on your performance on two interim assessments and a final exam. The final exam will be closed-book and comprised of both essay and multiple-choice questions.

Date	Assessment	% of Final Grade
February 24 On Canvas	Interim Assessment 1 Relevance, Prejudice, Impeachment, Character	15%
April 7 On Canvas	Interim Assessment 2 Authentication, Opinion Testimony, Hearsay	15%
TBD	Cumulative Final Exam	70%

Honor Code. The UHLC Honor Code applies to this course. For more information on the UHLC Honor Code, please consult the code itself, [available at this link](#).

Course Materials. Rent or buy Deborah J. Merritt and Ric Simmons, *Learning Evidence: From the Federal Rules to the Courtroom* (5th ed. 2022) (ISBN 978-1684675784). This includes access to the recommended

CasebookPlus Learning Library. If you purchase a used book, instead, you may still purchase access to the CasebookPlus Learning Library at westacademic.com. The cost is \$50 and the ISBN for the Learning Library alone is 978-1636594453. Use discount code WAHOUSTON for a 15% discount.

Attendance | Class Administration. This class will meet via Microsoft Teams. Be prepared to discuss the lecture material that I assign for each class. I will call on you at random. If you will not be prepared for class, please email me before class to let me know. Teams information is listed below:

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 229 840 292 349 50

Passcode: PZ2RY9aG

Law Center Attendance Policy. As noted in the student handbook, [link](#) (page 5), the Law Center has a minimum 80% attendance policy for students. The ABA standards say that the Law Center must have a policy. The 80% threshold is that policy. Express the attendance policy in the syllabus and discuss the mode of accounting for attendance in the course. Express how many missed class sessions constitute student nonadherence to the policy in the course, and what consequences the instructor might predetermine. These consequences can be left vague, such as “the student’s nonadherence will be notified to the Office of Student Affairs” (OSA). For consequences that are more strict, such as dropping the student automatically from the course, these strict consequences should be described with particularity in the syllabus.

Prohibited Use of Artificial Intelligence.

The software technology known as artificial intelligence has recently expanded its capability to generate text and other work product (AI Generated Work Product). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text and other work product in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Work Product, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for material one might generate themselves. AI Generated Work Product can include computer code or programs as well as human language content and materials.

Your continuing enrollment in this course obligates you to not knowingly prompt, generate, or use any AI Generated Work Product in relation to any activity or assessment in this course. This applies to AI Generated Work Product from yourself or others. This obligation includes that your assessment materials in the course be without any contribution from AI Generated Work Product. This obligation specifically extends to not plagiarize any writing required of you for assessment in the course: AI Generated Work Product will be treated as from another/others in applying the plagiarism policy to this course. The term “assessment” means any material generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Work Product may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination.

Mental Health and Wellness Resources.

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

The Center for Student Advocacy and Community (CSAC) is where you can go if you need help but don't know where to start. CSAC is a "home away from home" and serves as a resource hub to help you get the resources needed to support academic and personal success. Through our Cougar Cupboard, all students can get up to 30 lbs of FREE groceries a week. Additionally, we provide 1:1 appointments to get you connected to on- and off-campus resources related to essential needs, safety and advocacy, and more. The Cougar Closet is a registered student organization advised by our office and offers free clothes to students so that all Coogs can feel good in their fit. We also host a series of cultural and community-based events that fosters social connection and helps the cougar community come closer together. Visit the CSAC homepage or follow us on Instagram: [@uh_CSAC](https://www.instagram.com/uh_CSAC) and [@uhcupbrd](https://www.instagram.com/uhcupbrd). YOU belong here.

Women and Gender Resource Center

The mission of the WGRC is to advance the University of Houston and promote the success of all students, faculty, and staff through educating, empowering, and supporting the UH community. The WGRC suite is open to you. Stop by the office for a study space, to take a break, grab a snack, or check out one of the WGRC programs or resources. Stop by Student Center South room B12 (Basement floor near Starbucks and down the hall from Creation Station) from 9 am to 5 pm Monday through Friday.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Resources for Online Learning

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email

Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

Webcams

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on at all times.

Security Escorts and Cougar Ride

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called "Cougar Ride" that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Syllabus Changes

Please note that the instructor may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible through Canvas or email.

Syllabus. I assign reading by the week. I recommend completing your reading for the week *before* attending class on Tuesdays. From time to time, reading assignments may change to meet class needs. I will announce all changes orally in class and in writing via Canvas.

Week 1
Jan 20 | 22

Read Chapters 2 – 9, 11, and 13 | Complete Learning Library Quizzes for Chapter 6

Introduction to the Study of Evidence

- Origins of the Rules
- Categories of Evidence
- Admissibility: Raising and Resolving Evidentiary Objections (FRE 101, 1101, 103, 105)
- Determining Relevance (FRE 401 – 402, 406)

At trial, a party tells its story through evidence. Evidence can be testimony from a fact or expert witness; documents; photos; videos; or tangible items – like the car that was involved in an accident or the gun that was used in a murder. Evidence can also be demonstrative, that is evidence that is representative of something relevant to the case. Think of a bag of powdered sugar introduced at trial to show the jury the amount of cocaine found on a defendant’s person.

Rule 402 provides that relevant evidence is generally admissible. Rule 401 defines the term “relevant” broadly. Evidence is relevant if it has *any* tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence. The question for the trial judge is whether a reasonable person would find the probability of a consequential fact to be altered, one way or the other, by the proffered evidence. The important thing for the judge and for counsel to remember is that the evidence does not by itself have to prove the ultimate proposition for which it is offered; nor does it have to make that ultimate proposition more probable than not. To be relevant it is enough that the evidence has a *tendency* to make a consequential fact even the least bit more probable or less probable than it would be without the evidence.

Sometimes courts will permit a party to admit evidence for one purpose, but not another. When this happens, the court will instruct the jury to consider the evidence for only the limited purpose.

Week 2
Jan 27 | 29

Read Chapters 10 & 12 | Complete Learning Library Quizzes for Chapters 7 & 9 – 12

Relevance and Unfair Prejudice (FRE 403, 407-411)

- Excluding Relevant Evidence Based on Policy (FRE 407 – 411)
- Discretionary Exclusion of Relevant Evidence (FRE 403)

Despite the breadth of this definition of “relevance,” Rule 403 provides that evidence may be excluded if it will cause prejudice, confusion, or undue delay. And rules 407 – 411 place some limits on the admissibility of evidence for specific policy reasons that, in the view of the rules committee, supersede a party’s right to tell its story using all relevant evidence.

Week 3
Feb 3 | 5

Read Chapters 14, 16 – 20; 25 - 27

Putting a Witness on the Stand | Impeachment (FRE 601 – 607, 611-615)

- Competence (FRE 601)
- Personal Knowledge (FRE 602)
- Miscellany (FRE 603-606)
- Examining (Lay) Witnesses (FRE 611, 612 – 615)
- Impeaching a Witness (FRE 607, 611, 613)

Character Evidence

- Character Evidence and Criminal Convictions (FRE 404(a), 608(b)(1), 609)
- Miscellany (FRE 60(a), 608(b)(2), 610)
- Reputation or Opinion Evidence of Untruthful Character

The court controls how each party tells its story. When a witness testifies, the court prefers open-ended questions so that the testimony is presented using the witness's words, not the lawyer's. An exception is cross-examination, where the court permits leading questions for a more controlled examination. To testify, witnesses must take an oath or an appropriate substitute and understand the consequences of doing so. They must have perceived something of relevance in the case and recollect it. And they must be able to communicate the testimony to the finder of fact. This means that witnesses must be "competent" to testify.

Discrediting or "impeaching" witnesses is an essential part of many trials. Most trials center on the testimony offered by live witnesses; documents and real evidence often assume meaning only in the context of a witness's testimony. To prevail in court, it usually is not enough for a litigant to present a convincing case of his own to the jury. The litigant often must discredit at least some of the opponent's witnesses to win.

Character is defined in Black's Law Dictionary as "the aggregate of the moral qualities which belong to and distinguish an individual person." For purposes of evidence law, character evidence is generally used to show the nature of a person as it pertains to a particular trait, i.e., reckless, careful, hot-tempered, peaceful, violent, calm, etc.

Federal Rule of Evidence 404(a) provides the basic principle that a party cannot prove a person's character if the purpose is to create an inference that the person acted in accordance with the character trait on a particular occasion. The basic reasons for this exclusion are two: 1. A person's character trait is not always an accurate predictor of how the person will act - for example, violent people do not always act violently; and 2. The trial should be about what people did at the time in question, not what kind of people they are; we don't want the trial to turn into a popularity contest. As it is often said, "we try cases, not people."

There are exceptions provided in the Rule. The major challenge for lawyers, judges, and students of evidence is to determine whether a party is offering evidence of a character trait in order to prove conduct in accordance with that character trait - or for some other purpose. If the advocate can convince the judge that the evidence is offered for some other purpose, it will come in.

Week 4
Feb 10 | 12

Read Chapters 28 and 30 - 33 | Take Learning Library Quiz on Chapter 31

Character Evidence | Crimes, Wrongs, and Other Acts

- Character Evidence to Show Propensity (FRE 404(a)(2); 405(a))
- Crimes, Wrongs, and Other Acts (FRE 404(b))

Habit | The Rape Shield Law | Sexual Assault & Child Molestation Cases

- Habit (FRE 406)
- Rape Shield Law (FRE 412)
- Propensity in Sexual-Assault and Child-Molestation Cases (FRE 413 - 415)

Week 5
Feb 17 | 19

Read Chapters 59 & 69 | Take Learning Library Quiz on Chapter 69

Authentication | Judicial Notice

- Authentication (FRE 901, 902)
- Judicial Notice (FRE 201, 901, 902)

In order to be admitted, a party must prove that its evidence is authentic and that the evidence is presented in a reliable manner. Sometimes, evidence may be so uncontroversial that a party can ask the court to take notice of the evidence without offering further proof of it. And sometimes evidence can lead to a presumption without the need to offer further proof of the presumption.

Review

Week 6
Feb 24 | 26

In-Class Interim Assessment 1 (Feb 24)

Read Chapters 35 – 38 | Take Learning Library Quizzes on Chapters 36 & 37

The Rule Against Hearsay (FRE 801(a) – (c) & 802)

- What is Hearsay and Why Don't We Like It?
- What Do We Mean by "The Truth of the Matter Asserted"?
- What is an Assertion?
- What is a Statement?

Despite its reputation, hearsay is not complicated. It's just information received from other people or documents that cannot adequately be substantiated; in a different context, you might call it rumor. Rumor's fine, but would you rather be convicted on the basis of rumor, or fact? Most people would say fact, and I don't blame them. The rules committee agrees and generally excludes hearsay, which is an out-of-court statement offered to prove the truth it asserts. But sometimes, a party cannot tell its story any other way except through hearsay. When this is true, and the out-of-court statement the party offers falls within a category of statements that are generally reliable, then courts will balance the need of the party to tell its story and the right of the other party to test the reliability of the evidence against it through cross-examination. Policy considerations supersede a party's right to cross-examine evidence offered against it. Certain categories of statements are either excluded from the rule altogether, or the rules committee makes an exception that allows the hearsay to be admitted.

Week 7
Mar 3 | 5

Read Chapters 39, 53, and 55 | Take Learning Library Quizzes on Chapters 39 and 53

Statements That are Called "Not Hearsay" (but actually *are* hearsay) (FRE 801(d)(1) and 801(d)(2))

- Admissible Hearsay – Chapter 38 Continued
- Hearsay Exemption: Prior Statements by Witnesses
- Hearsay Exemption: Statements by an Opposing Party
- Hearsay Exemption: Statements of Co-conspirators

Week 8
Mar 10 | 12

Read Chapters 40 – 43; 45 – 46 (including chart on page 478)

The Rule Against Hearsay: Unrestricted Hearsay Exceptions (FRE 803(1) – (24); 612)

- Hearsay Exceptions: Present Sense Impressions and Excited Utterance
- Hearsay Exception: State of Mind
- Hearsay Exception: Medical Treatment
- Hearsay Exception: Recorded Recollection
- Hearsay Exception: Business Record
- Hearsay Exception: Public Record

SPRING BREAK

Week 9
Mar 24 | 26

Read Chapters 48 – 52

The Rule Against Hearsay: Restricted Hearsay Exceptions (FRE 804, 807)

- Rule 804 Introduction: What is Unavailability?
- Hearsay Exception: Former Testimony
- Hearsay Exception: Dying Declarations
- Hearsay Exception: Statement Against Interest
- Hearsay Exception: Forfeiture

Week 10
Mar 31 | Apr 2

Read Chapters 44, 56 and 58

Final Thoughts on Hearsay

- Hearsay Within Hearsay
- The Residual Exception
- The Sixth Amendment and Hearsay

The confrontation Clause of the Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Confrontation clause thus serves two purposes: to allow a defendant the right to

face his or her accusing witness in open court for truth-testing cross-examinations, and to give the jury an opportunity to determine the credibility of the witness through observation of the witness's demeanor. *Mattox v. United States*, 16 U.S. 237 (1895). The protections afforded a criminal defendant under the confrontation Clause of the Sixth Amendment are also applicable in state court proceedings by virtue of the Due Process Clause of the Fourteenth Amendment. *Pointer v. Texas*, 380 U.S. 400, 403 (1965).

Hearsay is excluded from evidence for the same reason that underlies the Confrontation Clause – such declarations are generally not subject to cross-examination. See *California v. Green*, 399 U.S. 149, 155 (1970) (hearsay rules and the Confrontation Clause generally designed to protect similar values); and *Dutton v. Evans*, 400 U.S. 74, 86 (1970) (hearsay rules and the Confrontation Clause “stem from the same roots”). Thus, read together, the Confrontation Clause and the hearsay rule would seem to provide a basis for excluding from evidence any statements that fall under the definition of hearsay and for which no right of cross-examination is granted to the defendant in a criminal case. But a conflict between the Confrontation Clause and hearsay rule arises as a result of the exclusions from and the exceptions to the hearsay rule, which allow a vast number and type of out-of-court declarations to be admitted into evidence without the declarant being present in court for cross-examination by the defendant.

Review

Week 11
Apr 7 | 9

In-Class Interim Assessment 2 (Apr 7)

Read Chapters 60 – 62

Opinion Testimony

- Lay Opinions
- What Subjects are Appropriate for Expert Testimony
- Qualifying Experts

The rules provide that fact witnesses generally may not offer opinion testimony (though they may do so in very limited circumstances). But expert witnesses may offer opinion testimony if the expert is qualified and offers reliable testimony.

Week 12
Apr 14 | 16

Read Chapters 63 – 64; Take Learning Library Quizzes for Chapters 61 – 64

More on Expert Testimony

- Bases of Expert Opinion
- Limits on Opinion and Expert Testimony

Week 13
Apr 21 | 23

Read Chapters 66 – 68; Take Learning Library Quiz for Chapter 67

Privileges

- Introduction to Privileges
- Attorney-Client Privileges
- Other Privileges

Recall our discussion of relevance earlier in the semester. Sometimes even relevant evidence will be excluded, either because it is unduly prejudicial, causes confusion or delay, or because it runs afoul of certain desirable policy considerations. Evidence can also be excluded because it is privileged. Privileges are simply additional policy considerations that, in the eyes of the rules committee, supersede a party's right to tell its story using all relevant evidence.

Week 14
Apr 28 | 30

Read Chapters 24 & 70; Take Learning Library Comprehensive Quiz Before November 21

The Best Evidence Rule Class Wrap-Up and Exam Review

- Rule of Completeness (FRE 106)
- Best Evidence Rule (FRE 1001 - 1008)