UNIVERSITY of HOUSTON
LAW CENTER

Evidence
5357-25218
Spring 2027

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Office Hours:

Wednesdays 2:00-3:00 in my office, 430W or via Zoom by request.

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 differ significantly 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). 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 asked to offer direct- or cross-examination of a witness or to object to such testimony.

Attendance Policy

My secretary, Ms. Camille Miles, cljones4@Central.UH.EDU, will send you a link for the attendance sheet electronically. You should enter the daily password to sign the attendance sheet. You must attend 80% of the classes taught, or you will be dropped. In other words, you may miss no more than five classes. 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 and Class Preparation

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. If you will not be prepared for class, I ask that you let me know by email (sgthompson@Central.uh.edu) prior to the start of the class.

For most of the course, we will focus on the practice problems in the book. You should carefully read the rules and cases in the book to answer the problems. You should pay special attention to the language of the applicable rules. In general, I will NOT call on you to recite the cases in the book. The cases are assigned to enable you to solve the problems.

I will assign the Texas rules when they vary significantly from the Federal rules. We will not discuss the rules in other states, nor will I test you on them.

Counseling and Psychological Services

Counseling and Psychological Services (CAPS) can 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) 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 at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html.

Nomenclature

If you want me to refer to you in any particular way—including name pronunciation, nickname, gender pronoun, etc.—please feel free to tell me, and I'll respect any such preference.

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.

For multiple choice questions, you can find some useful questions at http://www.merrittevidence.com/problems.asp#quiz . Additionally, the library has a subscription to CALI which has a number of good multiple choice exams on different areas of evidence law. You can use the Authorization Code of HOUSTUstu90 and your UH email as your Login ID.

Final Examination

You will be graded based on a three-hour multiple choice and True / False exam. This is a closed 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. An ungraded midterm will be provided, along with the exam answers.

Course Materials

1. "T" refers to the textbook by Peter Nicolas, Evidence: A Problem-Based and Comparative Approach (5th Ed.) (Carolina Academic Press 2025).

2. "Supp." refers to a supplementary collection of readings located on the Canvas webpage for this course.

3. "FRE" refers to the Federal Rules of Evidence (Dec. 1, 2024).

4. "TRE" refers to the Texas Rules of Evidence (Sept. 1, 2025).
   Note: The Texas Rules will be assigned *whenever they significantly differ from the FRE.*

5. "TxCCrProc." refers to the Texas Code of Criminal Procedure (2025).

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

Syllabus/Reading List

1/20 **1. Relevance**
T: 3-44; FRE: 102, 104, 107, 401, 402, 403 (up to and including Prob. 1-7)

1/25 **2. Relevance**
T: 44-78; FRE 105, 106, TRE 106, 107
Supp: Problems to Accompany Nicolas, Evidence 5th Ed.

1/27 **3. Authentication**
T: 83-124; FRE: 901, 902; TRE: 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."

2/1 **4.Relevance and Prejudice Refined—Character Evidence**

T: 125-164 (skip Probs. 3-2 and 3-3(e)), FRE: 404, 405.

2/3 **5. Relevance and Prejudice Refined—Character Evidence, cont'd**

T: 165-193, 202-207, 213-222 (skip Probs. 3-8, 3-14); FRE: 406-415; TRE 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.

Supp: Problems to Accompany Nicolas, Evidence 5th Ed.

2/8 **6. The Rule against Hearsay**

T: 507-536; FRE: 801 (a)-(c), 802

Supp: Problems to Accompany Nicolas, Evidence 5th Ed.

2/10 **7. The Rule against Hearsay—What is an Assertion?**

T: 507-536; TRE: 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.

2/15 **8. The Rule against Hearsay—Statements that are called "Not Hearsay" (but that actually *are* hearsay)—801(d)(1) exceptions**

T: 567-590 (skip Prob. 7-13 #2); FRE 801(d)(1); TRE: 801(e)(1)(A) (exception for grand jury testimony). We will discuss any questions you have from the Hearsay Quiz in your Supplement.

2/17 **9. The Rule against Hearsay—Statements that are called "Not Hearsay" (but that actually *are* hearsay)—Opposing Party Statements under 801(d)(2)**

T: 591-622; FRE 801(d)(2), 104; TRE 601(b)

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

2/22 **10. The Rule against Hearsay--Unrestricted Hearsay Exceptions**

T: 622-664; FRE 803 (1)-(4); Supp: Texas Court Refines Exception for Statements Made for Medical Treatment.

2/24 **11. The Rule against Hearsay--Unrestricted Hearsay Exceptions**

T: 665-697, FRE 803 (5)-(8), 803(10), 612, 902; TRE 902 (10)

Supp.: Additional Problems to Accompany Nicolas, Evidence 5th Ed.

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.

3/1 **12. The Rule against Hearsay--Unrestricted Hearsay Exceptions**
T: 697-736; 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.

3/3 **13. Restricted Hearsay Exceptions**

T: 697-736, FRE 804

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

3/8 **14. Restricted Hearsay Exceptions**

T: 775-810; FRE 804, 807. Note: TRE does not contain a provision for forfeiture by wrongdoing or a residual exception.

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

Optional practice problems: Supp: Hearsay Exceptions Quiz; Hearsay Exceptions Quiz Suggested Answers. We will discuss the quiz if time allows.

3/10 **15. Hearsay and the Confrontation Clause**

T: 811, 815-848 We will discuss the Hearsay Exceptions Quiz if time allows.

3/22 **16. Hearsay and the Confrontation Clause**

T: 848-889

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

3/24 **17. Witness Qualification, Competency, and Oaths**

T: 223-256; FRE: 601, 602, 603, 606; TRE: 601 (insane may not testify; children and others who may lack intellect must be qualified by the court)

In Problem 4-2, please disregard the question about the laws in Indiana, Montana, and Minnesota.

3/29 **18. Direct and Cross Examination**

T: 257-289; FRE: 602, 603, 605, 611, 612, 614, 701, TRE: 611(b) (no limit on scope of cross-examination).
Supp.: Problems to Accompany Nicolas, Evidence 5th Ed. (for pages 609-640)
Last chance to ask questions about the Hearsay Exceptions Quiz.

3/31 **19. Witness Qualification, Competency, and Examination—Expert Witnesses**

T: 290-332; FRE: 702-706.

4/5 **20. Witness Qualification, Competency, and Examination**

T: 332-360; FRE 615, 703-706; TRE: 704 (unlike FRE, no prohibition on expert opinions regarding criminal defendant's mental state). Note: TxCCrProc 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).

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/7 **21. Impeachment**

T: 967-1002; Supp: "What are Crimes of Moral Turpitude?"; FRE: 608, 609; TRE: 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).

4/12 **22. Impeachment and Rehabilitation of Witnesses**

T: 1003-1038; FRE 601, 607, 610, 613; 613(b),(c) (no federal counterparts). TRE 613 (b), (c) (no federal counterparts).

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/14 **23. Texas Privileges—Attorney-Client Privilege**

T: 361-385; FRE: 501; TRE: 503. Skim all of TRE Article V. Be prepared to discuss the *Upjohn* case. Be prepared to discuss the case discussed in the article here.

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/19 **24. Texas Privileges—Exceptions to the Attorney-Client Privilege**

T: 385-402; TRE 511 (Waiver by Voluntary Disclosure); TRE 512 (Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege). Be prepared to discuss the *Zolin* case.

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/21 **25. Spousal Privileges and Psychotherapist-Patient Privilege, and a Quick Review of Other Privileges**

T: 403-434 (Assume Prob. 5-5 occurs in a Texas State Park; Skip Prob. 5-6); TRE 504 (Spousal Privileges), 510 (Mental Health Information Privilege in Civil Cases), 505 (Communications to a Clergy Member); 507 (Trade Secrets); 508 (Informer's Identity); 509 (Physician-Patient); 513 (Comment on Inference From a Privilege Claim; Instruction)

Tex. Fam. Code Sec. 261.202 states: "In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client."

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/26 **26. Judicial Notice**

T: 891-918; FRE 201; TRE 202-204; Supp.: "How to Offer Evidence: Basic Predicates," Part IV

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

4/28 **27. The "Best Evidence" Rule**

T: 461-506; FRE: Art. X.

Supp.: Problems to Accompany Nicolas, Evidence 5th Ed.

5/3 Review Session