



EVIDENCE
FALL 2018

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I. General.

- A. *Course Number and Credit.* LAW L760; 3.0 hours.
- B. *Course Description.* This course involves a treatment of the rules of evidence, the qualifications and impeachment of witnesses, the opinion rule, admissions and confessions, rules relating to writings, the hearsay rule and its exceptions, privileged relations, burden of proof, presumptions, and judicial notice.
- C. *Required Materials.* We will use the following book during this course: Michael H. Graham, *Evidence: A Problem, Lecture and Discussion Approach* (4th ed. 2015) (CasebookPlus ISBN: 9781634595391). It is important to get the “CasebookPlus” version of this book; if you have purchased a used hard-copy book, you can purchase the “digital-only option” from West Academic. The Casebook Plus version contains online quizzes that will be assigned during the course.



You can purchase a print book either from the university bookstore or from Amazon at this link:

https://www.amazon.com/dp/1634595394/ref=sr_ob_1?s=books&ie=UTF8&qid=1533916023&sr=1-1

You can purchase CasebookPlus from the West Academic online store for \$35.00 here:

<http://store.westacademic.com/Store/?ext=F&search=9781634598149>

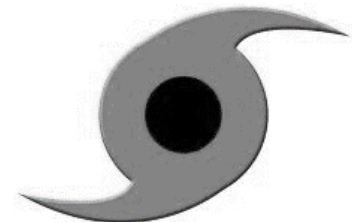
- D. *Statutory Supplement.* There is no “statutory supplement” or “rules supplement”; all rules and statutes are in the principal text. However,

most students find it helpful to have a small booklet containing the Federal Rules of Evidence.

II. Class Attendance and Preparation.

- A. *Generally.* You are expected to attend each class, and to attend each class prepared. In order to prepare fully, you must (1) read all assigned pages in the casebook, (2) be prepared to discuss and to resolve the problems set forth in the casebook.
- B. *Problem Preparation.* This is a problem-driven course. As a result, you must independently work through all problems contained in the reading assignment before each class.
- C. *Penalties for Excessive Absences or Unpreparedness.* You are permitted to be absent from, late for or unprepared for a total of four (4) classes. (If you are called on in class and you are unprepared, this will count as an absence.) Each absence or late attendance or unprepared attendance thereafter will automatically result in the lowering of your final course grade by one-half letter grade. For example, if you write a “B” exam but you are absent, late or unprepared for a total of five (5) classes, your course grade will be lowered from a “B” to a “C+”.
- D. *Learning Outcomes.* The mission statement of the College of Law strives to prepare “a diverse community of students to be thoughtful counselors, skilled advocates, compassionate leaders in the Jesuit tradition of academic rigor, pursuit of justice, and service to others.” To this end, this course will focus on and evaluate the following learning outcomes.
 - 1. *Knowledge of Substantive Law and Processes.* Students should learn the substantive and procedural law of evidence, the processes through which the law of evidence is created, and the policies underlying that law.
 - 2. *Analysis and Reasoning.* Students should learn to identify legal issues faced by courtroom lawyers relating to the admission of evidence. Students should learn to apply the standards regulating the admission of evidence. Students should also learn to understand the nature and importance of exercising practical judgment in trial practice.
 - 3. *Research and Information Gathering.* Students should learn to perform comprehensive legal research into the regulatory standards and case law relating to evidence law.

4. *Communication.* Students should learn to articulate objections to evidence and to respond to such objections.
- III. *Evaluation.* Your course grade will be based on your performance on the final exam (80%), and on chapter quizzes administered through CasebookPlus (20%).
- IV. *Seating Chart.* Please choose a “permanent” seat by the second class meeting. At that time, I will distribute a seating chart.
- V. *Blackboard.* I will use the Loyola Blackboard system to post the class syllabus, to distribute supplementary class materials, and to notify the class about scheduling changes. The Loyola Blackboard site is located at <http://loyno.blackboard.com/>.
- VI. *Special Needs:* Loyola is committed to offering classes that are inclusive in their design. If you encounter disability related barriers in a course, please let the Office for Accessible Education (OAE) know immediately. OAE welcomes your feedback, which will assist us in improving the usability and experience for all students. To find out more about the accommodations process or if you need to discuss the accommodations you may be eligible for, please see our contact information below. Office for Accessible Education: Monroe Library, 2nd Floor; 504-865-2990 (front office) Email: oea@loyno.edu; Website: <http://www.loyno.edu/success/disability-services> Law students should contact Carol Magendie, Law Building room 345; Phone: 504-861-5494 Email: magendie@loyno.edu.
- VII. *In Case of Emergency University Closure.* At times, ordinary University operations are interrupted by tropical storms, hurricanes, or other emergencies that require evacuation or suspension of on-campus activities. To prepare for such emergencies, review the instructions at this link: <http://academicaffairs.loyno.edu/students-emergency-responsibilities>. Please note that students who are not living on campus need not file an evacuation plan with student affairs.
- VIII. *University Counseling Center.* The University Counseling Center, located on the 2nd floor of the Danna Center, provides mental healthcare for all currently enrolled Loyola students. Office hours are Monday-Friday, 8:30 a.m. to 4:45 p.m., and services are free. Counseling is available 24/7 by contacting the UCC counselor-on-call. During business hours, call 504- 865-3835 to schedule an appointment and/or to request to speak with the



counselor on-call. After hours and on weekends, call 504-865-3835 and press 1 at the voicemail prompt to be immediately connected to a trained and licensed mental health professional. Please visit our website at <http://studentaffairs.loyno.edu/counseling> for more information.

IX. *Information Technology.* Information Technology provides on-campus computer systems assistance and technical support to students, faculty, and staff, through the support units of client services, computer services, distributed systems, telecommunications, and information management. Visit us on the 2nd floor of the Monroe Library, online at <http://academicaffairs.loyno.edu/infotech/student-computing>, or by phone at 504-865-2255.

X. *Office Hours.* My office is on the fourth floor of the law building in Room 439. My office hours are set forth below. I am normally in my offices at these hours unless I am off campus.



A. *Mondays and Wednesdays.* 1:45 p.m. to 3:15 p.m.

B. *Other Times.* I maintain an “open-door” policy. Also, I am happy to set up appointments at your convenience. Finally, please do not hesitate to send me an email message at any time; I will usually respond immediately if you include your mobile telephone number.

XI. *Assignments.* Class assignments are set forth in the following table. I will not announce assignments in class.

| Class | Description | Reading |
|--------------|--|----------------|
| 1. | <i>Introduction.</i> The Structure of the Trial. Order of Proceedings. Types of Evidence. Preliminary Questions of Admissibility. Hearing of Jury. Limited Admissibility. Judicial Discretion. Scope, Definitions and Applicability. | iii-vi; 1-17 |
| 2. | <i>Relevance and the Exclusion of Relevant Evidence.</i> Relevance. Exclusion of Relevant Evidence. | 19-33 |
| 3. | <i>Competency of Lay Witnesses.</i> General Rule of Competency. The Requirement of Personal Knowledge. Oath or Affirmation; Interpreters. Competency of Judge as Witness. Competency of | 35-55 |

| Class | Description | Reading |
|--------------|---|----------------|
| | Juror as Witness. Competency and Propriety of Lawyer for a Party as a Witness at Trial. | |
| 4. | <i>Direct Examination.</i> Mode and Order of Interrogation. Refreshing Recollection. Principle of Completeness. Exclusion and Separation of Witnesses. | 57-75 |
| 5. | <i>Hearsay.</i> The Hearsay Rule. | 77-110 |
| 6. | <i>Hearsay.</i> Prior Statement by Witness. Admission by Party-Opponent. Statements by Co-Conspirator. Judicial and Evidentiary Admissions. | 110-42 |
| 7. | <i>Hearsay.</i> Hearsay Exceptions; Availability of Declarant Immaterial. Overview. Present Sense Impression. Excited Utterance. Then-Existing Personal Condition. Statements for Medical Diagnosis or Treatment. | 143-60 |
| 8. | <i>Hearsay.</i> Hearsay Exceptions; Availability of Declarant Immaterial. Recorded Recollection. Business Records. Public Records. Vital Records. | 160-85 |
| 9. | <i>Hearsay.</i> Hearsay Exceptions; Availability of Declarant Immaterial. Religious Records. Certificates of Ceremonies. Family Records. Property Records. Ancient Documents. Market Reports. Learned Treatises. Reputation Testimony. Judgments. | 185-202 |
| 10. | <i>Hearsay.</i> Hearsay Exceptions; Declarant Unavailable. Overview. "Unavailable" Defined. Former Testimony. | 202-15 |
| 11. | <i>Hearsay.</i> Hearsay Exceptions; Declarant Unavailable. Dying Declaration. Statement Against Interest. Statement of Family History. Forfeiture by Wrongdoing. | 215-31 |
| 12. | <i>Hearsay.</i> Hearsay Exceptions; Declarant Unavailable. Dying Declaration. Statement Against Interest. Statement of Family History. Forfeiture by Wrongdoing. | 231-51 |
| 13. | <i>Hearsay.</i> The Confrontation Clause. | 251-71 |
| 14. | <i>Authenticating or Identifying Evidence.</i> General Provision. Illustrative Testimonial Foundations. | 273-95 |

| Class | Description | Reading |
|--------------|---|----------------|
| 15. | <i>Authenticating or Identifying Evidence.</i> Evidence That is Self-Authenticating. Subscribing Witness's Testimony. | 295-313 |
| 16. | <i>The Original Writing (Best Evidence) Rule.</i> Introduction. Nature of an Original. Duplicates. Requirement of the Original. Admissibility of Duplicates. | 315-30 |
| 17. | <i>The Original Writing (Best Evidence) Rule.</i> Admissibility of Other Evidence of Content. No Degrees of Secondary Evidence. Copies of Public Records to Prove Content. Summaries to Prove Content. Testimony or Statement of a Party to Prove Content. Functions of Court and Jury. | 330-43 |
| 18. | <i>Opinions and Expert Testimony.</i> Introduction. Opinion Testimony by Lay Witness. Testimony by Expert Witness. | 345-56 |
| 19. | <i>Opinions and Expert Testimony.</i> Testimony by Expert Witness. Bases of Expert's Opinion. Disclosing Underlying Data. Opinion on Ultimate Issue. | 356-79 |
| 20. | <i>Opinions and Expert Testimony.</i> Testimony by Expert Witness. Reliability "Gatekeeping." Subjects of Expert Testimony. Court-Appointed Experts. | 379-406 |
| 21. | <i>Character, Habit and Routine Practice.</i> Habit and Routine Practice. Character Evidence. Circumstantial Use. Method of Proving Character. Character as an Element. | 407-35 |
| 22. | <i>Character, Habit and Routine Practice.</i> Character Evidence. Crimes Wrongs, or Other Acts. | 435-50 |
| 23. | <i>Character, Habit and Routine Practice.</i> Sex Offense Cases: The Victim's Sexual Behavior or Predisposition. Similar Crimes in Sexual-Assault and Child Molestation Cases. | 450-71 |
| 24. | <i>Real and Demonstrative Evidence, Experiments and Views.</i> An Overview. Relevancy. Real Evidence. Demonstrative Evidence. Courtroom and Out of Court Demonstrations. Experiments. View by Trier of Fact. | 473-92 |
| 25. | <i>Cross-Examination, Impeachment and Refutation.</i> Cross-Examination. Impeachment. | 493-514 |

| Class | Description | Reading |
|--------------|---|----------------|
| 26. | <i>Cross-Examination, Impeachment and Refutation.</i> Impeachment. Modes of Impeachment. | 514-41 |
| 27. | <i>Cross-Examination, Impeachment and Refutation.</i> Impeachment. Modes of Impeachment. Refutation. | 541-88 |
| 28. | TBA | TBA |