Syllabus -- Evidence, Spring 2022 (Bowman)

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Meeting times and teaching mode: Monday, Wednesday, Thursday & Friday, 9:00-9:50 am. Barring further developments related to the COVID-19 pandemic, classes will be held in-person in Hulston Hall Room 6.

I. Required Materials

A. Books

The books you are required to have for this class are:

1. Christopher Mueller and Laird Kirkpatrick, Evidence Under the Rules: Text, Cases, and Problems (9th Ed. 2018);  
2. Daniel J. Capra, ed., Federal Rules of Evidence 2021-2022, with Evidence Map (by David Faigman);  

The Mueller & Kirkpatrick and Capra books are available in the bookstore or online.

B. Computer learning aids

1. The CALI Exercises

From time to time, you will be assigned optional exercises from the CALI Exercises. The CALI exercises are technologically simple, text-based, self-testing exercises. They are accessible on-line. You should find them useful to get a practical grasp on some of the more abstract concepts we deal with in class, and to test your knowledge as we go through the course. A warning. Don’t be unduly dismayed of you find that, occasionally, your answer is different than the CALI-approved answer. Every experienced practitioner or evidence teacher I know disagrees with some of the CALI answers. However, the approved answer is right the overwhelming majority of the time, and when it’s not, it is valuable to think carefully about why you disagree. If you find that, despite careful rethinking of your reasoning, you still disagree with the approved answer, contact me and we’ll figure out who’s right -- you or the computer -- and why.

Instructions for how to access CALI lessons, including MU Law's authorization code are posted on my LexisNexis Canvas site under "Course Documents/Instructions for CALI Lessons."
C. Study aids and supplemental materials

For those who would like a hardback treatise or hornbook on evidence as a study aid, I recommend MUELLER & KIRKPATRICK, EVIDENCE. The same authors have now produced a Black Letter Outline, also cleverly titled “Evidence.” Those preferring a shorter treatment might consider MICHAEL H. GRAHAM, FEDERAL RULES OF EVIDENCE IN A NUTSHELL. Both of these, as well as many other study aids, are now available to you free through the West Academic Study Aid subscription you should have heard about through the law library.

Also, the Capra-edited version of the Federal Rules comes with the “Federal Rules of Evidence Map” by David L. Faigman. It provides a visual, shorthand way of seeing the basic content of the Rules and how they relate to one another.

II. LexisNexis CANVAS

Throughout the semester, I will use the Canvas-based system on LexisNexis to provide you with announcements, weekly reading assignments, supplemental materials, and so forth. THIS IS DIFFERENT FROM THE CANVAS SYSTEM OPERATED BY THE UNIVERSITY. You must self-enroll in the course on LexisNexis to access the material. If you are not familiar with LexisNexis, please follow the following instructions to get yourself enrolled:

You will need your LexisNexis password to enroll in the course, and to access materials in the course.

Enrollment Instructions for LexisNexis Webcourses


2. Scroll to Lexis Classroom in the right pane.

3. Click Add a Course.

4. Locate the professor's name.

Note: the professor's name only appears if the course is available and published.

5. Click the professor's name to see all the courses published by the professor.

6. Click the course name to enroll in the course.

7. Enter the course code if you are prompted. **The course code for Evidence is JMK7GR.**
Technical Questions or Problems?

Please contact the UMC Law Help Desk at umclawhelpdesk@missouri.edu, or at 573-884-7800.

III. Grading

Your final grade will be calculated from five components:

1) 65% Essay-style final exam given at the close of the semester

2) 10% Mid-term (multiple choice, administered on-line)

3) 15% Three graded on-line quizzes, each worth 5% (multiple choice).

4) 10% Daily pre-quizzes.

5) Class participation – You will not receive a specific numerical or letter grade for class participation. However, I reserve the right to increase or decrease final grades by the effective equivalent of 1/3 of a letter grade (e.g., upward from a B to a B+, or downward from a B to a B-) based on my assessment of class participation.

A word about the graded midterm and three graded quizzes – For some of you, the idea of having multiple quizzes or tests prior to the final will be a novel concept, at least in law school. I have found that giving short quizzes that count for a small fraction of the final grade serves a couple of useful functions. First and probably foremost, quizzes encourage you to focus on the material consistently throughout the semester, rather than trying to learn it all in a rush at the end (which, to be candid, was what I tended to do back in the early Jurassic Period when I attended law school). Second, the results of the quizzes enable you to identify your strengths and weaknesses as you go. Third, I like to give students more than one opportunity to submit work that affects the final grade so that not everything depends on how you did on a single day. Fourth, the quizzes will be “objective” – meaning multiple choice – as distinct from the final which will be an essay. Some people perform better on objective tests than on essays, and others have the opposite tendency. I feel that giving students the opportunity to submit both types of work gives me a better overall picture of what you know.

Pre-quizzes -- These are 2-4 question on-line quizzes you take before class on designated days. With a few rare exceptions there will be a pre-quiz due before every class. See the assignment sheet for each week to confirm the pre-quizzes that must be performed that week. NOTE: They are pass-fail. All you have to do is complete them to receive credit. To receive that credit, the pre-quiz must be completed before the class to which it pertains.

As noted in the section on grading, pre-quizzes are worth 10% of your final grade. There will be roughly 40-ish pre-quizzes, so each quiz is worth very close to 0.25% of
your final grade. If you submit every one, on time, you’ll get the full 10%. I give you two free missed quizzes. After that, each one you fail to submit on time costs you about 0.25% of your final grade. That may not seem like much, but on the upside these are essentially free points, and on the downside missing more than a couple can cost you measurably by the end of the semester.

I have administered quizzes like this for some years because there is a body of research suggesting that testing people on material before they’ve really focused on it in detail assists in comprehension and retention. ALSO, after you submit each answer to a pre-quiz, there is a feedback section that will explain why you got the answer right or wrong. Take advantage of that function.

Note on Final Exam – Although neither the content nor the format of the final is set in stone, you may expect that it will contain at least one question in which you are asked to consider a trial transcript and identify and rule on possible objections, and that it may also contain one or more essay questions in which you will be asked to apply rules of evidence to fact patterns. It may also include one or more questions about the policy basis of evidentiary rules. The exam will be a take-home examination, somewhere between 6-8 hours in duration.

IV. Attendance & Preparation for Class

I consider it essential to your learning process that you attend class every day absent some compelling reason to the contrary, and that you come to class each day prepared to participate in a discussion of the assigned material. Sometimes, in the finest Paper Chase tradition, I will call on you without prior assignment or warning and require you to air your views. By now, as second or third year law students, most of you will take this sort of thing in stride. For some, this may remain a trying experience. Do your best, however, not to take it too much to heart. Be assured that no one is trying to expose or humiliate you. Remember that an important skill for any lawyer in any field is the ability to think clearly and speak cogently under pressure. What we do in class will be the merest baby steps towards your mastery of this skill. As with any skill, you have to start somewhere.

(See the special note in Section X below on availability of class recordings to students obliged to be absent due to COVID, another serious illness, or personal emergency.)

“Trial Teams”

On the second or third day of class, you will be assigned to a three-person “trial team.” From time to time, I will ask you prepare for certain in-class exercises as a team. Mostly, this will just mean that you should put your heads together before class, through phone, email, Zoom, or what-have-you, to discuss the exercise together and, if necessary, agree on a unified approach to the problem. The first such exercise will occur on the third day of the first week of class.
V. Reading Assignments

Generally, I will give out reading assignments on the last class day of each week for the following week. I will post the assignment on LexisNexis Canvas. I do not give assignments earlier because I find some students, in an excess of zeal, will read far ahead and consider themselves “prepared” for class. However, when the time comes to discuss the material, the reading happened so long ago that the student doesn’t remember much about it.

Reading Assignments: 1/19 – 1/21/22

The reading assignments for the first week of class are as follows:

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<tr>
<th>Session</th>
<th>Subject</th>
<th>Assignment</th>
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<td></td>
<td>*“Stages of American Jury Trial” – posted on LexisNexis Canvas under “Course Documents”</td>
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<tr>
<td>Thurs, Jan 20</td>
<td>Fundamentals of Courtroom Presentation of Evidence</td>
<td>*M&amp;K 20-24 (up to, but not including, “The special case of the accused as witness);</td>
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<td>*M&amp;K 26 (beginning with “c. Real Evidence”) to 33 (up to, but not including, list of common “formal objections”);</td>
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<td>*M&amp;K 703-707; 725-727 (up to, but not including, Notes)</td>
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<td>Fri., Jan 21</td>
<td>Admitting and Excluding Evidence</td>
<td>*M&amp;K 31-50 (not Problem 1-B);</td>
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<td>*Excerpt from Goode &amp; Wellborn (posted on LexisNexis Canvas under “Course Documents”)</td>
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<td>*Fed. Rule of Evidence (FRE) 611</td>
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Depending on time, we may begin the following exercise on Friday, Jan 21. In any case, it will continue into Monday, Jan 24, and will consume the entirety of that class.
Transcript exercise, *United States v. James*: Together with the other members of your trial team, consider the direct and cross-examinations of Amanda and Hilda Swinton. Identify all possible objections to the form of these questions and answers. Refer to the lists of objections as to form in M&K and the Goode & Wellborn excerpt. Be prepared to point out and explain your objections in class.

**DON’T FORGET to TAKE PRE-QUIZ #1 on Lexis-Nexis Canvas BEFORE CLASS today – Friday, 1/21**

**VI. Subject Matter -- An Outline of the Course**

You may find it useful in keeping track of where we’ve been and where we’re headed to keep the following list of topics we will cover in the approximate order we’ll cover them:

1. Evidence and the Trial Process
2. Foundation requirements and the unwritten rules of admissibility
3. Competence of witnesses
4. Relevance
   – Logical relevance vs. “pragmatic relevance
   – Circumstantial evidence and probabilistic analysis
   – Character evidence and sexual history
   – Prior acts and habit evidence
   – Remedial measures and settlement negotiations
5. Hearsay and its many exceptions
   – Defining hearsay
   – Separating hearsay from non-hearsay
   – Prior statements of witnesses
   – Admissions by party opponent
   – Co-conspirator exception
   – State of mind
   – Statements for purposes of medical treatment
   – Past recollection recorded, business and public records, learned treatises
   – Statements from unavailable witnesses: dying declarations, etc.
   – Declarations against interest
   – Statements of personal or family history
   – The residual exception
   – Hearsay and the Confrontation Clause
6. Direct and cross-examination
7. Impeachment for bias
8. Impeachment on sensory or mental capacity
9. Character evidence
10. Repairing credibility
11. Opinion testimony
   – Opinion testimony of lay witnesses
– Opinion testimony of expert witnesses
12. “Real evidence” and demonstrative exhibits
13. The law of privileges
14. The digital courtroom

VII. Learning Outcomes

The following statement is provided in compliance with Revised ABA Standard 301(b).

In the course in Evidence students will:
• become familiar with the Federal Rules of Evidence and other sources of evidence law, including selected provisions of Missouri statutory and case law;
• learn the policy underlying evidence law;
• learn to apply the Rules of Evidence to differing factual situations, and to craft arguments for and against admission of evidence;
• gain knowledge useful for passing the evidence portion of the bar exam;
• gain familiarity with how trials work

VIII. Academic Honesty

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including reduction of your final grade or even failing the course for any violation, and in addition may include disciplinary sanctions imposed pursuant to the Honor Code, ranging from an admonition to academic probation to expulsion from the law school. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

IX. Medical Information & Americans With Disabilities Act

If you have emergency medical information to share with me, please inform me immediately. Ordinarily, I’d encourage you to see me in person privately, but under the current circumstances that won’t be possible, so you can either e-mail me or call me on my cell phone listed above.

If you need academic accommodations because of a disability, please contact Associate Dean Ben Trachtenberg or Registrar Denise Boessen who will work with you to determine an appropriate response to your needs.

To request academic accommodations (for example, a notetaker), students must also register with the Office of Disability Services, (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696. It is the campus office responsible for reviewing
documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

X. Statement on Classroom recordings

The University of Missouri has a moderately complex set of rules regarding the recording of class sessions. University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in section 200.015 of the Collected Rules and Regulations. The pre-COVID-19 policy in this class was that I did not make, and students could not make, audio or video recordings of course activity, except students permitted to record as an accommodation under section 240.040 of the Collected Rules.

The circumstances of the COVID-19 pandemic have led to some reconsideration of these rules. Here’s the long and short of it for this class: I will try to remember to record every class session on Zoom; however, I will not make recordings of sessions available except to students who are obliged to miss class due to infection with COVID, another serious health condition, or a genuine personal emergency. Should you have to miss one or more classes due to one of these circumstances, please advise me and I will make the applicable class recording(s) available to you.

HOWEVER, this does not amount to permission for you personally to record either class sessions or any other communications with the professor or students without prior permission from the professor and any students who are recorded.

Students are not permitted to redistribute audio or video recordings (whether posted on Canvas or otherwise) of statements or comments from the course to individuals who are not students in the course without the express permission of the faculty member and of any students who are recorded.

Students who record and/or distribute audio or video recordings of class activity except pursuant to the foregoing conditions are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.