

SYLLABUS AND CLASS PLAN FOR EVIDENCE

Prof. Janicke

Fall 2021

Description of the Course:

The course will concentrate on students obtaining a working understanding of the Federal and Texas Rules of Evidence. Both sets are available free on my faculty home page. I strongly recommend printing out the Federal rules before the semester begins. It will save you time when called upon to discuss a particular rule, and during the quizzes. Most states' rules, including those of Texas, are closely modeled on the Federal Rules; any significant differences in the Texas rules will be discussed in class.

The syllabus and class plan are built around a combination of materials:

- (1) The Mueller-Kirkpatrick 9th edition casebook “Evidence Under the Rules”: a book of fact-pattern problems drawn mostly from actual litigations, plus case opinions from the courts.
- (2) The Federal and Texas Rules of Evidence (both are posted on my faculty home page). You will need the Federal rules close at hand for each class, except for Chapter 12 on privileges; for that subject you will need the Texas rules close at hand.
- (3) PowerPoints (posted on my faculty home page). There is at least one for each chapter included in the course. We will go through each PowerPoint in sections, with the Mueller-Kirkpatrick cases and problems interspersed where indicated.
- (4) Film Clips: interspersed in the plan, to increase discussion and understanding

My faculty home page is at www.law.uh.edu/faculty/pjanicke/Courses_Page.html

Grading; Class Preparation

Day-to-day preparation is essential. The subject is too large for cramming. There will be three short, multiple-choice, for-credit quizzes spaced during the semester at pre-announced times. These will be open book, with about ten questions per quiz. The quizzes will count for 10% of the final grade, in a manner to be discussed during the first week of class.

80% of the final grade will be based on the final exam. 15% will be determined by three pre-announced quizzes spaced through the semester.

5% of the final grade will be determined by class participation. This aspect of your grade is obviously not anonymous. It will be determined by (i) your interactions when called upon, (ii) your questions and comments, and (iii) your attentiveness in class. Details on how this works will be discussed at the beginning of the semester.

CLASS PLAN

The following class plan is correct regarding the chapters, topics, cases, and problems, but *approximate* as to dates when they will be reached. Number references are to pages of Mueller & Kirkpatrick (new 9th ed.) unless otherwise stated. All the cases, problems, and rules listed here will be called on for discussion in class. The PowerPoints for the course are located on my faculty home page for you to download.

Section 1: Aug. 23 – Sept. 8

Chap. 1: Evidence Law and the System: PowerPoint only. There is no required reading for Chapter 1 of Mueller & Kirkpatrick, which largely tracks my Introductory PowerPoint.

Chap. 2: Relevance: PowerPoint; Fed. R. 401-403; Prob. 2D Flight and Guilt (68); State v. Chapple (71); Prob. 2E Battered Wife (82); Prob. 2G My Insurance (84); Fed. Rule 106; Fed. R. 106; Prob. 2H Power Rollback (87).

Chap. 5: Relevance Revisited (special exclusions): PowerPoint; Fed. R. 404; Fed. R. 406;

Prob. 5A Red Dog part 1(423); Prob. 5B Red Dog part 2 (425); Prob. 5C Red Dog part 3 (427); Prob. 5E Drug Sale (437); Prob. 5F He Came Running In (439); Prob. 5G Was It a Crime (441); Prob. 5H It Was Just A Tragic Accident (443); Fed. R. 412; Prob. 5J Ordeal of Leslie or Fred (451); Fed. R. 413-415; Prob. 5L I Told Him (457); Prob. 5M Death On Highway (461); Prob. 5O Was He Served (464); Fed. R. 407; Tuer (467); Fed. R. 408; Prob. 5P Two Potato (475); Fed. R. 410; Prob. 5R I Used His Stuff (480); Prob. 5S We Can Talk (482).

Section 2: Sept. 13 – Sept. 15

Chap. 6: Competency of Witnesses: Fed. R. 601, 602; PowerPoint; Lightly (492); Fowler (495); Ricketts (497); Lawyers as witnesses (502); Fed. R. 605; Judges as witnesses (503); Tex. R. 601; Fed. R. 606; Prob. 6A Outside Influence (505); Tanner (505); Prob. 6B Refusal to Take the Stand (511); Prob. 6D The Bomber (511); Prob. 6E \$800,000 Error (511; Fed. R. 602

Chap. 7: Direct and Cross Examination Revisited: PowerPoint; Fed. R. 611; Fed. R. 612; Baker (519). Fed. R. 615; Prob. 7A Daily Transcripts. Film clip: from *A Place in the Sun*, Direct and cross of D

Section 3: Sept. 20 – Sept. 29

Chap. 3: Hearsay (resumed): PowerPoint on Chap. 3; Fed. R. 801-802; Prob. 3A Three See a Robbery (114); Prob. 3B Kenworth and Maserati (116); Check (128); Prob. 3C Blue Car (134); Prob. 3D Any Way You Like (135); Prob. 3E Whose Corn (136); Prob. 3F I'm From the Gas Company (137); Prob. 3G Eagle's Rest (138); Prob. 3H Anna Sofer's Will (140); Prob. 3J My Husband Is in Denver (148); Betts (158). Fed. R. 801(d); M-K's Hearsay "*Quiz*" (*non-graded*) (*pp. 161 et seq.*) – *but omit ## 4, 6, 15, 18, 24, 25, 30, 34.* Film clip: hearsay from sheriff in *To Kill A Mockingbird*.

Section 4: Oct. 4 – Oct. 20

Chap. 4:

- Definitional exceptions to meaning of “hearsay”: Fed. R. 801(d) again; PowerPoint Chap. 4 A-B: Prob. 4C Fire In the Warehouse (191); Hoosier (205); Doyle (209); Prob. 4G Couldn't He See the Boy (215); Mahlandt (220).
- For statements that really ARE hearsay, we go to Rule 803, the exceptions to general rule (R802) that hearsay is inadmissible. PowerPoint Chap. 4 C; Fed. R. 803(1), (2); Nutall (240); Arnold (244); Fed. R. 803(3); Hillmon (262); Pheaster (265); Fed. R. 803(4); Blake (278); Fed. R. 803(5); Fed. R. 803(6); Petrocelli (293); Fed. R. 803(7); Fed. R. 803(8); Fed. R. 803(9); Prob. 4N You Can't Offer a Police Report (320); Fed. R. 803(11-13); Fed. R. 803(18); Fed. R. 803(19-21); Fed. R. 803(22).
- Rule 804 -- more exceptions to the rule excluding hearsay (R802), usable only when the person who made the out-of-court statement is “unavailable” for trial: PowerPoint Chap. 4 Part D; Fed. R. 804(a); Barber v. Page (332); Prob. 4-O The Govt. Let Her Go (335); Fed. R. 804(b)(2); Fed. R. 804(b)(3); Prob. 4P He Had Nothing To Do With It (358). Fed. R. 804(b)(4); Fed. R. 804(b)(6). The catch-all exception, Fed. R. 807): Weaver (374). Sixth Amdmt. confrontation clause as a bar against hearsay being used by prosecutors: Crawford (389); Davis (404).

Section 6: Oct. 25 – Nov. 1

Chap. 8: Impeachment: PowerPoint; Fed. R. 608; Fed. R. 609; Fed. R. 613; Abel (538); Prob. 8A Hired Gun (546); Manske (553); Prob. 8B Hit the Deck (563); Prob. 8C History of Lying (567); Prob. 8D Faker Thug (570); Luce (573); Prob. 8E He's Trying to Sandbag Us (580); Webster (583); Harris (587); Havens (602; Fed. R. 610; Fed. R. 408(a).

Chap. 9: Opinion evidence: Powerpoint; Fed. R. 701; Prob. 9A It Was My Impression (628); Prob. 9B Watchful Neighbor (630); Fed. R. 702; Prob. 9C They Saw It the Same Way (639); Daubert (655); Kumho v. Carmichael (668); Prob. 9D They Become Anxious (684); State v. Moore (688); Prob. 9E We Found A Match (691); Fed. R. 704; Fed. R. 706; film clip from *My Cousin Vinny* on expert witness testimony.

[Omit Chapter 10]

Section 7: Nov. 3 – Nov. 17

Chap. 11: Judicial Notice: PowerPoint; Fed. R. 201; Prob. 11A Dry Pavement (756); Prob. 11B Subpoena (756); Prob. 11D Football Fan (757); Prob. 11E Delayed Shipment (757); Virgin Islands (758); Prob. 11G Deadly Weapon (765).

Chap. 12: Privileges: PowerPoint; Tx R. 503; Fed. R. 502(b); Tx R. 511(b)(2); Prob. 12A Bum Rap (784); Prob. 12B Bail Jumper (787); Prob. 12C Tipsy Client (789); Meredith (790); Prob. 12D Failed Venture (798); Suburban (800); Upjohn (804); Osterhoudt (815); Prob. 12E Hit and Run to your Lawyer (818); Prob. 12F Disclosure Was Inadvertent (828); Prob. 12G Reluctant Lawyer (833); Tx R. 504(a); Tx R. 504(b); Trammel (849); Prob. 12H The Babysitter's Testimony (857); Montgomery (859). Tx R. 513(c); Tx R. 505; Tx R. 507; Tx R. 509; Tx R. 510; Tx Civ. Prac. & Rems. Code §22.021 (posted).

Section 8: Nov. 22 – Dec. 1

Chap. 13: Authentication: PowerPoint; Fed. R. 611(a); Fed. R. 901(b); Johnson (870); Bagarich (873); Prob. 13B Land-Sale Contract (876); Prob. 13C Wizard and Incriminating Email (879); Prob. 13E Photograph (887); Fed. R. 902; Prob. 13J Death Certificate (892).

Chap. 14: Best Evidence Rule: PowerPoint; Fed. R. 1002-1004; Fed. R. 1007; Prob. 14E XXX Rated Movies (917); Prob. 14F Surveillance Photograph (917); Meyers (917).