I. COURSE OVERVIEW

Class Meetings

Mondays, Tuesdays, and Wednesdays 1:40-2:55
Room 106

Required Materials

George Fisher, EVIDENCE (Foundation, 2d ed. 2008)

George Fisher, FEDERAL RULES OF EVIDENCE: 2011-12 STATUTORY AND CASE SUPPLEMENT (Foundation, 2011)

Course Objectives

This course has three primary objectives: (1) to provide instruction on the technical rules of evidence; (2) to assist you in understanding the theoretical justifications and policy underpinnings for those rules; and (3) to help you begin to apply those rules in “real-life” practice situations. Please note, however, that Trial Advocacy is the course through which you will devote extensive time to applying the evidence rules.

Much of the course will focus on the Federal Rules of Evidence yet, in doing so, we will gain insight into Utah evidentiary issues given that the Utah Rules of Evidence largely mirror the Federal Rules. See http://www.utcourts.gov/resources/rules/ure/index.htm. For a discussion of the background surrounding the decision to incorporate the Federal Rules into the Utah state system, see http://www.utcourts.gov/resources/rules/ure/prelim.htm. The Federal Rules are currently in the process of undergoing some stylistic changes that – pending Congress’s approval – will take effect in December 2011. As a result, we will focus on the “restyled” Federal Rules of Evidence this semester.

I am also in the process of developing an on-line program to complement the textbook and lectures. So far, I have developed on-line content for approximately the first third of the course. I would like you to utilize this tool and, if possible, let me know if you find it helpful. Aaron Dewald, a leader of our technology team, will provide you with information about the system.
Assignments and Grading

Your grade will primarily be determined based on an in-class, open book, final examination. Specific information about the final examination will be provided as we progress through the semester. Moreover, class participation can be a factor in your favor in that you may receive a 1/3 grade increase (e.g., A- to A) in your final mark for outstanding class participation. There will be no downward adjustments for a lack of class participation.

Teaching Methodology

My teaching method for this course will be based on the “Expert” system. That is, I will ask each of you to volunteer to serve as an expert for two (2) classes this semester. During classes in which you are an expert, I will call on you directly and ask questions. Even if you are not designated as an expert on any particular day, I welcome and encourage significant voluntary participation! In addition to being familiar with the reading and on-line materials, experts should be prepared to grapple with the “Problems” (exercises) contained in the textbook and to respond to questions raised in class through video clips and other exercises. On occasion, we may fall slightly behind in covering the material. In that likely – perhaps inevitable – event, experts will not be called on directly regarding the previous day’s “leftovers.”

Accommodations

The University of Utah seeks to provide equal access to its programs, services, and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S. Central Campus Drive, Room 162, or you can call (801) 581-5050. All written information in this course can be made available in alternative format with prior notification.

II. SCHEDULE OF ASSIGNMENTS:

For organizational purposes, the syllabus is divided into three Parts that correspond with the three macro-level areas of Evidence: Relevance, Reliability, and Privileges. Before turning to the specific reading assignments, I should make two important clarifications. First, the reading assignments contain a number of Problems. Unless otherwise indicated, you should be prepared to discuss these Problems during class, especially those that I list on the class agenda, but you will not be asked to submit anything in writing. Second, when I ask you to read a particular Rule from the Supplement, this means that you should be familiar with both the pertinent rule and any corresponding legislative history/discussion contained in the Supplement. Please note that—in addition to the on-line tool that I mentioned above—there is a TWEN page for our course where, among other features, I post all handouts distributed during class.
PART I: RELEVANCE

Week # 1
Relevance 1: The Basics

CLASS 1: Tues. Aug. 23: Introduction to Evidence
Assignment Fisher, pp. 1-16 & Supplement, FED. R. EVID. 606(b); Digital Module 1.

(Logical Relevance)

Week # 2
Relevance 1: The Basics Completed

CLASS 3: Mon. Aug. 29: Relevance 1: The Basics
(Conditional Relevance; “The 403 Seesaw”)  

CLASS 4: Tues. Aug. 30: Relevance 1: The Basics
(Probative Value vs. Prejudice: Evidence of Flight and Probability Evidence)
Assignment Fisher, pp. 54-75; Digital Module 5.

CLASS 5: Weds. Aug. 31: Relevance 1: The Basics Completed
(Probative Value vs. Prejudice Continued: The Effect of Stipulations)
Assignment Fisher, pp. 75-89
Week # 3  
Relevance 2: Specialized Relevance (SAPPI Rules)  

No Class Monday, September 5 – Labor Day  

CLASS 6: Tues. Sept. 6: Relevance 2: Specialized Relevance  
(Subsequent Remedial Measures)  

No Class Wednesday, September 7; make-up Tuesday, September 13  

Week # 4  
Relevance 2: Specialized Relevance (SAPPI Rules) Completed;  
Introduction to  
Relevance 3: Character Evidence  

CLASS 7: Mon. Sept. 12: Relevance 2: Specialized Relevance  
(Compromise Offers; Payment of Medical Expenses)  

**CLASS 8: Tues. Sept. 13: Relevance 2: Specialized Relevance  
Completed (Liability Insurance; Pleas in Criminal Cases)  

** Make-up class at 12:15 in Room 106  

(Propensity Evidence in General; Proof of Knowledge)  
Assignment Fisher, pp. 135-151, 154-155 (through Prob. 3.1) & Supplement, FED. R. EVID. 404; Digital Module 12-14.  

No Class Wednesday, September 14 – no make-up!
Week # 5
Relevance 3: Character Evidence Continued

CLASS 10: Mon. Sept. 19: Relevance 3: Character Evidence
(Proof of Motive; Proof of Identity)
Assignment Fisher, pp. 157-177.

CLASS 11: Tues. Sept. 20: Relevance 3: Character Evidence
(Proof of Identity Continued; Res Gestae; Absence of Accident; Doctrine of
Chances; the Huddleston Standard)
Assignment Fisher, pp. 178-197; Digital Module 15-16.

CLASS 12: Wed. Sept. 21: Relevance 3: Character Evidence
(Propensity in Sexual Assault Cases)
Assignment Fisher, pp. 197-203, 207-221 & Supplement, FED. R. EVID. 413-415;
Digital Module 18.

Week # 6
Relevance 3: Character Evidence Completed

CLASS 13: Mon. Sept. 26: Relevance 3: Character Evidence
(Proof of Defendant's and Victim's Character in Criminal Cases; Habit)
Assignment Fisher, pp. 223-238, 240-245 & Supplement, FED. R. EVID. 405, 406;
Digital Module 17, 19-21.

CLASS 14: Tues. Sept. 27: Relevance 3: Character Evidence
(Habit Continued; Truthfulness I)
Assignment Fisher, pp. 246-249, 255-263 & Supplement, FED. R. EVID. 607, 608;
Digital Module 22-23.

CLASS 15: Weds. Sept. 28: Relevance 3: Character Evidence
Completed (Truthfulness II)
Assignment Fisher, pp. 265-278 & Supplement, FED. R. EVID. 609; Digital
Module 24-26.
Week # 7
Relevance 4: The Rape Shield Law; Relevance Review; Rule against Hearsay

CLASS 16: Mon. Oct. 3: Relevance 4: The Rape Shield Law

PART II: RELIABILITY

CLASS 17: Tues. Oct. 4: Brief Review of Relevance and Introduction to Hearsay
Assignment Review class notes from Part I; Fisher, pp. 360-369 & Supplement, FED. R. EVID. 801(a)-(c), 802

CLASS 18: Weds. Oct. 5: What is Hearsay?
Assignment Fisher, pp. 369-386

FALL BREAK

Week # 8
Hearsay Exceptions I

(Statements of Party-Opponents)
Assignment Fisher, pp. 392-405

CLASS 20: Tues. Oct. 18: Hearsay Exceptions
(Co-Conspirator’s Statements; Past Statements of Witnesses & Past Testimony)
Assignment Fisher, pp. 405-418, 421-424 & Supplement, FED. R. EVID. 613, 805

(Past Statements of Witnesses Continued; Introduction to Rule 804)
Assignment Fisher, pp. 437-457 (through Prob. 7.22) & Supplement, FED. R. EVID. 804
Week # 9
Hearsay Exceptions II

(Declarant Unavailable: Statements against Interest and Dying Declarations)
Assignment Fisher, pp. 468-484

(“Availability of Declarant Immaterial” I: Present Sense Impressions; Excited
Utterances; Statements of Then-Existing Condition)
Assignment Fisher, pp. 490-510 & Supplement, FED. R. EVID. 803

(“Availability of Declarant Immaterial” II: Statements for Medical Diagnosis;
Refreshing Memory and Recorded Recollections)
Assignment Fisher, pp. 510-527 & Supplement, FED. R. EVID. 612

Week # 10
Hearsay Exceptions III; Confrontation Clause

CLASS 25: Mon. Oct. 31: Hearsay Exceptions
(“Availability of Declarant Immaterial” III: Business Records; Public Records
and Reports)
Assignment Fisher, pp. 528-535, 540-547

CLASS 26: Tues. Nov. 1: Hearsay Exceptions Completed;
Introduction to the Confrontation Clause
(Residual Exception; Introduction to the Confrontation Clause)
Assignment Fisher, pp. 552-568 (read), 568-572 (skim) & Supplement, FED. R.
EVID. 807

CLASS 27: Weds. Nov. 2: Hearsay and the Confrontation Clause
I: Crawford and Its Progeny
Assignment Fisher, pp. 573-587 & Supplement, pp. 543-549
Week # 11
Hearsay Completed

CLASS 28: Mon. Nov. 7: Hearsay and the Confrontation Clause
II: Bryant
Assignment Supplement, pp. 553-579

CLASS 29: Tues. Nov. 8: Hearsay and the Confrontation Clause
III: Bullcoming
Assignment Supplement, pp. 580-605, 608-609 (Prob. 8.1)

CLASS 30: Wed. Nov. 9: Hearsay and Compulsory Process/Due Process
Assignment Fisher, pp. 663-679

-------------------

Week # 12
Lay Opinion and Expert Testimony

CLASS 31: Mon. Nov. 14: Lay Opinion and Introduction to Expert Testimony
Assignment Fisher, pp. 680-696 & Supplement, FED. R. EVID. 701, 702

CLASS 32: Tues. Nov. 15: Expert Testimony 1
Assignment Fisher, pp. 709-726 & Supplement, FED. R. EVID. 703, 705

CLASS 33: Wed. Nov. 16: Expert Testimony 2
Assignment Fisher, pp. 726-741, 748-753

-------------------

Week # 13
Expert Testimony Completed; Reliability Review; Privileges

CLASS 34: Mon. Nov. 21: Experts and Non-Scientific Evidence; Reliability Review
Assignment Fisher, pp. 774-795 & Review class notes from Part II
PART III: PRIVILEGES

CLASS 35: Tues. Nov. 22: Introduction to Privileges; Psychotherapist-Patient and Priest-Penitent Privileges

Week # 14
Privileges; Course Wrap-Up

CLASS 36: Mon. Nov. 28: Attorney-Client Privilege

CLASS 37: Tues. Nov. 29: Marital Privileges

CLASS 38: Wed. Nov. 30: Review Privileges and Course Wrap-Up
Assignment Begin process of reviewing materials

READING PERIOD: Optional Review Sessions TBA
• Substantive Review of the Material in Preparation for the Exam
• Review of Spring 2011 Exam
• Review of Fall 2009 Exam
• Q&A Sessions