

COURSE SYLLABUS

Evidence 101

Spring Semester 2012

Professor Dee Benson

Tuesdays and Thursdays, 5:25 p.m. - 7:05 p.m.

This class goes like this:

First: Your goal is to learn all of the Federal Rules of Evidence. There are 68 of them.

Second: A brief description of each class is given in this syllabus. It lists which Rules will be covered in every class session. It also lists the pages in the main casebook, *Evidence* by George Fisher, and Arthur Best's *Examples and Explanations* paperback that cover these rules. Also, if you have the excellent *Mangrum & Benson on Utah Evidence* treatise, you would do well to consult that as well. But regardless of how much, or little, you read in these three texts, your goal remains the same: to learn the rules.

Third: In case you missed it, here's the thing about the reading assignments: you don't necessarily need to read all of the pages; but you do need to read enough to learn the rule. You have more than enough resources with these three books to learn the rules, and the more you read the cases and the problems in Fisher, and the questions and answers in Best, the better off you'll be.

Fourth: YOU SHOULD COME TO CLASS. If you want to learn the rules, do well on the final, and pass the bar exam, you should attend class, pay attention, and allow me to explain these rules to you. If you'll do a modicum of reading in advance of class, then come to class, and listen, I guarantee you will learn evidence.

Fifth: You should watch reruns of Law & Order and other law-related TV programs and movies, as much as possible. "The Firm" looks promising. Time will tell.

Sixth: This should be an interesting class for you. I believe evidence can be one of your most interesting law school courses. If you have questions as the class progresses, and they don't get answered in (or after) class, feel free to call me at the federal courthouse, (801)524-6160 or e-mail at dee_benson@utd.uscourts.gov.

Finally: The final will be 100 true/false and multiple choice questions, on Wednesday, May 2, 2012 at 8:30 a.m. You will have 4 hours to complete the test.

Class No. 1 Tues., Jan. 10

Introduction to the Course.

Evidence Rules: 101, 102, 1101, 1102, and 1103; 401 and 402.

Reading assignment: Fisher: pp. 1-5; 18-30

Best: pp. 1-17

Special Emphasis on: Fisher: Problem 1.3 (p.22)
 Problem 1.4 (p.23)
 USA v. James (p.25)

Goals: Learn where the Rules of Evidence are applicable & learn what “relevance” means

Class No. 2 Thurs., Jan. 12

Evidence Rules: 401, 402 and 403.

Reading assignment: Fisher: pp. 38-61; 77-90

Best: pp. 1-17

Special Emphasis on: Old Chief v. U.S. (p. 77)
 State v. Bocharski (p. 39)
 United States v. James (P.50)
 O.J. Simpson Case (p.52)

Goal: Learn about Relevance & Rule 403.

Class No. 3 Tues., Jan. 17

Evidence Rules: 407, 408, 409, 410 & 411

Reading Assignment: Fisher: pp. 90-134

Best: pp. 19-32

Special Emphasis on: Fisher: Problem 2.1 (p.94)
 Problem 2.4 (p.110)
 Problem 2.8 (p.127)

Goal: To learn these 5 policy - based specialty rules.

Class No. 4 Thurs., Jan. 19

Evidence Rules: 404(a) & 404(b)

Reading Assignment: Fisher: pp. 135-197
Best: pp. 32-62

Special Emphasis on: Rules 404(a) & 404(b)
Fisher: People v. Zackowitz
(p.137)
United States v. Trenkler
(p. 161)
Problem 3.2 (p.155)
Problem 3.4 (p.157)
Problem 3.7 (p.159)
Problem 3.8 (p.160)

Goal: To learn about the concept of character evidence (i.e., generally, the rule against propensity evidence)

Class No. 5 Tues., Jan. 24

Evidence Rules: 404(a)(1), 404(a)(2), 405(a)

Class No. 6 Thurs., Jan. 26

Reading Assignment: Fisher: pp. 135-197; 223-240
Best: pp. 32-62

Special Emphasis on: Michelson v U.S. (P.223)
Problem 3.15 (p.238)
Problem 3.16 (p.239)
Problem 3.17 (p.238)
Problem 3.18 (P.239)

Goal: To learn how criminal defendants may open the door to the exceptions under 404(a)(1) & (2)

Class No. 7 Tues., Jan. 31
Class No. 8 Thurs., Feb. 2

**Evidence Rules: 404(a)(3), 607, 608 & 609 plus
Impeachment.**

Reading Assignment: Fisher: pp. 246-305
Best: pp. 32-62

Special Emphasis on: Fisher: U.S. v. Whitmore (p.250)
Problem 4.4 (p.285)
Problem 4.5 (p.286)

**Goal: To learn how character evidence applies to
witnesses and to learn about impeachment.**

Class No. 9 Tues., Feb. 7
Class No. 10 Thurs., Feb. 9

Rules 405(b), 412, 413, 414, 415 & 406

Reading Assignment: Fisher: pp.240-245; 306-359
Best: pp. 32-62

Special Emphasis on: Fisher: Halloran v. Virginia
Chemicals (p. 240)
Problem 3.19 (p.244)

**Goals: To learn about specialty rules where character
“other acts” evidence is admissible, under 405(b)
(where character is the issue); Rules 413 & 415
(cases involving sexual assaults) Rule 414 & 415
(cases involving child molestation).**

**Also to learn the Rape Shield Rule (412) & the
rules regarding habit (406)**

Class No. 11 Tues., Feb. 14

Review Character Evidence

Class No. 12 Thurs., Feb. 16 **Rules: 801(a), (b), & (c), Definition of Hearsay; & 802**

Reading Assignment: Fisher: pp.360-391
Best: pp. 63-91

Special Emphasis: Fisher: Trial of Sir Walter Raleigh
(p.360)
Problems 7.2, 7.3, 7.5, 7.6, 7.8, 7.9
& 7.10

Goal: To learn the definition of hearsay.

NO CLASS ON TUESDAY, FEBRUARY 21, 2012

Class No. 13 Thurs., Feb. 23 **Rules: 801(a), (b) (c) & 802**

Reading Assignment: Same material as previous class, plus
the hearsay quiz, Fisher, p. 384 &
389.

Class No. 14 Tues., Feb. 28 **Rules: 801 (d), (1) & (2)**

Reading Assignment: Fisher: pp. 392-456
Best: pp.93-107

Special Emphasis: Fisher: Problems 7.11-7.21
Mahlandt v. Wild Canid, (p.400)
Bourjaily v. United States, (P.406)
Tome v. United States, (p.439)

**Goal: To learn what the FRE define as non-hearsay
under 801(d).**

Class No. 15 Thurs., Mar. 1
Class No. 16 Tues., Mar. 6

Rules: 803 (1), (2), (3), (4), (5), (6), (7), (8), (10), (16), &(18)

Reading Assignment: Fisher: pp.490-552
Best: pp. 108-128

Special Emphasis: Mutual Life v. Hillmon (p.495)
Johnson v. State (p.523)
Palmer v Hoffman (p.528)
United States v. Vigneau (p.536)
Beech Aircraft v. Rainey (p.540)

**Goal: To learn the hearsay exceptions under Rule 803
(declarant's unavailability immaterial)**

Class No. 17 Thurs., Mar. 8

Rules: 804 (a) & (b)

*****SPRING BREAK MARCH 12 - 16, 2012*****

Class No. 18 Tues., Mar. 20

Reading Assignment: Fisher: pp. 457-490
Best: pp. 128-134

Special Emphasis: United States v. DiNapoli (p.458)
Williamson v. United States (p.469)
Shepard v. United States (p. 479)
United States v Gray (p.484)

**Goal: To learn the hearsay exceptions under Rule 804
(declarant unavailable).**

Class No. 19 Thurs., Mar. 22

Rules: 805, 806 & 807

Reading Assignment: Fisher: pp. 552-564; 565-679
Best: p. 134

Special Emphasis: Fisher: Crawford v. Washington
(p. 573),
Davis v. Washington (p.
597)
Hammon v. Indiana
(p.597)

**Goal: To learn about the residual exception & the
confrontation clause.**

Class No. 20 Tues., Mar. 27

Rules: Article VI - Witnesses (Rules 601-615)

Reading Assignment: Fisher: pp. 5-16; 350-360
Best: pp. 143-177

Goal: To learn all of the rules of Article VI.

Class No. 21 Thurs., Mar. 29

Rules: 701 & 702

Reading Assignment: Fisher: pp. 680-802
Best: pp. 179-190

Special Emphasis: Problem 9.2
United States v. Johnson (p.694)

**Goal: To learn the lay opinion rule (Rule 701) and an
introduction to the rules on expert testimony.**

Class No. 22 Tues., April 3 **Rules: 702, 703, 704, 705 & 706**

Reading Assignment: Same as previous class

Special Emphasis: Fisher: Frye v. U.S. (p. 726)
Daubert v. Merrell Dow
(p. 727)
Kumho Tire Co. v.
Carmichael (p. 774)
Problems 9.12 & 9.14

Goal: To learn rules on expert testimony.

Class No. 23 Thurs., April 5 **Rules: Articles IX (Authentication) & X (Original Writing Rule)**

Reading Assignment: Fisher: pp. 805-842
Best: pp. 213-225

Special Emphasis: Problems 10.1 & 10.2

Goal: To learn the rules on Authentication & Contents of writings, recordings & photographs.

Class No. 24 Tues., April 10 **Rules: 103, 104, 105, 106; plus 501**

Goal: To learn rules 103-106 and the rules pertaining to privileges. (particularly attorney-client; the marital privileges; priest-penitent; psychotherapist-patient.)

Class No. 25 Thurs., April 12 **Rule: 501 (privileges)**

Reading Assignment: Fisher: pp. 842-987
Best: pp. 191-211

Goal: To learn the rules pertaining to privileges

Class No. 26 Tues., April 17 **Review entire course**