

Last updated: October 1, 2014

Evidence

University of Minnesota Law School

LAW 6219

Fall 2014

4 Credits, Grading: A/F

Professor Francis X. Shen

Tues, Wed: 1:25 pm – 3:25 pm

Location: Mondale Hall, Room 20

Administrative Memo & Syllabus

Instructor: Dr. Francis X. Shen
330 Mondale Hall
Email: fxshen@umn.edu
Phone: 612-625-5323

Faculty Assistant: Ms. Morgan Gooch
Email: gooch010@umn.edu
Phone: 612-626-5984

Office Hours: Tuesdays, 3:30-5:00 pm (in Sullivan Café), and by appointment

Required Texts: GEORGE FISHER, EVIDENCE (3rd ed. 2012)
Current Federal Rules of Evidence, including the Advisory Committee Notes ¹

Final Exam: 3-hour in-class, open book exam on Wednesday, December 17 at 8:30 am

Grading: A/F. See Section IV below.

TWEN: courseid=184319

¹ Professor Fisher's Federal Rules of Evidence 2013-2014 Statutory Supplement is one option, though you can do fine with another text if it covers the same material.

I. Course Aims and Objectives

Aims. This aim of this course is to provide you with a basic introduction to the Federal Rules of Evidence. This aim will be accomplished primarily through a problem-based approach to understanding and applying the Rules of Evidence.

Specific Learning Objectives. By the end of this class, students will:

- Be familiar with black letter evidence law, and be able to spot evidentiary issues in a variety of civil and criminal fact patterns.
- Be able to discuss the concepts of relevance and reliability as they are used in Evidence law to guide decisions of evidentiary admissibility.
- Think critically about the rationales, and some of the assumptions underlying those rationales, that justify the Federal Rules of Evidence.
- Be exposed to ways in which the rules of evidence are used in criminal and civil practice, and have opportunities to meet practitioners experienced in courtroom litigation.
- Have opportunities to further develop legal writing and oral presentation skills.

II. Course Format and Procedures

Class meetings. This is a four-credit course offered in the Law School. The course will meet for two hours two times a week (1:25 – 3:25 pm, Tuesday, Wednesday) over the duration of the semester. (For those planning Thanksgiving travel, note that we *will* meet, for our final session, on Wednesday, November 26. Class will, however, be recorded for those who cannot attend.)

Each class session will involve a mix of lecture, discussion, and problem solving (sometimes in small groups). Lecture and discussion will be grounded in the assigned reading material, and will also at times incorporate additional materials to be presented or distributed by the Professor. Additional contextualizing background on the relevant law and policy may also be provided via lecture.

You should get in the habit of reading both the casebook and the associated evidentiary rules. When you see the “Focus On” logo in the casebook (see page 24 for an example), you should read both the cited rule *and* the Advisory Committee Notes for that rule.

TWEN. Course materials will be posted on the TWEN site, and I will send email via the TWEN site as well. I may also, on occasion, use some TWEN features in class. Thus, it is a requirement of the course that you register for the TWEN course.

Class Outlines and Visual Presentations. Basic class outlines will generally be distributed via email the morning of each class. This will allow you to incorporate the text of the outline into your notes. For classes in which a visual presentation is used, a file of the visual materials will be posted to the TWEN site after class. Please note that the Powerpoint slides and other materials posted on the course TWEN site are only for use by students in this semester's course, and may not be distributed to anyone else without express permission.

Attendance. Please read and adhere to the Law School's Policies and Procedures page (Academic Rule 1.1, ABA Standards 304(b) and 304(d)), which requires regular class attendance and adequate preparation, starting with the first scheduled day of class. Students who join a class late are responsible for all information about course attendance and participation expectations, whether announced in class or noted in the syllabus. For this course, excessive unexcused absences and/or an excessive lack of preparation may reflect negatively on your final grade. I also reserve the option of awarding one or two additional grade points (e.g. B to B+) for consistent high-quality contributions in class.

Students will not be penalized for absence during the semester due to unavoidable or legitimate circumstances. Such circumstances include verified illness, participation in intercollegiate athletic events, subpoenas, jury duty, military service, bereavement, and religious observances. For complete information, please see:
<http://policy.umn.edu/Policies/Education/Education/MAKEUPWORK.html>

Participation in Class. I strongly encourage your participation in this course, and I will use a combination of cold-calling and volunteer responses in our classroom discussion. We will also utilize some small-group work, which I will discuss in class.

Cell Phones, Smart Phones, and Laptops. When you walk into the classroom, you are expected to silence your phones. Exceptions will be made only in exceptional circumstances, which you should discuss with me before class.² Law school policy prohibits unauthorized use of laptops during class. You are expected to refrain from any computer use that is not germane to the class.

Law School policy prohibits unauthorized use of laptop computers during class, including, but not limited to, playing games, reading or writing e-mail, and internet surfing. Under University policy, students are not permitted to record any part of a class unless explicitly granted permission by the instructor. I reserve the right to lower your final grade in the event you fail to comply with the rules requiring regular attendance, adequate preparation, observing all deadlines, or computer usage.

² You do *not* need permission to keep your phone on vibrate, and step out of class to take calls from potential employers.

III. Required Readings and Optional Exercises

Readings. All of the required readings will be from the casebook – GEORGE FISHER, EVIDENCE (3rd ed. 2012) – and from the Federal Rules of Evidence (including the Advisory Committee Notes). Additional, optional further readings may be posted on TWEN.

It is expected that you read the assigned pages, and that you think through the assigned problems. We will spend much of our class time working on the problems, so it is in your interest to review them before class. You should come to class prepared to engage meaningfully with the material.

You do not need a horn book to succeed in this class, but if you are interested in a supplementary text, there are many good options. (There are also many free online resources that can serve the same purpose.) I don't recommend any supplemental text in particular (and likely most will do the trick), but two popular options are: Graham C. Lilly, Daniel J. Capra & Stephen A. Saltzburg, Principles of Evidence (6th ed. 2012); and Kenneth Broun, et al., McCormick on Evidence (7th ed. 2014). Also, please note however that because a focus of the course, and of the exam, will be *applying* evidentiary rules in novel contexts, simply memorizing doctrine as presented in a hornbook will not necessarily help you improve the legal analytic skills that will be tested at the end of the semester.

Optional Exercises. There are no required assignments other than the reading preparation described above and the exam described below. However, there will additional, optional exercises that you can do in order to receive instructor feedback. These assignments will not be graded, and will thus not factor into your final grade (other than indirectly, to the extent that they help you learn the material and improve your exam performance).

Optional Exercise #1: Post in TWEN forum (on-going). Throughout the semester, you are welcome to post to the “Anything and Everything” forum. You can post either under your name or anonymously, and I will reply either in the forum itself, via email, or via discussion in class.

Optional Exercise #2: Post in TWEN a written response to designated problem or question. On occasion during the semester, I will flag certain casebook problems and questions, and may also circulate questions related to the assigned material. You may, if you wish, post a short written response to the question and I will provide feedback either in or outside of class. Additional details will be provided in class.

IV. Exam and Grading

Basis for Grades. Grading this course will be on the A/F scale. Under the Law School Academic Rules, the meaning of those grades are:

A+	4.333	} Excellent to outstanding performance
A	4.000	
A-	3.667	

B+	3.333	}	Substantially better than adequate through very good performance
B	3.000		
B-	2.667		
C+	2.333	}	Minimally acceptable through adequate and somewhat above adequate performance
C	2.000		
C-	1.667		
D	1.000	}	Inadequate performance
F	0	}	Failing performance

Grading for the course will be based on the three-hour open-book examination described below. As mentioned above, excessive unexcused absences, an excessive lack of preparation, and/or unauthorized laptop use may reflect negatively on your final grade. Similarly, I reserve the option of awarding one or two additional grade points for consistent high-quality contributions in class

Exam Format. The final exam will be a three-hour, in-class open-book examination consisting of essay questions. In general, the exam questions will require you to recognize the relevant legal issues, to understand the applicable Federal Rules of Evidence, to apply those rules to the facts and issues identified, and to arrive at conclusions logically and with careful reasoning. As with all legal writing, precision and attention to detail will make for better answers. Additional details on the exam will be provided in class.

For purposes of this course, “open book” means that you may bring with you and consult: the Fisher casebook; the Federal Rules of Evidence and Advisory Committee Notes; the course syllabus; all handouts distributed in class or contained in the course packet; designated materials posted on the TWEN site; and any notes and outlines for which you have played a substantial role in preparing. “Substantial role” means all material was prepared by students in this semester’s course and that you prepared at least 20 percent of the total. Commercially prepared outlines, student outlines from other courses, “model” exam answers, hornbooks (including Dressler), nutshells and the like are not permitted, in whole or in part, nor are study group outlines unless they meet the “substantial role” test above.

V. Academic Integrity

You are expected to abide by the Law School Academic Rules, which require regular attendance and adequate preparation, and to satisfy the [University's Teaching and Learning Student Responsibilities](#), which note student responsibility for attending class, for meeting all course requirements, observing all deadlines and course procedures, maintaining academic integrity, seeking academic help and accommodation as warranted, respecting intellectual property, and keeping the classroom in good order.

The University seeks an environment that promotes academic achievement and integrity, that is protective of free inquiry, and that serves the educational mission of the University. Similarly, the University seeks a community that is free from violence, threats, and intimidation; that is respectful of the rights, opportunities, and welfare of students, faculty, staff, and guests of the University; and that does not threaten the physical or mental health or safety of members of the University community.

As a student at the University you are expected adhere to the Board of Regents Policy: Student Conduct Code. Note that the conduct code specifically addresses disruptive classroom conduct, which means "engaging in behavior that substantially or repeatedly interrupts either the instructor's ability to teach or student learning. The classroom extends to any setting where a student is engaged in work toward academic credit or satisfaction of program-based requirements or related activities."

The Law School's Academic Rules can be found at:
<http://www.law.umn.edu/current/policies.html>

The University's Code of Student Conduct can be found at:
http://www1.umn.edu/regents/policies/academic/Student_Conduct_Code.html

You are encouraged to study together and to discuss information and concepts covered in class. With the exception of any clearly noted collaborative tasks, this permissible cooperation should never involve a student submitting as her/his own work as the work of another. If at any time you have questions about the right way to proceed, simply ask.

VI. Disability Accommodations & Mental Health

Students with disabilities should consult with the University's Office of Disability Services (612-626-1333) and the Law School's Assistant Dean of Students Office regarding any necessary classroom or exam-related accommodations. The University is committed to providing quality education to all students regardless of ability. Determining appropriate disability accommodations is a collaborative process. You as a student must register with Disability Services and provide documentation of your disability. The course instructor must provide information regarding a course's content, methods, and essential components. The combination of this information will be used by Disability Services to determine appropriate accommodations for a particular student in a particular course. For more information, please reference Disability Services: <http://ds.umn.edu/student-services.html>

As a student you may experience a range of issues that can cause barriers to learning, such as strained relationships, increased anxiety, alcohol/drug problems, feeling down, difficulty concentrating and/or lack of motivation. These mental health concerns or stressful events may lead to diminished academic performance and may reduce your ability to participate in daily activities. University of Minnesota services are available to assist you. You can learn more about the broad range of confidential mental health services available on campus via the Student Mental Health Website: <http://www.mentalhealth.umn.edu>

VII. Professionalism

All students are expected to comply at all times with the Law School's [Honor Code](#) and the University's [Student Conduct Code](#). You should conduct yourself in this class and throughout your Law School career in accordance with the principles of professionalism applicable to practicing attorneys, the profession to which you aspire. The Hennepin County Bar Association Lawyers' Pledge of Professionalism says lawyers should encourage respect for the law and our legal system through their words and actions and be courteous to everyone during the course of their work. The Minnesota Supreme Court and MSBA Professionalism Aspirations say that "a lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms" and "lawyers and judges owe each other respect, diligence, punctuality, and protection against unjust and improper criticism and attack." I expect the same behavior in your interactions with me and other faculty, with your fellow students, and with Law School staff.

VIII. Class Schedule

NOTE: This schedule is subject to change as additional guest speakers are still being scheduled.

Week 1: Read pages 1-65

1. Tuesday, September 02, 2014
 - a. Introduction to the Course
 - b. Introduction the Federal Rules of Evidence
 - c. Relevance: Probativeness
 - d. Relevance: Materiality
2. Wednesday, September 03, 2014
 - a. Conditional Relevance
 - b. Unfair Prejudice (with the example of evidence of flight)

Week 2: Read pages 66-144

3. Tuesday, September 09, 2014
 - a. Probability Evidence (briefly)
 - b. Stipulations
 - c. Specialized Relevance Rules: Subsequent Remedial Measures
4. Wednesday, September 10, 2014
 - a. Specialized Relevance Rules: Compromise Offers & Medical Expenses
 - b. Specialized Relevance Rules: Liability Insurance
 - c. Specialized Relevance Rules: Criminal Pleas

Week 3: Read pages 145-207

5. Tuesday, September 16, 2014
 - a. Character Evidence: Propensity
6. Wednesday, September 17, 2014
 - a. Character Evidence: Propensity (continued)

Week 4: Read pages 207-256

7. Tuesday, September 23, 2014
 - a. Character Evidence: Propensity (continued, with focus on cases of rape and sexual assault)
 - b. Character Evidence: Character of the Victim
8. Wednesday, September 24, 2014
 - a. Character Evidence: Character of the Victim (continued)
 - b. Character Evidence: Habits

Week 5: Read pages 257-317

9. Tuesday, September 30, 2014
 - a. Introduction to Impeachment
 - b. Impeachment: Past Convictions
10. Wednesday, October 01, 2014
 - a. Character and Credibility – Review and Problems
 - b. Rehabilitation
 - c. Extrinsic Evidence

Week 6: Read pages 362-465, pages

11. Tuesday, October 07, 2014
 - a. Reliability: Competency
 - b. Reliability: Introduction to Hearsay
 - c. Hearsay: Assertions
 - d. Hearsay: Introduction to Exceptions
12. Wednesday, October 08, 2014
 - a. Hearsay: Opposing Parties' Statements
 - b. Guest speaker (2nd half)
 - i. [Attorney Steven J. Wells](#), Partner, Dorsey & Whitney
 1. Steven Wells is the Partner-in-Charge of Dorsey's Trial Group worldwide. He also chairs the firm's Appellate Practice Group and Professional Malpractice Group, and co-chairs the Franchise and Distribution Group.

Week 7: Read pages 465-504, 510-531, 542-574

13. Tuesday, October 14, 2014
 - a. Hearsay: Past Statements, Past Testimony
 - b. Hearsay: Declarant Unavailable; Statements Against Interest; Dying Declarations
14. Wednesday, October 15, 2014
 - a. Hearsay: Exceptions under Rule 803
 - b. Refreshing Memory & Recorded Recollections
 - c. Business Records, Police Records

Week 8: Read (for Wednesday): 318-361

15. Tuesday, October 21, 2014
 - a. Hearsay (no new reading): Review
 - b. Guest speaker (2nd half)
 - i. [Attorney Adine S. Momoh](#), Stinson Leonard Street LLP
 1. Attorney Momoh is a trial attorney focusing her practice on the areas of complex business and commercial litigation, securities litigation, estates and trusts litigation, and creditors' rights and bankruptcy.

16. Wednesday, October 22, 2014
 - a. Rape Shield Law (pages 318-361)

Week 9: Read (for Wed) pages 735-783

17. Tuesday, October 28, 2014
 - a. Special Guests
 - b. [Pete Orput](#), Washington County Attorney and Fred Fink, Criminal Division Chief, Washington County Attorney's Office
18. Wednesday, October 29, 2014
 - a. Lay Opinions
 - b. Expert Testimony

Week 10: Read pages 783-847

19. Tuesday, November 04, 2014
 - a. Expert Testimony (continued)
20. Wednesday, November 05, 2014
 - a. Scientific Evidence
 - b. Special Guest (2nd Half)
 - i. [Fred Pritzker](#) (UMN Law, Class of 1976)
 1. Atty Pritzker is founder and president of the national food safety law firm, Pritzker Olsen, P.A. His firm represents survivors of foodborne illness in cases involving pathogenic microorganisms and natural toxins. The firm is involved in virtually every national foodborne illness outbreak. In addition, Mr. Pritzker and his firm represent people harmed by defective products, medical devices, and drugs, as well as Legionella survivors.

Week 11: Read (for Tues) pages 847-893 and (for Wed) selections to be assigned from pages 586-717

21. Tuesday, November 11, 2014
 - a. Scientific Evidence (continued)
22. Wednesday, November 12, 2014
 - a. Confrontation Clause (selected topics)

Week 12: Read (for Tues) pages 894-928 and (for Wed) pages 930-974

23. Tuesday, November 18, 2014
 - a. Authentication, Identification, and Best Evidence
24. Wednesday, November 19, 2014
 - a. Privileges (selected topics)

Week 13: No new reading (catch-up and review)

25. Tuesday, November 25, 2014
 - a. Catch-up (and possible guest speaker)
26. Wednesday, November 26, 2014
 - a. Review