

EVIDENCE

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Fall 2026
9:30-10:45 a.m. Monday/Tuesday
RDB 2006

Office Hours: 10:30 a.m.-Noon Wednesday/Thursday
2-3:15 p.m. Monday/Tuesday
Whenever I am in my office
Email questions for the Blog

No Class on the Following Days:

- Monday, September 7 for Labor Day. Make-up built into schedule.
- Monday, September 21 for Jewish Holy Day. Make-up TBD.

Notes:

- All classes will be audio-recorded
- If you are sick, please stay home, for your health and for that of your colleagues. I will not take or record attendance.
- In selecting seats, please try to keep the two halves of the room roughly even.

Course Outline

This is an introduction and survey of the law of Evidence, providing students with an understanding of the rules and procedures governing the presentation of proof at trial. Students will consider not only how the judicial system and the rules of evidence operate, but why they operate in that manner and whether they are effective in discovering truth and properly resolving disputes. An overarching issue will be how the Anglo-American “adversary system” compares with Continental or Inquisitorial System that prevails throughout much of the world in terms of the presentation of evidence.

The primary focus of the class will be on two hypothetical case files, one criminal and one civil, and on working through a series of evidentiary questions related to those two cases, operating under the Federal Rules of Evidence. You should thoroughly familiarize yourself with the details of both cases and be prepared to argue both for and against the admission of each piece of evidence, as well as to argue a judicial determination of admissibility. This practice orientation should provide students with a real-world understanding of the trial process and the way in which the rules of evidence control how parties prove their cases.

Purpose

The point of this class is to study and understand how courts, political officials, and commentators understand the law of evidence and its application in court. The focus is not on the views of the instructor or of students. Readings and discussions are not intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, viewpoint, or belief.

In addition, academic freedom and responsibility are essential and integral to the University as a community of scholars engaged in the pursuit of truth and the communication of knowledge in an atmosphere of tolerance and freedom. The University serves the common good through teaching,

research, scholarship/creative activities, and service. Fulfilling these functions requires preservation of and respect for the intellectual freedoms of teaching, expression, research, and debate.

Required Class Materials

- ROBERT P. BURNS, STEVEN LUBET, & RICHARD MOBERLY, EVIDENCE IN CONTEXT (National Institute of Trial Advocacy) (6th ed. 2023) (Problems and Case Files for *People v. Mitchell* and *MacIntyre v. Easterfield*)
- DANIEL J. CAPRA & STEPHEN A. SALTZBURG, PRINCIPLES OF EVIDENCE (West) (9th ed. 2022) (“C&S”)
- FEDERAL RULES OF EVIDENCE (Wolters Kluwer) (2026) (compiled by Mueller, Kirkpatrick & Richter)
- BLOG MATERIALS (*Wasserman’s Evidence Blog*: <http://fiuevidence.blogspot.com>, in the post titled *Supplemental Materials*)

Technology and Class Conduct

Use of laptops, tablets, book readers, smart phones, and similar devices during class is absolutely prohibited, unless you have received permission or accommodation in advance.

Phones must be turned off when class begins.

Class attendance is required.

You must be in class on time unless I have previously given you permission to come late. You may not enter the room once class has begun unless I have given you permission to come late. Once class has begun, do not leave unless absolutely necessary. Please limit movement in and out of the room during class; I reserve the right to change this policy mid-semester. Exceptions to these policies for medical or similar reasons will be made for documented accommodations.

You must have your Federal Rules of Evidence pamphlet, problems, and any assigned materials with you and open on your desk at every class.

For those who prefer having (or being able to obtain) more precise notes, classes will be audio-recorded and the audio file for each class session will be posted on the ***Blog***. You are welcome and encouraged to review the recording and Blog your notes. This is, in fact, comparable to what you will experience in practice. You will go through a day of trial or deposition working with your own brief notes and your participation in events, then receive a transcript a day or two later.

Plagiarism Policy

Do not.

AI Policy

Do not.

The use of AI is prohibited for aid in conceptualizing, outlining, drafting, revising, translating, or editing any work submitted for credit. AI use is prohibited for any use for any purpose in any exam situation. Students may not upload course materials—including assignments, readings, slides, class recordings, or other class content—into generative AI systems.

Assessments:

Your grade for the semester will consist of three components.

Preliminary Examination: Short-answer essays. 120-150 points

Final Examination: Short-answer essays. 200-300 points

Class Participation: 30 points

Evidence Blog

The course blog is ***Wasserman's Civil Procedure Blog***. To read the blog, go to <https://fiuevidence.blogspot.com/>; posts can be read going down from most recent to least recent.

We will use the blog for posting:

- Syllabus, assignment information, and all additional assigned readings.
- Discussion Questions. Document containing the questions that will guide the class discussion.
- Supplemental Materials beside rules.
- Audio recording of each class meeting.
- A short after-class post containing a summary and some additional points about the just-completed session, as well as assignments, materials, questions, and issues you should think about for the next class.
- Generate ongoing conversations with ***short*** posts about the law of Evidence, the class discussions, reaction papers, and, most importantly, real-world stories touching on this material (I promise there will be a lot of them). I occasionally will post questions to the blog and encourage written responses for the blog.

All of this is by way of saying that you should get in the habit of checking the blog *at least* once or twice during the day.

Because you do not have access to write for the blog, email posts, stories, etc. to me and I will put them on the site.

College of Law J.D. Student Handbook

This class is administered and conducted in accordance with all the provisions of the Florida International University College of Law J.D. Student Handbook. Students are expected to be familiar with and to conduct themselves in line with those policies.

Assignments:

For each subject, the syllabus lists:

- **Provisions** (from the Federal Rules of Evidence Pamphlet or the Additional Provisions, in the *Supplemental Materials* post on the ***Blog***);\
- **Problems** to be prepared (from EVIDENCE IN CONTEXT)
- **Commentary**, including pages from C&S and any additional articles on the ***Blog***
- **Cases** (from the ***Blog*** or the Rules Pamphlet, as indicated)
- **Additional Materials:** Usually from ***Blog***.

The focus of class discussions will be the questions in the Discussion Questions document (***Blog***) and the 250+ evidentiary problems in EVIDENCE IN CONTEXT. You must know the facts, details, characters, and events of our two cases—*People v. Mitchell* (prosecution for murder) and *MacIntyre v. Easterfield* (civil action for damages for defamation). Think of these as case you are working on as an attorney. All the evidence and materials are in EVIDENCE IN CONTEXT.

During class we will go around the room to discuss the problems. You must be prepared for every class to handle the assigned questions as both the proponent and opponent of the admission of that piece of evidence, as well as the Judge ruling on that issue. I strongly recommend that you take the time to write-out notes and answers for each question prior to coming to class and use those notes for class discussion.

All rules and commentary are contained in the FEDERAL RULES OF EVIDENCE pamphlet, except for a few provisions in the **Additional Provisions** document in the *Supplemental Materials* post on the ***Blog***. When a rule is assigned, you should read the text of the rule first, then read the Advisory Committee Notes (which are in Part II of the Pamphlet), then go back and read the rule again. “Reading” a rule means understanding the rule; by the time you come to class, you should be able to paraphrase the rule in plain English and discuss and explain what it says and means and how it will apply. Our class discussion focuses on the Rules and statutes and the answers to most of the issues and questions can be found in the text and commentary. In preparing for class, understand how different rules connect and relate to the other rules.

Additional proposed or unenacted rules, as well as some cases and additional provisions, can be found on the indicated pages in the Rules Pamphlet.

The Syllabus links the relevant rules to the relevant questions and topics. In answering a question, the answer requires knowledge of any rule listed in the syllabus for that question or a rule we already covered.

You should not come to class without your rules pamphlet and any additional statutes or rules assigned from the ***Blog***. Your pamphlet should be tabbed, dog-eared, and marked-up. Part I includes only the text of the Federal Rules, without notes; that will be helpful in class, where we will be jumping from rule to rule. This course builds on itself. It is important that you grasp the rules and material that we discuss early in the semester in order to grasp the rules and materials that we discuss later in the semester. Do not simply forget or disregard the rules we discuss early in the semester, because they will come up again in answering questions later in the semester. You should approach each question by considering all the possible evidentiary concerns that might arise, including the concerns that we discussed earlier in the semester.

Additional questions for each topic (beyond the questions from *Evidence in Context*) provided in the **Guiding Questions** document, available on the ***Blog***.

Introduction: Evidence and the Adversary System

Provisions:

Fed. R. Evid. 101-102, 611, 614
28 U.S.C. §§ 2072-2074 (Rules Enabling Act) (pp. 351-52)

Problems: Review case file in *People v. Mitchell* (in EVIDENCE IN CONTEXT)

Commentary:

C&S 1-7, 11-18, 68-69 (§ 3.5)

Relevance:

Introduction to Relevance

Provisions

Fed. R. Evid. 105, 401-403

Problems:

3-14

Commentary:

C&S 33-48

Character Evidence and Prior Bad Acts

Provisions:

Fed. R. Evid. 105, 404-405

Restoring Artistic Protect (“RAP”) Act of 2022 (***Blog***)

Problems:

15-31

Review case file in *MacIntyre v. Easterfield*

Cases:

United States v. Bell (***Blog***)

Commentary:

C&S 69-89, 92-109

Conditional Relevance

Provisions:

Fed. R. Evid. 104

Problems

32-38

Commentary:

C&S 25-29, 61-69 (§ 3.4)

Habit, Custom, Character

Provisions:

Fed. R. Evid. 406

Unenacted Fed. R. Evid. 406(b) (pp. 310-11)

Problems:

39-44

Commentary:

C&S 89-92

Policy-Based Exclusions

Provisions:

Fed. R. Evid. 407-409, 411

Problems:

45-49, 51-52

Commentary:

C&S Chapter IV (except § 4.5)

Sexual Assault Rules

Provisions:

Fed. R. Evid. 412-415 (pay special attention to Advisory Committee Notes and History)

Unenacted Fed. R. Evid. 404(a)(4) and 405(c) (pp. 306-10)

Commentary:

C&S 109-20

Relevancy Review:

Problems:

58-62

Witnesses:

Provisions:

Fed. R. Evid. 601-606, 701, 704

Problems:

242-57

Commentary:

C&S 18-20, 301-04

Impeachment:

Introduction to Impeachment

Provisions:

Fed. R. Evid. 607-610

Problems:

66-74

Commentary:

C&S 304-07, 307-39

Impeachment: Character, Bias, Interest, Prejudice, Prior Crimes, Convictions

Provisions:

Fed. R. Evid. 404(a), 607-610, 613

Fed. R. Evid. 404(b)

Problems:

75-81

Commentary:

C&S 307-39

Impeachment: Prior Inconsistent Statements and Contradiction

Provisions:

Fed. R. Evid. 612, 613

Fed. R. Evid. 801(d)(1)(A) (current)

Fed. R. Evid. 801(d)(1)(A) (proposed amendment) (pp. 355-57)

Problems:

82-90

Commentary:

C&S 327-33

Impeachment Review:

Provisions:

- Fed. R. Evid. 404(a), 405(a)
- Fed. R. Evid. 801(d)(1) (current)
- Fed. R. Evid. 801(d)(1) (proposed amendment) (pp. 355-57)

Problems:

91-101

Commentary:

C&S 336-39

Trial Process, Burdens of Proof, and Presumptions:

Provisions:

- Fed. R. Evid. 301-302
- Unenacted Fed. R. Evid. 303 (pp. 303-06)
- Fed. R. Crim. P. 29 (***Blog***)
- Fed. R. Civ. P. 50 (***Blog***)

Problems:

103-08

Commentary:

- C&S 5-7, Chapter XII
- Colb, *Difference Between Presuming Innocence* (***Blog***)
- Hans & Jolly, *Jury Trials are Disappearing* (***Blog***)

Rulings on Evidence:

Commentary:

- Fed. R. Evid. 103-106
- 28 U.S.C. §§ 1291-1292 (***Blog***)
- 18 U.S.C. § 3731 (***Blog***)

Problems:

109-22

Commentary:

C&S 7-20, 25-29

Hearsay:

Introduction to Hearsay

Provisions:

Fed. R. Evid. 801-807 (Review Rules only, without Advisory Committee Notes)
Introductory Note: *The Hearsay Problem* (pp. 193-198)
Fed. R. Evid. 801(a)-801(c) (with Advisory Committee Notes)

Problems:

144-71

Commentary:

C&S 25-29; Chapter V (all); §§ 7.1-7.2

Hearsay Exclusions

Provisions:

Fed. R. Evid. 805
Fed. R. Evid. 801(d) (current)
Fed. R. Evid. 801(d)(1) (proposed amendment) (pp. 355-57)

Problems:

91, 178-86

Commentary:

C&S Chapter VI (all)

Hearsay Exceptions: Spontaneous Statements

Provisions:

Fed. R. Evid. 803(1)-(4)

Problems:

156, 187-94, 227, 231

Commentary:

C&S §§ 7.3-7.5
Hearsay Exception Video (***Blog***)

Hearsay Exceptions: Documentary Exceptions

Provisions:

Fed. R. Evid. 803(5)-(10), 612

Problems:

195-206

Commentary:

C&S 20-25; §§ 7.6-7.7

Recollection Cartoon (***Blog***)

Hearsay Exceptions: Other Documents and Statements

Provisions:

Fed. R. Evid. 803(11)-(23)

Commentary:

C&S § 7.8

Hearsay Exceptions: Declarant Unavailable

Provisions:

Fed. R. Evid. 804

Problems:

215-19, 235

Commentary:

C&S § 7.9

Layered or Multiple Hearsay

Provisions:

Fed. R. Evid. 805, 806, 613, 1006

Problems:

220-24, 236

Commentary:

C&S § 7.11

Hearsay: Residual Exception

Provisions:

Fed. R. Evid. 807

Problems:

225-26

Commentary:

C&S § 7.10

Confrontation Clause: Hearsay and the Constitution

Commentary:

C&S Chapter VIII (all)