

**NOTE: THERE WILL BE NO CLASS ON FRIDAY, SEPTEMBER 11 AND FRIDAY, OCTOBER 2. TO MAKE UP FOR THESE MISSED CLASSES, BEGINNING ON WED. AUG 29 AND CONTINUING THROUGH WED. SEPT. 30 CLASS WILL START AT 12:30 AND END AT 2:30.**

## **EVIDENCE SYLLABUS, Fall, 2009**

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### **Required Texts**

- 1. Evidence, The Objection Method, Prater, Capra, et al., 3rd edition\***
- 2. Courtroom Evidence Handbook, Goode & Wellborn, 2009-2010 edition\*\***

**\* You can buy this used – just be sure to get the 3<sup>rd</sup> edit.**

**\*\* A number of Rules changed in 2008. You can buy the 2008-2009 edition of this book (but not earlier editions). If you choose to buy the 2008-2009 edition, you will have to deal with pagination issues in terms of the assignments but there will be no big substantive difference in the texts**

### **Recommended outside reading and practice materials**

- 1. Evidence, Mueller Kirkpatrick Treatise**
- 2. Courtroom Handbook on GA Evidence, Milich \*\***
- 3. CALI Lessons**
- 4. Emanuel's and Emanuel's flashcards (for review)**

**\*\* Georgia evidence differs from Federal Evidence in many respects. If you plan to litigate in Georgia, I strongly recommend that you get this book.**

## **GENERAL INFORMATION**

***Course Objective:* To learn the Rules of Evidence through hands-on application. The goal of this course is to help you learn how to identify potentially inadmissible evidence and argue why it should/should not be admitted. The key to this class is learning to articulate WHY a particular piece of evidence is potentially (in)admissible in light of the context in which the**

issue arose and the facts of the problem. Your favorite phrase should be -- the evidence is (in)admissible under Rule \_\_\_ BECAUSE . . .

**Syllabus and Assignments:** The syllabus provides you with an outline of the material we will cover and a general plan for coverage. As you can see, there is a tremendous amount of material we need to cover. Because you need Evidence for your Litigation course and because it is heavily tested on the Bar, it is important that we cover virtually all the material on the syllabus. Be prepared to spend a lot of time reading and reviewing this material. If you fall behind, you will have a difficult time catching up!

Any changes to the assignments will be posted to the class email list as well as posted on the course website.

Our main focus in class will be on the Rules of Evidence. We will analyze how courts apply the rules in the cases we read and we will spend a great deal of time with "hands on" application of the Rules to handout problems. The more time you put into the problems, the more you will get out of them. The cases we read generally are only to help you understand how the Rule is actually applied - we will not spend hours dissecting the cases like you do in other courses.

When reading, make sure you read both the casebook and the Goode & Wellborn Rules and accompanying headnotes that are assigned; the headnotes in G&W help explain the nuances of the rules and help you break the rules into comprehensible sub-parts.

## **GRADES**

### **Ungraded Quizzes/Assignments**

Throughout the semester, to help you learn the material and test your comprehension, we will be doing ungraded "quizzes" and "problems" at home and in class and reviewing your answers through self and peer grading. You are urged to use this experience as a way to further your knowledge of the substantive material and how it is applied to various factual scenarios.

### **Mid-Term – 25 % of grade**

To help you see if you are on track for learning the substantive law, you will have a 60-75 minute in-class short answer/short essay mid-term on Wed. Oct. 2. That mid-term will be worth 25% of your final grade. The mid-term will be open book. You must attend class that day and take the mid-term. Only unforeseen emergencies will allow you to take a make up test. If you have A.D.A. accommodation issues or an unforeseen emergency, please work with the registrar to arrange for a make up test to be taken no later than 5 pm Tuesday, October 8.

## **Final Exam – 75 % of grade**

**In your law practice, you will have different approaches to evidence problems. Before a trial, you will have the luxury of thinking about evidentiary issues and discussing them with colleagues; during a trial, you will have to respond immediately to evidence, either through an objection or a response to your opponent's objection. At trial, you must know the Rules of Evidence extremely well so that you immediately can explain why, based on the Rules, you should win the contested point. As explained in more detail below, your final exam tries to reflect these scenarios.**

**At the end of the semester, you will get a case file. There will be numerous evidentiary issues in the case file. You will have the opportunity to review the case file, identify the evidentiary issues in it and discuss these issues with colleagues as you study for the exam. Between 33- 50% of the questions on the final exam will be from the case file. The remaining questions on the final exam will involve something other than material from the case file. The exam will be short answer and short essay questions. The final exam will be CLOSED BOOK - no text, no rules, no notes. I will allow you to bring in the case file - but it must be a clean copy of the file - with no writing on it. You will be asked to turn the case file in at the end of the exam period.**

## **Attendance/Participation/Preparation**

**Attendance, preparation and professionalism are important parts of this class. I expect you to come to class, be well prepared and to participate. I also expect the highest standards of professionalism.**

**I reserve the right to penalize you if you are repeatedly unprofessional or unprepared. By “unprofessional manner” I mean acting in a way that distracts or disturbs your colleagues and/or me, including, but not limited to: talking to classmates or blatantly passing notes to classmates while someone is talking, leaving your cellphone or pager on, consistently coming in late or leaving early, or using your computer FOR ANYTHING other than note-taking or class-related research during class time. NOTE: The ABA requires attendance. If you are absent more than 6 times (i.e. approximately 25% of the class), I reserve the right to prohibit you from taking the final exam.**

## **How to reach me:**

**Anytime you have a question or just want to talk, you can call me (404 413 9157); email me (acurcio@gsu.edu) or set up an appointment to see me. The best way to make an appointment is to communicate via email.**

## **ASSIGNMENTS\***

**\* The casebook sets forth the applicable rules at the beginning of each chapter. However,**

**your understanding of the Rules will be GREATLY increased if you read the accompanying headnotes that are in the Goode and Wellborn Rules book. Unlike in other classes, we will not spend a lot of time analyzing the cases, but will read them just to pull out the legal rule and see how it applies to various factual situations (SEE KEY QUESTIONS BELOW). We also will not be reading all the cases in the case book. Nonetheless, there will be substantial reading. Remember that this is a four hour class with a lot of material to cover. Under the theory that forewarned is forearmed: you will have to spend a lot of time preparing for class.**

**We will be doing a lot of handout problems - in answering the problems, make sure you can identify the part of the applicable Rule(s) you relied upon and the reason(s) underlying your answer. There may be times that we do not cover all assigned problems in a particular class. Those problems we do not cover we will either do in the next class, or I will post answers on the class e-mail discussion group. The problems are incredibly important and I strongly encourage you to spend time working through them.**

### **KEY QUESTIONS TO ANSWER WHEN READING CASES**

**In reading cases for this class, the main focus will be on: identifying the evidentiary issue; knowing the court's holding and its reasoning for that holding. We will only briefly discuss most cases - you need to read them to get a sense of how the rule is applied in a given factual situation. Rather than brief the cases, you just need to be prepared to answer the following questions for each case:**

- a. what is the contested evidence**
- b. what are the arguments for and against the admission of this evidence**
- c. what is the court's ruling and why**

### **ASSIGNMENTS**

#### ***Week 1***

**Week One – (Aug. 19 & Aug. 21) [foundational issues & relevancy]**

***REMEMBER THAT CLASS STARTS ON AUG. 19 at 1:00 pm and on Aug. 21 at 12:45; it ends at 2:25 both these days***

**Wed. Aug. 19 [foundational information]**

**Goode & Wellborn [G&W] Rules 103, 104 (a) & (b), 105 & 611 (read rule and accompanying headnotes in this book - i.e. pp. 53-62; the headnotes have a lot of important explanatory information)  
CB pp. 9-16; 25-26; 34-49**

**Fri. Aug. 21 [general relevancy rules]**  
**Goode & Wellborn - 401-403 [read rules and accompanying notes – i.e. pp. 73-84];**  
**CB pp. 120-127; 131-143; 156-160**  
**Hypos posted on TWEN**

***Week 2 [special relevancy rules & begin character evid]***

**REMINDER: Starting this week and ending on 9/30, class begins at 12:30 and ends at 2:30**

**Wed. Aug. 26 [special relevancy rules]**

**G & W – Rules 407 & 408 [read rules and accompanying notes]**  
**CB pp. 175-182; 190-201;**  
**Hypos posted on TWEN**

**Fri. Aug. 28 [special relevancy rules cont'd & begin char evid]**

**Note: Character evidence is relatively complicated. We will start with an overview lecture and some basics. Thus, just read the subpart of the rule that I noted. Note that the book uses the term “circumstantial character evidence”. That term is essentially the same as what we will be calling “propensity character evidence”. Also, ignore the book’s “rules” on character evidence - they are NOT the actual rules and are more confusing than clarifying**

**G&W Rules 409-411 [rules & headnotes]; 404(a)(1) notes (1-4) [Rule 404a begins char evid]**  
**CB 209-212; 223-225**  
**CB pp. 231-240 [begins character evid]**  
**Hypos posted on TWEN**

***Week 3 [character evidence]***

**Wed. Sept. 2 [char evid cont'd]**  
**G&W: Rules 404(a) [rule & headnotes 5-12] & 405 [rule & headnotes]**  
**CB pp. 240-264**  
**[no hypos]**

**Fri. Sept., 4 [character evid continued]**

**Hypos posted on TWEN [reviewing the character evid rules we learned and explaining**

**404b issues – note that you should be prepared to answer the review hypos; we will discuss the other hypos to illustrate the issues we cover in Rule 404(b) – I don't expect you to know the answers to those hypos although you should try and answer them]**

**G&W Rule 404(b) [non propensity purposes for prior bad act evidence – rules & headnotes]**

**CB pp. 264-285**

***Week 4 [habit & sexual conduct char evid rules]***

**Wed Sept. 9 [habit & sexual conduct char evid rules]**

**G&W Rules 406, 412-415 [rules & headnotes] [habit & sexual conduct char evid rules]**

**CB pp. 297-298; 308-310; 312-313; 332-340**

**Hypos posted on TWEN**

**REMINDER: No Class Fri. 9/11**

***Week 5 [lay and expert witness rules]***

**Wed. Sept. 16 [competency, lay opinions & ultimate issue rule]**

**G&W Rules 601-603 [Rules & headnotes], 701 [Rule & headnotes], 704(a) &(b)[rules & notes]**

**CB pp. 78, 86-90, 440-447; 459-460; 543-49**

**Hypos posted on TWEN**

**Fri. Sept. 18**

**G&W Rules 702, 703, & 705 [Experts]**

**CB pp. 472-79, 510-521; 534-36; 541-46**

**Hypos posted on TWEN**

***WEEK 6 [authentication and best evidence rules]***

**Wed. Sept. 23 [Authentication]**

**Rules 901-902 [rules & headnotes]**

**CB pp. 344-348; 354-56**

**CB – read notes and do problems on pp. 363-387 (skimming cases will help you answer problems if you can't figure the problems out from the G&W reading and the notes in the casebook)**

**CB 390-400**

**Fri. Sept. 25 [Best Evidence]**

**G&W Rules 1001-1008**

**NOTE: If you find the rules confusing, then you should read the notes in the casebook for chapter 8 to re-inforce the text in G&W**

**Hypos posted on TWEN**

***Week 7 [begin hearsay]***

**Wed. Sept. 30 [Begin Hearsay – is it hearsay]**

**This week, we will begin hearsay. I really encourage you to do the reading, do the hypos, and attend class b/c this is complicated stuff. I also have put some explanatory text into the assignment to help you understand what we are doing. I am starting the section on hearsay fairly slowly. We will increase speed/assignments when we get into the exceptions (Rules 804 & 803)**

**G&W Rule 801(a) (notes 3-7)**

**CB pp. 558-571 (omit Wicks case)**

**REMINDER: No Class on Oct. 2**

***Week 8 – REMINDER Class reverts to original schedule – Begin at 12:45 and end at 2:25***

***Wed. 10/7 – In Class Mid-Term [includes all material except for Hearsay class on 9/30]***

**Fri. Oct. 9 [hearsay cont'd – is it hearsay & begin statutory exemptions]**

**G&W Rule 801(a) (notes 1-2); 801 (d)(1)(a) [rule & headnotes]**

**CB 574-576; 580-585; 594-598; 610-614**

**Hypos posted on TWEN**

***Week 9 [hearsay cont'd]***

**Wed Oct. 14 [statutory exemptions cont'd]**

**G& W Rule 801(d)(1) (b) & (c) & d(2) (a) – (c)[notes 1-7]  
CB pp. 607-609; 614-624  
Hypos posted on TWEN**

**Fri. Oct. 16 [finish statutory exemptions & begin 804 exceptions]**

**G&W Rule 801(d)(2) (d) & (e) & Rule 804 definitions  
CB pp. 625-636; 640-647  
Hypos posted on TWEN**

***WEEK 10* – [hearsay cont'd]**

**Wed. Oct. 21 [804 exceptions]**

**G&W Rules 804(b)(1) - 804(b)(6)(note that G&W only provides headnotes for former testimony, statements against interest and forfeiture by wrongdoing)  
CB pp. 673-686; 695-709  
Hypos posted on TWEN**

**Fri. Oct. 23 – [begin 803 exceptions]**

**Rules 803(1) - (3)  
CB 718-728; 733-749  
CB Problem 13-1 (a) & (b) pp. 748-750  
Hypos posted on TWEN**

***WEEK 11* [hearsay continued & confrontation clause]**

**Wed. Oct. 28 [803 cont'd]  
Rules 803(4) –(7); Rule 612; Rule 805[rules & headnotes]  
CB pp. 751-758; 94-107; 767-776  
Hypos posted on TWEN**

**Fri. Oct. 30 [finish hearsay & confrontation clause]  
Rules 803 (8) – (10) & 803(18)  
Rule 807; skim rule 806  
CB pp. 783-791; 811-812; 815-821  
Confrontation Clause cases TBA  
Hypos posted on TWEN**

***Week 12* [finish confrontation clause & begin impeachment]**

**Wed. Nov. 4 [impeachment generally & via prior convictions]**

**Finish confrontation clause cases if nec'y**

**G&W Rule 607 [notes 1, 2, 6 & 9], Rule 610; Rule 609;**

**CB read notes only pp. 925-939**

**CB pp. 943-953; 958-59**

**Hypos posted on TWEN below**

**Fri – Nov. 6 [impeachment with prior un-convicted acts of untruthfulness & prior statements & bias]**

**Rule 607 [all notes] 608 & 613**

**CB 965-970; 973-79; 996-1002; 1015-16**

**Hypos posted on TWEN**

**Week 13 [impeachment & rehabilitation & begin privileges]**

**Wed Nov. 11 [review impeachment; rehabilitation & marital privileges]**

**Rule 608(a)**

**CB pp. 1002-1009; 1088-96**

**Hypos posted on TWEN**

**Fri. Nov. 13 [dr/patient/psych patient & attorney client privileges]**

**[NOTE: THERE ARE NO FEDERAL RULES ON PRIVILEGES other than Fed. R. 502 which deals with attorney/client privilege; there is federal common law on privileges (and state privilege law in diversity cases) the “Privileges” rules in Goode & Wellborn are only a compilation of proposed rules which are really a compilation of existing common law rules on privileges]**

**Rule 502; look at R. 503 – not an enacted rule but good outline of attorney/client privilege**

**CB 1109-1110, 1035-1044; 1063-1076**

**Week 14 [privileges cont'd & review]**

**Wed. Nov. 18**

**Finish privileges & do brief general review & go over review questions posted on TWEN**

**NOTE: Exam Case file will be posted no later than Mon. 5 pm Nov. 16**

**NOTE: THIS WILL BE THE ONLY TIME YOU CAN ASK ANY QUESTIONS ABOUT THE EXAM FORMAT (you will be able to ask substantive questions unrelated to the exam format and content at any time up until 24 hours before the exam).**

**Fri. Nov. 20**

**Maybe additional review or catch-up if our pace is slower than expected**