

## EVIDENCE ASSIGNMENTS

### PROFESSOR KESSLER

#### CASEBOOK: EVIDENCE, CASES AND MATERIALS, 9TH EDITION WEINSTEIN, MANSFIELD, ABRAMS & BERGER Federal Rules of Evidence - 2015 Rules or more recent (You may download them)

#### NOTES:

- 1) **Office Hours:** 30 minutes after each class. Office: room 235 - drop in or by appointment: [speak2kess@yahoo.com](mailto:speak2kess@yahoo.com)
- 2) **Laptops** are permitted. Those using laptops will be expected to be able to look back through their class notes to explain what has been said in prior classes and also may be asked to do quick legal research during the class.
- 3) **Attendance:** Good and regular attendance is mandatory. Attendance will be taken and an excessive number of absences may lead to involuntary withdrawal from the class.
- 4) **Final Examination:** Closed book.
- 5) **Assignments:** The schedule identifies specific Federal Rules of Evidence that are to be read in conjunction with the assignments.
  - 1) Students will be expected to have carefully read the assigned Federal rule prior to class and to be able to explain each such rule *during the class session*. If the rule contains elements, students must be able to identify those elements. **In other words, students are expected to have memorized the rules that are assigned for each class!**
  - 2) The major cases that will be discussed in class are specifically noted in the assignment to facilitate class preparation.
- 6) **Class Participation:** Class participation is critical to learning. Preparation to answer questions requires more than simply reading the assignment. To be prepared students must both have read and spend time trying to understand the cases before class. In this class, hypotheticals will be used extensively. The purpose of a hypothetical is to give students an opportunity to assess their knowledge of the materials. Students who do not try to answer hypotheticals will deprive themselves of critical feedback. If you are not called on, think of what your answer would be and compare it to the students who are responding.

This feedback mechanism is solely designed to assist students in evaluating their knowledge of the materials. Each class is an informal examination. Each class is designed to provide a measure of how much you have learned. If you are not called on, think of what your own answer would be and compare it to the students who are responding. To ease the burden of preparation for class participation, students will have advance notice when they will or may be called on. Further, to enable preparation for class, the specific cases and rules that will be the topic of each class are noted in the assignments.

## EVIDENCE ASSIGNMENTS

- 1<sup>st</sup> Class**      Judicial Notice +:  
                         FRE 201; 1238-1247; 237-246; 333-339; 316-333
- 2<sup>nd</sup> Class**      Witness Examination  
                         Direct (Rule 611 (a) (b) (c)-- 333-339  
                              Straub v. Reading Co.;  
                              - 335-339 (important pages)  
                         Preparation of Witnesses -- 316-333; 237- 246  
                              Resolution Trust Corp. v. Bright  
                              Opinion NO. 79, Legal Ethics Committee
- 3<sup>rd</sup> Class**      Refreshing (Rule 612 (a - c) -- 340-352  
                              US v. Riccardi  
                         Past Recollection Recorded (Rule 803(5) -- 539-540  
                              US v. Porter
- Cross -- (Rule 607,611(a)(b)(c)) -- 362-381  
                              Finch v. Weiner  
                              People v. Sallis
- Redirect -- 381-385  
                              Commonwealth v. O'Brien
- Real
- Proof/Relevance
- 4<sup>th</sup> Class**      Factual Relevance (Rule 104 (b), 401, 901)-- 97-122  
                              McAndrews v. Leonard  
                              Baillet Latour v. Baillet Latour - 94  
                              Almeida v. Corriea  
                              Bruce's Juices v. US  
                              Miller v. Pate - Add the following facts:  
                                   The "blood" was Type A  
                                   The decedent had Type A blood  
                                   40% of the population has Type A blood  
                                   The shorts were found 3 days after the crime  
                              Anderson v. Berg  
                         Preliminary Issues of Fact (Rule 104 (a) & (b)) - 169-172  
                              Sliker v. US



**Statistical Proof -- 51-79**

**People v. Collins  
Smith v. Rapid Transit, Inc.  
State v. Rolls**

**9<sup>th</sup> Class      Review of Relevance  
Collateral Evidence (Rule 607) - U.S. v. Abel, p. 406 ) -- 402-407  
State v. Oswald  
Stephens v. People  
People v. Pargo  
People v. Terczak  
People v. Wilson**

**Competency**

**Common Law -- (Rule 601) -- 255-277  
Rock v. Arkansas  
Zeigler v. Moore  
Truthfulness -- 285-291  
US v. Ward  
Ability to Perceive -- (Rule 602) -- 291-297  
State v. Ranieri**

**10<sup>th</sup> Class      Dead Man's Statute -- FRE 601 -- 274 - 277  
Zeigler v. Moore  
Infancy -- 297-305; 563;  
  
Mental Disease -- 305-316**

**Opinion Evidence**

**Lay Opinion -- (Rule 701) --352-362  
Wilson v. Pennsylvania RR Co.  
US v. Stamps  
11<sup>th</sup> – 13<sup>th</sup> Class      Expert Opinion -- (Rule 702-5) -- 954-1067  
Een v. Consolidated Freightways  
People v. Taylor  
Meier v. Ross General Hospital  
Daubert v. Merrell Dow Pharm.  
Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)  
  
General Tire v. Joiner, 522 U.S. 136 (1997)  
US v. Chischilly**

**US v. Scop**  
**US v. West (Rule 704)**  
**Rabata v. Dohner**  
**Pelster v. Ray (Rule 703)**  
**People v. Anderson**

**Learned Treatises -- (Rule 803(18)) -- 766-771**  
**Lie Detectors -- 467-471**

**Cross Examination**

**14<sup>th</sup> Class    Anticipating Cross -- 385-390**  
                  **US v. Cosentino**  
**Impeaching Own Witness --( Rule 607) - 390-401**  
**Impeachment Subject Matter**  
                  **Bias -- 406-416**  
                  **Gordon v. US**  
                  **US v. Campbell**  
                  **Henning v. Thomas**  
                  **Grudt v. City of**

**LA**

**15<sup>th</sup> Class        Crimes -- (Rule 609) -- 416-429**  
                          **People v. Sandoval, 34NY2d 371 (1974)**  
                          **US v. Valencia**  
                          **Cree v. Hatcher**  
**Bad Acts -- (Rule 608) -- 429-438**  
                          **People v. Sorge**  
                          **People v. Duffy, 36NY2d258 (1975)**

**16th Class**  
**530**

**Prior Inconsistent -- (Rule 613; 801(d)(1)(A)) -- 453-462; 522-530**  
**Denver City Tramway Co. V. Lomovt**  
**Rowe v. Farmers Insurance Company, Inc**  
**Nucci v. Proper, 95NY2d 597 (201)**  
**Letendre v. Hartford Ins Acc & Indemntiy Co,**  
**21 NY2d 518 (1968)**  
**Prior Consistent -- (Rule 801 (d)(1) (B)) -- 540-549; 552-554**  
**Tome v. US**  
**Beech Aircraft Corp. V. Rainey (Rule 106)**

**Circumstantial**

**Proof**

**17<sup>rd</sup> & 18<sup>th</sup> Class**

**Character**

**Other Crimes -- (Rule 404, 405)**

**-- 808-815; 819-853; 861-875**

**People v. Molineux, 168NY264 (1901)**

**People v. Zackowitz**

**State v. Spraggin**

**State v. Abercrombie**

**People v. Steele**

**Gaddis v. State**

**People v. Cole**

**US v. Montalvo**

**People v. Santarelli (Review 703 & 702 on these facts)**

**State v. Bock**

**US v. Figueroa**

**Lyles v. State**

**Huddleston v. US**

**19<sup>th</sup> Class**      Reputation -- (Rule 803(21); 404 (a); 608(a)) -- 875-887; 438-447; 464-467

**Michelson v. US**

**US v. Dotson**

**Civil Cases -- 914-921**

**Dallas Railway & Terminal CO. v.**

**Farnsworth**

**Habit & Custom -- (Rule 406) -- 921-926**

**Frase v. Henry**

**Settlement Offers -- (Rule 408) -- 938-947**

**Hearsay**

**20<sup>th</sup> Class**

**Rule 801**

**Definition (Rule 801 (a))-- 475-522**

**Leake v. Haggert**

**People v. Eady**

**Brown v. Coca Cola**

**Kingdon v. Sybant**

**Safeway Stores Inc. v. Combs**

**Hanson v. Johnson**  
**Koury v. Follo**  
**US v. Jackson**  
**Betts v. Betts**  
**Bridges v. State**  
**State v. Galvan**  
**Rex v. Wysochan**

**21<sup>st</sup> Class**      **Wright v. Doe D. Tatham**  
**Silver v. New York Cent. R.R. Co.**  
**Kinder v. Commonwealth**

**22<sup>nd</sup> Class**      **Admissions (Rule 801(d)(2)(A-E)-- 563-605**  
**Bill v. Farm Bureau Life Insurance Co.**  
**Schrffius v. Orr**  
**East Kentucky Rural Electric Co-op. v. Phelps**  
**US v. McKeon**  
**Mahlandt v. Wild Canid Survival & Research Center, Inc.**  
**Brookover v. Mary Hitchcock Memorial Hospital**  
**Wilkerson v. Carnival Cruise Lines, Inc.**  
**Bourjaily v. US**  
**US v. Urbanik**

**23<sup>rd</sup> Class**      **Rule 804      Unavailability - Rule 804(a)(1-5)**

**Dying Declaration - Rule 804(b)(2)-- 753-760**

**People v. Callahan**

**People v. Nieves**

**Declaration Against Interest- (Rule 804(b)(3)-- 605-634**

**Potter v. Finan**

**Carpenter v. Davis**

**People v. Brown**

**Williamson v. US**

**24<sup>th</sup> Class**      **Former Testimony - Rule 804 (b)(1)-- 723-737; 747-752**

**Lloyd v. American Export Lines, Inc.**

**Fleury v. Edwards**

**State v. Ayers**

**Commonwealth v. Canon --- US. v. Napoli**

**Rule**

**803**

- 25<sup>th</sup> Class    Business Records –R.803(6) & 803(8)– 679-723**  
    **Palmer v. Hoffman**  
    **US v. Jacoby**  
    **Johnson v. Lutz**  
    **Beech Aircraft Corp. v. Rainey**  
    **Baker v. Elcona Homes Corp.**  
    **Commonwealth v. DiGiacomo**  
**Physical or Mental Condition -- R.803(4) – 645-654; 718-723**  
    **Wadena v, Bush**  
    **US v. Tome**
- 26<sup>th</sup> Class    State of Mind -- R.803(3) – 654-679**  
    **US v. Brown**  
    **Mutual Life Ins. v. Hillmon**  
    **US v. Annunziato**  
    **Smith v. Slifer**  
    **In re Anderson’s Estate**  
**Spontaneous or Excited Utterances -- R.801-2) --634-645**  
    **Commonwealth v. Coleman**  
    **US v. Obayagbona**  
**Catchall -- (Rule 807) – 774-796**  
    **Robinson v. Shapiro**
- 27<sup>th</sup> Class    Constitutional Limitations -- Confrontation**  
    **Handout:**  
    **Crawford v. Washington, 541 U.S. 36 (2004)**  
    **Davis v. Washington, 47 U.S. 813 (2006)**  
    **Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011)**  
    **Williams v. Illinois, 132 S. Ct. 2221, 183 L. Ed. 2d 89 (2012)**
- 28<sup>th</sup> Class    Review**





# EVIDENCE LAW LEARNING OBJECTIVES

Professor Lawrence Kessler

## COURSE DESCRIPTION AND LEARNING OBJECTIVES

### Course Description:

This course introduces students to a field of law in which the fundamental policy decisions are based on disdain for the jurors who are not believed to be rational enough to free themselves from their individual and cultural biases. It is based on distrust of lawyers who are not trusted to avoid intentionally deceiving jurors about both the existence and importance of facts. These perceptions have led to the development of a system that seeks to protect the fairness of trial proceedings by systematically concealing information from juries. The system of seeking fairness by concealment is effectuated by the Rules of Evidence. These rules exist solely to keep information away from jurors.

Students will learn the rules and, more importantly, how to use the rules to benefit the client by applying them to exclude information that is bad for the client and evading them when it is good. In this pursuit, students will learn how to develop a Theory of the Case (litigation strategic planning) without which they would not be able to tell what is good and what is bad for their client. The students will acquire a detailed knowledge of the rules of evidence and a basic set of skills in applying those rules. The primary focus of the course will be on the Federal Rules of Evidence. When New York evidence practice is significantly different, the New York rules will be taught as well.

### Learning Objectives:

By the end of this course, students should know the:

#### Category 1- **Substantive rules of law and policies.**

Each ... student must have demonstrated a thorough knowledge of the basic rules of law and policies that were covered in this course, both the Federal Rules of Evidence and New York State evidence law;

And

- Category 5, **Basic Legal Analysis, fact development and law-finding.** - ##a - e\
- Have advanced their proficiency in extracting rules and policies from cases and statutes and in analyzing, interpreting and arguing differing interpretations of how those rules would apply in specific factual settings = fact analysis.

And

Develop an appreciation of the ways in which trial lawyers properly use the rules to circumvent the rules in witness preparation, witness and client interviewing, misrepresentation of purpose in asking questions, and the like. Both legal ethics standards and moral standards will be used in this analysis.