

**EVIDENCE**  
Fall Quarter 2010  
Professor Rose Zoltek-Jick

**COURSE SYLLABUS**

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*All page references are either to the main text for this course, Evidence (2<sup>nd</sup> edition) by George Fisher (Foundation Press) or to its Federal Rules of Evidence 2010 Supplement.*

**Section One: Introduction to the Rules (September 1)**

**A. Basic Rules**

1. What the FRE covers and what it does not, FRE 101, 1101
2. Purpose and Construction, FRE 102
3. How to Object to Evidence, FRE 103
4. Determining Admissibility, FRE 104(a) (c)
5. Limiting Admissibility, FRE 105, 106
6. Judicial Notice, FRE 201

**NO CLASSES on September 6 (Labor Day) or on September 8 (Rosh HaShana)**

**Section Two: Relevance**

**A. The Basic Rule (September 13)**

1. FRE 402
2. FRE 401
3. pp. 18-34

**B. Conditional Relevance**

1. FRE 104(b)
2. pp. 34-38
3. Authentication : FRE 901, 902 and pp. 805-808

**C. Balancing the Risk of Unfair Prejudice (September 15)**

1. FRE 403
2. pp. 38-61

**D. Probability Evidence (September 19 @ 12 noon- 1:30—makeup class)**

1. People v. Collins, pp. 61-75

**E. Effect of Stipulations**

1. United States v. Jackson, pp. 75-77
2. Old Chief v. United States, pp. 77-89

#### **F. Specialized Relevance Rules (September 20)**

1. FRE 407- 411
2. pp. 90-134

### **Section Three: Character Rules**

#### **A. The Character-Propensity Rule (September 13)**

1. FRE 404(a) itself -- i.e. skip 404(a)(1)(2) and (3)
2. pp. 135-145

#### **B. Evidence that Reveals Character but is Used for a Different Purpose**

1. FRE 404(b)
2. pp. 145- 154
3. Examples, pp. 155-187 (**September 22**)
4. Huddleston v. United States, pp. 190-196
5. Dowling v. United States, pp. 196-197

#### **C. Sexual Assault Cases (September 27)**

1. The Alleged Assailant: FRE 413, 414, 415
2. pp. 198- 223
3. The Alleged Victim: FRE 412
4. pp. 306-318 (background)
5. pp. 319-347 (current)

#### **D. Proof of Defendant and Victim's Character (September 29)**

1. When it is relevant to the case: FRE 405(b)
2. When it is an exception to the propensity ban/ the character witness: FRE 404(a) (1) (2) and FRE 405(a)
3. pp. 223- 240

#### **E. Habit Evidence**

1. FRE 407
2. pp. 240- 245

## **Section Four: Witnesses (October 4, 6)**

- A. Competence:** FRE 601, pp. 350-359
- B. Personal Knowledge:** FRE 602
- C. Oath:** FRE 603
- D. Examination and Cross-Examination:** FRE 611(a)(c)
- E. Refreshing a Witness' Memory:** FRE 612
- F. Impeachment of a Witness**
  - 1. Who can be impeached?: FRE 607, 610
  - 2. What restrictions are there on cross-examination?: FRE 610, 611(b)
  - 3. Using a witness' prior statements to impeach: FRE 613, pp. 421- 430
  - 4. Impeaching the Witness as a Liar: pp. 246-250
    - a. because of a prior conviction, FRE 609, skim pp. 265-272; pp. 287-291
    - b. because s/he has lied in the past, FRE 608(b)
    - c. because s/he has the reputation of being a liar, FRE 404(a)(3); 608(a); pp. 250-255
  - 5. Rehabilitating a Witness' Credibility, FRE 608; pp. 296-297

On your own, please review the helpful guide in the text as to character and credibility, pp. 259-263; 278-285; 295-304

## **NO CLASS on October 11 (Columbus Day)**

## **Section Five: The Rule Against Hearsay (October 13)**

### **A. Introduction**

- 1. Skim the history of the general rule: pp. 360-362
- 2. Outlining why there is a ban: pp. 362-365
- 3. FRE 802, FRE 801(a)(b)(c), FRE 805
- 4. Defining hearsay and non-hearsay uses of out of court statements, pp. 365- 386
- 5. See flowchart in particular, p. 369

### **B. Exemptions from the Rule Against Hearsay: Statements by a Party Opponent (October 15—Friday is Monday)**

- 1. FRE 801(d) (2)
- 2. pp. 396-415
- 3. Miranda and silence: pp. 432- 437

### **C. Exemptions from the Rule Against Hearsay: Past Testimony by a Witness (October 18)**

- 1. FRE 801(d) (1)
- 2. pp. 437-456
- 3. remember FRE 613

**D. Exceptions from the Rule Against Hearsay: the FRE 803 Exceptions (October 20, 25)**

1. Present Sense Impressions/Excited Utterances-- FRE 803(1) and (2): pp. 492-494
2. Present State of Mind-- FRE 803(3): pp. 495- 498 and Problem 7.33
3. Statements Made For Medical Diagnosis-- FRE 803(4): pp. 510- 521
4. Recorded Recollection-- FRE 803(5): pp. 521-528
5. Business Records-- FRE 803(6) and 803(7): pp. 528-540
6. Public Records and Reports-- FRE 803(8) and (10): pp. 540-552

**E. Exceptions from the Rule Against Hearsay: the 804 Exceptions (October 27)**

1. The Definition of Unavailability-- FRE 804(a)
2. Former Testimony-- FRE 804(b) (1): pp. 457-468
3. Dying Declarations-- FRE 804(b) (2): pp. 448-484
4. Statements Against Interest-- FRE 804(b) (3): pp. 469- 477
5. Statement of Personal History-- FRE 804(b) (4)
6. Forfeiture by Wrong-Doing-- FRE 804(b) (6)

**F. Residual Exception**

1. FRE 807: pp. 552-564

**G. The Sixth Amendment and the Rule Against Hearsay (November 1)**

1. Maryland v. Craig, pp. 570-571
2. Crawford v. Washington, pp. 573-587
3. Davis v. Washington; Hammon v. Indiana, pp. 597-607
4. Giles v. California, pp. 628-635
5. Melendez-Diaz v. Massachusetts, Supplement, pp. 403-429
6. Bruton v. United States, pp. 639- 641
7. Chambers v. Mississippi, pp. 663-670

**Section Six: Opinion Evidence and Experts (November 3, November 5 at 3:30)**

**A. Lay Opinions**

1. FRE 701
2. Problems 9.1 and 9.2
3. pp. 681-683

**B. Expert Witnesses**

1. Introduction, pp. 692-693

2. FRE 702
3. Who qualifies as an expert?: Problem 9.5 and United States v. Johnson, pp. 694-695
4. Can an expert give an opinion as to the ultimate issue? : FRE 704 and Problems 9.7 to 9.9 and Hygh v. Jacobs, pp. 704-707
5. On what can experts base their opinions and how do they have to present their opinions?: FRE 703, 705 and pp. 718-720 and In re Melton, pp. 722-726
6. The Frye/Daubert standards for assessing the reliability of scientific evidence: pp. 726-748 and commentary afterward to p.753

## **Section Seven: Privilege (November 8)**

### **A. The General Rule**

1. FRE 501
2. pp. 842-846
3. Skim deleted Rules 501-513 in Rulebook, pp. 354-398

### **B. Federal Privilege Law in Action**

1. Jaffee v. Redmond, pp. 846-854: Problem 11.1

### **C. Spousal Exemption and Privilege**

1. Trammel v. Trammel, pp. 955-961
2. The Moon case, pp. 961-963
3. The two marital privileges: pp. 963-969

### **D. Parent-Child Privilege**

1. In re Grand Jury Proceedings, pp. 977-987

## **REVIEW DAY (November 10)**