

# **EVIDENTIARY FOUNDATIONS AND OBJECTIONS**

## **Fall 2023**

### **Class Meetings:**

**Tuesday & Thursday**  
**10:00 AM – 11:25 AM**

### **Professor:**

**Elizabeth I. Boals**

Office: TBD

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Office hours: **Wednesday, 11 AM to 12 PM (in-person)**

**By appointment (in-person or on Zoom) – reach out by email to schedule**

Zoom meeting link for ALL online meetings:

<https://stetson-edu.zoom.us/j/5736202540>

### **Introduction:**

*Evidentiary Objections & Foundations* is a practical course designed to enrich students' understanding of the Federal Rules of Evidence and their application in a trial setting. Through a series of exercises, which simulate pretrial motions and witness examinations, students develop the skills to advocate for and against the admissibility of evidence at trial.

The trial simulation exercises, which are followed by critiques and self-assessment through video review, help students master laying foundations for various types of evidence, making evidentiary proffers, and objecting to evidence. Additionally, students learn how evidentiary rules can be used both strategically and tactically.

The course also involves a written motions requirement that focuses students on evidentiary issues and how those issues fit into their case theory.

**Learning Goals, Outcomes and Assessments:**

<b>GOALS</b>	<b>OUTCOMES</b>	<b>ASSESSMENTS</b>
Students develop an understanding of the Federal Rules of Evidence and the application of those rules in a trial setting.	Lay the foundation for the admissibility of different types of evidence, including but not limited to photographs, diagrams, business records, and demonstrative exhibits.	<ul style="list-style-type: none"> <li>• Students participate in simulation exercises in class where they are required to lay the foundation for the admission of evidence and demonstratives.</li> <li>• Students prepare and present on a rule of evidence. Presentations include the application of the rule to a simulated fact pattern.</li> </ul>
Students are able to critically analyze, understand, and evaluate the appropriate times and techniques to make and respond to evidentiary objections.	Understand the basis and justification for objections and how to respond to the objections made by opposing counsel.	During simulated arguments students will be required to make timely, well-argued, and supported objections and respond to objections made by opposing counsel.
Students learn to analyze the importance of evidence as it relates to case theory and trial strategy.	Strategically plan and organize a case, draft pretrial motions and examine witnesses consistently with case theory.	Students are required to submit case outlines weekly and pretrial motions. Students are required to work collaboratively on case theory so that all in-class exercise performances incorporate a coherent and consistent case theory.
Students learn to present pretrial evidentiary motions and examine witnesses in a persuasive and well supported manner.	Strategically plan, draft, and present pretrial evidentiary motions and witness examinations.	<ul style="list-style-type: none"> <li>• Students are required to submit pretrial motions and present oral motions and witness examinations in class.</li> <li>• Students argue a pretrial motion as part of their final exam.</li> </ul>

## **Attendance:**

Because this is an experiential course, meaning that much learning will take place by participation in in-class exercises and role plays, as well as, during in-class presentations, class attendance is a fundamental component of this course. Accordingly, prepared attendance and participation in all class sessions is required. Unplanned unavoidable absences, for illness or family emergencies, or similar reasons, may be excused but will be subject to make-up requirements. Other absences will generally not be excused. As a consequence, each unexcused absence will result in the student not earning class participation credit for any such class. You are expected to be able to participate fully for all class sessions, unless you notify your professor by email or in person in advance of class that you will be absent or unprepared.

## **Materials:**

### **Required Textbook:**

Trial Practice: Exercises in Witness Examination and the Rules of Evidence, P. Milich, 2nd edition (West Academic, 2018) [referred to as WORKBOOK]

### **Recommended Textbook:**

Trial Evidence, Mauet and Wolfson, 7th edition (Aspen, 2022) [referred to as Trial Evidence]

## **Class Structure and Weekly Assignments:**

The class is divided into two teams. The exercises in the WORKBOOK supply opposing positions and witnesses to the same fact pattern. For each exercise, a person from each team will play that team's witness(es), a person from each team will prepare a direct examination and a person from each team will prepare a cross examination of the opposing team's witnesses. Members of each team will handle pretrial motions. For some exercises, students will play the role of judge during the simulations.

The team members are responsible for assigning roles for each exercise to team members each week. Students are responsible for evenly distributing roles to team members throughout the semester. **A different member of each team will serve as lead counsel for each exercise. Lead counsel is responsible for emailing pretrial motions to opposing lead counsel and the professor by 12:00 PM the Saturday before the in-class motion presentation. Lead counsel is also responsible for emailing the professor the problem outline (no more than four pages, single-sided, double spaced) by 5:00 PM the day before the first class that includes the presentation of the in-class exercise (usually Mondays).** The outlines should include case theory, relevant FRE's, counter arguments to evidentiary points, potential ethical issues, and a breakdown of positive and negative facts for each witness. There is a sample problem outline posted on Canvas. Lead counsel will also represent the team in any discussions or negotiations with opposing lead counsel and with the court that occur outside of class.

**Each team member will play the role of Judge once during the semester and is required to meet with me to review the problem before playing that role in class. Additionally, students are required to meet with me individually at least once to discuss (1) a motion argument; (2) a direct examination; or (3) a cross-examination that they are scheduled to present in an upcoming class.** Students should coordinate these meetings with me to ensure we have sufficient time to discuss your assignment. You should come to this session with a **complete draft** of the role you would like to work on during the session.

**Twice during the semester, students are required to watch a recording of their in-class performance and complete a self-evaluation. One self-evaluation is due before Class 15 and the other is due at the final simulation.**

A substantial amount of out-of-class is required for this class. Students must contribute to team discussions and preparations for each in-class exercise. At the end of the semester, students will evaluate the contributions made to the team by their teammates.

**Once during the semester, each student is required to prepare and present on one rule of evidence.** The presentation must be between 10 to 15 minutes and include an example of the application of the rule to a fact pattern. Rule assignments and presentation details to follow.

### **Grading:**

Grades are a combination of the following:

- 20% participation in class discussions, team contribution, rule presentation, written pretrial motion, and case outline (as lead counsel)
- 55% preparation and performance of in-class pretrial motions and witness examinations throughout the semester (this grade includes an evaluation of how the student integrates feedback in later performances)
- 25% final written case outline and motion simulation

According to the College of Law policies on ADA Accommodations and ESL Testing Modifications, students with disabilities or foreign students may seek reasonable accommodations and/or ESL testing modifications for this course. Accommodations and/or modifications cannot be made unless written notice is provided from to the ADA Coordinator. To seek accommodations students must communicate with the ADA Coordinator as soon as possible at [ada@law.stetson.edu](mailto:ada@law.stetson.edu) and follow the procedures found on the school's Accessibility Resources website: [Http://www.stetson.edu/law/accessibility/index.php](http://www.stetson.edu/law/accessibility/index.php).

### **Exam:**

The final examination in the course is a pretrial motion simulation. This is an individual assignment not a group project. It includes drafting a case outline and presenting an oral pretrial motion. A full explanation of the final exam simulation will be provided to each student approximately two weeks before the final exam simulation date.

## **Syllabus:**

It is important that you read the assigned material and prepare your presentations prior to class. Students are required to spend 2 hours out of class time preparing for each hour of in class time. In total it is necessary for students to spend at least 127.5 hours on this 3-credit class.

### *Suggested reading for first class in Trial Evidence:*

Chapter IV, §4.2 Direct Examination of Witnesses (pp. 41-45), §§4.6 - .7 Excluding Witnesses and Personal Knowledge/Opinions (pp. 52-61), and §§4.9 - .10 Leading Questions/Other Form Objections (pp. 64-69)

### **CLASS 1 — August 22**

- Discuss structure of course, group outlines, format for written motions, role of lead counsel, grading policy, and attendance policy.
- Workshop storytelling and witness examination.

### *Exercise and reading for next class:*

Posted on Canvas (Mauet, *Trial Evidence*) (Pages 1 – 7)  
WORKBOOK, Exercise #6

### **CLASS 2 — August 24**

- Review Three R's.
- Workshop Exercise #6 and making motions.

### *Exercise to read for next class:*

WORKBOOK, Exercise #6

### *Suggested reading for next class:*

#### Trial Evidence:

Chapter V, §5.3(2) Other Crimes, Wrongs and Acts (FRE 404(b)) (pp. 98-110)

Chapter V, §5.3(5) Habit and Routine Practice (FRE 406) (pp. 120-124)

Chapter VII, §7.3 Excited Utterances (FRE 803(2)) (pp. 178-182)

Chapter VIII, §8.2 Subsequent Remedial Measures (FRE 407) (pp. 238-242) and §8.3

Compromise/Offer of Compromise (FRE 408) (pp. 242-244)

FRE 801 and 803(17)

### **CLASS 3 — August 29**

Simulation: Exercise #6 Pretrial Motions.

Discussion of rulings, trial strategy, and critique.

### **CLASS 4 — August 31**

Simulation: Exercise #6 Examination of Witnesses.  
Discussion of rulings, trial strategy, and critique.

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #7

*Suggested reading for next class:*

#### **Trial Evidence:**

Chapter V, §5.3(1) Character Traits (FRE 404) (pp. 85-99)

Chapter V, §5.3(5) Habit and Routine Practice (FRE 406) (pp. 120-124)

Chapter VI, §6.4 Prior Statement by Witness (FRE 801(d)(1)) (pp. 141-149)

Chapter VI, §6.5 Admission by party-opponent (FRE 801(d)(2)) (pp. 150-162)

### **CLASS 5 — September 5**

Simulation: Exercise #7 Pretrial Motions.  
Discussion of rulings, trial strategy, and critique.

### **CLASS 6 — September 7**

Simulation: Exercise #7 Examinations of Witnesses.  
Discussion of rulings, trial strategy, and critique.

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #9

*Suggested reading for next class:*

#### **Trial Evidence:**

Chapter V, §5.3(1) Character Traits (FRE 404) (pp. 85-99)

Chapter VI, §6.4 Prior Statement by Witness (FRE 801(d)(1)) (pp. 141-149)

Chapter VI, §6.5 Admission by party-opponent (FRE 801(d)(2)) (pp. 150-162)

Chapter IX, Direct Examination of Experts (FRE 702-705) (pp. 275-304)

### **CLASS 7 — September 12**

Simulation: Exercise #9 Pretrial Motions.  
Discussion of rulings, trial strategy, and critique.

### **CLASS 8 — September 14**

Simulation: Exercise #9 Examination of Witnesses.  
Discussion of rulings, trial strategy, and critique

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #14

**CLASS 9 — September 19**

Simulation: Exercise #14 Pretrial Motions.  
Discussion of rulings, trial strategy, and critique.

**CLASS 10 — September 21**

Simulation: Exercise #14 Examination of Witnesses.  
Discussion of rulings, trial strategy, and critique.

**CLASS 11 — September 26**

Rule Presentations (3)  
Skill drilling, dealing with difficult witnesses & demonstratives

**CLASS 12 — September 28**     **CLASS CANCELED**

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #11

**CLASS 13 — October 3**

Simulation: Exercises #11 Pretrial Motions.  
Discussion of rulings, trial strategy, and critique.

**CLASS 14 — October 5**

Simulation: Exercises #11 Examination of Witnesses.  
Discussion of rulings, trial strategy, and critique.

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #3

**CLASS 15 — October 10**

Simulation: Exercise #3 Pretrial Motions.  
Discussion of rulings, trial strategy, and critique

**CLASS 16 — October 12**

Simulation: Exercise #3 Examination of Witnesses.  
Discussion of rulings, trial strategy, and critique.

**CLASS 17 — October 17**

Rule Presentations (3)  
Rapid-fire Foundations and Objections

**CLASS 18 — October 19**

Rule Presentation (1)  
Evidence Jeopardy

*Exercise to prepare for next class:*  
WORKBOOK, Exercise #20

**CLASS 18 — October 24**

Simulation: Exercise #20 Pretrial Motions and One Witness.  
Discussion of rulings, trial strategy, and critique.

**CLASS 19 — October 26**

Simulation: Exercise #20 Examination of Remaining Witnesses.  
Discussion of rulings, trial strategy, and critique.

**CLASS 20 — October 31**

Rule Presentations (3)  
Discussion of Procedures for Expert Qualifications, Voir Dire, and *Daubert* Hearings

*Exercise to prepare for next class:*  
Materials for *Daubert* case are posted on Canvas

**CLASS 21 — November 2**

Rule Presentation (3)  
Workshop *Daubert* Motion

**CLASS 22 — November 7**

Rule Presentations (1)  
*Daubert* Motion

**CLASS 23 — November 9**

Expert Qualifications and Voir Dire before the Jury

*Exercise to prepare for next class:*

WORKBOOK, Exercise #4 (Please be sure to read the supplemental materials on Canvas)

**CLASS 24 — November 14**

Simulation: Exercise #4 Pretrial Motion to Suppress Statements (Officer and Defendant Testify)

**CLASS 25 — November 16**

Stimulation: Exercise #4 Examination of Witnesses at Trial

**FINAL EXAM SIMULATIONS  
DATE TBD**