Evidence Syllabus
Spring 2018
Professor Capra

All page citations are to the assigned Casebook "Evidence: The Objection Method" FIFTH EDITION (2016) by Prater, Capra, Saltzburg and Arguello.

Assignments are given during the last class of each week; the assignments cover the next week.

My e-mail address is dcapra@law.fordham.edu

This course covers the Federal Rules of Evidence. Specific Evidence Rules are placed throughout the Book where pertinent to the subject matter. The entire set of the Federal Rules of Evidence can be found in Appendix A, beginning on page 1175.

A complete copy of the Advisory Committee Notes to the Rules can be found in Appendix B of the Casebook, beginning on Page 1197.

Learning Outcomes:

1. By the end of the semester students should know how evidence rules work and the process by which they are made and applied.

2. Students should also be aware of how judicial discretion works in allowing or excluding evidence, and at what point such discretion needs to be controlled.

3. Students should be able to articulate proper purposes for evidence in a specific trial situation, and also should be able to counter such arguments by articulating purposes that might be barred by the evidence rules.

4. Students should come to appreciate that the system of evidence is dependent on who controls it --- judges, litigants, legislatures, or rulemakers.

5. Finally, students should become aware that evidence rules are not just about trials but that they also affect all stages of dispute resolution --- and that the more predictable the rules are, the more useful they are throughout the process of dispute resolution.
Assigned Reading

I. An Introduction to Relevance

A. The definition of relevance--pages 103-109.

B. Sources of authority for excluding relevant evidence -- Lowery, pages 109-112.

C. Balancing probative value against prejudicial effect, confusion and delay--pages 112-123; 133-174.

II. Special Relevance Rules

A. Subsequent remedial measures: pages 181-185. (Including note 1 of the notes. The other notes are useful for class discussion).

   Also, I will handout a side-by side showing how Rule 407 (along with the other Evidence Rules) was restyled in 2011. This will be an example for discussion of the restyling.

B. Offers of compromise -- pages 191-197.

C. Payment of medical expenses --- Federal Rule 409.

D. Guilty plea negotiations --- pages 202-212.

E. Liability insurance --- Federal Rule 411.

III. Character Evidence, Prior Bad Acts, and Habit

A. Introduction and general rule --- pages 223-227.

B. Civil cases --- pages 227-229.


D. Use of character evidence in criminal cases --- pages 233-239; 242-246.

F. Uncharged misconduct offered for purposes other than proving character --- pages 253-265; 267-295.

G. Habit and the line between character and habit --- pages 301-306; and *Perrin*, page 308-309.


IV. Opinion Testimony

A. Lay opinions --- pages 453-463; and pages 465-468.

B. Expert opinions

1. Reliability --- pages 498-537; 541-560.

2. Expert witnesses in lay witness clothing --- pages 471-478; and *Habibi*, pages 482-484.

3. Underlying information used for basis—bottom of page 562- page 571.

4. Qualifications ---*Berry*, pages 484-487.

5. Proper subject matter --- pages 489-498.

6. Ultimate conclusions and intent in a criminal case --- Rule 704(b); *Thigpen* and following notes, pages 576-579.

V. Hearsay: Step 1, determining whether evidence is subject to exclusion.


B. Offered for truth --- pages 589-602.

C. Implied assertions --- pages 609-617.
VI. Hearsay: Step 2, determining whether an exception/exclusion to the hearsay rule applies.

A. Exclusions: Rule 801(d).

1. Prior Statements of Testifying Witnesses: Rule 801(d)(1)
   a. Prior inconsistent statements --- page 625 through note 1 on page 631.
   c. Prior identifications --- Rule 801(d)(1)(C); Owens, pages 638-643.

2. Statement of Party-Opponent---Rule 801(d)(2)
   a. Personal --- pages 644-48 (including notes 1-3).
   b. Adoptive ---- pages 649-656.
   e. Coconspirator statements --- pages 669-673; pages 677-682.

B. Hearsay Exceptions

1. Exceptions Dependent on Declarant Unavailability---Rule 804.
   a. Definition of unavailability --- Rule 804(a).
   b. Unavailability-based exceptions --- Rule 804(b)
      (1) Prior testimony --- pages 707-715.
      (2) Dying declarations --- pages 715-717.
      (3) Declarations against interest ---Rule 804(b)(3); pages 719-728; and note 3, pages 731-733; and Linde, pages 735-738.
      (6) Forfeiture --- pages 738-744.
2. Hearsay exceptions Not Dependent on Declarant Unavailability---Rule 803.

a. (1) and (2). Present sense impressions and Excited Utterances --- pages 753-770.

b. (3). State of mind --- pages 775-789


d. (5). Past recollection recorded (and recollection revived) --- Rule 803(5) and Rule 612.

e. (6) and (7). Business records and absence of records --- pages 806-822.

f. (8) and (10). Public records and absence of records --- pages 823-829; and note 6 on pages 835-837. (Other notes on public records on pages 829-35 could be helpful to you).


h. (18) Learned treatises --- pages 838-39.

3. The Residual Exception to the Hearsay Rule (Rule 807) ---Pages 845-857 (notes 1 and 3 starting at page 857 will be helpful to you).

VII. Hearsay: Step 3, Determining whether the Confrontation Clause excludes hearsay when offered against the accused, even though it would be admissible under a hearsay exception.

A. Regulation of Testimonial Hearsay.


4. Forfeiture of confrontation objection --- *Giles v. California*, pages 914-17

B. Confrontation Issues in Multiple Defendant Cases

1. The *Bruton* problem: pages 917-928.

C. The Right to Face-to-Face Confrontation --- Classroom discussion.

VIII. Rules Governing the Treatment of Witnesses

A. Competency

1. The basic rule: Rule 601

2. Competency of jurors, Rule 606(b), pages 52-60.

B. The oath --- Rule 603.

C. Sequestration --- Rule 615

D. Impeaching your own witness --- Rule 607.

E. Trial court control, scope of cross-examination, and leading questions --- Rule 611.

F. Character impeachment

1. Bad Acts (Rule 608) --- pages 994-999; and note 6, pages 1003-1004.

2. Convictions (Rule 609) --- pages 975-994.

G. Prior inconsistent statements --- pages 1006-1011.

H. Contradiction --- pages 1013-14; *Beauchamp*, pages 1017-1018.
I. Bias --- pages 1019-1024.

J. Impeachment of hearsay declarants --- pages 1029-1033.

IX. Privileges

A. Attorney-Client privilege ---
   *Upjohn* pages 1045-1053;
   Legal advice requirement, Notes 1-3, pages 1053-1056 (notes 4-7 will be helpful as well);
   Waiver, pages 1074-1097 (the notes on pages 1098-1100 will be helpful).

B. The marital privileges --- pages 1104-1111.

C. Privileges related to mental health --- pages 1114-1123.

D. Clergy --- classroom discussion.

E. Newsreporter “Privilege” --- pages 1129-1131.

F. State Secrets Privilege --- pages 1149-1157.

G. Parent-child privilege --- classroom discussion.

X. Authenticating Proffered Evidence (time permitting)

A. Rules 901 and 902; pages 386-409.

XI. The Best Evidence Rule (time permitting)

A. Rules 1001-1004; and class discussion.