

EVIDENCE

VERMONT LAW AND GRADUATE SCHOOL, FALL 2024

PROFESSOR BARBARA A. MASTERSON (SHE/HER/HERS)

OFFICE: WATERMAN HALL, ROOM 107

E-MAIL: BMATERSON@VERMONTLAW.EDU

CLASS MEETINGS: Monday/Wednesday/Friday 11:20 am – 12:35 pm, Oakes Hall room 107

OFFICE HOURS: Available both in person and virtually.

In-person: Mondays and Wednesdays, 12:45 pm – 1:30 pm. Feel free to drop in or schedule in advance. If you decide to drop in, I welcome group office hours or discussions. If you'd like to ensure an individual discussion, please contact me to schedule something in advance.

Virtually: I will make myself available for virtual appointments. Reach out via email to request a virtual meeting time for weekdays not earlier than 9:00 am and not later than 4:30 pm. In your message, please include a few times that you are available. I will include a Teams Link for all Virtual Office Hours in a page and module on our Canvas page. It is called "Evidence Virtual Office Hours with Prof. Masterson Link." Anytime we schedule a virtual appointment, use that link to meet.

TEACHING ASSISTANT:

To be determined.

REQUIRED TEXT, COURSE WEBSITE(S) AND RECOMMENDED SUPPLEMENTAL TEXT:

Required:

- (1) **Learning Evidence: From the Federal Rules to the Courtroom**, 5th Edition, Deborah Jones Merritt & Ric Simmons
 - a. **Student Resources (the "Learning Library"):** supplemental materials for the *Learning Evidence* book. These are stored under the "Student Resources" tab on West Academic's eProducts site. The materials include:
 - i. "Evidence in Practice" simulations
 - ii. Links to video mini-classes
 - iii. Additional videos and student updates
 - iv. Multiple-choice quizzes for student review
 - v. Sample short-answer questions and answers
 - vi. Practice essays and model answers
 - vii. Access to several study aids, a law dictionary, and outlining tools

(2) **Federal Rules of Evidence Handbook (2023-2024)**, Carolina Academic Press

(3) **Canvas**: Throughout the semester, I will post additional material, from videos to podcasts to readings, through Canvas. It is your responsibility to keep track of these individually distributed handouts as well as to read, view, or listen to anything assigned. Please follow the postings closely so you have completed any reading, viewed any videos, listened to any podcasts, and completed any other assignments before each class. Generally, I will post any additional material at least one week in advance. Of course, rules can have exceptions (especially if the assignment stems directly from something that came up in class that requires follow-up), but I will do my best to give you ample time to complete the assignments. As discussed below in the “Assigned Readings” section, problem sets or class hypotheticals may appear the same day as class so please be sure to check before you get to class as well.

*Please reach out to me or to your TAs if you have any questions while navigating the Canvas page. We will use various features from the page, including “groups” for dividing into groups in class (see section below on Group Work).

Recommended Text:

(4) Goode, S & O. Willborn, **Courtroom Evidence Handbook, Student Edition 2021-22**, West Academic 2021.

CLASSROOM ENVIRONMENT, EXPECTATIONS, AND VALUES: Creating an Accountable Space

- (1) The class is structured with the understanding that everyone learns at a different pace and in a different way and that we each bring different lived experiences to the classroom and to our discussion of evidence. I plan to vary the way we cover the material throughout the semester to appeal to all preferred learning methods. However, there will be a strong focus on practice short answer and multiple choice questions, as well as active exercises where we practice on our feet when possible.
- (2) I hope to have lively class discussions in which everyone will *listen* to each other’s opinions with *civility and respect*. That does not mean that everyone must agree with everyone else. My expectation is simply that everyone will treat one another with common courtesy and professional integrity as you discuss the material. It also means that when you disagree with one another, you will do so in a professional manner.
- (3) All members of the VLGS community, including professors, are expected to treat each other with respect. I want to promote an environment that avoids “othering” anyone based on identity. Words/remarks or actions that show bias or prejudice based on age, disability, ethnicity, gender, national origin, native language, race, religion, sex, sexual orientation, or socioeconomic status will not be tolerated. I also want us to be able to engage in honest discourse. If you have any concerns about anything said or done in class, by me or by one of your colleagues, I encourage you to talk to me about your concerns.
- (4) Evidence involves discussions about trials and information introduced during them. Some topics will arise that may be distressing to you or your classmates. Please keep in mind that everyone else’s lived experiences are not your own and you may not know what another person has been or is going through. Do not make assumptions about your classmates. Instead, show sensitivity and respect to one another and to the subject matter.

- (5) In my prior life as a federal prosecutor, I specialized in prosecuting child exploitation cases. Therefore, many of my war stories/real life examples of the use of evidence may include material from those types of cases. I will endeavor not to be unnecessarily detailed, of course. Please let me know by private email or conversation if this material will be difficult for you. I do not need to know why.
- (6) Be open to new ideas. Our environment should foster growth and learning.
- (7) It is okay to admit not knowing or understanding something. It is safe to make a mistake. This is true for everyone in class, including your professor. All class members should strive to create and maintain that feeling for all other class members. Evidence can be a very complicated subject for students so it is of paramount importance that we all give each other space to learn during class. Do not expect perfection from yourself or your classmates.
- (8) Be willing and unafraid to express yourself: including your thoughts, opinions, or any concerns.
- (9) Come to class prepared and engaged! Preparation, active discussion, and earnest participation during practice hypos and questions is very important!

Please consult and abide by the Vermont Law and Graduate School's Better Community Statement (which can be found in the [student handbook](#) and is reprinted here):

As members of the Vermont Law and Graduate School (VLGS) community, we choose to be a part of an academic community that is dedicated to principles that foster integrity, civility, and justice.

As citizens of a broad and pluralist society, we encourage those of all cultures, orientations, and backgrounds to educate and respect one another in a safe environment.

- We respect the dignity of all persons and assume the best about them.
- We challenge and reject all forms of bigotry while striving to learn from each other's differences.
- We celebrate our differences while appreciating our similarities.
- We value an inclusive environment that is accepting of each other's physical, cognitive, social, and professional differences.
- We respect the rights of each and every member of the community, regardless of race, ethnicity, national origin, religion, age, gender, sexual orientation or lifestyle, medical condition, or socio-economic status.
- We realize that our common interests exceed our individual differences.

As members of the Vermont Law and Graduate School community, we affirm our rights to freedom of expression and association, and the belief that they must be exercised responsibly. The spirit of building a better community is best served when the ideals of integrity, civility, and justice are expressed and debated with tolerance, understanding, appreciation, and good will.

CLASS ATTENDANCE:

Class attendance is mandatory. I repeat: class attendance is mandatory. Vermont Law and Graduate School Academic Regulation II.A provides that a student will receive a grade of F-Wd if they are absent from 20% of regularly scheduled classes. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement). **For this class, you will receive a grade of F-Wd if you are absent from more than six (6) regularly scheduled classes.**

Two tardies equals one unexcused absence. Being on time means you are in the classroom, in your seat, and ready to participate in class when it starts at 11:20 a.m. Joining class on Teams does not count as attendance. Additionally, students cannot consistently absent themselves for long periods during class. Of course, I understand if you need to excuse yourself occasionally, but doing so every class, multiple times in the same class or in another unreasonable way indicates that you are not complying with the participation requirement in the course. You are also disrupting others in the class. It may count as an absence or, if consistently occurring, may directly impact your final grade.

Pursuant to Vermont Law and Graduate School's attendance policy, I am required to record class attendance. **I have no authority to excuse any absence or to allow more absences than the Attendance Policy allows.** Students are responsible for monitoring their own compliance with the attendance policy. For more information, please speak directly with the Registrar's Office.

If additional absences are due to a health issue or some other extraordinary circumstance beyond your control, contact Vice Dean for Students Brennan as a withdrawal or medical leave may be appropriate.

On occasion, we may need to have class virtually on Teams due to inclement weather or other unforeseen circumstances. I ask that you all commit to full participation in a virtual forum as well if this situation arises.

CLASS DISCUSSION AND PREPARATION:

Class discussion, including responding to questions asked by me and points made by your classmates, is an essential component of this course. That said, ***please do not confuse quantity with quality.*** Being a part of class discussion includes actively listening, not disengaging or merely waiting to speak, and contributing in useful ways in accordance with the classroom environment section above. If you find yourself talking a lot in class, take the responsibility for listening more. If you never talk in class, take the responsibility for contributing more.

I expect students to be prepared for class and will call on you at random. As I said above, active participation based on preparation is expected. If you are not prepared on a particular day, you may "pass" once. However, you should expect to be called on during a future class in short order. Passing more than once will put you in jeopardy of negatively impacting your final grade (in accordance with the paragraph below).

As you will see in the “Grading” section, I do not grade “participation” as a factor in your final grade. Please do not interpret that to mean your participation is not required. To the contrary, I assume you all will be excellent participants! Essentially, so long as you follow the expectations in this syllabus, you will have no issue. However, if you consistently pass when called on or violate other classroom rules, *I reserve the right to lower your final grade by one half of a letter grade to reflect these violations of classroom expectations.*

I am incredibly understanding if you alert me to any issues that impact your participation *in advance of class*. If, due to the nature of the topic matter, a personal life experience, or another sensitive personal reason, a certain class is not one that you feel comfortable contributing to, please let me know in advance of class via email. You do not need to provide the specific reason why in this circumstance.

IN-CLASS EXERCISES AND GROUP WORK:

We will do a number of hands-on exercises throughout the semester by breaking into small groups. In addition to classroom discussion, your active contribution to these exercises falls into the category above regarding expectations of class discussion and participation. Please do not underestimate the value of group work and in class practice.

I will frequently ask students to participate in role-playing exercises in this course both in a large group setting and in smaller breakout groups. If this is something that you just cannot do in a large group setting (or otherwise), please come to speak with me about it in advance.

As noted above, I often use the “groups” tab on canvas to create random groups. Please familiarize yourself with this tab so you can easily access your group assignment when asked to do so.

ASSIGNED READINGS:

There is a separate document with your reading assignments. These readings are tentative and may change throughout the semester as current events, time, and interest necessitate (please see details below). Again, **you must check our Canvas site regularly to stay current on the assignments for each week. The casebook reading assignments are unlikely to change in substance (unless shortened or excised), but their timing may change.**

As you will see in the assigned readings list, the structure of the assigned readings in this course is likely very different from what you have come to expect in other law school courses. I have assigned weekly readings rather than readings for each individual day of class. Full disclosure, there are a few that are quite long, between 100-150 pages. At times, I may alter that a little by letting you know we will only cover a portion of the assigned reading for the week. You can then limit or adjust your reading accordingly.

There are three main reasons for weekly (rather than daily) assignments:

(1) The readings move fairly quickly (even though there are a lot of pages). Our book does not contain cases to read and brief as a part of the assigned reading. Therefore, the readings should go much faster than readings in another course. Again, this is likely very different from any other course you have encountered in law school. The book does reference cases as examples and does

so by alerting you to the case citation in a footnote. Once you read the study guide (as part of the first reading assignment), you will understand the layout of the book more and (hopefully) come to embrace the structure of this textbook for this subject matter.

(2) Evidence Rules are *incredibly* intertwined. This is what can make the subject challenging to study and comprehend. Therefore, I find it helpful to read as much as possible at one time in this course so that you do not feel that you understand a rule/topic and then something immediately changes in the next class (when you are introduced to an exception). You will see that I try to assign the entire section of a topic at once where possible.

(3) **Because the rules are intertwined and build upon each other, it is very important that you keep up with the reading.**

(4) As we will go over in more detail, whenever timing allows, I plan to infuse our Fridays with more practical exercises, using the rules on our feet in small groups or spending a lot of time on practice questions. By doing assigned reading for the week, we will be able to frontload our learning of the rules and use Fridays to focus on exercises and practice questions.

(5) Bonus reason: You'll see midway through the semester that there is a break in "new" reading assignments to catch up, review, and prepare for the midterm. There are also two other weeks (out of 15) without assigned readings.

One final, related point worth mentioning about the readings: this is a course where the timing of our readings truly may change from time to time. It is difficult to predict what concepts the class may find more difficult than others. I want to leave room and flexibility to adjust if there are topics where it is clear that the class needs extra exploration or, conversely, be able to move quicker when it seems like a rule has landed.

I will use Canvas to communicate any changes or additional assigned materials not listed on the reading list. The book and its supplemental materials will be very helpful as the course progresses. Even if not assigned, I suggest you take advantage of the Textbook's website and its available resources. I may, at times, add these as additional assignments via canvas.

For many classes, I will post a hypothetical to canvas in advance of class. This may even come the same day. *PLEASE* check canvas before class to ensure you have reviewed all materials that are relevant for class that day. The hypothetical problem will not normally be long, but it will save us time if everyone has already read and started to think about it in advance of class.

POWERPOINTS:

I utilize PowerPoint slides throughout the course. I will provide you with a pdf version of my slides at the end of each week through Canvas (in the module for that week). Please do not share these slides with anyone outside of our course.

THE STRUCTURE OF A TRIAL:

We will discuss this in detail our first week. I realize many of you may already have background information about trials, but an in-depth review is vital to your understanding of Evidence and your ultimate ability to implement the rules in practice. A goal of this course is for you to feel that you understand what a *REAL* trial looks like, even if you have never seen one in real life (and no, television and the movies do not get it right).

ACCOMMODATIONS:

If you have a disability and would like to request an accommodation for any reason and/or any aspect of the class, please review our accommodations policy [here](#). Follow the instructions by completing the on-line form and uploading the required supporting documentation to ensure the accommodation is considered in a timely manner. Contact Associate Dean of Diversity, Equity, and Inclusion, Lisa Ryan, for any accommodation request or questions. Please note that requests made within two weeks of an examination may not be granted in time. Please make your request as soon as possible.

QUESTIONS:

You are welcome to reach out directly to me or the TA with questions; however, please know that I am not a fan of answering substantive questions *via* email. The reason for this is that I want to engage in an actual dialogue about your question to ensure that I understand the question and you understand the answer. That said, I invite you to ask me a question via email or canvas if you think the question is straightforward enough that it does not warrant a meeting or if you think it is something I should clarify with the class.

GRADING:

1. 15% - Midterm Exam
2. 75% - Final Exam
3. 10% - Quizzes, Group Work, Other Exercises

EXAMS:

You will have one midterm exam and one final exam. Both will be in-class examinations available through exam soft. The exams may include multiple choice questions, true/false questions, and short answer questions. You will not see essay questions on the exams. I will discuss the exams more as we progress through the course. For now, please know that you are responsible for all material covered in class (including guest speakers or information otherwise discussed or distributed for class and anything posted in Canvas, such as information in handouts, supplementary readings, video clips, in-class exercises, etc.). You are responsible for all material assigned on the syllabus, including material in the reading that we do not go over in class, unless I tell you otherwise.

Midterm Exam:

The midterm exam will take place on **Friday, October 11, 2024**. The midterm exam will be fully open book. You may use the textbook, our course slides, any outlines created individually or with a group, your notes, outside study aides, etc. You may use whatever you want - subject to the fact that it will be through exam soft so you will not be able to access the internet or other items on your computer.

Final Exam:

The final will be closed book. However, you will be allowed to have a copy of just the Federal Rules of Evidence (not a copy with annotations or explanations). The date will be determined at a later time by the registrar's office.

Exam Review:

Following your receipt of a grade in the course, you are able to contact me to review your exam and discuss any questions for a two-week period only. This is so that it is fresh in both of our minds, enabling a productive and helpful conversation. I will first have you meet with my administrative assistant, Brenda Caron, to review the materials. You will then need to schedule a follow-up appointment with me if you have remaining questions.

QUIZZES:

Evidence is a difficult, rules-based subject. It is important that you practice the rules soon after learning them and start to see examples of questions that arise in each topic. It will help you to internalize the rules. Therefore, you will have quizzes **every week**. These will be short -- a handful of multiple choice questions -- and should not take a large amount of your time. They will generally be available in the quizzes tab on canvas Friday at 1 pm until just before the start of class on Monday (11:20 am). They are fully open-book, notes, slides, (see above for all that it entails) and even available to be done as a group (though each student must submit an individual quiz to receive credit for completion). These are to help both of us gauge progress and see if there are areas where more work is needed to ensure understanding. **ALL weekly quizzes are required**. **If you fail to complete a weekly quiz, IT WILL IMPACT YOUR FINAL GRADE**. If there is any change to this structure during the semester, e.g. a week without a quiz or a quiz at a different time that will count in this section, I will alert you to that.

Bottom line: You only need to complete these in a timely manner and with a good faith earnest effort in order to receive credit. You will receive a score, but it will not contribute to your final grade. In other words, so long as you complete the quizzes on time and do your best, you will receive full credit.

OTHER FORMATIVE ASSESSMENTS:

I will give several additional formative assessments during the semester in the form of practice questions, polls, and short written responses. These are to help both of us gauge progress. They will not directly impact your final grade, but I do expect participation in accordance with the above section regarding participation.

COMPUTERS AND TECHNOLOGY:

As a courtesy to everyone, do not use the internet or your computer for personal use during class, including but not limited to: instant messaging, peer-to-peer file sharing, text-messaging, any kind of recording, or any other such applications during class. Please do not look things up on the internet, check your email, or otherwise multi-task during class. Even if you are great at doing multiple things at once, it can be very distracting to others, including classmates sitting near you or behind you. You will also be distracted when you should be paying attention. The only exception is if you are specifically asked to do so for learning purposes during a class. Texting during class is also prohibited.

RECORDING CLASS:

Do not independently record the class without checking with me beforehand and/or obtaining permission to do so. Links to class recordings will be available on our Canvas site in the module for that week.

COURSE LEARNING OUTCOMES:

My overarching goals for the course are for you to understand the federal rules of evidence and how to use and apply them. Additionally, during your study of the rules, I want you to consider their effect: on specific moments of a trial, on trials generally, and on individual litigants. When studying the rules, you should critically examine their impact and fairness. Importantly, students will be able to analyze and identify issues within complex fact patterns that reflect realistic trial scenarios. Finally, students should also be able to know the basics of how to use the rules in practice from our smaller group exercises.

To these ends, my goals for the course include the following specific learning outcomes:

1. Understand the topics of relevance, witness examination, expert testimony, hearsay, and character-related evidence through learning and understanding the Federal Rules of Evidence (FRE);
2. Demonstrate the ability to apply the FRE adeptly to fact patterns;
3. Know the development of the FRE, including where and when they apply;
4. Understand FRE terminology surrounding certain types of evidence and objections;
5. Enhance their ability to interpret and apply rules on their feet while simulating the higher stakes and higher pressurized environment of actual litigation;
6. Be able to identify and resolve pertinent constitutional issues that arise in connection with admission of trial evidence;
7. Understand their roles as trial counsel and legal professionals with ethical duties even while seeking to preserve, admit, or object to evidence;
8. Improve their skills as public speakers, courtroom advocates, legal strategists, and collaborative partners;
9. Be mindful of the role that race, poverty, gender, power, privilege, and other factors may play in the FRE as written and applied; and
10. Understand that litigation and evidentiary concerns greatly impact real human beings.

In order to assess progress toward these goals, we will use in-class exercises as touchstones. This will enable a better understanding of the substantive knowledge and ability to apply the rules to facts that the class has mastered, as well as areas we need to cover in more depth. The exercises will also enable you to monitor your own personal progress during the semester. We will also use lecture, discussions, problem-solving groups, practical exercises modeling using evidence in court, videos, written assignments, and other in-class activities to achieve these goals.

SYLLABUS AND AMENDMENTS:

This is an important document for our class. It sets the expectations for each of you as we begin the semester. An important lesson to be learned from law school in general and the study of Evidence in particular that will immensely benefit your practice as an attorney is: **always check**

the rules to find the answer *first*. Conversely, if someone asks me a question that can be found in this syllabus, I will be clear that is the case and ask that you locate the answer yourself.

When you have completed reading the syllabus, you must affirm that you have read the syllabus and understand the requirements of this course. To affirm you have done so, please send me an email (bmasterson@vermontlaw.edu) and tell me your favorite sport. Please submit the affirmation as soon as possible after reading this syllabus. The first three students who respond will receive a prize.

Any Amendments to the Syllabus will be made in writing.

FINAL THOUGHTS:

I value all perspectives and experiences, and I expect each of you to contribute in meaningful ways to class discussion based on your careful preparation for class, as well as on the individual experiences and perspectives that shape and influence your understanding of the material. As your professor, I am here to help you learn this important and foundational topic. Please do not hesitate to reach out with questions, ideas, and/or concerns. I look forward to working with each of you.