

First Assignment

ASSIGNMENT: [Background Reading]

1. Giannelli: Understanding Evidence
_Chapter 1 - Overview of Evidence Law, pages 1-17
_Chapter 2 – Roles of Judge and Jury, pages 17- 22

NOTE: Read the KEY POINTS after this and all subsequent chapters.

[Class Discussion Readings]: LOGICAL RELEVANCY

Discussion Topics:

- Establishing a Foundation
- Probative Value
- Conditional Relevancy
- Multiple Admissibility
- Admissibility Versus Weight
- Exclusion of Relevant Evidence
- Similar Occurrences

ASSIGNMENT:

1. Giannelli: Understanding Evidence:

_Chapter 9, Relevancy and Its Counterparts: FRE 401-403, pages 107-128

Evidence
SpringTerm 2008
Professor Kiely
Syllabus and Class Assignments

REQUIRED TEXTS:

- Giannelli: Understanding Evidence (LexisNexis 2003 - 2d ed.)
- The BLACKBOARD EVIDENCE PAGE for this course contains additional case and statutory materials that will be assigned reading throughout the semester.

RECOMMENDED STUDY AIDS:

1. Lilly: Principles of Evidence 4th ed. (Thompson/West)
2. Cleary and Giannelli: Handbook on the Law of Evidence
3. McCormick: Handbook on Evidence
4. Wigmore: Wigmore on Evidence

EVALUATION:

The grade in this course will be determined by the student's performance on a single three hour examination at the completion of the semester. Exceptional class participation may result in a higher grade than that reflected on the final examination.

SYLLABUS

I. THE EVIDENCE PROCESS

Discussion Topics:

Evidence as Approved Information
Introduction to Foundation
The Competency of Witnesses
The Lawyer's Function
The Judge's Function
Direct and Cross_Examination
The Inference Process

ASSIGNMENT:

[Background Reading]

1. Giannelli: Understanding Evidence
_Chapter 1 - Overview of Evidence Law, pages 1-17
Chapter 2 – Roles of Judge and Jury, pages 17- 22

NOTE: Read the KEY POINTS after this and all subsequent chapters.

II. LOGICAL RELEVANCY

Discussion Topics:

Establishing a Foundation
Probative Value
Conditional Relevancy
Multiple Admissibility
Admissibility Versus Weight
Exclusion of Relevant Evidence
Similar Occurrences

ASSIGNMENT:

2. Giannelli: Understanding Evidence:
_Chapter 9, Relevancy and Its Counterparts: FRE 401-403, pages 107-128
2. Corona Exercise [BLACKBOARD]
3. Sutherland Exercise [BLACKBOARD]
4. FRE 401-403 [Text Appendix A]

III. LEGAL RELEVANCY:CHARACTER AND HABIT

Discussion Topics:

Character Witnesses
 Foundation for Character Witnesses
 Cross_Examination of Character Witnesses
 Prior Criminal Conduct
 Subsequent Criminal Conduct
 Exceptions to the Prohibition of Prior Crime
 Testimony
 Habit and Routine Practice
 Rape Shield and Related Topics

ASSIGNMENT:

A. Character Evidence: Formal Character Evidence

1. Giannelli: Understanding Evidence

_Chapter 10, Character Evidence: FRE 404-405; 412-415, pages 139-152

2. FRE 404-405; 412-415

3. BLACKBOARD CASES:

B. Rape Shield Legislation and Related Topics

1. Gianmelli: Understanding Evidence

Chapter 11, Other Acts Evidence: FRE 412-415, pages 150-161

2. BLACKBOARD CASES:

C. Other Crimes : Prior and Subsequent "Bad Acts"

1. Gianmelli: Understanding Evidence

Chapter 11, Other Acts Evidence: FRE 404(b); 413-415, pages 163-177

2. BLACKBOARD CASES:

D. Habit and Routine Practice

1. Giannelli: Understanding Evidence

Chapter 12, Habit Evidence: FRE 406, pages 179-184

2. FRE 406

IV. LEGAL RELEVANCY: THE RELEVANCY RULES

Discussion Topics:

Subsequent Remedial Measures
Payment of Medical Expenses
Offers to Compromise
Offers to Plead Guilty
Insurance
Religious Affiliation

ASSIGNMENT:

F. Subsequent Remedial Measures

1. Giannelli: Understanding Evidence

Chapter 13, Subsequent Remedial Measures: FRE 407, Pages 185-193

2. FRE 407 and Comments

3. BLACKBOARD CASES:

G. Compromises and Offers: FRE 408

1. Giannelli: Understanding Evidence

Chapter 14, Compromises & Offers: FRE 408, pages 195-201

3. FRE 408

H. Medical Payments

1. Giannelli: Understanding Evidence

Chapter 15, Medical Payments: FRE 409, Pages 203-204

I. Criminal Pleas and Offers To Plead

1. Giannelli: Understanding Evidence

1. Chapter 16, Criminal Pleas and Offers: FRE 410, Pages 205 - 212

2. BLACKBOARD CASES:

J. Insurance

1. Giannelli: Understanding Evidence

Chapter 17, Insurance: FRE 411, pages 213-215

V. INTRODUCTION TO HEARSAY

Discussion Topics:

The Nature of Hearsay

Non_Verbal Hearsay

Hearsay and Relevance

Double Hearsay

Non_Hearsay

Statutory Non_Hearsay

Introduction to Hearsay Exceptions

ASSIGNMENT:

A. Definitions of Hearsay: Overview of Hearsay

1. Giannelli: Understanding Evidence

_Chapter 31, Hearsay Rule: FRE 801(a)-(c), 805, 806, Pages 419-443

2. FRE 801(a)-(c)_802, 805, 806

3. BLACKBOARD CASES:

B. Hearsay Exemptions: FRE 801(d)

1. Giannelli: Understanding Evidence

-Chapter 32, Hearsay Exceptions: FRE 801(d), Pages 445-467

2. FRE 801(d)

VI. HEARSAY EXCEPTIONS

Giannelli: Understanding Evidence Unrestricted Exceptions

Chapter 33- Hearsay Exceptions: FRE 803, Pages 469-510 (All Exceptions - **SEE SPECIFIC ASSIGNMENTS BELOW**)

Discussion Topics:

Reliability
 Necessity
 Exceptions and Foundation
 Selected Exceptions:
 Admissions: Nonhearsay by Statute

INDIVIDUAL HEARSAY EXCEPTIONS:

Declarant Available

_ Present Sense Impressions
 _ Excited Utterances/Spontaneous Declarations
 _ Present Mental State
 _ Present Physical Condition & Statements
 Pertinent to Medical Diagnosis and Treatment
 _ Past Recollection Recorded
 _ Business Records
 _ Public Records
 _ Learned Treatises

Declarant Unavailable

_ Prior Testimony
 _ Dying Declaration
 _ Statement Against Interest
 Residual Exceptions

DECLARANT MAY BE AVAILABLE TO TESTIFY

ASSIGNMENT:

A. Present Sense Impressions and Excited Utterances

1. Giannelli: Understanding Evidence

Chapter 33, Hearsay Exceptions: 803, Pages 470-478

2. BLACKBOARD CASES:

2. FRE 803(1) (2)

B. Present State of Mind, Present Physical Condition & Statements for Purposes of Medical Treatment

1. Giannelli: Understanding Evidence

Chapter 33, Hearsay Exceptions: FRE 803: Pages 478-486

2. FRE 803(3), 803(4)

3. BLACKBOARD CASES:

C. Past Recollection Recorded _ Present Recollection Revived

1. Giannelli: Understanding Evidence

Chapter 33, Hearsay Exceptions, Pages 486-489

2. FRE 612, 803(5)

3. BLACKBOARD CASES:

D. Business Records

1. Giannelli: Understanding Evidence

Chapter 33 Hearsay Exceptions, Pages 489-495

2. FRE 803(6)_803(7)

3. BLACKBOARD CASES:

E. Public Records

1. Giannelli: Understanding Evidence

Chapter 33 Hearsay Exceptions, Pages 495-510

2. FRE 803(8)

3. BLACKBOARD CASES:

F. Learned Treatises

1. Giannelli: Understanding Evidence

Chapter 33 Hearsay Exceptions, Pages 501-502

2. FRE 803(18)

DECLARANT MUST NOT BE AVAILABLE TO TESTIFY:

G. Unavailability (What does it mean?)

1. Giannelli: Understanding Evidence

Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 511-514

2. FRE 804(a)

H. Former Testimony

1. Giannelli: Understanding Evidence

_ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 514-520

2. FRE 804(b)(1)

I. Dying Declarations

1. Giannelli: Understanding Evidence

_ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 521-522

2. FRE 804(b)(2)

J. Statements Against Pecuniary and Penal Interests

1. Giannelli: Understanding Evidence

_ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 523-529

2. FRE 804(b)(3)

3. Key points

Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 509-513

K. Residual Exceptions And Minor Exceptions

1. Giannelli: Understanding Evidence

_ Chapter 35 Residual Exceptions, FRE 807, Pages 533-537

2. FRE 807

L. Hearsay and Confrontation

1. Giannelli: Understanding Evidence

_ Chapter 36 Right of Confrontation, Pages 539-558

VII. DIRECT EXAMINATION, CROSS EXAMINATION AND IMPEACHMENT OF WITNESSES

Discussion Topics:

Competency
 Presentation of Evidence
 The Nature of Impeachment
 Scope of Direct
 Cross-Examination
 Return to Character Evidence
 Matters Affecting Credibility
 Opening the Door
 Prior Inconsistent Statements
 The Extrinsic Evidence Rule
 Arrests
 Prior Convictions

ASSIGNMENT:

A. Direct Examination and Impeachment

1. Giannelli: Understanding Evidence

_Chapter 18, Witness Competency: FRE 601,603, 605, 606, Pages 217-231
 Chapter 20, Examination of Witnesses: FRE 611, Pages 241-249
 Chapter 21, Refreshing Recollection: FRE 612, Pages 243-249

2. FRE 601,603, 605, 606, 611, 612

C. Witness Credibility

1. Giannelli, Understanding Evidence

Chapter 22, Witness Credibility: FRE 607-609, 613, Pages 257-295

VIII. OPINION TESTIMONY

Discussion Topics:

Lay Opinion

- _Rational Basis
- _Helpful or Necessary
- Expert Opinion
- _Basis for Expert Testimony
- _Qualifications
- _Hypothetical Question
- _Basis of Opinion
- _Ultimate Issue

ASSIGNMENT:

A. Lay Opinion Testimony

1. Giannelli: Understanding Evidence

_ Chapter 23, Lay Witnesses: FRE 602, 701, Pages 297-306

2. FRE 701

B. Expert Opinion Testimony

1. Giannelli: Understanding Evidence

Chapter 24, Expert Testimony: FRE 702, 704, 706, Pages 307-349

2. FRE 702-706

3. Kiely: Science and Litigation: Products Liability in Theory and Practice (CRC Press, 2002) [SELECTIONS HANDOUT]

IX. PRIVILEGES

1. Giannelli: Understanding Evidence

Chapter 37, Privileges: FRE 501, Pages 559-569

Chapter 38, Attorney-Client Privilege, Pages 571-595

Chapter 39 Spousal & Family Privileges, Pages 597-607

Chapter 40 Doctor & Psychotherapist Privileges, Pages 609-619

Chapter 41 Other Private Privileges, pages 621-627

2. FRE 501