

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

1. 2. Corona Exercise [BLACKBOARD]

2. 3. Sutherland Exercise [BLACKBOARD]
3. 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. 1. Giannelli: Understanding Evidence _Chapter 10, Character Evidence:
FRE 404-405; 412-415, pages 139-152
2. 2. FRE 404-405; 412-415
3. 3. BLACKBOARD CASES:

B. Rape Shield Legislation and Related Topics

1. 1. Gianmelli: Understanding Evidence Chapter 11, Other Acts Evidence: FRE
412-415, pages 150-161
2. 2. BLACKBOARD CASES:

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

1. 1. Gianmelli: Understanding Evidence Chapter 11, Other Acts Evidence:
FRE 404(b); 413-415, pages 163-177
2. 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. 1. Giannelli: Understanding Evidence Chapter 13, Subsequent Remedial Measures: FRE 407, Pages 185-193
2. 2. FRE 407 and Comments
3. 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. 1. Chapter 16, Criminal Pleas and Offers: FRE 410, Pages 205 - 212
2. 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. 1. Giannelli: Understanding Evidence _Chapter 31, Hearsay Rule: FRE 801(a)-(c), 805, 806, Pages 419-443
 2. 2. FRE 801(a)-(c)_802, 805, 806
 3. 3. BLACKBOARD CASES:
- B. Hearsay Exemptions: FRE 801(d)
1. 1. Giannelli: Understanding Evidence -Chapter 32, Hearsay Exceptions: FRE 801(d), Pages 445-467
 2. 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. 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. 2. FRE 803(3), 803(4)
3. 3. BLACKBOARD CASES:

C. Past Recollection Recorded _ Present Recollection Revived

1. 1. Giannelli: Understanding Evidence Chapter 33, Hearsay Exceptions, Pages
486-489
2. 2. FRE 612, 803(5)
3. 3. BLACKBOARD CASES:

D. Business Records

1. 1. Giannelli: Understanding Evidence Chapter 33 Hearsay Exceptions, Pages 489-
495
2. 2. FRE 803(6)_803(7)

3. 3. BLACKBOARD CASES:

E. Public Records

1. 1. Giannelli: Understanding Evidence Chapter 33 Hearsay Exceptions, Pages 495-510
2. 2. FRE 803(8)
3. 3. BLACKBOARD CASES:

F. Learned Treatises

1. 1. Giannelli: Understanding Evidence Chapter 33 Hearsay Exceptions, Pages 501-502
2. 2. FRE 803(18)

DECLARANT MUST NOT BE AVAILABLE TO TESTIFY:

G. Unavailability (What does it mean?)

1. 1. Giannelli: Understanding Evidence Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 511-514
2. 2. FRE 804(a)

H. Former Testimony

1. 1. Giannelli: Understanding Evidence _ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 514-520
2. 2. FRE 804(b)(1)

I. Dying Declarations

1. 1. Giannelli: Understanding Evidence _ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 521-522
2. 2. FRE 804(b)(2)

J. Statements Against Pecuniary and Penal Interests

1. 1. Giannelli: Understanding Evidence _ Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 523-529
2. 2. FRE 804(b)(3)
3. 3. Key points Chapter 34 Hearsay Exceptions, Unavailable Declarant, Pages 509-513

K. Residual Exceptions And Minor Exceptions

1. 1. Giannelli: Understanding Evidence _ Chapter 35 Residual Exceptions, FRE 807, Pages 533-537

2. 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. 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. 2. FRE 701

B. Expert Opinion Testimony

1. Giannelli: Understanding Evidence
Chapter 24, Expert Testimony: FRE 702, 704, 706, Pages 307-349
2. 2. FRE 702-706
3. 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. 2. FRE 501