

**SUL ROSS STATE UNIVERSITY-RIO GRANDE COLLEGE
DEPARTMENT OF NATURAL AND BEHAVIORAL SCIENCES
DEL RIO * EAGLE PASS * UVALDE
CRIMINAL JUSTICE PROGRAM
COURSE SYLLABUS**

- COURSE TITLE:** CRIM 3308: Law of Evidence
- COURSE PERIOD:** Online Web Course
- INSTRUCTOR:** Dr. Ferris Roger Byxbe fbyxbe@sulross.edu
- BIOGRAPHY:** <http://faculty.sulross.edu/fbyxbe>
- OFFICE:** Sul Ross Faculty Offices Building 205, Del Rio Campus
- OFFICE PHONE:** 830-703-4834 (Office) or 830-703-4831 (Fax)
- OFFICE HOURS:** Tuesday & Thursday 09:00 – 12:00 Noon.
- COURSE DESCRIPTION:** Rules which govern the admissibility of evidence at hearings and trials. This course provides a thorough study of the evidence rules, with specific emphasis on the application of these rules in preparing and presenting evidence. This includes a discussion of the history and approach of the study of evidence; proof by evidence and substitutes; general admissibility tests, including relevance and materiality; opinions and expert testimony, and the hearsay rule; evidence by way of witness testimony; documents, scientific and real evidence; and exclusion of evidence on Constitutional grounds. For a better understanding of the evidence rules, judicial decisions are cited and included for discussion.
- TEXTBOOK:** Criminal Evidence, 6th edition (2011).
Norman Garland
McGraw Hill
ISBN: 978-0-07-352799-4
- ACADEMIC SUCCESS:** Students enrolling in online Web Courses at Rio Grande College must be aware that such courses are not self-paced and require considerable vested time in order to meet requirements. Students should be prepared to devote a considerable amount of time to accomplish the requisites in this self-directed course of study. Each semester will require a student to devote approximately 12 hours per week to each web class – which equates to 3 hours of class time plus 9 hours of research, reading, writing and other course preparation.

COMPUTER LABS:

Rio Grande College computer labs are open Monday – Thursday 8:00AM - 9:00PM and Friday 8:00AM – 4:00PM. **RGC Computer labs are not open weekends.** However, students may avail themselves to the SWTJC computer labs with a valid ID. Online web students should have available a high-speed internet connection on a regular basis for off-campus course work, exams, assignments and research.

DISHONESTY:

Academic cheating and plagiarism is not acceptable behavior. It violates university policy and human ethics. If a violation occurs the penalty will result in the grade of “F” for the semester.

EXAMINATIONS:

Exams have been structured to mandate maximum participation in this self-directed course of study.

- There will be a chapter exam each week.
- Chapter reading assignments, research and writing endeavors are of the utmost importance in student assessment and evaluation.
- Exams will consist of multi-formatted questions taken from weekly reading assignments.
- It is recommended that all exams be taken in the computer laboratory on the Rio Grande College campus. However, this is not required. Exams may be taken at any location using a high-speed internet connection.
- **Weekly exams will be made available on Blackboard 12 hours each Tuesday 09:00 – 9:00 pm. And the last exam will be on Monday, July 3rd (same time). Weekly exams may be accessed for a period of 75 minutes.**
- **OIT nor the professor are available after 9:00 pm to assist students with exams.**

NO MAKE-UP EXAMS:

If a student for any reason:

- fails to take an exam
 - fails to complete an exam
 - fails to submit an exam
- will result in a failing grade.

The professor assumes no responsibility for student omissions. Exams will not be reset for any reason. There will be no make-up exams for any reason.

GRADING SCALE: 450 - 500 = A
400 - 449 = B
350 - 399 = C
300 - 349 = D
0 - 299 = F

NOTE: Each exam is worth 100 points x 5 exams = 500 total points.

SEMESTER GRADES: Final semester grades are reported to the Office of Admissions & Records at the conclusions of each semester and grades are posted on Banner for student review.

COURSE OBJECTIVES: Upon attending class, taking comprehensive notes, and reading assigned chapters in the textbook with a thorough analysis of the key concepts, terms and case law within each chapter the student will acquire extensive knowledge of the following subject-matter materials to be inclusive on each examination.

Chapter 1: Introduction to the Law of Evidence and the Pretrial Process

- Explain what constitutes evidence
- State the objectives of the rules of evidence
- Name the most common version of evidence law in the United States
- Describe the three basic police functions
- Contrast the jobs of the prosecuting attorney and the defense attorney
- Describe the dual court system in the United States
- Define probable cause to arrest
- State the two alternative ways that a defendant can be formally charged with a serious crime in the United States

Chapter 2: The Trial Process

- Describe the sequence of events in a typical criminal trial
- Contrast the level of proof required in a criminal case with the level of proof required in a civil case.
- Name the two types of challenges of a juror used during *voir dire*
- Describe the various duties of a judge in a criminal trial
- Cite a working definition of reasonable doubt
- Contrast the roles of the prosecuting attorney and defense attorney
- Describe the burden upon the prosecution in its case-in-chief
- List the five requirements for being a witness
- State the difference between the types of questions allowed on direct and on cross-examination
- Identify the order of presentation of closing arguments

Chapter 3: Evidence – Basic Concepts

- List the four general categories of evidence
- Define relevant evidence
- Discuss some of the reasons relevant evidence may be excluded
- Explain the difference between contradictory and corroborative evidence
- Define judicial notice
- Describe four examples of facts that a court may judicially notice

- List the two factual components of a true presumption
- Describe the relationship of a presumed fact to a basic fact
- Describe two examples of rebuttable presumptions
- Explain what a stipulation is

Chapter 4: Witnesses – Competency and Privileged Communications

- Explain the qualifications required to be considered competent to be a witness
- List the three characteristics that constitute witness capacity
- State the rationale for privileged communications
- Explain the difference between the spousal incapacity and marital communications privileges
- State when the attorney-client privilege is created
- Describe two exceptions to the physician-patient privilege that often make the rule irrelevant
- Explain why there is no compelling need for a physician-patient privilege, according to the United States Supreme Court
- State the strong policy justification for the psychotherapist-patient privilege
- State when the government may refuse to reveal the identity of an informant
- Explain when the news reporter-news source privilege yields

Chapter 5: Witness – Lay and Expert

- State the one essential characteristic required before a person may become a witness
- Name the two rights the Constitution guarantees to an accused person that assures the accused may call witnesses on his or her behalf
- Define a leading question
- List five exceptions to the rule prohibiting leading questions on direct examination
- Define impeachment
- Name the five methods of impeachment
- List the subjects typically within the purview of lay opinion
- State the circumstances under which testimony may be introduced
- Explain how a witness may be qualified as an expert
- List the three foundational requirements for an expert's testimony
- State the three bases for expert opinion
- Explain when and how a witness's recollection may be refreshed
- List the steps that must be taken before a witness's recorded recollection may be admitted into evidence

Chapter 6: Credibility and Impeachment

- Name the four components of witness capacity
- List the five basic methods of impeaching a witness
- Name the two types of criminal convictions that may be admitted to impeach a witness
- Explain the difference between the balancing test applied to the admission of evidence of

- a conviction of a criminal defendant who testifies and the balancing test of FRE 403
- Describe the types of crimes that are automatically admissible to impeach a witness
- Explain the principle restrictions upon impeachment by the use of evidence of misconduct not resulting in a conviction of a witness
- Name the one requirement for the introduction of extrinsic evidence of a prior inconsistent statement
- State the rule governing the impeachment of a witness on the grounds of bias
- State the rule governing the impeachment of one's own witness
- Describe when a witness may invoke the privilege against self-incrimination
- Name the prevailing form of witness immunity in the United States

Chapter 7: The Hearsay Rule

- Define hearsay
- Explain the rationale for the hearsay rule
- Explain the FRE's assertion-based definition of a statement
- List the five subcategories of statements that are Not Offered for the Truth of the Matter Asserted (NOTMA)
- Name the two general categories of exemptions from the hearsay rule under the FRE
- List the three types of prior statements by witnesses that are exempt from the hearsay rule
- Identify the five types of admissions by a party opponent that are exempt from the hearsay rule
- List four foundational requirements for the dying declaration exception to the hearsay rule
- Name the two species of spontaneous declarations exceptions to the hearsay rule and state the difference between them
- Identify a major limitation upon the state of mind exception to the hearsay rule
- List the foundational requirements for the statements for purposes of medical diagnosis exception to the hearsay rule
- Name the foundational requirements for the former testimony exception to the hearsay rule
- State the foundational requirements for the business records exception to the hearsay rule

Chapter 8: Admissions and Confessions

- Define an admission
- Distinguish between confessions and admissions
- State the fundamental requirement for a confession to be usable as evidence
- Describe the test for voluntariness of a confession
- State the requirements of *Miranda*
- Define custody for purposes of *Miranda*
- Define interrogation for purposes of *Miranda*
- State the burden of proof required to prove a waiver of *Miranda* rights by a suspect
- Describe when interrogation of a suspect who has invoked the right to counsel may resume

- List the three exceptions to the requirement of *Miranda* warning
- Explain when the Sixth Amendment right to counsel attaches
- State the rule governing interrogation of a suspect when right to counsel has attached
- Define what constitutes deliberate elicitation
- Explain the procedures to determine the admissibility of a confession at trial

Chapter 9: The Exclusionary Rule – Search and Seizure

- State the main purpose of the exclusionary rule
- Explain the two-pronged test for determining whether there is a search
- Identify the procedure and requirements for obtaining a valid search warrant
- Explain the meaning of probable cause and possible ways of establishing probable cause
- Discuss the requirements and limitations of a search incident to lawful custodial arrest
- List the three ways in which a vehicle may be searched without a warrant
- Identify two requirements for a valid consent
- Discuss the additional requirements for a valid consent if a third party is giving consent
- Review those circumstances that have been recognized as exigent, allowing an officer to search without a warrant
- State the elements that must be satisfied before an officer may seize an object pursuant to the plain view doctrine
- Discuss the justification needed to conduct a stop and frisk
- Explain the standing requirement for a defendant's assertion of a constitutional violation by law enforcement officers

Chapter 10: Exclusionary Rule – Identification Procedures

- Name three types of identification procedures
- Explain when an accused is entitled to counsel at an identification procedure
- Explain when an accused is not entitled to counsel at an identification procedure
- Identify the constitutional grounds for an accused offender's claim of misidentification before trial and at trial
- Explain the test for allowing an in-court identification by a witness whose pretrial identification was tainted
- State the test for excluding evidence of a pretrial identification on grounds of suggestiveness
- List the five factors set forth in the *Biggers* case
- Summarize the law applicable to identifications when there is a claim that a pretrial identification procedure was suggestive
- Name several situations that the law enforcement officer should avoid with respect to the makeup of a lineup or photographic array
- State the purpose of the *Biggers* five factors analysis

***Chapter 11: Circumstantial Evidence**

- Distinguish between direct and circumstantial evidence
- State when and how the trial judge determines the relevancy of circumstantial evidence
- Explain why the law generally prohibits evidence of the defendant's character
- Name the principle non-character uses of "other crimes" evidence
- Explain how motive and intent differ
- Describe how the prosecution might use "other crimes" evidence
- State how the prosecution may use another act of the defendant to refute a claim of mistake
- Explain what *modus operandi* means in the context of the "other acts" evidence rule
- Give several examples of circumstantial evidence that may be admitted to prove the accused offender's consciousness of guilt
- Explain when the prosecution might prove the defendant's bad character
- Explain when a victim's character is at issue
- Describe the laws shielding victims of sex offenses and why lawmakers have enacted the laws
- Identify how a witness's character may be attacked
- Describe the test used to evaluate the admissibility of a defendant's prior uncharged felony convictions.

***Chapter 12: Documentary Evidence and the Right of Discovery**

- Name the two classifications of documents and each of their categories
- List the six situations in which secondary evidence of the contents of a writing may be introduced
- Explain the three foundational elements that must be shown before secondary evidence is admitted
- State when a defendant is not required to comply with a subpoena *duces tecum* and produce a document in his or her possession
- Name the three types of discovery the defendant can obtain from the prosecution under FRCrP 16 and which type is granted reciprocal discovery
- Describe what statements are covered by the Jencks Act
- Identify the range of matters that may be subject to discovery by the defendant in a criminal case
- List the defenses that the accused may be required to disclose to the prosecutor prior to trial

***Chapter 13: Physical Evidence**

- Name five examples of how authentication can be accomplished
- Identify the four general categories of physical evidence
- List the order and persons in a typical chain of custody
- State the three methods an officer can use to identify positively the object in court as the one that the officer found at the crime scene
- Identify the information that should be placed on a typical tag
- Describe how items of evidence should be packaged for long-term storage in an evidence locker

- Explain the balancing test of FRE 403 for admitting gruesome objects into evidence

***Chapter 14: Photographic, Recorded, and Computer-generated Evidence**

- Define the kinds of evidence included in the terms “writings” and “recording” in the FRE
- State the circumstances in which video and audio evidence may be used in court
- Decide when to use a hard copy or a projected image in presenting evidence
- List the various uses of photographs and recorded evidence
- State the first rule of admissibility of photographic and recorded evidence
- Determine when a gruesome photograph or videotape is likely to be admitted
- State the second rule of admissibility of photographic and recorded evidence
- Identify those witnesses who can authenticate a photograph and recording.
- List three methods of authentication of photographs and recordings
- List the data to be included on the crime scene identification card
- State when a posed or reconstructed scene is acceptable
- Identify the methods of presenting photographic or recorded evidence

***Chapter 15: How to Testify Effectively**

- Name the different methods used to notify a law enforcement professional to appear in court
- Describe the appropriate clothing for law enforcement professionals to wear to court
- Identify those people to whom the law enforcement professional should not speak during recesses
- Explain what a law enforcement professional should do while testifying with respect to objections
- State what a law enforcement professional should do when he or she does not remember the answer to a question asked
- Explain what a law enforcement professional should do when asked an argumentative question on cross-examination that the defense attorney insists should be answered yes or no.

(*) Chapters not assigned summer I.

WEEK ONE:

(May 31 – June 6)

Chapter 1: Introduction to the Law of Evidence and the Pretrial Process

Chapter 2: The Trial Process

EXAM #1: Tuesday, June 6th

WEEK TWO:

(June 7 - 13)

Chapter 3: Evidence – Basic Concepts

Chapter 4: Witnesses – Competency and Privileged Communications

EXAM #2: Tuesday, June 13th

WEEK THREE:

(June 14 - 20)

Chapter 5: Witnesses – Lay and Expert

Chapter 6: Credibility and Impeachment

EXAM #3: Tuesday, June 20th

WEEK FOUR:

(June 21 - 27)

Chapter 7: The Hearsay Rule

Chapter 8: Admissions and Confessions

EXAM #4: Tuesday, June 27th

WEEK FIVE:

June 28 – July 3)

Chapter 9: The Exclusionary Rule – Search and Seizure

Chapter 10: Exclusionary Rule – Identification Procedures

EXAM #5: Monday, July 3rd

STUDENT LEARNING OUTCOMES (SLO): The graduating student will

(SLO 1) Content Knowledge: Students will demonstrate proficiency in the application of legal concepts, theoretical applications, scientific principles, and historical trends in the criminal justice arena.

(SLO 2) Research Skills: Students will demonstrate competency in the application of basic research methods to include: research design, statistical analysis, and uses of empirical findings and interpretations.

(SLO 3) Critical Thinking Skills: Student will demonstrate the application of organizational principles, cultural, social and behavioral knowledge, critical thinking skills and cognitive thought processes within the criminal justice arena.

Distance Education Statement: Students enrolled in distance education courses have equal access to the university's academic support services, library resources, and instructional technology support. For more information about accessing these resources, visit the SRSU website. Students should submit online assignments through Blackboard or SRSU email, which require secure login information to verify students' identities and to protect students' information. *[If the course requires students to take proctored exams or to purchase additional software or equipment, please describe those requirements here.]* The procedures for filing a student complaint are included in the student handbook. Students enrolled in distance education courses at Sul Ross are expected to adhere to all policies pertaining to academic honesty and appropriate student conduct, as described in the student handbook. Students in web-based courses must maintain appropriate equipment and software, according to the needs and requirements of the course, as outlined on the SRSU website.

ADA (Americans with Disabilities Act)

Sul Ross State University – Rio Grande College is committed to equal access in compliance with the Americans with Disabilities Act of 1973. It is the student's responsibility to initiate a request for accessibility services. Students seeking accessibility services must contact Kathy Biddick, Student Services 830-279-3003 or kbiddick@sulross.edu.