**EVIDENCE - PROFESSOR SCHROEDER**  
**COURSE OUTLINE**  
**Spring 2015**

**Texts**

**Class recordings:** Classes will be recorded and will be available for viewing in the Computer Lab for two weeks afterwards. Students may not create audio or visual recordings of class sessions. Any recordings or materials posted on TWEN may not be copied, duplicated or disseminated outside the course without express authorization from the professor.

**Make up class:** Class held on Martin Luther King’s birthday, Monday, January 19, will be made up on a date to be determined. This information will be posted on TWEN.

**Course Coverage:** Various problems in the book are referenced in this outline. You should review all the cited problems but we will not do all of them in class.

**S/U grading:** The grades of students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course.

**Final Exam:** The final exam will be held on Wednesday, May 13, at 8:15 a.m.

**First Week:** For the first full day you should skim through Pages 1 thru 131 in L & S and read carefully pp-140-147. We will refer to those pages throughout the week.

**Outline**

I. **TAKING EVIDENCE**

Day 1: Introduction - Structure of a Trial - **FRE 102 and 611(a)**  
Skim L & S, pp 1-140

Day 2: A. Preconditions to Testimony – Personal Knowledge, Lay Opinion, Oath, and Witness Competence - **FRE 601, 602, 603, 604, 605, 606, 701, 704**  
L & S ch. 2, sec 1; pp. 141-147  
Probs. II-1 and II-2 on L & S p.147

B. Production of Witnesses and Evidence - L & S, pp. 198-212.

Day 3: A. Interrogation of Witnesses,  
**FRE 401, 402, 403, 611, and 614**  
Direct. L & S, pp. 148-151 & 154-55; p. 27 et seq; p. 34, n. 24; p. 35,n. 26  
Cross, L & S pp. 151-54 & p. 36-37, nn. 28 & 29.
B. Refreshing Recollection - **FRE 612**

C. “The Rule” on Witnesses - **FRE 615**
   L & S, pp. 18 & n.9

D. Objections - **FRE 103**
   L & S, pp. 157-173
   Prob II-4 on p. 172-173

Day 4: A. Preliminary Issues of Admissibility - **FRE 104**
   L & S pp. 174-183

B. Limited Admissibility - **FRE 105**
   L & S, pp. 184-186.

C. The Rule of Completeness - **FRE 106**

D. More on objections - **FRE 103**
   L & S - pp. 186-191

E. Bench Trials - pp. 191-193


II. **RELEVANCE and LIMITATIONS on the ADMISSION OF RELEVANT EVIDENCE**

Days 5 & 6: A. Introduction to Relevance: **FRE 401; 402**
   L & S pp. 215-221; Prob III-1 on p. 221-223 (all parts)

B. Conditional Relevance
   L & S, pp. 223-228; Prob III-2 on p. 228

C. More on Relevance - **FRE 403, 702**

D. Stipulations & Judicial Admissions
   L&S, pp. 1393-1399

Days 7-8: A. Grounds for Excluding Relevant Evidence - **FRE 403**
   L & S pp. 234-243
   Probs. III-5, III-6 on p. 242

B. Relevant but Inadmissible: Categorical Balancing
   L & S, pp. 287-294; **FRE 407-411**
Day 9:  
A. Subsequent Remedial Measures - **FRE 407**  
   L & S pp. 294-302  
   Prob. IV-1 on pp 302  

B. Compromises and Offers to Compromise - **FRE 408**  
   L & S, pp. 304-309  
   Prob. IV-3, IV-4 and V on p309  

C. Pleas and Plea Discussions - **FRE 410**  
   L & S, pp. 309-314  
   Prob. IV -6 & IV-7 on p. 315  

Day 10:  
A. Payment of Medical and Similar Expenses - **FRE 409**  
   L & S, p. 316-17  
   Prob. IV-8  

B. Liability Insurance - **FRE 411**  
   L & S pp. 318-319  
   Probs. IV-9, IV-10 on pp 319-320  

Day 11:  
A. Similar Happenings - **FRE 401, 402, 403**  
   L & S, pp. 320-323  
   Probs. IV-11, -12, -13 on pp 323-324  

   Probs. IV-16; IV-19; IV-22; IV-23; IV-25; IV-26; IV-29; IV-39; IV-40  

Days 12-13:  
A. Character Evidence - **FRE 404, 405**  
   L & S, pp. 345-360  
   Probs. V-1; V-2 & V-3  

B. Other Crimes, Wrongs and Acts - **FRE 404(b)**  
   L & S, pp. 361-379  
   Probs. V-4, V-5, V-6, V-7, V-8, V-9, V-10, V-11, V-12, V-14  

Day 14:  Habit and Routine Practice - **FRE 406**  
L & S, pp. 379-387  
Probs. V-15; V-16, V-17, V-18, V-19  

Days 15&16: More on Character Evidence  
L & S, pp. 388-395;  
Prob. V-20  

   Exceptions to the Propensity Rule, FRE 404(a)-405  
L & S, pp. 395-410  
Probs. V-21, V-22, V-23
Day 17:  
A. Rape Shield Laws - **FRE 412**  
L&S, pp. 478-499  
Probs. V-38, V-39, V-40; V-41  
**FRE 413, 414, and 415**, L&S, pp. 500-512; prob. V-41  

B. Additional Character Problems beginning on page 513.  

Midterm EXAM given out  

III. **IMPEACHMENT**  

Day 18:  
A. Generally - **FRE 607**  
L & S, pp. 411-414  
Prob. V-24  

B. Bad Character - **FRE 608(a)**  
L & S, pp. 414-419  
Prob. V-25  

Day 19:  
A. Specific Bad Acts - **FRE 608(b)**  
L & S, pp. 419-424  
Prob. V-26  

B. Prior convictions - **FRE 609**  
L & S, pp. 424-439  
Probs. V-27, 28  

Day 20:  
Bias, Prejudice and Interest  
L & S pp. 440-446  
Probs. V-29, V-30  

Day 21:  
A. Contradictory Testimony and the Collateral Issue Rule - **FRE 410-403**  
L & S, pp. 446-450  
Prob. V-31  

B. Prior Inconsistent Statements - **FRE 613**  
L & S, pp. 450-459  
Prob. V-32 on p. 459  

Day 22:  
A. Mental or Physical Defects - **FRE 601, 602, 603**  
L & S, pp. 459-465  
Probs. 30 & 31  

B. Religious Belief - **FRE 610**  
L & S, pp. 465-467  
Prob. V-35, pp. 466-467
Day 23: 
A. Corroboration & Rehabilitation  
  L & S, pp. 467-471  
  Prob. V-36  

B. Ethics of Impeachment  
  L & S, pp. 472-475  
  Prob. V-37  

C. Constitutional Issues in Impeachment  
  L & S, pp. 863-883  


IV. REAL & DEMONSTRATIVE EVIDENCE: EXHIBITS

Days 24-25:  Midterm Exam due to be returned

A. Introduction - FRE 401, 403  
  L & S, pp. 1269-1275  

B. Authentication - FRE 901 & 902  
  L & S, pp. 1275-1292  
  Prob., X-2 on p. 1282; Prob. X-3 on p. 1286)  
  Probs. X-4 and X-5 (all parts on pp. 1291-1292)

Day 26:  A. Chain of Custody  
  L & S, pp. 1292-1297  
  Prob. X-6 on pp. 1298-1299  

B. Attesting Witnesses - FRE 903  
  L&S, 1297-1298

V. WRITINGS and the ORIGINAL DOCUMENT or BEST EVIDENCE RULE

Day 27:  The Best Evidence Rule - FRE 1001 thru 1008  
  L & S, pp. 1299-1309  
  Probs. X-7 & X-8 on pp. 1308-1309

VI. PARTICULAR TYPES OF DEMONSTRATIVE EVIDENCE – FRE 401,402,403

Day 28:  A. Views  
  L, G, & L, pp. 1312-1314  
  Prob. X-9 on p. 1314
B. Demonstrations and Experiments. Generally,
   L & S, pp. 1314-1316
   Probs. X-10, X-11 on p. 1316

C. Photographs and Sound Recordings
   L & S, pp. 1317-1325
   Probs. X-12 (pp. 1324-1325), and X-13 (p. 1325)

Day 29:
   A. Videotapes and other Motion Pictures
      1. Videotapes etc – pp. 1328-1333

   B. Review: Additional Demonstrative and Best Evidence Problems

VII. HEARSAY

Day 30:
   A. Introduction - FRE 801, 802
      L & S, pp. 547-557

   B. Definitions, L & S, pp. 557-575; Wright v. Doe dem. Tatham, 792-798

   C. Other Hearsay-Related Considerations
      L & S, pp. 575-583
      Probs. VI-3 (all parts), VI-5, VI-10, VI-11, VI-17

Day 31:
   A. Exceptions generally, L & S, pp. 589-591

   B. Prior statements of a Witness - FRE 801(d)(1)

Day 32:
   A. Admissions - FRE 801(d)(2)
      L & S, pp. 591-621
      Probs. VI-22, VI-23, VI-25, VI-27, VI-28, VI-30, VI-35

   B. Other Exceptions, L & S, pp. 621-633

Day 33:
   A. Crawford v. Washington et seq, L & S pp. 829-858

   B. Present Sense Impressions - FRE 803(1)
      L & S, pp. 633-634

   C. Excited Utterances - FRE 803(2)
      L & S, pp. 634-638
      Prob. VI-42

Day 34:
   A. Statements of Physical Condition and State of Mind - FRE 803(3)(4)
United States, pp. 763-766
Probs. on pp. 653-662 including VI-46, VI-48, VI-50, VI-51, VI-53, VI-54, VI-56, VI-62, VI-63

B. Recorded Recollection - FRE 803(5)
L & S, pp.662-666
Prob. VI-65

Day 35: A. Business Records and other Regular Entries - FRE 803(6), 803(7)
L & S, pp. 666-674; Probs. VI-66

B. Public Records - FRE 803-(8)(9)(10)
L & S, pp. 675-691
Probs. VI-69, VI-70, VI-71

L & S, pp. 691-702
Prob. VI-79

Day 37: A. Unavailability of Witness - FRE 804(a)
L & S, pp. 702-707

B. Former Testimony - FRE 804(b)(1)
L & S, pp. 707-715
Probs. VI-80

Day 38: A. Dying Declarations - FRE 804(b)(2)
L & S, pp. 715-719
Prob. VI-82

B. Statements Against Interest - FRE 804(b)(3)
L & S, pp. 719-724
Probs. VI-83, VI-84

Day 39: A. Statements of Pedigree - FRE 804(b)(4)
L & S pp. 726-728
Prob. VI-85

B. Forfeiture by Wrongdoing - FRE 804(b)(5)
L & S, pp. 728-730
Prob. VI-86

C. Catchall Exceptions - FRE 807
Prob. 87

D. Multiple Hearsay - FRE 805
L & S, pp. 5767
E. Impeachment of Hearsay Declarants - FRE 806
   L & S, pp. 730-733
   Prob. VI-87

VIII. EXPERT TESTIMONY

Day 40:   A. Introduction; Obtaining and Preparing Expert Witnesses - FRE 701
           L& S, pp. 1125-1134
           Prob. IX-1

           B. Qualifications of Experts - FRE 702
              L & S, pp. 1134-1136
              Prob. IX-2 (p. 1136)

Day 41:   C. Expert Opinion Evidence - FRE 703, 704, 705
           L & S, pp. 1137-1146
           Prob. IX-3 (p. 1140); Prob. IX-4 (p. 1145-1146)

           D. Presenting and Responding to Expert Testimony
              L & S, pp. 1147-1157; pp. 1187-1192; pp. 1210-1231 (especially pp. 1215-1216)
              Prob. 5 and 6 (pp. 1155-1157)

Day 42:   Scientific Evidence
           L & S pp. 1157-1177; 1247-1260

Day 43:   A. Court Appointed Experts - FRE 706
           L & S, pp. 1177-1186
           Prob. IX-10

           B. Review material and problems
              L & S, pp. 1260-1263
              Prob. IX-12 and IX-17

IX. PRIVILEGES

Days 44-45: A. Non-Constitutional Privileges - FRE 501 and 502
              L & S, pp. 929-939

              B. Attorney-Client Privilege
                 L & S, pp. 939-989 and 993-1018
                 Probs. VIII-2, VIII-3

Day 46:   A. Attorney Work-Product
           L & S, pp. 989-992
           VIII-8, VIII-9, VIII-24
B. Health Care Providers  
L & S, pp. 1018-1034  
Probs. VIII-39

Day 47:  
A. Marital Privileges  
L & S pp. 1034-1046  
Probs. VIII-41
B. Parent Child Privileges  
L & S, pp. 1046-1047  
Probs. VIII-42

Day 48:  
A. Government Privileges  
L & S, pp. 1048-1058
B. Official Information Privileges  
L & S pp. 1058-1062
C. Informer Privilege  
L & S, pp. 1062-1069
D. Other Privileges  
L & S, Prob VIII-94; pp. 1070-1076; pp. 1118-1119
E. Reporter’s Privileges  
L & S, pp. 1092-1117

Additional Problems  
L & S, pp. 1076-1089; 1117-1118

X. JUDICIAL NOTICE

Day 49:  
A. Adjudicative Facts: Generally - FRE 201  
L & S, pp. 1399-1414  
B. Legislative Facts  
L & S pp. 1414-1436  
Prob. XI-30, XI-32

XI. BURDENS of PROOF and PRESUMPTIONS

Day 50:  
A. Burdens of Proof: Production and Persuasion  
L & S, pp. 1367-1393  
Probs. XI-1(p. 1382), XI-IV(p. 1383), XI-10(p. 1389)
B. Presumptions - FRE 301 and 302  
L & S pp. 1437-1477; Prob. XI-33, XI-34, XI-36, X-37
Emergency Procedures

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.