

CRIMINAL EVIDENCE AND PROCEDURES

San Jose State University: Justice Studies 16

Fall 2006

Mondays 5:30-8:15 p.m. in 324 MacQuarrie Hall

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Office Hours: Mondays 4:15-5:15 p.m.

by appointment

SYLLABUS

COURSE DESCRIPTION

This course examines the processes by which US courts determine criminal liability, emphasizing the law regulating what information, or evidence, can be considered in determining guilt. Part I of the course starts with an introduction to how courts process criminal cases from arrest through final appeal, with a close-up examination of the stages of a jury trial, and a look at the law governing pretrial access to opposing parties' information, a process called discovery.

Part II of the course then delves extensively into what evidence can and cannot be considered in determining the criminal responsibility of the accused. In this segment we study first the general rule of relevance, and its balancing factor, prejudice. We then examine an application of this general rule by considering circumstantial evidence, including a close examination of whether triers of fact may consider evidence that the accused (or other witnesses) may have committed other, uncharged crimes or bad acts, or may consider other evidence of character, both bad and good. We then look at the means of introducing evidence through the testimony of witnesses. We study who may be a witness, how witnesses may be examined, and methods of undermining and bolstering the believability of their testimony. We also consider an extensive limitation on permissible testimony: the rule of hearsay. We then look at other forms of evidence besides witnesses' testimony, including documents, physical evidence, photographs, and other recorded information.

Part III of the course examines rules that prevent consideration of some types of evidence in order to serve other social goals besides the discovery of truth. Specifically we look closely at what is called the exclusionary rule, which requires evidence obtained in violation of the constitution to be excluded from consideration of guilt. Our study of the rule includes examination of arguments for and against it. In connection with the exclusionary rule, we also examine the law governing interrogation of witnesses, including the accused, as well as that law governing identification methods, such as line-ups. Finally, we consider the rule of privileges, under which a class of conversations cannot be revealed in court in order to protect certain classes of confidential relationships.

Students who successfully complete this course should have a firm grasp of these concepts and therefore a thorough introduction to the U.S. law of evidence as it applies in criminal cases.

REQUIRED READING

Required Text: Norman M. Garland, Criminal Evidence (5th ed. 2006) published by McGraw Hill. Available at Spartan Books and on reserve at MLK library.

Such additional readings as professor may from time to time hand out or assign students to obtain, such as the reading of an entire case as opposed to just the summary in the textbook.

All readings must be completed in advance of the class for which they are assigned.

COURSE SCHEDULE

PART I: CRIMINAL PROCESS

Week 1: 8/28: **Introductions, Survey of Course**
 Life Cycle of a Criminal Lawsuit: Pretrial through Final Appeal
 Reading: Ch 1 (all)

No class 9/4: U.S. Labor Day

Week 2: 9/11: **Pretrial Discovery**
 Ch. 12, pp. 388-end

The process of a jury trial
Ch 2 (all)

PART II: ADMISSIBLE EVIDENCE

Week 3: 9/18 **Basic Concepts of Evidence, including the balancing test**
 Ch 3 (all)

Circumstantial Evidence, including “Other Crimes” evidence and other character evidence
Ch. 11 (all)

Week 4: 9/25 **Witness Competency**
 Ch 4, pp. 80-84

Methods of Interrogating a Witness on the Witness Stand
Ch. 5, pp. 119-124, 143-147

Lay and Expert Witnesses
Remainder of Ch. 5

Credibility and Impeachment
Ch. 6 (all)

- Week 5: 10/2 **The Hearsay Rule and Exceptions to It**
Ch. 7 (all)
- Documentary Evidence**
Ch. 12 (remainder, see Week 2)
- Week 6: 10/9 **Other Types of Evidence: Physical, Photographic, etc.**
Ch 13 (all)
Ch 14 (all)
- Week 7: 10/16 Catch up and Review
- Week 8: 10/23 **MIDTERM 1**

PART III: EVIDENCE EXCLUDED FOR PUBLIC POLICY REASONS INCLUDING THE EXCLUSIONARY RULE

- Week 9: 10/30 **The Exclusionary Rule: Search & Seizure**
Ch. 9 (all)
- Week 10: 11/6 **Admissions & Confession: Due Process, The Privilege Against Self Incrimination, and the Right to Counsel**
Ch. 8 (all)
- Week 11: 11/13 **The Exclusionary Rule & Identification Procedures**
Ch. 10 (all)
- Privileges**
Ch. 4 (remainder: pp. 79, 84-end)
- Review Public Policy Exclusions**
- Week 12: 11/20 **MIDTERM 2** (Will cover material studied after the first midterm)
- Week 13: 11/27 Present Empirical Observation Papers and POTLUCK
Turn in Paper
- Week 14: 12/4 Review and Prepare for Final Exam

FINAL EXAM: Monday 12/11 5:15-7:30 p.m.
(Note earlier meeting time: 5:15, not 5:30)
Exam will be comprehensive, i.e. material from the whole semester.

REQUIREMENTS AND EVALUATIONS

Students' mastery of the material will be evaluated through two midterm exams, one short paper, oral presentation of those papers (on a credit/no credit basis), a comprehensive final exam, and class preparation and participation, including attendance and performance on any quizzes or homework. Students should expect some quizzes, perhaps take-home, especially before the first midterm. Exams will be short-answer, not multiple choice (except perhaps some true/false questions) and not long essay. Good exam preparation technique would include studying the review questions at the end of each chapter as we read them. Students should expect the ethical and professional application questions at the end of the chapters to be discussed in class as well. Students are expected to participate in class discussion and may, from time to time, be called upon to answer questions in order to help facilitate that discussion.

The short paper of at least 3 and no more than 4 pages will report and reflect on the student's observations of the criminal rules of evidence in operation in real life, for example in a trial court, in police work, or in one's home or neighborhood. The student must observe the rules of evidence in operation for at least one hour and interview someone who participated in the rules' application. A student might, for example, go to court and watch a witness in a *criminal* case be examined and cross-examined and then interview the witness or a lawyer examining the witness. Or, a student might have witnessed a search and/or arrest and interview the subject searched and/or the police doing the search. Or a student might work in a bank or a library, interview those responsible for turning over information upon the government's request, and report on how the rules of evidence do and do not give government access to citizens' information. The observation must have been made during this semester, preferably toward the end of the term when the student has a fuller grasp of the rules of evidence. The paper should not only relate the student's observations and interview, but analyze and critically evaluate those observations in light of course material. Thus, the paper should have some theme or thesis that the author wishes to persuade the reader of. For example, the student might examine the advisability of the rule(s) of evidence the student saw applied. Based on the students' observations and course materials, is the rule good rule or bad? Should we keep it or change it? Why?

A student's final grade will be based on the following weighted evaluation of the student's work:

- 20% First Midterm
- 20% Second Midterm
- 20% Paper
- 25% Final Examination
- 10% Class discussion preparedness and participation, including attendance, and any quizzes or homework
- 5% Presentation of papers, including active listening to others' presentations (graded on a credit/no credit basis)

Grades attempt to measure the student's mastery of the material. Full command receives a grade of A, good mastery a B, satisfactory a C, unsatisfactory a D, and not completed work will be assigned the grade of F. Grades are assigned on an absolute, not a relative, or "curved" basis. The Professor is willing to give all who demonstrate full mastery of the material an A.

A NOTE ON LATE ASSIGNMENTS: They are unprofessional and not tolerated. Any quizzes or homework assignments may not be made up. For exams and the paper, only excuses as would persuade a trial judge to postpone an in-progress trial, including documentation, are accepted. Hospitalization of the student or the student's dependent are examples of good cause, as is observance of a major religious holiday. Forgetting, oversleeping, traffic, or technology failure does not constitute good cause. Without "good cause," exams may not be made up. The sanction for papers that are late without "good cause" is that the grade on a late paper will be reduced one whole letter grade for each day it is late, including weekends and holidays.

A WORD ABOUT ACADEMIC INTEGRITY: This professor takes professional ethics very seriously. Any failure to comply with the University's academic integrity policy will be reported. Fabricated, or "recycled" papers are examples of violations of the policy. Any such paper will receive a grade of "F," the student may -- at the Professor's sole discretion -- fail the course, and the student will be reported for further disciplinary action by the University. More information about the university's academic integrity policy is available on its web page. Students are encouraged to read it.

A NOTE ON TECHNOLOGY ETIQUETTE: Class meetings are a time to focus exclusively on the course material. Using technology during class when that technology use is not required for the class meeting -- including using cell phones, checking messages, Blackberries, using the internet, playing games on laptops -- distracts not only the technology user but also those around him or her. So, in devotion to your own education, as well as out of kindness for others, please *turn OFF your cell phone* and do not use unrelated technology use during class. Thanks!

QUESTIONS: The professor welcomes questions, all questions. Always feel free to email marr@ucsc.edu or call 831/429-6276, anytime, seven days a week. (Be aware that this is my cell phone and my residence is out of range. So expect to leave a message.) If you have not received a reply within 24 hours, assume a technology glitch and try again, perhaps with a different form of technology. (An alternate email address is mmarr@cruzio.com).