

EVIDENCE
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2025 SYLLABUS – LAW 6330– 4 CREDITS

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Office Hours: In the office for sure Mon/Tues/Wed 10:00-12:00 and 1:00-2:30 and probably most of the day Thursdays as well. I teach Property Mon/Tues/Wed from 8:30-9:45, so those times are out. If you need to see me on some other day or time besides those listed here, just let me know and I will make something happen. The electronic office (meaning access by email) is always open, including weekends, though I will not always respond in real time.

CLASS MEETING TIME: Mon/Tues/Wed 3:00-4:15

CLASSROOM: HH 285-C

COURSE DESCRIPTION AND OBJECTIVES:

This course is an introduction to the law of evidence, principally through a study of the Federal Rules of Evidence. Topics include a short look at evidence theory and careful doctrinal study of relevance, conditional relevance, foundation, original documents rules, expert testimony, and various rules that exclude relevant evidence from the record, such as anti-propensity rules and hearsay doctrine. The course is mainly focused on the formal process of building a record rather than the practical process of convincing decisionmakers to rule in one's favor.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- recognize relevant legal questions arising in a range of evidence law contexts,
- apply statutory texts, judicial doctrine, and settled principles to those questions,
- recognize the likely range of legal outcomes in such proceedings,
- see how evidence law doctrines relate to doctrines in other subject areas, and
- be able to adapt knowledge of current doctrine to changed conditions, at least within a narrow range of plausible future changes in legal frameworks.

REQUIRED READING MATERIALS:

The casebook for this course is *either*:

RONALD J. ALLEN, DAVID S. SCHWARTZ, MICHAEL S. PARDO & ALEX STEIN, AN ANALYTICAL APPROACH TO EVIDENCE: TEXT, PROBLEMS, AND CASES (7th ed., 2022) (“New Allen”)

or

RONALD J. ALLEN, ELEANOR SWIFT, DAVID S. SCHWARTZ, MICHAEL S. PARDO & ALEX STEIN, EVIDENCE: TEXT, PROBLEMS, AND CASES (6th ed., 2016) (“Old Allen”).

That is correct – you can use *either* of those editions. Honestly, I prefer the sixth edition to the seventh, but I was not confident that the bookstore would be able to acquire enough copies of the now-expired sixth edition to cover the enrollment. If you want the newer, updated seventh edition, that is great. If you want a used, cheaper copy of the sixth edition, that will work as well. *This syllabus provides assignments keyed to both editions.* The changes made in the new edition mostly don't affect the material that I teach, with the exception of a new Chapter 1 in the seventh edition which I do not like. Fortunately, Aspen has given me permission to distribute the first chapter of the sixth edition, so for anyone using the seventh edition, you will also use the first chapter of the sixth edition, which is on Canvas as “ALLEN 6-CHAPTER 1.”

There are additional assigned materials on Canvas, in three separate files: Lawson Evidence Supplemental Notes (“LESN”), Lawson Evidence Supplemental Cases (“LESC”), and Lawson Evidence Supplemental Problems (“LESP”). I might also periodically send out additional materials by e-mail and Canvas – more on that in a moment. The LESP document contains some problems from the casebook's fifth edition that your editors dropped (one of which they actually put back into the seventh edition, so I guess I was not the only person who liked it), along with problems from the sixth edition that stem from the old Chapter 1 that are not available in the seventh edition.

You can get by in this course without a full copy of the Federal Rules of Evidence (“FRE”) because the book provides the text of the relevant rules when discussing them. It is certainly helpful to have a full set of the FRE all in one place, but it is not so helpful that I am going to make you buy another book to get them. There are commercial versions of the FRE that include commentary such as the Advisory Committee Notes, and if money is no object, it is not a terrible idea to pick up such a volume, though the commentary is substantially less helpful than one might think, so I do *not* elevate these sources even to the level of “recommended.” On the cheap side: I make no guarantees about this, but companies trying to sell you everything from bar preparation courses to WESTLAW sometimes hand out free pocket copies of the FRE. Take them if offered. If you use the sixth edition: There have been a number of amendments to the FRE since 2016, but all of the amendments of any consequence are in the LESN document (and none of them will change your life). If you use either edition: There are a few new amendments from the past few years that post-date the seventh edition as well, but the ones that matter are also in the LESN document. There is one likely forthcoming amendment that is of some consequence, but we will get to that in due time.

One should note that the FRE, as with the other federal rules, were “restyled” in 2011 to make them more (pick one depending on whether you think the changes are a good idea or a bad idea) accessible/chatty. Some on-line versions of the FRE include both the current restyled FRE and the old, pre-2011 version. Although we will concentrate in this course on the current version, the older version is actually still of great importance – *arguably more important than the current version* – not just because all federal cases prior to 2011 use the old version but because states with their own evidence codes based on the federal rules have not flocked to the restyling enterprise. Since the overwhelming majority of real-world evidence problems arise at the state level rather than the federal level, something like the pre-2011 version of the FRE is going to continue to govern many evidence issues that actually arise for quite some time, so having both versions handy is useful. But nothing of the sort is required for the course.

The textbook, at least in most parts, is structured largely around “problems.” The textbook's strategy is to present material in essentially hornbook fashion and then use the problems – many of which are distillations of real cases -- to illustrate, clarify, and extend the basic material. I learned the hard way that this strategy, of which I was initially skeptical, is generally sound. Accordingly, you should take the problems quite seriously as an integral part of the material. *Only a fraction of the problems provided in the book are assigned.* Check the parenthetical information that accompanies each assignment on the syllabus for the specific problems that you need to read. For example, in Part IV-B of the syllabus, on pages 167-68 of the sixth edition of the book you *only* need to look at problems 3.6 and 3.9, and for the seventh edition

you read only 3.6 in the LESP and 3.9 in the book. If I assign reading and make no reference to any of the problems contained in that reading, you can safely skip *all* the problems therein. For example, in Part II-F, you should skip all the problems associated with the reading. As a consequence, some of the reading assignments are actually significantly shorter than they look because they include pages that are wholly or mostly problems that you will be skipping. I will not necessarily go over in class every single problem assigned, and it is likely that I will address a few problems that are not assigned, including some that are not in the book that I will base on recent real-world cases.

Some of the problems that are assigned on the syllabus are not in your edition of the textbook – *regardless of which edition of the textbook you use*. The editors took out some of my favorite problems from earlier editions when they issued the sixth edition, and then made it worse in the seventh edition, so I am restoring those problems in the “Lawson Evidence Supplementary Problems” (“LESP”) file on Canvas. Mostly, they took out problems that they considered too easy. Those are often the best ones for teaching, I think – and many of them are more complicated than the editors realize.

I will distribute and post on Canvas written answers to the problems a day or so after covering them in class. The only reason I do not hand out the answers beforehand is that I change the answers a bit each year after going through the material as I discover or emphasize different things about the problems. Once posted, the answers are considered *required reading*, as they sometimes contain important elements of doctrine.

It is *possible* that I will assign my FAQs (explained below in “Other Resources”) as required reading, but that won’t happen until near the end of the semester if it happens at all.

Because the readings for Parts I-II of the course are relatively brief and the readings for Part III are not brief, you might want to read Part III *while* you are doing the other readings during the first week or two so it does not hit you all at once with 100 pages for one class. Just a thought.

There are certain topics in the course that are worth covering in the abstract but are *not* necessarily worth covering given our limited class time. The opportunity cost of covering them, in other words, is potentially high. I have moved some of those topics to the very end of the course, where they will surely get dropped as we run out of time at the end of the semester. There are a few other topics or cases in the middle of the course that have me on the fence about whether I want to cover them. My mature, professional-school solution to this quandary is as follows: During the class when that material comes up, I am going to roll a D20 (a twenty-sided die) to see whether I am going to spend any class time on those subjects. I have assigned each of those topics or cases a DC (difficulty class¹) on the syllabus; if the roll of the D20 equals or exceeds the DC, we will cover the material. (For D & D fans: There are no modifiers; it is a straight D20 roll.) That means that the reading is assigned without you (or me) knowing whether it will actually be covered in class. That is the compromise that I am at right now. If the roll fails to cover the DC and I pass over the subject in class, that material will categorically be *excluded* from coverage on the exam, though there will still be pedagogical value in your having read it. Frankly, I will probably exclude all those topics from the exam even if I cover them, but I will let you know that well before the exam comes up.

For those who are reading these remarks during the drop-add period, you need to know that the first sets of readings – and the conduct of the first few classes -- *are not* typical of what you should expect

¹ The “difficulty class” *does not* measure the difficulty of the topics. It just determines how likely I am to get a dice roll which results in coverage of the topics. A higher DC means that I am less likely to roll a high enough number to lead to class coverage.

in this course. For reasons that I will explain on the first day of class, I have front-loaded most of the theoretical materials in the course into the first few weeks. The vast bulk of the class will be technical doctrine and will proceed at a *much slower pace* and at a *much less abstract level* than you will see in the first few weeks. In other words, you won't really know what this course is like until it is too late – so I am trying to tell you now.

COURSE EXPECTATIONS AND GRADING EVALUATION:

There will be a four-hour, in-class, open-book exam at the end of the semester. That is the sole grading criterion. For those who like formative assessments, the book contains some of those at the end of each chapter. More generally, the course is oriented around problems, so by reading and thinking through the problems, you will be able to see as you go whether you are falling too far behind (and therefore should be talking to me about it).

There is no class participation component because I do not cold-call students. In the tradition of such luminaries as Oliver Wendell Holmes, Richard Feynman, and Twilight Sparkle, I *lecture* (emphasis in Pony-riginal). As I will explain on day one, questions and comments are always welcome at any time during my perorations, but if you rely on the terror of cold-calling to stay attentive – well, may I suggest strong tea or coffee as a next best alternative?

Given that choice to base everything on one event, I will disclose in advance as much as I possibly can about my exam and grading philosophy. I will make numerous past exams, and my analysis of and answers to those past exams, available on Canvas. I am starting with the past five exams that I have given in this course. I am willing in principle to make available *all* my past exams, going back fifteen years, but looking at more than a few past exams is simply not a productive use of your time, so I will initially put up five and hope that everyone has the good sense to stop there (or sooner). Indeed, once you see one or two, you will get the idea. I repeat: Five is already way more than anyone should reasonably think it helpful to look over.

OTHER RESOURCES

In addition to the textbook supplements, the answers to problems, and the ridiculous volume of old exams and exam answers that you will find on Canvas, I will also post my class powerpoint slides on Canvas, though sometimes that will happen just minutes before class if I make last-second revisions (which I often do). You *are not* required to read those slides; they are simply there for your convenience, edification, and amusement.

I will also put on Canvas a document that I call “FAQs,” which consists of some questions and answers that have arisen over past classes. I am toying with the idea of requiring you to read it late in the year. I have never done that before, and I probably won't do it this time either, but it is a pretty good study aid that contains a lot of valuable stuff. At a minimum, this document is strongly recommended. If you tend to panic without a commercial study aid in your hands, there are lots of good ones out there, but none really tracks the material that I cover, so I don't have any strong recommendations. If you are absolutely committed to getting a study aid that goes beyond the FAQs and the written answers to problems that you are going to get throughout the semester, the most intellectually satisfying, in my humble opinion, is CHRISTOPHER B. MUELLER, LAIRD C. KIRKPATRICK & LISA RICHTER, *EVIDENCE* (6th ed., 2018). PAUL GIANELLI, *UNDERSTANDING EVIDENCE* (4th ed., 2013), is also very solid, much shorter, a lot cheaper, and therefore probably better suited for use as a study aid.

I honestly doubt whether a commercial study aid will be all that helpful in this course, so I am *not* recommending that you get one, but that is naturally your call. In my humble opinion, class attendance, careful reading, class notes, and my FAQs and problem answers are going to be *much* more useful in this course than any commercial study aid. Which leads to . . .

CLASS ATTENDANCE AND MAKEUP POLICY:

Class attendance is required by both the ABA and the Law School. As a result of that requirement, students are allowed two absences during the course of the semester, absent special circumstances. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. For this course, that amounts to about eight hours per week, corresponding to the slightly less than four hours per week of class time. My sense is that the volume of reading in this course is relatively modest. But much of the reading is pretty dense, so if you are doing it as I will suggest you do it on the first day of class (which will involve integrating the reading with class notes – and trust me that class notes will be crucial in this course), we will all easily meet and beat this requirement, even if you are all fast readers.

TECHNOLOGY:

I do not limit the use of technology during class. If you are playing video games and it is distracting other students, I might well ask you to stop (yes, even if you are winning), but I have no *general* antipathy to computers in the classroom. Once the exam comes along, it will be open-book, including open-computer, *except* that you will not be allowed access to the internet or any AI technology. You *will* be able to use your computers as data storage tools, so you will just need to make sure that any materials, including materials from the Canvas site that you wish to have available, are downloaded onto your computer before the exam. Will it help you to download tons of material onto your computer for the exam? I honestly cannot imagine how that will be helpful, but if it makes you feel better to do it, by all means go ahead.

I am requesting that all the classes be videotaped. Thus, if you are going to miss a class for some (exceptionally good) reason, you do not need to ask me to tape the class, because that will happen automatically. The videos usually show up on Canvas pretty quickly, but I have no control over that process.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

The topic listing that follows is offered merely as a guide – though a detailed one -- to the direction and pacing of the course. Actual coverage and pacing depend on a variety of things, including your reactions and my sense at any given moment of which topics are most salient. I believe that I am required by state

law to estimate the week-by-week coverage, so I have made my best estimate, but it is only an estimate. Do not hold me to it.

[WEEK ONE]

I. THEORIES AND FRAMEWORKS

A. *What Lurks Beneath*

John Leubsdorf, *Presuppositions of Evidence Law*, 91 IOWA L. REV. 1209, 1210-12 (2006) (LESN 1)²

5 U.S.C. § 556(d) (2018) (LESN 1)

B. *The Theoretical Structure of Legal Proof*

GARY LAWSON, EVIDENCE OF THE LAW: PROVING LEGAL CLAIMS 20-27 (2017) (LESN 1-3)

C. *The Operational Structure of Legal Proof*

Ronald J. Allen, *The Nature of Juridical Proof*, 13 CARDOZO L. REV. 373, 383 (1991) (LESN 3)

Ronald J. Allen, *A Reconceptualization of Civil Trials*, 66 B.U.L. REV. 401, 405-07, 426-27 (1986) (LESN 3-5)

D. *The Cognitive Structure of Legal Proof*

Dan Simon, *A Third View of the Black Box: Cognitive Coherence in Legal Decision Making*, 71 U. CHI. L. REV. 511, 511 (2004) (LESN 5)

Reid Hastie, *What's the Story? Explanations and Narratives in Civil Jury Decisions*, in CIVIL JURIES AND CIVIL JUSTICE: PSYCHOLOGICAL AND LEGAL PERSPECTIVES 23, 23 (Brian H. Bornstein et al, eds., 2008) (LESN 5)

Kevin M. Clermont, *Standards of Proof Revisited*, 33 VERMONT L. REV. 469, 477 (2009) (LESN 5)

E. *Fact versus Law*

Ronald J. Allen & Michael S. Pardo, *The Myth of the Law-Fact Distinction*, 97 NW. U.L. REV. 1769, 1769-70 (2003) (LESN 6)

F. *Fact versus Fact*

Advisory Committee Notes to the Federal Rules of Evidence, Rule 201 (LESN 6-8)

G. *Huh? Wha?*

² What the heck does “LESN” mean? Read the second paragraph of the “Required Reading Materials” part of the syllabus.

Key Points Thus Far (LESN 9-10)

[WEEK TWO]

II. WINNING WITHOUT EVIDENCE

A. *Substantive Law Definition*

B. *Standards of Proof and Burdens of Proof*

SIXTH EDITION USERS: Old Allen 804-13, 835-39

SEVENTH EDITION USERS: New Allen 738-47, 769-73

C. *Crossroads*

SIXTH EDITION USERS: Old Allen 839-51

SEVENTH EDITION USERS: New Allen 774-90

NOTE: It is a good idea to read this material, but do not agonize over it – the cases are incoherent, and you *will not* be tested on them under any circumstances. Indeed, DC=15 for whether I cover this material at all in class – and that coverage will be very thin even if it happens.

D. *Judicial Comment*

SIXTH EDITION USERS: Old Allen 817-21, 856-57

SEVENTH EDITION USERS: New Allen 751-54, 790-92

NOTE: Judicial comment on the evidence is not allowed in Florida.

E. *Jury Instructions*

Leprino Foods Co. v. Factory Mutual Insurance Co., 653 F.3d 1121 (10th Cir. 2011) (LESC 1-2)

F. *Judicial Notice – and, Much More Importantly, Jury Notice*

SIXTH EDITION USERS: Old Allen 865-82

SEVENTH EDITION USERS: New Allen 801-17

NOTE: As with “Crossroads,” it is a good idea to read this material, but do not agonize over it. Analysis in class will focus almost entirely on Old Allen 876-77/New Allen 812. Yep, just a few sentences. The rest of the reading can be quickly skimmed, and I have debated whether even to assign it.

G. *Presumptions*

H. *Stipulations/Admissions*

I. *Bias/Prejudice*

“Just one look, that’s all it took,
“Yeah, just one look.”
Doris Troy, Just One Look (Atlantic 1963)

J. *Alternative Dispute Resolution, Plea Bargains, Settlement, and Agency Adjudication*

[WEEK THREE]

III. WELCOME TO THE JUNGLE

A. *People v. Johnson*

SIXTH EDITION USERS: Old Allen 1-84
SEVENTH EDITION USERS: Old Allen 1-84 (these pages are available on Canvas as “Allen 6-Chapter 1”)

Lawson’s Handy-Dandy Notes on People v. Johnson (LESN 11-15)

B. *Trial Basics*

SIXTH EDITION USERS: Old Allen 87-101
SEVENTH EDITION USERS: New Allen 21-32

NOTE: This material is valuable but *not required*. It is optional reading for those who want an introductory or refresher course in trial practice.

C. *Trial Management and Trial Records*

SIXTH EDITION USERS: Old Allen 101-22
SEVENTH EDITION USERS: New Allen 33-53

NOTE: This material *is required*, but do not agonize over it. It is mostly just useful background.

D. *Ruminations from the Editors*

SIXTH EDITION USERS: Old Allen 123-32
SEVENTH EDITION USERS: New Allen 53-63

NOTE: This is strictly *optional* reading, but it is interesting if you have the time and energy.

IV. RELEVANCE AND ITS LIMITS

A. *Relevance*

“All in all it’s just another brick in the wall.”

Pink Floyd, Another Brick in the Wall, Part II, **The Wall** (Harvest Records, 1979)

SIXTH EDITION USERS: Old Allen 133-45 (Problems 3.1-3.3 in Old Allen 148-50)

SEVENTH EDITION USERS: New Allen 65-77 (Sixth Edition Problem 3.1 in LESP 1, Problems 3.2-3.3 in New Allen 81-82)

Relevance Chains from Sixth Edition Problem 3.1 (LESN 16-19)

[WEEK FOUR]

B. *Its Limits*

“No one needs to know right now.”

Shania Twain, No One Needs to Know, **The Woman in Me** (Polygram/Mercury 1995)

SIXTH EDITION USERS: Old Allen 151-81 (Problems 3.6, 3.9)

SEVENTH EDITION USERS: New Allen 83-113 (Sixth Edition Problem 3.6 in LESP 1, Problem 3.9)

V. FOUNDATIONS

A. *Preconditions for Admissibility*

“Is this the real life? Is this just fantasy?”

Queen, Bohemian Rhapsody, **Night at the Opera** (EMI 1975)

1. *Witnesses*

SIXTH EDITION USERS: Old Allen 189-95 (Problem 4.2)

SEVENTH EDITION USERS: New Allen 123-29 (Sixth Edition Problem 4.2 in LESP 1)

2. *Exhibits and Other Evidence*

SIXTH EDITION USERS: Old Allen 196-226 (Problems 4.6, 4.7, Fifth Edition Problem 4.11 in LESP 2)

SEVENTH EDITION USERS: New Allen 130-61 (Problems 4.8, 4.10, Fifth Edition Problem 4.11 in LESP 2)

State v. Scarlett, 395 A.2d 1244 (N.H. 1978) (LESC 3-6)

Rodriguez v. State, 273 P.3d 845 (Nev. 2012) (LESC 7)

Selected Federal Rules of Civil Procedure (LESN 20-25)

[NOTE: No, you are not responsible in this class for knowing the details of these FRCP texts in LESN 20-25, but in the real world you should be aware that they exist.]

FRE 107 (LESN 39)

[WEEK FIVE]

B. “Best Evidence” (or “Original Documents”) Rules

“Fakers gonna fake, fake, fake, fake, fake.”

Taylor Swift, Shake It Off, 1989 (Big Machine Records 2014)

“Ain’t nothing like the real thing baby.”

Marvin Gaye & Tammi Terrell, Ain’t Nothing Like the Real Thing (Tamia 1968)

SIXTH EDITION USERS: Old Allen 241-57 (Fifth Edition Problem 4.19 at LESP 2, Problems 4.17, 4.19)

SEVENTH EDITION USERS: New Allen 177-93 (Fifth Edition Problem 4,19 at LESP 2, Problems 4.24, 4.26)

C. Preliminary Facts and the “Conditional Relevance” Quagmire

“And we rely on each other (ahh-ahh).”

Kenny Rogers (with Dolly Parton), Islands in the Stream, **Eyes that See in the Dark** (RCA 1983)

SIXTH EDITION USERS: Old Allen 226-41 (Problems 4.12, 4.13)

SEVENTH EDITION USERS: New Allen 162-76 (Problems 4.16, 4.17)

Answers to Conditional Relevance Problems (LESN 26-29)

Conditional Relevance FAQs (LESN 30-34)

D. Bring It on Home

Trial Judge Cheat Sheet (LESN 35-38)

[WEEK SIX]

VI. PROPENSITY

A. *What You Can’t Get In: Character to Prove Conduct or Conduct to Prove Character*

“Who are you when I’m not looking?”

Blake Shelton, Who Are You When I’m Not Looking, **All About Tonight** (Reprise Nashville 2010)

SIXTH EDITION USERS: Old Allen 261-70 (Problems 5.1, 5.4)
SEVENTH EDITION USERS: New Allen 197-206 (Problems 5.1, 5.4)

B. *What You Can Get In*

1. *Conduct Other than to Prove Character*

“It’s not in the way you look or the things that you say that you do.”
Toto, Hold the Line, **Toto** (Columbia 1978)

SIXTH EDITION USERS: Old Allen 270-93 (Problems 5.6, 5.12-5.14)
SEVENTH EDITION USERS: New Allen 206-228 (Problems 5.6, 5.12-5.14)

United States v. Burwell, 642 F.3d 1062 (D.C. Cir. 2011) (LESC 8-12)

2. *Habit*

“It’s the same old story, same old song and dance.”
Aerosmith, Same Old Song and Dance, **Get Your Wings** (Columbia 1974)

SIXTH EDITION USERS: Old Allen 293-307 (Problem 5.19)
SEVENTH EDITION USERS: New Allen 228-43 (Problem 5.20)

3. *Character (Sometimes)*

“If I could read your mind, love, what a tale your thoughts could tell.”
Gordon Lightfoot, If You Could Read My Mind, **If You Could Read My Mind** (Reprise 1970)

SIXTH EDITION USERS: Old Allen 309-29 (Problem 5.33)
SEVENTH EDITION USERS: New Allen 245-61 (Problem 5.34)

[WEEK SEVEN]

VII. RELEVANCE FOR IMPEACHMENT

A. *Truthfulness*

“You lie like the man with the slicked-back hair who sold me that Ford.
“You lie like a pine tree in the back yard after last month’s storm.
“You lie like a penny in the parking lot at the grocery store.”
The Band Perry, You Lie, **The Band Perry** (Republic Nashville 2010)

SIXTH EDITION USERS: Old Allen 385-415 (Problems 7.2-7.3, 7.6-7.7)
SEVENTH EDITION USERS: New Allen 319-46 (Problems 7.2-7.3, 7.7-7.8)

B. *Accuracy, Inconsistency, and Contradiction*

“You’re hot then you’re cold.
“You’re yes then you’re no.
“You’re in then you’re out.
“You’re up then you’re down.”

Katy Perry, Hot n Cold, **One of the Boys** (Capitol 2008)

SIXTH EDITION USERS: Old Allen 415-22, 425-38 (Assessment A-7.4)

SEVENTH EDITION USERS: New Allen 348-54, 357-71 (Assessment A-7.4)

FRE 613 (LESN 39)

[WEEK EIGHT]

VIII. HEARSAY

A. *The Basic Definition*

1. *Hearsay and Hearsay Uses*

“Heard it from a friend who heard it from a friend who
“Heard it from another you’ve been messin’ around.”

REO Speedwagon, Take It on the Run, **High Infidelity** (Epic 1980)

SIXTH EDITION USERS: Old Allen 441-62 (Problems 8.1-8.2, 8.5, 8.9-8.10, 8.13)

SEVENTH EDITION USERS: New Allen 373-94 (Problems 8.1-8.2, 8.7, 8.11-8.12, 8.15)

Points to Ponder about Hearsay (LESN 40-41)

2. *Assertive Conduct*

“You say it best when you say nothing at all.”

Alison Krauss and Union Station, When You Say Nothing At All, **Live** (Rounder 2003)

[Note to country music fans: Yes, I *know* it is really a Keith Whitley song. I grew up watching “Hee Haw,” and my father was an animal feed salesman, so don’t try to out-country me. But this is a better version. Sorry, it just is.]

SIXTH EDITION USERS: Old Allen 462-71 (Problems 8.17-8.19, 8.23, 8.25)

SEVENTH EDITION USERS: New Allen 394-404 (Problems 8.19-8.21, 8.25, 8.27)

[WEEK NINE]

3. *Unstated Beliefs*

“You are only coming through in waves.
“Your lips move, but I can’t hear what you’re saying.”
Pink Floyd, Comfortably Numb, **The Wall** (Harvest/EMI 1979)

SIXTH EDITION USERS: Old Allen 471-83 (Problems 8.27, 8.30)
SEVENTH EDITION USERS: New Allen 404-14 (Problems 8.29, 8.32)

B. *The Basic Exemptions*

1. *Prior Statements*

“Don’t you forget about me.”
Simple Minds, Don’t You (Forget about Me) (A & M 1985)

SIXTH EDITION USERS: Old Allen 483-501 (Problem 8.32)
SEVENTH EDITION USERS: New Allen 416-35 (Problem 8.35)

Proposed amendment to FRE 801(d)(1) (LESN 42)

2. *Statements of Party Opponents*

“All that you do,
“All that you say,
“All that you eat,
“Everyone you meet.”
Pink Floyd, Eclipse, **Dark Side of the Moon** (Harvest 1973)

SIXTH EDITION USERS: Old Allen 502-15 (Problem 8.37 on Old Allen. 521)
SEVENTH EDITION USERS: New Allen 436-48 (Problem 8.40 on New Allen 454)

Mahlandt v. Wild Canid Survival & Research Center, Inc., 588 F.2d 626 (8th Cir. 1978)
(LESC 13-18)

FRE 801(d)(2) (LESN 42)

[WEEKS TEN and ELEVEN]

C. *Availability Exceptions*

“Spent my days with a woman unkind,
“Smoked my stuff and drank all my wine.
“Made up my mind to make a new start –
“Going to California with an aching in my heart.”
Led Zeppelin, Going to California, **Untitled (“Led Zeppelin IV”)** (Atlantic 1971)

SIXTH EDITION USERS: Old Allen 525-89 (Problems 8.46, 8.49, Fifth Edition Problem 8.52 in LESP 3, Fifth Edition Problem 8.57 in LESP 3, 8.54, 8.57, 8.60-8.61 8.65)

SEVENTH EDITION USERS: New Allen 459-525 (Problems 8.54, 8.58, Fifth Edition Problem 8.52 in LESP 3, Fifth Edition Problem 8.57 in LESP 3, 8.65, 8.69, 8.73-8.74, 8.79)

Banks v. State, 608 A.2d 1249 (Md. Ct. App. 1992) (LESC 19-27)

Jordan v. Binns, 712 F.3d 1123 (7th Cir. 2013) (LESC 28-43)

NOTE: The *Jordan v. Binns* case is an excellent study aid for understanding FRE 803(8), so you should definitely take the time to read it. But it takes a lot of class time to work through, so DC=12 for whether I cover it in class.

[WEEK TWELVE]

D. *Unavailability Exceptions*

“How long gone are you gonna be?”

Brooks & Dunn, How Long Gone, If You See Her (Arista Nashville 1998)

SIXTH EDITION USERS: Old Allen 589-607, 621-29 (Problem 8.67 (pg. 593), 8.67 (pg. 602))

[NOTE: The editors misnumbered one of the problems – the book contains two problems numbered “8.67.”]

SEVENTH EDITION USERS: New Allen 525-42, 557-64 (Problems 8.82, 8.84)

FRE 804(b)(3)(B) (LESN 42)

E. *Hearsay and the Constitution*

“Can I get a witness?”

Grand Funk Railroad, Some Kind of Wonderful, All the Girls in the World Beware!!! (Capitol Records 1974)

SIXTH EDITION USERS: Old Allen 630-69, 673-82

SEVENTH EDITION USERS: New Allen 565-604, 609-18

Gary Lawson, *Confronting Crawford: Justice Scalia, the Judicial Method, and the Adjudicative Limits of Originalism*, 84 U. CHI. L. REV. 2265, 2274-76 (2017) (LESN 43-44)

[WEEK THIRTEEN]

IX. OPINIONS AND EXPERTS

A. *Fundamentals*

1. *Lay Opinions*

“Tell it like it is.”

Heart, Tell It Like It Is (Epic 1980)

SIXTH EDITION USERS: Old Allen 699-707 (Fifth Edition Problem 9.1 in LESP 4, Fifth Edition Problem 9.5 in LESP 4)

SEVENTH EDITION USERS: New Allen 633-41 (Problem 9.1, Fifth Edition Problem 9.5 in LESP 4)

2. *Experts*

“She blinded me with science.”

Thomas Dolby, She Blinded Me with Science (Capitol 1982)

SIXTH EDITION USERS: Old Allen 708-36

SEVENTH EDITION USERS: New Allen 642-68

FRE 702 (LESN 45)

B. *Mechanics*

SIXTH EDITION USERS: Old Allen 738-62 (Problem 9.8)

SEVENTH EDITION USERS: New Allen 670-94 (Problem 9.10)

C. *The Constitution Redux*

Smith v Arizona, 602 U.S. – (2024) (no reading, but wait for the explanation in class)

[ALMOST SURELY NEVER GETTING THIS FAR, SO NEVER MIND]

X. PRIVILEGES

“Listen (ooh, ahh ooh), do you want to know a secret (ooh, ahh, ooh), do you promise not to tell?”
The Beatles, Do You Want to Know a Secret, **Please Please Me** (Parlophone 1963)

A. *Attorney-Client*

SIXTH EDITION USERS: Old Allen 887-938

SEVENTH EDITION USERS: New Allen 823-73

B. *Marital and Medical*

SIXTH EDITION USERS: Old Allen 956-90

SEVENTH EDITION USERS: New Allen 893-929

C. *“And the Rest”*

SIXTH EDITION USERS: Old Allen 991-1018
SEVENTH EDITION USERS: New Allen 930-57

XI. POLICY-BASED EXCLUSIONS

SIXTH EDITION USERS: Old Allen 357-81 (Problems 6.1, 6.4, 6.6, 6.9)
SEVENTH EDITION USERS: New Allen 292-314 (Problems 6.1, 6.5, 6.6, 6.9)

XII. POLICY-BASED INCLUSIONS: X-OFFENDER

“We are who we are.”
Kesha, We R Who We R, **Cannibal** (RCA 2010)

SIXTH EDITION USERS: Old Allen 330-36, 341-48
SEVENTH EDITION USERS: New Allen 263-69, 274-81

NOTE: Even if we reach this far on the syllabus, which is never going to happen, you are not officially responsible for any of this material, though it is good stuff about which to know. DC=15 for whether I cover it at all in class if we get this far.