MASSACHUSETTS SCHOOL OF LAW

MASSACHUSETTS EVIDENCE AND STATE CONSTITUTIONAL LAW

Fall/Winter 2022

Judge Peter Agnes

Scope: This course will cover the major differences between Massachusetts evidence law and the Federal Rules of Evidence of which there are many as Massachusetts remains the only jurisdiction in the United States to rely primarily on the common law of evidence. The course also will address the ramifications of the new conservative majority on the Supreme Court primarily through the lens of the decisions during the 2021 Term ending in June, 2022.

Organization: Reading material will be assigned for each class and discussed in class. No text book is required. There will be a midterm and a final exam. Class participation is essential.

**SYLLABUS**

Class 1

Introduction. Distribution of materials, organization of the class. Discussion of class participation expectations and factors that will make up the grade.

Sources of authority. Basis of Massachusetts evidence law: common law, statutes, rules and federal and state constitutions. Introduction to the Massachusetts Guide to Evidence (2021) [free download from Mass.gov and ebook version also available for free] and SJC Advisory Committee on the Law of Evidence. Status of the Guide as preferred secondary authority.

Mass. law versus Federal law. The relationship between Massachusetts Evidence law and the Federal Rules of Evidence and the Uniform Rules of Evidence. Discussion of the relationship between Massachusetts common law and statutory law (principally G.L. c. 233). See Commonwealth v. Steeves, \_\_ Mass. \_\_ (July 18, 2022).

Federalism. Part One: Introduction to the concept of dual sovereignty and judicial federalism. Brief history of the adoption of the Massachusetts state Constitution in 1780.

 READING CLASS 2. The Upton Trilogy of cases: Commonwealth v. Upton, 390 Mass. 562 (1983); Massachusetts v. Upton, \_\_ U.S. \_\_, 104 S. Ct. 2085 (1984); Commonwealth v. Upton, 390 Mass. 562 (1983); and State v. Brown, 14 Conn. App. 605 (1988). Also read the Introduction to Article V of the Mass. Guide to Evidence (2022) which is available at no charge on Mass.gov

Class 2

DISCUSSION: Federalism Part Two: Adequate and Independent State Law grounds.

Confidentiality and Privileges under Massachusetts law. Mass. G. Evid. Article V, Introduction. Judge Agnes will address aspects of sections 504, 511, and 529 of the Mass. G. Evidence.

READING FOR CLASS THREE. Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977); Kafker, State Constitutional Law Declares its Independence, 49 Hastings Const. L. Q. No. 2 (2022); Commonwealth v. Brennan, 386 Mass. 772 (1982) and Commonwealth v. Gonsalves, 429 Mass. 658 (1999).

BACKGROUND: Robert F. Williams, The State of State Constitutional Law, The New Judicial Federalism and Beyond, 72 Rutgers Univ. L. Rev. 949 (2020).

Also read Mass. G. Evid. sections 601-606 and Commonwealth v. Vigiani, 488 Mass. 34 (2021).

Class 3

DISCUSSION: Federalism Part Three: The New Judicial Federalism.

Competency of witnesses, jurors and judges and juror questions, . Mass. G. Evid. Article VI, sections 601-606, and 614.

READING CLASS 4. Mass. G. Evid. Article VII (lay and expert witnesses opinion evidence). Also Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); Commonwealth v. Lanigan, 419 Mass. 15 (1994); Commonwealth v. Rintala, 488 Mass. 421 (2021); Commonwealth v. Robertson, 489 Mass. 226 (2022); Commonwealth v. Shiner, 101 Mass. App. Ct. 206 (2022); Commonwealth v. Hinds, 487 Mass. 212 (2021). Brandon Garrett, Forensics, Statistics and Law: Ten Years After a Path Forward, 69 Duke Law Journal Online (September 2019)

REVIEW: The National Registry of Exonerations, see <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>

BACKGROUND MATERIAL: Annot., Post-Daubert Standards for Admissibility of Scientific and Other Expert Evidence in State Courts, 90 ALR5th 453. National Research Council, Strengthening Forensic Science in the United States, A Path Forward (2009)

Class 4

DISCUSSION: (1) Lay and Expert Witness Opinion testimony under Massachusetts Law.

 (2) The phenomenon of Wrongful Convictions

READING FOR CLASS FIVE: Mass. G. Evid. sections 401-414

Class 5

DISCUSSION: Relevancy and Its Limitations including Character Evidence, The First Complaint Doctrine, and the Rape Shield Law

READING FOR CLASS SIX: Mass. G. Evid., Article VIII, Introductory Note and sections 801, 802, 803(2).

Class 6

DISCUSSION: The Confrontation Clause and its impact on the Hearsay Rule.

READING FOR CLASS SEVEN: Dobbs v. Mississippi Dept. of Health (S. Ct. June 24, 2022); N.Y. State Rifle & Pistol Assoc. v. Bruen (S. Ct. June 23, 2022);

CLASS 7

DISCUSSION: Assessing SCOTUS overruling of Roe and Casey and the evolving meaning of the right to bear arms. What space is available to be filled by state courts and state legislatures?

READING CLASS EIGHT: SCOTUS: Kennedy v. Bremerton School District, (S. Ct. June 27, 2022); West Virginia v. EPA (S. Ct. June 30, 2022); Carson v. Makin, (S. Ct. June 21, 2022)

CLASS 8

DISCUSSION: Assessing SCOTUS interpretation of the First Amendment’s establishment and free exercise clauses. Does a separation between church and state exist? What space is available to be filled by state courts and state legislatures?

READING CLASS NINE: Vega v. Tekoh (S. Ct. 6.23.22); Commonwealth v. Gonzalez, 487 Mass. 661 (2021); Commonwealth v. Stanley S., 100 Mass. App. Ct. 298 (2021); Commonwealth v. Davis, 98 Mass. App. Ct. 604 (2020); Commonwealth v. Diaz-Arias, 98 Mass. App. Ct. 504 (2020)

CLASS 9

The Miranda doctrine and Voluntariness: substantial divergence between state and federal law.

READING: Mass. G. Evid. 1112 (Eyewitness Identification). Albright & Garrett, The Law and Science of Eyewitness Identification, 102 B.U.L.Rev. 511 (2022)

CLASS 10

DISCUSSION: The influence of science on the admissibility of eyewitness identification evidence.

READING CLASS ELEVEN: Mass. G. Evid. sections 1101, 1102, 1106, 1109.

CLASS 11

DISCUSSION: See Class 10 above.

READING CLASS TWELVE: Mass. G. Evid. sections 1104, 1105, 1107, 1110 and 1111.

CLASS 12

DISCUSSION: See Class 11 above.

READING CLASS THIRTEEN: Mass. G. Evid. sections 1114, 1115, 1116, and 1119.

CLASS 13

DISCUSSION: See Class 12 above.

CLASS 14

TO BE ANNOUNCED