

**Class Schedule - Spring 2013**

Class#	Day	Date
1	Mon	14-Jan
2	Wed	16-Jan
3	Mon	21-Jan
4	Wed	23-Jan
5	Mon	28-Jan
6	Wed	30-Jan
7	Mon	4-Feb
8	Wed	6-Feb
9	Mon	11-Feb
10	Mon	25-Feb
11	Tue	26-Feb
12	Mon	4-Mar
13	Mon	18-Mar
14	Mon	25-Mar
15	Mon	1-Apr
16	Mon	8-Apr
17	Mon	15-Apr
18	Mon	22-Apr
19	Mon	29-Apr
20	Mon	6-May

**Glossary of Abbreviations**

CACI = Judicial Council of California, Civil Jury Instructions (pronounced "Casey;" posted on Blackboard)

CALI = The Center for Computer Assisted Legal Instruction (to receive credit, **you must access these lessons only via the links on Blackboard**)

CEC = California Evidence Code (use Miller text)

FRE = Federal Rules of Evidence (use Miller text)

PF = Park and Friedman, Cases and Materials on Evidence (12th ed., 2012)

\* = Background reading – may not be discussed in class, but is subject to testing.

\*\* = Suggested reading – may be discussed in class, but not subject to testing.

Notes: Many of the "Additional" materials are posted on Blackboard.

This reading and assignment list is subject to change. Please check Blackboard before and between class sessions for updates.

Class#	Subject(s)	PF Reading	Rules	Additional
1	RELEVANCE -- CORE PRINCIPLES			
1	Making the Record (background reading*)	* 1-77	FRE 103; CEC 353, 354	Hiser v. Bell Helicopter Textron, 111 Cal.App.4th 640, 643-647, 656-657 (2003)
1	Introduction to Relevance	79-88	FRE 401, 402; CEC 210, 350, 351	In-class exercises: direct and leading questions; objections; motions to strike non-responsive testimony; offers of proof
1	Interactive Lecture -- the role of the pleadings and substantive law, and the phases of trial, as a framework for applying the rules of evidence		CEC 776; *CEC 760-767, 772-775	CACI Nos. 106 & 112
1-2	Discretion to exclude ["logical" versus "legal" relevance] / probative value versus danger of undue prejudice, confusion, or inefficiency	88-97; Hypos on 100-101; *101-106 [Holmes v. So. Carolina]	FRE 403; CEC 352	
2-3	Limited admissibility / limiting instructions		FRE 105; CEC 355	CACI Nos. 206, 207; Hiser v. Bell Helicopter Textron, supra, 111 Cal.App.4th at 656-58; People v. Ricarrdi, 54 Cal.4th 758 at 824-25 (2012)
3	Interactive Lecture -- Harmless or invited error [CA miscarriage of justice standard]; waiver of objections / "opening the door"	106-108 (Fighting Fire with Fire; Note; Clark v. State); 851-852	FRE 103; CEC 353, 354, 356	Hiser v. Bell Helicopter Textron, supra, 111 Cal.App.4th at 643-647, 656-58; CACI No. 106 [on Blackboard]

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3	Interactive Lecture -- burdens of proof and production / circumstantial evidence / inferences / presumptions	745-751 [thru Smith v. Rapid Transit, 765-728-769 [Degnan]; **728-731 (In re Nicholas H), **773-781 (Virginia v. Black); *937-983 (DNA & Other Exonerations)	FRE 301-302; CEC 500-502, 520-522, 550, 600-607; **CEC 620-647,660-670	CACI No. 202; Hiser v. Bell Helicopter, supra; Dimond v. Caterpillar Tractor Co., 65 Cal.App.3d 173 (1976); De Vera v. Long Beach Pub. Trans. Co., 180 Cal.App.3d 782 (1986) [excerpts on Blackboard]
3	RELEVANCE -- PUBLIC POLICY CONSTRAINTS			
3-4	Character Evidence: character in issue / character as circumstantial evidence	108-135; Hypos & Questions on 111, 131-132, 154	FRE 404, 405; CEC 1100-1104	CALI Lesson: "Character Evidence Under Federal Rules" [due by Class #3]; *People v. Felix, 70 Cal.App.4th 426 (1999)
4	Character continued; habit versus character	136-160; Hypos on 160-162	FRE 406; CEC 1105	CA Const. Art. 1 § 28 [Proposition 8]
4-5	Prior sexual conduct	162-176	CEC 1103, 1106; *CEC 1108; * FRE 412, 413, 414, 415	
4-5	*Prior domestic violence		*CEC 1109	
4-5	Interactive Lecture -- "MIMIC" exceptions re: character evidence - motive / identity [modus operandi] / mistake/ intent / common plan or scheme [pattern] - consent	176-178	FRE 404(b); CEC 1101(b)	*People v. Thornton, 11 Cal. 3d 738, 745-760 (1974) [*see important notes and excerpted version on Blackboard]
5	Practice Exam available for writing; bring answers for review at Class #6			Practice Exam on Blackboard

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5-6	Similar happenings; other incidents; absence of other incidents	179-182; Hypo on 182		Excerpted versions of the following cases on Blackboard: Laird v. TW Mather Inc.; Elsworth v. Beech Aircraft Corp.; Benson v. Honda; ** Witkin Circumstantial Evidence §§ 102, 103 [on Blackboard]
5-6	Subsequent precautions	182-192; Hypos on 192	FRE 407; CEC 1151	Ault v. International Harvester Co., 13 Cal. 3d 113, 116-122 (1974) [excerpts on Blackboard]; ** Witkin Circumstantial Evidence § 105 [on Blackboard]
5-6	Offers to compromise / apologies and compassionate gestures	192-195; Hypos on 195	FRE 408, 409, 410; CEC 1152, 1153, 1154, 1160	
6	Liability insurance		FRE 411; CEC 1155	CACI No. 105
6	Collateral source rule			Helfend v. Southern Cal. Rapid Transit Dist., 2 Cal.3d 1 (1970) [on Blackboard]; CACI No. 105 [on Blackboard]
6	Practice Exam Review			<b>TURN-IN</b> printed/written answer to Practice Exam # 1 at Class #6
7	IMPEACHMENT AND REHABILITATION	485-494	FRE 607; CEC 780, 785, 786, 787	
7	Impeachment - attacking and supporting credibility / direct versus collateral	494-501 [incl. Questions on 496-497	FRE 607, 608; CEC 780	CALI Lesson: "Impeachment and Rehabilitation of Witnesses" [due by Class #7]
7	Prior bad acts / prior convictions	501-535 [incl. Hypos & Questions on 510- 511, 530-531	FRE 608, 609; CEC 787, 788, 790	CACI No. 211; CA Const. Art. 1 § 28(f)

Class#	Subject(s)	PF Reading	Rules	Additional
7-8	Reputation / character for veracity	534-535 [incl. Hypos & Questions on 535, 538, 542]	FRE 608; CEC 786	
7-8	Bias and prejudice	554-560; Hypos on 560-561	FRE 402 [Case Notes]; CEC 780(f)	CACI No. 113
7-8	Prior consistent and inconsistent statements (will be revisited during hearsay module)	542-553; Hypos & Questions 553-554	FRE 613; CEC 791	
8	Religious belief		FRE 610; CEC 789	
8	Interactive Lecture -- innocent failure of recollection versus willful falsity / failure to produce evidence within a party's ability / failure to explain or deny adverse evidence			CACI Nos. 203, 204, 205; De Vera v. Long Beach Pub. Trans. Co., 180 Cal.App.3d 782 (1986) [excerpts on Blackboard]
9	Catch-up and review session			
10	Mid-Term Examination			NOTE: All material assigned, or discussed in class, through Class #8 is "fair game" for testing on the mid-term exam
9, 11	WRITINGS		FRE 1001; CEC 250	
9, 11	Best Evidence Rule	669-679	FRE 1002-1008; CEC 1520, 1521, 1522, 1523, 1550-1553	CALI Lesson: "Best Evidence Rule Under the Federal Rules" [due by Class #11]

Class#	Subject(s)	PF Reading	Rules	Additional
9, 11	Authentication	679-686 [incl. Hypo on 686]	FRE 901; CEC 1400, 1401, 1410; *FRE 902; *CEC 1402, 1410.5, 1414, 1415, 1416, 1417, 1418, 1420, 1421	
11	Refreshed recollection and examining re: a writing [revisit this rule when we get to the hearsay module, and note its distinctions vis-à-vis FRE 803(5)]		* FRE 612; *CEC 771, 768	
11	Interactive Lecture -- laying a proper foundation with the right witness, RFA, stipulation, or presumption / "self-authenticating" evidence		*FRE 902; *CEC 1414	
11-12	PERSONAL KNOWLEDGE AND OPINION		FRE 602, 702-705; CEC 702, 720-723, 800-805	CALI Lesson: "Expert and Opinion Evidence" [due by Class #12]
11-12	Interactive Lecture -- Do you know what you're saying? A synopsis of the rules regarding competence, personal knowledge, and opinion			
12	Witness Competency (*Background reading)	*697-726	FRE 601; CEC 700, 701	
12	Personal Knowledge Requirements		FRE 602; CEC 702	
12	Lay opinion	783-789	FRE 701; CEC 800	CACI No. 223

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12	Expert opinion	789-820 (State v. Odem)	FRE 702, 703, 704, 705; CEC 720, 721, 722, 723, 801, 802, 803, 804, 805; *FRE 706; *CEC 730-733	CACI No. 219
12	*CEC gatekeeper and Kelly-Frye standard	Hypo on 852; 858-867(Daubert); 868-876 (Kumho Tire); 877-887(Saelee case and note)	FRE 702(d); CEC 801, 802	Sargon Enterprises v. USC, 55 Cal.4th 747 (2012); * Roberti v. Andy's Termite & Pest Control, Inc., 113 Cal. App. 4th 893 (2003); * Ragland v. Com., 191 S.W.3d 569, 569-582 (Ky. 2006)
12	Interactive Lecture -- weight versus admissibility of evidence / using hypothetical questions at trial	*833-841	CEC 312(b)	CACI Nos. 220, 221; Volk v. U.S., 57 F.Supp.2d 888, 895-896 (1999)
12	Demonstrative Evidence (*Background reading)	*962-970		
13	HEARSAY -- CORE PRINCIPLES		FRE 802; CEC 1200	
13	Interactive Lecture -- Defining hearsay / nonverbal conduct / implied assertions / using conduct to raise inferences e.g., consciousness of guilt	197-208	FRE 801; CEC 1200	CALI Lesson: "Hearsay from Square One: The Definition of Hearsay" [due by class # 13]
13	Interactive Lecture -- operative facts / independent legal significance / effect upon listener / scienter	208-209 (Vinyard); 209-210 (Johnson); 211-211 (Ries Biologicals); Hypos on 215-216; 216-221 (Zenni and note); 221-222 (Knapp); 223-232		<b>TURN IN</b> answers to questions 1-75 on pages 236-240 (P&F); De Vera v. Long Beach Pub. Transp. Co. (1986) 180 Cal.App.3d 782, 790-91, 796;

Class#	Subject(s)	PF Reading	Rules	Additional
13	*Preliminary questions of fact		*FRE 104; *CEC 310, 400, 401, 403, 405	CALI Lesson: "The Concept of Hearsay" [due by Class #14]
13-14	Relationship between hearsay rules and foundation of personal knowledge / evidence derived from machines and animals	232-234 (Brown); 234-236	FRE 801(b); CEC 135	People v. Craig, 86 Cal.App.3d 905, 905-911, 915-917 & n. 4 (1978); **State v. Streeper, 113 Idaho 662, 747 P.2d 71 (1987)
14	HEARSAY -- EXEMPTIONS AND EXCEPTIONS			CALI "The Hearsay Rule and Its Exceptions" [complete by start of class # 15];
14	6th Am. Right of Confrontation [intro to Crawford]	240-250 (Crawford v. Washington)	US Const. Amend VI	
14	Admissions by a party or agent	252-254 (Hoosier); 255-259 (Carlson); Hypos & Question on 259; 260-264 (Mahlandt); Hypos on 264; 268-270 (Sabel); 271-275 (incl. Questions); 275-280 (Bourjaily) [incl. Question on 280]	FRE 801(d)(2); CEC 1220-1224	CACI Nos. 212, 213, 214; O'Neill v. Novartis Consumer Health, Inc. (2007) 147 Cal. App. 4th 1388, 1390-1392, 1402-1406
14	Declarations against Interest	355-356; 358-363; 364-367 (Williamson); Hypos and Questions on 367-368	FRE 804(b)(3); CEC 1230	People v. Wheeler (2003) 105 Cal.App.4th 1423, 1423-1431
14	Prior inconsistent statements		FRE 801(d)(1)(A); CEC 1235	



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14	Prior consistent statements		FRE 801(d)(1)(B); CEC 1236	
14-15	Prior identification	386-391 [incl. Hypos on 387 & 391]	FRE 801(d)(1)(C); CEC 1238	
14-15	Interactive Lecture -- "unavailable" declarants		FRE 804(a); CEC 240	
14-15	Dying declarations	369-377 & Hypo on 377	FRE 804(b)(2); CEC 1242	Kincaid v. Kincaid, 197 Cal. App. 4th 75 (2011) [dying declaration & adoptive admission issues]
15	Spontaneous statements / excited utterances	281-315 [incl. Hypos on 295]	FRE 803(2); CEC 1240	
15	Present sense impression		FRE 803(1); CEC 1241	
15	State of mind / physical condition	Hypos on 320; 321-323 (Hillmon); 323-326 (Shepard); Hypos and Question on 326-327; 327-332 (Pheaster); Hypos on 332-333; & 338-339	FRE 803(3); CEC 1250-1252, 1260, 1261	People v. Riccardi, 54 Cal. 4th 758, 765-776, 810-822, 281 P.3d 1, 12-18, 42-51 (2012); US v. Houlihan, 871 F. Supp. 1495 (D. Mass. 1994); People v. Han, 78 Cal. App. 4th 797, 807 (2000)
15-16	Medical treatment	339-344	FRE 803(4); CEC 1253	
16	Business records (affirmative records; absence of entries)	405-411; 421-426; 430-435; Hypos on 461, 463-464	FRE 803(6), 803(7); CEC 1270, 1271, 1272	
16	Public records (affirmative and absence of entries); vital statistics		*FRE 803(8), 803(9), 803(10); *CEC 1280, 452.5, 1281, 1284	

Class#	Subject(s)	PF Reading	Rules	Additional
16	Prior conviction (judgment)		FRE 803(22); CEC 1300	
17	Past recollection recorded [revisit FRE 612 / CEC 771 re: refreshing memory; distinguish from 803(5) / 1237]	392-403 [incl. Note and Hypo on 403]	FRE 803(5); CEC 1237	<b>TURN-IN</b> Practice Exam #2: Bring printed/written answer to Class #17
17	Former testimony	*344-353; Hypos on 353-354	*FRE 804(b)(1); *CEC 1290-1293	
17	**Learned treatise (experts only)		**FRE 803(18); cf, **CEC 1341	
17	*Residual (catch-all) exceptions	*471-476	*FRE 807; ** CEC 1228-1231, 1360-1380	** In re Cindy L. (1997) 17 Cal.4th 15, 28
17	Multiple hearsay (hearsay within hearsay)		FRE 805; CEC 1201	<b>TURN-IN</b> written answers to questions 76-125 on pages 480-484 (P&F)
17	*Credibility of hearsay declarants		*FRE 806; CEC 1202-1203	
17	**Judicial Notice		** FRE 201; **CEC 450, 451, 452, 452.5-459	
18	CONFRONTATION CLAUSE			CALI Lesson: "An Overview of Relevance and Hearsay: A Nine Step Analytical Guide" [due by Class #18]

Class#	Subject(s)	PF Reading	Rules	Additional
18	The Confrontation Clause and its relationship to hearsay evidence / "testimonial" versus non-testimonial hearsay / unavailability and opportunity for prior cross-examination	240-250 (Crawford); 296-303 (Davis); 304-315 (Bryant); 435-439 (Friedman essay re: Melendez-Diaz and Bullcoming cases); 439-461 (Williams v. Illinois)	US Const. Amend VI	People v. D'Arcy (2010) 48 Cal. 4th 257, 265-269, 288-292 [dying declarations and the Sixth Amendment]
18	Forfeiture of objections; Giles v. California	377-386		People v. Riccardi, supra, (text corresponding to headnotes 32-35)
18-19	PRIVILEGES			
18-19	Interactive Lecture -- identifying the holder(s) of a privilege / the professional's duty to assert / waiver of, and exceptions to, privilege		CEC 953, 954, 955	CALI Lesson: "Survey of Evidence" [due by class #19]; CACI No. 215
18-19	Attorney-Client	563-590 [incl. Hypos on 588-590]	CEC 956.5-962	
18-19	Physician-Patient	590-608 [incl. Hypo]	CEC 990-1007	
18-19	* Psychotherapist-Patient		*CEC 1010-1027	
18-19	Marital privileges (communications / compelled testimony)	608-615 [incl. Hypo]	CEC 970-987	
18-19	* Clergy-Penitent	*615-620	* CEC 1030-1034	
18-19	Mediation privilege		CEC 1115-1128	
19	Catch-up and review session			
<b>20</b>	<b>FINAL EXAM</b>			