

**Class Schedule - Fall 2013**

<b>Class#</b>	<b>Day</b>	<b>Date</b>
1	Mon	26-Aug
2	Wed	28-Aug
HOLIDAY	Mon	2-Sep
3	Wed	4-Sep
4	Mon	9-Sep
5	Wed	11-Sep
6	Mon	16-Sep
7	Wed	18-Sep
8	Mon	23-Sep
9	Mon	30-Sep
10	Mon	7-Oct
11	Mon	14-Oct
12	Mon	21-Oct
13	Mon	28-Oct
14	Mon	4-Nov
15	Mon	11-Nov
16	<b>Fri</b>	<b>15-Nov</b>
17	Mon	18-Nov
18	<b>Fri</b>	<b>22-Nov</b>
19	Mon	25-Nov

**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, access these lessons only via the links on Blackboard)

CEC = California Evidence Code (use Miller text)

FRE = Federal Rules of Evidence (use Miller text)

Text = Wonsowicz, Evidence: A Context and Practice Casebook (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.

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

Class # 16 will meet on Friday November 15 from 4:00 p.m. to 7:15 p.m.

Class # 18 will meet on Friday November 22 from 4:00 p.m. to 7:15 p.m.

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

Class#	Subject(s)	Text Reading	Rules	Additional
1	RELEVANCE -- CORE PRINCIPLES			
1	Trial; Witnesses; Competency; Personal Knowledge	1-16	FRE 601, 602, 603; CEC 700, 701, 702	
1	Interactive Lecture -- Making the record (preserving objections); Harmless or invited error [CA miscarriage of justice standard]; waiver of objections / "opening the door"		FRE 103; CEC 353, 354, 356	Hiser v. Bell Helicopter Textron, 111 Cal.App.4th 640, 643-647, 656-58 (2003); CACI No. 106 [on Blackboard]; In-class exercises: direct and leading questions; objections; motions to strike non-responsive testimony; offers of proof
1	*The role of the jury (*background reading)	*16-24		
1	Shortcuts to Proof: Stipulations; *Judicial Notice	24-25; *25-28	*FRE 201; *CEC 450-453	Note: Revisit this concept when briefing Old Chief in Chapter 2 of textbook
1	*Presumptions and burdens of proof	*28-35	FRE 301-302; CEC 500-502, 520-522, 550, 600-607; **CEC 620-647,660-670	
1	Introduction to Relevance ("logical relevance")	35-56	FRE 401, 402; CEC 210, 350, 351	
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		FRE 611; CEC 776; *CEC 760-767, 772-775	CACI Nos. 106 & 112
1	*Conditional relevance; preliminary question of fact	*57-58	FRE 104(b)	Note: Revisit this rule and its distinction from FRE 104(a) when we enter the Hearsay module

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1-2	Discretion to exclude ["logical" versus "legal" relevance] / probative value versus danger of undue prejudice, confusion, or inefficiency	58-77	FRE 403; CEC 352	
2-3	Limited admissibility / limiting instructions		FRE 105; CEC 355	CACI Nos. 206, 207; <i>Hiser v. Bell Helicopter Textron</i> , supra, 111 Cal.App.4th at 656-58; <i>People v. Ricarrdi</i> , 54 Cal.4th 758 at 824-25 (2012)
3	Interactive Lecture -- circumstantial evidence / inferences versus presumptions			CACI No. 202; <i>Hiser v. Bell Helicopter</i> , supra; <i>Dimond v. Caterpillar Tractor Co.</i> , 65 Cal.App.3d 173 (1976); <i>De Vera v. Long Beach Pub. Trans. Co.</i> , 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	109-163	FRE 404, 405; CEC 1100-1104	CALI Lesson: "Character Evidence Under Federal Rules" [due by Class #3]; * <i>People v. Felix</i> , 70 Cal.App.4th 426 (1999)
3-4	Interactive Lecture -- "MIMIC" exceptions re: character evidence - motive / identity [modus operandi] / mistake/ intent / common plan or scheme [pattern] - consent		FRE 404(b); CEC 1101(b)	* <i>People v. Thornton</i> , 11 Cal. 3d 738, 745-760 (1974) [*see important notes and excerpted version on Blackboard]
4	Character continued; habit versus character	144-147	FRE 406; CEC 1105	CA Const. Art. 1 § 28 [Proposition 8]

Class#	Subject(s)	Text Reading	Rules	Additional
4-5	Prior sexual conduct	*163-175; *209-221	CEC 1103, 1106; *CEC 1108; *FRE 412, 413, 414, 415	
4-5	*Prior domestic violence		*CEC 1109	
5	Practice Exam available for writing; bring answer to Class #6			Practice Exam on Blackboard
5-6	Similar happenings; other incidents; absence of other incidents; safety history	45-51		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	79-89	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 / pleas	89-102	FRE 408, 409, 410; CEC 1152, 1153, 1154, 1160	
6	Liability insurance	102-107	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			TURN-IN printed/written answer to practice exam at Class #6
6-7	IMPEACHMENT AND REHABILITATION		FRE 607; CEC 780, 785, 786, 787; *FRE 611; *CEC 776	
6-7	Bias and prejudice	177-183	FRE 402 [Case Notes]; CEC 780(f)	CACI No. 113

Class#	Subject(s)	Text Reading	Rules	Additional
6-7	Impeachment - attacking and supporting credibility / direct versus collateral / reputation or character for veracity	183-187	FRE 607, 608; CEC 780	CALI Lesson: "Impeachment and Rehabilitation of Witnesses" [due by Class #7]
7	Prior bad acts / prior convictions	187-200	FRE 608, 609; CEC 787, 788, 790	CACI No. 211; CA Const. Art. 1 § 28(f)
7-8	Prior consistent and inconsistent statements	200-208	FRE 613; CEC 791	Note: Revisit these rules during the hearsay module on prior statements
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	Inscribed chattel doctrine: People v. Mastin, 115 Cal. App. 3d 978, 982-86 (1981)
9, 11	Authentication	413-422	FRE 901; CEC 1400, 1401, 1410; *FRE 902; *CEC 1402, 1410.5, 1414, 1415, 1416, 1417, 1418, 1420, 1421	**Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co., Inc., 252 F. Supp. 2d 917, 923-28 (D. Ariz. 2003) [hereinafter, "Telstar"]

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9, 11	Best Evidence Rule	422-429	FRE 1002-1008; CEC 1520, 1521, 1522, 1523, 1550-1553	CALI Lesson: "Best Evidence Rule Under the Federal Rules" [due by Class #11]
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	
11-12	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. Application in context of affidavits and declarations.		FRE 101, 1101	United States v. Dibble, 429 F.2d 598 (9th Cir. 1970); **Telstar, supra, 252 F. Supp. 2d at 923-28
12	Lay opinion	431-435	FRE 701; CEC 800	CACI No. 223
12	Expert opinion	435-479	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		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		*CEC 312(b)	CACI Nos. 220, 221; Volk v. U.S., 57 F.Supp.2d 888, 895-896 (1999)

Class#	Subject(s)	Text Reading	Rules	Additional
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	223-243	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			TURN IN answers to questions 1-23 on pages 243-245; De Vera v. Long Beach Pub. Transp. Co. (1986) 180 Cal.App.3d 782, 790-91, 796;
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		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	Prior inconsistent statements	245-248	FRE 801(d)(1)(A); CEC 1235	
14	Prior consistent statements	249-257	FRE 801(d)(1)(B); CEC 1236	
14	Prior identification	257-259	FRE 801(d)(1)(C); CEC 1238	
14	Admissions by a party or agent or co-conspirator	259-277	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
14-15	Interactive Lecture -- "unavailable" declarants	318-320	FRE 804(a); CEC 240	

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14-15	Statements against Interest	331-338	FRE 804(b)(3); CEC 1230	People v. Wheeler (2003) 105 Cal.App.4th 1423, 1423-1431
15	*Former testimony	*320-326	*FRE 804(b)(1); *CEC 1290-1293	
15	Dying declarations	326-331	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 / present sense impression	277-281	FRE 803(1), (2); CEC 1240, 1241	
15-16	State of mind / physical condition	281-289	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); People v. Han, 78 Cal. App. 4th 797, 807 (2000)
15-16	Medical treatment	289-295	FRE 803(4); CEC 1253	
16	Past recollection recorded [revisit FRE 612 / CEC 771 re: refreshing memory; distinguish from 803(5) / 1237]	295-301	FRE 803(5); CEC 1237	
16	Business records (affirmative records; absence of entries)	301-310	FRE 803(6), 803(7); CEC 1270, 1271, 1272	
16	Public records (affirmative and absence of entries); vital statistics	311-318	*FRE 803(8), 803(9), 803(10); *CEC 1280, 452.5, 1281, 1284	
16-17	*Residual (catch-all) exceptions	340-347	*FRE 807; ** CEC 1228-1231, 1360-1380	** In re Cindy L. (1997) 17 Cal.4th 15, 28
17	Multiple hearsay (hearsay within hearsay)	310	FRE 805; CEC 1201	TURN-IN Practice Exam #2: Bring printed/written answer to Class #17

Class#	Subject(s)	Text Reading	Rules	Additional
17	*Credibility of hearsay declarants	*346-347	*FRE 806; CEC 1202-1203	
17-18	CONFRONTATION CLAUSE			CALI Lesson: "An Overview of Relevance and Hearsay: A Nine Step Analytical Guide" [due by Class #18]
17-18	The Confrontation Clause and its relationship to hearsay evidence / "testimonial" versus non-testimonial hearsay / unavailability and opportunity for prior cross-examination	349-410	US Const. Amend VI	People v. D'Arcy (2010) 48 Cal. 4th 257, 265-269, 288-292 [dying declarations and the Sixth Amendment]
17-18	Forfeiture of objections; Giles v. California	338-340	FRE 804(b)(6)	Giles v. California, 128 S.Ct. 2678 (2008); People v. Riccardi, supra, (text corresponding to West's headnotes 32-35)
18	PRIVILEGES	481-518		
18	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 #18]; CACI No. 215
18	Attorney-Client		CEC 956.5-962	
18	* Physician-Patient		* CEC 990-1007	
18	* Psychotherapist-Patient		*CEC 1010-1027	
18	Marital privileges (communications / compelled testimony)		CEC 970-987	
18	* Clergy-Penitent		* CEC 1030-1034	

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18	Mediation privilege		CEC 1115-1128	
19	Final review and make-up session			