

WESTERN STATE COLLEGE OF LAW
EVIDENCE Section 213A
Spring 2013 SYLLABUS
Tuesdays and Thursdays 1:00 PM- 3:00 PM
4 Units

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1. Objectives:

This course has two objectives. First and foremost, the course will assist you to develop the analytical skills which are essential for you to “handle” evidence issues, *i.e.*, to identify from the facts the appropriate issues to be addressed and to address these issues by *creatively and intelligently* applying the rules of evidence to the facts. Part of this process will be the development of an approach to analyzing evidence issues. Second, the course will provide you with an introductory survey of most of the important issues in Evidence Law. This will include how the 6th Amendment Right of Confrontation preempts any statutory rule in criminal cases and how California’s Prop 8 affects the admissibility of evidence in criminal cases.

Because of time limitations, some evidence topics will not be addressed at all, such as presumptions, judicial notice and scientific evidence. These are, however, important areas of evidence law. Students can obtain a basic understanding of these topics from Lilly’s An Introduction to the Law of Evidence, a respected and concisely written hornbook (see *infra* “Recommended Text”). After completing the current survey course, students should develop a more refined understanding and mastery of these, and other, evidence issues by taking one or more advanced evidence electives such as Evidence Practice and Criminal Evidence. Consult the W.S.C.L. Catalogue for course descriptions.

2. Required Texts:

Cases and Materials on Evidence, (**Twelfth Edition**), Park and Friedman. (2013). CAVEAT: The 11th edition will be inadequate: This new edition has been significantly revised; many new cases have been added and the chapters have been reorganized.

2012 Federal & California Evidence Rules, David W. Miller, Aspen Publisher
Printed on Facing Pages for Comparative Study

3. Optional books:

Principles of Evidence – Concise Hornbook Series, Graham C. Lilly; SIXTH edition, West Publishing Co., 2012

Evidence-A Concise Comparison of the Federal Rules with the California Code, Miguel Mendez, West Publishing Co., 2012 Edition

4. “In-Class” Methodology:

Evidence law was, at one time, universally derived from case law (common law). Today, many jurisdictions, including California and the federal courts, have codified their respective laws of evidence. However, even in these jurisdictions, case law interpretation of the evidence codes still shapes and refines the rules of evidence. Therefore, the “case method”, with which you are already familiar, will be used extensively in-class to develop your ability to apply the codes. Brief all the assigned reading cases. Bring **both** the Park & Friedman case book **and** the Miller rules book to *each* class session.

The *Restyled Federal Rules of Evidence (FREs)* and the California Evidence Code are the centerpieces of the course. *California evidence law is now a bar-tested subject.* The “*Restyled FREs*” took effect on December 1, 2011. This means that when you take the California Bar exam you will be tested on the Restyled FREs and the California Evidence Code. There are some major differences between the FREs and the California Evidence Code, as well as major differences in California between admissibility of evidence in criminal cases as compared to civil cases. Therefore, when the assigned casebook material refers to any rule of evidence, you MUST find and read:

- A) The corresponding comparative facing pages in part I of the Miller book
 - B) The text of the corresponding FRE and related legislative history material in part II of the Miller book
- and**
- C) The text and related legislative and law review commission comments of the corresponding California Evidence Code section in part III of the Miller book.

As with any statutory material, legislative history is an essential resource for statutory interpretation. Please prepare to address in class how a particular California Evidence Code section differs from its FRE counterpart. You will find the Miller book’s comparison of California and Federal evidence code provisions especially useful in this regard.

When an assignment includes a case from another jurisdiction that has not adopted the Federal Rules of Evidence, please prepare to address in class how you think the case would be decided under the Federal Rules and the California Evidence Code. The class assignments include all the Hypotheticals in the assigned pages of Park & Friedman. Be prepared to discuss these Hypotheticals in class under both Federal rules and California rules. When a class ends in the middle of a syllabus assignment, prepare for the next class by reviewing that assignment as well as any new material assigned for that next class.

We will be using the Clicker system during the class. Please purchase a Clicker before the start of the semester and bring it with you at every class. This is a mandatory requirement for the class. The CPS Pulse Radio Frequency Pads “clickers” ISBN 9781881483816 are available for purchase at the Law Bookstore. Caveat: This is a NEW 2012 version of the clicker.

5. Preparation for Class and Classroom Participation:

Legal education is a co-operative venture that requires your active engagement in class discussion. Therefore, class participation is a **mandatory** part of this course. A student whom I deem unprepared will be treated as absent for that day. You will be expected to stay sufficiently ahead of the class in your preparation to insure your readiness to participate for each class. Neither the assertion that you did not anticipate the class getting so far, nor that you read the assignment too long ago to remember it will excuse a failure to be prepared for class. **15%** of your semester grade will be based on your **preparation** for class, your **attendance**, your class **participation** and any required **assignments** that must be timely turned in.

6. Exams and Grading

There will be a “closed-book” midterm exam in essay and multiple choice formats which will count as 15% of your final grade. There will also be a three or four-hour, “closed-book” final examination which will count as 70% of your final grade. The final exam will consist of a multiple choice component and an essay component. **The final examination may test you on any material assigned in the Park & Friedman casebook, as well as any material covered in the assigned CALI (computer-aided) exercises.** The remaining 15% of your semester grade will be based on your preparation for class, your attendance, your class participation and any required assignments. As the semester progresses, I may indicate in class and/or the webcourse any additional required assignments. It is your responsibility to be aware of any such assignments and their due dates. You should check the webcourse site regularly for any changes in the syllabus and/or any assignments.

After the first weeks of class, some past essay examinations will be placed on the webcourse site. As the semester progresses, if you would like feedback on your answers to some of these exam questions, please make an appointment (reserve time in the Appointment Book at the Reception Desk on the Third Floor). You must email me your practice exam question and answer before your consultation so that I can review them beforehand.

7. Attendance & Decorum:

Successful completion of this course is dependent upon satisfaction of the W.S.C.L. Attendance Policy, which is reprinted in the Student Handbook. **IF YOU MISS MORE THAN FOUR (4) CLASSES, YOU WILL RECEIVE A GRADE OF “F” AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES.** Students leaving and returning to their seats, while class is in session, disrupt the concentration of students and, therefore, the learning environment. Please refrain from walking in and out during the class unless it is absolutely necessary. **Cell phones must be turned off** during class **and you must not access the internet** during class unless specifically requested to by me. **No Texting/Tweeting** is allowed. You will be asked to leave the classroom for any violation of these rules and you will be deemed absent for that day also.

8. Seating Chart:

A seating chart will be distributed at the beginning of the second class session. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat at a later date, please notify me so that I can make the appropriate changes on the chart.

9. Office Hours: Tuesdays and Thursdays 10:00AM- 12:30PM

Please make appointments (at least one day in advance) through the Faculty Appointment Book located at the front desk in the Faculty Office Suite on the third floor. My office hours will be contained in the Appointment Book. As a courtesy to other students, do not sign up for a “block” of consecutive appointments, or sign up for multiple consecutive weekly appointments all at once. If needed, I will always find time to meet with you. Please put your email address and your telephone number on the appointment list, so that I may contact you if I have to reschedule your appointment. If you are running late to an appointment or if you cannot keep a scheduled appointment, please email me AND call a faculty secretary and advise her as soon as possible (LaTonya Hodges 714-459-1196; TBD 714-459-1126; Bonnie Manning 714-459-1128)

**EVIDENCE 213A
Spring 2013 Syllabus
4 hours per week**

<i>Week</i> 2 2-hour classes per week	<i>Subject</i>	<i>Reading Assignment</i> Casebook P&F	<i>Computer Aided Instruction (CALI) & Other Assignments</i> TURN IN	<i>Federal Rules of Evidence and California Evidence Code</i> Additional Reading Assignment
Jan 15-17 <i>4 hours</i>	<ul style="list-style-type: none"> • “Making the Record” – Read for background* • Introduction to Relevance 	1 – 77 79 – 108		FRE 401,402,403 Ca. Ev. 210,350,351,352 Hypos on p. 100-101
Jan 22-29 <i>6 hours</i>	Relevance: <ul style="list-style-type: none"> • Character Evidence • Prior Sexual Conduct • Prior Domestic Violence 	108 – 162 162 – 179	TURN IN CALI “Character Evidence Under Federal Rules”	FRE 404,405, Ca. Ev. 1101-1103 FRE 412-413, Ca. Ev. 1103,1106,1108 FRE 414,415, Ca. Ev. 1109 Prop 8 , <i>P v. Ewoldt</i> (1994) 7 Cal.4 th 380 Hypos on p.111, 131-132,154,160-62
Jan 31 <i>2 hours</i>	Relevance: <ul style="list-style-type: none"> • Similar Happenings • Offers to Compromise • Subsequent Precautions 	179 – 195		FRE 407, 408, 409, 410 Ca. Ev. 1151, 1152, 1153 FRE 403, Ca. Ev. 352 Hypos on p.182,192, 195

April 2, 9 <i>4 hours</i>	<ul style="list-style-type: none"> • Admissions(Continued) • Former Testimony • Declarations Against Interest 	344-354 355-368	No class on April 4 TURN IN CALI “The Hearsay Rule and Its Exceptions”	FRE 804(b)(1), Ca. E.C. 1290-1293 Hypos p.353-54 FRE 804(b)(3), Ca. E.C. 1230 Hypos p. 367-68
April 11, 16 <i>4 hours</i>	<ul style="list-style-type: none"> • State of Mind • Statement for Purposes of Medical Diagnosis or Treatment • Prior Identification • Past Recollection Recorded 	315 - 339 339-344 386-391 392-403		FRE 803(3), Ca. E.C. 1250, 1251, 1252, 1260, 1261 Hypos p.292, 326-27, 332-33, 338-39, 344 FRE 803(4), Ca. E.C. 1253 FRE 801(d)(1)(C), Ca. E.C. 1238. Hypos p.387, 391 FRE 803(5), Ca. E.C. 1237. Hypo p. 403
April 18, 23 <i>4 hours</i>	<ul style="list-style-type: none"> • Business Records, Public Records • 6A: Melendez-Diaz, Bullcoming, Williams v. Illinois • Prior Convictions • Prior Inconsistent Statement • Prior Consistent Statement • Residual Exception 	404-464 465-470 389-398 471-480	Turn in Answers to Questions 76 – 125 on p. 480-484	FRE 803(6) - 803(8), Ca. E.C.1270-1280 Hypos p.411, 461, 463-64 FRE 803(22) FRE 801(d)(1)(A), Ca. E.C. 1235 FRE 801(d)(1)(B), Ca. E.C. 1236, 791 Only FRE 807. None in Ca. Hypos p. 480
April 25, 30 <i>4 hours</i>	Privileges <ul style="list-style-type: none"> • Attorney-Client • Psychotherapist-Patient • Physician-Patient • Marital • 5th Amendment • Clergy-Penitent • Waiver of privilege 	563-590 590 – 608 608-615 615-620		FRE 501, Ca. E.C. 911-919 Ca. E.C. 950-962. Hypos p.588-590 Ca. E.C. 1010-1027. Ca. E.C. 990- 1007. Hypo p. 608 Ca. E.C. 970-973, 980-987. Hypo p.615 5th Amendment, Ca. E.C. 930, 940 Ca. E.C. 1030-1034 FRE 502
FINAL Examination				