

Class Schedule–Spring 2015

Class#	Day	Date
1	Mon	12-Jan
2	Wed	14-Jan
HOLIDAY	Mon	19-Jan
3	Wed	21-Jan
4	Mon	26-Jan
5	Wed	28-Jan
6	Mon	2-Feb
7	Wed	4-Feb
8	Mon	9-Feb
HOLIDAY	Mon	16-Feb
9	Tues	17-Feb
10	Mon	23-Feb
11	Mon	2-Mar
HOLIDAY	Mon	9-Mar
12	Mon	16-Mar
13	Mon	23-Mar
14	Mon	30-Mar
15	Mon	6-Apr
16	Mon	13-Apr
17	Mon	20-Apr
18	Mon	27-Apr

Notes and 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.

During the Hearsay module, before each class be sure to read the Fishman text and exercises for the corresponding FRE rules listed on this assignment list

You will receive a DVD of clips from a documentary entitled "The Staircase," which correspond to readings in the Wonsowicz textbook. Check Blackboard for a list of dates by which to watch the various clips.

Class #9 will be held on Tuesday February 17, 2015 (Legislative Day)

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]
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	*28-33	FRE 301-302; CEC 500-502, 520-522, 550, 600-607; **CEC 620-647,660-670	
1	Introduction to Relevance ("logical relevance")	35-45, 51-56	FRE 401, 402; CEC 210, 350, 351	Note: Jones v. PakMor will be briefed in a later assignment
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

Class#	Subject(s)	Text Reading	Rules	Additional
2-3	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 and 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	109-143, 149-163	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)
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]
4-5	Character continued; habit versus character	144-147	FRE 406; CEC 1105	CA Const. Art. 1 § 28 [Proposition 8]
4-5	Prior sexual conduct	*163-175; *209-221	CEC 1103, 1106; *CEC 1108; *FRE 412, 413, 414, 415	

Class#	Subject(s)	Text Reading	Rules	Additional
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	Overview of the specialized relevance rules	78-81		
5-6	Subsequent precautions	81-89	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]
6	Offers to compromise / apologies and compassionate gestures / pleas	89-102	FRE 408, 409, 410; CEC 1152, 1153, 1154, 1160	
6	Liability insurance	102-108	FRE 411; CEC 1155	CACI No. 105
6	Practice Exam Review			TURN-IN printed/written answer to practice exam at Class #6
7	IMPEACHMENT AND REHABILITATION		FRE 607; CEC 780, 785, 786, 787; *FRE 611; *CEC 776	
7	Bias and prejudice	177-183	FRE 402 [Case Notes]; CEC 780(f)	CACI No. 113
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]

Class#	Subject(s)	Text Reading	Rules	Additional
7-8	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	200-209	FRE 613; CEC 791	Note: Revisit these rules during the hearsay module on prior statements
8	*Religious belief		*FRE 610; CEC 789	
8	*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]
8-9	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"]
9	WRITINGS		FRE 1001; CEC 250	Inscribed chattel doctrine: People v. Mastin, 115 Cal. App. 3d 978, 982-86 (1981)
9	Best Evidence Rule	422-430	FRE 1002-1008; CEC 1520, 1521, 1522, 1523, 1550-1553	CALI Lesson: "Best Evidence Rule Under the Federal Rules" [due by Class #10]
9-10	*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	
10	Catch-up and review session			

Class#	Subject(s)	Text Reading	Rules	Additional
11	Mid-Term Examination			NOTE: All material assigned, or discussed in class, through Class #10 is "fair game" for testing on the mid-term exam
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]
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	435-444 449-452 455-463 471 (note)	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	*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)
13	HEARSAY -- CORE PRINCIPLES		FRE 802; CEC 1200	<i>Read the Fishman text corresponding to each federal hearsay rule in the "Rules" column starting with Class 13</i>

Class#	Subject(s)	Text Reading	Rules	Additional
13	Interactive Lecture -- Defining hearsay / nonverbal conduct / implied assertions / using conduct to raise inferences e.g., consciousness of guilt	223-235 237-238	FRE 801; CEC 1200	CALI Lesson: "Hearsay from Square One: The Definition of Hearsay" – NOTE: Complete and Finalize Lesson after Section I only [due by class # 13]
13	Interactive Lecture -- operative facts / independent legal significance / effect upon listener / scierter			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	
14-15	Statements against Interest	331-338	FRE 804(b)(3); CEC 1230	People v. Wheeler (2003) 105 Cal.App.4th 1423, 1423-1431

Class#	Subject(s)	Text Reading	Rules	Additional
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
17	*Credibility of hearsay declarants	346-347	*FRE 806; CEC 1202-1203	

Class#	Subject(s)	Text Reading	Rules	Additional
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 / testimonial vs non-testimonial hearsay / unavailability and opportunity for prior cross-examination	349-410 453-455	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 headnotes 32-35)
18	PRIVILEGES	481-482		
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	482-486	CEC 956.5-962	
18	Marital privileges (communications / compelled testimony)	499-501	CEC 970-987	
18	* Physician-Patient	507-508	* CEC 990-1007	
18	* Psychotherapist-Patient		*CEC 1010-1027	
18	* Clergy-Penitent	516-518	* CEC 1030-1034	
18	*Mediation privilege		*CEC 1115-1128	