

WESTERN STATE COLLEGE OF LAW

EVIDENCE Section 213A

SPRING 2015 SYLLABUS

Mondays and Wednesdays 1:00 PM- 3:00 PM

(See schedule infra for 2 exceptions)

4 Units

Professor Robert Molko

Office: Third Floor, Room 302R

Phone: 714-459-1149

rmolko@wsulaw.edu

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.

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), Waltz and Park.

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 Waltz & Park 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 Waltz and Park. 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. Class Participation is also a component of the grade in this course. Students are encouraged to ask questions. All views are welcome. A common maxim in law is that “reasonable minds may differ”. You are expected to respect others who disagree with you. The quality of your answers and comments is more important than the quantity.

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 (e.g. CALI)** that must be timely turned in.

Preparation is a component of the grade in this course. Students are expected to have carefully read and briefed all cases (including dissenting/concurring opinions) scheduled for discussion in class. Each student should be prepared to be called upon in class to summarize the pertinent facts, issues, law and court findings and rulings of a case. The quality of the recitation is more important than the quantity. In order to discuss a case intelligently in the limited time available in class, students should prepare a brief to assist them in recitation and discussion and have it readily available if called upon in class. In other words, students should not be fumbling through their textbooks or computer screens to find their “brief”. Book briefing is a poor idea and is discouraged; it is not an effective and acceptable sole method of briefing; it also often causes delays in the presentation of cases in class. Be prepared to also discuss the notes and comments from the casebook.

CALI exercises are designed to supplement and test your understanding of a subject that has been covered in the Casebook and/or class. They are also good tools to practice answering multiple choice questions. In order to access the proper CALI exercise and get credit for completing it, you **MUST** use the URL link provided on the webcourse for each particular assignment. If you do not use this URL link, you will **not get credit** for the assignment. You must complete each exercise by the date indicated on the syllabus. Other exercises may be assigned during the semester.

6. Exams and Grading

There will be a “closed-book” midterm exam with essay and multiple-choice components 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 Waltz & Park casebook, any material discussed in class, 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 at least 2 days 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: Mondays 10:00AM- 12:30PM, Wednesdays 10:00AM- 12:30PM, Tuesdays 2:30PM – 3:30 PM

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 (Sierra Douglas 714-459-1196; Eboni Hardin 714-459-1126)

10. Website:

LexisNexis Web course: Evidence Spring 2015

You MUST also register on the webcourse for this class. The webcourse will provide me with a method to communicate with you by posting assignments, syllabus modifications, etc... and by mass emailing you, if necessary. I will also use the Discussion Forum on the webcourse to share my answers to students’ relevant questions. This webcourse will also provide you with the URL link that you MUST use for each assigned CALI exercise.

EVIDENCE 213A

11. Spring 2015 Syllabus Schedule of Classes

*** There will be 2 Friday sessions (9:00-11:00 AM) to make up for 2 classes that have to be rescheduled in late March***

<i>Week</i> 2 2-hour classes per week	<i>Subject</i>	<i>Reading Assignment</i> Casebook P&F	<i>CALI</i> [MUST Use URL] & <i>Other Assignments</i>	<i>Federal Rules of Evidence and California Evidence Code</i> Additional Reading Assignment
January 12-14 <i>4 hours</i>	<ul style="list-style-type: none"> • “Making the Record” – Read for background* • Introduction to <i>Relevance</i> 	1 – 77 79 – 108		FRE 401,402,403 Ca. Ev. 210,350,351,352 Hypos on p. 100-101
Jan 21-28 <i>6 hours</i>	<i>Relevance:</i> <ul style="list-style-type: none"> • Character Evidence • Prior Sexual Conduct • Prior Domestic Violence • No class on Mon. Jan 19 	108 – 162 162 – 179	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
Feb 2 <i>2 hours</i>	<i>Relevance:</i> <ul style="list-style-type: none"> • Similar Happenings • Offers to Compromise • Subsequent Precautions • Discretion to Exclude 	179 – 195		FRE 407, 408, 409, 410 Ca. Ev. 1151, 1152, 1153 FRE 403, Ca. Ev. 352 Hypos on p.182,192, 195
Feb 4-11 <i>6 hours</i>	<ul style="list-style-type: none"> • Impeachment • Cross-Examination • Burden of Proof 	485– 561	CALI “Impeachment and Rehabilitation of Witnesses”	FRE 607,608,609, 611,615, 705 Ca. Ev. 780, 785, 786-787, 788, 721 FRE 613, Ca. Ev. 770 Hypos p.496-97,510-11,530-31,535,538, 542,553-54,560 Ca. Ev. 500-522
Feb 17,18 <i>4 hours</i>	Writings: <ul style="list-style-type: none"> • Best Evidence Rule • Authentication • Competency of Witnesses 	669 – 6679 679 – 696 699 – 720		FRE1001-1008; Ca. Ev. 1520-1523, 1550-1551 FRE 901-903; Ca. Ev. 1400-1421, 1450-1454, 1552-1553, 1530-1532 Hypo p. 686 FRE 601, 602, 603; EC 700, 701, 702, 710, 795
Feb 23 <i>2 hours</i>	<ul style="list-style-type: none"> • Opinion, Expertise and • Experts 	783 – 852	CALI Expert and Opinion Evidence	FRE 701-706 Ca. Ev. 800-805, 720, 721, 722 Hypo p. 852

Feb 25 <i>2 hours</i>	<ul style="list-style-type: none"> The Hearsay Rule <i>Introduction</i> 	197 -236		FRE 801 Ca. E.C. 1200 Hypos p.215-216
March 2	<ul style="list-style-type: none"> Midterm 			
March 4 <i>2 hours</i>	<ul style="list-style-type: none"> The Hearsay Rule (cont'd) Questions 1 – 75 	236-240		
Mar 9-13	<ul style="list-style-type: none"> Spring Break 			
March 16,18 <i>4 hours</i>	<ul style="list-style-type: none"> 6 A Right of Confrontation (Crawford v. Washington) Dying Declarations Forfeiture Preliminary Questions of Fact 	240-250 369-386	-> CALI “Hearsay from Square One: The Definition of Hearsay” -> Turn in Answers to Q1-75	FRE 804(b)(2), Ca. E.C.. 1242 Hypos p.377 FRE 104(a) and (b) Ca. E.C. 405,403
Friday Mar. 20 9-11AM & Mon Mar. 23 4 hours	<ul style="list-style-type: none"> Spontaneous Exclamations Present Sense Impression 6A: Davis v. Washington 6A: Michigan v. Bryant Admissions 	281-315 250-280	CALI “The Concept of Hearsay”	FRE 803 (2),Ca. E.C. 1240, 1241 FRE 803 (1) FRE 801(d)(2) Hypos p. 295 Ca. E.C. 1220, 1221, 1222, 1223. Hypos p.259,264
April 1 & *Friday* April 3 9-11AM 4 hours	<ul style="list-style-type: none"> Admissions(Continued) Former Testimony Declarations Against Interest 	344-354 355-368	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 6-8 4 hours	<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

<p>April 13-15</p> <p><i>4 hours</i></p>	<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 	<p>404-464</p> <p>465-470</p> <p><i>Review</i></p> <p>542-554</p> <p>471-480</p>	<p>CALI “Confrontation of Hearsay Declarants”</p>	<p>FRE 803(6) - 803(8), Ca. E.C.1270-1280</p> <p>Hypos p.411, 461, 463-64</p> <p>FRE 803(22)</p> <p>FRE 801(d)(1)(A), Ca. E.C. 1235</p> <p>FRE 801(d)(1)(B), Ca. E.C. 1236, 791</p> <p>Only FRE 807. None in Ca. Hypos p. 480</p>
<p>April 20-22</p> <p><i>4 hours</i></p>	<p style="text-align: center;">Privileges</p> <ul style="list-style-type: none"> • Attorney-Client • Psychotherapist-Patient • Physician-Patient • Marital • 5th Amendment • Clergy-Penitent • Waiver of privilege 	<p>563-590</p> <p>590 – 608</p> <p>608-615</p> <p>615-620</p>	<p>Turn in Answers to Questions 76 – 125 on p. 480-484</p>	<p>FRE 501, Ca. E.C. 911-919</p> <p>Ca. E.C. 950-962. Hypos p.588-590</p> <p>Ca. E.C. 1010-1027.</p> <p>Ca. E.C. 990- 1007. Hypo p. 608</p> <p>Ca. E.C. 970-973, 980-987. Hypo p.615</p> <p>5th Amendment, Ca. E.C. 930, 940</p> <p>Ca. E.C. 1030-1034</p> <p>FRE 502</p>
<p>April 27</p> <p><i>2 hours</i></p>	<p style="text-align: center;">Catch-up</p>		<p>Suggested review Qs:</p> <p style="text-align: center;">CALI</p> <p style="text-align: center;">“FRE 801(d) & Multiple Hearsay”</p> <p style="text-align: center;">& CALI</p> <p style="text-align: center;">“Preliminary Fact finding under Rule 104”</p>	
<p>TBD</p>	<p style="text-align: center;">Review session</p>			
<p>TBD</p> <p style="text-align: center;">+</p>	<p>FINAL Examination</p>			

12. Disability Services Statement:

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Second Floor Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."