

WESTERN STATE COLLEGE OF LAW

EVIDENCE – Spring 2019

SYLLABUS

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1. Objectives and Learning Outcomes:

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 identifying and 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 Sixth Amendment Right of Confrontation preempts any statutory evidence rule in criminal cases. Third, you will learn to identify the differences between federal and California evidence rules.

Because of time limitations, some evidence topics, such as presumptions and judicial notice, will not be addressed. These are, however, important areas of evidence law. Students can obtain a basic understanding of these topics from Lilly’s Principles of Evidence – Concise Hornbook Series, a respected and concisely written hornbook (see *infra* “Recommended Hornbooks”). After completing the current course, students can deepen their understanding and develop mastery of evidence law 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.

It is expected that, upon completion of this course, you will be able to: i) demonstrate knowledge of evidence law; ii.) identify evidentiary issues, *i.e.* plausible objections to particular items of evidence; iii.) argue the admissibility of particular items of evidence in different factual contexts by applying the evidence rules that you have learned; iv) effectively communicate, in writing and orally, the admissibility issues raised by items of evidence and the appropriate legal analysis applicable to those issues; v) identify the legislative history and social policy, where applicable, behind each of the evidence rules.

2. Required Texts:

Evidence: Cases and Materials, Roger Park and Richard Friedman (West Academic, 2013/Twelfth edition).

Park and Friedman 2015 Supplement (on Professor Koppel’s LexisNexis web course).

Federal & California Evidence Rules, Thomas Leach and Emily Uhrig (WaltersKluwer, 2018-2019 edition).

3. Optional Books:

Principles of Evidence – Concise Hornbook Series, Graham C. Lilly (West Academic, 2015/7th edition.)

Evidence – A Concise Comparison of the Federal Rules with the California Code, Miguel Mendez, (West Academic, 2016 edition). (This text is harder to use than the required Leach & Uhrig text, but its explanation of the differences between the Federal and California rules is more complete.)

A Student’s Guide to Hearsay, Clifford Fishman (Carolina Academic, 2013/4th edition).

4. “In-Class” Methodology:

Evidence law was, at one time, universally derived from case law (common law). Today, many jurisdictions have codified their respective laws of evidence including the federal courts, in the *Federal Rules of Evidence* (FRE) and California, in the *California Evidence Code* (CEC). 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 in different factual contexts. Brief all the assigned reading cases and analyze each of the problems and hypotheticals in the Park and Friedman casebook and bring that casebook and the Leach & Uhrig rules book to each class session.

Both the federal rules and the California code are both bar-tested subjects. This means that, when you take the California Bar Exam (and, therefore, exams in this class), you will be tested on the FREs and the California Evidence Code. For this reason, *both* the Federal Rules of Evidence *and* the *California Evidence Code* are the centerpiece of this course. There are some *major differences* between the FREs and the California Evidence Code, as well as major differences in California evidence law between admissibility of evidence in criminal as compared to civil cases.

Therefore, when assigned casebook material refers to a Federal Rule of Evidence, read both the text of the rule in Appendix A of the Park & Friedman casebook and the related legislative history material in Appendix B. You must also read the “re-styled” version of that Rule and compare it with the current Rule. As noted above, I have posted a side-by-side comparison of the current and re-styled federal rules in our course website filed under “Course Documents.” As with any statutory material, legislative history is an essential resource for statutory interpretation. When assigned casebook material refers to a section of the California Evidence Code, read the text of that section in Appendix D of the casebook and compare that section with its federal rule counterpart. Please prepare to state in class how a particular California Evidence Code section differs from its F.R.E. counterpart. *California evidence law is now a bar-tested subject.* 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 a jurisdiction that has not adopted the Federal Rules of Evidence, please prepare to state in class how you think the case would be decided under the Federal 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.

CALI LESSONS

Please note that, on the Assigned Readings for certain weeks, I have assigned certain CALI lessons. CALI.org is the website for the Center for Computer Assisted Legal Instruction (aka CALI). Taking advantage of CALI's interactive lessons is essential because it allows students to apply the rules they learn in the classroom, and through timely feedback, better understand any legal subject.

5% of a student's final grade in this course will be allocated to successful completion of all assigned CALI lessons. To receive proper credit, **all lessons MUST be accessed through the link below. Otherwise, your completion will not be recorded and reviewable by the Professor.**

The student LessonLink page is at https://urldefense.proofpoint.com/v2/url?u=https-3A_www.cali.org_courses_5753&d=DwIDaQ&c=VJcX3xJwJKggcmYZP-xVNfKwBnVBQf3uSOPll1vxQbo&r=Vg3gvDFWTqHFjmxoTrdjaLGCAfaaoMqGQ9R8nOfNfVo&m=jx6blth4nhDkDCKSAfJy3i3dXDeLI7hOEGVwk3hF-P4&s=xTaNKzXHGZUS8JCFgsfpk_ph8QIJs-1e65enG6qml-M&e=. To complete the lessons, you must register with CALI and be logged in to CALI. The student code required for registration is: WESTNNstu235 (If you have any questions or trouble registering, please see one of the librarians for help.)

5. Exams and Grading:

There will be a mid-term exam in essay format which will constitute 15% of the final course grade. . There *will* be a three-hour, "closed-book," final examination which will consist of a multiple choice component and an essay component. The final exam will constitute 80% of the final course grade. **The final examination may test you on any material assigned in the Waltz & Park casebook, as well as any material covered in the assigned CALI (computer-aided) exercises.**

After the first week of class, I will place some of my past essay examinations on my Evidence I course website. 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). Please bring your practice exam answer with you to your consultation. Before your consultation, please carefully compare your answer with the issue analysis posted on the course website.

6. 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.

7. Attendance & Decorum:

Successful completion of this course is dependent upon satisfaction of the W.S.U. Attendance Policy, which is reprinted in the Student Handbook. If you arrive late, do not sign the sign-in sheet; you will be deemed “absent” for that session. If you depart early you may be marked absent for that session. **IF YOU MISS MORE THAN FOUR (4) DAY CLASSES OR TWO (2) EVENING CLASSES YOU WILL RECEIVE A GRADE OF “F” AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES.**

ALSO BE AWARE THAT, PURSUANT TO W.S.U.’S ATTENDANCE POLICY, STUDENTS CANNOT MAKE UP AN ABSENCE BY ATTENDING ANOTHER PROFESSOR’S CLASS.

Students leaving and returning to their seats, while class is in session, disrupts the concentration of students and, therefore, the learning environment. Therefore, once class begins, students may not leave the classroom prior to the end of the session, or (for the evening class) prior to the scheduled break, unless you have notified the Dean of Students, in advance, that you have a particular physical condition that renders you unable to comply with this rule. Violation of this rule may be deemed an “early departure” for which a student may be marked absent. Also, *please turn off your cell phones during class.*

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, please notify me so that I can make the appropriate changes on the chart.

9. Webcourse: Lexis Classroom

Lexis® Classroom has replaced LexisNexis® Web Courses. LexisNexis Web course: Fall 2018 You **MUST** register on the webcourse for this class. The webcourse will provide me with a means to communication with you by posting assignments, syllabus modifications, announcements, etc. 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 to receive credit for successful completion of all assigned CALI exercises. There are computers in the Library if you need one. For information on how to enroll and navigate Lexis Classroom, here is the link: <https://player.vimeo.com/video/283737721>.

10. 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 Students Services Suite 119. 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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

11. Office Hours:

Please make appointments through the Faculty Appointment Book located at the front desk in the Faculty Office Suite on the second floor. My office hours will be contained in the Appointment Book. If you cannot keep a scheduled appointment, please email me as soon as possible to cancel your appointment so that another student can see me during that time slot. I will also be available the rest of the week, as time permits

12. Reading and Other Assignments: It is estimated that, on average, the assigned reading and other classroom preparation should require four or more hours outside of class for each class session

<i>Week</i>	<i>Subject</i>	<i>Reading Assignment</i>	<i>Computer Aided Instruction Assignment/ Federal Rules of Evidence California Rules of Evidence</i>
January 15, 17 <i>4 hours</i>	"Making the Record" – Read for background* Competency of Witnesses Introduction to Relevance and Inference (Logical Relevance) Discretion to exclude (Legal Relevance)	1 – 77 697-706 79– 88 88 - 108	FRE 401, 402 CEC 210, 350, 351, 500-522 FRE 403; CEC 352 FRE 105; CEC 355
January 22, 24, 29 <i>6 hours</i>	Relevance and Its Counterweights: <ul style="list-style-type: none"> • Character Evidence • Prior Sexual Conduct 	105 – 162 162 – 179	CALI: "Character Evidence Under Federal Rules" FRE 404, 405, 406; CEC 1101-1103, 1105 FRE 412, 413, 414, 415 CEC 1103, 1106, 1108, 1109
January 31 <i>2 hours</i>	Relevance and Its Counterweights: <ul style="list-style-type: none"> • Similar Happenings • Subsequent Precautions • Offers to Compromise • Payment of Medical Expenses • Liability Insurance 	179 – 195	FRE 407, 408, 409, 410, 411 CEC 1151, 1152, 1153, 1154, 1155

February 5, 7, 12 6 hours	<ul style="list-style-type: none"> Impeachment and Cross-Examination Rape Shield Statutes 	485 – 561	CALI: “Impeachment and Rehabilitation of Witnesses” FRE 607, 608, 609, 611, 613, 615, 801(d)(1) CEC 766, 767, 769, 770, 780, 785, 786, 787, 788, 790, 791, 721, 1235, 1236
February 14 2 hours	Writings: <ul style="list-style-type: none"> Best Evidence Rule Authentication 	669-696	CALI: “Best Evidence Rule Under the Federal Rules” FRE 1001-1008; CEC 1520-1523, 1550-1551 FRE 901-903; CEC 1400-1421, 1450-1454, 1552-1553, 1530-1532
February 21, 26 4 hours	<ul style="list-style-type: none"> Opinion, Expertise and Experts Scientific Evidence: <i>Daubert test v. Kelly-Frye test</i> 	783-825; 833-852 852 – 887; 905-923	CALI: “Expert and Opinion Evidence” FRE 701-706 CEC 800-805, 720, 721, 722
February 28	<ul style="list-style-type: none"> Midterm 		
March 12, 14, 19 6 hours	<ul style="list-style-type: none"> Hearsay: Rationale and Meaning Questions 1 – 75 Introduction to the Confrontation Clause: <i>Crawford v. Washington</i> Preliminary Questions of Fact 	197-236 236-240 240-250	FRE 801; CEC 1200 <i>Complete and turn in answers to Questions 1-75 in Park & Friedman, pp. 236-240.</i> FRE 104(a) and (b); CEC 405, 403 CALI: “The Concept of Hearsay” and “Confrontation of Hearsay Declarants”
March 21, 26 4 hours	<ul style="list-style-type: none"> Dying Declarations Spontaneous and Contemporaneous Exclamations <i>Ohio v. Clark (2015)</i> 	369-386 281-315	FRE 804(b)(2) and (6); CEC 1242 FRE 803(2); CEC 1240 FRE 803(1); CEC 1241 <i>Ohio v. Clark (2015): See Park & Friedman’s 2015 Supplement on Course Website</i>
March 28; April 2 4 hours	<ul style="list-style-type: none"> Admissions 	250-280	FRE 801(d)(2) CEC 1220, 1221, 1222, 1223
April 4 2 hours	<ul style="list-style-type: none"> Former Testimony Declarations Against Interest 	344-354 355-368	FRE 804(b)(1); CEC 1290-1293 FRE 804(b)(3); CEC 1230
April 9, 11 4 hours	<ul style="list-style-type: none"> State of Mind/Physical Condition (<i>Hillmon Doctrine</i>) Statement for Medical Diagnosis or Treatment Prior Identification Past Recollection Recorded 	315-339 339-344 386-391 392-403	FRE 803(3); CEC 1250, 1251, 1252, 1260, 1261 FRE 803(4); CEC 1253 FRE 801(d)(1)(C); CEC 1238 FRE 803(5); CEC 1237
April 16, 18 4 hours	<ul style="list-style-type: none"> Business and Public Records 	404-464	FRE 803(6) – 803(7); CEC 1270-1280 FRE 803(8), 803(10) FRE 805; CEC1201

	<ul style="list-style-type: none"> • Multiple hearsay levels • Prior Judgments • Prior Inconsistent Statement • Prior Consistent Statement • Residual Exception • Questions 76-125 	465-468 471-480 480-484	FRE803(22); CEC 1300 FRE 801(d)(1)(A); CEC 1235 FRE 801(d)(1)(B); CEC 1236, 791 FRE 807 (None in CA) <i>Complete and turn in Questions 76-125 in Park & Friedman, pp. 480-484</i>
April 23, 25, 30 <i>6 hours</i>	Privileges: <ul style="list-style-type: none"> • Attorney-Client • Physician-Patient and Psychotherapist Patient • Marital • Clergy-Penitent 	563-590 590-608 608-615 608-620	FRE 501; CEC 911-919 CEC 950-962 CEC 990-1007 CEC 1010-1027 CEC 970-973; 980-987 CEC 1030-1034 CALI: FRE 801(d) & Multiple Hearsay

*“Background” reading need not be briefed and may not be covered in class. You may, however, be tested on this material.

13. Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and

applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

14. Argosy University Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

