

EVIDENCE FALL 2017
SYLLABUS
Judge Judith L. Meyer
Room 201
Monday 6:40 pm – 8:50 pm
Wednesday 6:40 pm – 8:50 pm

I.

A. COURSE OBJECTIVES & OUTCOMES:

This course consists of the study of the rules and principles that regulate what is and what is not admissible at trial. But it is much more than that. It includes the examination of the nature of truth and knowledge and the extent to which one can predict human behavior. Evidence law is particularly important in our adversary system due to the system's reliance on a lay juror to decide the facts in most cases and the central role played by partisan advocates in deciding which evidence to present at trial. The rules of evidence reflect a fundamental mistrust of jurors (due to their perceived inability to give proper weight to certain kinds of evidence) and a definite distrust of partisan lawyers (due to their loyalty to clients in presenting evidence). The course will focus primarily on the federal rules of evidence, because they control proceedings in federal courts and in the forty-two states that have adopted the federal rules in whole or in substantial part. However, we will also examine the California Evidence Code from time to time. California is one of the few states that has not adopted the federal rules, having codified its evidence code a number of years before the federal rules were enacted. There is substantial agreement between the two approaches, but there are also significant areas of conflict, which we will discuss.

A serious study of the rules of evidence provides a wonderful blend of theory and practice. Of course, the rules are first and foremost for lawyers and judges who participate directly in the justice system, and they exist for the extremely practical purpose of deciding whether proffered evidence is admissible or not. At the same time, the rules invite us to consider the theoretical dimension of truth-seeking. We must confront the questions: What is truth? Do trials exist for the purpose of uncovering the truth? What responsibility should the judge play (as opposed to jurors) in deciding issues of evidence? What is the proper balance between competing goals such as efficiency and fairness? My hope is that at the end of the course you will have developed mastery over the rules so that you can apply them to questions of admissibility, but I hope that you will have also thought deeply about the policies and theories behind the rules and that you will be able to critique the rules in light of the strengths or weaknesses of their underlying bases.

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 evidence rule in criminal cases.

It is expected that when you have completed this course, you will be able to: 1) demonstrate knowledge of substantive evidence law; 2) argue the admissibility of evidence in different contexts by applying the evidence rules that you have learned; 3) identify the evidentiary issues implicated in any fact pattern and apply the learned rules to reach the appropriate conclusions about the admissibility of the evidence at issue; 4) effectively communicate the issues involved, the legal argument and the proper analysis both verbally and in writing; 5) identify the legislative history and social policy behind each of the evidence rules.

B. 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.

C. 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.

II. 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.”

III. REQUIRED TEXTS

1. Pavel Wonsowicz: *Evidence. A context and Practice Casebook*, (Carolina Academic Press 2017) (You may share, rent, or borrow from library. Clips of readings will be presented in class.)
2. Edward J. Imwinkelried & Thomas J. Leach: *California Evidentiary Foundations, 4th Edition* (LexisNexis Publishers, 2009) or e-book version (You may rent this book but I highly recommend buying this book.)
3. David W. Miller & Thomas J. Leach, *Federal & California Evidence Rules* (Aspen Publishers);
4. **The Staircase DVD**: The Wonsowicz casebook uses a documentary movie – *The Staircase* – as illustrative of the role of the rules of evidence we will be studying. I have assigned 29 clips from the movie as **mandatory** “watching.” The faculty staff assistants on the 2nd floor will have a DVD which contains the 29 clips for every student in the class. **Please pick up your DVD before the first class.** You should be able to watch the clips on the DVD on your personal computer or on a computer in the library. If you do not watch the clips before class, a portion of our class discussion will not mean very much. The list of clips will be posted on in this syllabus. You **must return** your DVD copy to the faculty staff assistants at the end of the semester, so that it can be used for other students in future classes. No final grade will be issued until you return your copy of the DVD.
5. Clifford S. Fishman: *A Student’s Guide to Hearsay*, (LexisNexis, 4th Edition 2013) (You may rent this book.)

Guide to Books for Reading Assignments in Syllabus:

TEXT: *Evidence: A Context and Practice Casebook* (I’m using a 2017 version, so the 2012 version may be different. You do not need to “brief” the cases. We will focus more on problems in class than cases to brief.)

CEF BOOK: *California Evidentiary Foundations*

GUIDE TO HEARSAY: *A student’s Guide to Hearsay*

FRE: Federal Rules of Evidence

CEC: California Evidence Code

DVD: *The Staircase*

IV. COURSE REQUIREMENTS

Preparation: Each student is expected to attend class fully prepared to discuss the assigned material. Preparation for class should include carefully reading and analyzing the material assigned from the text book (including text, cases, and problems) and reading each applicable rule of evidence (whether Federal or California) and the accompanying advisory committees notes and legislative history, as well as the sample problems handed out. **It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside of class for each class session.**

Attendance: Regular attendance is vitally important and will be monitored. If you are absent from class more than four times, you are subject to dismissal from the class and exclusion from the final examination.

Exam & Grade: Your grade in this course will be based as follows: 30% Midterm; 70% Final Exam. The midterms and final examination may consist of essay questions, multiple choice questions, true false questions, and something called: “Is it Hearsay” questions. Exams are closed book. The final exam is cumulative for the entire semester.

V. CLASSROOM CELL PHONE & COMPUTER USAGE

Cell Phones: I will not tolerate seeing any cell phone in a student’s hand or on a student’s desk during class time (unless it is an emergency situation, and you have pre-arranged permission by the instructor). **NO PICTURES** will be taken at any time during class or without a person’s direct permission. If my picture shows up on social media in any format without my express consent, I reserve the right to fail the student.

Computers: You may use your laptop computer during class for the purpose of taking notes or other purposes that are directly related to your meaningful participation in class. However, your use of computers in class is a privilege and not a right and the privilege may be withdrawn if you do not use it responsibly. Any use of a computer or **other electronic device** during class that is not directly related to the course, including composing, sending, or reading emails or text messages, instant messaging, searching or browsing the Internet, playing games, and/or viewing movies is **prohibited.**

VI. PROFESSORIAL INFORMATION

1. Office: Adjunct Faculty Office, Classroom, or Cafeteria
2. Office hours: Before class on Tuesdays, or by appointment
3. Phone Office: (562) 256-1488
4. Phone Cell: (818) 599-4519
5. E-mail: professorjudymeyer@yahoo.com; or jlmeier@lacourt.org

COURSE SCHEDULE & ASSIGNMENTS

CLASS/DATE	TOPIC	READING ASSIGNMENT:
Week 1:		
Wednesday 1/17/18	Class Cancelled Your instructor is guest teaching in Israel. I can't wait to tell you all about it. I will share my experience upon my return on Monday 1/22/18. Until then Read your assignments!	Read for next assignment

Week 3:		
Monday 1/29/18	Best Evidence Rule	<p>TEXT:</p> <p>Ch. 9 - Pages 431-439</p> <ul style="list-style-type: none"> - §II: Best Evidence <p>CEF BOOK:</p> <p>Ch. 7 Read the following pages:</p> <ul style="list-style-type: none"> - 7-3 thru 7-6; 7-10 thru 7-15 (introduction) - 7-16 thru 7-18 (originals) - 7-18 thru 7-21 (duplicates) - 7-21 thru 7-36 (no original) - 7-21 thru 7-40 (excuses for no original) <p>FRE: 1001-1008</p> <p>CEC: 250; 255; 260; 1520-1523; 1530-1532</p>
Wednesday 1/31/18	Hearsay	<p>TEXT:</p> <p>Ch. 7 - Pages 231-253</p> <ul style="list-style-type: none"> - §I: Unraveling Hearsay <p>GUIDE TO HEARSAY:</p> <p>Ch. 1 Read the following pages:</p> <ul style="list-style-type: none"> - All <p>Ch. 2 Read the following pages:</p> <ul style="list-style-type: none"> - All <p>CEF BOOK:</p> <p>Ch. 9 Read the following pages:</p> <ul style="list-style-type: none"> - 9-1 thru 9-8 (general law) - 9-15 thru 9-17 (out of court) - 9-8 thru 9-11 (assertive statements) - 9-11 thru 9-12 (assertive acts or conduct) - 9-12 thru 9-15 (non-assertive conduct) - 9-17 thru 9-19 (human declarant) - 9-19 thru 9-20 (truth of matter) - 9-24 thru 9-26 (verbal act) - 9-22 thru 9-24 (effect on listener) - 9-20 thru 9-21 (declarant state of mind) <p>FRE: 801 & 802</p> <p>CEC: 1200-1201 & 225</p> <p>DVD: clips 15-17</p>

Week 4:		
Monday 2/5/18	“Is it Hearsay” Quiz	
Wednesday 2/7/18	Hearsay Exemptions Part 1: <ul style="list-style-type: none"> - Prior Inconsistent Statement - Prior Consistent Statement - Prior Identification 	<p>TEXT:</p> <p>Ch. 7 - Pages 253-267</p> <ul style="list-style-type: none"> - §II: The Hearsay Exemptions <p>CEF BOOK:</p> <p>Ch. 5 Read the following pages:</p> <ul style="list-style-type: none"> - 5-39 thru 5-47 (inconsistent stmts.) - 5-51 thru 5-54 (consistent stmts.) - 5-5 thru 5-8 (prior identification) <p>GUIDE TO HEARSAY:</p> <p>Ch. 3 Read the following pages:</p> <ul style="list-style-type: none"> - All <p>Ch. 4 Read the following pages:</p> <ul style="list-style-type: none"> - 47-66 <p>FRE: 613; 801(d)(1)(A)-(C)</p> <p>CEC: 1235, 1236, 1238, 769, 770, 791</p>
Week 5:		
Monday 2/12/18	Hearsay Exemptions Part 2: <ul style="list-style-type: none"> - Admissions 	<p>TEXT:</p> <p>Ch. 7 Read the following pages:</p> <ul style="list-style-type: none"> - 267-285 <p>GUIDE TO HEARSAY:</p> <p>Ch. 5 Read the following pages:</p> <ul style="list-style-type: none"> - All <p>CEF BOOK:</p> <p>Ch. 9 Read the following pages:</p> <ul style="list-style-type: none"> - 9-26 thru 9-30 (personal admissions) - 9-30 thru 9-37 (adoptive admissions) - 9-37 thru 9-40 (agent admissions) - 9-40 thru 9-42 (employee admissions) - 9-42 thru 9-46 (co-conspirator admissions) <p>FRE: 801(d)(2)(A)-(E)</p> <p>CEC: 1220-1224</p>

Week 6:		
Monday 2/19/18	President's Day - No Class	
Tuesday 2/20/18	<p>Hearsay Exceptions Part 1:</p> <ul style="list-style-type: none"> - Present Sense Impression - Excited Utterance - State of Mind - Statements to Physician <p>Hearsay Exceptions Part 2:</p> <ul style="list-style-type: none"> - Past Recollection Recorded - Business Records - Public Records - Learned Treatise - Ancient Documents - Minor Exceptions 	<p>TEXT: Ch. 7 Read the following pages: - 285-303</p> <p>GUIDE TO HEARSAY: Ch. 8 Read the following pages: - 119 thru 129; 139 thru 161</p> <p>CEF BOOK: Ch. 9 Read the following pages: - 9-72 thru 9-75 (contemporaneous statements) - 9-67 thru 9-72 (excited utterances) - 9-75 thru 9-77 (state of mind) - 9-77 thru 9-79 (subsequent conduct) - 9-79 thru 9-81 (present bodily condition)</p> <p>FRE: 803(1)-(3) CEC: 1240, 1241, 1250-1253 DVD: clips 15-17</p> <p>TEXT: Ch. 7 Read the following pages: - 303-325</p> <p>GUIDE TO HEARSAY: Ch. 9 Read the following pages: - All</p> <p>Ch. 10 Read the following pages: - All</p> <p>CEF BOOK: Ch. 9 Read the following pages: - 9-59 thru 9-61 (refreshing recollection) - 9-56 thru 9-59 (prior recollection recorded) - 9-46 thru 9-52 (business records) - 9-52 thru 9-56 (public records) - 9-61 thru 9-64 (learned treatises)</p> <p>FRE: 612; 803(5)-(8) & (18) CEC: 1237, 1270, 1271, 1341</p>

Week 8:		
Monday 3/5/18	Midterm	
Week 9:		
Monday 3/12/17	Semester Break - No Class	
Week 10:		
Monday 3/19/18	Midterm Review	
Week 11:		
Monday 3/26/18	Lay Opinion & Expert Witnesses	<p>TEXT: Ch. 10 Read the following pages: - 441-491</p> <p>CEF BOOK: Ch. 8 Read the following pages: - 8-2 thru 8-10 (lay opinion) - 8-10 thru 8-16 (expert opinion, qualifications) - 8-21 thru 8-27 (basis for expert opinion) - 8-35 thru 8-41 (giving opinion, explanation, cross) - 8-16 thru 8-21 (the science behind expert opinions)</p> <p>FRE: 701-705; 602 CEC: 720-721; 800-805; 870</p>
Week 12:		
Monday 4/2/18	Social Policy Issues -Subsequent Remedial Measures -Settlements -Guilty Pleas -Insurance	<p>TEXT: Ch. 3 Read the following pages: - 89-117</p> <p>CEF BOOK: Ch. 10 Read the following pages: - 10-55 thru 10-61 (subsequent remedial repairs) - 10-61 thru 10-67 (offers to compromise) - 10-67 thru 10-70 (plea bargain statements) - 296-299 (liability insurance)</p> <p>Ch. 6 Read the following pages: - 6-49 thru 6-53 (liability insurance)</p> <p>FRE: 407-411 CEC: 1151-1155</p>

Week 14:		
Monday 4/16/18	Character Evidence Part 2 - Sexual Assault Evidence	TEXT: Ch. 5 Read the following pages: - 173-184 - 218-230 CEF BOOK: Ch. 6 Read the following pages: - 6-17 thru 6-23 (sexual assault and domestic violence character evidence) FRE: 404(a); 405(a); 412; 413; 414 CEC: 1100; 1101(a); 1103; 1108; 1109
Week 15:		
Monday 4/23/18	Impeachment of Witnesses Part 1: - Bias - Defects in Capacity - Prior Inconsistent Statements - Contradiction Impeachment of Witnesses Part 2: - Impeachment by Character - Rehabilitation of Witness - Forbidden Attacks	TEXT: Ch. 6 Read the following pages: - 185-193 - 209-218 CEF BOOK: Ch. 5 Read the following pages: 5-10 thru 5-11 (impeachment by character generally) 5-36 thru 5-39 (bias) 5-48 thru 5-51 (sensory or mental incapacity) 5-24 thru 5-26 (inconsistent statement – reading only) 5-39 thru 5-47 (inconsistent statement) 5-24 thru 5-26 (contradiction) FRE: 607 CEC: 780; 785; 770 TEXT: Ch. 6 Read the following pages: - 193-209 CEF BOOK: Ch. 5 Read the following pages: 5-11 thru 5-16 (prior bad acts) 5-16 thru 5-18 (character for untruthfulness) 5-26 thru 5-36 (prior convictions) 5-54 thru 5-56 (character for truthfulness) 5-51 thru 5-56 (consistent statements) FRE: 608 CEC: 786; 790; 787; 788

Week 16:		
Monday 4/30/18	Privileges -Attorney-Client -Psychotherapist-Patient Privilege -Marital Privilege	TEXT: Ch. 11 Read the following pages: - 493-530 CEF BOOK: Ch. 10 Read the following pages: 10-3 thru 10-28 FRE: 501 CEC: 950-962; 1010-1027; 990-1007; 970-973; 980-987