

Class Schedule–Fall 2015

| Class# | Day | Date |
|---------------|------------|-------------|
| 1 | Mon | 17-Aug |
| 2 | Wed | 19-Aug |
| 3 | Mon | 24-Aug |
| 4 | Wed | 26-Aug |
| 5 | Mon | 31-Aug |
| 6 | Wed | 2-Sep |
| HOLIDAY | Mon | 7-Sep |
| 7 | Wed | 9-Sep |
| 8 | Mon | 14-Sep |
| 9 | Mon | 21-Sep |
| 10 | Mon | 28-Sep |
| 11 | Mon | 5-Oct |
| 12 | Mon | 12-Oct |
| 13 | Mon | 19-Oct |
| 14 | Mon | 26-Oct |
| 15 | Mon | 2-Nov |
| 16 | Mon | 9-Nov |
| 17 | Mon | 16-Nov |
| 18 | Mon | 23-Nov |

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.

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" | [4-7; 42-45 (State v. Petersen "Staircase" case)] | 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 (US. v. James) | 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 (Old Chief starts at p. 66) | 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) |
| 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 | |
| 4-5 | *Prior domestic violence | | *CEC 1109 | |
| 5 | Practice Exam available for writing; bring answer to Class #6 | | | Practice Exam on Blackboard |

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|--------|--|--------------|---|--|
| 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] |
| 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 |

| Class# | Subject(s) | Text Reading | Rules | Additional |
|--------|---|--------------|--|--|
| 8 | *Religious belief | | *FRE 610; CEC 789 | |
| 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 | | | |
| 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] |

| Class# | Subject(s) | Text Reading | Rules | Additional |
|--------|--|---|---|---|
| 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 |
| 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> |
| 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 |

| Class# | Subject(s) | Text Reading | Rules | Additional |
|--------|---|--------------|--|--|
| 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) |
| 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 |
| 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 | |

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|--------|--|--------------------|--|--|
| 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) |
| 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 | |
| 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 | |
| 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] |

| Class# | Subject(s) | Text Reading | Rules | Additional |
|---------------|---|---------------------|-------------------|--|
| 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 | |