

WESTERN STATE COLLEGE OF LAW

EVIDENCE – Fall 2022

SYLLABUS

Professor Glenn S. Koppel
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1. Objectives and Learning Outcomes:

This course has two objectives. First and foremost, you will develop the analytical skills which are essential for you to “handle” evidence issues, *i.e.*, to identify from the facts the appropriate evidence admissibility issues (e.g., evidence objections) with respect to a given item of evidence offered at trial 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, this 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 Capra & Saltzburg’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 Trial Practice. 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.) identify evidentiary issues, *i.e.* plausible objections to particular items of evidence; ii.) argue the admissibility of particular items of evidence in different factual contexts by applying the evidence rules that you have learned; iii) effectively articulate, in writing and orally, the admissibility issues raised by items of evidence and the appropriate legal analysis applicable to those issues; iv) 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, 2019/Thirteenth edition).

Park and Friedman 2022 Supplement (on Professor Koppel’s LexisNexis web course).

Federal & California Evidence Rules, Thomas Leach and Emily Uhrig (WaltersKluwer, 2020-2021 edition).

3. Optional Books:

Principles of Evidence – Concise Hornbook Series, Capra & Saltzburg (West Academic, 2022/9th 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, 2018/5th 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. You are expected to 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 the 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 in Appendix B. As with any statutory material, legislative history is an essential legal resource for statutory interpretation. When the 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 a bar-tested subject.* You will find the Leach & Uhrig book’s comparison of California and Federal evidence code provisions especially useful in this regard.

When an assignment includes a case from a state jurisdiction that has not adopted the Federal Rules of Evidence, please prepare to state in class how you think that case would have been decided under the Federal Rules.

Keep 25 pages ahead of the last class but re-read before each class so you are ready and sharp to participate in class discussion of the material.

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). *You are required to complete each lesson by the end of the*

week for which it is assigned. 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 your 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=jx6blt h4nhDkDCKSAfJy3i3dXDeLI7hOEGVwk3hF-P4&s=xTaNKzXHGZUS8JCFgsfpk_ph8QIJs-1e65enG6qml-M&e=.](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.cali.org_courses_5753&d=DwIDaQ&c=VJcX3xJwJKggcmYZP-xVNfKwBnVBQf3uSOPll1vxQbo&r=Vg3gvDFWTqHFjmxoTrdjaLGCAfaaoMqGQ9R8nOfNfVo&m=jx6blt h4nhDkDCKSAfJy3i3dXDeLI7hOEGVwk3hF-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.) The LessonLink URL is <https://www.cali.org/courses/9073>.

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, 2 hours of multiple choice and 2 hours of essay. **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 course website. As the semester progresses, if you would like feedback on your answers to some of these exam questions, please make a Zoom appointment through Calendly. Please have your practice exam answer available with you. Before our virtual meeting, 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. 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.C.L. 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.L.’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 let me know, 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. Virtual Office Hours:

I will hold Virtual Office Hours online on Zoom and will meet with students for 15 minute slots on Tuesdays, Thursdays and Fridays from 3:30 p.m. to 5:30 p.m. To make an appointment, click on to <https://calendly.com/gkoppel/prof-koppel-office-hours-fall-2021>. Just follow the instructions to schedule an appointment and to log into Zoom at the appointed time.

If you are unable to show up for a scheduled appointment, please notify me as soon as possible that you are canceling your appointment in order to make room for another student for that time slot. If you are unable to find a time slot on Calendly, I will also be available, as time permits, in my office between 1:00 p.m. to 2:30 p.m.

9. 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.

10. Webcourse: Lexis Classroom

To register for the online portion of the course you will need to use Lexis Classroom (formerly Blackboard). You can access this by going to <http://www.LexisNexis.com/LawSchool>. Click on Lexis Classroom on the top bar and select “add course” to open the course selection page. Select “K” for Koppel and then click on GlennKoppel. Please enroll in your class from this screen.

When accessing the class after you have registered you can once again go from the <http://www.LexisNexis.com/LawSchool> and Lexis Classroom □ My Courses. This will take you to your Lexis Classroom Dashboard, which will display any courses you are enrolled in. Please bookmark that page to avoid having to go back through the Lexis Law School Portal. The URL should look like this: <https://pilotmlslp.route53.lexis.com/>.

11. 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. 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 aesley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

12. 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.

13. 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 UWorld Multiple Choice Assignments</i>
August 24, 29 <i>4 hours</i>	<p>“Making the Record” – Read for background*</p> <p>Introduction to Relevance and Inference (Logical Relevance)</p> <ul style="list-style-type: none"> Note: Probabilistic Analysis of Evidence* <p>Discretion to exclude (Legal Relevance)</p>	<p>1 – 73</p> <p>75– 84</p> <p>84 - 87</p> <p>87 - 96; 100 – 109 (including <i>Ballou v. Henri Studios, Inc.</i>)</p>	<p>FRE 401, 402 CEC 210, 350, 351, 500-522</p> <p>FRE 403; CEC 352 FRE 105; CEC 355</p>
August 31 September 7, 12 <i>6 hours</i>	<p>Relevance and Its Counterweights:</p> <ul style="list-style-type: none"> Character Evidence Prior Sexual Conduct 	<p>109 – 151</p> <p>151 – 172</p>	<p>CALI: “Character Evidence Under Federal Rules”</p> <p>FRE 404, 405, 406; CEC 1101-1103, 1105 FRE 412, 413, 414, 415 CEC 1103, 1106, 1108, 1109</p>
September 14 <i>2 hours</i>	<p>Relevance and Its Counterweights:</p> <ul style="list-style-type: none"> Similar Happenings Subsequent Precautions Offers to Compromise Payment of Medical Expenses Liability Insurance 	172 – 192	<p>FRE 407, 408, 409, 410, 411 CEC 1151, 1152, 1153, 1154, 1155</p>
September 19, 21, 26 <i>6 hours</i>	<ul style="list-style-type: none"> Competency of Witnesses Impeachment and Cross-Examination Rape Shield Statutes 	<p>699 – 707</p> <p>485 – 563</p>	<p>CALI: “Impeachment and Rehabilitation of Witnesses”</p> <p>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</p>
September 28 <i>2 hours</i>	<p>Writings:</p> <ul style="list-style-type: none"> Best Evidence Rule Authentication 	669-697	<p>CALI: “Best Evidence Rule Under the Federal Rules”</p> <p>FRE 1001-1008; CEC 1520-1523, 1550-1551 FRE 901-903; CEC 1400-1421, 1450-1454, 1552-1553, 1530-1532</p>
October 3, 5 <i>4 hours</i>	<ul style="list-style-type: none"> Opinion, Expertise and Experts Scientific Evidence: <i>Daubert test v. Kelly-Frye test</i> 	<p>781-840</p> <p>840-862</p> <p>873-879</p> <p>890-894</p>	<p>CALI: “Expert and Opinion Evidence”</p> <p>FRE 701-706 CEC 800-805, 720, 721, 722</p>

October 10	<ul style="list-style-type: none"> • Midterm 		
October 12,17,19 <i>6 hours</i>	<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 	193-234 234-238 238-248	FRE 801; CEC 1200 <i>Complete and turn in answers in class to Questions 1- 75 by 10/19.</i> FRE 104(a) and (b); CEC 405, 403\ CALI: “The Concept of Hearsay” and “Confrontation of Hearsay Declarants”
October 24, 26 <i>4 hours</i>	<ul style="list-style-type: none"> • Dying Declarations • Spontaneous and Contemporaneous Exclamations 	367-385 280-312	FRE 804(b)(2) and (6); CEC 1242 FRE 803(2); CEC 1240 FRE 803(1); CEC 1241
October 31 November 2 <i>4 hours</i>	<ul style="list-style-type: none"> • Admissions 	249-280	FRE 801(d)(2) CEC 1220, 1221, 1222, 1223
November 7 <i>2 hours</i>	<ul style="list-style-type: none"> • Former Testimony • Declarations Against Interest 	342-353 353-367	FRE 804(b)(1); CEC 1290-1293 FRE 804(b)(3); CEC 1230
November 9, 14 <i>4 hours</i>	<ul style="list-style-type: none"> • State of Mind/Physical Condition (<i>Hillmon</i> Doctrine) • Statement for Medical Diagnosis or Treatment • Prior Identification • Past Recollection Recorded 	399-454 337-342 385-391 391-399	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
November 16, 21 <i>4 hours</i>	<ul style="list-style-type: none"> • Business and Public Records • Multiple hearsay levels • Statements Describing Child Abuse or Domestic Abuse (<i>Ohio v. Clark</i>) • Prior Judgments • Prior Inconsistent Statement • Prior Consistent Statement • Residual Exception – Read for Background * • Questions 76-125 	399-454 454-463 463-466 546-551 551-553 468-474 480-484	FRE 803(6) – 803(7); CEC 1270-1280 FRE 803(8), 803(10) FRE 805; CEC1201 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 at 11/8 class</i>
November 28, 30 December 5 <i>6 hours</i>	Privileges: <ul style="list-style-type: none"> • Attorney-Client • Physician-Patient and Psychotherapist Patient • Marital • Clergy-Penitent 	563-593 593-603 610-617 617-622	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”

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

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