

**WESTERN STATE COLLEGE OF LAW
AT WESTCLIFF UNIVERSITY**

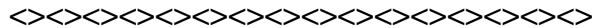
Evidence Practice

Adjunct Professor Kimberly Menninger

kmenninger@occourts.org

Spring 2023

M 6:00 p.m. – 9:00 p.m.



REQUIRED TEXT

Robert Burns, Steven Lubet, Richard Moberly, James H. Seckinger,

Problems and Materials in Evidence and Trial Practice

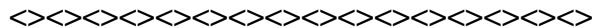
(Lexis/NITA) 6TH Edition

Volumes One and Two

Federal and California Rules of Evidence

Suggested Reading:

Thomas A. Mauet and Warren D. Wolfson, Trial Evidence, (Wolters Kluwer)



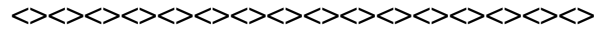
COURSE DESCRIPTION

Welcome Evidence Practice!

This class is a practical course where students will learn how to:

- ◆ Expand their knowledge of and familiarity with the Evidence Code;
- ◆ Admit and exclude various types of evidence in a courtroom;
- ◆ Practice and demonstrate competency and knowledge of the Evidence Code in a mock hearing setting;

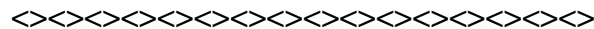
- ◆ Master the art of addressing and responding to evidentiary issues in a public setting, orally and instinctively;
- ◆ Write a trial brief outlining evidentiary motions in limine



LEARNING GOALS

After completion of this course, students should be able to:

- ◆ Evaluate Evidence to determine if it is relevant;
- ◆ Evaluate evidence to determine admissibility;
- ◆ Use the Evidence Code to admit, exclude and limit evidence;
- ◆ Lay a proper foundation for the admission of evidence;
- ◆ Learn how to think and speak on your feet;
- ◆ Research, write and argue evidentiary motions in limine;
- ◆ Draft a trial brief



METHODOLOGY

Each class will be spent working through assigned problems out of the Burns, Lubet and Moberly Volume II Problem book. The problems focus on two cases, one civil and one criminal. We will be working on both cases at the same time so all students should read Volume One before the first day of class. Each class session students will be presenting mock arguments and analysis as an attorney in one of the cases. All students are expected to participate in all of the class mock hearing scenarios. Students will be expected to “know” the factual scenario in Volume One and be able to act as attorneys or witnesses. All problems are assigned in the syllabus and students are allowed and are expected to review the questions in Volume Two, research the law surrounding the issues and be prepared

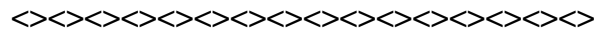
to address them. The Evidence Code (either California or Federal) is necessary as you will be expected to state the code section you are referring to. Additionally, some objections will be case law driven and you will need to be prepared to cite those cases in class argument.

Students will also learn how to draft motions in limine and a trial brief.

You are expected to:

- ◆ Read the materials assigned for each class;
- ◆ Research the Evidence Code and case law to support your positions;
- ◆ Be prepared to argue;
- ◆ Be prepared to be a witness;
- ◆ Actively participate in class-wide discussions of issues raised in the class;
- ◆ Prepare written notes for each assigned problem;
- ◆ Review the notes so that you can speak without them;

This weekly preparation should take you, on average, at least six hours per week if not more.



PREPARATION FOR THE FIRST DAY OF CLASS:

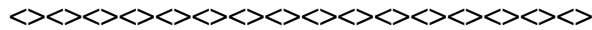
One of the basic themes of this course is the critical role played by the “facts” of the case and your ability to admit or exclude evidence (facts) to support your position. Although there is only one set of facts of an event that are “true”, there are often several possible theories and interpretations of those facts that can be constructed by counsel. These theories will often conflict with each other. A good advocate will need to select a theory they wish to pursue throughout the trial and attempt to have only evidence that supports their theory admitted. Counsel’s theory should be presented throughout the case from the opening to the closing argument, unless the facts change so significantly that the theory can no longer be pursued.

IT IS THEREFORE ABSOLUTELY ESSENTIAL THAT YOU MASTER THE CONTENTS OF VOLUME ONE BEFORE DAY 1.

On DAY 1:

All students will be expected to give an opening statement in either the criminal or civil case as either the Prosecutor, Criminal Defense Attorney, the Plaintiff’s Attorney or the Civil Defense Attorney.

An opening statement is a summary of the facts that bring us to this moment.



ATTENDANCE, EXAMINATIONS, & GRADES

Class attendance is mandatory. Students who miss more than two class sessions are subject to administrative dismissal from the course per the WSCL Attendance Policy (reprinted in the Student Handbook).

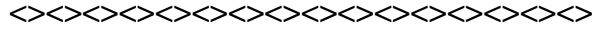
Students earn a numeric grade for the course. The grade will consist of a “mock-trial” mid-term and final exams weekly class projects, the written trial brief and motions in limine.

The breakdown will be:

- ◆ 50 points for class participation and class briefs;
- ◆ 30 points for the final exam;
- ◆ 20 points for the final trial brief;

Exams will be verbal, given in a mock hearing scenario and both will focus on areas evidentiary challenges taken from Volumes 1 and 2.

Reading, research, preparation and advocacy will be expected as students play the varying roles of attorneys each week opposing various legal positions presented. Students will be graded on their knowledge, articulation, and presentation of these issues before the class.

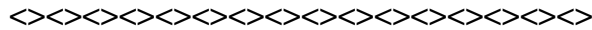


PREPARATION, PARTICIPATION, & PROFESSIONALISM

Participation & Professionalism (P&P): It is expected that each student come prepared to class each week. Preparation for this class will include:

- ◆ Completing assigned reading,
- ◆ Writing required research briefs
- ◆ Researching and reviewing ancillary text and codes

Outside Preparation: You should anticipate that, on average, preparing your weekly case reading and brief writing assignments will take you a minimum of two hours for every one hour of class time. This is a 3 hour class, so it is anticipated that your preparation for this class will take 6 hours each week. Please make sure to schedule time for this commitment.



SYLLABUS

Evidence Practice:

WEEK 1: Monday JANUARY 23, 2023

WEEK 2: Monday JANUARY 30, 2023

WEEK 3: Monday FEBURARY 6,

WEEK 4: Monday FEBRUARY 13, 2023

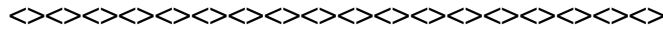
**WEEK 5: Monday FEBRUARY 20, 2023 PRESIDENT'S DAY NO CLASS
but we DO meet on Tuesday the 21st**

WEEK 6: Monday FEBRUARY 27, 2023

WEEK 7: Monday MARCH 6, 2023

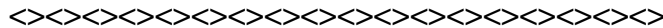
WEEK 8: Monday MARCH 13 NO CLASS SPRING VACATION 3-13-2023 - 3-19-2023

WEEK 9: Monday MARCH 20, 2023
WEEK 10: Monday MARCH 27, 2023
WEEK 11: Monday APRIL 3, 2023
FINALS: Monday April 10, 17, 24, May 1st



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. Dean Espinoza's contact information: (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 (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."



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.

