Course Description

This course will examine the rules governing the admission, exclusion, and presentation of evidence in judicial proceedings. Topics covered in this course include relevancy; authentication; the “Best Evidence” doctrine; categorical rules of exclusion; character and habit evidence; competency of witnesses; examination and impeachment of witnesses; opinion and expert testimony; presentation of evidence; privilege; the hearsay rule and its exceptions; presumptions and burdens of proof; and the scope of judicial notice. The focus of the course is on the Federal Rules of Evidence, upon which many other states model their own rules of evidence.

We will examine the California Evidence Code specifically as well. **One ortwo person/s in each section**\(^1\) will be required each class to report on how the California provisions on the same issue compare with the FRE: see below. You are responsible for previewing the reading and figuring out which rules of evidence are at issue for that day, and then comparing the California and federal versions. You may decide to work together on all that day’s rules, or you may divide them between you: the two of you should coordinate that. Your report should be about three seconds if there is no difference between the California and federal rules. If there is a difference, you should explain to the class the difference in language, whether the difference has any practical effect, and the reason for the difference, usually explained either in the Federal Advisory Committee Notes or the California Commission Comments to the particular rules.

Evidence is a subject which is only alive in a courtroom. We have chosen a text and will conduct class geared to your actual use of the rules in a trial context. Thus, the problems in each assignment will constitute the focus of our classes. It is imperative that you consider and prepare the problems prior to class, just as it is imperative that you identify and prepare for potential evidence issues prior to the start of trial. We will actually perform evidence activities in class most days. When you address the court, either objecting or responding to an objection, you MUST stand, just as you will do in a real courtroom.

**Class Meeting Times**
Per HLP schedule, reflected below

\(^1\) There are 21 class sessions for which California presentations are required. If there are 25 in each section, this means that for 4 of those 21 class sessions, the California presentations should be made in teams of 2 in each section.
Required Texts


Course Grading

Your grade in this course will be determined by your performance on the essay component of the final examination (60%), your performance on the multiple choice/true false component of the final examination (30%), and your class participation (10%). Each professor will write and grade ½ of each student’s essay exam, so that each student will be assessed on the same basis as every other student in the class. Likewise, the professors will each assign ½ of the class participation grade for each student. Finally, both professors will jointly assign the final letter grades for each student.

On the exams, you will be permitted to use the required texts, any materials handed out in class, your own class notes, and any outlines that you have materially participated in creating, meaning that you prepared at least 25 percent of the outline. The use of hornbooks, commercial outlines, notes or outlines prepared by other people, computers, or electronic databases (such as Westlaw) is strictly prohibited.

Workload

This is a rigorous, intellectually challenging course. There is a lot of material to cover. It is also challenging in requiring you to perform in small groups and before the large class, a skill which you will continue to hone throughout your career. That said, this is a beginning Evidence class and is exactly the place to try your skills without fear of failure or ridicule. No one gets it all right, but it is essential to try so you get your performance jitters out of the way and so that you cement the concepts, which is best done by doing.

Attendance

To succeed in this course, it is extremely important that you attend class on a regular basis. We will take attendance each day. Because of the intensive schedule, you may miss only 3 regular class sessions without ramification. For your fourth and each subsequent absence, you will drop a full letter grade on your final grade. If you miss eight class sessions, then, you will automatically fail the course.

“Matinee” Presentations

Each of you is required to make a presentation which illustrates the use of a particular evidentiary rule or concept we have studied. You may use movie clips, news clips, Internet material, or plain old newspaper stories, in any way which seems useful to you. You should be
prepared to a. identify the rule or concept in use and b. critique the use in the context (e.g., in this movie clip, the lawyer does a good job OR the lawyer should have….)

Each of you will have 5-7 minutes. To accommodate everyone, I will cut off your presentation ruthlessly at the 7-minute mark, just as a real judge will cut off a witness or argument which exceeds the allotted time. The two “matinee” dates are July 1 and July 12.
Syllabus/Reading List

Class 1: June 2, 2:30-4:30 (Prof. King-Ries)
Both Sections meet together
Students to do California comparison for Relevance rules:
Chapter 11: Appellate Review (yes, we’ll start at the end of the book:))
A. Appellate Review of Evidentiary Rulings (Text pp. 815-836)
**Note that each assignment gives only the text pages; you are responsible for identifying and reading the rules in question which are identified in the text assignment for the day
Chapter 1: Relevance
B. Relevance (Text pp. xxv-xxix, 3-15)

Class 2: June 3, Section 1:9:30-11:45, Section 2 1:00-3:15 (K-R)
Students:
A. Roles of Judge & Jury (Text pp. 15-19); Prejudice (Text pp. 19-37)
B. Limiting Instructions (Text pp. 37-38)
C. Rule of Completeness (Text pp. 38-39)
D. Relevance of Probabilistic Evidence (Text pp. 40-52)

Class 3: June 8, Section 1: 9:30-11:45, Section 2 1:30-3:45 (K-R)
Students:
Chapter 2: Authentication
A. Authentication of Physical Objects & Written Documents (Text pp. 53-70)
B. Authentication of Audio, Video, Photos, Voices & Electronic Communications (Text pp. 70-85)

Class 4: June 9, Sections 1 and 2: 9:30-11:45 (K-R)
Students:
Chapter 7: The Rule Against Hearsay
A. Declarant and “Truth of the Matter Asserted” (Text pp. 415-432)

Class 5: June 11, Section 1: 9:30-11:45, Section 2: 1:30-3:45 (K-R)
Students:
A. “Assertion” (Text pp. 432-450)
B. Statutory Nonhearsay: Prior Statement by a Witness (Text pp. 450-467)
C. Statutory Nonhearsay: Party Admissions (Text pp. 467-482)

Class 6: June 14, Section 1: 9:30-11:45, Section 2: 1:00-3:15 (K-R and Ford)
Students:
A. Statutory Nonhearsay: Party Admissions (cont’d) (Text pp. 482-493)
B. Hearsay Exceptions: Present Sense Impressions & Excited Utterances (Text pp. 493-504)
C. Statements for Medical Diagnosis & Treatment (Text pp. 504-511)
D. State of Mind (Text pp. 511-524)

**********EVIDENCE CAMPFIRE**********

Profs. Ford and King-Ries
MONDAY, JUNE 14
Potluck: we will provide smores
We will organize your contributions via discussion board

Class 7: June 16, Section 1: 9:30-11:45, Section 2: 1:30-3:45 (K-R)
Students:
A. Past Recollection Recorded (Text pp. 524-532)
B. Business Records (Text pp. 532-542)
C. Public Records (Text pp. 542-557)
D. Prior Court Judgments (Text pp. 557-559)

Class 8: June 21, Sections 1 and 2: 1:00-3:15 (K-R)
A. Reputation & Personal or Family History (Text pp. 559-568)
B. Learned Treatises & Other Documents (Text pp. 568-577)
C. Unavailability (Text pp. 577-586)
D. Former Testimony (Text pp. 586-599)

Class 9: June 24, Section 1: 9:30-11:45, Section 2: 3:15-5:30 (K-R)
Students:
A. Dying Declarations (Text pp. 599-610)
B. Statements Against Interest (Text pp. 611-624)
C. Forfeiture by Misconduct (Text pp. 624-632)
D. Residual Exception (Text pp. 632-640)

Class 10: June 25, Section 1: 9:30-11:45, Section 2: 1:00-3:15 (K-R)
Students:
A. Confrontation Clause (Text pp. 640-677)

Class 11: June 28, Combined Sections: 9:30-11:45 (K-R)
Students:
A. Confrontation Clause (Text pp. 677-708)

Class 12: July 1, Section 1: 12:45-3:00, Section 2: 3:15-5:35 (K-R)
MATINEE 1

Class 13: July 6, Section 1: 9:30-11:45; Section 2: 1:00-3:15 (Ford)
Students:
Chapter 3: Relevance & Prejudice Refined
A. Character Evidence (Text pp. 87-120)
B. Character Evidence in Sexual Assault Cases (Text pp. 120-132)
C. Habit Evidence (Text pp. 132-138).

Class 14: July 7, Combined Sections: 12:45-3:00 (Ford)
Students:
A. Subsequent Remedial Measures (Text pp. 138-153)
B. Compromises, Medical Expenses, and Liability Insurance (Text pp. 153-159)
C. Pleas and Plea Discussions (Text pp. 159-162)
Chapter 4: Witness Qualification, Competency, and Examination
D. Competency (Text pp. 163-182)
E. Oath (Text pp. 182-185)

Class 15: July 9, Combined Sections: 9:30-11:45 (Ford)
Students:
A. Direct & Cross-Examination (Text pp. 185-197)
B. Personal Knowledge (Text pp. 197-200)
C. Judge’s Involvement in Witness Examination (Text pp. 201-203)
D. Lay Witness Testimony (Text pp. 203-211)
E. Qualification of Expert Witnesses (Text pp. 211-216)
F. Reliability of Expert Witness Testimony (Text pp. 216-226)

Class 16: July 12, Section 1:9:30-11:45, Section 2: 1:30-3:45 (Ford)
Students:
MATINEE 2

Class 17: July 14, Combined Sections: 1:30-3:45 (Ford)
Students:
A. A Closer Look at Daubert (Text pp. 226-244; 251-255)
B. Bases for Expert Testimony (Text pp. 255-259)
C. Ultimate Issue Rule (Text pp. 259-267)
D. Exclusion and Sequestration of Witnesses (Text pp. 272-282)

Class 18: July 19, Section 1: 9:30-11:45, Section 2: 1:00-3:30 (Ford)
Students:
Chapter 5: Testimonial Privileges
A. Introduction (Text pp. 283-287)
B. Attorney-Client Privilege (Text pp. 287-318)
Class 19: July 20, Combined Sections: 9:30-11:45 (Ford)
  Students:
  A. Spousal Privilege (Text pp. 318-335)
  B. Psychotherapist Privilege (Text pp. 335-348)
  C. Parent-Child Privilege (Text pp. 348-360)
  D. Clergy Privilege (Text pp. 360-370)

Class 20: July 21, Section 1: 9:30-11:45, Section 2: 1:30-3:45 (Ford)
  Students:
  A. Report-Source Privilege (Text pp. 370-384)
  Chapter 6: The “Best Evidence” Rule
  B. Best Evidence Rule (Text pp. 385-413)

Class 21: July 22, Combined Sections: 1:00-3:15 (Ford)
  Students:
  Chapter 8: Judicial Notice
  B. Judicial Notice (Text pp. 701-721)

Class 22: July 23, Section 1: 9:30-11:45, Section 2: 1:30-3:45 (Ford)
  Students:
  Chapter 10: Impeachment & Rehabilitation of Witnesses
  A. Introduction; Character for Untruthfulness (Text pp. 763-774)
  B. Prior Convictions (Text pp. 774-787)

Class 23: July 27, Section 1: 9:30-11:45, Section 2: 1:30-3:45 (Ford)
  Students:
  A. Bias or Motivation (Text pp. 788-794)
  B. Sensory Perception (Text pp. 794-797)
  C. Contradiction (Text pp. 797-799)
  D. Prior Inconsistent Statement (Text pp. 799-805)
  E. Rehabilitation (Text pp. 805-810)
  F. Impeachment of Hearsay Declarants (Text pp. 810-814)

Class 24: July 28, BOTH SECTIONS 9:30-11:45 (Joint)
  Exam review session

FINAL EXAM: August 5 BOTH SECTIONS 9:30-12:30