

WESTERN STATE UNIVERSITY COLLEGE OF LAW

EVIDENCE II
SECTION 211.B: Spring 2012

SYLLABUS

Professor Glenn S. Koppel
Office: Third Floor, Room 302C
Phone: 714-459-1143

1. Objectives:

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.

2. Required Texts:

Cases and Materials on Evidence (Eleventh Edition), Waltz and Park.

Federal & California Evidence Rules (2009 Edition), David W. Miller (Aspen).

3. Optional Hornbook:

Principles of Evidence – Concise Hornbook Series, Graham C. Lilly; West Publishing Co., 2009 5th ed.

4. “In-Class” Methodology:

Evidence law was, at one time, universally derived from case law (common law). Today, many jurisdictions, including the federal courts, have codified their respective laws of evidence. 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. Bring the Waltz & Park case book to each class session.

The Federal Rules of Evidence are the centerpiece of the course. When assigned casebook material refers to a Federal Rule of Evidence, read both the text of the rule in Appendix A of the Waltz & Park casebook and the related legislative history material in Appendix B. As with any statutory material, legislative history is an essential resource for statutory interpretation. When 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 now a bar-tested subject.* You will find the Miller book’s comparison of California and Federal evidence code provisions especially useful in this regard.

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

When a class ends in the middle of a syllabus assignment, prepare for the next class by reviewing that assignment as well as any new material assigned for that next class.

5. Exams and Grading:

There will not be a mid-term exam. There will be a three-hour, “closed-book,” final examination. The final exam will consist of a multiple choice component (1 1/2 hours) and an essay component (1 1/2 hours). **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.**

I will post Evidence II final exams on the course website. As the semester progresses, if you would like feedback on your answers to some of these exam questions, please make an appointment (reserve time in the Appointment Book at the Reception Desk on the Third Floor). Before meeting with me, make sure you have compared your own answer with the posted issue analysis. Please bring your practice exam answer with you to your consultation.

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. You will be expected to stay sufficiently ahead of the class in your preparation to insure your readiness to participate for each class. 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.U. 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 TWO (2) CLASSES WILL RECEIVE A GRADE OF “F” AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES.**

ALSO BE AWARE THAT, PURSUANT TO W.S.U.’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 have notified the Dean of Students, 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. 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.

9. Office Hours:

Please make appointments through the Faculty Appointment Book located at the front desk in the Faculty Office Suite on the third floor. My office hours will be contained in the Appointment Book. If you cannot keep a scheduled appointment, please call either Cindy Sickinger or me as soon as possible to cancel your appointment so that another student can see me during that time slot. I will also be available the rest of the week, as time permits.

| <i>Week</i> | <i>Subject</i> | <i>Reading Assignment</i> | <i>Computer Aided Instruction Assignment</i> |
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| 1, 2 & 3 | Opinion: Lay and Expert Hearsay Rationale and Meaning Questions 1 - 75 | 742 – 778; 785 – 786; 814 - 830 398 – 400; 184 - 217 (W & P) 218 - 221 (W & P) | “Hearsay from Square One: The Definition of Hearsay” “The Concept of Hearsay” |
| 4 | Dying Declarations Preliminary Questions of Fact Spontaneous Exclamations | 314 – 321 (W & P) FRE 104 (a) and (b) 221 – 235 (W & P) | |
| 5 | Admissions | 235 – 264 (W & P) | “The Hearsay Rule and Its Exceptions” |
| 6 | Former Testimony Declarations Against Interest | 264 – 275 (W & P) 275 – 287 | |
| 7 | State of Mind, Physical Condition | 288 – 311 (W & P) | |
| 8 | Prior Identification Past Recollection Recorded Business Records, Public Records | 321 – 326 (W & P) 326 – 337 (W & P) 338 – 377 (W & P) | |
| 9 | Business Records, Public Records (Continued) Miscellaneous Exceptions | 377 – 384 (W & P) | |
| 10 | Questions 76 – 125 The Confrontation Clause. | 299 – 303 (W & P) 400 – 424 (W & P) | |
| 11 & | Attorney-Client Privilege | 528 – 554 (W & P) | |

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| 12 | | | |
| 13 & 14 | Physician-Patient Privilege Marital Privileges Miscellaneous Privileges Government Privileges (Read for Background)* | 554 – 579 (W & P) 579 – 585 (W & P) 585 – 606 (W & P) 607 – 632 (W & P) | |
| | Final Examination | | |

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

