

WESTERN STATE UNIVERSITY COLLEGE OF LAW

EVIDENCE II Section 212B

SPRING 2012 SYLLABUS

Tuesdays and Thursdays 10:45 AM- 12:15 PM

Professor Robert Molko

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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.

2009 Federal & California Evidence Rules, David W. Miller, Aspen Publisher

Printed on Facing Pages for Comparative Study

3. Optional books:

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

Evidence-A Concise Comparison of the Federal Rules with the California Code, Miguel Mendez, West Publishing Co., 2010 Edition

4. “In-Class” Methodology:

Evidence law was, at one time, universally derived from case law (common law). Today, many jurisdictions, including California and 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. Brief all the assigned reading cases. Bring **both** the Waltz & Park case book **and** the Miller rules book to *each* class session.

The *Restyled Federal Rules of Evidence (FREs)* and the California Evidence Code are the centerpieces of the course. *California evidence law is now a bar-tested subject.* The “*Restyled FREs*” took effect on December 1, 2011. This means that when you take the California Bar exam (obviously after December 2011), you will be tested on the Restyled FREs and the California Evidence Code. In order to understand the Restyled FREs, you will need to understand the previous FREs and their legislative and case history that you will find in the Miller book. Therefore, when the assigned casebook material refers to any rule of evidence, you must find and read:

- A) The corresponding comparative facing pages in part I of the Miller book
 - B) The text of the corresponding federal rule and related legislative history material in part II of the Miller book
 - C) The corresponding language in the “Restyled FREs” [I will post a comparative chart on the class’ webcourse] and note the differences, if any, between the restyled FRE and the previous FRE.
- and
- C) The text and related legislative and law review commission comments of the corresponding California Evidence Code section in part III of the Miller book.

As with any statutory material, legislative history is an essential resource for statutory interpretation. Please prepare to address in class how a particular California Evidence Code section differs from its FRE counterpart, and how, if at all, the restyled FRE differs from the present FRE. 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 another jurisdiction that has not adopted the Federal Rules of Evidence, please prepare to address in class how you think the case would be decided under the Federal Rules (both the previous and the Restyled ones) and the California Evidence Code. The class assignments include all the Hypotheticals in the assigned pages of Waltz and Park. Be prepared to discuss these in class under both Federal rules and California 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.

We will be using the Clicker system during the class. Please purchase a Clicker before the start of the semester and bring it with you at every class. This is a mandatory requirement for the class.

5. 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. 15% of your semester grade will be based on your preparation for class, your attendance, your class participation and any required assignments.

6. Exams and Grading

There will be a “closed-book” mid-term exam in essay format which will count as 15% of your final grade. There will also be a three-hour, “closed-book” final examination which will count as 70% of your final grade. The final exam will consist of a multiple choice component and an essay component. **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.** The remaining 15% of your semester grade will be based on your preparation for class, your attendance, your class participation and any required assignments. As the semester progresses, I may indicate in class and/or the webcourse any additional required assignments. It is your responsibility to be aware of any such assignments and their due dates. You should check the webcourse site regularly for any changes in the syllabus and/or any assignments.

After the first weeks of class, some past essay examinations will be placed on reserve in the Library and/or the webcourse site. 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). You must email me your practice exam question and answer before your consultation so that I can review them beforehand.

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 MISS MORE THAN FOUR (4) CLASSES, YOU WILL RECEIVE A GRADE OF “F” AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES. Students leaving and returning to their seats, while class is in session, disrupt the concentration of students and, therefore, the learning environment. Please refrain from walking in and out during the class unless it is absolutely necessary. Cell phones must be turned off during class **and you must not access the internet** during class unless specifically requested to by me. No Texting/Tweeting is allowed. You will be asked to leave the classroom for any violation of these rules and you will be deemed absent for that day also.

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 at a later date, please notify me so that I can make the appropriate changes on the chart.

9. Office Hours: Tuesdays and Thursdays 12:30 PM-2:30PM

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. As a courtesy to other students, do not sign up for a “block” of consecutive appointments, or sign up for multiple consecutive weekly appointments all at once. If needed, I will always find time to meet with you. Please put your email address and your telephone number on the appointment list, so that I may contact you if I have to reschedule your appointment. If you are running late to an appointment or if you cannot keep a scheduled appointment, please email me AND call a faculty secretary and advise her as soon as possible (Sameen Farooq 714-459-1196; Cindy Sickinger 714-459-1126; Bonnie Manning 714-459-1128)

EVIDENCE II SPRING 12 SYLLABUS

<i>Week</i>	<i>Subject</i>	<i>Reading Assignment and Computer Aided Instruction Assignment</i>	<i>Federal Rule of Evidence and California Evidence Code (Additional Reading Assignment)</i>
1, 2 & 3	<ul style="list-style-type: none"> • Hearsay Rationale and Meaning • Questions 1 - 75 	184 - 217 (W & P) CALI "Hearsay from Square One: The Definition of Hearsay" 217 - 221 (W & P)	FRE 801 Ca. E.C. 1200
4	<ul style="list-style-type: none"> • Dying Declarations • Preliminary Questions of Fact • Spontaneous Exclamations • Present Sense Impression 	314 – 321 (W & P) 221 – 235 (W & P) CALI "The Concept of Hearsay"	FRE 804(b)(2), Ca. E.C.. 1242 FRE 104(a) and (b) Ca. E.C. 405,403 FRE 803 (2) Ca. E.C. 1240, 1241 FRE 803 (1)
5	<ul style="list-style-type: none"> • Admissions 	235 – 264 (W & P) CALI "The Hearsay Rule and Its Exceptions"	FRE 801(d)(2) Ca. E.C. 1220,1221,1222, 1223
6	<ul style="list-style-type: none"> • Former Testimony • Declarations Against Interest 	264 – 275 (W & P) 275 - 288	FRE 804(b)(1), Ca. E.C. 1290-1293 FRE 804(b)(3), Ca. E.C. 1230
7	<ul style="list-style-type: none"> • State of Mind • MIDTERM? • Statement for Purposes of Medical Diagnosis or Treatment 	288 – 311 (W & P) 311 – 314	FRE 803(3), Ca. E.C. 1250, 1251, 1252, 1260, 1261 FRE 803(4), Ca. E.C. 1253
8	<ul style="list-style-type: none"> • Prior Identification • Past Recollection Recorded • Business Records, Public Records 	321 – 326 326 – 337 338 – 377	FRE 801(d)(1)(C), Ca. E.C. 1238 FRE 803(5), Ca. E.C. 1237 FRE 803(6)- 803(8), Ca.E.C..1270-1280

9	<ul style="list-style-type: none"> • Business Records, Public Records (Continued) • Miscellaneous Exceptions • Prior Inconsistent Statement • Prior Consistent Statement • Residual Exception 	377 – 384	<p>FRE 801(d)(1)(A), Ca. E.C. 1235</p> <p>FRE 801(d)(1)(B), Ca. E.C. 1236, 791</p> <p>Only FRE 807. None in Ca.</p>
10	<ul style="list-style-type: none"> • Questions 76 – 125 • Future of Hearsay (including the Confrontation Clause) 	384-388 389 - 430	<p><i>Crawford v. Washington et al</i></p> <p><i>Melendez-Diaz(2009)</i> 129 S. Ct. 2527</p> <p><i>Michigan v. Bryant</i> (2011) 131S. Ct. 1143</p> <p><i>Bullcoming v. New Mexico(2011)</i> 131 S. Ct. 2705</p> <p><i>Williams v. Illinois(2012)</i>U.S.S.Ct.</p>
11 & 12	<ul style="list-style-type: none"> • Privileges • Attorney-Client Privilege • Physician-Patient • Psychotherapist-Patient • Marital 	528– 554 554 – 579 579-585	<p>FRE 501, Ca. E.C. 911-919</p> <p>Ca. E.C. 950-962</p> <p>Ca. E.C. 990- 1007</p> <p>Ca. E.C. 1010-1027</p> <p>Ca. E.C. 970-973, 980-987</p>
13 & 14	<ul style="list-style-type: none"> • 5th Amendment • Clergy-Penitent • News-person’s • Sexual Assault Victim-Counselor • D. Violence Victim-Counselor • Trade secret • Government Privileges 	585-606 607-632	<p>5th A., Ca. E.C. 930, 940</p> <p>Ca. E.C. 1030-1034</p> <p>Ca. E.C. 1070</p> <p>Ca. E.C. 1035-1036</p> <p>Ca. E.C. 1037-1037.7</p> <p>Ca. E.C. 1060-1061</p>
FINAL Examination			