

# EVIDENCE SUMMER SEMESTER 2018 SYLLABUS

Judge Judith L. Meyer  
Room TBA

Tuesday 6:00 pm – 9:30 pm/Thursday 6:00 pm – 9:30 pm

## I. REQUIRED BOOKS FOR PURCHASE:

1. Edward J. Imwinkelried & Thomas J. Leach, *California Evidentiary Foundations, 4<sup>th</sup> Edition* (LexisNexis Publishers, 2009 ISBN: 9781422473047 or e-ISBN: 9781579115678)
2. Clifford s. Fishman, *A Student's Guide to Hearsay [Revised Fourth Edition]* (Carolina Academic Press, LLC, ISBN 9781422493663);
3. David W. Miller & Thomas J. Leach, *Federal & California Evidence Rules* (Aspen Publishers ISBN 9781454880547);

### ADDITIONAL READING VIA HANDOUTS:

4. Pavel Wonsowicz: *Evidence: A Context and Practice Casebook*  
Chapter sections will be included online for reading. **No need to purchase the book.**

## III. COURSE REQUIREMENTS

Each student is expected to attend class fully prepared to discuss the assigned material. Preparation for class should include carefully reading and analyzing the material assigned from the Mueller and Kirkpatrick text book (including text, cases, and problems) and reading each applicable rule of evidence (whether Federal or California) and the accompanying advisory committee's notes and legislative history, as well as the sample scenarios for foundation. Regular attendance is vitally important and will be monitored. If you are absent from class more than four times, you are subject to dismissal from the class and exclusion from the final examination.

Your grade in this course will be based as follows: 40% Midterm; 50% Final Exam; Class Participation 10%. The midterms and final examination will consist of both short essay questions and multiple choice questions. In addition, I reserve the right to increase your grade by .1 in recognition of outstanding attendance and classroom participation or to decrease your grade for extremely poor attendance and/or unsatisfactory classroom participation.

## IV. READING ASSIGNMENTS

### **Guide to Books for Reading Assignments:**

**TEXT:** Evidence: A Context and Practice Casebook, by Pavel Wonsowicz

**CEF BOOK:** California Evidentiary Foundations

**GUIDE TO HEARSAY:** *A student's Guide to Hearsay [Revised 4<sup>th</sup> Ed.]*

**FRE:** Federal Rules of Evidence

**CEC:** California Evidence Code

**DVD:** *The Staircase* – viewed in class

## V. CLASSROOM COMPUTER USAGE

You may use your laptop computer during class for the purpose of taking notes or other purposes that are directly related to your meaningful participation in class. However, your use of computers in class is a privilege and not a right and the privilege may be withdrawn if you do not use it responsibly. I hereby take judicial notice (*see* Federal Rule of Evidence 201) that the use of a computer in class for activities or purposes unrelated to the course causes a significant distraction for other students and severely disrupts the ability of those students to participate fully in class. **Therefore, any use of a computer or other electronic device during class that is not directly related to the course, including composing, sending, or reading emails or text messages, instant messaging, searching or browsing the Internet, playing games, and/or viewing movies is prohibited. AND, IF I FIND YOU TAKING PICTURES OF MYSELF WHILE TEACHING THIS CLASS AND POSTING THEM ON FACEBOOK, TWITTER OR ANY OTHER SOCIAL MEDIA SITE, YOU FAIL MY CLASS!!!**

## VI. PROFESSORIAL INFORMATION

1. Office: Adjunct Faculty Office, Classroom, Cafeteria, or wherever else we decide to meet.
2. Office hours: Before class on Tuesdays, or by appointment
3. Phone Office: (562) 256-1488
4. Phone Cell: (818) 599-4519
5. E-mail: [professorjudymeyer@yahoo.com](mailto:professorjudymeyer@yahoo.com)

## VII. INTRODUCTION TO EVIDENCE

This course consists of the study of the rules and principles that regulate what is and what is not admissible at trial. But it is much more than that. It includes the examination of the nature of truth and knowledge and the extent to which one can predict human behavior. Evidence law is particularly important in our adversary system due to the system's reliance on "lay" jurors to decide the facts in most cases and the central role played by partisan advocates in deciding which evidence to present at trial. The rules of evidence reflect a fundamental mistrust of jurors (due to their perceived inability to give proper weight to certain kinds of evidence) and a definite distrust of partisan lawyers (due to their loyalty to clients in presenting evidence). The course will focus primarily on the federal rules of evidence, because they control proceedings in federal courts and in the forty-two states that have adopted the federal rules in whole or in substantial part. However, we will also examine the California Evidence Code from time to time. California is one of the few states that has not adopted the federal rules, having codified its evidence code a number of years before the federal rules were enacted. There is substantial agreement between the two approaches, but there are also significant areas of conflict, which we will discuss.

A serious study of the rules of evidence provides a wonderful blend of theory and practice. Of course, the rules are first and foremost for lawyers and judges who participate directly in the justice system, and they exist for the extremely practical purpose of deciding whether proffered

evidence is admissible or not. At the same time, the rules invite us to consider the theoretical dimension of truth-seeking. We must confront the questions: What is truth? Do trials exist for the purpose of uncovering the truth? What responsibility should the judge play (as opposed to jurors) in deciding issues of evidence? What is the proper balance between competing goals such as efficiency and fairness? My hope is that at the end of the course you will have developed mastery over the rules so that you can apply them to questions of admissibility, but I hope that you will have also thought deeply about the policies and theories behind the rules and that you will be able to critique the rules in light of the strengths or weaknesses of their underlying bases.

## COURSE SCHEDULE & ASSIGNMENTS

CLASS/DATE	TOPIC	READING ASSIGNMENT:
1. Thursday 5/17/18	Introduction to Evidence	<p><b>TEXT:</b>  <b>Ch. 1</b> Read the following pages:                      - 1-10; 33</p> <p><b>CEF BOOK:</b>  <b>Ch. 1</b> Read the following pages:                      - 1-1 thru 1-4 (introduction)</p> <p><b>FRE:</b> 101-105  <b>CEC:</b> 402-406; 355-356  <b>DVD:</b> Clips 1</p>
	Direct & Cross Examination	<p><b>CEF BOOK:</b>  <b>Ch. 1</b> Read the following pages:                      - 1-4 thru 1-6 (direct examination)                      - 1-6 thru 1-8 (cross examination)</p> <p><b>Ch. 12</b> Read the following pages:                      - 12-2 thru 12-8 (stipulations)</p> <p><b>FRE:</b> 611-612  <b>CEC:</b> 760-767; 773</p>
	Judicial Notice	<p><b>TEXT:</b>  <b>Ch. 1</b> Read the following pages:                      - 33-36</p> <p><b>CEF BOOK:</b>  <b>Ch. 12</b> Read the following pages:                      - 12-8 thru 12-19 (judicial notice)</p> <p><b>FRE:</b> 201  <b>CEC:</b> 450-452</p>
	Witness Competency	<p><b>TEXT:</b>  <b>Ch. 1</b> Read the following pages:                      - 10-16</p> <p><b>CEF BOOK:</b>  <b>Ch. 3</b> Read the following pages:                      - 3-3 thru 3-5(Competency Generally)                      - 3-5 thru 3-9 (Child as witness)                      - 3-26-thru 3-29 (Judges &amp; Jurors - as witnesses)                      - 3-29 thru 3-32 (Attorney as witness)</p> <p><b>FRE:</b> 601-606  <b>CEC:</b> 700-704, 710; 1150</p>

<p><b>2. Tuesday</b> <b>5/22/18</b></p>	<p>Burdens of Proof, Persuasion &amp; Presumptions</p> <p>Relevance</p> <p>Authentication</p>	<p><b>TEXT:</b> <b>Ch. 1</b> Read the following pages: - 36-40</p> <p><b>TEXT:</b> <b>Ch. 2</b> Read the following pages: - 43-75</p> <p><b>CEF BOOK:</b> <b>Ch. 2</b> Read the following pages: - All</p> <p><b>FRE:</b> 401-403; 105-106 <b>CEC:</b> 210; 350-352; 355-356 <b>DVD:</b> Clips 2-7</p> <p><b>TEXT:</b> <b>Ch. 9</b> Read the following pages: - 423-431</p> <p><b>CEF BOOK:</b> <b>Ch. 4</b> Read the following pages: - 4-4 thru 4-8 (Intro &amp; general knowledge ) - 4-88 thru 4-93 (tangible objects) - 4-9 thru 4-18 (writings) - 4-62 thru 4-63 (e-mail) - 4-40 thru 4-41; 4-49 thru 4-55 (telephone calls) - 4-55 thru 4-62 (tape recordings) - 4-88 thru 4-93 (physical evidence) - 4-94 thru 4-96 (photograph) - 4-101 thru 4-104 (x-ray) - 4-21 thru 4-32 (computer print-out) - 4-112 thru 4-119 (scientific evidence; radar)</p> <p><b>FRE:</b> 901-902 <b>CEC:</b> 643; 1400-1402; 1413-1421; 1452; 1530-1532 <b>DVD:</b> clip 23</p>
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<p><b>4. Tuesday</b> <b>5/29/18</b></p>	<p>Hearsay Continued</p> <p>Hearsay Exemptions Part 1:</p> <ul style="list-style-type: none"> <li>- Prior Inconsistent Statement</li> <li>- Prior Consistent Statement</li> <li>- Prior Identification</li> </ul>	<p>Hearsay Quiz – In Class Exercise</p> <p><b>TEXT:</b></p> <p><b>CEF BOOK:</b></p> <p><b>Ch. 5</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 5-39 thru 5-47 (inconsistent stmts.)</li> <li>- 5-51 thru 5-54 (consistent stmts.)</li> <li>- 5-5 thru 5-8 (prior identification)</li> </ul> <p><b>GUIDE TO HEARSAY:</b></p> <p><b>Ch. 3</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- All</li> </ul> <p><b>Ch. 4</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 47-66</li> </ul> <p><b>FRE:</b> 613; 801(d)(1)(A)-(C)</p> <p><b>CEC:</b> 1235, 1236, 1238, 769, 770, 791</p>
<p><b>5. Thursday</b> <b>5/31/18</b></p>	<p>Hearsay Exemptions Part 2:</p> <ul style="list-style-type: none"> <li>- Admissions</li> </ul>	<p><b>TEXT:</b></p> <p><b>Ch. 7</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 267-285</li> </ul> <p><b>GUIDE TO HEARSAY:</b></p> <p><b>Ch. 5</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- All</li> </ul> <p><b>CEF BOOK:</b></p> <p><b>Ch. 9</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 9-26 thru 9-30 (personal admissions)</li> <li>- 9-30 thru 9-37 (adoptive admissions)</li> <li>- 9-37 thru 9-40 (agent admissions)</li> <li>- 9-40 thru 9-42 (employee admissions)</li> <li>- 9-42 thru 9-46 (co-conspirator admissions)</li> </ul> <p><b>FRE:</b> 801(d)(2)(A)-(E)</p> <p><b>CEC:</b> 1220-1224</p>

<p><b>6. Tuesday 6/5/18</b></p>	<p>Hearsay Exceptions Part 1:</p> <ul style="list-style-type: none"> <li>- Present Sense Impression</li> <li>- Excited Utterance</li> <li>- State of Mind</li> <li>- Statements for Medical Diagnosis or Treatment</li> </ul> <p>Hearsay Exceptions Part 2:</p> <ul style="list-style-type: none"> <li>- Past Recollection Recorded</li> <li>- Business Records</li> <li>- Public Records</li> <li>- Learned Treatise</li> <li>- Ancient Documents</li> <li>- Minor Exceptions</li> </ul>	<p><b>TEXT:</b></p> <p><b>Ch. 7</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 285-303</li> </ul> <p><b>GUIDE TO HEARSAY:</b></p> <p><b>Ch. 8</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 119 thru 129</li> <li>- 139 thru 161</li> </ul> <p><b>CEF BOOK:</b></p> <p><b>Ch. 9</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 9-72 thru 9-75 (contemporaneous statements)</li> <li>- 9-67 thru 9-72 (excited utterances)</li> <li>- 9-75 thru 9-77 (state of mind)</li> <li>- 9-77 thru 9-79 (subsequent conduct)</li> <li>- 9-79 thru 9-81 (present bodily condition)</li> </ul> <p><b>FRE:</b> 803(1)-(3)</p> <p><b>CEC:</b> 1240, 1241, 1250-1253</p> <p><b>DVD:</b> clips 15-17</p> <p><b>TEXT:</b></p> <p><b>Ch. 7</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 303-325</li> </ul> <p><b>GUIDE TO HEARSAY:</b></p> <p><b>Ch. 9</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- All</li> </ul> <p><b>Ch. 10</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- All</li> </ul> <p><b>CEF BOOK:</b></p> <p><b>Ch. 9</b> Read the following pages:</p> <ul style="list-style-type: none"> <li>- 9-59 thru 9-61 (refreshing recollection)</li> <li>- 9-56 thru 9-59 (prior recollection recorded)</li> <li>- 9-46 thru 9-52 (business records)</li> <li>- 9-52 thru 9-56 (public records)</li> <li>- 9-61 thru 9-64 (learned treatises)</li> </ul> <p><b>FRE:</b> 612; 803(5)-(8) &amp; (18)</p> <p><b>CEC:</b> 1237, 1270, 1271, 1341</p>
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<p><b>11. Thursday 6/21/18</b></p>	<p>Character Evidence Part 2 -Habit -MIMIC</p> <p>Character Evidence Part 3 - Sexual Assault Evidence</p>	<p><b>TEXT:</b> <b>Ch. 4</b> Read the following pages: - 154-158</p> <p><b>CEF BOOK:</b> <b>Ch. 6</b> Read the following pages: - 6-27 thru 6-30 (Habit) - 6-30 thru 6-41 (MIMIC) - 6-42 thru 6-49 (Similar Occurrences Evidence)</p> <p><b>FRE:</b> 406 <b>CEC:</b> 1105</p> <p><b>TEXT:</b> <b>Ch. 5</b> Read the following pages: - 173-184 - 218-230</p> <p><b>CEF BOOK:</b> <b>Ch. 6</b> Read the following pages: - 6-17 thru 6-23 (sexual assault and domestic violence character evidence)</p> <p><b>FRE:</b> 404(a); 405(a); 412; 413; 414 <b>CEC:</b> 1100; 1101(a); 1103; 1108; 1109</p>
<p><b>12. Tuesday 6/26/18</b></p>	<p>Impeachment of Witnesses Part 1: - Bias - Defects in Capacity - Prior Inconsistent Statements - Contradiction</p>	<p><b>TEXT:</b> <b>Ch. 6</b> Read the following pages: - 185-193 - 209-218</p> <p><b>CEF BOOK:</b> <b>Ch. 5</b> Read the following pages: - 5-10 thru 5-11 (impeachment by character generally) - 5-36 thru 5-39 (bias) - 5-48 thru 5-51 (sensory or mental incapacity) - 5-24 thru 5-26 (inconsistent statement – reading only) - 5-39 thru 5-47 (inconsistent statement) - 5-24 thru 5-26 (contradiction)</p> <p><b>FRE:</b> 607 <b>CEC:</b> 780; 785; 770</p>

<p><b>13. Thursday 6/28/18</b></p>	<p>Impeachment of Witnesses Part 2: - Impeachment by Character - Rehabilitation of Witness - Forbidden Attacks</p>	<p><b>TEXT:</b> <b>Ch. 6</b> Read the following pages: - 193-209 <b>CEF BOOK:</b> <b>Ch. 5</b> Read the following pages: - 5-11 thru 5-16 (prior bad acts) - 5-16 thru 5-18 (character for untruthfulness) - 5-26 thru 5-36 (prior convictions) - 5-51 thru 5-56 (rehabilitation via consistent statements) - 5-54 thru 5-56 (rehabilitation via character for truthfulness) <b>FRE:</b> 608 <b>CEC:</b> 786; 790; 787; 788</p>
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