

Evidence, Fall 2013
UC Berkeley
Professor Roger Park

SYLLABUS

COURSEBOOK

Please obtain a copy of ROGER C. PARK AND RICHARD D. FRIEDMAN, EVIDENCE – CASES AND MATERIALS (12th Ed. 2013).

EXAM AND CLASS PARTICIPATION

There will be one final exam. It will have an objective section and an essay section.

The exam will be a closed book exam. During the exam, you will receive a handout containing the Federal Rules of Evidence and selected provisions of the California Evidence Code for your use during both parts of the exam.

Credit may be given for class participation.

CONTACT INFORMATION

Office hours: To be added.

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READING ASSIGNMENTS

Making The Record and Trial Objections

Read Chapter One of the Casebook during the first half of the semester. This assignment will be relevant to class discussion, but will not be discussed on a page-by-page basis.

Relevancy and Its Counterweights

1. *Casebook, pp. 86-100; Federal Rules of Evidence (FRE) 401-03 in Appendix A and related notes/history in Appendix B; California Evidence Code (CEC) §§ 210, 352 in Appendix D; Questions 1 and 2 on p. 100*
Knapp v. State; Sherrod v. Berry; Old Chief v. United States; Ballou v. Henri Studios, Inc.
2. *Casebook, pp. 108-25; FRE 403-06, question, p.125. Read the text of Rules 404 and 405 with special care and prepare to answer specific questions about them.*
Cleghorn v. New York Central & H. River Ry. Co.; Wellman, The Art of Cross-Examination; Comment on Rule 405(b); Michelson v. United States; Camus, The Stranger; A.L.I., Model Penal Code; CPI Trial Manual; TR as Character Witness.
3. *Casebook, pp. 125-39; FRE 403-06; CEC § 1109. Questions 1-6, p. 131-32*
McCormick's Handbook of Evidence; United States v. Carrillo; California Constitution Art. 1, sec. 28; United States v. Beasley.
4. *Casebook, pp. 140-160; FRE 403-06; Advisory Committee's Note to FRE 406 in Appendix B; FRE 104(a)-(b) and related materials in App. B; . Questions 1-5, p. 154*
United States v. Cunningham; Tucker v. State; Huddleston v. United States; Note, Other Crime Evidence Offered against a Defendant who was Acquitted of the Other Offense; Perrin v. Anderson; Park, Leonard, Orenstein & Goldberg; Halloran v. Virginia Chemicals, Inc.
5. *Review prior assignment.*
6. *Casebook, pp. 162-79; FRE 412-415.*
Note; State v. Cassidy; Olden v. Kentucky; US v. Platero; Johnson v. Elk Lake School District; Park, Character at the Crossroads.
7. *Casebook, pp. 179-95; FRE 407-411.*
Similar Happenings: Simon v. Kennebunkport; Morris; Subsequent Precautions: Tuer v. Mc Donald; R. I. R. Evid. 407. Offers in Compromise: Davidson v. Prince; Note.
8. *Review prior assignment.*

[There is no assignment 9.]

Hearsay and the Confrontation Right

10. *Casebook*, pp. 197-203; 207-213; *FRE 801(a)-(c)*, 802. *Skim FRE 803(3)*.
Phillimore on Raleigh's Case; Tribe, Triangulating Hearsay; Park, Two Definitions of Hearsay; McCormick; (Skip Estate of Murdock, pp. 203-07); Subramaniam v. Public Prosecutor; Vinyard v. Vinyard Funeral Home, Inc.; Johnson v. Misericordia Community Hospital; Ries Biologicals, Inc. v. The Bank of Santa Fe; Strahorn, A Reconsideration; Fun-Damental Too, Ltd.
11. *Casebook*, pp. 214-26;; *FRE 801(a)-(c)*; *Advisory Committee's Note to FRE 801(a)-(c) in Appendix B*.
United States v. Hernandez; United States v. Zenni; Commonwealth v. Knapp; Morton, The Rothschilds; Sending a Message; McCormick, The Borderline of Hearsay.
12. *Casebook*, pp 226-236; *FRE 801(a)-(c)*; *Question*, p. 227
Wilson v. Clancy; Morgan, Basic Problems of Evidence; US v. Jaramillo-Suarez; US v. Rhodes; Lilly on Evidence; US v. Brown; City of Webster Groves v. Quick; Morgan, Hearsay and Non-Hearsay
13. *Casebook*, pp. 240-250
Crawford v. Washington
14. *Casebook*, pp. 250-264; *FRE 801(d)(2)*, 805; *Advisory Committee's Note to FRE 801(d)(2) in Appendix B*.
Reed v. McCord; Shakespeare (Othello); United States v. Hoosier; La Buy, Jury Instructions; The Gospel According to Luke; "Our Crowd"; Admission by Silence--Another View; State v. Carlson; La Buy, Jury Instructions; Mahlandt v. Wild Canid Survival & Research Center.
15. *Casebook*, pp. 264-280; *FRE 801(d)(2)*; *FRE 104*; *Questions*, p. 275, 280. *Compare CEC § 1220-27, especially § 1223. (Note: The final sentence of present FRE 801(d)(2) was added in 1997, after the Bourjaily decision.)*
Big Mack Trucking Co. v. Dickerson; Sabel v. Mead Johnson & Co.; United States v. Di Domenico; United States v. Goldberg; United States v. Doerr; Bourjaily v. United States.
16. *Casebook*, pp. 281-295; *FRE 803(1)*, 803(2), 803(3), 805; *Questions 1-4*, p. 295. *Also read Advisory Committee's Note to FRE 803(1) and 803(2) in Appendix B. Compare CEC §§ 1240-41, Appendix D.*
Hutchins & Slesinger article; Truck Ins. Exchange v. Michling; Lira v. Albert Einstein Medical Center; State v. Jones.
17. *Casebook*, pp. 296-315
Davis v. Washington; Michigan v. Bryant
18. *Casebook*, pp. 315-23; *Questions*, p. 320; *FRE 803(3)*
Adkins v. Brett; Mutual Life Ins. Co. v. Hillmon

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19. *Casebook*, pp. 323-44; *FRE 803(4) and related legislative history in Appendix B; CEC §§ 1250-53; Questions*, pp. 326-27, 332-33, 344.
Shepard v. United States; United States v. Pheaster; Zippo Mfg. Co. v. Rogers Imports; United States v. Tome on remand.
20. *Casebook*, pp. 344-53; *FRE 804(a), 804(b)(1)*
Travelers Fire Insurance Co. v. Wright; Note on issue preclusion; Note on predecessors in interest; United States v. Salerno.
21. *Casebook*, pp. 355-67; *Questions 1 and 3*, p. 367; *FRE 804(b)(3); CEC § 1230*
State v. English; G. M. McKelvey Co.; United States v. Barrett; Green v. Georgia; Williamson v. United States.
22. *Casebook*, pp. 369-86; *FRE 804(b)(2) and 804(b)(6); Question*, p. 379.
Cairns, Law and the Social Sciences; King John; Lope de Vega; Louis XVI; Stephen's Account; R. v. Perry; State v. Williams; Garza v. Delta Tau Delta Fraternity National; Roger W. Kirst; Richard D. Friedman; Giles v. California.
23. *Casebook*, pp. 386-403; *FRE 801(d)(1), 803(5), 611, 612; Hypotheticals*, p. 387.
Weinstein's Evidence; United States v. Owens; Baker v. State; Adams v. New York Central (Class exercise: laying foundation for past recollection recorded.)
24. *Casebook*, pp. 404-11 and 419 -21; *Questions*, p. 411; *FRE 106, 803(5)-(7), 805, 806; Legislative history in Appendix B relating to FRE 803(6)*.
CPI Trial Manual; Johnson v. Lutz; United States v. Vigneau; Hahnemann University Hospital v. Dudnick; Potamkin Cadillac.
25. *Casebook*, pp. 421-35; *FRE 803(8); Hypothetical*, p. 461
Palmer v. Hoffman; Lewis v. Baker; Sana v. Hawaiian Cruises Ltd; Beech Aircraft Corp. v. Rainey
26. *Casebook*, pp. 435-64; *Qs 1-3, 7 on pp. 463-64*.
Friedman, The Sky is Still Not Falling; Williams v. Illinois; United States v. Grady
27. *Casebook*, pp. 471-80; *FRE 807; Hypotheticals*, p. 480.
McCormick, Law and the Future: Evidence; Turbyfill v. International Harvester Co; Zenith Case; ABA Section of Litigation, Emerging Problems.

Impeachment and Rehabilitation

28. *Casebook*, pp. 485-97; *FRE 607, 611, 801(d)(1)(A). CEC 1235. Questions*, pp. 496-97.
Kaplan and Waltz, The Trial of Jack Ruby; Mathew, Forensic Fables; Susanna and the Elders; Gilbert Without Sullivan; Mathew, Forensic Fables; United States v. Hogan; State v. Oswalt.

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29. *Casebook*, pp. 497-514; *FRE* 608; *Questions 1-3 and 5*, pp. 510-511.

United States v. Copelin; United States v. Owens; Illustration: Cross-Examination; Steur & Steur; Note on Extrinsic Evidence; United States v. Drake.

30. *Casebook*, pp. 518-34; *FRE* 608-09, 806; *Questions*, p. 530.

United States v. Sanders; Note; Calif. Constitution Art. 1 § 28; Notes; United States v. Brackeen; Abby's View; Green v. Bock Laundry Machine Co.; Luce v. United States; Note on Ohler v. United States; Mathes and Devitt, Federal Jury Practice.

31. *Casebook*, pp. 535-53; *FRE* 608, 609, 610, 613, 801(c), 801(d)(1); *CEC* §§ 770, 791, 1235, 1236; *Hypos*, p. 538-39, *Questions about Minnesota Rule*, middle of p. 553. .

United States v. Lindstrom; The Testimony of Dr. Binger; UPI-Harlow Story; Coles v. Harsch; Goldstein, Trial Technique; Park, Leonard, Orenstein & Goldberg; Morgan; Tome v. United States; Minn. R. Evid. 801(d)(1)(B).

32. *Casebook*, pp. 554-60. *Review* pp. 68-77 (trial objections); *preview* pp. 783-90 (lay opinion).

United States v. Abel; Waltz, Criminal Evidence.
(The class associated with this assignment will include an exercise on witness examination.)

Opinion, Expertise and Experts

33. *Casebook*, pp. 783-820; *FRE* 701-06 and *Advisory Committee's Note to those sections*

Maguire excerpt; Commonwealth v. Holden; Government of the Virgin Islands v. Knight; Waltz, Criminal Evidence; Waltz & Inbau, Medical Jurisprudence; Note on Objections to Form of Expert Testimony; State v. Odom.

34. *Casebook*, pp. 820-41; *Advisory Committee's Note to 2000 Amendment to FRE 703*

United States v. Scop; Ingram v. McCuiston; Waltz, The New Federal Rules of Evidence; United States v. Brown; United States v. Tran Trong Cuong; People v. Gardeley

35. *Review prior assignment and read Casebook*, pp. 841-52

United States v. Moore; United States v. Kristiansen; Note; National Law Journal excerpt; United States v. Moore

36. *Casebook*, pp. 852-77; *FRE* 702 and *Advisory Committee's Note*.

The Case Against Expert Witnesses; Langbein, The German Advantage.; Daubert v. Merrell Dow Pharmaceuticals, Inc.; General Electric Co. v. Joiner; Kumho Tire Co. v. Carmichael; Ellis v. State.

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37. *Casebook, pp. 887-99, 923-29.*
 State v. Porter; People v. Collins (except for appendix)

Writings

38. . *Casebook, pp. 669-96. FRE 1101-04, 901-02.*
 McCormick, Evidence; Meyers v. United States; People v. Enskat; United States v. Diaz-Lopez;
 Dale A. Nance, The Best Evidence Principle; McCormick, Evidence; United States v. Dockins;
 United States v. Hampton; First State Bank of Denton v. Maryland Cas. Co.; Griffin v. State.