SYLLABUS

COURSEBOOK

Please obtain a copy of RODER 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: Thursdays, 2-4 p.m., Room 318, 200 McAllister.

Telephone: (415) 565-4632

Email: parkr@uchastings.edu
COMPUTER-AIDED INSTRUCTION ASSIGNMENTS

The computer exercises listed below are a required part of the course work.

How to obtain the exercises

You can get the lessons at the CALI website (Cali.org). The authorization code for Hastings students is CALHASstu23.

You can also pick up CALI DVDs for free in the library’s Computer Lab or at its Reference desk.

When to do the exercises

“Hearsay from Square One” by Roger C. Park. Do this exercise at the beginning of your study of hearsay. Do not do Part II of the exercise.

“The Concept of Hearsay” by Roger C. Park. You will be ready for this exercise when you have reached United States v. Zenni in the casebook.

“The Hearsay Rule and Its Exceptions” by Roger C. Park. You will be ready for this exercise when you have finished the hearsay chapter in the casebook.

“Impeachment and Rehabilitation of Witnesses” by Roger C. Park. You will be ready for this exercise when you have finished the impeachment and rehabilitation chapter of the casebook.

“Character Evidence” by Roger C. Park. You will be ready for this exercise after you have finished your material on Rules 404-05 and Rules 608-09.

“Expert Witnesses” by Ron Carlson. You will be ready for this exercise when you have reached the Kumho Tire Company case in the casebook.
Evidence, Spring 2013
Professor Roger Park

Making The Record, 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. 80-100[except for “The Judgment of Solomon”]; 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
   Hart and McNaughton, Evidence and Inference; James, Relevancy, Probability and the Law; Note, Assessing the Entire Body of Evidence; McCormick excerpt on relevancy; Knapp v. State; Sherrod v. Berry; Old Chief v. United States; Ballou v. Henri Studios, Inc.

2. Review prior assignment.

3. 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.

4. Casebook, pp. 125-39; FRE 403-06. 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.

5. 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; CEC 403(a)(4). 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.

6. Review prior assignment.

   Note; State v. Cassidy; Olden v. Kentucky; US v. Platero; Johnson v. Elk Lake School District; Park, Character at the Crossroads.


9. Review prior assignment.
Hearsay and the Confrontation Right

    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. Do the CALI computer exercise entitled “Hearsay from Square One.”

11. Casebook, pp. 214-26; FRE 801(a)-(c); Advisory Committee's Note to FRE 801(a)-(c) in Appendix B.

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.)

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
Evidence, Spring 2013  
Professor Roger Park

18. Casebook, pp. 315-23; Questions, p. 320; FRE 803(3)  
   Adkins v. Brett; Mutual Life Ins. Co. v. Hillmon

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.  

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  

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.

   (Class exercise: laying foundation for past recollection recorded.)

24. Casebook, pp. 404-21; Questions, p. 411; FRE 106, 803(5)-(7), 805, 806; Legislative history in Appendix B relating to FRE 803(6).  

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

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March 4, 7: Special guest lectures on scientific evidence by Professor Lisa Faigman  
Assignment: Casebook, pp. 852-76 (including Daubert, Joiner and Kumho cases)  
We will revisit this topic later in the semester.
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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

   McCormick, Law and the Future: Evidence; Turbyfill v. International Harvester Co; Zenith Case; ABA Section of Litigation, Emerging Problems.
Evidence, Spring 2013  
Professor Roger Park

Impeachment and Rehabilitation

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.

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.

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.)

Confidentiality and Confidential Communications

33. Casebook, pp. 563-88; 636-41; FRE 501-02; CEC §§ 952, 956, then § 915.  
Attorney-Client Privilege: Jeremy Bentham, 5 Rationale of Judicial Evidence; United States v. Woodruff; Upjohn Co. v. United States; Note on Federal Work Product Doctrine; City and County of San Francisco v. Superior Court; Clark v. State; Restatement § 132; United States v. Zolin; Swidler & Berlin v. United States; Peterson v. Bernardi.

34. Review prior assignment and read the Jaffee case in the next assignment.

35. Casebook, pp. 593-601; 608-15; CEC §§ 970-87; Skim CEC §§ 1010-1027.  
Psychotherapist-patient privilege and marital privileges: Jaffee v. Redmond; Trammel v. United States.
Evidence, Spring 2013
Professor Roger Park

OPINION, EXPERTISE AND EXPERTS

36. 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.

37. Casebook, pp. 820-41; Advisory Committee’s Note to 2000 Amendment to FRE 703

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

39. Casebook, pp. 852-77; FRE 702 and Advisory Committee’s Note.

   United States v. Saelee; State v. Porter; United States v. Scheffer

41. Review prior assignment and read 923-29, 931-38
   People v. Collins (except for the Appendix to that case); Nance and Lempert notes; The Red-Haired Soldier; People v. Mountain; Long odds story; DNA and Other Exonerations.

42. Casebook, pp. 941-54; Questions, pp. 961-62.
   Note; Lempert and Nance excerpts; The Red-Haired Soldier; People v. Mountain; Odds trip up pair; Harlan Levy, And the Blood Cried Out; Note on DNA Exonerations; Jonathan Koehler article.


44. Review prior assignment.
   If time permits, we will have a witness examination exercise in this class.