

ADVERSARIAL EVIDENCE SEMINAR
(Mastering Evidence, Objections and cross-Examination)
Syllabus for Fall Semester 2018

Instructor: Professor Ashley Lipson

Credit Hours: Two (2) Credit Hours **Days:** Tuesdays and Thursdays

Time and Place: Tuesdays & Thursdays 9:30 - 10:30 pm / 2490 LAW 642 / Room 217

Prerequisite Course: Evidence

- I. Required:** *The Federal Rules of Evidence* (FRE) and the *California Evidence Code* (CEC). Also, handouts will be distributed throughout the semester.
Recommended: Lipson, *Is It Admissible?* James Publishing 2016/2017 Ed.

II. Course Objectives/Goals/Contents:

The time elapsing between the end of an opposing attorney's question and the start of the witness's answer is often less than one second. Objections, therefore, whether critical or trivial, are either swift and proper or forever waived. In a slightly different vein, this single second might also serve as a measure for the skilled cross - examiner's response to a witness's answer. The two procedures, objecting and cross-examining, seem to share a history and accepted policy of confrontation and provocation. Both should rest on a solid knowledge of the operative principles of evidence, which is indispensable for superior trial lawyers.

Though courtesy and civility remain paramount, our adversarial system nevertheless, demands a level of stealth and competitiveness from our most competent attorneys. "*As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.*" (ABA Model Rules Preamble). Traditional evidence and trial practice courses typically provide necessary theoretical and doctrinal foundations for the subsequent practice-based development of those requirements. But the traditional classes cannot, by themselves, provide the proficiency required for a sustained high performance level. That can only come with practice. Nevertheless, to the extent that it is possible to do so, this course is designed to bridge the gap between the doctrinal and the real worlds.

- III. Banished Completely:** No computers, iPads, cell phones or other electronic mobile devices shall be permitted *in the classroom*. As a courtesy to other students, a single electronic use or disturbance requires you to accept an absence and leave the class; fairness and objectivity require that there be no exceptions.
- IV. Final Grade:** There will be a two hour final examination. Class participation and optional quizzes at the instructor's discretion (not exceed 30% of final grade), may also be imposed.
- V. Office Hours:**
Tuesday: Noon - 1:00 p.m. & 4:30 p.m. - 9:30
Thursday: Noon -1:00 p.m. & 4:30 p.m. - 9:30
Select Mondays and Wednesdays: 1:00 p.m. – 3:00 p.m.
All other times: By Appointment.
Any time (24/7) by telephone or email: [310] 777-8333. ashley@objection.com.

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VI. Classroom Expectations:

You are expected to be prepared to discuss assigned material. *Important rules (FRE/CEC) will be read and re-read.* A lack of proper preparation, when called upon, wastes time, adversely affects the entire class, and cannot be tolerated. You are expected to attend every class and be prepared.

Students are not permitted to record lectures. You are expected to be on time for class. If you are late, you will be marked absent. Excessive absences from class will result in an involuntary withdrawal from the course pursuant to College of Law policies. Changing seats without prior permission will not be tolerated. There is a less-than-zero tolerance (i.e., No Tolerance) for cell phones, computers and other electronic devices, which are strictly banned from the classroom. These rules constitute a simple courtesy to your fellow classmates and your professor. Studies have shown that *all* computers and electronic devices cause distraction and lower grades, particularly with respect to note-taking.

VII. Class Policies And Standards:

Attendance, Participation, and Preparation: Attendance is mandatory. Students benefit from the course by attending every class session and actively participating. Attendance policy is required by the California State Bar and is, therefore, strict. After providing notice, any instructor may, in his or her sole discretion, mark unprepared students as "absent". Regardless of excuse, absences in excess of 20% of a class (tardiness is an absence) results in automatic exclusion from that class. The effects of an automatic exclusion are as follows: A student's first withdrawal for excessive absence from a course results in an F/0.0 unless the Associate Dean for Academic Affairs finds that the student should receive an I, W, or F as defined in the Mapp. A student withdrawn for excessive absences a second time from the same course receives an F/0.0 in the second registration in the course with no right of appeal.

Tardiness: Students are expected to arrive on time and stay for the full class session as a matter of courtesy to your classmates and the professor. Arriving late or leaving early will result in a full absence. If you are not present when roll is taken, you will be marked absent.

Plagiarism: Plagiarism is prohibited. A violation will result in a score of zero on the subject assignment and a report to the Dean. The student may receive a grade of no credit in the course. Plagiarizing may adversely affect your moral character determination with the California State Bar, and your future career. Assignments for academic credit may differ somewhat from those of practicing attorneys. Students should also review the Student Handbook to familiarize themselves with the College of Law Plagiarism Policy.

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VIII. Disabilities and Accommodations:

Students With Disabilities: Students whose disabilities require accommodation must comply with all applicable requirements of the College of Law. Students desiring accommodation for a bar examination should research the rules and practices of the state in which they wish to be licensed, and begin the process early. In California, obtaining an accommodation is difficult, and is best pursued well in advance of the bar examination.

Accommodations: If you are eligible for and requesting academic accommodations for a documented or suspected disability, contact the Director of Student Affairs and ADA Compliance in Room 102 of the College of Law or telephone phone 909.460.2046; to be considered, your disabilities must be documented and proper medical evaluations submitted. We want you to succeed in law school. Visit online: <http://sites.laverne.edu/disabled-student-services/>

Civility: At all times, you must conduct yourself with civility and respect for your classmates and professor. Any behavior that unduly distracts from classroom instruction, or contributes to creating an environment that is not wholly conducive to your classmates' participation or concentration is prohibited. Examples of such behaviors include (but are not limited to) having "side" conversations during class, and eating. Unprofessional conduct will result in your being dismissed from class and marked absent.

IX. University Mission and Values:

It is the mission of the University of La Verne to provide opportunities for students to achieve their educational goals and become contributing citizens to the global community.

The University of La Verne shares four core values that promote a positive and rewarding life for its students through fostering a genuine appreciation and respect for: (1) Values Orientation: The University affirms a philosophy of life that actively supports peace with justice, the health of the planet and its people. Therefore, in light of this affirmation, it encourages students to become reflective about personal, professional, and societal values. It also encourages values-based ethical behavior. (2) Community and Diversity: The University promotes the goal of community within a context of diversity. Therefore, it encourages students to understand and appreciate the diversity of cultures that exists locally, nationally, and internationally. It also seeks to promote appreciation and preservation of biodiversity by helping students understand the impact-dependence of human beings on their environment. (3) Lifelong Learning: The University commits itself to promoting education that facilitates lifelong learning. Therefore, it teaches students how to learn, to think critically, to do constructive research, and to access and integrate information in order to prepare them for continued personal and career growth. (4) Community Service: The University believes that personal service is a primary goal of the educated person. Therefore, it encourages students to experience the responsibilities and rewards of serving the human and ecological community.

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Vision: La Verne Law is an incubator for innovation in legal education, thought, and advocacy for individuals passionate about serving their communities and promoting access and justice.

Mission: The mission of La Verne Law is to guide our students in the discovery of law and self as they prepare for the practice of law or other professional careers. Our faculty of scholars and teachers is committed to creating an innovative, collaborative learning environment designed to develop the knowledge and skills relevant to achieving individual and professional success. Our mission encompasses educating, as well as enhancing the professional lives of, the members of the local, regional, national, and international communities we encounter – students, faculty, staff, administrators, alumni, members of the bench and bar, and others who pursue social justice. Our mission is grounded in the core values of the University of La Verne – life-long learning, ethical reasoning and decision-making, diversity & inclusivity, and community & civic engagement. Difference-making is our legacy.

University Core Values: As a College within the University of La Verne we adopt and endorse the University core values of Lifelong Learning, Diversity and Inclusivity, Community Engagement, and Ethical Reasoning.

College of Law Core Principles and Values: As an institution dedicated to teaching and training the next generation of lawyers and leaders, we operate institutionally and individually on the principles of professionalism, innovation, ethics, student centeredness and community enhancement. In our actions and interactions, we are and seek to be affirming, respectful, humble, accountable, committed, inclusive, empathetic, responsive, passionate, and positive.

University of La Verne College of Law Program Objectives:

- A. Upon completion of the program of legal education, students will possess the skills and knowledge to enable them to pass any bar examination of their choosing.
- B. Upon completion of the program of legal education, students will possess those skills to participate as respected members of the legal profession.
- C. Upon completion of the program of legal education, students will model ethical, responsible, and professional behavior.
- D. Upon completion of the program of legal education, students will embrace cultural differences and civic and community engagement.

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X. American Bar Association Standard 302: Learning Outcomes

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

In compliance with ABA Standard 302, the University of La Verne College of Law has established the following: 1. Students shall demonstrate knowledge and understanding of substantive and procedural law. 2. Students shall demonstrate competence in legal analysis and reasoning. 3. Students shall demonstrate competence in conducting legal research. 4. Students shall demonstrate competence in problem-solving. 5. Students shall demonstrate competence in written and oral communication. 6. Students shall be able and motivated to exercise proper professional and ethical responsibilities to clients, the legal system, and the wider community. 7. Students shall demonstrate competent litigation skills. 8. Students shall demonstrate competent transactional skills. 9. Students shall apply cultural competency while exercising their legal skills.

XI. American Bar Association Standard 310: Coursework

A “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or (2) at least an equivalent amount of work as required in Subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours. For purposes of this Standard, fifty minutes suffices for one hour of classroom or direct faculty instruction. An “hour” for out-of-class student work is sixty minutes. The fifteen-week period may include one week for a final examination. A school may award credit hours for coursework that extends over any period of time, if the coursework entails no less than the minimum total amounts of classroom or direct faculty instruction and of out-of-class student work specified in Standard 310.

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XII. Schedule:

The listed pages are to be read prior to their applicable class session, subject to changes or modifications by the Professor. The professor reserves the right to modify the schedule to best serve the class.

Week 1

[8/21/18] - Intro: Read Rules 104 through 403 of the Federal Rules of Evidence

[8/23/18] [a] Discussion: Balancing zealous advocacy with civility.

[b] The Evidence Universe (Accompanying Videos):

1. Testimonial
2. Documentary
3. Real
4. Demonstrative

Week 2

[8/28/18] - Overview of The Rules of Evidence. Read Thoroughly:

[8/30/18] [i] FRE 104 (CEC 405)

[ii] FRE 401 & 402 & 403 (CEC 210, 350-351, 352)

[iii] FRE 701 & 702 & 703 (CEC 800, 720, 800-804)

[iv] FRE 801 & 802 & 803 (CEC 1200)

Week 3

[9/04/18] - The Big 12 Objections [Part I]:

[9/06/18] Continued

[1] **Argumentative** [Read FRE 607 & 611 and CEC 765(a)]

[2] **Best Evidence** [Read FRE 1001-1003 and CEC 1521(a)]

[3] **Conclusion Called For** [Read FRE 601, 701-703 and CEC 800-801]

[4] **Fact Not In Evidence Assumed** [Read FRE 403 & CEC 352(b)]

[5] **Hearsay** [Read FRE 801 & 802 & 803 and CEC 1200]

Week 4

[9/11/18] - The Big 12 Objections [Part II]

[9/13/18] Continued

[6] **Irrelevant** [Read FRE 401- 403 and CEC 765(a)]

[7] **Leading** [Read FRE 611(c) & 611 and CEC 767]

[8] **Multiple** or Compound

[9] **Privilege** [Read FRE 501 and CEC 940, 954, 994, 1014, 1033, 1034, 1040, 1070, 940]

[10] **Repetitive** [Read FRE 611(a) and CEC 765(a)]

[11] **Speculative** [Read FRE 701 - 703 and CEC 720]

[12] **Vague** [Read FRE 403]

Week 5

[9/18/18] - Testimonial Evidence Analysis

[9/20/18] Continued

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Week 6

[9/25/18] - Science and Technology. *Frye - Daubert*. Re-read FRE 701-703.
[9/27/18] Continued

Week 7

[10/02/18] - Documentary Evidence: Basics
[10/04/18] Documentary Evidence Objections:
[1] The Best Evidence Rule
[2] The Parole Evidence Rule
[3] The Rule of Completeness
[4] The Hearsay Rule

Week 8

[10/09/18] - Documentary Evidence: In Depth. Re-read: FRE 801 & 802 & 803
[10/11/18] The Five Types:
[1] Governmental Documents
[2] Private Sector Business Records
[3] Personal Documents
[4] Published Writings
[5] Legal Documents

Week 9

[10/16/18] - Real Evidence In Depth
[10/18/18] The Six Types
[1] Physical Objects
[2] Samples
[3] People
[4] Animals
[5] Views
[6] On-Site Recordings

Week 10

[10/23/18] - Demonstrative Evidence In Depth
[10/25/18] The Nine Types
[1] Models
[2] Maps, Charts, Graphs & Diagrams
[3] Document Presentations
[4] Photographs, Slides, Films and Videos
[5] Audio Recordings
[6] Finger, Foot & Palm Prints
[7] Computer-Generated Materials
[8] Live Demonstrations
[9] Internal Images

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Week 11

[10/30/18] - A study of cross-examination from the masters
[11/01/18] Continued

Week 12

[11/06/18] - [a] Irv Younger's Ten Commandments of Cross - Examination
[11/08/18] [b] Cross-examination Principles and Goals

Week 13

[11/13/18] - Cross-examination exercises. In-class practice.
[11/15/18] Continued

Week 14

[11/20/18] - Summary of course and review for final examination

Final Examination: Date/Time: TBA