

Evidence, Law 640, Section 2
Professor Michele Assael-Shafia
University of La Verne College of Law
Fall, 2018
4 units

This syllabus contains a general plan for the course. Deviations may be necessary.

Professor

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Class Time and Place

Meeting days: Monday, Wednesday, and selected Friday's
Meeting time: 9:00-11:00am
Location: 216

Office Hours

Monday and Wednesdays 11:30-3:00pm, Tuesday 10:00-2:00pm,
Additional hours as needed by appointment only at Massael-shafia@laverne.edu

Course Description

This course examines the rules and policies governing the fact-finding processes at trial, emphasizing rules relating to admitting and excluding evidence. Among the topics considered are relevance, judicial notice, witness competence and examination, hearsay, and burdens of proof. The course emphasizes a working knowledge of the concepts of courtroom evidence, as exemplified in the Federal Rules of Evidence. Examples from the California Evidence Code will also be analyzed, particularly where the Code differs significantly from the Federal Rules. The course heavily emphasizes practical application of evidentiary rules to factual situations.

Basis of Grade

Please read the College of Law policy regarding attendance. There are no "excused" absences. I expect students to come to class on time, prepared, and willing to add to class discussions. I require that class discussions reflect tolerance for, and respect of, others' perspectives and views.

I will evaluate students using their performance on a final exam (at least 60%), and one or more pre-final tests or projects, and exceptional attendance and outstanding classroom discussion (up to 40%). I assign points to each component of the evaluation for the course based on a maximum 1000 points. So, for example, if the midterm is worth 25%, the maximum score will be 250

points. Final exams will be closed-book. Generally, exams will consist of essay and multiple choice type questions.

In most cases, 'exceptional attendance' means perfect or near perfect attendance. 'Outstanding classroom participation' includes a demonstrated ability to prepare for class giving thoughtful attention to the assigned materials, as well as significant participation in the classroom discussion regarding those materials.

Required and Suggested Materials

Required Electronic Material:

Register for TWEN

Required Text:

ROGER C. PARK, Richard D. Friedman, EVIDENCE: CASES AND MATERIALS, 12th edition, Foundation Press, 2013; ISBN: 978-1-60930-138-5

Required Supplemental Materials:

CLIFFORD S. FISHMAN, A STUDENT'S GUIDE TO HEARSAY, revised 4th edition, LexisNexis, 2012; ISBN: 978-0-7698-4696-5

Optional/Recommended Materials:

KENNETH BROUN, (ED.), MCCORMICK ON EVIDENCE, 7th edition, 2014, West Group; ISBN-978-0-314- 29025-0

ABA Standard 310

This course is designed to satisfy the requirements of ABA Standard 310. Standard 310 requires that for each hour of in-class time, students spend two hours preparing for class (reading or completing class assignments or assessments).

Course Objectives

This course examines the rules and policies governing the fact-finding processes at trial, emphasizing rules relating to admitting and excluding evidence. Among the topics considered are relevance, judicial notice, witness competence and examination, hearsay, and burdens of proof. The course emphasizes a working knowledge of the concepts of courtroom evidence, as exemplified in the Federal Rules of Evidence. Examples from the California Evidence Code will also be analyzed, particularly where the Code differs significantly from the Federal Rules. The course heavily emphasizes practical application of evidentiary rules to factual situations.

Course-Specific Learning Outcomes

At the conclusion of this course, students will be able to:

Identify and apply the policies governing the fact-finding processes at trial using the Federal Rules of Evidence and the California Evidence Code as context;

Identify and apply the rules relating to admitting and excluding evidence using the Federal Rules of Evidence and the California Evidence Code;

Develop and apply individual analytical approaches addressing scenarios regarding relevance, character evidence, witness competence and examination, confidentiality and confidential communications, and burdens of proof;

Develop and apply a large-scale approach addressing scenarios involving regarding admitting and excluding evidence using the Federal Rules of Evidence and the California Evidence Code;

Competently identify and resolve evidentiary issues, applying policies and rules, in an essay exam format mirroring California bar exam questions;

Competently answer questions regarding the application of the Federal Rules of Evidence in a Multistate Bar Exam format.

Disability Accommodations Statement

Students with disabilities should refer to the policies described at the University of La Verne Disabled Student Services Handbook [as of September 13, 2017 located at <https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>], which can be found on the website of the University of La Verne Disabled Student Services website (<https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>) or at their office. Temporary accommodations are offered on a case by case basis. All required documentation must be submitted by the student before any formal accommodations and should be made directly to the Director of Student Affairs.

Any student eligible for and requesting academic accommodations due to a documented disability (or a suspected disability) is asked to contact the College of Law Director of Student Affairs and Americans with Disability Act Compliance Officer, Akita Mungaray by email at amungaray@laverne.edu or by phone at (909) 460-2017. Her office is located on the first floor of the College of Law, Office # 107. You can also contact Cynthia Denne at the University of La Verne Disabled Student Services office at (909) 448-4441. The office is located at the La Verne campus Health Center. In order to be considered for accommodations, disabilities must be documented and the proper medical evaluations must be submitted. The office is here to help you succeed in law school. Visit it online at <https://sites.laverne.edu/disabled-student-services/>.

Course-Specific Policies

Laptop computers are allowed for briefing cases and taking notes in class. Case briefs will be randomly collected and/or emailed throughout the duration of this course.

Reading Assignments

Week #1 August 20th-August 24th

I. INTRODUCTION - PRESERVING THE RECORD

Federal Rules of Evidence (FRE) 101-106
MCCORMICK, pp. 1-12; 119-43
WALTZ & PARK, Making the Record, pp. 1-68 (read for background information)
Fuller v. State (supplement) Smith v. State (supplement)
Brooks v. State (supplement)
Brooks v. Texas (supplement)
Brooks v. Estelle (supplement)
Loudres v. State (supplement)
Bob Ray Sanders, The First to Die by Injection, STAR TELEGRAM (supplement)
Robert Reinhold, Execution by Injection Stirs Fear and Sharpens Debate, NYTIMES, December 8, 1982 (supplement)
Litigation Track Problem 1 (supplement)

II. RELEVANCE, AND ITS COUNTERWEIGHTS

A. Relevance to What

FRE 401, 402 MCCORMICK, pp. 395-99 WALTZ & PARK, pp. 79-84
Problem 1 (supplement)
Union Paint & Varnish V. Dean (note case, p. 82)

B. Relevance and Inference

FRE 401, 402
WALTZ & PARK, pp. 84-88
Knapp v. State
Sherrod v. Berry (note case, p. 88)

C. Probative Value Versus Prejudicial Effect

FRE 403
WALTZ & PARK, pp. 88-108
Old Chief v. United States Ballou v. Henri Studios, Inc. Holmes v. South Carolina

D. Character, Habit, and Custom

FRE 404, 405, 406, 412, 413, 414, 415 MCCORMICK, pp. 401-19

1. Character in Issue

WALTZ & PARK, pp. 108-111
Cleghorn v. New York Central & H. River Ry. Co.

Week #2 August 27th-August 31st

2. Character as Circumstantial Evidence

WALTZ & PARK, pp. 111-44; 162-79

3. Habit

E. Similar Happenings

Michelson v. United States

United States v. Carrillo United States v. Beasley

United States v. Cunningham

Tucker v. State

Dowling v. United States (note case, p. 149)

State v. Cassidy

Olden v. Kentucky

Johnson v. Elk Lake School District

People v. Watkins (note case, p. 176)

WALTZ & PARK, pp. 157-62

Halloran v. Virginia Chemicals, Inc.

Reyes v. Missouri Pacific Railroad (supplement)

Levin v. United States (supplement)

MCCORMICK, pp. 421-26 WALTZ & PARK, pp. 179-82

Simon v. Kennebunkport

F. Subsequent Precautions

FRE 407

MCCORMICK, pp. 595-97 WALTZ & PARK, pp. 182-92

Tuer v. Maryland

G. Offers in Compromise

FRE 408, 409, 410 MCCORMICK, pp. 592-95 WALTZ & PARK, pp. 192-95

Davidson v. Prince

United States v. Mezzanatto (note case, p. 195)

H. Insurance Against Liability

FRE 411

MCCORMICK, pp. 427-29

Week#3 September 5th-September 7th

III. THE HEARSAY RULE

A. Rationale and Meaning

FRE 801(a-c) 802, 805, 806 MCCORMICK, pp. 539-52

FISHMAN, pp. 1-39; 101-17
WALTZ & PARK, pp. 197-221; 226-40
Estate of Murdock
Vinyard v. Vinyard Funeral Home, Inc.
Johnson v. Misericordia Community Hospital
Ries Biologicals, Inc. v. Bank of Santa Fe
Fun-Damental Too, Ltd. v. Gemmy Industries Corp.
United States v. Hernandez
United States v. Zenni
Wilson v. Clancy
Silver v. New York Central Railroad (question, p. 227-28)
United States v. Jaramillo-Suarez
United States v. Muscato (note case, p. 231)
United States v. Brown
City of Webster Groves v. Quick
Crawford v. Washington

B. Exclusions from the Hearsay Rule

1. Prior Statements by Witnesses FRE 801(d)(1)
MCCORMICK, pp. 552-56 FISHMAN, pp. 41-66 WALTZ &
PARK, pp. 386-91
United States v. Biener (supplement)
State v. Saporen (supplement)
United States v. Parry (supplement)
United States v. Red Feather (supplement)
United States v. DeSisto (supplement)
United States v. Owens

2. Opposing Party's Statements FRE 801(d)(2)
MCCORMICK, pp. 573-91
FISHMAN, pp. 67-99
WALTZ & PARK, pp. 250-68; 275-80
Reed v. McCord
United States v. Hoosier
State v. Carlson
Mahlandt v. Wild Canid Survival & Research Center Big Mack
Trucking Co. v. Dickerson
Bourjaily v. United States
State v Martinez (supplement)

Week#4 September 10th-September 14th

C. Exceptions to the Hearsay Rule

1. Declarant Unavailable

FRE 804

MCCORMICK, pp. 567-71 FISHMAN, pp. 241-46

Warren v. United States (supplement)

Barber v. Page (supplement)

a. Former Testimony

MCCORMICK, pp. 645-53 FISHMAN, pp. 247-3

WALTZ PARK, pp. 344-54

Travelers Fire Insurance Co. v. Wright

United States v. Salerno

b. Dying Declarations and Forfeiture of Objections

MCCORMICK, pp. 655-59; 570-71 FISHMAN, pp.263-68

WALTZ & PARK, pp. 369-86

R. v. Perry

State v. Williams

Reese v. Bara (supplement)

Garza v. Delta Tau Delta Fraternity National Giles

v. California

c. Declarations Against Interest

MCCORMICK, pp. 661-67 FISHMAN, pp. 268-87

WALTZ & PARK, pp. 355-56; 358-

Gichner v. Antonio Troiano Title (supplement)

State v. English

G.M. McKelvey Co. v. General Casualty Co. of America

United States v. Barrett

Green v. Georgia (note case, p. 363)

Williamson v. United States

Week #5 September 17th-September 21st

d. Medical Diagnosis/Treatment FRE 803(4)

MCCORMICK, pp. 617-19 FISHMAN, pp. 153-61

WALTZ & PARK, pp. 339-44

United States v. Iron Shell (supplement)

United States v. Tome

e. Past Recollection Recorded FRE 803(5)

MCCORMICK, pp. 621-24 FISHMAN, pp. 163-79

WALTZ & PARK, pp. 392-403

Baker v. State

Adams v. The New York Central Railroad Co.

United States v. Edwards (supplement)

- f. Records of Regularly Conducted Activity (Business and Public Records) FRE 803(6-8)
 MCCORMICK, pp. 625-44 FISHMAN, pp. 179-221 WALTZ & PARK, pp. 404-64
 Johnson v. Lutz
 United States v. Vigneau
 United States v. Duncan
 Williams v. Alexander
 Hahnemann University Hospital v. Dudnick
 Palmer v. Hoffman
 Lewis v. Baker
 Sana v. Hawaiian Cruises, Ltd.
 Beech Aircraft v. Rainey
 Williams v. Illinois
 United States v. Grady
 United States v. Quezada (supplement)
- g. Miscellaneous Exceptions
 FRE 803(9-12, 15-18, 22)
 MCCORMICK, pp. 669-74 FISHMAN, pp. 223-40
 WALTZ & PARK, pp. 465-70
 Stroud v. Cook
- h. Residual Exceptions FRE 807
 MCCORMICK, pp. 674-77 FISHMAN, pp. 299-308
 WALTZ & PARK, pp. 471-400
 Turbyfill v. International Harvester Co.
 Zenith Radio Corp. v. Matsushita Electrical Industrial Co., Ltd

Week#6 September 24th-26th (possible midterm)

V. IMPEACHMENT AND REHABILITATION; CROSS-EXAMINATION

A. Impeaching One's Own Witness

FRE 607
 MCCORMICK, pp. 68-70
 PARK & FRIEDMAN, pp. 485-94
United States v. Hogan

B. Cross Examination

FRE 611, 612, 615
 MCCORMICK, pp. 59-76
 Video - Younger, *The Ten Commandments of Cross Examination*

available
[v=dBP2if0l-a8](https://www.youtube.com/watch?v=dBP2if0l-a8) and in the

on youtube: <https://www.youtube.com/watch?v=dBP2if0l-a8>
 law library

C. Impeachment

MCCORMICK, pp. 77-78

1. Contradiction

MCCORMICK, pp. 103-04

PARK & FRIEDMAN, pp. 494-501

State v. Oswalt

United States v. Copelin

2. Character of the Witness

MCCORMICK, pp. 78-114

a. Prior Bad Acts

FRE 608

PARK & FRIEDMAN, pp. 501-18

United States v. Owens

United States v. Drake

United States v. Saada

b. Prior Convictions

FRE 609

PARK & FRIEDMAN, pp. 518-34

United States v. Sanders

United States v. Brackeen

Luce v. United States

c. Bad Reputation for Truth and Veracity

FRE 608

PARK & FRIEDMAN, pp. 534-35

Week #7 October 1st-3rd

3. Psychiatric Condition

PARK & FRIEDMAN, pp. 535-42

United States v. Lindstrom

4. Prior Statements to Impeach or Rehabilitate

FRE 613

PARK & FRIEDMAN, pp. 542-54

Coles v. Harsch

Tome v. United States

5. Bias

PARK & FRIEDMAN, pp. 554-61

United States v. Abel

VI. CONFIDENTIALITY AND CONFIDENTIAL COMMUNICATION

FRE 501

MCCORMICK, pp. 163-76

A. Attorney-Client Privilege

MCCORMICK, pp. 187-211

PARK & FRIEDMAN, pp. 563-90

United States v. Woodruff
Upjohn v. United States
City and County of San Francisco v. Superior Court
Clark v. State
United States v. Zolin
Swidler & Berlin v. United States (note case, p. 587)

B. Physician-Patient and Psychologist-Patient Privileges

MCCORMICK, pp. 213-220
PARK & FRIEDMAN, pp. 590-608
Prink v. Rockefeller Center Inc.
Jaffee v. Redmond
People v. Sergio

C. The Marital Privilege

MCCORMICK, pp. 177-85
PARK & FRIEDMAN, pp. 608-15
Trammel v. United States

D. Miscellaneous Privileges

PARK & FRIEDMAN, pp. 615-635
In re Grand Jury Investigation
In re Grand Jury
Matter of Farber

E. Inadvertent Waiver

PARK & FRIEDMAN, pp. 635-40
Peterson v. Bernardi

E. Governmental Privileges

MCCORMICK, pp. 223-33
PARK & FRIEDMAN, pp. 641-67
United States v. Reynolds
United States v. Nixon
United States v. Tzannos
Roviaro v. United States (in Tzannos opinion, p. 662)

Week #8 October 8-10

VI. WRITINGS

United States v. Reynolds
United States v. Nixon
United States v. Tzannos
Roviaro v. United States (in Tzannos opinion, p. 662)

A. Best Evidence Rule

FRE 1001-1008 MCCORMICK, pp. 521-36 WALTZ & PARK, pp. 669-79
Meyers v. United States People v. Enskat
United States v. Diaz-Lopez

B. Authentication

FRE 901-903
MCCORMICK, pp. 505-19 WALTZ & PARK, pp. 679-96
United States v. Dockins
United States v. Hampton
First State Bank of Denton v. Maryland Casualty Co. Griffin v. State

VII. COMPETENCY OF WITNESSES

FRE 601-606
MCCORMICK, pp. 27-28; 147-60 WALTZ & PARK, pp. 697-83
Hill v. Skinner
Rock v. Arkansas
State v. Moore
Tanner v. United States Ballinger v. Kirby (supplement)

Week #9 October 15-17

VIII. JUDICIAL NOTICE

FRE 201
MCCORMICK, pp. 689-712

A. Adjudicative Facts

WALTZ & PARK, pp. 727-34
De La Cruz v. City of Los Angeles Fielding v. State

B. Legislative Facts

WALTZ & PARK, pp. 734-39

C. Jury Notice

WALTZ & PARK, pp. 739-44
United States v. Amado-Nunez
State v. Mann (supplement)

IX. BURDENS OF PROOF

FRE 301, 302
MCCORMICK, pp. 715-52

A. Civil Cases

WALTZ & PARK, pp. 745-73
Smith v. Rapid Transit , Inc. Dyer v. MacDougall Legille v. Dann
In re Nicholas H.

B. Criminal Cases

Texas Jury Instruction, Beyond a Reasonable Doubt (supplement) WALTZ &
PARK, pp. 773-81

Virginia v. Black
Arroyo v. State (supplement) Paulson v. State (supplement)

Week #10 October 22-24

X. OPINION, EXPERTISE, AND EXPERTS

A. Opinion, Expertise, and Experts

FRE 701-706
MCCORMICK, pp. 28-57 WALTZ & PARK, pp. 783-852
Commonwealth v. Holden
Government v. Virgin Islands v. Knight State v. Odom
United States v. Johnson (supplement) United States v. Scop
Ingram v. McCuiston
People v. Garrdely
United States v. Moore
United States v. Kristiansen

Week #11 October 29th-October 31st

B. Scientific and Demonstrative Evidence

MCCORMICK, pp. 431-40; 462-75 WALTZ & PARK, pp. 852-32; 935-41;
Frye v. United States (handout)
Daubert v. Merrell Dow Pharmaceuticals, Inc. General Electric v. Joiner (note
case, p. 867) Kumho Tire Company, Ltd. v. Carmichel
Ellis v. State
United States v. Saelee
State v. Porter
United States v. Piccinonna
United States v. Scheffer
State v. Chapple
United States v. Horn (supplement)
Problem 2 (supplement)
People v. Collins
People v. Mountain
Kammer v. Young
Brown v. Farwell
Stewart v. State (supplement)

Week #12 November 3rd-November 5th

Appendix of Mission, Values and Learning Outcomes

University of La Verne 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.

University of La Verne College of Law Vision, Mission, and Values

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.

CORE VALUES

University 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.

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.

University of La Verne College of Law Program Learning Outcomes

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.