Evidence

In this subject, CALI has Lessons, Podcasts and eLangdell Press Texts. There are also Casebook Correlations available on the CALI website to aid you in assigning lessons.

CALI Lessons:

An Overview of Relevance and Hearsay: A Nine Step Analytical Guide

This lesson is an analytical guide to the study of two major aspects of evidence: relevance and hearsay. The vehicle used by this guide is a step by step, nine question analysis, applicable to any admissibility of evidence problem. This lesson should help one determine whether any item of evidence is admissible under the rules of evidence pertaining to relevance and hearsay. The answers to the first four questions determine whether any item of proffered evidence is admissible under the two components of relevancy: logical and legal relevancy. If the evidence in question is a statement, then the answers to questions five through nine will determine whether the evidence is admissible under the rules of hearsay.

Lesson Completion Time: 1.5 hours
Author: Norman Garland, Professor of Law, Southwestern Law School

Best Evidence Rule Under the Federal Rules

This exercise is designed to guide the student through the basics of the best evidence/original document rule under the federal rules. The exercise progresses logically through the rule. In order, it looks at the definition of "writing, recording, or photograph," the concept of proving "content of a writing," the definition of "original" and "duplicate," proof of "collateral" matters, material in possession of the opposite party, computer printouts, compilations, secondary evidence (Is there a "second best evidence" rule?), and the division of function between the judge and jury.

The exercise does not touch on Public Records (FRE 1005) or on Testimony or Written Admission of Party (FRE 1007). These are left for students to read on their own.

Lesson Completion Time: 30 minutes
Author: Robert Peterson, Professor of Law, Santa Clara University School of Law

California and Federal Best Evidence and Authentication Rules

This exercise tests the student's understanding of the authentication and best evidence rules. The exercise is designed for students who are looking at both the California and the federal rules. Where California and federal rules differ, the explanations generated by the computer contrast the two. Prior to attempting the exercise, the student should have studied best evidence and authentication and should be familiar with the concept of hearsay.

Lesson Completion Time: 45 minutes
Author: Robert Peterson, Professor of Law, Santa Clara University School of Law

Character Evidence Under Federal Rules

This exercise deals with attack and support of the character of parties, victims, and witnesses; the use of reputation and opinion testimony as character evidence; and the admissibility of other crimes, wrongs, or acts as evidence falling outside the general ban on character evidence.
Part of the exercise is a simulated trial in which students are asked to decide whether to object to certain questions asked on direct or cross-examination. In a subsequent section, students play the role of judge and rule on objections. Other sections of the exercise require students to respond to questions about factual hypotheticals.

Lesson Completion Time: 2 hours
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

Confrontation of Hearsay Declarants

This lesson explores the constitutional rules requiring confrontation of hearsay declarants in criminal prosecutions, with special emphasis on Crawford v. Washington, 541 U.S. 36 (2004), and its progeny.

Lesson Completion Time: 30 to 40 minutes
Author: Tom Lininger, Associate Professor of Law, University of Oregon School of Law

Expert and Opinion Evidence

This exercise applies hypotheticals to situations involving expert witnesses. Analysis relies primarily on the Federal Rules of Evidence. Expert testimony in both civil and criminal contexts is covered, as the exercise consists of two trials: the first is a civil case, the second a criminal prosecution. The challenge of understanding expert opinion law is addressed through a series of problems which raise issues of qualifying experts to give opinions, the proper bases for expert opinion, admissibility of fee information, cross-examination of experts, opinions on questions of law, and other applications.

Federal Rule 801(d) and Multiple Hearsay

This exercise is the counterpart of The Definition of Hearsay and the Federal Rules, which covers the definition of hearsay under Federal Rules of Evidence 801(a)-(c). The new exercise includes graphic reviews of each subsection of 801(d), and graphic illustrations of multiple hearsay, as well as interactive flowcharts for the subsections of 801(d). The program lends itself to use by students who either (i) want a relatively quick-review, with detailed work limited to those issues they find troublesome or (ii) want to review each relevant section of the rules in some detail. Those who wish to use the exercise to check their knowledge, and review only troublesome sections in detail, should follow the relevant strategies outlined in the READ ME section of the exercise. Students who wish to review 801(d) or multiple hearsay (Rule 805) in detail, will find a series of problems on each subsection of 801(d) and on 805, and review questions.

Four FRE 803 Hearsay Exceptions: Availability Immaterial

This exercise covers these four, most commonly used, specific exceptions to the Hearsay rule: 1) Present sense impressions; 2) Excited utterances; 3) State of Mind; and 4) Business records. The student will be applying these four exceptions in the context of scenarios presenting hypotheticals. The student's goal in this lesson is to work with the four exceptions, to gain a basic understanding of them with a focus on those fundamentals and problem areas identified in the FRE's Advisory Committee's Notes, recent judicial decisions, and legal commentators. The student will identify, examine, and explore specific problem areas within each exception.

Hearsay Exceptions: Rules 803 and 804

This exercise is designed to introduce students to the broad range of exceptions available under the Federal Rules of Evidence. Using hypothetical fact situations, students are asked to assume the role of the judge and to rule on the applicability of Federal Rules of Evidence 803 and 804. The exercise requires students to know the proper application of

each exception and to also understand the reason underlying each exception to the federal rules. Each section covers a separate sub-rule of either F.R.E. 803 or 804. Thus, the lesson is suitable as a review for students who have completed their study, or to reinforce classroom coverage of the rules throughout the semester.

Lesson Completion Time: 3 hours
Author: Richard Kling, Clinical Professor of Law, Chicago-Kent College of Law

Hearsay From Square One: The Definition of Hearsay

This lesson deals with the definition of hearsay under the Federal Rules of Evidence. It is a self-contained exercise that requires no prior knowledge or reference to outside material. It can be used as preparation before the topic of hearsay has been reached in the classroom, or as review after hearsay has been covered in class.

The exercise contains expository text followed by questions and responses. Its topics include statements offered as circumstantial evidence of the declarant's state of mind, utterances offered as legally operative language, and other utterances that are not hearsay under the definition set forth in Fed. R. Evid. 801 (c). The exercise uses a variety of examples to illustrate the concept of hearsay as a statement offered to prove its truth. The questions and text used in this exercise are different from those in the exercise entitled The Concept of Hearsay, so both exercises can be used by the same student without duplication. If both exercises are used, the author recommends that the present exercise (Hearsay from Square One) be used first.

Lesson Completion Time: 45 minutes
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

Impeachment and Rehabilitation of Witnesses

This exercise begins with a transcript of the direct examination of a government witness in a criminal action. The direct examination will be followed by a crossexamination, and the student is asked to rule on objections to impeachment questions by the crossexaminer. The student will be asked "remedial questions" after the completion of the first phase of this exercise if certain questions are erroneously answered. The lesson focuses on permissible and impermissible impeachment concepts under the Federal Rules of Evidence. The exercise was composed under a grant from the Federal Judicial Center as part of its training program for incoming federal judges.

Lesson Completion Time: 1 hour
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

Preliminary Factfinding Under Rule 104

Articles II through X of the Federal Rules set out substantive evidentiary tests and standards. However, a student's understanding of those tests and standards is incomplete unless the student appreciates the procedural framework within which those provisions operate. Federal Rules 104(a) and 104(b) are the fulcrum of that framework. Those subdivisions codify the distinction between competence and conditional relevance issues. The subdivisions govern such vital questions as whether the opponent may conduct voir dire in support of an objection, whether the trial judge may consider the credibility of the proponent's foundational testimony, how the trial judge instructs the jury, and whether the factual issue is ultimately submitted to the jury.

This lesson focuses on Rules 104(a) and 104(b). The first part of the lesson familiarizes the student with the key procedural differences between 104(a) and 104(b). It reviews all major facets of the problem, including the special procedures used when a preliminary fact coincides with a fact of consequence on the merits of the case. The second part of the lesson is an intensive drill giving the student extensive experience in classifying foundational facts as falling under either 104(a) or 104(b). Part two is divided into subparts, each subpart concerning a different article of the Federal Rules. Thus, there are separate subparts devoted to the foundational facts posed by the doctrines set out in Articles VI (credibility) and VII (opinion). Part two is divided into subparts to allow the professor to use the drill to directly reinforce the classroom discussion; the division of part two into subparts enables the student to do the relevant part of the drill after the professor has completed the discussion of the F.R.E. article. Hence, the professor can cover the articles and assign the subparts in the sequence which he or she believes makes the most pedagogic sense.

Lesson Completion Time: 1.5 hours
Author: Edward Imwinkelried, Edward L. Barrett, Jr. Professor of Law, University of California at Davis School of Law

Statutory Interpretation

This lesson introduces the student to the doctrine and processes involved in interpreting state and federal statutes. Statutes are a critical part of every substantive area of the law, so this is important background for every law student, lawyer and judge.

Lesson Completion Time: 30 minutes
Author: Ronald Brown, Professor of Law, Nova Southeastern University Shepard Broad Law Center

Survey of Evidence

Students are placed in the role of judge and asked to rule on objections. The case is a civil action to recover damages for personal injuries sustained when an automobile driven by

Plaintiff was involved in an intersection collision with an automobile driven by Defendant.

Lesson Completion Time: 1 hour
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

The Concept of Hearsay

Students are given hypothetical fact situations and asked whether the testimony offered would be hearsay. The exercise provides practice in applying the concept that an utterance is hearsay if it is offered to show the truth of matters asserted therein. It contains examples of utterances that are not hearsay because they are offered to show their effect upon the auditor, because they are legally operative language, or because they are offered as circumstantial evidence of the declarant's state of mind. Questions about the hearsay status of nonverbal conduct are also included. The exercise deals only with the concept of hearsay, not with exceptions to the hearsay rule.
The questions and text used in this exercise are different from those in the exercise entitled Hearsay From Square One: The Definition of Hearsay, so both exercises can be used by the same student without duplication. If both exercises are used, the author recommends that Hearsay from Square One be used first.

Lesson Completion Time: 1 - 3 hours (student option).
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

The Confrontation Clause

This lesson, which emphasizes Supreme Court decisions about the sixth amendment's requirement that an accused be confronted with the witnesses against him, should be helpful to teachers of evidence and criminal procedure. The lesson is designed to be useful both for students who have, or for those who have not, studied the cases. Students with some exposure to this material will encounter a challenging set of hypotheticals that will thoroughly test their understanding. Students who are new to the material can work their way through the same problems; and when they do not provide the best answer, they will encounter suggestions for rethinking or reconsidering their response in light of new information. Appropriate feedback appears whether the student's answer is correct or incorrect. The lesson begins by noting the overlapping purposes of the hearsay rule and confrontation clause, but it also highlights the differences between the two. The lesson contains links to carefully edited versions of the relevant cases.

Lesson Completion Time: 0.5 - 1 hours
Author: Marianne Wesson, Professor of Law and Wolf-Nichol Fellow, University of Colorado School of Law

The Definition of Hearsay and the Federal Rules Part 1: Substantive Rules and Hearsay Dangers

This lesson is part of another CALI lesson "The Definition of Hearsay and the Federal Rules." That lesson was divided into three parts for students who wish to cover the material in smaller modules. This lesson prepares the student for material covered in the final two modules, "The Definition of Hearsay and the Federal Rules Part 2: Statements and What They Assert" and "The Definition of Hearsay and the Federal Rules Part 3: Hearsay Arguments."

In this lesson, "The Definition of Hearsay and the Federal Rules Part I: Substantive Rules and Hearsay Dangers" the focus is on basic, non-controversial distinctions between hearsay and non-hearsay, which should be correct in any jurisdiction.

Lesson Completion Time: 1.25 hours
Author: Craig Callen, Professor of Law, Michigan State University College of Law

The Definition of Hearsay and the Federal Rules Part 2: Statements and What They Assert

This lesson is part of another CALI lesson "The Definition of Hearsay and the Federal Rules." That lesson was divided into three parts for students who wish to cover the material in smaller modules. This lesson builds on material covered in the first module, "The Definition of Hearsay and the Federal Rules Part 1: Substantive Rules and Hearsay Dangers" and prepares the student for material covered in the final module, "The Definition of Hearsay and the Federal Rules Part 3: Hearsay Arguments."

In this lesson, the focus is on more difficult and controversial topics in the application of the hearsay rules and the definition of hearsay, particularly issues pertaining to implied assertions. This part 2 focuses on the typical resolution of those questions under the Federal Rules of Evidence.

Lesson Completion Time: 1 hour
Author: Craig Callen, Professor of Law, Michigan State University College of Law

The Definition of Hearsay and the Federal Rules Part 3: Hearsay Arguments

This lesson is part of another CALI lesson "The Definition of Hearsay and the Federal Rules." That lesson was divided into three parts for students who wish to cover the material in smaller modules. This lesson builds on the material covered in the first two modules, "The Definition of Hearsay and the Federal Rules Part 1: Substantive Rules and

Hearsay Dangers" and "The Definition of Hearsay and the Federal Rules Part 2: Statements and What They Assert."

Part 3 introduces students to alternative approaches to the definition of hearsay, and their relation to the Federal Rules of Evidence. In the second part of this lessons, Arguments from the Approaches, presents a number of hypothetical problems. In each case, the lesson asks students to assess whether particular sorts of analysis support an argument about the application of the definition of hearsay.

Lesson Completion Time: 1.5 hours
Author: Craig Callen, Professor of Law, Michigan State University College of Law

The Hearsay Rule & Its Exceptions

This exercise is based on a simulated trial in which the user is asked to rule on hearsay objections and to give reasons for the rulings. The exercise was composed under a grant from the Federal Judicial Center, which has used it, along with the Character Evidence exercise, as part of its training program for incoming federal judges. It is suitable for students who have completed their study of the hearsay rule and who know something about the rules relating to impeachment and cross examinations.

Lesson Completion Time: 1 hour
Author: Roger Park, James Edgar Hervey Professor of Law, University of California Hastings College of the Law

Podcasts:

Impeaching a Hearsay Declarant Who Does Not Appear in Court

How can an opponent impeach a hearsay declarant, when the declarant does not appear in court? Find out in this Lawdible.

When hearsay is introduced against a party, that party may impeach the Declarant using any techniques that could be used against a witness who testifies live in court. For example, evidence of past convictions related to truth-telling may be introduced, to show that jury that the declarant has a character trait of untruthfulness. Similarly, opinion and reputation evidence about that character are admissible. Proof of bias in any form can be introduced to show that the declarant may have had a motive to shade his or her statements in a particular direction.

With regard to inquiring about past bad acts relevant to truth-telling, that technique can be used against a live-in-court witness, but probably cannot be used where a hearsay

declarant is sought to be impeached, since the declarant is not on the witness stand to hear and answer a question about his or her past acts.

Run Time: 9:55 Minutes
Author: Arthur Best, Professor of Law, University of Denver Sturm College of Law

Character Evidence for Impeachment of a Witness

Evidence about a person's character for impeachment purposes gets treated differently from evidence about a person's character to show how he or she acted out of court. What are these differences and why does the law have them?

When a party wants to show how someone acted out of court, using character evidence for that purpose is generally prohibited. But when a party wants to show that a witness likely lied while testifying, character evidence about the witness's character trait for truthfulness is allowed. In the first situation, character evidence to show conduct out-of-court, risks of prejudice against the defendant are high, and the vagueness of character evidence is particularly problematic.

When character evidence is offered to show whether a person lied on the witness stand, the risks of prejudice against the defendant are reduced since the witness may not be the defendant. Also, the probative value of the character evidence is likely to be high, since the trait – truthfulness – is clearer than other traits such as violence, and the conduct to which the trait is linked, testifying, may be less complex than much other conduct in the world.

CALI Lesson Pairings: Impeachment and Rehabilitation of Witnesses and Character Evidence Under Federal Rules.

Run Time: 9:55 Minutes
Author: Arthur Best, Professor of Law, University of Denver Sturm College of Law

Character Evidence: Evidence law's anti-propensity inference rule and its exceptions.

Why does so much evidence about a defendant's character get admitted, even though the law supposedly rejects the propensity inference? This question highlights a fundamental problem in evidence law – the shaky rationale for the anti-propensity rule, and the complications surrounding the many exceptions to the rule. Professor Arthur Best will address these issues and more in this character evidence Lawdible.

Apparently, even though there are big risks of prejudice and imprecision when we admit character evidence to show action in conformity with that character, some common-sense feelings about that evidence support the use of some major exceptions to the prohibition.

A defendant may introduce evidence of his or her own good character and may introduce evidence about an alleged victim's character for aggressiveness, for example. The prosecution may respond with additional character evidence. The combination of a general prohibition and a variety of exceptions suggests that the law may have only moderate allegiance to the basic anti-propensity rule.

CALI Lesson pairing: Character Evidence Under Federal Rules

Run Time: 10:35 Minutes
Author: Arthur Best, Professor of Law, University of Denver Sturm College of Law

Hearsay: Truth of the Matter Asserted Questions

The standard, broad definition of hearsay is "an out-of-court statement offered to prove the truth of whatever it asserts." The last part of the hearsay definition ("the truth of the matter of whatever it asserts") is essential to understanding hearsay, but that part can be tricky for law students who first learn the hearsay rule. The fact is, not all statements in court are offered for the truth of the matter asserted.

In this Lawdible Professor Best covers different scenarios where one might offer an out-of court statement for reasons other than the truth of the matter asserted, such as to show that someone who heard a statement had notice or knowledge about something. The analysis reviews the underlying rationale for the hearsay rule, explaining how cross-examination can probe a speaker's perception, memory, choice of words and apparent honesty. When those aspects of a speaker's statement would be trivial, the hearsay bar is usually withdrawn.

CALI Lesson Pairing: The Definition of Hearsay and the Federal Rules Part 2: Statements and What They Assert

Run Time: 10:26 Minutes
Author: Arthur Best, Professor of Law, University of Denver Sturm College of Law

eLangdell Press Texts:

Federal Rules of Evidence, 2014 Edition

Compiled by Legal Information Institute

These rules govern the introduction of evidence in proceedings, both civil and criminal, in Federal courts. While they do not apply to suits in state courts, the rules of many states have been closely modeled on these provisions.

Our Federal Rules ebooks include:

- The complete rules as of December 1, 2013 (for the 2014 edition).
- All notes of the Advisory Committee following each rule.
- Internal links to rules referenced within the rules.
- External links to the LII website's version of the US Code.

Impeachment by Evidence of a Criminal Conviction

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 14,265 Words, 52 Pages PDF

This material is about Federal Rule of Evidence 609: Impeachment by Evidence of Criminal Conviction. The goal of the party in impeaching a witness is to use the witness's prior conviction(s) to prove that the witness has a propensity to be deceitful and that the witness is likely acting in conformity with that propensity by lying on the witness stand and/or when making a prior statement admitted at trial to prove the truth of the matter asserted. This material will enable the student to understand FRE 609.

Evidence: Plea & Plea-Related Statements (Rule 410)

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 12,900 Words, 38 Pages in PDF

This text is designed for use in a Evidence course as a stand-alone chapter. Specifically, this material covers FRE 410. Federal Rule of Evidence 410 was an attempt to codify common law precedent finding that withdrawn guilty pleas, pleas of nolo contendere, and offers to plead guilty and nolo contendere were inadmissible against an accused.

Evidence: Propensity Character Evidence (Rule 404)

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 8,800 Words, 31 Pages in PDF

This chapter on Propensity Character Evidence under Rule 404 of the Federal Rules of Evidence, is part of a continuing series of chapters written by the author exploring topics in evidence. The chapter is intended for law students and faculty to use in their Evidence course.

Evidence: Best Evidence Rule

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 10,200 Words, 37 Pages in PDF

The Best Evidence Rule, contained in Article X of the Federal Rules of Evidence (Rules 1001-1008) and state counterparts, is a Rule that requires a party seeking to prove the contents of a writing, recording, or photograph to produce the original (or a duplicate) or account for its nonproduction. Through a series of cases and hypotheticals drawn from actual cases, this chapter gives readers a roadmap for how to address any Best Evidence Rule issue in practice.

Faculty materials also available: In addition to the free, open learning materials for students listed above, this eLangdell chapter includes a teacher's manual. Faculty and staff at CALI member schools can access these materials by logging in to eLangdell with a cali.org username and password. Contact CALI.

Evidence: Jury Impeachment

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 8800 Words, 32 Pages in PDF

The anti-jury impeachment rule, contained in Federal Rule of Evidence 606(b) and state counterparts, is a rule preventing the admission of jury testimony or statements in connection with an inquiry into the validity of the verdict, subject to certain exceptions. Through a series of cases and hypotheticals drawn from actual cases, this chapter gives readers a roadmap for how to address any jury impeachment issue in practice.

Faculty materials also available: In addition to the free, open learning materials for students listed above, this eLangdell chapter includes a teacher's manual. Faculty and staff at CALI member schools can access these materials by logging in to eLangdell with a cali.org username and password. Contact CALI if you have questions.

Evidence: Rape Shield Rule

Author: Colin Miller, Associate Professor of Law, University of South Carolina School of Law
Length: 6,735 Words, 28 Pages in PDF

The Rape Shield Rule, contained in Federal Rule of Evidence 412 and state counterparts is a Rule preventing the admission of evidence concerning the sexual predisposition and behavior of an alleged victim of sexual misconduct, subject to certain exceptions.

Through a series of cases and hypotheticals drawn from actual cases, this chapter gives readers a roadmap for how to address any Rape Shield Rule issue in practice.

Faculty materials also available: In addition to the free, open learning materials for students listed above, this eLangdell chapter includes a teacher's manual. Faculty and staff at CALI member schools can access these materials by logging in to eLangdell with a cali.org username and password. Contact CALI if you have questions.