



# Syllabus

# Evidence

**(Revised January 2020)**

**Candidates are advised that the syllabus may be updated from time-to-time without prior notice.**

**Candidates are responsible for obtaining the most current syllabus available.**



## Evidence

### LEARNING OUTCOMES:

The learning outcomes are based on the outcomes expected of graduates of Canadian common law programs. They include the ability to:

- Identify the purpose of the law of evidence and how that purpose informs which evidence we admit and how we use it in the relevant system of adjudication;
- Provide some theoretical and social context to the rules;
- Critically evaluate the extent to which the rules of evidence can safeguard against wrongful convictions and biased decision making;
- Identify the basic foundational elements of the common law approach to the law of evidence;
- Effectively identify admissibility issues with respect to evidence including the application of a relevant exclusionary rule(s);
- Understand the role of discretion in the law of evidence;
- Effectively identify and critically assess the basic principles and rules governing the proof of matters and evaluation of evidence in adjudicative proceedings;
- Reason persuasively in the context of fact-finding; and,
- Apply the law to new facts.

### EXAMINATION:

The function of the exam is to determine whether applicants can effectively demonstrate the learning outcomes expected of graduates from Canadian common law programs. To pass the examination, candidates are expected to identify the relevant evidentiary issues, select and identify the key Canadian cases and principles, and explain how the law applies on each of the relevant issues, given the facts presented. Candidates will also be expected to understand the process of fact-finding and demonstrate the ability to apply it to a given set of facts. Depending on the question, some critical reflection may also be required including identifying arguments based on the readings to address a systemic issue such as wrongful convictions or gender and racial bias. Those who fail to identify the key issues, or who demonstrate confusion on core legal concepts, or who merely list the issues and describe legal rules without demonstrating how they apply in the factual context presented will not succeed.



**MATERIALS:**

The readings referred to in this syllabus can be found in Ron Delisle, Don Stuart, David Tanovich & Lisa Dufraimont, *Evidence: Principles and Problems*, 12th ed. (Toronto: Carswell, 2018).

**The reading list starts on the next page.**



**READING LIST:**

<b>PART I - INTRODUCTION</b>	<b>READINGS</b>
<b>1. The Forum: Adversarial Adjudication</b>	1-3; 34-36
<b>2. Purpose</b>	3-30
<b>3. A Theory of Admissibility</b>	37-40

<b>PART II – STRUCTURAL ELEMENTS OF THE LAW OF EVIDENCE</b>	<b>READINGS</b>
<b>1. Theories &amp; Burdens of Proof</b>	
Allocation: <b>(i)</b> Who Should Bear The Burden? <b>(ii)</b> Preliminary Findings of Fact (Admissibility Stage)	<b>(i)</b> 43-53 <b>(ii)</b> 113-114
Measure of Evidential Burden: <b>(i)</b> Criminal Cases <b>(ii)</b> Civil Cases	<b>(i)</b> 114-126 <b>(ii)</b> 127-134
Measure of Burden of Persuasion: <b>(i)</b> Criminal Cases <b>(ii)</b> Civil Cases	<b>(i)</b> 61-64; 77-80 <b>(ii)</b> 53-61
<b>2. Relevance</b>	149-155
<b>3. Inductive Reasoning</b>	80-95; 155-168
<b>4. Exclusionary Discretion</b> <b>(i)</b> Criminal Cases - Common Law <b>(ii)</b> Criminal Cases - <i>Charter</i> <b>(iii)</b> Civil Cases	<b>(i)</b> 168-188 <b>(ii)</b> 194-204 <b>(iii)</b> 190-194
<b>5. Limiting Instructions</b>	87-88; 173-174



<b>6. Exclusionary Rules</b>	
<b>Character Evidence</b>	225-226; 239-242
Nature & Purpose: <u>Good Character</u> <b>(i)</b> Criminal Cases <b>(ii)</b> Civil Cases	<b>(i)</b> 217-218; 229-234 <b>(ii)</b> 209-217; 226-229
Nature & Purpose: <u>Bad Character</u> <b>(i)</b> <i>True Character Purpose</i> – Similar Fact Evidence & Third Parties	<b>(i)</b> 250-252; 257-281; 287-294
Nature & Purpose: <u>Bad Character</u> <b>(i)</b> <i>Rebuttal Evidence</i> <b>(ii)</b> <i>Relevant to a Material Fact</i> <b>(iii)</b> <i>Relevant to Credibility</i>	<b>(i)</b> 242-245; 292-294 <b>(ii)</b> 217-225 <b>(iii)</b> 171-177
<b>Sexual History Evidence</b>	<i>R v Barton</i> 2019 SCC 33 <i>R v Goldfinch</i> 2019 SCC 38 <i>R v V(R)</i> 2019 SCC 41
<b>Hearsay</b>	346-350
Identification	350-362
Principled Approach: <b>(i)</b> Criminal Cases – Necessity – Reliability <b>(ii)</b> Civil Cases	<b>(i)</b> 366-404; 406-413 <b>(ii)</b> 413-416
The Exceptions	416-476
<b>Voluntary Confessions Rule</b>	476-560
<b>Opinion Evidence</b>	560
Lay Opinion Evidence	561-568
Expert Opinion Evidence	568-672
<b>Privilege</b>	
Case-By-Case Privilege	673-677; 731-732
Solicitor Client Privilege	677-715
Marital Privilege	715-721
3rd Party Records	732-766



<b>PART III – MECHANICS OF PROOF</b>	<b>READINGS</b>
<b>1. Formal Admissions</b>	767-774
<b>2. Judicial Notice</b>	781-806
<b>3. Real Evidence</b>	810-848
<b>4. Witnesses</b>	
Competence	848-854; 876-877; 885-887
Compellability	888-923
Special Measures: Children’s Evidence	854-876
Direct Examination	923-945
Cross-Examination	945-978
Impeachment	979-1028
Bolstering Credibility/Rehabilitation	1028-1056

<b>PART IV – FACT- FINDING</b>	<b>READINGS</b>
<b>1. Direct Evidence</b>	
Assessing Credibility: <b>(i)</b> Demeanour Evidence <b>(ii)</b> Other Relevant Considerations  <b>(iii)</b> Applying WD	<b>(i)</b> 1057-1068 <b>(ii)</b> See above under Character Evidence, Children’s Evidence, Impeachment, Bolstering Credibility/Rehabilitation <b>(iii)</b> 64-76
<b>2. Identification Evidence</b>	95-104
<b>3. Circumstantial Evidence</b>	104-113
<b>4. Corroboration</b>	1068-1086



### Canadian Publishers

**Carswell (Thomson Reuters)**

Corporate Plaza  
2075 Kennedy Road  
Scarborough, ON M1T 3V4

Tel: 416.609.3800 or 1.800.387.5164  
Email: [carswell.customerrelations@thomsonreuters.com](mailto:carswell.customerrelations@thomsonreuters.com)  
URL: <http://www.carswell.com/>

**Irwin Law Inc.**

14 Duncan St.  
Toronto, ON M5H 3G8

Tel: (Canada & U.S.) 416.862.7690 or 1.888.314.9014  
Fax: 416.862.9236  
Email: [contact@irwinlaw.com](mailto:contact@irwinlaw.com)  
URL: <http://www.irwinlaw.com/>

**Emond Montgomery**

60 Shaftesbury Ave.  
Toronto, ON M4T 1A3

Tel: 416.975.3925  
Fax: 416.975.3924  
Email: [info@emp.ca](mailto:info@emp.ca)  
URL: <http://www.emp.ca/>

**Lexis Nexis Canada Inc.**

(For printed material only and  
not for access to Quicklaw)

Contact: Customer Service  
Tel: 905.415.5823 or 1.800.668.6481  
Fax: 905.479.4082 or 1.800.461.3275  
Email: [Customerservice@lexisnexis.ca](mailto:Customerservice@lexisnexis.ca)  
URL: <http://www.lexisnexis.ca/en-ca/home.page>

**Canada Law Books**

240 Edward St.  
Toronto, ON L4G 3S9

Tel: (Canada & U.S.) 416.609.3800 or 1.800.387.5164  
Email: [carswell.customerrelations@thomsonreuters.com](mailto:carswell.customerrelations@thomsonreuters.com)  
URL: <http://www.carswell.com/>

### Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada ([www.canlii.org](http://www.canlii.org)). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your registration fee also includes free access to the Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

Sign in to Quicklaw via <http://www.lexisnexis.com/ca/legal>. The first time you sign in to Quicklaw you will be asked to change or personalize your password. Remember your User ID and password are personal, and should not be shared with anyone.

If you forget or lose your password to Quicklaw you may retrieve it by clicking on the "Forget Password?" link on the Quicklaw sign-in page. Any other issues please Email [ftang@flsc.ca](mailto:ftang@flsc.ca).

Please review and abide by all Terms of Use when you receive your Quicklaw credentials, otherwise your Quicklaw account will be closed without any prior notice.

Lexis Nexis Quicklaw customer support is available via [service@lexisnexis.ca](mailto:service@lexisnexis.ca), or calling 1.800.387.0899.