



Syllabus

Evidence

(Revised September 2021)

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).

OR

Don Stuart, David Tanovich & Lisa Dufraimont, *Evidence: Principles and Problems*, 13th ed. (Toronto: Carswell, 2021)

Please note that this syllabus applies only to the November 2021 exam.

The reading list starts on the next page.



READING LIST:

PART I - INTRODUCTION	READINGS
1. The Forum: Adversarial Adjudication	1-3; 34-36 or 1-3; 32-38
2. Purpose	3-30 or 3-32
3. A Theory of Admissibility	37-40 or 39-43

PART II – STRUCTURAL ELEMENTS OF THE LAW OF EVIDENCE	READINGS
1. Theories & Burdens of Proof	
Allocation: (i) Who Should Bear The Burden? (ii) Preliminary Findings of Fact (Admissibility Stage)	(i) 43-53 or 45-57 (ii) 113-114 or 118-119
Measure of Evidential Burden: (i) Criminal Cases (ii) Civil Cases	(i) 114-126 or 123-135 (ii) 127-134 or 135-143
Measure of Burden of Persuasion: (i) Criminal Cases (ii) Civil Cases	(i) 61-64; 77-80 or 65-68; 80-83 (ii) 53-61 or 57-65
2. Relevance	149-155 or 145-154
3. Inductive Reasoning	80-95; 155-168 or 83-100; 154-164; 350-354
4. Exclusionary Discretion (i) Criminal Cases - Common Law (ii) Criminal Cases - <i>Charter</i> (iii) Civil Cases	(i) 168-188 or 164-190 (ii) 194-204 or 194-205 (iii) 190-194 or 191-194
5. Limiting Instructions	87-88; 173-174 or 91; 170; 323-326



6. Exclusionary Rules	
Character Evidence	225-226; 239-242 or 218-219; 227-228; 233-236; 241-247
Nature & Purpose: <u>Good Character</u> (i) Criminal Cases (ii) Civil Cases	(i) 217-218; 229-234 or 231-233 (ii) 209-217; 226-229 or 228-231
Nature & Purpose: <u>Bad Character</u> (i) <i>True Character Purpose</i> – Similar Fact Evidence & Third Parties	(i) 250-252; 257-281; 287-294 or 248-293
Nature & Purpose: <u>Bad Character</u> (i) <i>Rebuttal Evidence</i> (ii) <i>Relevant to a Material Fact</i> (iii) <i>Relevant to Credibility</i>	(i) 242-245; 292-294 or 236-241; 293-294 (ii) 217-225 or 219-227 (iii) 171-177 or 167-173
Sexual History Evidence	<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 or 296-349
Hearsay	346-350 or 358-363
Identification	350-362 or 363-375
Principled Approach: (i) Criminal Cases – Necessity – Reliability (ii) Civil Cases	(i) 366-404; 406-413 or 376-428 (ii) 413-416 or 429-431
The Exceptions	416-476 or 431-492
Voluntary Confessions Rule	476-560 or 493-569
Opinion Evidence	560 or 569-570
Lay Opinion Evidence	561-568 or 570-578
Expert Opinion Evidence	568-672 or 578-666
Privilege	
Case-By-Case Privilege	673-677; 731-732 or 666-670
Solicitor Client Privilege	677-715 or 670-710
Marital Privilege	715-721 or 710-715
3rd Party Records	732-766 or 735-753



PART III – MECHANICS OF PROOF	READINGS
1. Formal Admissions	767-774 or 755-762
2. Judicial Notice	781-806 or 762-790
3. Real Evidence	810-848 or 791-834
4. Witnesses	
Competence	848-854; 876-877; 885-887 or 834-841; 863-874
Compellability	888-923 or 874-886; 897-910
Special Measures: Children’s Evidence	854-876 or 841-863
Direct Examination	923-945 or 910-927
Cross-Examination	945-978 or 931-943; 951-968
Impeachment	979-1028 or 969-971; 990-1023
Bolstering Credibility/Rehabilitation	1028-1056 or 1023-1052

PART IV – FACT- FINDING	READINGS
1. Direct Evidence	
Assessing Credibility: (i) Demeanour Evidence (ii) Other Relevant Considerations (iii) Applying WD	(i) 1057-1068 or 1052-1064 (ii) See above under Character Evidence, Children’s Evidence, Impeachment, Bolstering Credibility/Rehabilitation (iii) 64-76 or 68-80
2. Identification Evidence	95-104 or 100-109
3. Circumstantial Evidence	104-113 or 109-118
4. Corroboration	1068-1086 or 1063-1081



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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). 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.

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