



Syllabus

Evidence

(Revised for February 2022)

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

The reading list starts on the next page.



READING LIST:

PART I - INTRODUCTION	READINGS
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2. Purpose	3-32
3. A Theory of Admissibility	39-43

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Measure of Burden of Persuasion: (i) Criminal Cases (ii) Civil Cases	(i) 65-68; 80-83 (ii) 57-65
2. Relevance	145-154
3. Inductive Reasoning	83-100; 154-164; 350-354
4. Exclusionary Discretion (i) Criminal Cases - Common Law (ii) Criminal Cases - <i>Charter</i> (iii) Civil Cases	(i) 164-190 (ii) 194-205 (iii) 191-194
5. Limiting Instructions	91; 170; 323-326



6. Exclusionary Rules	
Character Evidence	218-219; 227-228; 233-236; 241-247
Nature & Purpose: <u>Good Character</u> (i) Criminal Cases (ii) Civil Cases	(i) 231-233 (ii) 228-231
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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) 236-241; 293-294 (ii) 219-227 (iii) 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	358-363
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Principled Approach: (i) Criminal Cases – Necessity – Reliability (ii) Civil Cases	(i) 376-428 (ii) 429-431
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Opinion Evidence	569-570
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Case-By-Case Privilege	666-670
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3rd Party Records	735-753



PART III – MECHANICS OF PROOF	READINGS
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2. Judicial Notice	762-790
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4. Witnesses	
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Compellability	874-886; 897-910
Special Measures: Children’s Evidence	841-863
Direct Examination	910-927
Cross-Examination	931-943; 951-968
Impeachment	969-971; 990-1023
Bolstering Credibility/Rehabilitation	1023-1052

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