



Federation of
Law Societies
of Canada

NCA

National Committee
on Accreditation

Syllabus **Evidence**

Revised April 2025

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*, 14th ed. (Toronto: Carswell, 2024)

The reading list starts on the next page.



READING LIST

PART I - INTRODUCTION	READINGS
1. The Forum: Adversarial Adjudication & Context	31-37
2. Purpose	3-31
3. Aboriginal Rights & Indigenous Traditions	37-42

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) 43-55 (ii) 117-118
Measure of Evidential Burden: (i) Criminal Cases (ii) Civil Cases	(i) 121-133 (ii) 134-141
Measure of Burden of Persuasion: (i) Criminal Cases (ii) Civil Cases	(i) 63-79 (ii) 55-63
2. Relevance	143-161
3. Inductive Reasoning	74-95; 162-172
4. Exclusionary Discretion (i) Criminal Cases - Common Law (ii) Criminal Cases - <i>Charter</i> (iii) Civil Cases	(i) 172-197 (ii) 201-212 (iii) 197-201
5. Judicial Instructions	18-21; 178; 87



6. Exclusionary Rules	
Character Evidence	217-225; 238-241; 246-252
Nature & Purpose: <u>Good Character</u> (i) Criminal Cases (ii) Civil Cases	(i) 236-238 (ii) 233-236
Nature & Purpose: <u>Bad Character</u> (i) <i>True Character Purpose</i> – Similar Fact Evidence & Third Parties	(i) 253-291 Additional Cases: <i>MAM v JPM</i> 2024 PECA 13 (paras 1-2; 29-36)
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) 241-246 (ii) 225-232 (iii) 175-181 Additional Cases: <i>Saskatchewan v Racette</i> 2020 SKCA 2 (paras 1-45)
Sexual Activity Evidence	292-361 Additional Cases: <i>R v TWW</i> 2024 SCC 19 (paras 1-18; 24-54; 118-131); <i>R v Reimer</i> 2024 ONCA 519
Hearsay	362-366
Identification	367-378
Principled Approach: (i) Criminal Cases (ii) Civil Cases	(i) 380-432 (ii) 432-435
The Exceptions	436-438; 462-477; 480-483; 489-491 Additional Cases: <i>MJL Enterprises v SAL Marketing</i> 2025 ONCA 120 (paras 1-2; 14-26) (admissions); <i>R v DB</i> 2024 ONCA 546 (paras 2-3; 6; 9; 19-36); <i>R v Gordon</i> 2022 ONCA 799 (paras 1-6; 46-53) (adoptive admissions); <i>R v Nurse</i> 2019 ONCA 260 (paras 1-6; 54-57; 66-76) (dying declarations); <i>Samuel v Chrysler</i> 2007 BCCA 431 (paras 1-2; 15; 23-40) (declarations as to physical sensations); <i>R v Dion</i> 2025 ONCA 7 (paras 1-6; 27-47); <i>Briscoe Estate v Canadian Premier Life Insurance</i> 2012 ONCA 854 (paras 1-23; 52-57) (state of mind exception); <i>R v MacKinnon</i> 2022 ONCA 811 (paras 1-23; 39-51; 65-76; 102-109); <i>R v RA</i> 2024 ONCA 696 (paras 6-7; 33-43) (spontaneous utterances)



Voluntary Confessions Rule	493-666 Additional Cases: <i>R v Ordonio</i> 2025 ONCA 135 (Use of the Reid Technique)
Opinion Evidence	
Lay Opinion Evidence	568-577
Expert Opinion Evidence	573-666 Additional Cases: <i>JN v CG</i> 2023 ONCA 77 (paras 1-7; 11-31)
Privilege	
Case-By-Case Privilege	725-735
Solicitor Client Privilege	670-708
Marital Privilege	708-713
3rd Party Records	735-767



PART III – MECHANICS OF PROOF	READINGS
1. Formal Admissions	769-776
2. Judicial Notice	776-805
3. Real Evidence	808-848
4. Witnesses	
Competence	848-855; 876-889
Compellability	889-925
Special Measures: Children's Evidence	855-876
Direct Examination	925-948
Cross-Examination	946-984
Impeachment	984-1034
Bolstering Credibility/Rehabilitation	1034-1063

PART IV – FACT- FINDING	READINGS
1. Direct Evidence	
Assessing Credibility: (i) Demeanour Evidence (ii) Other Relevant Considerations (iii) Applying WD	(i) 1063-1074 (ii) See above under Character Evidence, Children's Evidence, Impeachment, Bolstering Credibility/Rehabilitation (iii) 66-76
2. Identification Evidence	96-104
3. Circumstantial Evidence	105-117
4. Corroboration	1075-1085



Canadian Publishers

Carswell (Thomson Reuters)
Corporate Plaza
2075 Kennedy Road
Scarborough, ON M1T 3V4

Tel: 416.609.3800 or 1.800.387.5164
Email Canadian Academic Print Team:
CAPTeam@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
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
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
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
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). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your exam registration fee also includes free access to the Advance 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.

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, or calling 1.800.387.0899.