

EVIDENCE 476

COURSE OUTLINE – SUMMER 2014¹

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Required Text: Evidence: Principles and Problems, 10th Edition, Carswell

Recommended Materials

Paciocco and Stuesser, *The Law of Evidence*
Harold Cox, *Criminal Evidence Handbook*
Ewaschuk, *Criminal Pleadings and Practice in Canada*
McWilliams, *Canadian Criminal Evidence*
Watt's *Manual of Criminal Evidence*
Steward et al. *Evidence: A Canadian Casebook*

Evaluation

100%, 3 Hour Final Examination. The examination is closed book, but students may bring into the exam two pieces of letter sized paper with notes.

E-Mails Re Course Material

Should be in reasonable proximity to the relevant lecture. No e-mails regarding course materials after the last lecture.

Lecture Recording

Lectures may not be recorded without prior permission from Professor Harris.

Further Materials

Case Supplement: to be e-mailed to students
Canada Evidence Act: <http://canlii.ca/t/7vf5>

Lecture I

Introduction to Evidence

- A Qualified Search for the Truth: pp. 1-14
- The Adversarial System of Trial: pp. 1-14
- Different Thresholds of Admissibility: 187-189

¹ This Course Outline is an approximation of the materials we will be covering, as certain alterations or editing of the Outline may occur during the course. We will generally be covering two lectures worth of material on each day of the summer course.

Lecture II

Critical Contexts for Determining Evidentiary Issues

- Assessing Probative Value and Prejudicial Effect: *R. v. Arp*; *R. v. F.F.B.*; *R. v. Cuadra*
- The Burden of Proof: pp. 64-76

Lecture III

Types of Evidence

- Direct / Circumstantial: 75-81
- Real Evidence: Objects, Photos, Videos, Documents: pp. 392-404, *R. v. Penney*; *R. v. Kinkead*;
- Demonstrative Evidence: pp. 411-422

Lecture IV

Extrinsic Misconduct Evidence: Bad Character of the Accused

- Putting Character in Issue: pp. 230-236
- Evidence of Habit and Similar Acts: pp. 211-219, 26256-274; 283-284

Lecture V

Post Offence Conduct: *White v. The Queen*; *R. v. Peavoy*; *R. v. S.B.C.*; pp. 81-87

Lectures VI, VII

Bad Character of the Witness

- *Canada Evidence Act (CEA)*, Section 12; pp. 623-624; *R. v. Cullen*
- The *Vetrovec* Witness: *R. v. Murrin*; pp. 661-671

Identification Evidence: *R. v. Gonsalves*

Judicial Notice: pp. 354-361, 385-387

Lectures VIII-X

Opinion Evidence

- **Statutory Rules:** pp. 972-977
- **Common Knowledge:** pp. 871-878
- **General Rules for Experts:** pp. 878-887
- **Necessity:** pp. 918-922, 941-949
- **Ultimate Issue:** pp. 953-955; *R. v. Llorenz*
- **Foundation:** pp. 955-967
- **A New Framework for Admissibility:** pp. 899-914

Lectures XI-XIII

Witnesses

Ability to Testify

- **Competence, Oaths, and Compellability of Witnesses:** *CEA*, Sections 13-16.1, pp. 424-428, 430-461
- **Spousal Competency:** *CEA*, Section 4, pp. 468-472; 487-488

Order of Witnesses: pp. 577-580

Direct Examination

- **Leading Questions:** pp. 532-539
- **Refreshing a Witness's Memory:** pp. 539-548

Lectures XIV

Cross-Examination: *CEA*, Section 10; pp. 557-571

Re-Examination: *R. v. Sipes*

Collateral Facts / Rebuttal Evidence: pp. 571-576

Lectures XV-XVI

Statement Evidence

- Prior Inconsistent Statements: pp. 638-653
- Attacking Credibility of Own Witness: *CEA*, Section 9(1) and 9(2); pp. 594-600; *R. v. Milgaard*; *R. v. Malik*

Lectures XVI-XVIII

Hearsay

- What is Hearsay: pp. 690-695
- Non Hearsay Uses: *R. v. Baltzer*

Traditional Hearsay Exceptions

- Declarations Against Interest, Dying Declarations, Dying Declarations, Declarations in Course of Duty: pp. 779-787
- Spontaneous Declarations: 808-816
- State of Mind, Statements of Intent: *R. v. Panghali*; pp. 804-807
- Oral History in Aboriginal Title Cases: pp. 408-411

The Principled Approach: pp. 709-719, 722-746

Statutory Exceptions

- Business Records: *CEA*, Section 30; *R. v. Wilcox*
- Prior Testimony: pp. 796-801

Lectures XIX-XX

Admissions and Confessions

Formal Admissions: pp. 343-348

Informal Admissions

- Probative Value: pp. 190-191, 758-765
- Voluntariness Rule: 831-844; *R. v. Grandinetti*
- Admissions of Co-Accused: *R. v. Grewall*

Lecture XXI

Exclusion of Evidence Under *the Charter*

- Section 24(2) of the *Charter*: *R. v. Grant*

Lectures XXII-XXIV

Privilege Against Self-Incrimination

- Police Custody: pp. 847-860
- Out of Custody: pp. 507-514, 522-524
- Witnesses: pp. 491-499
- Statutory Obligations: pp. 503-507; *Application Under Section 83.28 of the Criminal Code*

Privilege Based on Confidential Relationships

- Class Privilege - Solicitor-Client: pp. 989-992
- Litigation Privilege: pp. 994-1001
- Other Confidential Relationships: pp. 978-982
- Settlement Discussions: pp. 1025-1033
- Exceptions: pp. 1001-1017