

# EVIDENCE 476

## COURSE OUTLINE – SUMMER 2015<sup>1</sup>

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### Required Materials

Text: Evidence: Principles and Problems, 10<sup>th</sup> Edition, Carswell  
Supplemental Case Book (E-mailed)

Canada Evidence Act: <http://canlii.ca/t/7vf5>

Web cases: Canlii: <http://www.canlii.org/en/>

### Recommended Materials

Paciocco and Stuesser, *The Law of Evidence*

Harold Cox, *Criminal Evidence Handbook*

McWilliams, *Canadian Criminal Evidence*

Watt's *Manual of Criminal Evidence*

Steward et al. *Evidence: A Canadian Casebook*

### Evaluation

100%, 3 Hour Closed Book Examination. Students may only bring to the exam two double sided sheets of notes. Students will be provided in the exam with the course outline and excerpts from the table of contents of the course text.

### 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.

## Lecture I

### Introduction to Evidence

- A Qualified Search for the Truth: pp. 1-14
- The Adversarial System of Trial: pp. 1-14

PBS Frontline Documentary “Death By Fire” found at  
<http://www.pbs.org/wgbh/pages/frontline/death-by-fire/>

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<sup>1</sup> 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 for each day of the summer course.

## Lecture II

### **Critical Contexts for Determining Evidentiary Issues**

- Assessing Probative Value and Prejudicial Effect: pp. 157-164, 187-189, 192-195; **R. v. Arp**; **R. v. F.F.B.**
- The Burden of Proof: pp. 64-76; **R. v. Plewes**

## Lecture III

### **Types of Evidence**

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

## Lecture IV-V

### **Extrinsic Misconduct Evidence: Bad Character of the Accused**

- General Inadmissibility: pp. 219-236; **R. v. Cuadra**
- Evidence of Habit and Similar Acts: pp. 211-219, 256-274; 283-284; **R. v. Grant** (2015)

## Lecture VI

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

## Lectures VII, VIII

### **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**; **R. v. Hay**

## **Lectures VIX-XI**

### **Opinion Evidence**

- **Statutory Rules:** pp. 972-977
- **Common Knowledge:** pp. 871-878
- **General Rules for Experts:** pp. 878-887
- **Necessity:** pp. 918-922, 943-946
- **Ultimate Issue:** pp. 953-955; *R. v. Llorenz*
- **Foundation:** pp. 955-967
- **A New Framework for Admissibility:** pp. 899-914
- *R. v. Orr*

## **Lectures XII-XIII**

### **Witnesses**

#### **Ability to Testify**

- **Competence, Oaths, and Compellability of Witnesses:** *CEA*, Sections 13-16.1, pp. 424-426

**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 and Prior Consistent Statements: CEA, Section 10; pp. 638-653
- Attacking Credibility of Own Witness: CEA, Section 9(1) and 9(2); pp. 594-600; *R. v. Milgaard*; *R. v. Cassibo*; *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, Declarations in Course of Duty: pp. 779-789
- 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; *R. v. Chretien*

### **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; CBC documentary “The Interrogation Room” at <http://www.cbc.ca/fifth/episodes/2014-2015/the-interrogation-room>
- Voluntariness Rule: 831-844
- Revisiting Probative Value: *R. v. Hart*; CBC Documentary “Mr. Big” at <http://www.cbc.ca/fifth/episodes/2014-2015/mrbig>
- Admissions of Co-Accused: *R. v. Grewall*

## **Lecture XXI**

### **Exclusion of Evidence Under *the Charter***

- Section 24(2) of the *Charter*: *R. v. Grant* (2009)

## **Lectures XXII-XXIV**

### **Privilege Against Self-Incrimination**

- Police Custody: pp. 847-860
- Out of Custody: pp. 507-514, 522-524
- Witnesses: pp. 488-499
- Statutory Obligations: pp. 503-507; *Application Under Section 83.28 of the Criminal Code*

### **Privilege Based on Confidential Relationships**

- Class Privilege - Solicitor-Client: pp. 982-991, Spousal, Section 4, CEA
- Litigation Privilege: pp. 994-1001
- Other Confidential Relationships: pp. 978-982
- Settlement Discussions: pp. 1025-1033
- Exceptions: pp. 1001-1017