

**SAULT COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

**SAULT STE. MARIE, ON**

**COURSE OUTLINE**

**COURSE TITLE:** CANADIAN EVIDENTIARY PROCEDURES

**CODE NO.:** CJS 312

**SEMESTER:** THIRD

**PROGRAM:** LAW AND SECURITY ADMINISTRATION

**AUTHOR:** BOB TULLOCH

**DATE:** SEPTEMBER 1996

**PREVIOUS  
OUTLINE DATED:** SEPTEMBER 1995

**APPROVED:** *H. DePasaris*  
DEAN

*May 29/96*  
DATE

**TOTAL CREDITS :** 3

**PREREQUISITE(S):** NONE

**LENGTH OF COURSE:** 3 HOURS / WEEK FOR 16 WEEKS

**TOTAL CREDIT HOURS:** 48

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**I. COURSE DESCRIPTION**

This course will apprise students of the history of the development of the rules of evidence and of the various elements of the process by which evidence is admitted into court. It will also furnish the students with the *raison d'être* for the primary exclusionary rules of evidence as well as providing them with the major exceptions to these rules. The course will further show the students the protection afforded to accused persons, and the responsibility of the crown to prove the case beyond a reasonable doubt.

**II. LEARNING OUTCOMES AND ELEMENTS OF PERFORMANCE**

(Generic Skills Learning Outcomes placement on the course outline will be determined and communicated at a later date.)

**A. Learning Outcomes:**

1. Discuss some of the basic principles relating to the rules of evidence and in particular discuss the effect of the Charter of Rights and Freedoms on the rules.
2. Discuss evidentiary concepts relevant to the admissibility of evidence. In particular, discuss such topics as forms of evidence, competency and compellability, privilege and the "Best Evidence Rule".
3. State the three primary exclusionary rules of evidence and discuss their *raison d'être*. Furthermore, list the major exceptions to these rules and discuss the implications of these exceptions.
4. State the burden of proof at trial and discuss how this burden is met. Also, show how one evidentiary tool, presumptions, is effective in helping to meet this burden.
5. Apply the various rules of evidence to given scenarios as required.



**B. Learning Outcomes with Elements of Performance**

Upon successful completion of this course the student will demonstrate the ability to:

1. Discuss some of the basic principles relating to the rules of evidence and in particular discuss the effect of the Charter of Rights and Freedoms on the rules.

**Elements of Performance**

- \* List three things the crown must prove in order to gain a conviction
- \* State "The Rule" regarding admissibility of evidence
- \* State the exclusionary rule of evidence found in Sec. 24(2) of the "Charter"
- \* Define other terms as set out by the instructor
- \* Apply the rules, terms, definitions, and criteria listed above to given scenarios as required

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2. Discuss evidentiary concepts relevant to the admissibility of evidence. In particular, discuss such topics as forms of evidence, competency and compellability, privilege and the "Best Evidence Rule".

**Elements of Performance**

- \* List two methods of proof
- \* List three forms of evidence
- \* Define "Oral Testimony"
- \* List options regarding testimony of a witness under 14 years
- \* Define the following terms: Competency, Compellability, Accomplice, Co-Accused
- \* List occasions when a spouse is competent and/or compellable as a witness
- \* List criteria applicable to the following privileges: Spousal, Solicitor-Client, Police-Informant
- \* List some other less common privileges
- \* Identify some situations which are not privileged (common misconceptions)
- \* List criteria for using notes when called as a witness
- \* Define adverse/hostile witness and list unique situations which arise when such a witness is encountered
- \* Define "Real Evidence"
- \* List reasons why it is important to tag and initial exhibits
- \* Define "Documentary Evidence"



- \* List some examples of specific documents allowed by statute to be entered into evidence
- \* State the "Best Evidence Rule"
- \* List examples of various forms of secondary evidence including but not confined to demonstrative evidence
- \* State a definition which has now been developed for the term "Evidence"
- \* List the sources for the rules of evidence
- \* Define other terms as set out by the instructor
- \* Apply the terms, definitions, and criteria listed above to given scenarios as required

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3. State the three primary exclusionary rules of evidence and discuss their *raison d'être*. Furthermore, list the major exceptions to these rules and discuss the implications of these exceptions.

#### Elements of Performance

- \* State the exclusionary rule regarding "**Character**" evidence
- \* State the philosophy behind the rule
- \* List some examples of admissibility of character evidence after conviction but before sentencing
- \* Give an example of an exception to the general rule where character is a "fact in issue"
- \* Give an example of an exception to the general rule where character goes to prove a "motive"
- \* State the exception to the general rule where the accused makes "character" an issue
- \* List examples of how an accused might attempt to make character an issue during the trial
- \* State the exception to the general rule when a witness gives "testimony"
- \* Compare limitations placed on cross-examination of a defence witness with cross-examination of a crown witness
- \* Give an example of an exception to the general rule involving "**possession offences**"
- \* State the inference that arises as a result of the exception involving possession offences
- \* Give one reason why "**similar act evidence**" is admissible as an exception to the general rule
- \* Give some examples of where evidence might be admissible in this situation involving similar act evidence



- \* Give a second reason why "similar act evidence" is admissible as an exception to the general rule
- \* Give some examples of where evidence might be admissible in this situation involving similar act evidence
- \* List some criteria which apply when using similar act evidence
- \* Develop an acronym to remember the exceptions to the general rule
- \* Define other terms as set out by the instructor
- \* Apply the rule, the exceptions, terms, definitions, and criteria listed above to given scenarios as required
  
- \* State the exclusionary rule regarding "**Opinion**" evidence
- \* List two major exceptions to the general rule
- \* Give some examples of exceptions regarding matters of "personal knowledge"
- \* Define an "expert witness"
- \* State criteria which apply to expert witnesses
- \* State the number of expert witnesses allowed during criminal trials
- \* Define other terms as set out by the instructor
- \* Apply the rule, the exceptions, terms, definitions, and criteria listed above to given scenarios as required
  
- \* State the exclusionary rule regarding "**Hearsay**" evidence
- \* State the primary underlying reason for the rule
- \* State another (less important) reason for the rule
- \* Write a scenario which clearly shows an example of hearsay
- \* Define the term "Declarations in the Course of Duty" which is an exception to the general rule
- \* Give a common example of a declaration in the course of duty
- \* State reasons why such declarations are considered for admissibility into court
- \* State a special case where such declarations are allowed by statute to be admitted into court
- \* State what is special about these particular declarations
- \* List criteria which apply to these special declarations
- \* Define the term "Dying Declaration" which is an exception to the general rule
- \* State the reason why such declarations are considered for admissibility into court
- \* List the criteria which apply to these declarations
- \* State the types of offences to which "complaint evidence" applies which may also be an exception to the general rule
- \* List the limited situations where this type of evidence might be considered for admissibility into court
- \* Define the term "Res Gestae"



- \* Create a scenario which clearly shows an example of res gestae
- \* Define the term "Res Gestae Statement" which is an exception to the general rule
- \* Create a scenario which clearly shows an example of a res gestae statement
- \* State the reason why such statements are considered for admissibility into court
- \* State the options available to an accused when "Statements are made in the Presence and Hearing of the Accused" which is an exception to the general rule
- \* Explain the effect of the "Charter" on the inference to be drawn by the silence of the accused
- \* State the normal response of an innocent man to an accusation
- \* State the circumstances when a denial by the accused might be useful as evidence
- \* Differentiate between an admission and a confession
- \* Differentiate between inculpatory and exculpatory statements
- \* State the reason why admissions and confessions are considered as exceptions to the general rule
- \* Define a "Person in Authority"
- \* List some examples of persons in authority
- \* Explain how a third party might become a person in authority
- \* Explain how an undercover operative is considered with respect to rules regarding persons in authority
- \* Define a "Voir Dire"
- \* State "The Rule" with respect to the admissibility of statements
- \* Explain factors a judge considers during a voir dire when considering the voluntariness of a statement
- \* Define an "Inducement"
- \* Give examples of various types of inducements
- \* Explain how some minor inducements might be overcome
- \* Explain how the "Charter" has impacted on the use of tricks in the taking of statements
- \* List some examples various "States of Mind" of an accused which may affect the admissibility of statements
- \* Explain how each of these states of mind might adversely affect the admissibility of statements
- \* Define the term "The Judges' Rules"
- \* Paraphrase each of the rules in layman's terms
- \* State the general rule regarding "Previous Consistent Statements"
- \* State the rule regarding "Self-Serving Evidence"
- \* List some exceptions with respect to the rule regarding self-serving evidence
- \* Explain the reasoning behind the rule respecting the admissibility of self-serving evidence



- \* Define other terms as set out by the instructor
- \* Apply the rules, the exceptions, terms, definitions, and criteria listed above to given scenarios as required

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4. State the burden of proof at trial and discuss how this burden is met. Also, show how one evidentiary tool, presumptions, is effective in helping to meet this burden.

**Elements of Performance**

- \* Define "Facts in Issue"
- \* Compare the concept of "Burden of Proof" with the concept of "Burden of Producing Evidence"
- \* List the various types of examination which occur during a trial
- \* State the criteria which apply to each type of examination
- \* Define "Corroboration"
- \* State an acronym which defines corroboration
- \* List offences for which corroboration is required
- \* List examples of situations where corroboration may be found
- \* Compare "presumptions of fact" with "presumptions of law"
- \* Compare "permissive presumptions" with "mandatory presumptions"
- \* Compare "rebuttable presumptions" with "irrebuttable presumptions"
- \* Give examples of each of the various types of presumptions listed above
- \* Define other terms as set out by the instructor
- \* Apply the terms, definitions, and criteria listed above to given scenarios as required

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5. Apply the various rules of evidence to given scenarios as required.

**Elements of Performance**

- \* Apply the terms, definitions, and criteria listed in each of the learning outcomes to given scenarios as required

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**III. TOPICS TO BE COVERED**

**Note:** These topics sometimes overlap several areas of skill development and are not necessarily intended to be explored in isolated learning units or in order below.

1. Introduction to evidence / "The Rule" / Relevance of the Charter of Rights and Freedoms
2. Methods of proof / Direct & Circumstantial
3. Forms of evidence
4. Competency & Compellability
5. Privileges
6. The Best Evidence Rule
7. Exclusionary Rules / Character, Opinion, Hearsay
8. Voir Dire / Judges' Rules
9. Previous Consistent Statements
10. Burden of Proof / Presumptions

**IV. REQUIRED STUDENT RESOURCES**

A Basic Guide to Evidence in Criminal Cases, Salhany, 4th Ed  
Criminal Code of Canada

**V. METHODS OF EVALUATION**

The final grade will be derived from a combination of unannounced quizzes, announced tests, midterm test, a final exam and assignments (as required).

Unannounced Quizzes	20%
Announced Tests and Assignments	30%
Midterm Test	20%
Final Exam	30%
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Total	100%



## \* COURSE GRADING SCHEME

A+	90% - 100%	Outstanding Achievement
A	80% - 89%	Above Average Achievement
B	70% - 79%	Average Achievement
C	60% - 69%	Satisfactory Achievement
U		Unsatisfactory given at midterm only
S		Satisfactory given at midterm only
R		Repeat
X		A temporary grade that is limited to instances where special circumstances have prevented the student from completing objectives by the end of the semester. An "X" grade must have the Dean's approval and has a maximum time limit of 120 days.

## \* ADDITIONAL NOTES

Students enrolled in CJS 312 will be subject to unannounced quizzes. Should a student miss any quizzes without a reasonable explanation, that student shall receive a **0% grade** for that quiz. A student may be excused for any two (max) unannounced quizzes without adversely affecting the student's mark.

If a student misses any other test or exam, the student **must** make arrangements with the instructor to rewrite within 7 days of the original test after first producing **written documentation** of a valid reason for the absence.

**VI. SPECIAL NOTES**

1. All students should be aware of the Special Needs office in the college. If you have any special need such as a visual impairment, a hearing disability, a physical disability, a learning disability, you are encouraged to discuss required accommodations confidentially with the professor and/or personnel in the Special Needs Office. The Special Needs Office is located in Room E1204 and the phone number is: (705)759-2554 Ext.493.
2. Your professor reserves the right to modify the course as he/she deems necessary to meet the needs of the students.
3. It is the responsibility of the student to retain the course outline for possible future use in gaining advanced standing at other post-secondary institutions.
4. **Plagiarism:** Students should refer to the definition of "academic dishonesty" in the "Statement of Student Rights and Responsibilities". Students who engage in "academic dishonesty" will receive an automatic failure for that submission and/or such penalty, up to and including expulsion from the course, as may be decided by the professor.

**VII. PRIOR LEARNING ASSESSMENT**

Students who wish to apply for advanced credit in the course should consult with the Co-ordinator of the Law and Security Administration Program. Credit for prior learning will be given upon successful completion of the following:

1. Successful completion of the Recruit Training Level One course at the Ontario Police College

or

2. Experience in a Law Enforcement setting, accompanied by an oral test and written test encompassing the learning outcomes for this course