

SAULT COLLEGE OF APPLIED ARTS AND TECHNOLOGY

SAULT STE. MARIE, ONTARIO

COURSE OUTLINE

Course Title: EVIDENCE

Course No: LAS 400

Program: LAW AND SECURITY ADMINISTRATION

Semester: THREE

Date: SEPTEMBER 1994

Previous Date: SEPTEMBER 1993

Author: BOB TULLOCH

NEW

REVISION

Approved: ^{•^0Qj'gf^ A oAUh^}
Kitty DeRosario, Dean
Human Sciences & Teacher Ed.

Date: (?«» •//<?/

Evidence
Instructor: Bob Tulloch
Credit Hours: 45

LAS 400

PHILOSOPHY

This course will provide students with a history of the development of the rules of evidence and an understanding of the process by which evidence is admitted into court. The course will also help students to understand the protection afforded to accused persons, and the responsibility of the crown to prove the case beyond a reasonable doubt.

STUDENT PERFORMANCE OBJECTIVES

Upon completion of the course, the student will:

- a. Define selected terms related to the various rules of evidence.
- b. Explain the philosophy behind the development of various rules of evidence.
- c. State "The Rule" regarding the admissibility of evidence.
- d. State the primary exclusionary rules of evidence.
- e. List the exceptions to exclusionary rules of evidence.
- f. Apply the various rules of evidence to given scenarios as required.

TOPICS TO BE COVERED

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. Burden of Proof / Presumptions
8. Exclusionary Rules / Character, Opinion, Hearsay
9. Voir Dire / Judges' Rules
10. Previous Consistent Statements

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LEARNING ACTIVITIES

PART I •ADMISSIBILITY*

1.0 Introduction to Evidence / General Principles

Upon successful completion of this unit, each student will be able to:

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

Resources for 1.1 - 1.5: Assigned Text, Criminal Code, Class Notes

2.0 Kinds of Evidence

Upon successful completion of this unit, each student will be able to:

- 2.1 List two methods of proof
- 2.2 List three forms of evidence
- 2.3 Define "Oral Testimony"
- 2.4 List options regarding testimony of a witness under 14 years
- 2.5 Define the following terms: Competency, Compellability, Accomplice, Co-Accused
- 2.6 List occasions when a spouse is competent and/or compellable as a witness
- 2.7 List criteria applicable to the following privileges: Spousal, Solicitor-Client, Police-Informant
- 2.8 List some other less common privileges
- 2.9 Identify some situations which are not privileged (common misconceptions)
- 2.10 List criteria for using notes when called as a witness
- 2.11 Define adverse/hostile witness and list unique situations which arise when such a witness is encountered
- 2.12 Define "Real Evidence"
- 2.13 List reasons why it is important to tag and initial exhibits
- 2.14 Define "Documentary Evidence"
- 2.15 List some examples of specific documents allowed by statute to be entered into evidence

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- 2.16 State the "Best Evidence Rule"
- 2.17 List examples of various forms of secondary evidence including but not confined to demonstrative evidence
- 2.18 State a definition which has now been developed for the term "Evidence"
- 2.19 List the sources for the rules of evidence
- 2.20 Define other terms as set out by the instructor
- 2.21 Apply the terms, definitions, and criteria listed above to given scenarios as required

Resources for 2.1 - 2.21: Assigned Text, Criminal Code, Class Notes

PART II • PROOF AT TRIAL*

3.0 Burden of Proof / Presumptions

Upon successful completion of this unit, each student will be able to:

- 3.1 Define "Facts in Issue"
- 3.2 Compare the concept of "Burden of Proof" with the concept of "Burden of Producing Evidence"
- 3.3 List the various types of examination which occur during a trial
- 3.4 State the criteria which apply to each type of examination
- 3.5 Define "Corroboration"
- 3.6 State an acronym which defines corroboration
- 3.7 List offences for which corroboration is required
- 3.8 List examples of situations where corroboration may be found
- 3.9 Compare "presumptions of fact" with "presumptions of law"
- 3.10 Compare "permissive presumptions" with "mandatory presumptions"
- 3.11 Compare "rebuttable presumptions" with "irrebuttable presumptions"
- 3.12 Give examples of each of the various types of presumptions listed in 3.9, 3.10, and 3.11
- 3.13 Define other terms as set out by the instructor
- 3.14 Apply the terms, definitions, and criteria listed above to given scenarios as required

Resources for 3.1 - 3.14: Assigned Text, Criminal Code, Class Notes

PART III ^EXCLUDED EVIDENCE*

4.0 Character Evidence

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Upon successful completion of this unit, each student will be able to:

- 4.1 State the exclusionary rule regarding "Character" evidence
- 4.2 State the philosophy behind the rule
- 4.3 List some examples of admissibility of character evidence after conviction but before sentencing
- 4.4 Give an example of an exception to the general rule where character is a "fact in issue"
- 4.5 Give an example of an exception to the general rule where character goes to prove a "motive"
- 4.6 State the exception to the general rule where the accused makes "character" an issue
- 4.7 List examples of how an accused might attempt to make character an issue during the trial
- 4.8 State the exception to the general rule when a witness gives "testimony"
- 4.9 Compare limitations placed on cross-examination of a defence witness with cross-examination of a crown witness
- 4.10 Give an example of an exception to the general rule involving "possession offences"
- 4.11 State the inference that arises as a result of the exception involving possession offences
- 4.12 Give one reason why "similar act evidence" is admissible as an exception to the general rule
- 4.13 Give some examples of where evidence might be admissible in this situation involving similar act evidence
- 4.14 Give a second reason why "similar act evidence" is admissible as an exception to the general rule
- 4.15 Give some examples of where evidence might be admissible in this situation involving similar act evidence
- 4.16 List some criteria which apply when using similar act evidence
- 4.17 Develop an acronym to remember the exceptions to the general rule
- 4.18 Define other terms as set out by the instructor
- 4.19 Apply the rule, the exceptions, terms, definitions, and criteria listed above to given scenarios as required

Resources for 4.1 - 4.19: Assigned Text, Criminal Code, Class Notes

5.0 **Opinion Evidence**

Upon successful completion of this unit, each student will be able to:

- 5.1 State the exclusionary rule regarding "Opinion" evidence
- 5.2 List two major exceptions to the general rule

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- 5.3 Give some examples of exceptions regarding matters of "personal knowledge"
- 5.4 Define an "expert witness"
- 5.5 State criteria which apply to expert witnesses
- 5.6 State the number of expert witnesses allowed during criminal trials
- 5.7 Define other terms as set out by the instructor
- 5.8 Apply the rule, the exceptions, terms, definitions, and criteria listed above to given scenarios as required

Resources for 5.1 - 5.8: Assigned Text, Criminal Code, Class Notes

6.0 Hearsay Evidence

Upon successful completion of this unit, each student will be able to:

- 6.1 State the exclusionary rule regarding "Hearsay" evidence
- 6.2 State the primary underlying reason for the rule
- 6.3 State another (less important) reason for the rule
- 6.4 Write a scenario which clearly shows an example of hearsay
- 6.5 Define the term "Declarations in the Course of Duty" which is an exception to the general rule
- 6.6 Give a common example of a declaration in the course of duty
- 6.7 State reasons why such declarations are considered for admissibility into court
- 6.8 State a special case where such declarations are allowed by statute to be admitted into court
- 6.9 State what is special about these particular declarations
- 6.10 List criteria which apply to these special declarations
- 6.11 Define the term "Dying Declaration" which is an exception to the general rule
- 6.12 State the reason why such declarations are considered for admissibility into court
- 6.13 List the criteria which apply to these declarations
- 6.14 State the types of offences to which "complaint evidence" applies which may also be an exception to the general rule
- 6.15 List the limited situations where this type of evidence might be considered for admissibility into court
- 6.16 Define the term "Res Gestae"
- 6.17 Create a scenario which clearly shows an example of res gestae
- 6.18 Define the term "Res Gestae Statement" which is an exception to the general rule
- 6.19 Create a scenario which clearly shows an example of a res gestae statement

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- 6.20 State the reason why such statements are considered for admissibility into court
- 6.21 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
- 6.22 Explain the effect of the "Charter" on the inference to be drawn by the silence of the accused
- 6.23 State the normal response of an innocent man to an accusation
- 6.24 State the circumstances when a denial by the accused might be useful as evidence
- 6.25 Differentiate between an admission and a confession
- 6.26 Differentiate between inculpatory and exculpatory statements
- 6.27 State the reason why admissions and confessions are considered as exceptions to the general rule
- 6.28 Define a "Person in Authority"
- 6.29 List some examples of persons in authority
- 6.30 Explain how a third party might become a person in authority
- 6.31 Explain how an undercover operative is considered with respect to rules regarding persons in authority
- 6.32 Define a "Voir Dire"
- 6.33 State "The Rule" with respect to the admissibility of statements
- 6.34 Explain factors a judge considers during a voir dire when considering the voluntariness of a statement
- 6.35 Define an "Inducement"
- 6.36 Give examples of various types of inducements
- 6.37 Explain how some minor inducements might be overcome
- 6.38 Explain how the "Charter" has impacted on the use of tricks in the taking of statements
- 6.39 List some examples various "States of Mind" of an accused which may affect the admissibility of statements
- 6.40 Explain how each of these states of mind might adversely affect the admissibility of statements
- 6.41 Define the term "The Judges' Rules"
- 6.42 Paraphrase each of the rules in layman's terms
- 6.43 State the general rule regarding "Previous Consistent Statements"
- 6.44 State the rule regarding "Self-Serving Evidence"
- 6.45 List some exceptions with respect to the rule regarding self-serving evidence
- 6.46 Explain the reasoning behind the rule respecting the admissibility of self-serving evidence
- 6.47 Define other terms as set out by the instructor
- 6.48 Apply the rules, the exceptions, terms, definitions, and criteria listed above to given scenarios as required

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Resources for 6.1 - 6.48: Assigned Text, Criminal Code,
Class Notes

REQUIRED STUDENTS RESOURCES

A Basic Guide to Evidence in Criminal Cases, Salhany, 2nd Ed
Criminal Code of Canada

METHODS OF EVALUATION

The final grade will be derived from a midterm test, a final exam, unannounced quizzes, assignments, and case studies.

| | | |
|----------------------------------------|---|------|
| Quizzes, Assignments, and Case Studies | * | 50% |
| Midterm Test | | 20% |
| Final Exam | | 30% |
| Total | | 100% |

COLLEGE GRADING POLICY

90% - 100% = A+
80% - 89% = A
70% - 79% = B
60% - 69% = C
Below 60% = R

ADDITIONAL NOTES

Students enrolled in LAS 400 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

SPECIAL NEEDS NOTES

Students with special needs (eg. physical limitations, visual impairments, hearing impairments, learning disabilities) are encouraged to discuss required accommodations confidentially with the instructor.

Your instructor reserves the right to modify courses as he/she deems necessary to meet the needs of the students