

LAWS 2008.04: Evidence
Fall/Winter 2010-2011
Lee Seshagiri

BASICS:

Location: Room 207

Time: Mondays 4:30pm – 6:30pm

Unit Value: 4 credits

CONTACT INFORMATION:

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NOTE: Communications in this course will take place by e-mail. Please ensure that your Dal email addresses are activated. As per Faculty regulations, you will be deemed to have received any correspondence sent to your Dal address.

REQUIRED TEXTS:

1. Stewart, et al. *Evidence: A Canadian Casebook*, 2nd ed. (Toronto: Emond Montgomery, 2006).
 - Available for purchase at the University bookstore.
 - Feel free to try to track down a used copy, though the usual caveat applies: *Just because someone else highlighted something doesn't mean it's important...*
2. Web Supplement to the casebook (for decisions rendered after publication of the 2nd edition).
 - http://www.emp.ca/downloads/196-9_Evidence2d_2010Supplement.pdf
 - Note: A copy of the supplement will also be posted on the course website.
3. A Copy of the *Canada Evidence Act*.
 - Available from Geordie Lounsbury in the Materials Room
4. Course website:
 - There is a “Blackboard” website for the course.
 - Visit my.dal.ca and sign in using your netlink ID and password.
 - I will post materials on the site from time to time (updated syllabus, overheads/handouts, other resources etc.)

RECOMMENDED TEXTS:

Paciocco and Steusser, *The Law of Evidence*, 5th ed. (Toronto: Irwin Law, 2008).

- This is a very helpful textbook and there is a copy on reserve at the library.
 - When in doubt, try this textbook first! It is a practical go-to guide employed by students, practitioners, and judges alike.

There are many other evidence texts on reserve at the Library. Some great choices are: (1) *The Law of Evidence in Canada* (aka Sopinka on Evidence); (2) *McWilliams' Canadian Criminal Evidence*; (3) *Watt's Manual of Criminal Evidence*.

ABOUT ME:

I received my Bachelor of Arts from McGill University, where my academic achievements were less than stellar. My approach to school changed when I started at Dal Law, as I was continually stimulated by the material, the professors and my fellow students. I completed my articles at Ogilvy Renault LL.P. in Ottawa and then clerked for Madam Justice Louise Charron at the Supreme Court of Canada. Thereafter I pursued graduate studies at Harvard Law School. In 2009-2010 I taught Evidence, among other subjects, at the University of Victoria Law School in British Columbia. This summer I drove from Victoria to Halifax in order to start practicing as a Staff Lawyer with the Nova Scotia Legal Aid Commission and to teach Evidence to you!

ABOUT YOU:

Evidence is a dynamic, fascinating and complex area of the jurisprudence. I hope that you take the time to enjoy its richness and contemplate its weaknesses. I have designed the syllabus to provide you with an overview of the major aspects of the law, but it should be kept in mind that almost every topic we cover is fertile ground for intricacies and nuance beyond the scope of a survey course. I hope that the materials inspire you to dig deeper into the case law, statutes and literature as you move forward in your legal careers.

A forewarning about the study of evidence: This is one of the more difficult subjects at law school. Concepts in this area of the law often build upon one another or are interrelated and interconnected. The readings are at times heavy. Accordingly, it is very important that you read and *think through* the materials as we move forward in the course from lecture to lecture. Doing so will ensure that you get the maximum rewards for your effort, and make the lectures all the more stimulating for everyone involved.

ABOUT THE COURSE:

We will be focussing almost exclusively on the law of evidence as it relates to criminal trials, but this by no means encompasses the full scope of evidence law's importance in the Canadian legal system. Evidential principles – applied with varying degrees of rigour – pervade our legal system, be it in civil actions, regulatory cases, administrative hearings, or other settings such as Royal and Provincial commissions of inquiry. For those students who are unlikely to follow a career path towards criminal law, rest assured that the principles discussed in this course will remain relevant to your practices, subject to modifications applicable to the particular practice area you decide to pursue.

The focus in the course is on the following topics:

1. Understanding the law of evidence as law's particular "way of knowing" and its underlying bases.

- *Why are we doing what we are doing? What are the underlying rationales? This course will help you understand and assess various theories and perspectives on the purposes and functions of the law of evidence and on the competing interests that it serves*
2. The way that the laws of evidence work in trial practice, as well as the historical, social, political, and legal context in which they operate.
 - *This course will help you appreciate the way in which the law of evidence is both shaped by context (historical, political, etc.) and impacts upon social context (esp. Aboriginal and gender issues).*
 3. The relationship between the laws of evidence and social justice.
 - *As you will see, evidence is not a static area of the law, but rather a highly dynamic one, changing to meet the needs of society. But does it move quickly enough? Too fast?*
 4. The substantive law of evidence, including basic concepts such as relevance and admissibility, exclusionary rules based on unreliability and prejudicial effects, exclusionary rules based on policy rationales, and other aspects of proof.
 - *You will become familiar with the hugely important nuts and bolts of what types of evidence may be employed to prove facts in a court of law.*
 5. The effect of the *Canadian Charter of Rights and Freedoms* upon the law of evidence.
 - *You will see how constitutional principles impact upon the law of evidence and how they may shift or be varied over time.*

METHODOLOGY:

Both lecture and discussion methods will be used. *Students are expected to:*

1. Have read the assigned materials prior to class;
2. Be able to *identify* and state the *issues* presented by the assigned materials; and
3. Participate in class discussion of the assigned materials and any exercises relating to the assigned materials.
 - The purpose of the discussion is to develop an understanding of the issues presented by the materials; to develop the student's ability to analyze, synthesize, and present legal material; and to enable the instructor to gain a sense of the student's understanding of the materials and achievement of the objectives referred to above.

EVALUATION:

Final Examination..... 100%

- Currently scheduled for Monday, April 18, 2011.

The final examination will be semi-open book.

- Students may bring in **one 8.5 x 11 inch (letter size) sheet of paper (a "cheat sheet"), double sided, printed in Times New Roman 10-point Font, with 1 inch margins.**

The Calculation of Grades

The Faculty's grading system will be used to translate final numerical grades to letter grades.

The chart below includes my narrative description of the grading system:

| Letter Grade | Percentage Value | Narrative Description | |
|--------------|------------------|------------------------|---|
| A+ | 85-100% | Exceptional | Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter. |
| A | 80-84% | Outstanding | |
| A- | 78-79% | Excellent | |
| B+ | 75-77% | Very Good | Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area. |
| B | 70-74% | Good | |
| B- | 68-69% | Solid | |
| C+ | 65-67% | Satisfactory | These grades indicate a satisfactory performance and knowledge of subject matter. |
| C | 60-64% | Minimally Satisfactory | |
| D+ | 55-59% | Marginal | A student receiving this grade demonstrates a superficial grasp of subject matter. |
| D | 50-54% | Marginal | |
| F | 49 and below | Failing grade | |

OTHER IMPORTANT FACULTY NOTES:

Regulations:

Students should obtain and review all regulations and policies contained in the Faculty Regulations and Law School Calendar.

Academic Integrity:

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the Faculty Regulations and Law School Calendar for policies respecting paraphrasing, plagiarism, and cheating. If you have any concerns or questions, or require clarification, do not hesitate to send me an e-mail. It is your responsibility to familiarize yourself with the university policy on academic integrity. If, having reviewed this policy, you have any doubts whatsoever about what constitutes

plagiarism or about any other issues related to academic integrity, it is your responsibility to seek guidance from the professor.

Special Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the *Nova Scotia Human Rights Act*. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

I look forward to a great class!
L.S.