



DALHOUSIE UNIVERSITY

SCHULICH SCHOOL OF LAW

1. COURSE NAME AND NUMBER: **Evidence, LAWS 2008**

2. COURSE INSTRUCTOR

Name: Professor Adelina Iftene

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Office Hours: Wednesday: 2:00 – 4:00 pm

OR e-mail for appointment

NOTE: I do not answer substantive questions via e-mail. Please come and see me in person.

3. COURSE INFORMATION

a. Class Times and Location: Wednesday 9.00 – 10.50 am, Rm 105
Except for Wed. Jan 9 (Rm 305)

Friday 9.00 – 10.50 am, Rm 305
**Except for Fri Jan 11 (Rm 105)
and Fri, Jan 18 (Rowe 1011 TBC)**

b. Materials:

Required: Delisle, Stuart, Tanovich & Dufraimont – Evidence, Principles and Problems, 12th ed, Carswell, 2018.

All the materials posted on Brightspace, as indicated in the course outline.

Recommended: Pacciocco & Stuesser, The Law of Evidence, 7th ed., Irwin Law, 2015 (available on reserve in the library).

Adelina Iftene, Assistant Professor

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c. Learning Objectives:

By the end of this course, students will be able to:

- Understand the structure of the Canadian law governing proof of facts in civil and criminal trials, including its common law, statutory and constitutional elements
- Clearly communicate the basic principles of the law of evidence, including relevance, judicial discretion, burdens of proof, witness competency, judicial notice, character evidence, hearsay, admissions and confessions, and expert evidence.
- Identify evidence issues that arise on a set of facts and apply the law to those facts
- Explain the purposes and justifications of evidence rules and analyze how well the rules serve those purposes and justifications, both in general and in particular cases
- Critically evaluate the operation of evidence rules in the context of formal legal proceedings and in their wider historical and social context

c. Evaluation:

- 100% open book exam (3 hours, containing two hypos and two policy questions)

OR

- 67% open book exam (2 hours, containing two hypos) AND a 12-15 page reflection paper on a pre-established topic (33%)

NOTE:

Reflection paper: a reflection paper is different than a research paper you write for a seminar. A reflection paper will likely include some kind of minimal research, but the emphasis is on critically understanding, placing, explaining, interpreting and reflecting on a narrow area of the law of evidence. You may wish to discuss a new case (see the ones listed on the back cover of your book for instance) and reflect on how this impacts the law of evidence. You may wish to criticize a particular rule of evidence (for instance the similar fact evidence, or the categorical approaches to hearsay). The reflection paper is about deepening your understanding of an area of evidence beyond the immediate application of the case or of the rule.

Should you consider writing the reflection paper, you need to send me by e-mail, by February 27, a topic and a short paragraph about what you plan to write on so I can pre-approve it/ make suggestions. However, once your topic is pre-approved you can still change your mind and revert to the 100% exam up until the deadline for handing the paper in. The paper is due on the last day of class, April 5, by 4pm at the reception in hard copy and by e-mail. I am happy to talk to you about the paper through-out the term.

d. Exercises & Problems

Most classes will contain problem solving and discussions. For each course, I noted the problems that I find most helpful for you to reflect on in preparing for class and for the exam. However, we will not be able to address many of the problems in the casebook due to time constraints. When you study, I encourage you to attempt to solve as many problems as you can. You may send me any solved problem within 10 days from the day I taught the class, and I will be happy to look it over and provide you with feedback.

After each chapter, a set of multiple-choice quizzes will be available to you on Brightspace (in Assignments). Once you have completed the quizzes, the correct answers will be displayed. I encourage you to take the quizzes as they become available, and then to revisit them before the exam. We will not have time to discuss the quizzes in class, but if, after reviewing the correct answers you still have questions, please come and see me so we can go over them together.

4. POLICY & ADMINISTRATION

a. Special Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

b. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and

opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

5. COURSE OUTLINE *(the pages indicated below are from Delisle et al, the required casebook).*

Introduction

1. Wed, Jan 9 (this class has been moved to room 305) – Introduction to Course and Structure of the Law of Evidence
Readings: Ev 1 Fact Pattern on Brightspace (Content – Exercises & Fact Patterns) (read it and have it on you, do not attempt to solve it)
NOTE: there are no other formal readings, but this will be a full class.
2. Fri, Jan 11 (this class has been moved to room 105) – Introduction to the Law of Evidence
Readings: 1-18; 28-30; 34-40.

Burdens of Proof

3. Wed, Jan. 16 - Burdens of Proof – Persuasive Burden
Readings: 41 – 70 (stop at GW); 77 – 80.
Problem: p. 76.
4. Fri, Jan. 18 (this class has been moved to Rowe 1011 TBC) – Persuasive Burden: Direct and Circumstantial Evidence; Evidential Burden
Readings: con't from last class; 80 (start at Direct and Circumstantial Evidence) – 94 (stop at Angelis); 105 (start at Villaroman) -119.
Problem: pp. 119-120

Relevance & Discretion to Exclude

5. Wed, Jan 23 – Relevance & Discretion to Exclude
Readings: 149-186 (stop at Hart).
Problems: 2-5, 9, 13-16 (pp. 204-208)

Character as Test Case for Relevance & Discretion to Exclude

6. Fri, Jan 25 – Discretion, Habit & Character

Readings: con't from last class; 209-214; 217 – 228 (stop at Plester); 229- 236; 238 (start at AWA) – 245.

Problems: 1-3 (pp.245-246)

7. Wed, Jan 30 – Similar Facts

Readings: 247- 273; 276 (start at Shearing) - 279

Problems: 2-4 (p. 281)

Mechanics of Proof (Getting Evidence In)

8. Fri, Feb 1 – Witness competency

Readings: 848-850 (stop at Kalevar); 852 (start at JTR) – 873 (stop at FC); 876 (start at Mental Capacity) - 885 (stop at Interest).

9. Wed, Feb 6 – Compellability

Readings: 889 (start at Canada Evidence Act) – 899; 901- 923 (focus on Nedelcu, Turcotte, and Noble).

10. Fri, Feb 8 – Questioning

Readings: 923 – 938; 942 – 950 (stop at RAJ); 957 (start at Schmaltz) - 970; 973-976.

Guest speaker: Professor Emeritus Allan Manson, Queen's University, Faculty of Law

11. Wed, Feb 13 – Impeaching credibility

Readings: 979 – 982 (stop at Anderson); 987 - 1000; 1006 -1020 (stop at McFayden); 1024 – 1026 (Underwood).

Problem: p. 998

12. Fri, Feb 15 – Supporting credibility & Demeanour

Readings: 1028 – 1034 (stop at Tash); 1038 – 1046; 1052 (start at Recent Complaint) – 1065.

February 18 – 22 Reading Week

13. Wed, Feb 27 – Character of victim: rape shield law

Readings: 296 – 316 (stop at Crosby); 336 – 341.

Half of the class will be a lecture on the current law. The rest of class will be dedicated to a class activity & discussion drawing on Canadian Judicial Council's report on Robin Camp. Please skim the report posted on Brightspace and read the following paragraphs in preparation for the class: 1-11; 14-16; 46-75; 91-92; 134-138; 184-185; 239-241; 254-260; 261-271; 295-296; 343-345.

NOTE: This class involves heavy discussions on sensitive subject matters related to sexual assault. If you have any concerns regarding this class, please come and talk to me in private.

14. Fri, Mar 1 – Real evidence

Readings: 810 – 841 (stop at McCutcheon).

15. Wed, Mar 6 – Formal admissions & Judicial Notice

Readings: 767 – 791 (stop at Rowe); 799 – 806.

Problems: 2,3,5 (p. 809)

16. Fri, Mar 8 – Review & Problems (catching up on Ev 1 Fact Pattern and on the previously assigned problems we did not go over)

Exclusionary Rules (Keeping Evidence Out)

17. Wed, Mar 13– Hearsay I: Identification
Readings: 350 – 363.
Problems: 1-7 (pp. 362-363)
18. Fri, Mar 15 – Hearsay II: Principled approach (i)
Readings: 364 – 399.
19. Wed, Mar 20 – Hearsay III: Principled approach (ii) & Categorical approach (i)
Readings: 399 – 436 (stop at Exceptions where Declarant or Testimony Unavailable).
Problems: 1-4 (pp. 404-405)
20. Fri, Mar 22 – Hearsay IV: Exceptions: Categorical Approach (ii)
Readings: 436-448 (stop at Martin), 454-474.
Problem: 1 (pp. 458 - 459)
21. Wed, Mar 27– Confessions I
Readings:476-523
Problems: 2-4 (pp. 550-551)
22. Fri, Mar 29 – Confessions II & Opinion Rule
Readings: 523 - 542; 560-568
NOTE: During the class, a video which includes testimonies from people subjected to Mr. Big undercover operations will be played. Some people may find the details of these testimonies disturbing.
23. Wed, Apr 3 – Expert evidence
Readings: 568 - 605
Problem: p. 660
24. Fri, Apr 5 – Course Revision (finalizing Ev 1 Fact Pattern and solving a prep exam)
NOTE: A prep exam will be posted on Brightspace. Please attempt to solve the exam, and bring your solutions and questions to class. Alternatively, you may e-mail me your questions regarding the exam and I will address them anonymously in class.