

Course Outline

COURSE: LAWS 4903 B – Advanced Special Legal Topics: Evidence

TERM: Winter 2025

PREREQUISITES: LAWS 2908 and fourth-year Honours standing

CLASS: Friday 11:35 am – 2:25 pm
Online/Asynchronous

INSTRUCTOR: Stephen J. Donoghue

OFFICE HOURS: By Appointment

CONTACT: Email: stephendonoghue@cunet.carleton.ca

BRIGHTSPACE: <https://brightspace.carleton.ca/d2l/home/285205>

COURSE DESCRIPTION

The law of evidence is one of the most important, yet challenging, areas of the law. Because it is so central to the introduction of information into a courtroom, a solid knowledge of its rules and principles are essential for any lawyer, judge, police officer, or other justice system participant who appears in court. This course introduces students to evidence law and frames it as a process, beginning with the collection of information, and ending with the establishment of fact. The course will focus primarily on criminal law proceedings as the rules of evidence are most vigorously applied and developed in the criminal law context. Topics canvassed include: disclosure, third party records applications, relevance and materiality, hearsay, confessions, character evidence, opinion evidence, exclusion of evidence, privilege, use immunity, the exclusionary discretion, witness competency, examination in chief, cross examination, real evidence, objections, judicial notice, admissions, standards of proof, weighing information, corroboration, presumptions, and evidence in specific court proceedings.

LEARNING OUTCOMES

- 1) To demystify the legal concept of “evidence”;
- 2) To provide a framework to better understand evidence;
- 3) To introduce students to the rules of evidence; and
- 4) To discuss and critically assess the rules of evidence.

TEACHING METHOD

Primarily a lecture style with lectures posted on Brightspace.

REQUIRED TEXTS

- Paciocco, D., Paciocco, P., and Stuesser, L., *The Law of Evidence, 8th Edition* (Toronto, Ont.: Irwin Law Inc., 2020)
 - Available for purchase on-line from Irwin Law ([The Law of Evidence, 8/e – Irwin Law](#))
 - Cost = \$87.00
 - Use of secondhand copies is permitted.

SUPPLEMENTARY TEXTS

- Criminal Code of Canada
- Casebook (available on the course Brightspace page)

METHOD OF EVALUATION

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

The final grade for the course will be based on the following components:

1. **Assignment #1 – Discussion Question Exercise (30%)**
 - Students are to select one of the discussion questions listed on the Assignment Handout – Assignment #1.
 - Please explain why you selected this question and then answer the question by providing responses for both sides of the issue. There should be at least three reasons provided supporting each side of the issue. The assignment should be type-written, double spaced, and no more than five (5) pages long.
 - The discussion question exercise will be graded according to four factors:
 - (a) The explanation provided for selecting the question (/8),
 - (b) The answer provided for one side of the issue (/8),
 - (c) The answer provided for the opposing view (/8), and
 - (d) Style of presentation (/6).
2. **Assignment #2 – Discussion Question Drafting Exercise (30%)**
 - Students are to draft one discussion question. The question should identify an issue in the law of evidence which legitimately has two points of view. Students should explain the reason why they drafted their question.
 - Students must also answer their question. Answers for both sides of the issue should be provided. There should be at least three reasons provided

supporting each side of the issue. The assignment should be type-written, double spaced, and no more than five (5) pages long.

- The discussion question exercise will be graded according to four factors:
 - (a) The explanation provided for selecting the question (/8),
 - (b) The answer provided for one side of the issue (/8),
 - (c) The answer provided for the opposing view (/8), and
 - (d) Style of presentation (/6).

3. **Final Exam** (40%)

- 2-hour opened book examination
(Held during the formal examination period – April 11-26, 2025).
- Exam will be based on assigned readings, and class lectures, from throughout the full term.
- Exam will represent a combination of multiple choice and short answer questions.

All components must be completed in order to earn a passing grade.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for short-term extensions, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/academic-consideration-coursework-form/>.

Please be advised that extensions will generally not be granted. In those extraordinary cases where an extension is granted, the student may first be required to provide additional information to justify the extension, and a penalty may be applied to the grade.

Final exam deferrals must be applied for at the Registrar's Office. Please view the following link for more information and how to apply for a deferral: <https://carleton.ca/registrar/deferral/>.

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student's control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>.

SCHEDULE**Class Date** **Evidence Topic***Part I – Introduction*

1. January 10 **a) Introduction to the Course**
- Review of the course outline with elaboration on the course objectives, expectations, and method of evaluation.
 - Introduction to the Case Study for the course.
 - Handouts: Course Outline, Case Study, Assignment Handout
- b) Introduction to Evidence**
- A brief overview of evidence and the law of evidence.
 - Topics: what is evidence?, direct vs. circumstantial evidence, admissibility vs. weight, philosophies of evidence, law of evidence trends, role of the Crown, role of defence counsel
 - Text: Paciocco et al: chapter 1 – pages 1-31

Part II – Collecting Information

2. January 17 **Collecting Information**
- A review of the methods available to counsel to gather information at the outset of a case to best direct the progress of the matter.
 - Topics: sources of information, disclosure, third party records applications, alibi notice, lost evidence
 - Text: Paciocco et al: chapter 6 – pages 353-371
 - Key Cases: *Stinchcombe, O'Connor*

Part III – Assessing Information

3. January 24 **a) The Basic Rule: Relevance and Materiality**
- Information must be relevant to a material issue in a case to be admissible in court.
 - Topics: the basic rule, materiality, relevance, narrative
 - Text: Paciocco et al: chapter 2 – pages 32-43, 56-58
- b) Presumptively Inadmissible Information**
- Hearsay, Confessions, Character Evidence, Opinion Evidence

i) **Hearsay**

- Statements made outside of court can sometimes be problematic when one party seeks to tender them at trial for the truth of their contents.
- Topics: what is hearsay?, out of court statement, truth of its content, framework for hearsay, traditional exceptions to the hearsay rule, prior inconsistent statements, prior testimony, admissions by opposing party litigants, co-conspirators exception, declarations against interest, dying declarations, business records, *res gestae* statements, the principled approach, necessity, reliability
- Text: Paciocco et al: chapter 4 – pages 135-232
- Key Cases: *Khan, Smith, Starr, Khelawon*

ii) **Confessions**

- Statements made by accused persons admitting to crimes have shown to be problematic in some situations depending on the circumstances surrounding the making of the statement.
- Topics: voluntariness of accused statements, youth statements, Mr. Big operations, confessions to civilian witnesses, pre-trial silence
- Text: Paciocco et al: chapter 7 – pages 419-448
- Key Cases: *Oickle*

4. January 31 b) **Presumptively Inadmissible Information (con'd)**

iii) **Character Evidence**

- The personality, nature, or integrity of a witness is not always an accurate or fair predictor of the person's conduct or indicator of the person's credibility and reliability.
- Topics: character evidence introduced, character of the accused, bad character, criminal record, similar fact evidence, good character, character of others, co-accused, Scopelliti application, reputation evidence, alternate suspect, sexual history, civil cases
- Text: Paciocco et al: chapter 3 – pages 63-134; chapter 11 – pages 624-627; chapter 10 – pages 615-619, 606-607
- Key Cases: *Corbett, Handy, B(L)*

iv) Opinion Evidence

- The view or belief someone holds about a factual matter is often unimportant, unless the person is well positioned to comment on a matter of ordinary experience, or the person holds special expertise.
- Topics: opinion evidence generally, lay person opinions, identity, expert witnesses, rule against oath helping
- Text: Paciocco et al: chapter 5 – pages 233-286; chapter 12 – pages 679-682
- Key Cases: *Graat, Mohan, White Burgess*

5. February 7 **c) Exclusion of Evidence**

- Section 24(2) of the *Charter*, Privilege, Use Immunity, Exclusionary Discretion

i) Section 24(2) of the Charter

- Where an accused person's substantive *Charter* rights are infringed by a state actor, courts may remedy the situation by disregarding information from its consideration.
- Topics: wording of section 24(2), the technical components, obtained in a manner, bring the administration of justice into disrepute
- Text: Paciocco et al: chapter 8 – pages 469-513
- Key Cases: *Grant*

Discussion Question Exercise Due Date

- Please submit your discussion question exercise (Assignment #1) to the professor by email prior to 11:00 am.

6. February 14 **c) Exclusion of Evidence (con'd)****ii) Privilege**

- Some communications conducted in confidence are protected from being considered by a court.
- Topics: the nature of privilege, solicitor-client privilege, litigation privilege, settlement negotiation privilege, informer privilege, spousal privilege, case-by-case privilege, public interest immunity
- Text: Paciocco et al: chapter 6 – pages 287-349, 371-381
- Key Cases: *Smith v. Jones*

iii) Use Immunity

- Where someone testifies in one court proceeding, his or her testimony typically cannot be used against him or her in another court proceeding.
- Topics: section 13 of the *Charter*, perjury and similar cases, derivative use immunity
- Text: Paciocco et al: chapter 7 – pages 387-401

iv) Exclusionary Discretion

- Trial judges have a residual authority to disregard information, which does not ordinary warrant exclusion, where considering the information would be unfair.
- Topics: nature of the discretion, probative value, prejudicial effect, balancing
- Text: Paciocco et al: chapter 2 – pages 47-55

d) Trial Strategy

- Sometimes strategic considerations will influence decisions regarding how to best approach information.
- Topics: theory of the case, allowing inadmissible information, tactical burden to present information, tough choices, notice requirements
- Text: Paciocco et al: chapter 1 – pages 26-28; chapter 12 – pages 689-691

February 21 **Fall Break** (no class)

Part IV – Presenting Information**7. February 28 a) Witnesses (Viva Voce Testimony)**

- People with information to offer regarding a case often share that information with the court by answering questions from lawyers.
- Topics: oral evidence generally, competency, witnesses 14+ years old, child witnesses, examination in chief, technique, leading questions, refreshing memory, qualifying a police officer's notes, testimonial aides, prior consistent statements, adverse witnesses, re-examination, cross examination, scope and purpose, technique, limitations on cross examination, the collateral fact rule, impeachment, the rule in *Browne v. Dunn*, incomplete cross examination

- Text: Paciocco et al: chapter 9 – pages 519-554, 583-591; chapter 11 – pages 627-645, 648-669; chapter 4 – pages 173-180; chapter 10 – pages 598-615, 619-623
- Key Cases: *Milgaard, B(KG)*

8. March 7

b) Real Evidence

- Material things can be tendered at trial.
- Topics: general principles, what is real evidence?, authentication, continuity, undue prejudice, marking exhibits, types of real evidence, photographs and videotapes, documents, electronic documents, demonstrative evidence, views
- Text: Paciocco et al: chapter 9 – pages 554-573

c) Objections

- Where counsel disapprove of information being tendered at court, they can oppose its introduction by objecting.
- Topics: objections, when to object
- Text: Paciocco et al: chapter 1 – pages 26-28

d) Judicial Notice

- Some facts are so commonly known or easily verified that courts can accept them without evidence being tendered.
- Topics: judicial notice, three kinds of facts
- Text: Paciocco et al: chapter 9 – pages 573-583

e) Admissions

- Parties can agree to facts mutually presented to the court.
- Topics: admissions, common admissions
- Text: Paciocco et al: chapter 4 – pages 191-196

Discussion Question Exercise Due Date

- Please submit your discussion question drafting exercise (Assignment #2) to the professor by email prior to 11:00 am.

Part V – Judging Information

9. March 14
- a) **Standards of Proof**
- The degree of certainty required for facts to be accepted by a court can vary depending on circumstances.
 - Topics: burden of proof, reasonable doubt, balance of probabilities, *prima facie* case, air of reality, reasonable grounds, reasonable suspicion
 - Text: Paciocco et al: chapter 12 – pages 683-691, 697-704
 - Key Cases: *Lifchus*
- b) **Establishing Facts**
- Judges make findings of fact from the evidence before them for consideration.
 - Topics: weighing information, the golden rule, credibility and reliability, witness demeanor, children’s testimony, corroboration, corroboration rules, corroboration where not legally required, *Vetrovec* warnings, presumptions, presumptions of law, presumptions of fact
 - Text: Paciocco et al: chapter 10 – pages 592-596; chapter 2 – pages 44-46; chapter 12 – pages 670-678, 691-697
10. March 21
- c) **Specific Proceedings**
- The rules of evidence can vary depending on the nature of the court proceeding.
 - Topics: trial, standard of proof for evidence, trial procedure, blended trial, jury trial, the test in *W(D)*, bail hearing, the nature of bail hearings, onus, grounds for detention, relevant information, credible or trustworthy information, examination of the accused, preliminary hearing, test for committal to stand trial, reception of credible and trustworthy statements, sentencing, what is sentencing?, establishing a factual basis for sentencing, admissibility of evidence, materials for sentencing, burden of proof, the offender’s right to speak, appeals, standard of review, fresh evidence, enforcement on appeal
 - Text: Paciocco et al: chapter 2 – pages 58-62; chapter 1 – pages 22-26, 28-31; chapter 12 – pages 683-689, 698-700
 - Key Cases: *W(D)*, *USA v. Sheppard*

Part VI – Review

1. March 28 a) **Case Study**
 - Class discussion of evidence issues raised by the facts sets out in the case study.
 - Handouts: Case Study

2. April 4 a) **Discussion of the Exam**
 - Brief overview of the format for the final exam.
 - Answer student questions regarding the format, content, or expectations for the final exam.
 - b) **Review of the Course**
 - Review of the subject material covered during the full course of the academic year.
 - Answer student questions concerning any topic covered during the full academic year.

Please find a full list of important academic dates on the calendar website: <http://calendar.carleton.ca/academicyear/>.

POLICY ON PERMISSIBILITY OF SUBMITTING SAME WORK MORE THAN ONCE, PERMISSIBILITY OF GROUP OR COLLABORATIVE WORK, AND PERMISSIBILITY OF USING GENERATIVE AI

Students are strictly prohibited from submitting any work that has been previously submitted for academic credit in another course. Any such submission will result in a grade of 0, and the student will be referred to the university's academic integrity office for review. Re-using any portion of previous work, regardless of its extent, will be treated as a violation of academic integrity.

Students are not permitted to cooperate or collaborate on any academic assignments unless explicitly stated by the instructor. Any unauthorized collaboration will result in the assignment receiving a grade of 0 and the student being referred to the academic integrity office. This policy applies to all tests, exams, and individual assignments. Proofreading by others is not allowed.

The use of AI tools, such as ChatGPT, to produce any part of an assignment or test is strictly forbidden. Any use of AI for content creation, even for small edits, will result in an automatic grade of 0, and the student will be referred to the academic integrity office for disciplinary action.

UNIVERSITY AND DEPARTMENT POLICIES

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.” This includes reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

More information on the University’s Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

For more information, please consult <https://wellness.carleton.ca/>

Emergency Resources (on and off campus):

- <https://wellness.carleton.ca/get-help-now/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances, are outlined on the Academic Accommodations website (students.carleton.ca/course-outline).

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows.

Pregnancy Obligation and Family-Status Related Accommodations

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

Religious Obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For

more details, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>.

Academic Accommodations for Students with Disabilities

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.

Academic Consideration for Medical and Other Extenuating Circumstances

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant

impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three (3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of-refusal-to-provide-academic-consideration/>. *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).