

FACULTY OF LAW, UNIVERSITY OF VICTORIA
2011-12 COURSE REGISTRATION – PRELIMINARY COURSE INFORMATION¹

COURSE	Law 309 Law of Evidence
UNIT VALUE	2.0 Units (4 hours of instruction per week)
INSTRUCTOR	Hamar Foster
TERM OFFERED	Fall 2011
CLASS TIMES	See schedule
PREREQUISITES/CO-REQUISITES	None
PREREQUISITE FOR OTHER COURSES	Required course for J.D. students who were in upper year in 2010-11

OBJECTIVES AND COURSE DESCRIPTION

Evidence is one thing, the law of evidence quite another. In both common and scientific usage “evidence” means a fact (the *factum probans* in the old Law Latin) that tends to support or weaken inferences concerning the existence of another fact (the *factum probandum*) that one wants either to prove or disprove. The “law of evidence,” however, means the specialized body of rules developed by the common law to determine what facts may be presented to a court, and how. Put more simply, the former is about proof, the latter about admissibility.

The rules that make up the modern common law of evidence are not very old. Most of the ones that apply today date from the mid- to late 18th century, when lawyers began to involve themselves in ordinary criminal trials - which therefore became more adversarial - and when law reporting began to become much more common - thus increasing awareness of judicial rulings on points of evidence law. Another reason for the unique approach of the common law to evidence is that since the early 13th century most trials at common law were by jury, and over time jurors ceased to be quasi-witnesses who swore to the truth of what they knew and became judges of the facts presented before them. So decisions had to be made about what facts they could hear. This of course raises the question of what effect the decline of the jury has had on the law of evidence, and what effect it should have.

Most of the material that we cover in this course deals with the rules that determine admissibility. But some of it is concerned with the equally fundamental – and logically prior – question of how facts gathered by lawyers and police before trial become evidence at trial, and the further question of how the Trier of fact decides which items of evidence become, in turn, *the* facts that form the basis of the Trier’s decision and the foundation for appellate review.

Evidence is, in short, a fascinating, if occasionally frustrating, subject. Specifically, the objectives of this course are:

1. To introduce you to basic concepts in the law of evidence, including materiality, relevance, probative value and the exclusionary principle.
2. To examine the impact of statutory law on the primarily common law of evidence, and the relevance of context to how the rules are applied.
3. To examine the respective roles of fact-gathering, advocacy and the rules of evidence in the trial process from pre-trial matters through to appellate hearings.
4. To consider and discuss issues of professional responsibility and ethics in the context of the trial process.
5. To enable you to analyze and resolve the sorts of problems that arise in practice and that may be characterized as “evidence problems.”

METHODOLOGY

The course will be taught by a combination of lecture and discussion, *and the instructor will assume that students have read the assigned readings*. Students are also encouraged to attend and observe trials in the courts downtown.

EXPECTED EVALUATION METHODOLOGY

Evaluation will be confined to a final examination in December worth 100% of the grade in the course - with a possible essay alternative for part of the grade (but not a major paper).

March 9, 2011

¹ The information in this document is provided for course registration purposes only and is **subject to change**. More detailed course information about course content and evaluation will be provided upon the commencement of the course. Students seeking additional information about the course prior to its commencement may contact the instructor or, if no instructor is listed, the Associate Dean (lawassoc@uvic.ca). .