

LEARNING GUIDE: LAW OF EVIDENCE A: 2020

OVERVIEW:

PURPOSE OF THE COURSE:

For the student to acquire basic knowledge of general principles relating to the law of evidence.

With the knowledge acquired in this course the student should be equipped to deal with the more specialised principles covered in Law of Evidence A and apply such principles in a practical working legal environment.

HOW THIS FITS INTO THE OVERALL DEGREE STRUCTURE

As a procedural (adjectival) law subject, this course equips the student to apply the substantive law and law of evidence in courts and tribunals in South Africa. In terms of the overall LLB structure, Law of Evidence A (as will be the case for Law of Evidence B) builds on the foundational knowledge and skills obtained in the modules offered in the first, second and the current year of study including criminal law, contract and law of persons. For example, Criminal Law, as one of the modules encountered in the previous years, engages with aspects of crimes and their definitions. Thus, the skills of modules such as Criminal Law are built upon in the Law of Evidence as the rules of adducing evidence are necessary to prove the commission of crimes which are taught in criminal law. The skills imparted by the law of Evidence will prove relevant in other modules including the Law of Criminal Procedure, Civil Procedure and Clinical Legal Education.

CREDIT VALUE: 10

This works out as follows:

18 hours	25 lectures @ 45 mins each (NB. Some of these lectures may have to proceed online depending on severity of Covid-19 pandemic).
0.75 hours	1 written test
2 hours	1 written examination
79.25 hours	Individual learning (pre- and post-lecture reading, preparation of written assignment, test and examination preparation). The word count for the written assignment is 2500 words (fully referenced)
Total:	100 hours work

ASSUMPTIONS OF PRIOR LEARNING

General exposure to the idea of legal principles (legal theory, constitutional law, interpretation of statutes, criminal procedure, civil procedure), as well as the whole spectrum of private law, such as contract, property, delict. Ability to read and interpret statute law, read and interpret decided cases in law reports, apply the doctrine of precedent. Ability to analyse a set of facts; identify the legal problem contained therein, apply the appropriate law to derive a solution.

OUTCOMES

CRITICAL CROSS-FIELD OUTCOMES (CCFOs)

This course should contribute to the following critical outcomes:

- a) identify and solve problems
- b) collect, analyse and evaluate information
- c) communicate effectively
- d) recognise problem solving contexts
- e) solve legal problems in a practical scenario
- f) reflect on and explore effective learning strategies
- g) critique existing legal rules

SPECIFIC INTENDED OUTCOMES

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
1. Describe what law of evidence is; describe sources of SA law of evidence; describe the two main systems of gathering evidence: adversarial and inquisitorial, listing advantages and disadvantages of each; describe role of English law in SA law of evidence	a, b, c, f, g	Describes: <ul style="list-style-type: none"> • What law of evidence is and purpose thereof • Two main evidence-gathering systems, with advantages/disadvantages of each • Role of English law of evidence in our system 	Class discussions: examining examples (formative) Written test (summative): paragraph style description Final examination (summative): paragraph style description Online discussion via the RUConnected discussion forum: Examining examples (formative)

<p>2. Describe key concepts: relevance, admissibility, weight; describe basic terminology used in law of evidence</p>	<p>a, b, c, f, g</p>	<p>Describes:</p> <ul style="list-style-type: none"> • Key concepts: relevance, admissibility, weight • Basic terminology 	<p>Ditto (as above)</p>
<p>OUTCOME Students will be able to:</p>	<p>LINKED CRITICAL OUTCOME</p>	<p>ASSESSMENT CRITERIA</p>	<p>ASSESSMENT TASKS</p>
<p>3. Describe concepts of burden and standard of proof required in a court of law; describe presumptions assisting a party to prove a case</p>	<p>a, b, c, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Burden of proof and standard of proof for criminal and civil cases • Presumptions and their effect in proving a case 	<p>Ditto</p>
<p>4. Describe concepts of competence to testify and compellability to testify; identify from a factual scenario whether a witness is competent to testify and whether a particular witness can be compelled to testify</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Concept of competence to testify and compellability to testify • Identifies whether in practical scenario a witness is competent and/or compellable to testify and applies correct rules 	<p>Class discussions: examining examples (formative) Written test (summative): paragraph style description or factual problem requiring solution Final examination (summative): paragraph style description or factual problem requiring solution</p>

<p>5. Describe the course of evidence in a typical criminal and civil trial and the basic concepts such as sequence of parties' cases; evidence in chief, cross-examination, re-examination, proof of prior consistent statements, evidence taken on commission.</p>	<p>a, b, c, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Course of evidence in a typical trial (criminal and civil) • Sequence of evidence • Way evidence is presented: examination in chief, cross-examination, re-examination; • Proof of prior consistent statements • Evidence taken on commission 	<p>Class discussions: examining examples (formative) Written test (summative): paragraph style description Final examination (summative): paragraph style description</p>
<p>6. Describe the concept of judicial notice and principles applicable thereto; list some common examples in practice of matters of which judicial notice can be taken; identify in a given factual scenario whether judicial notice of a particular fact or facts can be taken, and what the effect thereof will be.</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Concept of judicial notice • Rules applicable to judicial notice • Some typical examples of matters of which judicial notice can be taken • Effect of judicial notice • Identifies opportunity for judicial notice in factual scenario and applies correct rules 	<p>Class discussions: examining examples (formative) Written test (summative): paragraph style description or factual problem requiring solution Final examination (summative): paragraph style description or factual problem requiring solution</p>

<p>7. Describe opinion evidence and the principles relating thereto; the traditional rule distinguishing between the opinion of experts and lay people; critique the validity of this distinction; describe the rules relating to the presentation of expert opinion evidence</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Opinion evidence • Principles relating to opinion evidence • Rules relating to presentation of opinion evidence • Critically analyses the appropriateness of some earlier cases which apply different criteria to opinions of experts and lay persons 	<p>Ditto</p>
<p>8. Describe character evidence and the principles relating thereto; identify character evidence in a given factual scenario, and ‘decide with reasons whether such evidence would be admissible</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Meaning of character evidence • Principles relating to admission of such evidence • Identifies whether in practical scenario character evidence would be permissible, and if admissible applies correct rules 	<p>Ditto</p>
<p>9. Describe real evidence (tangible objects used as evidence, e.g. murder weapon); describe the rules applicable to the presentation of such evidence; identify real evidence in a given</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Real evidence • Rules relating to admission thereof • Identifies real evidence in a practical scenario and 	<p>Ditto</p>

<p>factual scenario, and decide with reasons whether such evidence would be admissible</p>		<p>applies correct rules thereto</p>	
<p>10. Describe documentary evidence (documents used as evidence of their contents, e.g. cheque, contract, letter); describe the rules applicable to the presentation of such evidence; identify documentary evidence in a given factual scenario, and decide with reasons whether such evidence would be admissible</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Documentary evidence • Rules relating to admission thereof • Identifies documentary evidence in factual scenario and applies correct rules thereto 	<p>Ditto</p>
<p>11. Describe evidence generated by machines such as computers; describe the history of rules applicable to the presentation of such evidence; describe the rules currently applicable to the presentation of such evidence; identify machine-generated evidence in a given factual scenario, and decide with reasons whether such evidence would be admissible</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • Machine-generated evidence • History of approach to such evidence • Rules currently applicable (s 15 of Act 25 of 2002) • Identifies machine-generated evidence in a factual scenario and applies correct rules thereto 	<p>Ditto</p>
<p>12. Describe the principles applicable to the weighing up of evidence at the end of a trial; critique some approaches favoured by courts; in a given factual scenario identify the applicable rule(s) to be applied, and apply same to the facts</p>	<p>a, b, c, d, e, f, g</p>	<p>Describes</p> <ul style="list-style-type: none"> • The process of weighing up evidence at end of trial • Critically analyses some traditional approaches to weighing of evidence • Identifies and applies correct rules from factual scenario 	<p>Ditto</p>

TEACHING METHODS

- Lectures (mainly with the aid of PowerPoint slides)

NB. With the unprecedented times we are in due to the Covid-19 pandemic, it is critical for us to be open to adjusting to new methods of learning, many of which might never have been envisaged. Face-to-face lectures cannot be ruled out and they will continue to be the norm. However, some lectures might be online taking the form of audio recordings, discussion forums, to mention but a few. Amidst the possible limited face-to-face classes (depending on how the Covid-19 outbreak unfolds), the learning process will in many respects incorporate assessment for purposes of testing one's own knowledge of the unit.

- Skeleton slides for teaching purpose only
- Reading list at each lecture
- Class discussion and group discussion
- Assignment
- Test and examination
- Students shall from time to time be expected to participate in role-play activities when treating topics that require practical exposure, e.g examination in chief and cross- examination.

RESOURCES AND OWN NOTE MAKING

NB: Lecture slides WILL NOT BE MADE AVAILABLE to students.

Students are expected to TAKE NOTES IN CLASS and use the textbooks below and cases cited to make their own notes.

TEXT BOOKS:

- **Adrian Bellengere et al: *The Law of Evidence in South Africa, Basic Principles*. Oxford (2nd edition – 2019).**
- **Zeffert and Paizes: *The South African Law of Evidence*. LexisNexis (3rd edition- 2017).**
- **Schwikkard & Van der Merwe: *Principles of Evidence*. Juta (4th edition – 2016).**

NB. Please note that the editions cited above are the most recent editions. Therefore, for purposes of personal study, the pages cited (based on the current edition) may differ for the version you are currently using (which could be an earlier edition).

See also

- Commentary on the Criminal Procedure Act, by Du Toit and others (looseleaf)

Other key sources

- Constitution of the Republic of South Africa 1996
- Criminal Procedure Act, Act 51 of 1977
- Civil Proceedings Evidence Act 25 of 1965
- Electronic Communications and Transactions Act 25 of 2002
- Law of Evidence Amendment Act 45 of 1988
- Case Laws to be provided in class as per the topic covered

SUMMATIVE ASSESSMENT TASKS

Exam	70%
Classwork	30%
Assignment	15% (the word count for the assignment is 2500 words (including references)).
Test	15%

ASSESSMENT CRITERIA

(For written assignments, and, with due allowance for time and other constraints, for tests and examinations)

- Presentation: 10%
- Structure: 10%
- Content: 20%
- Understanding: 30%
- Insight: 30%

COURSE CONTENT / OUTLINE

Topic 1 Introduction and overview – Week 1

- Law of Evidence – sources, history and scope
- Impact of the Constitution on the law of evidence

Topic 2 The Presentation of evidence – Week 1

- Basic concepts and terminology
- Admissibility and weight
- Evidence and proof – Duty to begin
- Burden and standard of proof

Topic 3 Witnesses – Week 2

- Competence and compellability
- General rules
- Special categories

Topic 4 Stages in trial process, and the presentation of oral evidence – Week 2

- Adducing evidence
- From evidence-in-chief to re-examination
- Hostile Witnesses
- Prior statements
- Refreshing memory
- Evidence on commission

Topic 5 Types of Evidence

- Real evidence – Week 3

Topic 6 Documentary evidence – Week 3

Topic 7 Evidence of uncertain classification – Week 4 and 5

- *Sui generis* evidence
- Electronic / machine generated evidence

Topic 8 Judicial notice – Week 5

Topic 9 Presumptions – Week 6

- Presumptions of law and fact
- Statutory presumptions

Topic 10 Assessment of evidence in court - Week 7

- Opinion evidence

Topic 11 The assessment of Evidence in court – Week 8

- Character evidence

Topic 12 The onus of proof in criminal matters – Week 9

- The onus of proof in civil cases

Topic 13 The evaluation of evidence – Week 10

- Basic principles
- Credibility
- Circumstantial evidence

Topic 14 The further assessment of evidence – Week 10

Topic 15 Corroboration – Week 11/12

Topic 16 Cautionary rule – Week 13

- Testimony of children
- Single witnesses
- Evidence of identification
- Abolition of the cautionary rule applicable to sexual offences