

LWZ316 EVIDENCE

Credit points:	10	Mode:	Internal and External
Assumed knowledge:	LWZ100A Introduction to Legal Studies; LWZ100B Legal Interpretation	Location:	Casuarina Campus
Pre-requisite(s):	Evidence is a 300 level unit and students are advised to have completed 120 credit points in units prefixed with LWZ before attempting this unit.	Learning method:	Seminar and online resources
Year:	2012		
Semester:	1	Unit coordinator:	Professor Les McCrimmon
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Unit Description

This unit explores the law governing the admissibility of evidence in civil and criminal court proceedings.

Learning Outcomes

On completion of this unit students should be able to:

- 1 appraise the rationale for having rules governing the nature of evidence that may be led in judicial proceedings;
- 2 critically analyse and explain the sources of evidence law;
- 3 demonstrate the application of rules of evidence at the stages of trial having regard to the various roles of the participants; and
- 4 critically evaluate the forms of evidence that may be available and the rules governing the use of that evidence.

Teaching and Learning Strategies

- 1 The online resources and reading materials bring a range of issues and analytical techniques to the student's attention. Tutorial participation, however, will provide more dynamic opportunities to engage with and extend students' understanding of the materials. Students have the opportunity to consider more fully and articulate their ideas in the research assignment.
- 2 Students analyse statute and case law to distil the basic principles relating to the nature and use of evidential material in a range of trial situations. These basic principles are then applied to a range of problem scenarios.
- 3 Students engage in small group discussions and presentations during weekly tutorial sessions. The tutorials generally involve hypothetical problems where evidential situations dealing with the topic under consideration are analysed and discussed.
- 4 Specific tutorial questions throughout the entire unit develop, test for and reinforce students' knowledge of fundamental principles.

Participation

Students are expected to attend a weekly tutorial of 1.5 hours duration, and to engage in the Discussion Board discussions. Students are also encouraged to join and participate in a study group. Finally, students are expected to engage in individual study, completing the assigned reading and listening to the lectures posted online. In total, students should expect to spend 8-10 hours per week (excluding attendance at tutorials) working on this unit.

Specific details of individual class times can be obtained by accessing the class timetable at:

<http://skua.cdu.edu.au/swseven/>

Overview of Assessment

Item	Description/Focus	Value	Relates to learning outcomes
1.	Tutorial Participation	10 %	1, 2 & 4
2.	Assignment	40 %	2 & 4
3.	Open book examination	50 %	2 & 4

Required textbook(s)

Odgers, S, *Uniform Evidence Law*, (9th ed, 2010, Law Book Co, Sydney)

[Note: students may also use the 8th edition of Odgers' text, however, editions earlier than the 8th are unsuitable because the substantial amendments to the uniform Evidence Act in 2008 are not picked up in editions 1 – 7.]

Required textbooks can be ordered from the CDU Bookshop through their website at

www.cdu.edu.au/bookshop

Learnline (Online Learning System)

Learnline is Charles Darwin University's on-line learning system.

In this unit, Learnline will be used to:

- provide important announcements about the unit;
- distribute lecture podcasts and slides, and other study material;
- access feedback from tasks and grades for assessable work; and
- provide a communication point where you contribute to discussions as part of your assessment, and to interact with other students in the unit.

You will need to connect to the Internet to access Learnline, at <http://learnline.cdu.edu.au/>.

Access to Learnline may not be available until Day 1 of semester.

If this is your first time using Learnline, click on 'Student Learnline Support' in the left-hand navigation panel BEFORE logging in.

It is recommended that all students have access to regular and reliable broadband access to complete unit requirements.

e-Reserve

e-Reserve allows electronic copies of journal articles, book chapters and lecturer notes that have been recommended by a lecturer as part of their course reading requirements. You can access e-Reserve at <http://www.cdu.edu.au/library/ereserve/index.html>.

This site is password protected. Your CDU student login will provide you access. You can then search for items by Lecturer, Unit Code, Title, Author, keyword, Year or Date if you have that information.

Additional Resources (not required to purchase)

Heydon, J D, *Cross on Evidence* (8th Australian edition, 2010, LexisNexis Butterworths)

Ligertwood, A, Edmond, G, *Australian Evidence* (5th ed, 2010, LexisNexis Butterworths)

Anderson, J, Williams, N, Clegg, L, *The New Law of Evidence* (2nd ed, 2009, LexisNexis Butterworths)

Learning Schedule

Duration / Module	Topics	Required readings or student learning activities to be completed	Assessments Due
Week 1	1. Introduction <ul style="list-style-type: none"> • Overview of the trial process • Ethics and litigation • Reform of the rules of evidence • General powers of the court • Introduction to the uniform Evidence Act (UEA) 	Odgers, [1.1.10]-[1.1.100] UEA ss 8, 9, 11, 26-27 – and associated commentary in Odgers	
Week 2	2. Adducing Evidence <ul style="list-style-type: none"> • Calling witnesses • Competence and compellability • Sworn and unsworn evidence • Examination of witnesses – exam-in-chief <ul style="list-style-type: none"> ○ Reviving memory ○ Unfavourable witnesses 	UEA ss 12-19, 21-24, 28-29, 32-34, 37-38 – and associated commentary in Odgers	
Week 3	3. Adducing Evidence (cont) <ul style="list-style-type: none"> • Cross-examination <ul style="list-style-type: none"> ○ Form of questioning ○ Documents ○ Rule in <i>Browne v Dunn</i> • Re-examination • Documentary evidence • Real evidence 	UEA ss 39, 41-44, 46-48, 50-51, 53-54 – and associated commentary in Odgers	
Week 4	4. Admissibility of Evidence <ul style="list-style-type: none"> • Approach to admissibility • Relevance • Hearsay <ul style="list-style-type: none"> ○ The hearsay rule ○ 1st hand hearsay – civil ○ 1st hand hearsay – criminal 	UEA ss 55-56, 59-60, 62-67 – and associated commentary in Odgers	
Week 5	5. Admissibility of Evidence (cont) <ul style="list-style-type: none"> • 2nd hand and more remote hearsay • Opinion evidence <ul style="list-style-type: none"> ○ The opinion rule ○ Exception – otherwise admissible ○ Exception – lay opinion ○ Exception – traditional laws ○ Exception – specialised knowledge • Ultimate issue and common knowledge 	UEA ss 77-80 – and associated commentary in Odgers	
Week 6	6. Admissibility of Evidence (cont)	UEA ss 135-139 –	

- Discretionary and mandatory exclusions and associated commentary in Odgers

Week 7	<ul style="list-style-type: none"> 7. Admissibility of Evidence (cont) <ul style="list-style-type: none"> • Admissions • the Anunga rules • Tendency and coincidence <ul style="list-style-type: none"> ○ Tendency rule ○ Coincidence rule ○ Notice ○ Dispensing with notice ○ Further restrictions 	UEA ss 81-90, 97-101 – and associated commentary in Odgers	Assignment due on Wednesday 18 April at 11.59pm
Week 8	<ul style="list-style-type: none"> 8. Admissibility of Evidence (cont) <ul style="list-style-type: none"> • Credibility <ul style="list-style-type: none"> ○ Definition of credibility evidence ○ Credibility rule ○ Attacking credibility <ul style="list-style-type: none"> ▪ Other side's witness ▪ Own witness ○ Supporting credibility • Character <ul style="list-style-type: none"> ○ Accused persons ○ Co-accused ○ Leave required 	UEA ss101A-104, 106, 108-108C, 109-112 – and associated commentary in Odgers	
Week 9	<ul style="list-style-type: none"> 9. Admissibility of Evidence (cont) <ul style="list-style-type: none"> • Identification evidence • Client legal privilege 	UEA ss 113-116, 117-120 – and associated commentary in Odgers	
Week 10	<ul style="list-style-type: none"> 10. Admissibility of Evidence (cont) <ul style="list-style-type: none"> • Loss of client legal privilege <ul style="list-style-type: none"> ○ Consent ○ Misconduct ○ Related communications/docs • Other privileges <ul style="list-style-type: none"> ○ Religious confessions ○ Self-incrimination ○ Matters of state ○ Settlement negotiations 	UEA ss 121-122, 125, 127-128, 130-131 – and associated commentary in Odgers	
Week 11	<ul style="list-style-type: none"> 11. Proof <ul style="list-style-type: none"> • Inferences from the absence of evidence • Standard of proof • Judicial notice • Warnings 	UEA ss 20, 140-142, 143-144, 165-165B – and associated commentary in Odgers	
Week 12	<ul style="list-style-type: none"> 12. Miscellaneous provisions & Revision <ul style="list-style-type: none"> • Voir dire • Waiver of rules of evidence • Advance rulings and findings 13. Revision 	UEA ss 189-190, 192A – and associated commentary in Odgers	
Week 13	Revision Week		
Weeks 14 – 15	Centrally scheduled exams		

Assessment Item 1

Description: Tutorial Participation

Value: 10 %

Tutorial participation is assessed on the basis of participation, not attendance. One mark is allocated to each tutorial to a maximum of 10 marks over the course of the unit.

You can participate in the following ways:

- Task:**
- taking part orally in the tutorial discussion; and/or
 - posting contributions on the Discussion Board on topics **discussed or arising from the discussion** in the tutorial. In other words, if you are unable to attend a tutorial, you can still achieve a mark for the tutorial by listening to an archive of the tutorial and posting a contribution on the Discussion Board.

Assessment criteria: The assessment criteria will be posted before tutorials commence.

Assessment Item 2

Description: Assignment

Value: 40 %

Due date: Wednesday 18 April 2012 at 11.59pm

Length: 3,000 – 3,500 words (3,500 words being the absolute maximum). The word limit does not include footnotes (unless footnotes contain information which, in the opinion of the marker, should be in the body of the assignment). The word limit also does not include a bibliography. A bibliography is **not** required, but may be included. The policy for extensions and deductions for exceeding the word limit may be found in the Assignment and Extension Policy available on Law Central.

Task: The assignment question will be released in Week 1. The assignment will take the form of an essay question. Students can work either individually or in **groups of no more than two students** (eg, you and one other). If you work in a group, only one assignment should be submitted in the 'group' section of the assignment submission section, with the names of both students noted on the Assignment Cover Sheet.

Assessment criteria: The assessment criteria will be included with the assignment question.

Please download Assignment Cover Sheet here:

<http://learnline.cdu.edu.au/support/ess/assignment.html>

Assessment Item 3

Description: Open Book Examination

Value: 50 %

Due date: The examination will be centrally scheduled in the examination period.

Task: There will be a 2 hour exam with 20 minutes reading time during the examination period. The examination will consist of problem questions, covering topics noted in the above Learning Schedule. The examination will be open book. All topics covered in lectures, tutorials and the Learning Schedule are potentially examinable.

**Assessment
criteria:**

The assessment criteria will be posted before the end of Week 12.

CDU Graduate attributes

CDU graduate attributes refer to those skills, qualities and understandings that should be acquired by students during their time at the University regardless of their discipline of study. (See <http://www.cdu.edu.au/teachingandlearning/gradattributes.html>).

In this unit, the following graduate attributes are developed:

Attribute	Description	Learning outcomes
Acquisition	Can identify, retrieve, evaluate and use relevant information and current technologies to advance learning and execute work tasks.	1, 2, 3, 4
Application	Is an efficient and innovative project planner and problem solver, capable of applying logical and critical thinking to problems across a range of disciplinary settings and has self-management skills that contribute to personal satisfaction and growth.	1, 2, 3, 4
Creativity	Can conceive of imaginative and innovative responses to future orientated challenges and research.	1, 2, 3, 4
Knowledge base	Has an understanding of the broad theoretical and technical concepts related to their discipline area, with relevant connections to industry, professional, and regional and indigenous knowledge.	1, 2, 3, 4
Communication	Demonstrates oral, written, and effective listening skills as well as numerical, technical and graphic communication skills in a cross generational environment.	2, 3
Team work	Has a capacity for and understanding of collaboration and co-operation within agreed frameworks, including the demands of inter-generational tolerance, mutual respect for others, conflict resolution and the negotiation of productive outcomes.	3
Leadership	Can exercise initiative and responsibility, taking action and engaging others to make a positive difference for the common good.	3