COURSE: LAW OF EVIDENCE A: 2012

OVERVIEW

PURPOSE OF THE COURSE:

For the student to acquire a 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 B 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 criminal and civil procedure in courts and tribunals in South Africa.

CREDIT VALUE: 10
This works out as follows:

18 hours	24 lectures @ 45 mins each
.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)
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: • 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
2. Describe key concepts: relevance, admissibility, weight; describe basic terminology used in law of evidence	a, b, c, f, g	Describes: • Key concepts: relevance, admissibility, weight • Basic terminology	Ditto

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
3. Describe concepts of burden and standard of proof required in a court of law; describe presumptions assisting a party to prove a case	a, b, c, f, g	Describes • Burden of proof and standard of proof for criminal and civil cases • Presumptions and their effect in proving a case	Ditto
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	a, b, c, d, e, f, g	Describes • 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	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

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.	a, b, c, f, g	Describes • 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	Class discussions: examining examples (formative) Written test (summative): paragraph style description Final examination (summative): paragraph style description

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
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 .	a, b, c, d, e, f, g	Describes • 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	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
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	a, b, c, d, e, f, g	Describes • Opinion evidence • Principles relating to • 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	Ditto

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
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	a, b, c, d, e, f, g	Describes • 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	Ditto
9. Describe real evidence (tangible objects used as evidence, eg murder weapon); describe the rules applicable to the presentation of such evidence; identify real evidence in a given factual scenario, and decide with reasons whether such evidence would be admissible	a, b, c, d, e, f, g	Describes • Real evidence • Rules relating to admission thereof Identifies real evidence in a practical scenario and applies correct rules thereto	Ditto

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
10. Describe documentary evidence (documents used as evidence of their contents, eg 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	a, b, c, d, e, f, g	Describes • Documentary evidence • Rules relating to admission thereof Identifies documentary evidence in factual scenario and applies correct rules thereto	Ditto
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	a, b, c, d, e, f, g	Describes • 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 factua scenario and applies correct rules thereto	Ditto

OUTCOME Students will be able to:	LINKED CRITICAL OUTCOME	ASSESSMENT CRITERIA	ASSESSMENT TASKS
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	a, b, c, d, e, f, g	Describes process of weighing up evidence at end of trial Critically analyses some tradtional approaches Identifies and applies correct rules from factual scenario	Ditto

TEACHING METHODS
Lectures (mainly with the aid of PowerPoint slides)
skeleton handouts
reading list
class discussion
assignment

COURSE CONTENT

RESOURCES

TEXT BOOK: Schwikkard & Van der Merwe: *Principles of Evidence* (3rd edition) (2009)
Other recommended reading
South African Law of Evidence (2nd ed) by Zeffertt, Paizes and Skeen (2009)
Commentary on the Criminal Procedure Act, by Du Toit and others (looseleaf)

Students will also be provided with outline notes on statutory law, cases etc
that they will be required to study in more detail. Note that these notes are not
complete in themselves, ie they will merely serve as pointers to where further
reading is to be found.

ASSESSMENT CRITERIA

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

Presentation: 10%

Structure: 10%

Content: 20%

Understanding: 30%

Insight: 30%