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**London
South Bank
University**

Module Guide

Analysis of Evidence – the Science of Proof

LAW-6-AOE

FACULTY OF ARTS AND
HUMAN SCIENCES -
LAW DIVISION

LEVEL 6

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1. MODULE DETAILS

Module Title:	Analysis of Evidence – theory and practice in criminal cases
Module Level:	Level 6
Module Reference Number:	LAW-6-AOE
Credit Value:	15
Student Study Hours:	150
Contact Hours:	40
Private Study Hours:	40
Pre-requisite Learning (If applicable):	Criminal Law
Co-requisite Modules (If applicable):	None
Course(s):	LLB Hons Degree
Year and Semester	2019/2020 Semester 1
Module Coordinator:	Katherine Stylianou
MC Contact Details (Tel, Email, Room)	Room BR315, Telephone to be confirmed email: styliakd@lsbu.ac.uk
Subject Area:	Law
Summary of Assessment Method:	2 pieces of related coursework
External Examiner appointed for module:	Jayne Jeffcott, The University of Law, Birmingham.

2. SHORT DESCRIPTION

This unit introduces the students to the theory of the function of the law of evidence and the necessity for a distinct consideration of the analysis of evidence and proof. These theories mainly advocated by Professor William Twining and Jeremy Bentham. The unit then introduces the students to a practical tool of analysis of facts in a hypothetical case that students will eventually translate in to two pieces of coursework for assessment. The students analyse the evidence in terms of relevance and then for presentation at a mock trial on the unit. The classes require the students each week to focus on the preparation of the chart which in turn prepares them for trial. The chart is a detailed analysis of evidence in the hypothetical case given to students, presented in diagrammatic form which can be put in to their professional development portfolios.

3. AIMS OF THE MODULE

1. To develop a theoretical context for the study of the Law of Evidence.
2. To give students a practical tool with which to manage and analyse facts in a criminal legal context - the Wigmore chart based on the theory put forward by Wigmore, who saw the study of evidence as requiring an ability to analyse facts.
3. To stress, as Wigmore did, the use of logic, common sense and experience in the analysis of evidence and the articulation of relevance.
4. To give a context for the use of the chart by using a role play, whereby students will prepare a prosecution or defence case by plotting the evidence on the chart and participate in a mock trial.
5. To emphasise the research into this aspect of trial preparation by the student, who will then produce their work in a written form along with a theoretically based discussion of the subject of evidence.
6. To provide the student with an opportunity to experience advocacy and case preparation/analysis.
7. To develop students' ability to work independently.

4. LEARNING OUTCOMES

4.1 Knowledge and Understanding

the theories discussing the distinct functions of the law of evidence, questions of reform and the analysis of evidence in order to establish proof of a fact; (A1, A2)

the Wigmorean chart method of analysing the relevance of evidence using common sense, logic and experience. (A1,A2)

4.2 Intellectual Skills

analyse and evaluate the strengths and weaknesses of the prosecution and defence case in a hypothetical criminal trial with reference to the evidence (B1)

evaluate question of relevance, use and effectiveness of wigmorean analysis using complex legal and theoretical materials; from a range of sources (B1)

analyse and evaluate the theoretical perspectives and law reform proposals, studied in relation to the function of the law and evidence in their social, economic and moral contexts in criminal contexts (B3),

reason critically and argue effectively about the relevance of evidence, recognising strengths and weaknesses of the arguments offering reasoned opinion supported by the evidence. (B4)

4.3 Practical Skills

Communicate ideas effectively and appropriately in writing; (C1)Read and understand technical legal materials and technical theoretical materials; (C2)

Employ communication techniques and strategies appropriate for advocacy; (C3)

Interact effectively within a team; (C4)

Produce word processed, where appropriate, assignments; (C5)

4.4 Transferable Skills

Plan and manage work, including setting priorities in terms of importance and deadlines; (D3)

Identify and acknowledge issues of culture, disability and diversity;(D6)

5. ASSESSMENT OF THE MODULE

Coursework 1 - 50% - Basic Wigmorean Chart of Prosecution or Defence Case to be handed in after a final teaching session which will be a mock trial. The chart will have been prepared by students in their prosecution or defence teams during some lectures and seminars. Each seminar group will be divided in to these teams. The mock trial is not to be assessed. It is simply an opportunity for students to try out their advocacy skills

in a friendly environment. The chart, which is a diagrammatic representation of the analysis of the evidence in the case, is assessed.

The chart, more specifically, is a diagram of the relationship between the evidence presented and the facts needing to be proven, which constitutes an organisational tool for structuring arguments and the relevance of evidence. The class will use the symbols and the method identified by Wigmore, and American jurist and legal educator.

Coursework 2 - 50% - this will take the form of an essay, related to the work done on the unit.

6. FEEDBACK

Feedback is given throughout the module in small groups on coursework produced in the classes. Feedback on submitted work will be given on moodle as well as generic – common errors and good practice - at the beginning of semester 2.

7. INTRODUCTION TO STUDYING THE MODULE

7.1 Overview of the Main Content

The unit will draw on aspects of the following:

1. **THEORIES IN EVIDENCE**

Rationalist Tradition: overview of the various theorists - Gilbert - the Best Evidence theory - its criticisms for being incomplete and misleading.

Bentham - The utilitarian concept of evidence: adjectival law which ensures rectitude of decision - the doing away

Thayer - Freedom of proof with public policy considerations and relevance as the only exclusions.

Wigmore - Concentrating on Twining's resurrection of Wigmore's ideas of legal education. The science of Proof: logic, psychology and experience.

Twining - "What is the Law of Evidence? - context of the trial and the incidence of the rules of evidence. Damaska's model of our legal system - hybrid of various ideal types.

2. INTRODUCTION TO WIGMORE

A closer look at Wigmore. Explanation of his chart method for plotting evidence - the value of which is to illustrate the relationship of evidence to the facts needing to be proven - ie an assessment of relevance. Practical exercises - using case of R v Bywaters and Thompson and Professor Twining's analyse of the case in his book "Analysis of Evidence". The emphasis of the chart is logic and what evidence is logically probative of what fact.

3. WIGMORIAN CHART

Starting the chart. Coursework.

4. LAWYERS STORIES

An introduction into the procedure and purpose of examination of witnesses. A look at the rules of examination in chief and cross examination and the concentration on relevance. Demonstrations of examination of witnesses. Practice of constructing a story of a case in a practical role play situation, and conducting a case using the Wigmorean chart. Preparation in lectures and seminars.

7.2 Overview of Types of Classes

There will be weekly four hour classes that will vary between small group discussions, group work on the coursework, presentations from the lecturer and research and feedback.

7.3 Importance of Student Self-Managed Learning Time

It is essential that students use their time to research their essays, and prepare for the seminars, as well as further the charts.

7.4 Employability

Law graduates having studied this module will have had a unique experience of having prepared for a criminal trial and advocated on behalf of a defendant or prosecutor. The students work on preparation and fact analysis throughout the unit, with a view to conducting a mock criminal trial. They are given briefs and use a tool called the Wigmorean Chart method for analysing and charting the relevance of the evidence so as to prepare them for trial. They identify the types of questions that need to be asked in order to extract the relevant evidence and they prepare submissions to the judge. Very few undergraduates will have had the experience of dedicated classes to fact analysis and management. The students will have had the additional experience of working in a team to prepare the case.

8. THE PROGRAMME OF TEACHING, LEARNING AND ASSESSMENT

WEEK 1

Introduction and overview of the module. Set the work for the following week.

WEEK 2

What is the Law of Evidence. Theories of the law of evidence and the function of analysis of evidence. Exercise on distinguishing between rules, facts and facts in issue, done in small groups.

Discussion of Lawyers Stories

How we construct pictures from gaps in evidence

WEEK 3

Introduction to Wigmore's theory and approach. This involves an exercise to be done in small groups. The purpose of the exercise is to show how we fill in gaps in information by using generalisations. This leads to a discussion about how important Wigmore thought common sense, logic and experience were to analysing evidence. There is then a short talk about the use of deductive logic and exposure of generalisations, followed by an example: the Bywaters and Thompson case – how the fact that Edith Thompson was eight years older than Freddie Bywaters was made relevant to a case where Edith Thompson was alleged to have incited Freddie to stab her husband – there being a lack of direct evidence.

WEEK 4

Students organised into their groups and begin to work on the coursework.

Ground rules are laid by the students to ensure that they feel safe in the groups to have discussions. Also discuss what to do to avoid a member of the group taking advantage of the group's hard work. How to make sure everyone feels involved in the group task.

Students are introduced to the chart method. They are taken through the basic symbols Wigmore used. Students then read their coursework briefs and identify the ULTIMATE and PENULTIMATE PROBANDA.

Students are given small tasks to begin with and started off on their Coursework charts. All students, whether they are prosecution or defence will have the same basic chart. Defence may have more weaknesses, and prosecution may have more strengths.

WEEK 5

Students further their charts

WEEK 6

Students further their charts.

WEEK 7

Students finishing off their charts and beginning to add strengths and weaknesses.

WEEK 8

Trial Prep.

Students prepare for trial using the chart to assist them in asking questions, identifying strengths and weaknesses and in formulating appropriate submissions on relevance.

Module co-ordinator gives short talk on rules of examination in chief and cross examination.

Students plan who will do advocacy, who will role play witnesses, what questions to ask at trial, what submissions to make at the start of the trial, and to which evidence the defence may object and prosecution respond. Module co-ordinator assists and facilitates.

WEEK 9

MOCK TRIAL AND COURSEWORK SUPPORT

Students spend some time negotiating with their opponents and finalise the submissions to be made and any further preparation that needs to be done.

The trial will take place in the seminar and lecture slots and any additional slots that need to be found.

WEEK 10 to 12

Research, preparation and submission both pieces of coursework.

9. STUDENT EVALUATION

Available on request

10. LEARNING RESOURCES

10.1 Core Materials

T Anderson, D Schum, and W Twining, Analysis of Evidence, (Second Edition, Law in Context Series, Cambridge University Press, 2005)

W Twining, Rethinking Evidence, Exploratory Essays, (Second Edition, Law in Context Series, Cambridge University Press, 2006)

10.2 Optional Materials

M Childs and L Ellison, *Feminist Perspectives on Evidence*, (Cavendish Publishing Limited London, 2000)

P Ainsworth, *Psychology and Crime – Myths and Reality*, (Longman Criminology Series, 2000)

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