Evidence & Proof is a unique branch of the law. It is also a unique subject at Melbourne Law School. The subject’s content, reading and assessment differ significantly from other large subjects covering traditional aspects of the law. So you should pay more attention to this subject information guide than you probably would to similar guides for other subjects in the LLB.

The basic difference in Evidence & Proof comes down to this: while most LLB subjects are primarily concerned with teaching you how to handle legal information, Evidence & Proof is primarily concerned with teaching you how to handle factual information. This means that a large part of the reading, class-time and assessment will deal with ‘fact analysis’ skills that are quite different from the skills of case, statute and policy analysis that you typically learn in a law course. That is not to say that you won’t study law in this subject. To the contrary, you will be expected to gain a detailed working knowledge of an entire branch of law: the law of evidence. However, even there, the subject’s emphasis is on performing factual analysis in a manner suited to resolving questions raised by the law of evidence, rather than making arguments about what the law of evidence is or should be.


In semester 1, 2008, Evidence & Proof will be coordinated and taught by Jeremy Gans. Contact details are as follows:

- **Office**: 812 [Note: I am never in on Fridays.]
- **Phone**: 8344 1097
- **E-mail**: jeremy.gans@unimelb.edu.au
Evidence & Proof will be taught across ten weeks. The seminars will be on Thursday afternoons from 3.15pm until 6.15pm. Note that the seminars will start at 3.15pm, not five minutes after 3.15pm. There will be a break about half-way through each seminar. Most seminars will run all the way to 6.15 p.m. No roll will be taken. The seminars will be recorded on the Lectopia system and, where possible, multimedia material will be posted on the subject webpage. However, the classes are interactive and the subject-matter is unique and cumulative, so missing seminars is a bad idea.

What you need to do to prepare for each seminar is set out in the course materials for each week. The relevant sections from the textbooks and statutory provisions are set out below. **Note: For most seminars, there are documents from State v Peterson to read and questions to think about. See the course materials.**

<table>
<thead>
<tr>
<th>Day</th>
<th>Topic</th>
<th>Textbooks*</th>
<th>Statutory Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6th March</td>
<td>Introduction</td>
<td>Proof, Chapters 1 &amp; 2 Evidence, Chapter 1</td>
<td></td>
</tr>
<tr>
<td>13th March</td>
<td>Developing a case theory</td>
<td>Proof, Chapters 3-5</td>
<td></td>
</tr>
<tr>
<td>20th March</td>
<td>Proving a case theory</td>
<td>Proof, Chapter 6</td>
<td></td>
</tr>
<tr>
<td>3rd April</td>
<td>Hearsay evidence</td>
<td>Proof, pp 138-146</td>
<td>Charter, ss 24, 25(2) &amp; 32</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evidence, Chapter 9</td>
<td>Evidence Act 1958, ss 3, 55-55C</td>
</tr>
<tr>
<td>10th April</td>
<td>Hearsay exceptions</td>
<td>Proof, pp 131-137</td>
<td>Charter, ss 4, 13, 20, 21, 32, 38, 39</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evidence, Chapter 10</td>
<td>Crimes Act 1958, ss 458-464 &amp; 464K-465</td>
</tr>
<tr>
<td>17th April</td>
<td>Discretionary exclusion</td>
<td>Proof, Chapter 7</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evidence, Chapters 8 &amp; 17</td>
<td></td>
</tr>
<tr>
<td>24th April</td>
<td>Opinion evidence</td>
<td>Proof, pp 146-149</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evidence, Chapters 11 &amp; 12</td>
<td></td>
</tr>
<tr>
<td>1st May</td>
<td>Patterns of human behaviour</td>
<td>Proof, pp 149-154</td>
<td>Charter, ss 13 &amp; 32</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evidence, pp 267-274 279-282, 305-320 &amp; 369-392</td>
<td>Crimes Act 1958, s398A</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence Act 1958, s37</td>
</tr>
<tr>
<td>8th May</td>
<td>Post-offence conduct</td>
<td>Evidence, pp 324-328 &amp; 395-410 &amp; Chapter 18</td>
<td>Charter, ss 24, 25(2) &amp; 32 |</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Crimes Act 1958, s 399</td>
</tr>
<tr>
<td>15th May</td>
<td>Admissions to investigators</td>
<td>Evidence, Chapter 19</td>
<td>Charter, ss 4 10, 21, 24, 25(2), 32, 38, 39 |</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Crimes Act 1958, ss 464-464J</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence Act 1958, s149</td>
</tr>
</tbody>
</table>

* You must also read the remainder of the Proof and Evidence texts that are not specifically addressed in a particular class, i.e. Chapter 9 of Proof and Chapters 2-7 & 15 and pp 292-302, 320-324 & 392-395 of Evidence.
COURSE MATERIALS & MULTIMEDIA

The course materials for Evidence & Proof are entirely based on real trials. Most of the materials are reproductions of primary sources, such as documents adduced in court. The remainder are adapted from published secondary sources (e.g. the media), including lengthy excerpts from documentaries and other multimedia materials. There are no ‘hypotheticals’ or other inventions by the lecturer.

The fact that the course is based around ‘real’ evidence has several consequences. Two of them are pretty obvious, while the third isn’t.

First, some of the material is confronting. One video (to be shown in the first class) concerns a rape trial (although the dispute is about the identity of the rapist, not the details of the crime.) The balance of the course materials concern a murder trial. In terms of the traditional warnings shown at the start of television programmes, the materials contain scenes of violence, sexual references, strong course language and adult themes. The course’s content reflects actual legal practice and its inclusion is important, both for a full understanding of the issues we discuss and so that you can learn about how disturbing facts are analysed by lawyers and regulated by courts.

Second, the material is provided for teaching purposes, rather than as a way of learning about the trials themselves. Space considerations mean that many relevant facts have been left out. Also, some of the facts implied by the materials may be wrong, because of a flaw in the sources or an error by the lecturer. So, if you want the truth, the whole truth and nothing but the truth about these matters, don’t use these course materials.

Third, much of the course materials and multimedia (and the course) revolve around a single trial: *State v Peterson*. This trial was the subject of a documentary screened on SBS in 2005 (repeated in 2006) and was also the running example for the semester 2 2005, summer 2006 and summer 2007 versions of the course, so some of you may already know something about it. Moreover, it is a high profile case that continues to get some media coverage in the US and which is the subject of many webpages, which are only a google away.

However, I suggest that you don’t try to find out anything about this case beyond what is in the course materials, until the classes are over. In fact, I also recommend that you don’t look ahead beyond the current class’s materials.

There are two reasons for this. One is pedagogical. The course is about preparing for a trial and the course materials are structured to approximate the way that the lawyers involved in the case discovered the evidence as they prepared. So, actually knowing what is to come (and, especially, the eventual decision) will undermine the course’s approach to an extent. The non-pedagogical reason is that *State v Peterson* is a compelling example and the materials present it as a continuing story, with an introduction, development, surprises and a conclusion. Spoilers about what is to come – especially the
outcome – will probably reduce your enjoyment of the course. So, why not wait until the classes end? That’s just a suggestion and it’s up to you.

If you do happen to know a ‘spoiler’ (i.e. something that hasn’t yet been revealed in class), especially the ‘ending’, then please don’t mention it in class or tell anyone else (without checking with them first.) That way, everyone is free to make up their own mind about whether to follow my suggestion or not. If you are in any doubt as to what you are ‘allowed’ to say in class, please talk to the lecturer beforehand.

---

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR CRIMINAL DIVISION
FILE NO.: 01-CRS-24821

STATE OF NORTH CAROLINA

VS.

MICHAEL IVER PETERSON

We, the twelve members of the jury, unanimously find the defendant to be:

_____ 1. Guilty of First Degree Murder;

Or

_____ 2. Not Guilty;

This, the _____ day of October, 2003.

Signature of Jury Foreperson

Printed Name of Jury Foreperson
REQUIRED READING

There are NO judgments to read in Evidence & Proof. That is, you are not required to look up or read any law reports, even if cases are mentioned in the reading or in class. Indeed, you are not even encouraged to read them. However, you are, of course, permitted to read them. As always, they are available online and/or in the Legal Resources Centre. Speak to the lecturer if you can’t locate a judgment you want to read.

Instead, the content of Evidence & Proof is entirely contained in the subject’s prescribed readings, which are as follows:

Course Materials

You are required to read ALL of the documents from State v Peterson, contained in the course materials, as part of your class preparation. The materials are divided into ten parts, one for each seminar. It would be best if you do the relevant reading no more than a day or two before the relevant seminar, so that it remains fresh in your mind. The materials are available for sale from the Melbourne Law School Student Centre (née UGS) and also (for free) online.

Proof and the Preparation of Trials (Palmer, Thomson LawBook Co, 2003)

You are required to read ALL of this text, which covers the ‘fact analysis’ part of the subject. It is presently available at the University of Melbourne Bookshop and there are copies at the Legal Resources Centre. You should also be able to purchase it second-hand, as it has been a set text for this subject and its predecessor since summer 2004.

You are required to read ALL of this text, which covers the 'law of evidence' part of the subject (see next section.) It is presently available at the University of Melbourne Bookshop and there are copies at the Legal Resources Centre. You should also be able to purchase it second-hand, as it has been a set text for this subject and its predecessor since summer 2004. Note that the predecessor to this text, Principles of Evidence, published in 1997, is not sufficient for Evidence & Proof.

Statutes

The only other required reading for the course is some Victorian statutory provisions. The required provisions are contained at the end of the course materials (in both the hard and online versions.) You do NOT have to buy any statutes.

Please note that the seminars are not a substitute for the required readings and the required readings are not a substitute for the seminars.
OBJECTIVES AND ASSESSMENT

The purpose of Evidence & Proof is to teach students about the role played by evidence in litigation and the skills needed to deal with evidence in a variety of legal settings. In particular, the subject aims to teach two related sets of skills:

First, ‘fact analysis’, i.e. how to think about (and communicate your thinking about) what happened in the past based on documents and other evidence that are given to you. The techniques you are expected to learn are those described in the prescribed text Proof and the Preparation of Trials. In particular, students must be capable of examining a brief of evidence (roughly modelled on the information available to barristers prior to a trial) and, then: (1) devising the factual theory that a litigant will seek to prove; and (2) determining the reasoning that can be used to prove it from the available evidence.

Second, the ‘law of evidence’, i.e. the law that regulates what happens inside Australia’s courtrooms, especially what is allowed to happen inside the minds of people (judges and jurors) who have to make legally significant factual judgments. You will need to understand all of the law set out and analysed in the prescribed text Australian Principles of Evidence, as well as the statutory provisions you’ve been given. In particular, students must be capable of examining a brief of evidence and determining (and communicating) the possible impact of the law of evidence on the factual theory and arguments that the student has devised through fact analysis.

Throughout the subject, the emphasis will be on your ability to deal with novel scenarios in a precise, practical and innovative way and to communicate your analysis in written form. In short, the subject’s objective is that all students will, on completing the subject, be capable of reading a brief of evidence and writing an advice on evidence. That is precisely how the subject will be assessed: Evidence & Proof has a single form of an assessment: a 100% take-home exam that requires you to read a ‘brief of evidence’ and write an ‘advice on evidence’ in accordance with detailed instructions.

A brief of evidence is a compilation of documents resembling the information that might be available to a barrister preparing for litigation. The assessment brief may concern an actual, hypothetical or proposed criminal prosecution in Victoria and may include both text and pictures. The brief will be distributed in hard copy.

Completing the assessment involves preparing and submitting an ‘advice on evidence’, which is a written report on the outcome of your factual and legal analysis of a brief of evidence. The precise nature of an advice on evidence will be extensively discussed in the seminars and is detailed in the exam instructions. The exam instructions for semester 1 2008 will be the same as those used in semester 2 2005, summer 2006 and summer 2007, which are set out on the following page:
Your instructions are to prepare an advice on whether the evidence detailed in the attached brief can establish the case that XXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX. Your advice must consist of the following:

- **A statement of a factual theory of the case given the evidence in the brief.** You must select a factual theory that best satisfies the criteria listed at pp 48-53 of the Proof text. You must perform this task without considering the effect of the law of evidence.

- **A description of how the evidence can be rationally used to prove the case during a trial, consistently with your theory.** You must use the brief to identify, with precision, documentary or real evidence and testimony from living witnesses (whether you know their names or not) that could be available in a future criminal trial to assist in proving the case. Then, arrange the case you’ve been given and the anticipated trial evidence, together with intermediate factual propositions that you have devised (consistently with your factual theory) so that they have the logical relationship described in p71 of the Proof text, i.e.: ‘If the previous evidence or factual proposition is true, then it is more likely than it otherwise would be that the next factual proposition or case is true’. Ensure that the logical relationships you assert are clear and plausible; if they aren’t, then you will need to add more information to clarify your argument. Explain the relationship between different chains of inferences, i.e. whether separate chains that lead to the same factual proposition are conjunctive or not (see p79 of the Proof text.) You must perform this task without considering the effect of the law of evidence.

- **An evaluation of the impact of the law of evidence on the proof you have described.** You must consider the Victorian law set out in the Evidence text, together with the statutory materials you have been given and identify any rules that might affect your proof if it was offered in a future criminal trial where XXXXXXXXXXXXX is the defendant. Then state precisely how and why those rules will or will not affect your proof. Where the application of the law will depend on the views of a trial judge, you must explain what she or he will consider and how the issue ought to be resolved. When the outcome depends on the existence of other facts or the occurrence of particular events in the trial, identify those contingencies and explain what follows from them. You are not required to cite, identify or analyse the sources of evidence law. Just explain and apply the law as you understand it. If the law or the factual context is unclear, then simply analyse and explain how and why that ambiguity matters.

Your advice must be divided into three sections corresponding to the above three tasks. Otherwise, you may express yourself however you want, using words, diagrams or whatever and you can - and are encouraged to - use a mixture of formats. Whatever works best. Avoid repetition by making clear reference to the brief or your earlier discussion as necessary. Avoid verbosity by redrafting so that your answer is clear and concise. Given the time constraints, you will not be able to cover every aspect of the issues raised by the brief in your advice. Instead, focus on the issues that are likely to be of greatest significance in any future trial (i.e. factual propositions that are especially likely to be significant and chains of reasoning that are likely to be crucial to the proof of the case.)

You will be assessed solely on your effectiveness in performing the tasks set out above. Your mark will be based on both the quality of your analysis of the pertinent issues that flow from the brief and your effectiveness in communicating that analysis consistently with the instructions. Roughly half of your marks will be based on your analysis of the impact of the law of evidence on your proof (i.e. the third task.) To complete the exam, you only need to consider these instructions, the brief, the two textbooks and the statutory materials. You will not receive additional marks for further research or for going beyond these instructions.
The take-home exam will run from 2pm Thursday 22\textsuperscript{nd} May through to 9.30am Monday 26\textsuperscript{th} May. You will need to keep significant time free across those dates and also allow time prior to those dates to practice.

Take-home exams are subject to all the Faculty and University rules governing assessment. In summer 2007, the exam cover sheet contained the following rules:

1. **This take-home exam is subject to all the rules governing assessment in the law faculty and the university.** It is your responsibility to be aware of all those rules, including the rules on academic misconduct. Students doing the Evidence take-home are subject to the same guidelines on extensions and special consideration as students undertaking a supervised exam.

2. This examination represents 100\% of your total assessment for this subject.

3. **There is one question, which must be answered in its entirety.**

4. In preparing your answer, you may consult any printed or written material.

5. The exam question may be discussed with other students, but **joint work is not permitted.** In particular, you are not permitted to collaborate with anyone else in writing an answer to the exam; view another person’s written notes about the exam or their draft or final versions of an answer to the exam; permit another student to view your written notes about the exam or your draft or final versions of an answer to the exam; make written notes of what anyone else says to you during the exam; or permit another student to make written notes of what you say during the exam.

6. **Under no circumstances should the lecturer be approached or contacted once the exam paper has been released.** If you have a query about an aspect of the paper, which you think needs to be resolved in order for you to answer a question, please contact the Undergraduate Studies Office* and state what the query is and why you think it needs to be resolved. Do not contact the Undergraduate Studies Office* about any typographical errors or missing words in the documents in the brief of evidence. Just analyse those errors or problems, as appropriate, in your answer.

7. The word limit is 5000 words. However, Marking Code 3 will apply to this examination, so you will not lose any marks for exceeding the word limit. Instead, you will be marked based on the criteria set out in the instructions.

8. **All papers must be submitted in duplicate in hard copy with a cover sheet to the Undergraduate Studies Office*. Fax and e-mail copies will not be accepted.

9. A **penalty for late submission** will be imposed in the following way: For the first 2 hours late (or part thereof) a 5\% reduction applies. For every hour late (or part thereof) after the first 2 hours, the penalty increases to a 10\% reduction.

10. **Read the instructions very carefully. Be sure to check that you have complied with these rules and all the instructions before submitting your paper.**

*Note that the Undergraduate Studies Office is now called the Melbourne Law School Students Centre.
STUDY AND FEEDBACK

You should recognise that the Evidence & Proof is unlike any subject you’ve done before and, in particular, the take-home exam is unlike any exam you’ve done before. All your fellow students – apart from those who are repeating the course – will be doing this unique assessment for the first time, just like you. Your success in the subject is based on how effectively you adapt to a novel way of thinking, studying and communicating.

How to study for the exam

Think about learning how to ride a bicycle. What is more useful: attending a course of ten seminars on how to ride or getting on a bike and trying until you stop falling over? Studying Evidence & Proof is the same. You cannot learn by simply doing the prescribed readings and attending the seminars. Instead, you must practice both ‘fact analysis’ and the ‘law of evidence’ yourself. Being ready for the exam means being able to read a brief and write an advice on evidence, not just knowing the content of the course.

The course readings and seminars, especially the material from State v Peterson, are designed to prompt you into doing the thinking and, at times, the writing that amount to practising fact analysis and the law of evidence. So, instead of simply ‘doing’ the reading or, even worse, using a highlighter pen or taking notes, you should think while you read. Just about any thinking is useful, but in particular you should be thinking about the questions set out at the start of each seminar’s materials, as well as the set readings from the texts and statutes.

Ideally, you should be thinking about fact analysis and the law of evidence for every factual example you come across, whether in class, in the text or in your outside life. Fact analysis and even the application of the law of evidence are quite individual things, so you shouldn’t simply try to follow the approach of the lecturer, the texts or the courts. Rather, your task is to identify your own views and learn how to effectively communicate them to others.

There are thirty hours of seminars in Evidence & Proof. You are strongly encouraged to use the seminar time itself to think. Remember that everything you have to know is in the readings, so there is little reason to take notes in the seminar. Indeed, sometimes taking notes can stop you from thinking. The exam will contain a novel situation you’ve never seen before, so there is no point in simply learning or copying what is done in class. Instead, you should spend the seminar time trying to deal with the set scenarios yourself, in your head or out loud (by participating in seminar discussion.) You should make sure that you’re at least capable of thought when you attend the seminars. If doing the prescribed reading makes you too tired to think in the seminars, then do the reading some other time.
Finally, before the exam, don’t waste your time doing summaries or reading someone else’s summary. There is a summary at the end of each chapter of each textbook, so just use that. The major chapters even have charts to assist you (and the course materials contain versions of the charts suited to Victorian law.) Anyway, it’s a four-day open-book take-home exam, so you don’t have to know anything off by heart. Instead, simply make sure that you know where to look in the books or statutes when you need to and hone in on the topics that you’ve found difficult.

Most importantly, you must do some practice. That means doing at least one advice on evidence (based on one of the many practice briefs available to you) completely in written form, as well as looking over (and writing out partial responses to) as many other practice briefs as possible. There are dozens of past exams or practice briefs available to you. The Evidence & Proof LMS site gives you access to a number of past exams and sample answers. The www.evidence.com.au site contains briefs used in other courses at Melbourne Law School. The first answer your write will be your worst, so don’t make the actual take-home your first attempt at doing an advice on evidence. See the next section for recommendations on particular briefs that may be useful for practice before the exam.

**What you have to ‘know’ for the exam**

What you have to ‘know’ to complete Evidence & Proof is what is contained in the two prescribed texts and the prescribed statutory provisions. However, Evidence & Proof is a vast topic and both the ‘fact analysis’ and ‘law of evidence’ portions are too large to be comprehensively examined within the confines of a semi-compulsory undergraduate subject. Instead, the assessment focuses on certain key parts of the subject’s content. The content of the seminars is a good guide of what to focus on when preparing for and completing the take-home exam. In particular, you should note the following general limitations on the scope of the assessment:

First, the most important chapters of the *Proof* text are Chapters 5 and 6. That is because the ‘advice on evidence’ format focuses on the presentation of the results of fact analysis. However, the remaining chapters will still assist you by describing methods that will help you prepare for and fine-tune your written communication of fact analysis.

Second, the most important chapters of the *Evidence* text are Chapters 8 to 19, especially chapters 8 to 12 and chapters 16 to 19. That is because the ‘brief’ format emphasises the regulation of reasoning over questions of procedure and trial practice. However, the remaining aspects of the law dealt with in *Evidence* provide vital background to understanding the regulatory questions, so you should still pay careful attention to the remaining chapters.

Third, the assessment brief will be based on a matter that is within the jurisdiction of a Victorian court, so the ‘laws of evidence’ aspect of the assessment will assess your knowledge of Victoria’s law of evidence, i.e. the
common law and the statutory law of Victoria. The *Evidence* text covers all Australian law and some overseas law, but you only need to know the Victorian law (i.e. the common law and statutes passed by the Victorian parliament), which is the only law of evidence governing criminal prosecutions in Victoria. However, while non-Victorian law (including the uniform evidence legislation) is not directly assessed, knowledge of comparative developments is important to your understanding of Victorian law (see Chapter 1 of *Evidence*.)

Fourth, the assessment brief will concern a criminal prosecution, so the exam will cover the laws applicable in criminal, rather than civil, trials. As the *Evidence* text explains, the Australian law of criminal evidence incorporates much of the law of civil evidence, so the exam will cover nearly all of the law of evidence. Note that you will not be tested on substantive criminal law (i.e. criminal responsibility and the definitions of particular crimes.)

Fifth, the main focus of the course is on preparing for a trial, rather than arguing an appeal before a higher court. So, you only need to know what the law is, rather than what the authority for each proposition of law is. Moreover, while applying the law always requires that you be aware of the uncertainties in it, you will not be tested on your ability to describe the source of that uncertainty, much less resolve it. The *Evidence* text, of course, does discuss legal authorities and, at times, does so in depth. You must, of course, read those discussions so that you understand the content of the law. Similarly, you will need to read relevant statutory provisions to understand the content of some Victorian law not addressed in the textbook. But you don’t have to cite either cases or statutes as justifications for legal rules you describe and apply in the exam. Indeed, you should only be citing things as a convenient shorthand for a legal principle or in order to acknowledge that the wording you’ve relied upon is actually someone else’s. If everything you write is your own work (as it should be) and you express yourself clearly, then there should be no need to cite anything in the exam.

Finally, a hallmark of the study of Evidence & Proof is how every fact situation is unique, so both students and practitioners must expect the unexpected. The assessment brief, which will be based on an actual fact scenario, will reflect this. As a consequence, the assessment will be more concerned with testing your ability to deal with novel issues than it is with testing your knowledge of how courts reacted to past issues. In particular, it will not examine your knowledge of precedent or the development of the law; however, for some issues, an understanding of legal history and present controversies will assist you in applying the law to a novel matter. Obviously, you don’t have to know anything at all about *State v Peterson* for the exam. That case (and indeed any other case mentioned in the course) is referred to only as a teaching tool.
Pre-exam feedback

This section answers the question: how will you know whether or not you’re ready to do the take-home exam, particularly given its unique nature?

This section lists a number of mechanisms for feedback. All of them require your participation (which is not surprising, as it is your abilities that you need feedback on.) Unless you practice the skills taught in this subject – in the manner described above – then you simply won’t know what you don’t know. Merely doing the reading and attending the seminars won’t tell you. Indeed, some of the things you need to learn in Evidence & Proof – the hearsay rule is the main example – are so subtle that many students find themselves quite confused immediately after they’ve done the reading and sat through the classes. That doesn’t mean you’re doing badly; actually, it might be a sign that you appreciate some of the subtleties. The only way to test your understanding – and, for that matter, to gain an understanding – is to practice using the various example briefs available to you. Most students report that, at some point, much of Evidence & Proof ‘falls into place.’ Until that happens, you’re probably not ready to do the exam. You need to practice more and use the feedback mechanisms described below.

The following feedback mechanisms (in no particular order) are available in Evidence & Proof in semester 1 2008:

- **Doing practice exams.** As noted above, practicing is the way to study Evidence & Proof. All past exams are suitable for practice. However, every brief of evidence is in part a reflection of a lecturer’s interests (in terms of the scenario chosen) and approach (in terms of what is put in a brief and how it is arranged.) So, as this year’s exam will be set and marked by the lecturer, you are advised to practice on past exams set by the same lecturer. Copies of the semester 2 2005, summer 2006 and summer 2007 exams will be posted on the subject webpage. Note that the semester 1 2006 and summer 2007 exams were set by a different lecturer and its instructions aren’t the same as those you’ll have to follow.

- **Looking at sample advices on evidence.** A selection of good student answers to some of the past exams is posted on the website. You should use these to gain a further understand of what is expected of you in the exam. But you should not try to use these samples as ‘model’ answers for the exam, for at least four reasons:
  - Some of these answers are written for other subjects, or earlier versions of this one, so they don’t comply with the instructions set out in the preceding section.
  - These aren’t perfect answers, just good ones.
  - A good advice on evidence is an individual response to a novel scenario, not a formulaic generic response; the assessment brief will be unique, so your advice should be as well.
  - Copying anyone else’s work (including their wording) is plagiarism.
Getting feedback from others on your practice advices on evidence. One of the hardest aspects of fact analysis is learning how to communicate your thinking. There is no required form for an advice on evidence; rather, the key criterion is that your writing be clear to others. The best way to check this is to ask someone else to read your practice answer. Consider asking a non-lawyer/law student to look at what you’ve written. With few exceptions, all good legal writing should be intelligible to lay people.

Talking to the lecturer. My contact details are provided on the first page of this guide. I am happy to be contacted through any of those avenues, including e-mail. On days when there are seminars, I am happy to speak with you before or after a seminar, or during the seminar break; however, for obvious reasons, lengthy consultations will not be possible on those days. Other days are fine, apart from Fridays, when I work from home. I will post contact hours for the period between the seminars and the exam. I am happy to answer any specific questions you have, or to discuss any parts of the course that are causing you difficulty. However, due to increased numbers of students enrolled, I cannot provide any feedback on practice answers you’ve done.

Seminar discussion. The bulk of the seminars will be concerned with working through the course materials, especially State v Peterson. That is because the reading covers everything you need to ‘know’ (see above), so the seminars will focus on the skills you need to develop (see ‘objectives and assessment’. To the extent that it’s possible in a large lecture room, the seminars will operate like tutorials. So, your understanding of what comes up in the seminars will give you a good guide to your own likely ability to complete the exam. However, just like regular tutorials, the point isn’t to copy down the ‘answers’ given in the seminar. Just as each factual scenario differs from every other one, the assessment brief will be different from anything discussed in the seminars. Moreover, you will earn marks for your advice on evidence from those parts that address the unique features of the assessment brief.

Talking to fellow students. Like most law subjects, Evidence & Proof can be usefully studied in groups. In particular, you will almost certainly benefit from talking with others about how they would approach writing an advice on evidence about a particular brief. Remember, however, that all work you submit must be your own.