

How, and why, does the teaching of Evidence and Proof differ from teaching the Law of Evidence?

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1. Introduction

The moral and practical significance of university learning can be realised only if there is significant application of that learning. This is not possible till law students are given the responsibility to make decisions that impact their clients, the wider community, and participation within the legal process.¹ With a rapid expansion in case loads, law students have to be active in learning important lessons. Several different approaches are used for teaching different concepts and laws to legal students. Reports and court observations are significant approaches but none of them position the students actively as players for the law of trial evidence.² Participation in prosecution and defence, and witness plays in fictional case provide better scope to apply law in action.

In legal courses, evidence is among the most crucial concept, which includes the application of various pedagogical approaches. In every case, law is strongly stemmed with the role played by evidence law for the creation of factual records related to the case. Familiarizing dynamics about a trial help in offering dramatic opportunities for the enhancement of learning.³ However, there are a number of differences between the teaching of evidence and proof, and the teaching of evidence law due to the fact that evidence itself is a concept and evidence law demonstrates the legal rules.

Therefore, the aim of this essay is to understand the different aspects between teaching of evidence and proof, and teaching evidence law. Both the teaching processes require different considerations and approaches. Key points of conclusion will be drafted accordingly. The essay will help to understand different teaching and pedagogical approaches that can be used for enhancing learning of evidence and evidence law.

2. The Nature of Legal Evidence

A criminal case is formed by a number of interlinked sets of arguments utilized for convincing a jury that prove the guilt of individuals towards a crime. It is not a natural aspect and based on the result of investigation, it can be modified in order to convince a jury about suspects involved in the case.⁴ While investigating a reported crime, there can be several aspects of information which can be used by investigators for resolving a case. It is mostly known that police authorities look for evidence and there are laboratories that analyse evidence. Out of the common use, it is crucial for deducing evidence as a set of things which can be utilized by legal representatives in court for pressing against criminal convictions.⁵

Any expert or eyewitness can provide evidence for a legal case. The eyewitness will not always provide some tangible thing that the court can inspect. Instead, the eyewitness focuses on providing evidence by describing events and information relevant for solving the case. Therefore, teaching the concept of evidence is pertained to specific propositions.⁶ This differentiates evidence in legal classes evidence has an inextricable relationship with the use of observations. Usually, in the law of evidence, it is crucial for supporting or refuting specific propositions, which help in undermining or supporting the case arguments.

The legal nature of evidence is neither universal nor static. There are no universal approaches to proof and evidence that can be shared every lawful system all across the globe.⁷ However, there are a number of special rules and laws regarding the introduction of evidence in legal court while presenting evidence and utilizing it as per the sufficiency or strength of evidence required for the establishment of proof and evidence. The law has also ignored certain crucial concerns.

For the resolution of factual disputes at bench trial, jury or court, there is specific reliability upon additional lawful principles.⁸ Various academic attempts have been placed for systematically analysing the operability of principles in order to look for legal facts. As claimed, the principles of evidence have a general nature. Moreover, evidences have to be used to draw inferences while testing hypotheses and justifying conclusion under the governance of different disciplines in similar principles.⁹

The process of evidentially reasoning law and other considerations can help in sharing specific attributes and approach proof and evidence that are different than law. The process begins first by identifying the meanings of evidence across lawful discourse.

¹Z. Wang, "The fate of evidence law: Two paths of development." *The International Journal of Evidence & Proof* 24, no. 3 (2020): 329.

²R.V. Kostenko, "The Problems of Realizing the Right to Collect and Present Evidence by Parties to a Criminal Proceeding." *Legal Concept= PravovayaParadigma* 17, no. 2 (2018).

³V.A. Lazareva, "Evidence as a Category of Criminal Procedure Law: New (Old) Approaches." *Legal Concept= PravovayaParadigma* 18, no. 2 (2019).

⁴A. Hopkins, "Teaching Evidence Law within the Framework of a Trial: Relating Theory to Practice as Students Take to Thier Feet and Take Responsibility for the Trial Narrative." *Journal of the Australasian Law Teachers Association* 2, no. 12 (2009): 173.

⁵D.S. Rudes, J. Viglione, J. Lerch, C. Porter, and F.S. Taxman., "Build to sustain: Collaborative partnerships between university researchers and criminal justice practitioners." *Criminal justice studies* 27, no. 3 (2014): 249-263.

⁶P. Bergman, "Teaching Evidence the Reel Way." *QLR* 21 (2001): 973.

⁷P. Bergman, "Teaching Evidence the Reel Way." *QLR* 21 (2001): 973.

⁸M.L. Seigel, "The Effective Use of War Stories in Teaching Evidence." *Louis ULJ* 50 (2005): 1191.

⁹Y. Daly, J. Gans, and P. J. Schwikkard, eds. *Teaching Evidence Law: Contemporary Trends and Innovations*. Routledge, 2020.

When lawyers refer to evidence, they consider their theoretical knowledge of legal evidence while perceiving the perspective as to what is accounted as evidence in court.¹⁰ As the overall process of understanding evidence and proof is different from applying them in real life cases, there are huge differences in the teaching methods adopted by law universities and professors. This will be further investigated and rationalized in this essay.

3. Teaching Evidence and Proof

Majority of the experiences in evidence and proof are partly theoretical, which are usually applied with respect to litigation and trial. Evidences are related to proofs that manifest truth on specific circumstances or facts. On the contrary, it is possible to demonstrate the reality of evidence through the application of evidence law.¹¹ In the absence of evidence, there will be no scope of proof. In the absence of proof, it is not possible to meet burdens, and making judgments, verdicts or convictions is impossible. Evidences help in directing the practitioners, the jury and the tribunal in order to advocate content for taking actions further ahead.¹² Evidences help lawyers in leading the truth, based on a fact or a tangible element elucidating proposition. The scope to derive evidence is through supposition, logical inference and deductive reasoning. On the other hand, the law of evidence is the procedural and substantive instruction for the utilization of evidence.¹³

Students are expected to analyse texts for understanding and identifying evidences. The direct aim of such texts should be arming the practitioners through the aspiration of justice professional with data related to evidence. Students need to learn about suggesting ways through evidence can impact litigation and investigation, whether criminal or civil case.¹⁴ They further need to evaluate information related to the integral purpose played by evidence for evaluating the case.

The most important aspect of teaching evidence and proof is evidentiary analysis which leads to the application of evidence law. Evidentiary analysis is a primary product that students have to initiate and the ways in which it can be related with the physical platform. Evidence analysis can help in dealing with predictable circumstances and events, probabilities, and possibilities.¹⁵

As evidence has to be understood from such a behavioural and dynamic perspective, it is not a fatiguing or dull undertaking even if under the guidance of applying technical rules. The process of collecting, analysing, organizing and delivering evidence is an intellectual performance for directing a specific objective and understanding the truth. In the general sense, anything can be submitted as evidence to the court and judges for possible ruling, inspection, and review.¹⁶ Evidence takes a number of different forms. Nevertheless, the array of evidence is restricted by the real understanding of the physical setting and the lawful nuances that affect this scope of admission.

The process of teaching the concept of evidence and proof becomes further complex because evidence does not help in accurately reflecting reality. There can be tainted or biasness in the representation as per individuals who inspect it.¹⁷ Therefore, evidence is portrayed through a rational consideration. In consequential terms, it is necessary to recognize initially that it is not possible to expect accurate outcomes.

Litigants and society have to be content by roughly approximating what can be demanded by the scientists. It is also worth noting that settling disputes throughout a court room will play an important role.¹⁸ A trial cannot be absolutely based on intellectual performance. In this context, it is necessary to teach evidence and proof as a materialistic reflection, and a combination of actions, deeds, and thoughts for aligning properties with specific facts.

4. Teaching the Law of Evidence

Law students need to establish a lot theoretical and practical knowledge for delivering good performance in court, while performing new tasks for the examination of witness and engagement in complicated evidential argument and analysis.¹⁹ These are a lot of responsibilities imposed on junior practitioners in order to conduct their summary trial for the first time.

Similar to junior practitioners, students can succeed in demonstrating their capacity for enhanced challenge in demanding respect. Moreover, similar to practices, students have to sustain their preparedness. It is crucial to understand the objectives and role, and understand the admissible principles and adduced evidence.²⁰ They have to determine the theoretical consideration related to the case while identifying fact based propositions as per winning theory.

For the purpose of enabling such preparations, in 2008, the University of Canberra designed its lectures on the evidence law for elucidating critical principles and processes of evidence law. Students were provided with theory every week that they were

¹⁰ S.R. Arnott, "Evidence beyond the Rules: A Critical Thinking Approach to Teaching Evidence Law to Undergraduate Students." *Journal of the Scholarship of Teaching and Learning* 18, no. 4 (2018): 151.

¹¹ M.L. Seigel, "The Effective Use of War Stories in Teaching Evidence." *Louis ULJ* 50 (2005): 1191.

¹² Y. Daly, J. Gans, and P. J. Schwikkard, eds. *Teaching Evidence Law: Contemporary Trends and Innovations*. Routledge, 2020.

¹³ S.R. Arnott, "Evidence beyond the Rules: A Critical Thinking Approach to Teaching Evidence Law to Undergraduate Students." *Journal of the Scholarship of Teaching and Learning* 18, no. 4 (2018): 152.

¹⁴ S.J. Agüero, Claudio, and Rodrigo Coloma Correa**. "Pay attention to the students' epistemic barriers. A key for teaching Evidence Law." *Revista de derecho (Valdivia)* 32 (2019): 17.

¹⁵ F.E. Mezzanotte, "Use of "reading quizzes" to foster learning: evidence from teaching company law in business programmes." *The Law Teacher* 51, no. 3 (2017): 349.

¹⁶ C. Strevens, R. Grimes, and E. Phillips, "Revisiting the Law of Evidence: A Case Study on the Practicalities of Simulation-Based Learning and Teaching." In *Legal Education*, pp. 235. Routledge, 2016.

¹⁷ M.H. Schwartz, "Towards a Modality-Less Model for Excellence in Law School Teaching." *SYRACUSE L. REV.* 70 (2020): 115.

¹⁸ F.E. Mezzanotte, "Use of "reading quizzes" to foster learning: evidence from teaching company law in business programmes." *The Law Teacher* 51, no. 3 (2017): 351.

¹⁹ D. Merritt, and R. Simmons, "Learning Evidence with an uncasebook." In *Teaching Evidence Law*, pp. 15. Routledge, 2020.

²⁰ V.A. Lazareva, "Evidence as a Category of Criminal Procedure Law: New (Old) Approaches." *Legal Concept= PravovayaParadigma* 18, no. 2 (2019).

supposed to apply in fictional trial.²¹ As a result of this lectures, students got the opportunities of stimulating critical thinking to support students with the independent analysis of progressed case as the ones participating across emerging narrative.

Tutorials were used as opportunities for examination of witness among students, in playing the role of prosecution and defence lawyers. They also have the opportunity to seek submissions regarding what can be and cannot be stated in court.²² Students had to take strategic decisions with an evolved understanding about the trial, evidence principles and trial process. The key intention was continuously and explicitly relating theory in the practical scenario for the purpose of supporting experiential learning. This was done by adopting the evidence based model of teaching proof and evidence where key emphasis is laid upon teaching students to prove the facts and evidence in litigation.²³

The process of teaching the law of evidence is complex. Students can succeed in acquiring unit specific learning and discipline in the role of prosecution and defence lawyers. They also have the ability to foster and develop professional ethics, problem solving, and data literacy and communication skills along the way. However, there are more demands set under university education. Graduate students should have the capability of critical reflection and thought, with the ability of understanding social responsibilities and the capacity of challenging current social institutions and orders.²⁴ After running the trial course, the students have to focus on reflecting upon the fact if there are just trial outcomes and processes.

The courses of evidence law are taught in the form of tutorial formats and standard lectures. This is a relevant format in which the law of evidence end up receiving a systematic exposition across lectures. There can further be discussion and analysis of essay type questions and problem in tutorials. Inexperienced students may struggle in uncovering frameworks over which complex principles can be underpinned. The law of evidence is all about practicing the trial is a relevant learning framework.²⁵ This framework is the lens by which it is possible to understand the holistic attribute of evidence law. While the trial stage in resolving legal disputes can be achieved in fewer cases, it is necessary to have information of all aspects related to the trial in order to link it with legal practice while following instructions learned during the legal course.²⁶

The teaching of evidence law is all about the application of knowledge obtained during legal course. Students need to understand and translate their own desire as lawyers while playing a central role in legal trials and applying the lecture insights on evidence law. With all of the key complexities, the law of evidence can help in constraining and facilitating the process of storytelling in course while resolving the legal disputes.²⁷ Lawyers have to initiate several attempts for evolving inquiry methods in order to allow the prevention of error and elicitation of truth.

5. Differences between Teaching Evidence and Proof, and Teaching the Law of Evidence

The biggest difference in teaching the concepts of proof and evidence, and teaching evidence law is the type of methods utilized for the learning process. Students need to understand what they can treat as evidences and hence, it is necessary to teach them about the theoretical foundation of proof and evidence.²⁸ However, knowing the definition and constituency of evidence is not enough for resolving legal disputes and hence, it is necessary to teach the law of evidence that can be actually applied in court. Therefore, teaching through experience should be involving relationships between the personal knowledge of evidence and the application of evidence law.²⁹

There are certain possibilities of observing, listening and reading these narratives while studying the operability of evidence law and hence, understanding the involvement of legal principles. Difficulties are faced by students in understanding the operability and purpose of evidence rules when they actually do not understand the theoretical concept of evidence.³⁰

Therefore, while teaching evidence is mostly about theories and concepts, teaching the evidence law is about giving the opportunity to apply that knowledge through legal case role play sessions and simulations. This is the biggest difference in teaching evidence and proof and teaching evidence law. In order to do so, there is assumption of practical and moral responsibility for the emergence of evidences.³¹ For the advancement of case, there must be necessary development about the comprehensive understanding of evidence principles, practice and trial process.

The model of experiential learning for the law of evidence needs to focus on articulating the process of proof and the law of evidence. There is a requirement of learning model that ends up creating explicit relations between the two. In this learning model, there must be active and direct engagement of students with the process of evidence while applying the evidence law as they arise

²¹ R.V. Kostenko, "The Problems of Realizing the Right to Collect and Present Evidence by Parties to a Criminal Proceeding." *Legal Concept= PravovayaParadigma* 17, no. 2 (2018).

²² R.V. Kostenko, "The Problems of Realizing the Right to Collect and Present Evidence by Parties to a Criminal Proceeding." *Legal Concept= PravovayaParadigma* 17, no. 2 (2018).

²³ A. Hopkins, "Teaching Evidence Law within the Framework of a Trial: Relating Theory to Practice as Students Take to Thier Feet and Take Responsibility for the Trial Narrative." *Journal of the Australasian Law Teachers Association* 2, no. 12 (2009): 179.

²⁴ C. Strevens, R. Grimes, and E. Phillips, "Revisiting the Law of Evidence: A Case Study on the Practicalities of Simulation-Based Learning and Teaching." In *Legal Education*, pp. 245. Routledge, 2016.

²⁵ F.E. Mezzanotte, "Use of "reading quizzes" to foster learning: evidence from teaching company law in business programmes." *The Law Teacher* 51, no. 3 (2017): 354.

²⁶ V.A. Lazareva, "Evidence as a Category of Criminal Procedure Law: New (Old) Approaches." *Legal Concept= PravovayaParadigma* 18, no. 2 (2019).

²⁷ Z. Wang, "The fate of evidence law: Two paths of development." *The International Journal of Evidence & Proof* 24, no. 3 (2020): 333.

²⁸ Y. Daly, J. Gans, and P. J. Schwikkard, eds. *Teaching Evidence Law: Contemporary Trends and Innovations*. Routledge, 2020.

²⁹ S.J. Agüero, Claudio, and Rodrigo Coloma Correa**. "Pay attention to the students' epistemic barriers. A key for teaching Evidence Law." *Revista de derecho (Valdivia)* 32 (2019): 31.

³⁰ R.V. Kostenko, "The Problems of Realizing the Right to Collect and Present Evidence by Parties to a Criminal Proceeding." *Legal Concept= PravovayaParadigma* 17, no. 2 (2018).

³¹ D. Merritt, and R. Simmons, "Learning Evidence with an uncasebook." In *Teaching Evidence Law*, pp. 18. Routledge, 2020.

in a setting.³² The theoretical teaching of evidence and proof help to investigate facts and collect evidence. On the other hand, the teaching of evidence law is crucial for organizing and analysing evidences in order to prepare them for trials.³³ The knowledge of evidence law is used to make arguments related to the admissible scope of evidence and adduce evidence during the trial.³⁴

Investigations of fact along with organising and analysing evidence are key aspects involved in the trial stage of planning. Moreover, they have to make arguments regarding the evidences in the trial stage of active engagement. It is necessary for both of them to know the stage of thinking and impacts learning through reflection. Therefore, law students have to deal with fictional trials for presenting their knowledge about evidence law through the model of experiential learning.³⁵ Students are also confronted with issues and situation which they have to manage as real life lawyers. With adequately adaptive learning assessments and materials, providing an opportunity of trials during class helps them to continuously link practice and theories.

6. conclusion

In this essay, the concept of evidence and proof has been compared with the knowledge of evidence law. This is investigated from the perspective of teaching process adopted in the two. The biggest difference in teaching the concepts of proof and evidence, and teaching evidence law is the type of methods utilized for the learning process. Students need to understand what they can treat as evidences and hence, it is necessary to teach them about the theoretical foundation of proof and evidence. However, knowing the definition and constituency of evidence is not enough for resolving legal disputes and hence, it is necessary to teach the law of evidence that can be actually applied in court.

The teaching of evidence law is all about the application of knowledge obtained during legal course.³⁶ Students need to understand and translate their own desire as lawyers while playing a central role in legal trials and applying the lecture insights on evidence law. With all of the key complexities, the law of evidence can help in constraining and facilitating the process of storytelling in course while resolving the legal disputes.

The process of teaching the law of evidence is complex. Students can succeed in acquiring unit specific learning and discipline in the role of prosecution and defence lawyers. They also have the ability to foster and develop professional ethics, problem solving, and data literacy and communication skills along the way.³⁷ However, there are more demands set under university education. Therefore, while teaching evidence is mostly about theories and concepts, teaching the evidence law is about giving the opportunity to apply that knowledge through legal case role play sessions and simulations.

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13. R.V. Kostenko, "The Problems of Realizing the Right to Collect and Present Evidence by Parties to a Criminal Proceeding." *Legal Concept= PravovayaParadigma* 17, no. 2 (2018).
14. Z. Wang, "The fate of evidence law: Two paths of development." *The International Journal of Evidence & Proof* 24, no. 3 (2020): 329-348.

³² P. Bergman, "Teaching Evidence the Reel Way." *QLR* 21 (2001): 973.

³³ F.E. Mezzanotte, "Use of "reading quizzes" to foster learning: evidence from teaching company law in business programmes." *The Law Teacher* 51, no. 3 (2017): 363.

³⁴ S.R. Arnott, "Evidence beyond the Rules: A Critical Thinking Approach to Teaching Evidence Law to Undergraduate Students." *Journal of the Scholarship of Teaching and Learning* 18, no. 4 (2018): 157.

³⁵ C. Strevens, R. Grimes, and E. Phillips, "Revisiting the Law of Evidence: A Case Study on the Practicalities of Simulation-Based Learning and Teaching." In *Legal Education*, pp. 239. Routledge, 2016.

³⁶ S.J. Agüero, Claudio, and Rodrigo Coloma Correa**. "Pay attention to the students' epistemic barriers. A key for teaching Evidence Law." *Revista de derecho (Valdivia)* 32 (2019): 31.

³⁷ D.S. Rudes, J. Viglione, J. Lerch, C. Porter, and F.S. Taxman., "Build to sustain: Collaborative partnerships between university researchers and criminal justice practitioners." *Criminal justice studies* 27, no. 3 (2014): 261.