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| **TEXAS CTE LESSON PLAN**[www.txcte.org](http://www.txcte.org) |
| **Lesson Identification and TEKS Addressed** |
| **Career Cluster** | Law, Public Safety, Corrections, and Security |
| **Course Name** | Court Systems and Practices |
| **Lesson/Unit Title** | Rules of Discovery and Privileged Communications |
| **TEKS Student Expectations** | **130.340. (c) Knowledge and Skills**(5) The student examines the steps by which a criminal charge is processed through pretrial, trial, adjudication, and the appellate stages. (B) The student is expected to explain pretrial court proceedings such as rules of discovery, challenges to evidence, and the bail process |
| **Basic Direct Teach Lesson**(Includes Special Education Modifications/Accommodations and one English Language Proficiency Standards (ELPS) Strategy) |
| **Instructional Objectives** | The student will be able to:1. Explain and identify the purposes and types of discovery and privileged communications
2. Demonstrate a scenario that allows for identification of multiple opportunities for discovery and privileged communication exceptions
3. Analyze other students’ scenarios and critique where an attorney would request or challenge a discovery or privileged communication concept
4. Judge the strength and number of challenges other students have concerning the rules of discovery and privileged communications in the scenario
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| **Rationale** | In this lesson, students will discuss the rules of discovery and privileged communication. Students will complete a case study activity in which they will apply the rules of discovery and privileged communication. |
| **Duration of Lesson** | 6 hours |
| **Word Wall/Key Vocabulary***(ELPS c1a,c,f; c2b; c3a,b,d; c4c; c5b) PDAS II(5)* |  |
| **Materials/Specialized Equipment Needed** | Rules of Discovery PowerPoint presentation  |
| **Anticipatory Set**(May include pre-assessment for prior knowledge) | Use the following scenarios and questions for a class discussion:**Scenario 1:**You are unfairly charged with a crime. You believe the police discovered evidence in their investigation that will prove this. What types of things does the prosecutor have to let you see concerning the police investigation of you?**Scenario 2:** You are a prosecutor. You know that the defendant has probably toldcertain people he knows the intimate details about a crime that will without a doubt show him guilty in the eyes of the jury at trial. What relationships of the defendant can you not pry into? What relationships do you personally think the government has no right prying into?The Discussion Rubric may be used for assessment. |
| **Direct Instruction \*** | 1. Discovery
	1. The process of exchanging information between the prosecution and defense
	2. This allows the defendant to know exactly what will be used against him or her, and prevents surprises to the government at the trial
	3. The following will be the federal rules and constitutional requirements for discovery
2. Bill of Particulars
	1. A detailed, formal, written statement of charges or claims by a plaintiff or the prosecutor given upon the defendant’s formal request to the court for more detailed information
	2. This is intended to provide a defendant with details about the charges that are necessary for preparation for trial
3. Statements of the Defendant
	1. Upon request, the government must allow the defendant to inspect, copy, or photograph all prior relevant written and recorded statements made by the defendant
	2. This includes
		1. Statements the defendant made to the grand jury
		2. Oral evidence that the police may testify about concerning what the defendant said
	3. Only statements that the prosecution intends to use at trial are discoverable

IV. Defendant’s Criminal Record* 1. Prosecutors must furnish a copy of the defendant’s criminal record
1. Documents and Tangible Objects
	1. Defendants are entitled to inspect and copy photographs, books, objects, papers, buildings, and places of the government if
		1. The item is material to preparation of the defendant’s defense
		2. The item is going to be used by the government at the trial
		3. The item was obtained from, or belongs to, the defendant
		4. The defendant must allow the government to inspect their belongings only if used at trial

VI. Scientific Reports and Tests1. All scientific reports and tests in the possession of the government must be turned over to the defendant if requested
2. This includes
	1. Conclusions of mental examinations of the defendant
	2. Autopsy reports
	3. Drug tests
	4. Fingerprint analyses
	5. Blood tests
	6. DNA tests
	7. Ballistic tests
	8. Other related examinations

VII. Statements of the Witnesses/Jencks Act1. A defendant can review a prior written or recorded statement after the witness has testified
2. This allows the defendant to see if the witnesses’ testimonies are inconsistent with what they told police before trial

VIII. Deposition1. A deposition is oral testimony given under oath, not in court
2. Depositions are frequently given in civil cases
3. What was said in the deposition can be used in court when there are “exceptional circumstances”
4. An example would be if the person who gave the deposition was unable to testify at the trial

IX. Brady Doctrine* 1. Exculpatory evidence of the defendant must be provided by the prosecution
	2. Exculpatory evidence tends to prove a defendant’s innocence
	3. This could be in the form of information that comes up in another trial where someone admits they committed the crime the defendant is charged with
1. Alibis
	1. An alibi is a defendant’s account of what they were doing when the crime they are charged with occurred—this to show that they did not commit the crime
	2. The defense has to give prior notice of the defendant’s alibi so the prosecution can investigate its legitimacy and any witnesses related to it

XI. Fingerprints, Handwriting, Photographs, Etc.1. Fingerprinting and photographing the defendant can be constitutionally required in all felony cases
2. The defendant can be ordered to give examples of handwriting, blood samples, etc.

XII. Privileged Communications1. Some communications between certain types of people are confidential and cannot be revealed in any court proceedings
2. This includes the following relationships:
	1. Marital Privilege
		1. Communication between husband and wife is confidential
		2. The marriage must be valid
		3. There is an exception to this privilege if one commits a crime against his or her spouse
3. Medical Privilege
	1. Communication between a doctor and patient is confidential
	2. This generally applies to all matters within the hospital
	3. Only the patient can break confidentiality
	4. The patient can lose this privilege if they “open the door” by introducing evidence concerning a physical or mental condition
4. Legal Privilege
	1. Whenever legal advice is sought from a lawyer, the communication is considered confidential and permanently protected from disclosure, unless the client consents to its disclosure
	2. Confidential communication includes words, conversations, or letters
	3. An exception to the legal privilege exists if the lawyer is a party to a crime or a participant in a conspiracy, or if the communication itself is criminal
5. Divinity Privilege – communication between a clergyman and an individual is protected if consulting the clergyman professionally
6. Official Privilege
	1. The government has a privilege not to disclose confidential matters of state, particularly military secrets
	2. This privilege also applies to continuing investigations of a criminal nature

XIII. Exemptions to Freedom of Information Laws1. Freedom of information laws allow the public access to government records
2. There are nine exemptions to the federal Freedom of Information Act
3. If a request for information falls into one of the nine exemptions, the government may withhold disclosure
4. One of the exemptions provides that law enforcement records may be withheld if disclosure will
	1. Interfere with enforcement proceedings
	2. Deprive a person of a fair trial or an impartial adjudication
	3. Constitute an unwarranted invasion of personal privacy
	4. Disclose the identity of a confidential source
	5. Disclose investigative techniques and procedures
	6. Endanger the life or physical safety of law enforcement personnel
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| **Guided Practice \*** | Divide the class into three groups.* + Group One -- defense
	+ Group Two -- prosecution
	+ Group Three -- brainstorm a scenario involving a defendant charged with a crime.
* The scenario will need to include the defendant having something to do with topics covered in this lesson such as making statements, having medical issues with tests done, different types of evidence, confiding in specific types of relationships, an alibi, and issues involving exemptions to freedom of information laws.
* Group Three can safely act the scenario out or just inform the other two groups of the defendant’s story. The scenario needs to be at least a page long to ensure that there are plenty of things for the other two groups to consider about what they will be doing as described below. Group Three will be graded by the other groups with the Group Evaluation Rubric. Members of this group will also grade each other using the Peer Evaluation Rubric.
* Group Three will also play the judge in a pre-trial hearing. They will use the Debate Rubric to assess the quality of each group’s arguments for challenges or requests to keep evidence in or out of a future trial.

**Group One** (the defense) and **Group Two** (the prosecution) Prepare for pre-trial hearings and examine the evidence they can use or keep out of the trial. Each group may designate a spokesperson. Whichever group comes up with the most successful challenges or requests may be rewarded extra credit. Groups One and Two will also use the Peer Evaluation Rubric to assess each other.For a large class, have more than one scenario with three groups participating as described above or allow each group to participate in the several roles by having more than one scenario and then rotating the groups’ positions. Adapt the assessments as needed.Those in Groups One and Two can be working on the Rules of Discovery Quiz while Group Three is creating a scenario; and Group Three can be working on the quiz while the other groups are planning.The evaluations may be combined to give each student an individual grade. To be successful, the student groups will need to realize the types of evidence they can or cannot access because of the rules of discovery and privileged communications. |
| **Independent Practice/Laboratory Experience/Differentiated Activities \*** |  |
| **Lesson Closure** |  |
| **Summative/End of Lesson Assessment \***  | Completion of the Rules of Discovery (open-note) QuizRules of Discovery Exam and KeyRules of Discovery Quiz and KeyGroup Evaluation RubricPeer Evaluation RubricDebate RubricDiscussion RubricIndividual Work RubricResearch Rubric**Accommodations for Learning Differences** For reinforcement, students will take each rule of discovery and each privileged communication and describe how it would hurt the defendant’s chance for a fair trial if it did not exist. Use the Individual Work Rubric for assessment. |
| **References/Resources/****Teacher Preparation** | ISBN: 0766818314, Criminal Law and Procedure (5th Edition) by Daniel E. Hall, J.D., Ed.D.ISBN: 0821107321, Introduction to Criminal Evidence and Court Procedure (3rd Edition) by Julian R. Hanley, Wayne W. Schmidt, and Larry D. Nichols |
| **Additional Required Components** |
| **English Language Proficiency Standards (ELPS) Strategies** |  |
| **College and Career Readiness Connection[[1]](#footnote-1)** | English Language ArtsIII. SpeakingB. Develop effective speaking styles for both group and one-on-one situations.1. Participate actively and effectively in group discussions.

3. Plan and deliver focused and coherent presentations that convey clear and distinct perspectives and demonstrate solid reasoning. |
| **Recommended Strategies** |
| **Reading Strategies** |  |
| **Quotes** |  |
| **Multimedia/Visual Strategy****Presentation Slides + One Additional Technology Connection** |  |
| **Graphic Organizers/Handout** |  |
| **Writing Strategies****Journal Entries + 1 Additional Writing Strategy** |  |
| **Communication****90 Second Speech Topics** |  |
| **Other Essential Lesson Components** |
| **Enrichment Activity**(e.g., homework assignment) | For enrichment, students will research and list specific cases when one of the rules of discovery or privileged communication exceptions have been used and present what they find to the class. Use the Research Rubric for assessment. |
| **Family/Community Connection** |  |
| **CTSO connection(s)** | SkillsUSA |
| **Service Learning Projects** |  |
| **Lesson Notes** |  |

1. Visit the Texas College and Career Readiness Standards at <http://www.thecb.state.tx.us/collegereadiness/CRS.pdf>, Texas Higher Education Coordinating Board (THECB), 2009. [↑](#footnote-ref-1)