

Evidence law is steeped in the drama of trials. It is critically important for any lawyer who might ever set foot in a courtroom. Even in an era of fewer trials, evidence law continues to loom large over settlement and plea negotiations and charging decisions. And it is just plain fascinating. For all these reasons, we love teaching the subject, and most students seem to enjoy learning it.

But students also tend to find evidence law difficult. The rules of evidence are notoriously complicated and confusing. Much of evidence law makes sense only against the backdrop of Anglo-American trial procedure, with which law students typically have only limited familiarity. And students, along with lawyers and judges, often are puzzled by the very nature of evidence law. Is it statutory, judge-made, or a matter of applied logic?

We have tried in this book to capitalize on the inherent attractions of evidence law and to minimize its difficulty. Because actual cases are more interesting and more memorable than made-up problems, the book has more cases than problems. The cases have been selected to illustrate the central concepts and controversies of evidence law, not to provide encyclopedic coverage of the subject, and they have been edited tightly. Omissions are signaled with ellipses, except when they consist solely of citations, headings, or paragraph breaks. Problems have been used selectively, sometimes to test students' understanding of the rules, sometimes to highlight ambiguities, and sometimes to encourage reflection on what the rules are trying to accomplish and how well they succeed. Many of the problems are drawn from real cases. Because the Federal Rules of Evidence provide a convenient and now pervasive framework for thinking about evidence law, the structure of the book tracks, wherever possible, the structure of the federal rules. The major exceptions to the ban on hearsay, for example, are addressed in the same order here as in the Federal Rules of Evidence. Because the legislative history of the federal rules, particularly the Advisory Committee's Notes, have proved so highly influential, the cases are accompanied by edited excerpts from the Advisory Committee Notes and, where relevant, congressional reports and floor debates. Because academic commentary has played such a large role in the development of evidence law — and because much of that commentary is so interesting — we have added excerpts from the writings of a wide range of scholars. Wigmore and Morgan are here, but so are Bennett Capers, Andrew Ferguson, and Julia Simon-Kerr. These excerpts, too, have been edited tightly, in part to allow room for multiple perspectives.

The book is designed so that it can be presented cover to cover in a four-unit, one-semester course. The topics are arranged in the order that we address them, but other instructors may choose to vary the sequence. In view of the steadily increasing importance of scientific evidence, probabilistic proof, expert testimony, and illustrative exhibits, we have included more materials on these topics than evidence casebooks typically contain. We also have included readings on certain other

topics traditionally slighted in evidence courses, such as questioning by the judge and by the jury. We have found that students enjoy studying all of these issues, and we think they are sufficiently important to warrant the space we have given them. But instructors who disagree can easily skip those portions of the book or assign readings from them selectively.

This edition, the sixth, contains a great deal of new material: more than seventy new cases (including six from the United States Supreme Court), portions of close to thirty new articles, excerpts from new Advisory Committee notes, and half a dozen new problems. We have worked particularly hard to keep the materials on scientific proof and digital evidence fresh and current, and to deepen the attention the book pays to issues of race and gender. Along these lines, we have updated the materials on evidentiary issues in cases of sexual assault and abuse, and we have added cases and commentary addressing, for example, the use of rap lyrics as evidence, the challenge of “deep fakes,” and the evidentiary uses of artificial intelligence. To keep the book a manageable length, we have dropped some cases and commentary superseded by the additions, and we trimmed some older materials to sharpen their focus.

We owe thanks to many people. Hundreds of law students at UCLA, Berkeley, Harvard, and Stanford have sharpened our understanding of evidence law and made teaching the subject a joy. Several students, in particular, gave countless hours of their time to improving this book and its supporting materials: on the first edition, Carolyn Hoff, Christina Johnson, Hien Nguyn, Meghan Habersack, Robert Horton, and Jonathan Phillips; on the second edition, Katie Wozencroft; on the fourth edition, Brandon Martinez; on the fifth edition, Ryan Shelley and Safa Ansari-Bayegan; and on the sixth edition, Griffin Brunk. Our editors at Aspen, Wolters Kluwer, and the Froebe Group have been a pleasure to work with. Steven Clymer, Daniel Richman, and several anonymous reviewers critiqued early drafts of the first edition of this book perceptively and constructively. Michael Beach graciously helped with the “probability primer” in Chapter 9. Instructors who used earlier editions of the book have offered sound and valuable advice for revising it; we are particularly grateful in this regard to George Bach, David Eggert, Sean Farhang, Jonah Gelbach, Tamara Lave, Erin Murphy, John Rappaport, Anna Roberts, Avani Mehta Sood, Shanin Specter, James Tomkovicz, Rebecca Wexler, and the late Welsh White. Conversations over the years with Jeff Bellin, Paul Bergman, Scott Brewer, Daniel Capra, Ed Cheng, Samia Fam, George Fisher, Jeff Fisher, Bob Gordon, Ken Graham, Ed Imwinkelried, David Kaye, Jimmy Klein, Sandy Levick, Jan Vetter, Alex Whiting, John Wiley, Maggie Witlin, and the late Eleanor Swift, who passed away in 2023 and whom we greatly miss, have deepened our understanding of evidence law and made this a better book. We have been blessed at UCLA, at Berkeley, at Harvard, and at Stanford with terrific librarians and strong clerical support. And we never could have finished this edition, or any of its predecessors, without the support and forbearance of our spouses, Deborah Lambe and John Paul Reichmuth.

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