

This book offers basic coverage of the most important Evidence rules and doctrines. Its goal is to clear things up without dumbing them down. To that end, it provides a narrative introduction to each section, introduces each case with a brief description of the main problem that case analyzes, and uses charts and tables where that kind of exposition may be helpful. Many of the cases have interesting factual settings. This fourth edition improves some of the illustrative material and reflects recent developments related to the residual hearsay exception and strengthened judicial control over admissibility of expert opinion that may have only weak support.

The book exposes students to rival approaches for many topics. This highlights the choices inherent in many of the Federal Rules of Evidence and some traditional doctrines. Along with providing a basic understanding of the main topics, the book covers intriguing frontier issues. Some of these are allowing extrinsic evidence of past false accusations for impeachment, the “near-miss” interpretation of the residual hearsay exception, treatment of innocent loss of memory for impeachment with prior inconsistent statements, and allowing character evidence about a defendant who introduces character evidence about a victim.

Why cases? The problem method has been very successful in many Evidence courses. But sometimes students can feel swamped by a full diet of hypothetical situations. In this book, cases are the new problems. By that, I mean they offer detailed factual settings for considering how evidence problems might be solved. Because the cases involve real people and real trials, they have inherent interest.

Any problems with that? Along with cases, this book presents about 80 problems. Each of them reinforces aspects of evidence that are clear-cut. And many require consideration of ambiguity in rules, or in the art of applying rules to diverse factual situations.

What’s an interesting case? People are interested in different things. Where possible, this book’s cases are recent and involve circumstances that current students may find engaging. For example, Facebook postings by participants in a law school romance demonstrate that statements may be relevant not for their truth but for their effect on their audience, the murders of a defendant’s husbands provide the context for a case involving forfeiture of hearsay and Confrontation Clause claims. Authentication is presented in a case with many quotations from social media postings. An impeachment case involves a prosecutor using a defendant’s photograph of himself holding a bag of drugs. Statements by an opposing party are introduced with a case in which a prosecutor sought to introduce a draft e-mail from a defendant’s computer, which confessed a crime to a talk show host.

Why cover minority views? For some topics where treatment varies significantly among states, this book gives students examples of the range of choices. This allows students to compare, for example, the standard treatment of impeachment by proof of past convictions with choices that either allow that technique, essentially, always or never. Seeing the range can help

students understand the majority choice better, can help them understand the values at stake in making a choice, and can prepare them to evaluate changes and developments during their future careers. Students may find it provocative to know that one state always treats evidence of subsequent remedial measures as relevant to negligence or product defect. Comparing the inclusion and exclusion of social interests in the hearsay exception for statements against interest can provoke a discussion of the common sense rationale for the majority rule.

Students who have used prior editions of this book have given it very favorable ratings in anonymous evaluations. Their enthusiasm, and their many suggestions, have shaped this edition. They have particularly appreciated the clear organization of the materials and the small introductions that help them dig into the cases.

The opinions have been edited with the goal of facilitating readability and understanding. Typographic choices used here may vary from those of the courts, and many citations have been omitted.

Evidence law is a great context for learning and reinforcing the skill of reading rules as a professional must read them, and of analyzing social problems and the judicial opinions that grapple with them. Teaching and learning from these materials has been lots of fun for my students and me, and I hope others will have the same experience.

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