

Preface

In technical classes like Evidence, students are understandably looking for some extra assistance with understanding the material. The Federal Rules of Evidence (FRE) are explained in numerous student supplements (including another excellent work in the *Examples and Explanations* series). But until the year I began working on this project, no texts had been written to help students understand the California Evidence Code (CEC). This book, the first comprehensive student supplement focused on the CEC, responds to the increasing number of student requests for this type of guide. It provides an easy-to-read analysis of the various CEC provisions, and then gives examples and explanations to illustrate the practical and theoretical applications of those code provisions.

Evidence is a required course in many law schools, or it becomes a de facto requirement because it is tested on the Multi-State Bar Examination, as well as in the essay portion of the bar examination for numerous states. The law of evidence is the study of what information can and will be presented to the trier of fact to reach decisions at trial. The evidence laws also cover which types of evidence can be used to prove certain types of claims and defenses. For those who want to be litigators in civil or criminal courts, knowledge of evidence law is a critically important tool to competently represent clients' interests in any litigation matter.

Not all law students want to be litigators, of course. But knowing the laws of evidence is useful in other legal practice areas as well. Contract attorneys, for instance, need to know how to draft agreements that will survive an opposing party's objections if the matter ends up in litigation. Those who plan to take a state bar examination will need to understand evidence law for both the multiple choice and essay components of that exam. Even for those who do not plan to practice law, knowing evidence law is useful when friends and family members ask for explanations of high-profile cases in the media.

In 1965, California adopted its own Evidence Code, which was modeled in part after the Uniform Rules from the 1950s. The CEC was designed to provide a more complete, organized, and accurate codification of existing California case law on evidentiary issues. The FRE were adopted and approved by Congress in the early 1970s and took effect a few years later. In many areas, the CEC is similar to the FRE, but there are notable and important distinctions.

Preface

Students who wish to practice in the California state courts will need a strong working knowledge of the CEC, but the code is given scant attention in many evidence courses. Now that California evidence is tested on the California bar examination, however, some California law schools have begun offering courses that focus on the CEC, as an alternative or a supplement to existing courses that cover the FRE. Others still offer the standard FRE course because all students will need to know the FRE for the multi-state portion of the bar examination and because some will practice in federal courts.

This book follows the approach of many evidence professors and evidence textbooks, which is to begin with relevance and then consider character evidence (Chapter 2) and other policy reasons for excluding relevant evidence (Chapter 3). Chapters 4 through 7 address the Hearsay Rule and its many exceptions. Chapter 8 explains the foundations of witness testimony and impeachment, and Chapter 9 covers the opinion rules for lay and expert witnesses. Presumptions, burdens of proof, and judicial notice are covered in Chapter 10, and Chapter 11 explains the authentication requirement and the Secondary Evidence Rule. Chapters 12 and 13 conclude the book with a discussion of privileges. Throughout the book, these concepts are reinforced through examples and explanations based on real-world appellate court decisions.

This book also notes important and substantive distinctions between the CEC and the FRE in a separate section at the conclusion of each topic, as well as through the divergent outcomes detailed in the “Examples and Explanations” sections of each chapter. Minor variations and details of the FRE are beyond the scope of this work, given the numerous FRE supplements currently available.

All CEC sections that are discussed at length appear as excerpts in the text; these excerpts appear with an icon so that students can quickly identify them as they skim the text. Other CEC sections mentioned but not discussed in detail are included in the Appendix.

This book gives tools to identify objectionable evidence, analyze potential objections, and choose the most appropriate or strongest objections to present to the court. Students should take advantage of opportunities to get hands-on experience making and meeting objections because that is the best way to learn evidence law. Practicing attorneys develop their skills by using the laws of evidence, especially those governing objections. Simply reading about how to make objections is not enough.

This book also teaches students how to anticipate potential objections from opposing parties, how to offer the evidence in ways that are less likely to draw or sustain objections, and thus how to get the evidence that they need admitted at trial. Many evidence issues can be argued either way, meaning that clear answers are not always available when it comes to admitting evidence. However, some issues will have a clear answer based on

Preface

strict application of the evidence rules. Students should keep this in mind as they review.

CHANGES IN THE SECOND EDITION

The Second Edition includes more summaries and enhanced flowcharts. Most chapters include additional examples and explanations based on recent California cases. We have moved the Confrontation Clause into a separate chapter, which provides more detail on recent significant United States Supreme Court and California activity in this area of the law. Some additional CEC sections are addressed in the text, and are included in the Appendix.

CHANGES IN THE THIRD EDITION

The Third Edition includes discussions of new U.S. Supreme Court and California cases and commentary in the areas of the racialization of character evidence, updates on the Confrontation Clause and testimonial statements, and specific authentication concerns that arise in the age of artificial intelligence. It replaces the Appendix of CEC sections not detailed in the text with a link to the legislative website where the full text and commentary is located.