
PREFACE

This seventh edition seeks to carry forward the aim of the authors to set out for students an account of evidence law that is readable and detailed enough to paint a true picture of that law in its most important applications. This book has proved useful to judges and scholars too, and has been cited in law review articles and books, and in opinions by courts across the country, including the Supreme Court. In this seventh edition, we hope once again to provide a source that is clear and concise enough for students in their first encounter with evidence law, yet comprehensive enough to be a book that they can carry forward into the profession. Again we have added content where developments warrant, expanded coverage in some areas, and added references to (and sometimes discussions of) new cases by cutting back where necessary to keep the book compact.

This seventh edition, coming eight years after the prior edition, reflects changes in many Rules. This edition details amendments to Rule 106 regarding completion of partial statements, Rule 404(b) governing notice of prior bad act evidence in criminal cases, Rule 613(b) regarding extrinsic impeachment with prior inconsistent statements, Rule 615 governing witness sequestration, Rule 702 governing expert opinion testimony, Rule 804(b)(3) governing statements against interest, Rule 807, the residual exception to the hearsay rule, and Rule 1006 governing summaries as proof of voluminous materials. The seventh edition also describes new Rule 107 adopted in 2024, governing the use of illustrative aids at trial. Finally, this edition details several important Supreme Court opinions since the previous edition, including *Diaz v. United States*, *Samia v. United States*, and *Smith v. Arizona*.

The Federal Rules of Evidence have been in effect for 50 years. Their influence on state law is manifest, as 45 states now have codes based on them (the list is set out in §1.2, footnote 2). State variations and experimentation with versions of the Rules are paying off in yielding new approaches to persistent problems (one of the benefits of federalism).

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Indeed, Maine's provision on illustrative aids was influential in the adoption of FRE 107. Hence this book follows the organization of the Rules. Again in this edition, we include the text of each Rule prior to the discussion that goes with it, and we employ marginal tags on each page ("ears" as they are known among printers), which cite the Rule being discussed.

As authors, we hope both to raise questions and to answer them. When we think the answer is clear, we say so. When we think the answer is not clear, we say that too. In areas of uncertainty, we provide the best guidance we can, based on policy and our own assessment of the approach that is most appropriate in light of the suggestion in FRE 102 that the Rules should be construed, *inter alia*, to "secure fairness" and to promote "growth and development" of the law.

In important areas, the Rules provide little or no direct guidance. In such areas, which include privileges, criminal presumptions, and much of the topic of impeaching and repairing credibility of witnesses, the whole focus is on caselaw, on policy, and on the wisdom or folklore of the common law.

We have not ignored constitutional values lurking behind evidence issues. In addition to sections discussing confrontation jurisprudence under the *Crawford* doctrine (see §§8.83-8.92, *infra*), we include consideration of the *Bruton* problem (limiting as a constitutional matter the admission by one defendant in a trial that involves additional defendants), the *Doyle* problem (using silence by the accused), the doctrines developed in *Havens*, *Harris*, and *Harvey* (using evidence barred by the fourth, fifth, or sixth amendments to impeach), and the *Giles* doctrine, which affects application of the hearsay forfeiture exception. Also, much of the discussion of criminal presumptions is in fact a discussion of constitutional principles.

As teachers, all three of us think evidence law is both vivid and engaging, and that it captures the interest of almost everyone. The hearsay doctrine has to do with language and meaning, with courtroom testing and fears over untested evidence from human sources. And when students struggle with the basic concept, and eventually the light goes on, we know they have changed their understanding of the world in a way that will last them a lifetime. The law relating to evidence of prior bad acts has to do with human character, and with concerns over prejudice to defendants and to victims, and looking at the Rules that govern this material is another eye-opening experience.

Mastering evidence law is a crucial part of the professional education of lawyers. When students learn about hearsay, relevancy and its limits, impeaching witnesses, and authenticating exhibits, they have taken huge steps toward becoming competent lawyers. They have reached a level of understanding that will help them in many other aspects of their professional lives, whether the problem at hand involves contract negotiation, initiating or resisting government enforcement actions, dealing with workplace injuries and grievances, or drafting wills. In

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short, understanding evidence law is part of the background knowledge that every lawyer needs.

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May 2026