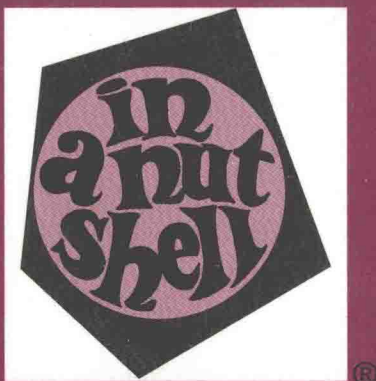


Federal Rules of Evidence



MICHAEL H. GRAHAM

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**FEDERAL RULES
OF
EVIDENCE
IN A NUTSHELL**

SEVENTH EDITION

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PREFACE TO SEVENTH EDITION

The last thirty-two years have seen the Federal Rules of Evidence assume their rightful place of importance alongside the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. Not only do the Federal Rules of Evidence govern proceedings in the federal court, over forty states have promulgated rules of evidence modeled on the Federal Rules. While evidence courses in law school in the mid nineteen seventies taught the common law of evidence employing the Federal Rules of Evidence to highlight and contrast, today's students of the law of evidence study principally the Federal Rules of Evidence with often only passing reference to common law antecedents. Even closer to home is the relationship of the Federal Rules of Evidence to the multistate bar examination.

The structure of this Nutshell, Seventh Edition, is to present each rule of the Federal Rules of Evidence in the order in which it appears in the Federal Rules followed by commentary explaining and exploring the concepts underlying the particular rule. Commentary sections also discuss the relationship between rules so that a complete picture may be obtained. The Nutshell has been revised to reflect amendments to the Federal Rules of Evidence going into effect up to and including December 1, 2006, as well as judicial interpretations of the rules culled from thousands of citations to the Federal Rules of Evidence appearing since publication of the Sixth Edition. Overall literally tens of thousands of citations in reported federal

decisions have been examined in the process of the creation of the Nutshell.

Generally speaking, consistent with the nature of a Nutshell, the commentary sections are crisp and to the point. However with respect to the definition of hearsay and exploration of the most commonly encountered exceptions more exhaustive treatment is provided. The importance of hearsay to the course in evidence and its complexity warrant the additional attention. The same holds true with respect to several other areas as well such as expert witness testimony and the operation of the confrontation clause.

The Federal Rules of Evidence address the area of privilege in Article V in a single rule, Rule 501, which requires that privileges "shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience." To further assist the student, the common law privileges of lawyer-client and husband-wife are discussed along with the general question of waiver. Similarly, while the Federal Rules of Evidence do not address presumptions in criminal cases or burdens of proof specifically in either civil or criminal cases, these matters are explored in considerable detail in conjunction with the discussion of presumptions in civil cases, Article III of the Federal Rules of Evidence.

Certain areas of the law of evidence are best understood in the context of concrete illustrations. To this end illustrations are provided with respect to the definition of hearsay, the operation of presumptions in civil cases, the collateral-noncollateral distinction, expert witness rea-

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sonable reliance, prior consistent statements, the business record hearsay exception and the Original Writing Rule.

This Nutshell on the Federal Rules of Evidence contains very few citations for two reasons. First, as an aid to student understanding of the law of evidence, citations to numerous authorities are not only not helpful but serve to destroy the natural flow of the commentary sections. Second, the text of the commentary sections of this Nutshell tracks very closely the text of Graham, *Handbook of Federal Evidence* (6th ed., West 2006), a five volume handbook for trial attorneys and judges. Students desiring authorities in support of stated propositions are referred to the exhaustive footnotes contained in the Handbook.

It is sincerely hoped that the discussion of the Federal Rules of Evidence contained in this Nutshell will assist the student in coming to grips with the law of evidence and at the same time make the task both easier and more enjoyable.

MICHAEL H. GRAHAM

December, 2006

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