

West  Nutshell Series

MICHAEL H. GRAHAM

Federal Rules of Evidence

in a
nut
shell

8th Edition

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FEDERAL RULES
OF
IN A NUTSHELL
EIGHTH EDITION

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[Reflects Restyling of the
Federal Rules of Evidence,
effective Dec. 1, 2011]

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PREFACE TO EIGHTH EDITION

The last thirty-seven 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, Eighth 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 Evi-

PREFACE TO EIGHTH EDITION

dence going into effect up to and including December 1, 2011, which includes a complete restyling, as well as judicial interpretations of the rules culled from thousands of citations to the Federal Rules of Evidence appearing since publication of the Seventh 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, apart from Rule 502 dealing with waiver of work product and attorney client privilege, address the area of privilege in Article V in a single rule, Rule 501, which requires that privileges be governed by the common law as interpreted by the United States courts 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

PREFACE TO EIGHTH EDITION

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 reasonable 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. The only exception is the United States Supreme Court's treatment of the confrontation clause which is fully explained herein. Second, the text of the commentary sections of this Nutshell tracks very closely the text of Graham, Handbook of Federal Evidence (7th ed., West 2012), a seven 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, 2011

TABLE OF CASES

References are to Pages

- Alford v. United States, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931), 259
- Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988), 567
- Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977), 168
- Bourjaily v. United States, 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed.2d 144 (1987), 493, 506
- Bridges v. State, 247 Wis. 350, 19 N.W.2d 529 (Wis.1945), 462
- Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), 36
- Bullcoming v. New Mexico, — U.S. —, 131 S.Ct. 2705, — L.Ed.2d — (2011), 518
- Christian, State v., 245 S.W.2d 895 (Mo.1952), 176
- County Court of Ulster County, N. Y. v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979), 97
- Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), 510, 616, 637
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), 381
- Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), 299
- Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), 513, 618
- Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 11 O.O. 246 (1938), 86

TABLE OF CASES

- Fisher v. United States, 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976), 211
- Francis v. Franklin, 471 U.S. 307, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985), 97
- Frye v. United States, 293 F. 1013 (D.C.Cir.1923), 380
- George Wright v Sandford Tatham, 1838 WL 5540 (HL 1838), 467
- Gertz v. Fitchburg R. Co., 137 Mass. 77 (Mass.1884), 280
- Giles v. California, 554 U.S. 353, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008), 627
- Goings v. United States, 377 F.2d 753 (8th Cir.1967), 341
- Inadi, United States v., 475 U.S. 387, 106 S.Ct. 1121, 89 L.Ed.2d 390 (1986), 505
- Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999), 393
- Lilly v. Virginia, 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999), 508, 614
- McDonald v. Pless, 238 U.S. 264, 35 S.Ct. 783, 59 L.Ed. 1300 (1915), 238
- Melendez-Díaz v. Massachusetts, — U.S. —, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), 517
- Metropolitan St. Ry. Co. v. Gumby, 99 F. 192 (2nd Cir.1900), 605
- Michelson v. United States, 335 U.S. 469, 69 S.Ct. 213, 93 L.Ed. 168 (1948), 281
- Michigan v. Bryant, — U.S. —, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011), 519, 620
- Mutual Life Ins. Co. of New York v. Hillmon, 145 U.S. 285, 12 S.Ct. 909, 36 L.Ed. 706 (1892), 536
- Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597, 17 O.O.3d 240 (1980), 502
- Olano, United States v., 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), 26
- Old Chief v. United States, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997), 132, 145

TABLE OF CASES

Queen's Case, 1820 WL 2043 (CCP 1820), 347

Rivers v. United States, 270 F.2d 435 (9th Cir.1959), 129

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979), 97

Smith v. State of Illinois, 390 U.S. 129, 88 S.Ct. 748, 19 L.Ed.2d 956 (1968), 259

State v. ____ (see opposing party)

Trammel v. United States, 445 U.S. 40, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980), 204

United States v. ____ (see opposing party)

Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 71 S.Ct. 456, 95 L.Ed. 456 (1951), 437

Upjohn Co. v. United States, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981), 213

White v. Illinois, 502 U.S. 346, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992), 506

Whorton v. Bockting, 549 U.S. 406, 127 S.Ct. 1173, 167 L.Ed.2d 1 (2007), 523

Williamson v. United States, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994), 509, 614

Winans v. New York & E.R. Co., 62 U.S. 88, 21 How. 88, 16 L.Ed. 68 (1858), 429

SUMMARY OUTLINE

	Page
PREFACE	III
TABLE OF CASES	XLI
 Article	
I. General Provisions	1
II. Judicial Notice	42
III. [Burdens of Proof and] Presumptions in Civil [and Criminal] Actions and Pro- ceedings	59
IV. Relevance and Its Limits	104
V. Privileges	202
VI. Witnesses	218
VII. Opinions and Expert Testimony	366
VIII. Hearsay	435
IX. Authentication and Identification	639
X. Contents of Writings, Recordings, and Photographs	685
XI. Miscellaneous Rules	714
INDEX	719

OUTLINE

	Page
PREFACE	III
TABLE OF CASES	XLI

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope; Definitions.....	1
§ 101.1 Scope of Rules; Definitions.....	2
Rule 102. Purpose.....	2
§ 102.1 Purpose	3
Rule 103. Rulings on Evidence.....	3
§ 103.1 Rule 103(a): Reversible, Harmless and Structural Error; An Over- view	5
§ 103.2 Rule 103(a)(1): Error in Admitting; Objection, Presentation and For- feiture	11
§ 103.3 Rule 103(a)(1)(A): Error in Admit- ting; Time of Objecting; Motion to Strike; Curative Instructions.....	14
§ 103.4 Error in Admitting: Waiver of Right to Object by Other Than Failure to Make; Invited Error, Door Opening.....	15

OUTLINE

	Page
§ 103.5 Error in Admitting: Nonjury and Chancery Cases	18
§ 103.6 Rule 103(a)(2) and (c): Error in Excluding; Offer of Proof	19
§ 103.7 Rules 103(b) and (d): Hearing of Jury; Motions in Limine; "Definitive" Rulings	22
§ 103.8 Rule 103(e): Plain Error	25
Rule 104. Preliminary Questions	27
§ 104.1 Rule 104(a) and (e): Preliminary Questions of Admissibility; Weight and Credibility	29
§ 104.2 Rule 104(b): Relevancy Conditioned on Fact; Connecting Up	32
§ 104.3 Rule 104(c): Hearing Outside Presence of Jury	33
§ 104.4 Rule 104(d): Testimony by Accused Upon Preliminary Matter; Suppressed Evidence	34
Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes	35
§ 105.1 Limited Admissibility	35
Rule 106. Remainder of or Related Writings or Recorded Statements	38
§ 106.1 Remainder of or Related Writings or Recorded Statements Employed at Time of Introduction	38
§ 106.2 Remainder of Oral Statements, Writing or Recorded Statements Employed on Next Examination ...	40

OUTLINE

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts	42
§ 201.1 Rule 201(a): Nature of Judicial Notice; An Overview	43
§ 201.2 Rule 201(b)(1): Adjudicative Facts; Matters Generally Known	46
§ 201.3 Rule 201(b)(2): Adjudicative Facts; Accurately and Readily Determined	47
§ 201.4 Judicial Notice: Ascertaining the Appropriate Law	51
§ 201.5 Judicial Notice of Legislative Facts: Factual Bases of Judicial Rules	52
§ 201.6 Judicial Notice of Legislative Facts: Factual Aspects of Legislation	53
§ 201.7 Rules 201(c)–(f): Procedural Aspects of Judicial Notice	55

ARTICLE III. [BURDENS OF PROOF AND] PRESUMPTIONS IN CIVIL [AND CRIMINAL] ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in Civil Cases Generally	59
§ 301.1 Burdens of Proof and Presumptions in Civil Cases: An Introduction	59
§ 301.2 Burden of Proof: Allocating the Elements; Burden of Pleading	61
§ 301.3 Burden of Proof: Description and Nature of Responsibility; State Law Supplying Rule of Decision	64

OUTLINE

	Page
§ 301.4 Burden of Production: Measure and Effect; Prima Facie Case	64
§ 301.5 Burden of Persuasion: Incidence and Measure in Civil Cases	67
§ 301.6 Presumptions in Civil Cases Generally: Definition and Nature	68
§ 301.7 Presumptions: Inferences and Permissive Presumptions	73
§ 301.8 Presumptions: Prima Facie Evidence	74
§ 301.9 Presumptions: Conclusive and Irrebuttable Presumptions	75
§ 301.10 Presumptions as Evidence	75
§ 301.11 Conflicting Presumptions	76
§ 301.12 Presumptions: Attack by Rebutting Basic Facts or Presumed Fact; Effect on Jury Instructions	77
§ 301.13 Presumptions: Instructing the Jury	80
§ 301.14 Presumptions: Statutory and Common Law Illustrations	84
 Rule 302. Applying State Law to Presumptions in Civil Cases	 86
§ 302.1 Applying State Law to Presumptions in Civil Cases	86
 Standard 303. Presumptions in Criminal Cases	 88
§ 303.1 Burden of Proof in Criminal Cases: Allocating the Elements; Procedure for Allocating	90
§ 303.2 Burden of Producing Evidence	92

OUTLINE

	Page
§ 303.3 Burden of Persuasion: Incidence, Measure and Shifting	93
§ 303.4 Standard 303(a), (b) and (c): Presumptions in Criminal Cases; Definition, Nature and Instructions; Constitutionality	95
§ 303.5 Presumption of Innocence	103

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 401. Test for Relevant Evidence	104
§ 401.1 Test for Relevant Evidence: Materiality and "Fact is of Consequence"	104
§ 401.2 Demonstrative and Real Evidence: Definition	108
§ 401.3 Demonstrative and Real Evidence: Relevancy	110
§ 401.4 Real Evidence: Tangible Objects; Instrumentalities of Crime	111
§ 401.5 Real Evidence: Exhibiting Personal Injuries; Bodily Demonstrations ...	113
§ 401.6 Demonstrative Evidence: Maps, Models, Drawings, Charts and Tangible Items	113
§ 401.7 Demonstrative Evidence: Photographs, Videotapes, Animations	115
§ 401.8 Demonstrative Evidence: X-rays	120
§ 401.9 Demonstrative Evidence: Courtroom and Out of Court Demonstrations	121
§ 401.10 Experiments	121
§ 401.11 View by Trier of Fact	122

OUTLINE

	Page
Rule 402. General Admissibility of Relevant Evidence	124
§ 402.1 General Admissibility of Relevant Evidence; Irrelevant Evidence Inadmissible	125
Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons	126
§ 403.1 Excluding of Relevant Evidence: Factors to Be Considered; Standard Applied	127
Rule 404. Character Evidence; Crimes or Other Acts	133
§ 404.1 Character Evidence: An Overview	134
§ 404.2 Rule 404(a)(1): Character Evidence; Circumstantial Use in Civil Cases	137
§ 404.3 Rule 404(a)(2)(A): Character Evidence of the Defendant	138
§ 404.4 Rule 404(a)(2)(B) and (C): Character Evidence of the Alleged Victim; Homicide Case	140
§ 404.5 Rule 404(b)(2): Other Crimes, Wrongs or Other Acts	141
Rule 405. Methods of Proving Character	148
§ 405.1 Rule 405(a): Method of Proof of Character; By Reputation or Opinion; Specific Instances Permitted Only on Cross-Examination	148