

THIRD EDITION

Evidence

Christopher B. Mueller
Laird C. Kirkpatrick

BLACK LETTER OUTLINES

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Evidence

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Evidence

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Preface to the Third Edition

Evidence is a foundational course in all law schools across the United States. It is a “building block” course that is often required for trial practice and advanced clinical offerings. The subject of evidence is tested on the bar examination of almost every state. Knowing evidence law well is critical for trial lawyers, and important even for lawyers who never set foot in a courtroom because anticipating the possibility of litigation and taking appropriate steps to put clients in the best position is part of the task of “transactional” lawyers, even if they never try cases.

Evidence is also one of the most interesting courses in the curriculum, for both students and teacher. Perhaps more than any other course in law school, evidence combines issues of great theoretical complexity with the most practical concerns. It draws on assumptions and understandings about human nature and principles of communication because its very purpose is to regulate the impact of various forms of evidence on juries.

The good news about studying evidence law is that the subject can be mastered by every law student willing to put some time and energy into the task. It consists of a manageable number of discrete rules that in most jurisdictions have been codified in a straightforward way.

The bad news is that some of the rules are technical, and particularly the all-important hearsay doctrine requires students to look at the uses and role of

language in new ways. And there are some subtle distinctions between rules and some surprising relationships among rules that are not always readily apparent.

The purpose of this Outline is to provide you with what we might call a roadmap to the subject. You can use this Outline with any of the major evidence coursebooks. It covers evidentiary principles applicable in all states, but places special emphasis on the Federal Rules of Evidence because they are the source of evidence law for federal courts and 43 out of the 50 states.

This Outline should supplement the primary reading in your coursebook, not supplant them. Reading the primary material, which likely includes classic cases in the field that every lawyer is expected to know, and working through problems and questions provided by your professor or found in your regular reading, are important in developing your understanding, as is classroom discussion.

By serving as a roadmap, this Outline provides you an overview of the terrain (a glimpse of the forest as well as the trees), showing where the pathways intersect, and making it clear how one gets to various destinations. But a roadmap is not a substitute for an atlas, and this Outline is not a substitute for a treatise when more detailed explanation or exploration of a subject is needed.

At various places in this Outline, we refer the reader seeking further elaboration or supporting citations to our treatise: Christopher B. Mueller & Laird C. Kirkpatrick, *Evidence* (Aspen Law and Business, 5th ed. 2012). Other student books provide excellent coverage of the subject, including Graham Lilly, Daniel Capra, and Stephen Saltzburg, *Principles of Evidence* (5th ed. 2009), Roger C. Park, David P. Leonard, Aviva A. Orenstein, and Steven H. Goldberg, *Evidence Law* (3d ed. 2010); and McCormick on Evidence (Kenneth Broun 6th ed. 2006).

For use in a practice setting (either after law school or while clerking), the following treatises are recommended: Christopher B. Mueller, Laird C. Kirkpatrick, and Charles H. Rose III, *Evidence Practice Under the Rules* (3d ed. 2009); McCormick on Evidence (Practitioner Series, Kenneth S. Broun, General Editor, 6th ed. 2006); Stephen A. Saltzburg, Michael M. Martin, & Daniel J. Capra, *Federal Rules of Evidence Manual* (9th ed. 2006).

For the most comprehensive and detailed treatment of the subject, the following four multi-volume treatises are available: Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* (3d ed. 2007) (six volumes); Michael H. Graham, *Handbook of Federal Evidence* (6th ed. 2006–2010); Charles Wright & Kenneth Graham, *Federal Practice and Procedure* (volumes 21–26 and 27–28 (Charles Wright & Victor Gold)). See also *The New Wigmore* (Richard Friedman,

ed., 2002) (volumes on privileges, expert testimony, and relevancy and its limits presently available).

We wish you well and hope that you enjoy your study of the subject.

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