



# EVIDENCE

**INVESTIGATION,  
RULES, AND TRIALS**

**BENJAMIN H. FRISCH**



# Evidence: Investigation, Rules, and Trials

First Edition

BENJAMIN H. FRISCH

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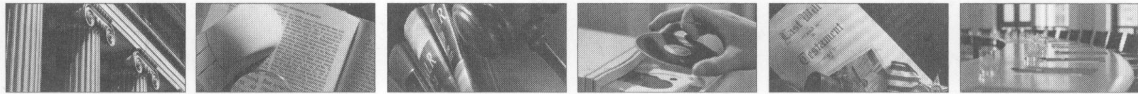
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# Dedication

*In memory of my grandfather, Myer R. Shark,  
a tireless advocate for the little guy.*



# Preface

I wrote this book to provide paralegal students and professors with a text that is truly written for them. This book will help paralegals improve their attorneys' practices by focusing on the paralegal's role, from interviewing clients and witnesses to investigating cases through formal discovery and informal processes. Each chapter will discuss the complex law of evidence in language that nonlawyers can understand, without sacrificing important coverage. This book will be useful to paralegal and criminal justice students, and anyone else who wants to learn the basics of finding evidence and getting it admitted into or excluded from court.

## **FOLLOW A CASE FROM START TO FINISH**

*Evidence: Investigation, Rules, and Trials* follows the path of a case from initial client interview through investigation, trial, and appeal. After an introduction to evidence, the text covers informal investigations, including interviewing the client and witnesses. Next we examine the formal discovery process and introduce the courts and evidence rules. Then we can dive into the rules of evidence, starting with relevance. Hearsay, exceptions to hearsay, and opinion testimony follow. Next we cover pretrial matters such as motions in limine and preparing a trial notebook. The penultimate chapter concerns trials, and finally we look at the future of evidence.

Discussions and examples from criminal practice are included where appropriate throughout this text.

I hope you find this book to be practical, not overly technical in explaining the concepts, thorough but not too complex, and as much fun to read as an author can make a textbook on his favorite subject. Wherever possible, I tried to utilize an example that would prove interesting.

## FEATURES

Evidence does not exist in a vacuum. I wrote this text to show how evidence is analyzed in the context of the case it supports. To create that context, this text uses a recurring feature called ***Passim Case***, a fictional civil case involving identity theft. In *Fields v. Prairie Bank*, students will learn to apply otherwise abstract concepts to a concrete case, while considering which evidence is admissible and completing projects related to the burgeoning problem of identity theft.

### PASSIM CASE



### FIELDS V. PRAIRIE BANK

When something is cited throughout a legal document it can be referred to in an index as “Passim.” Throughout the text you will be learning about evidence by looking at a fictional case. It will help you understand the concepts involved in gathering evidence and evaluating its admissibility. That way you will not need to learn these things in a vacuum. You will read an overview of the case and learn more about it in each chapter.

Bench Briefs appear liberally throughout the text to continue building a real-life framework for the law of evidence. Bench Briefs include documents and transcripts from real cases, examples from real-life experience, ethics alerts, and relevant excerpts from movies, television, and novels.

### BENCH BRIEF



### ENTERTAINMENT NOTE

In the following scene from the screenplay for *My Cousin Vinny*, Mona Lisa Vito is an unemployed hairdresser, yet she is qualified as an expert on auto repair.

**D.A. JIM TROTTER:** Ms. Vito, what is your current profession?

**LISA:** I'm an out-of-work hairdresser.

**D.A. JIM TROTTER:** An out-of-work hairdresser. In what way does that qualify you as an expert in automobiles?

**LISA:** It doesn't.

[she indicates that her training is from working on cars her whole life]

**D.A. JIM TROTTER:** Now, Ms. Vito, being an expert on general automotive knowledge, can you tell me . . . what would the correct ignition timing be on a 1955 Bel Air Chevrolet, with a 327 cubic-inch engine and a four-barrel carburetor?

**MONA LISA VITO:** No, it is a trick question!

**JUDGE CHAMBERLAIN HALLER:** Why is it a trick question?

**MONA LISA VITO:** 'Cause Chevy didn't make a 327 in '55, the 327 didn't come out till '63. And it wasn't offered in the Bel Air with a four-barrel carb till '64. However, in 1964, the correct ignition timing would be four degrees before top-dead-center.

**D.A. JIM TROTTER:** Well . . . uh . . . she's acceptable, Your Honor.



**E**nd-of-Chapter Assignments provide opportunities for review and further study. There are review questions and projects as well as legal research projects. Most paralegal students will study legal research in a separate course. To complement that learning, this text offers end-of-chapter opportunities for students to practice their legal research skills at varying levels of difficulty. Students may perform book or Internet research to complete such easy tasks as locating a case by citation and briefing it, medium difficulty tasks such as locating sample interrogatories or a form, and more difficult research tasks such as original legal research and writing a memo.

*Evidence: Investigation, Rules, and Trials* is rich in features that will ease the learning process now and serve as valuable references later.

- **Learning Objectives** in checklist form at the beginning of each chapter
- **Definitions** of important legal terms boxed and highlighted in the margins for easy reference.
- **Cases** carefully excerpted and boxed for easy reference, with discussions of what the student can gain by studying each case
- **Ethics Alerts** provided where appropriate and included in Bench Briefs
- **Summaries** that wrap up the salient points of each chapter
- **Helpful Web Sites** listed at the end of each chapter for reference or to aid further study

## A COUPLE OF NOTES REGARDING AUTHOR'S LICENSE

Some cases are tried to the court without a jury, and some are tried to a judge in a *bench trial*. Rather than saying “fact finder” or “judge or jury” throughout the textbook, I have chosen simply to use the word *jury*. The same rules apply to court trials as to jury trials, although a judge might be less persnickety about what evidence comes in when it is he or she who is determining the facts.

I have included some short excerpts from cases, and where they cite something within them, I have typically deleted the citation without stating “citation omitted.”

## SUPPLEMENTS PACKAGE

- This complete learning package includes an **Instructor's Manual** with sample tests and ideas for using the *Passim Case* to build class discussion, legal role-playing, individual or group projects, and research assignments. The Instructor's Manual is also available online at <http://www.westlegalstudies.com> in the Instructors Lounge under Resource.
- **Online Companion™.** The **Online Companion™** Web site can be found at <http://www.westlegalstudies.com> in the Resource section of the Web site. The Online Companion™ contains objectives, lists of key terms, lecture notes, and practice quizzes.
- Visit our **Web site** at <http://www.westlegalstudies.com>, where you will find valuable information specific to this book, such as hot links and sample materials to download, as well as other West Legal Studies products.
- **Westlaw®**, West's online computerized legal system, offers students "hands-on" experience with a system commonly used in law offices. Qualified adopters can receive 10 free hours of Westlaw. Westlaw can be accessed with Macintosh and IBM PC and compatibles. A modem is required.



# About the Author

**B**enjamin H. Frisch graduated in 1993 from the University of North Dakota School of Law, where he was an editor on the law review and represented the school in two national competitions. He has 14 years of experience as an attorney in a variety of settings including solo and small firm litigation practice in suburban Minneapolis, and as a prosecutor in rural Minnesota. Currently, he is a Westlaw Reference Attorney assisting other attorneys, law students, judges, paralegals and paralegal students, law librarians, and others who are conducting legal research. He has served as an instructor at the Minnesota School of Business in the paralegal program, teaching litigation and family law.

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Most of all, I would like to thank my wife, Ione Ansel, for her extraordinary patience with this and other projects and my odds hours, and for her dedication to and love for our family.

# Contents

	PREFACE .....	VII
<b>CHAPTER 1</b>	<b>Importance and Basics of Evidence .....</b>	<b>1</b>
	WHY STUDY EVIDENCE? .....	1
	THE PARALEGALS' ROLE IN WORKING WITH EVIDENCE .....	2
	THE BASICS OF EVIDENCE .....	4
	What Is Evidence? .....	4
	How Does an Attorney Use Evidence? .....	5
	Direct Evidence vs. Circumstantial Evidence .....	6
	Things Other Than Evidence That Can Be Used to Prove a Case .....	7
	ETHICAL ISSUES FOR PARALEGALS .....	7
	Ethics in the Law Office .....	7
	Ethics and Evidence .....	14
	ROLES OF DIFFERENT PEOPLE IN THE COURT SYSTEM .....	16
	Lawyer .....	16
	Paralegal .....	17
	Law Clerk .....	17
	Judge .....	17
	Court Reporter .....	17
	Peace Officer .....	17
	SUMMARY .....	20

## CHAPTER 2 Investigating Cases Outside the Court System .22

IMPORTANCE OF FACT INVESTIGATION .....	22
GETTING EVIDENCE .....	26
Lay Witnesses .....	26
Expert Witnesses .....	26
Crime and Accident Scenes .....	28
Private Investigators .....	31
The Internet .....	33
Public Records .....	36
Freedom of Information Act and State Equivalents .....	37
Weather Reports .....	37
Videotapes .....	38
Audiotapes .....	41
Computers and Data .....	41
Medical Records .....	42
Other Sources .....	43
ORGANIZING AND CONDUCTING THE INVESTIGATION AND PRESERVING EVIDENCE .....	43
COLLECTING A DEBT AND PERFORMING BANKRUPTCY INVESTIGATIONS .....	45
Finding and Recovering Assets .....	45
Fair Debt Collection Practices Act .....	45
Bankruptcy Investigations .....	45
SUMMARY .....	47

## CHAPTER 3 Witness and Client Interviews .....50

COMMUNICATION THEORY .....	50
Communication Theory As Applied to Interviews .....	52
LISTENING .....	54
Listening Is Important .....	55
Listening Is a Skill .....	56
INTERVIEWING A CLIENT .....	58
Starting the Interview .....	60



Avoid Giving Legal Advice .....	61
Conducting the Interview .....	62
Ending the Interview and Assessing It .....	64
INTERVIEWING A WITNESS .....	65
Starting the Interview .....	67
Conducting the Interview .....	67
SPECIAL INTERVIEWEES .....	69
Children .....	70
Other Difficult Witnesses .....	71
Expert Witness Interviews .....	72
SUMMARY .....	73

## **CHAPTER 4** **Discovery: Getting Evidence Through the Court System** .....75

PURPOSE AND IMPORTANCE OF DISCOVERY .....	75
Purpose of Discovery .....	76
Importance of Discovery .....	76
Who Pays? .....	77
What Is Discoverable? .....	77
TYPES OF DISCOVERY .....	79
Interrogatories .....	80
Requests for Production .....	84
Depositions .....	85
Depositions via Written Questions .....	88
Requests for Admissions .....	89
Electronic Data Discovery and Computer Forensics .....	89
PROBLEMS WITH DISCOVERY .....	93
Continuing Duty to Disclose .....	93
Privileges, Protections, and Abuse .....	94
Sanctions .....	97
DISCOVERY IN CRIMINAL CASES .....	98
SUMMARY .....	100

**CHAPTER 5 Courts and Evidence Rules Overview .....102****OVERVIEW OF THE COURT SYSTEM .....102**

Federal Courts .....103

State Courts .....104

Trial vs. Appeal .....104

**OVERVIEW OF THE RULES OF EVIDENCE .....105****FEDERAL RULES OF EVIDENCE .....106**

History .....106

Where Adopted .....106

**FOUNDATION AND CHAIN OF CUSTODY .....106**

Foundation .....107

Chain of Custody .....115

**JUDICIAL NOTICE, ADMISSIONS, AND STIPULATIONS 117**

Judicial Notice .....117

Admissions .....119

Stipulations .....119

**BEST EVIDENCE RULE .....121****WHEN DO THE RULES APPLY? .....123****SUMMARY .....123****CHAPTER 6 Relevance .....126****INTRODUCTION .....126****RELEVANT, IRRELEVANT, AND PREJUDICIAL****EVIDENCE .....127**

All Relevant Evidence Is Admissible .....127

Otherwise Admissible Evidence Is Prohibited by Another Law  
or Rule .....130

Prejudicial Evidence Is Inadmissible .....130

**CHARACTER EVIDENCE .....132**

Character Evidence Is Inadmissible to Prove Conduct ....132

Exceptions .....132

Methods of Proving Character .....135