

LEARNING EVIDENCE

FROM THE FEDERAL RULES
TO THE COURTROOM



SIXTH EDITION

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LEARNING SERIES

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PREFACE TO THE SIXTH EDITION

The sixth edition of *Learning Evidence* updates the text to include all rule changes through December 1, 2024, as well as recent developments in the case law. As always, the sixth edition preserves the chapter numbering, structure, and most examples from the first edition. If you used the fifth edition of *Learning Evidence*, this edition should feel quite familiar.

The book comes with digital study aids, accessible at eproducts.westacademic.com, which include hundreds of multiple choice, short answer, and essay questions; thirteen videos that review difficult subjects; and seven interactive simulations in which students take the role of a trial attorney or judge during a trial and then make or rule on objections in real time.

This book is unusual because students contributed so substantially to its preparation. For each successive edition, dedicated research assistants researched points of law, found examples, checked cites, proofread pages, and suggested formats. We offer special thanks to the outstanding work of our research team over these years. For the first edition: Abigail Andre, Courtney Cook, Daniel Corcoran, Katherine Everett, Christina Y. Han, Douglas Hattaway, James Marra, Rex Miller, Megan Shepston Overly, Corrina Roy, Carla Scherr, Jillian Slinger, Ravi Suri, and Stephen M. Wolfson. For the second edition: Eric M. Bell, Timothy Brownrigg, Andrew DeFranco, Stephanie Fitos, Joe Griesmer, Douglas Hattaway, Chris Immormino, Caitlyn Nestleroth, and Joseph Saks. For the third edition: Joseph Case, Zach Horton, Scott McCormick, and Matthew Navarre. For the fourth edition: Kelsey Kornblut, Melissa Lenz, Mallory Murphy, and Chad Smith. For the fifth edition: Sadie Boyer, Julie Howard, Ashton Marr, Brittany Munn, John Ryan, and Austin Strohacker. And for this edition: Nicole Beckman and Jessica Frank.

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We are grateful, finally, for our supportive, engaging, and inspirational family members. They are true members of the *Learning Evidence* team, as well as partners in all of life's other adventures.

Deborah Jones Merritt
Ric Simmons

Columbus, Ohio
July 11, 2025

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STUDY GUIDE

How to Get the Most out of This Book

The study techniques you have developed in other courses will help you in this course as well. But this book approaches legal study differently than the typical casebook. Here are some tips on how to get the most out of this book:

1. Learning the Basics. The materials in this book teach the basic rules of evidence through textual discussion, analysis of the relevant rules, and concrete examples. The text does not require you to extract principles from cases, respond to questions, or solve problems to grasp these basics. By the end of each chapter, you should understand the basic features of the rule(s) discussed in that chapter.

Key Concepts. Most chapters begin with a text box labeled “Key Concepts” and marked with this key icon. These boxes serve two purposes. First, they will alert you to the most important concepts that you should focus on when reading the chapter. Second, when you review the materials, you should be able to glance at the Key Concepts box for each chapter and readily recall the meaning of those concepts.

Quick Summary. Each chapter ends with a “Quick Summary” of the contents, designated by the “summary folder” icon. These boxes do not contain all the information you need to know from the chapter. You need to master details from the chapter, not just the summary principles. But these summaries will give you a mental framework for organizing the material in the chapter. After reading the chapter, look at the Quick Summary and see how many details you can recall to accompany each principle.

2. Reading Rules. The federal law of evidence has been codified in the Federal Rules of Evidence. To understand the law and practice it effectively, you need to read the rules! Rather than refer you to a statutory appendix or separate rulebook, these materials incorporate relevant sections of the rules in each chapter. The materials attempt to walk you through the rules, so that you will see how the language relates to the issues disputed in the courtroom.

To aid your understanding, we underline key words in the rules and arrange complex lists into bullets. This formatting is not part of the official rules; it is designed to introduce you to each rule. Here is how a hypothetical rule (one that is not part of any evidentiary code) might appear:

HYPOTHETICAL RULE. Prohibited Conduct by Jurors.

In any civil or criminal trial, jurors may not

- Snore
- Yawn, or
- Roll their eyes

during the presentation of a party's evidence, except when the judge engages in the same behavior.

The full text of the Federal Rules of Evidence appears in an appendix to this book. In addition to studying the rules in each chapter, you should look frequently at the full set of rules; that will help you understand how the rules relate to one another. You may want to annotate the rules in the appendix with notes from your reading and class. This is a good way to learn the rules.

3. Applying the Rules. After summarizing and explaining the relevant rule, most chapters present an “In the Courtroom” section that provides numerous examples of how the rule works in practice. These examples are meant to demonstrate the scope of the rules and how the rules apply in different circumstances. Some of these examples are hypothetical fact patterns, but most of them are summaries of actual cases in which an advocate sought to admit a specific piece of evidence. When the examples are drawn from real cases, we use the actual names of the parties and witnesses, although we sometimes simplify or modify the facts.

4. Open Questions. Many points of evidentiary law are settled, but a surprising number are still open to dispute. Even when a principle is clear, its application may vary depending on the facts of the case. This book notes when legal issues are unresolved, as well as when application of a principle depends on the facts of the case. In addition to textual explanations, icons mark these points so they are easy to recognize:

This icon indicates points of law that are still evolving. Evolving issues include (1) legal principles that most parties assume are settled, but that a thoughtful attorney might challenge; (2) issues on which a conflict exists among the federal circuits; (3) unsettled questions raised by recent Supreme Court decisions or rule changes; and (4) issues that no court has yet addressed. The “evolving rule” icon identifies these issues, which are discussed further in the text.

This second icon marks issues on which the legal principle is clear, but the court’s decision will depend on the facts of the case. Legal counsel’s ability to apply the governing principle to the facts is particularly important in these situations. When you study these issues, the legal principle may seem straightforward. Think, however, about how you would apply the principle to a variety of factual situations. Applying the principle, rather than simply knowing it, is critical to these issues.

5. Organization. Each chapter in this book addresses a particular evidentiary principle. The chapters are self-contained, although later chapters build on earlier ones. True mastery of the Rules of Evidence, however, requires seeing relationships among the rules and using the rules in combination. To help you build that understanding, the book uses two techniques:

First, a **Table of Contents** and **Detailed Table of Contents** show how some of the rules relate to one another. The Table of Contents includes just the title for each chapter, while the Detailed Table of Contents incorporates the Key Concepts for each chapter. These tables may help you see the “big picture” and integrate the individual rules.

Second, **Overview Chapters** and **Paragraphs** offer specific information about how rules relate to one another or to trials in general. When you see this overview icon at the beginning of a chapter, it means that the entire chapter is an organizational one, helping you relate rules to one another. When the icon appears beside a particular paragraph, it means that the paragraph positions the material within the broader Rules of Evidence.

6. How to Prepare for Class. You should read the assigned materials before class! All professors say that, but there is a particular reason to read these materials before class. With the case method, some students (especially in upper-level

courses) find that it is efficient to read the cases very lightly—or not at all—and wait for class to illuminate the principles contained in the cases. The materials in this book, however, teach the basics directly; there's no quicker way to learn them.

Your professor, moreover, might not review the basics in class. Instead, the professor may focus class on review questions, advanced problems, policy discussion, and simulations. If you haven't read the material, you will not benefit much from the classes.

For some chapters, we have created short videos that review key concepts. You will find most of these videos in the Video Mini-Classes module from the eBook on your eProducts bookshelf. Others are available on YouTube and are linked directly from the text of this book. Sidebars with this video icon will direct you to videos that complement specific chapters.

7. How to Prepare for Exams. You should find these materials helpful, both in preparing for the exam in this course and when reviewing for the bar exam. The techniques outlined below will help you prepare well for both exams:

1. Be sure that you understand the **Key Concepts** in each chapter. These appear both at the beginning of the chapter and in the **Detailed Table of Contents**.
2. Read over the **Quick Summary** for each chapter. In addition to understanding the summary, you should be able to recall details relating to each of the points in the summary.
3. Review the **Rules of Evidence** that you have personally annotated. Most of federal evidentiary law stems from those rules. The language of the Rules should help you track the basics, while your annotations flesh them out.
4. Review **Overview** chapters and paragraphs to be sure that you understand how the rules relate to one another. Reviewing the **Table of Contents** will also reveal important relationships.
5. Take special note of **Evolving Issues** and know how you would argue both sides of those issues. You may argue these issues some day

in court, and you almost certainly will have to argue some of them on an exam.

6. Pay special attention to **Balancing Scale** principles as well. These rules often seem easy, but the essence of these rules lies in their application. You need to know how to apply these rules carefully to the facts of a problem, seeing arguments that both sides might raise.

Near the end of most chapters you will have the opportunity to **Test Your Understanding** with multiple choice questions that review the material you just learned. These questions can be found in the [Quizzes module](#) from the eBook on your eProducts bookshelf.

There are a total of two hundred of these questions in the Quizzes module. After you respond to each question, the website will tell you the correct answer and explain why the answer is correct. You can use these questions to assess your understanding of the chapter you just read, or save them and take them all as a review at the end of the semester.

One final method of review is to engage with the **Evidence in Practice** interactive trial simulations found after [chapters 13](#), [22](#), [31](#), [43](#), and [56](#). You can access those simulations through the [Evidence in Practice and Skills Lessons module](#) from the eBook on your eProducts bookshelf. In these interactive simulations, you play the role of a trial attorney or judge during a witness examination at trial, and you make or rule on objections in real time as the trial unfolds. Each of these simulations will help you review a specific topic. In addition, there are two longer interactive simulations that review material from the entire course, which you can use at the end of the semester. Those simulations are also available in the Evidence in Practice and Skills Lessons module from the eBook on your eProducts bookshelf. For an even deeper dive into the practice of Evidence law, the module also includes nine longer skills exercises that ask you to apply different rules of evidence in drafting motions or preparing for trial.

Enjoy your study of evidence!

LEARNING EVIDENCE

**FROM THE FEDERAL RULES
TO THE COURTROOM**

SIXTH EDITION

1

Why Take This Course?

There are dozens of courses to take in law school, many more than you can fit into a three-year schedule. So why spend time in a class on the Federal Rules of Evidence? For some students, the answer is that they plan to litigate; mastering Evidence is essential to courtroom survival. Other students believe that Evidence is a basic area that every lawyer should know. Still others respond that the subject figures prominently on the bar exam. These are all good reasons to take an Evidence course, but there are other reasons why evidence matters, why the Federal Rules of Evidence matter, and why you will benefit from this course.

A. Why Does Evidence Matter? Evidence is the heart of persuasion. Humans do not respond to abstract, theoretical arguments as well as they respond to examples, details, and stories. Whenever we try to sway others, we cite evidence. Certainly this is true in the courtroom. A police officer who is called by the prosecutor to testify in a homicide case will show the jury the blood-stained knife found in the defendant's kitchen. A laboratory expert will then explain that the blood on the knife matches that of the deceased. The prosecutor will arrange pieces of evidence like these to tell a coherent tale about when, where, how, and why the defendant stabbed the victim. The jury should convict only if the prosecutor shows them evidence that tells a convincing story.

Evidence is central to every trial. Sometimes the evidence even determines whether there will **be** a trial. The question in many disputes is not what happened, but what the parties can prove. If two cars collide on an isolated highway, one of the drivers may be certain that the other crossed the center line and caused the collision. But if the other driver denies fault, there were no eyewitnesses, and the physical evidence of the crash is ambiguous, then the first driver has little chance of persuading a jury that the other driver was at fault. Without convincing evidence, even a truthful claim will fail.

Evidence matters outside the courtroom as well. Transactional lawyers, deal makers, negotiators, lobbyists, in-house corporate counsel, and attorneys of all stripes use evidence to analyze and advance their clients' causes.

- A real estate lawyer helping a client develop a new office complex will cite evidence of job growth, construction costs, traffic flow, environmental effects, and other factors during negotiations with lenders, zoning boards, tax authorities, and other decision makers.
- A lobbyist will emphasize evidence about the positive effects of a client's proposed legislation, while discrediting evidence offered by opponents.
- An in-house lawyer for a corporation, advising the company on the effect of new government regulations, will marshal evidence about the regulations' impact on the company's day-to-day operations.

Evidence, in other words, is vital to everything lawyers do. It is the essential counterweight to abstract legal rules. Without evidence to explain and persuade, legal principles have little meaning.

B. Why Do Rules of Evidence Matter? Lawyers use evidence in most tasks, but many of those uses fall outside formal evidentiary codes. An intellectual property lawyer negotiating a licensing arrangement, for example, may use evidence to show the other party how the proposed arrangement will generate profits for both sides. But this lawyer does not need to worry about whether the projected earning streams comply with evidentiary rules governing hearsay, expert opinion, or other matters. Formal evidentiary rules regulate courtroom evidence closely, but they may seem unimportant outside the courtroom.

In fact, however, the formal rules of evidence affect most aspects of legal practice in at least three ways. **First**, every action lawyers undertake, from informally advising a client to negotiating a contract, occurs in the shadow of possible litigation. Although much of what lawyers do is constructive, every human action has the potential to end in disagreement and conflict. Even when preparing a simple will, lawyers must think about what type of evidence will protect their client's interests if a disagreement generates a lawsuit.

Second, advances in technology have made evidence easier to gather for courtroom use. Even when the rules of evidence are the farthest thought from your client's mind, they may be generating evidence that could be used against them in court. The e-mail a client sent this morning might become evidence in a lawsuit;

so might the notes they keep on a desk calendar or the files they dispatched to a storeroom. Savvy lawyers advise their clients about the evidentiary trails they inadvertently create.

Finally, the rules of evidence embody (mostly) sensible distinctions about what types of evidence support sound decision making and what types carry hidden risks of confusion. By learning the formal rules of evidence, you learn concepts that may help you and your clients make better decisions. No one, for example, wants to sign a long-term supply contract with a company that is unreliable. But how does a client judge reliability? Studying the rules of evidence will teach you that people sometimes attach more weight to secondhand reports than is rational. Learning the policies that surround formal evidentiary rules may help you make better decisions outside the courtroom.

C. How Will You Benefit from This Course? There are at least four ways in which you may benefit from this course.

First, you will learn the Federal Rules of Evidence. If you plan to litigate, a thorough knowledge of those rules is essential to your courtroom practice. Every trial plan depends on the Rules of Evidence for its success. The most brilliant strategy will fail completely if it is founded on hearsay, character evidence, unsupported lay testimony, or other evidence that your opponent successfully excludes. The best litigators know the Rules of Evidence so well that they incorporate those rules seamlessly into their strategies.

If you don't plan to litigate in federal court, the rules you learn in this course will still guide most adjudications in which you do take part. As we'll see in [Chapter 3](#), most states have adopted principles from the Federal Rules of Evidence in their own evidentiary codes. Many administrative agencies also follow rules similar to the Federal Rules of Evidence.

Even when you settle disputes informally, the evidentiary rules you learn in this course will inform your negotiations. Parties settle disputes with an eye on both their underlying claims and what they are likely to prove in court. The admissibility of key evidence affects a party's bargaining position. So even if you hope to resolve all your client's problems outside a courthouse, you are likely to encounter issues that turn on the Federal Rules of Evidence.

Second, this course will help you think about the role that facts play in conducting all kinds of legal business. Every appellate opinion you have read in law school

began with a statement of the facts. But where did those “facts” come from? How does the prosecutor prove that the defendant intended to kill the victim, or that a car’s passenger knew that the trunk contained packages of cocaine? How does the plaintiff in a contract action prove that the defendant provided defective goods or that the breach injured the plaintiff’s business? In law school, we often take the facts for granted. But in practice, gathering, analyzing, and organizing facts are among the most important tasks a lawyer performs. Assembling evidence to prove the facts is inextricably interwoven with understanding a client’s legal goals. In this course, we will spend more time on the “facts” than in any other course in law school.

Third, the course illuminates the strategies that lawyers use to create persuasive stories and arguments. What kinds of evidence do decision makers find most convincing? What types are likely to distract a decision maker? The basic Evidence course only scratches the surface of these issues: Courses on Trial Advocacy, Law and Psychology, and other subjects treat them in more depth. But the Federal Rules of Evidence rest on basic insights about how people weigh pieces of evidence and make decisions. Exploring why the Federal Rules permit some types of evidence and not others will help you understand how the human brain responds to evidence. You can apply those lessons to a wide range of tasks, from persuading a potential client to hire your firm to concluding a successful business deal. You can also use those lessons to think about aspects of trial practice that fall outside the formal rules of evidence. How do the parties’ and witnesses’ appearance, for example, affect courtroom decisions?

Finally, this course confers several practical benefits. It **does** prepare you for an important bar exam subject, and it does fulfill a prerequisite for Trial Advocacy and some clinical courses. It will also give you useful insights into movies, television episodes, books, and news stories that feature courtroom evidence. When you watch courtroom dramas, you will no longer wonder why the lawyers are always objecting and proffering, while the judges are sustaining and overruling. What could be better than that?