Table of Contents

TITLE 1. INTRODUCTION

CHAPTER 1. PREPARING AND PRESENTING THE EVIDENCE
§ 1 Planning and preparation of proof as important as the rules of evidence
§ 2 Preparation for trial on the facts without resort to the court's aid
§ 3 Invoking the court's aid in preparing for trial: Right to interview witnesses; discovery and depositions; requests for admission; pretrial conferences
§ 4 The order of presenting evidence at the trial

TITLE 2. EXAMINATION OF WITNESSES

CHAPTER 2. THE FORM OF QUESTIONS ON DIRECT; THE JUDGE'S WITNESSES; REFRESHING MEMORY
§ 5 The form of questions: (a) Questions calling for a free narrative versus specific questions
§ 6 The form of questions: (b) Leading questions
§ 7 The form of questions: (c) Argumentative, misleading, and indefinite questions
§ 8 The judge may call witnesses; the judge and jurors may question witnesses
§ 9 Refreshing recollection

CHAPTER 3. THE REQUIREMENT OF FIRSTHAND KNOWLEDGE: THE OPINION RULE & EXPERT TESTIMONY
§ 10 The requirement of knowledge from observation
§ 11 The evolution of the rule against opinions: opinions of laymen
§ 12 The relativity of the opinion rule: Opinions on the ultimate issue
§ 13 Expert witnesses: Subjects of expert testimony, qualifications, and cross-examination
§ 14 Grounds for expert opinion: Hypothetical questions
§ 15 Expert's opinion based on reports of others and inadmissible or unadmitted data and facts
§ 16 Should the hypothetical question be retained?
§ 17 Proposals for improvement of the practice relating to expert testimony
§ 18 Application of the opinion rule to out-of-court statements
CHAPTER 4. CROSS-EXAMINATION AND SUBSEQUENT EXAMINATIONS

§ 19 The right of cross-examination: Effect of deprivation of opportunity to cross-examine

§ 20 Form of interrogation

§ 21 Scope of cross-examination: Restriction to matters opened up on direct: the various rules

§ 23 Formal and practical consequences of the restrictive rules: effect on order of proof: Side-effects

§ 24 The scope of the judge's discretion under the wide-open and restrictive rules

§ 25 Application of wide-open and restrictive rules to the cross-examination of parties: (a) Civil parties

§ 26 Application of wide-open and restrictive rules to the cross-examination of parties: (b) The accused in a criminal case

§ 27 Merits of the systems of wide-open and restricted cross-examination

§ 28 Cross-examination about witness's inconsistent past writings: Must examiner show the writing to the witness before questioning about its contents?

§ 29 The standard of relevancy as applied on cross-examination: Trial judge's discretion

§ 30 The cross-examiner's art

§ 31 Cross-examination revalued

§ 32 Redirect and subsequent examinations

CHAPTER 5. IMPEACHMENT AND SUPPORT

§ 33 Introduction: Bolstering, impeachment, and rehabilitation

§ 34 Prior inconsistent statement impeachment: Degree of inconsistency required

§ 35 Prior inconsistent statements: Opinion in form

§ 36 Prior inconsistent statements: Extrinsic evidence and previous statements as substantive evidence of the facts stated

§ 37 Prior inconsistent statements: Requirement of preliminary questions on cross-examination as "foundation" for proof by extrinsic evidence

§ 38 Prior inconsistent statements: Rule against impeaching one's own witness

§ 39 Bias and partiality

§ 40 Character: In general

§ 41 Character: Misconduct, for which there has been no criminal conviction

§ 42 Character: Conviction of crime

§ 43 Character: Impeachment by Proof of Opinion or Bad Reputation

§ 44 Defects of capacity: Sensory or mental

§ 45 Impeachment by "specific contradiction"

§ 46 Beliefs concerning religion

§ 47 Supporting the witness

§ 48 Attacking the supporting character witness
§ 49 Contradiction: Collateral and non-collateral matters; good faith basis
§ 50 Exclusion and separation of witnesses

TITLE 3. ADMISSION AND EXCLUSION

CHAPTER 6. THE PROCEDURE OF ADMITTING AND EXCLUDING EVIDENCE
§ 51 Presentation of evidence: Offer of proof
§ 52 Objections
§ 53 Preliminary questions of fact arising on objections
§ 54 Availability as proof of evidence admitted without objection
§ 55 Waiver of objection
§ 56 The effect of the introduction of part of a writing or conversation
§ 57 Fighting fire with fire: Inadmissible evidence as opening the door
§ 58 Admissibility of evidence dependent on proof of other facts: "Connecting up"
§ 59 Evidence admissible for one purpose, inadmissible for another: "Limited admissibility"
§ 60 Admission and exclusion of evidence in bench trials without a jury

TITLE 4. COMPETENCY

CHAPTER 7. THE COMPETENCY OF WITNESSES
§ 62 Mental incapacity and immaturity: Oath or affirmation
§ 63 Religious belief
§ 64 Conviction of crime
§ 65 Parties and persons interested: The dead man statutes
§ 66 Husbands and wives of parties
§ 67 Incompetency of husband and wife to give testimony on non-access
§ 68 Judges, jurors and lawyers
§ 70 The procedure of disqualification

TITLE 5. PRIVILEGE: COMMON LAW AND STATUTORY

CHAPTER 8. THE SCOPE AND EFFECT OF THE EVIDENTIAL PRIVILEGES
§ 72 The purposes of rules of privilege: (a) Other rules of evidence distinguished
§ 73.1 Procedural recognition of rules of privilege: (a) Who may assert?
§ 74 Limitations on the effectiveness of privileges: (a) Risk of eavesdropping and interception of letters
§ 75 The sources of privilege
§ 76.1 The current pattern of privilege: (a) Privilege in federal courts; what law applies?
§ 76.2 The current pattern of privilege: (b) State patterns of privilege; recognizing new privileges

CHAPTER 9. THE PRIVILEGE FOR MARITAL COMMUNICATIONS
§ 79 What is privileged: Communications only, or acts and facts?
§ 80 The communication must be confidential
§ 81 The time of making the communication: Marital status
§ 82 Hazards of disclosure to third persons against the will of the communicating spouse
§ 83 Who is the holder of the privilege? Enforcement and waiver
§ 84 Controversies in which the privilege is inapplicable

CHAPTER 10. THE CLIENT'S PRIVILEGE: COMMUNICATIONS BETWEEN CLIENT & LAWYER
§ 87 Background and policy of the privilege: (a) Theoretical considerations
§ 87.1 Background and policy of the privilege: (b) Applications in corporate, governmental and other entity settings
§ 88 The professional relationship
§ 89 Subject-matter of the privilege: (a) Communications
§ 90 Subject-matter of the privilege: (b) Fact of employment and identity of the client
§ 91 The confidential character of the communications: Communications intended to be made public; presence of third persons and agents
§ 91.1 The confidential character of the communications: Joint consultations and employments; controversies between client and attorney
§ 93 Waiver
§ 94 The effect of the death of the client
§ 95 Consultation in furtherance of crime or fraud
§ 96 Protective rules relating to materials collected for use of counsel in preparation for trial: Reports of employees, witness-statements, experts' reports, and the like
§ 97 Discovery in criminal cases: Statements by witnesses

CHAPTER 11. THE PRIVILEGE FOR CONFIDENTIAL INFORMATION SECURED IN THE COURSE OF THE PHYSICIAN-PATIENT RELATIONSHIP
§ 98 The statement of the rule and its purpose
§ 99 Relation of physician and patient
§ 101 The confidential character of the disclosure: Presence of third persons and members of family; information revealed to nurses and attendants; public records
Chapter 12. Privileges for Governmental Secrets

§ 107 The common law privileges for military or diplomatic secrets and other facts the disclosure of which would be contrary to the public interest

§ 108 Qualified privileges for government information: The constitutional presidential privilege; common law privileges for agency deliberations and law enforcement files

§ 109 Effect of the presence of the government as a litigant

§ 110 The scope of the judge’s function in determining the validity of the claim of privilege

§ 111 The privilege against the disclosure of the identity of an informer

§ 112 Statutory privileges for certain reports of individuals to government agencies: Accident reports, tax returns, etc.

Chapter 13. The Privilege against Self-Incrimination

§ 118 Asserting the privilege

§ 124 Limitation of the privilege to compelled “testimonial” activity

§ 126 Privilege as applied to an accused in a criminal proceeding: (a) Inferences from and comment upon the accused’s reliance upon the privilege in the trial

§ 129 Privilege as applied to an accused in a criminal proceeding: (d) “Waiver” of the privilege by voluntary testimony

§ 130 The privilege as applied to a witness: (a) Invoking the privilege

§ 135 The privilege as applied to a witness: (f) Effect in a criminal trial of defense witness’s invocation of the privilege

§ 138 The privilege as related to documents and tangible items: (b) Compulsory production and incrimination by the “act of production”

Chapter 14. Confessions

§ 145 Corpus delicti or corroboration requirement: (a) In general

§ 146 Corpus delicti or corroboration requirement: (b) Requirement of independent proof of the corpus delicti

§ 147 Corpus delicti or corroboration requirement: (c) Requirement of evidence tending to establish truthfulness of statement

§ 149 Voluntariness, in general

§ 150 Self-incrimination (Miranda) requirements: (a) In general
§ 152 Self-incrimination (Miranda) requirements: (c) Prohibition against interrogation
§ 154 General right to counsel requirements
§ 155 Special problems: Promises made to suspects and deception of suspects
§ 157 Reliability or trustworthiness as admission requirement
§ 160 Judicial confessions, guilty pleas, and admissions made in plea bargaining
§ 161 “Tacit” and “adoptive” confessions and admissions

CHAPTER 15. THE PRIVILEGE CONCERNING IMPROPERLY OBTAINED EVIDENCE
§ 165 Policy bases for exclusionary sanctions
§ 166 Federal constitutional exclusionary sanctions: (a) Development
§ 168 State constitutional exclusionary sanctions
§ 170 Exclusion for nonconstitutional illegality: (b) Legislative requirements
§ 171 Exclusion for nonconstitutional illegality: (c)Judicially developed requirements
§ 172 Exclusion for nonconstitutional illegality: (d) Substance of exclusionary requirements
§ 173 Use of illegally obtained evidence in noncriminal litigation
§ 174 Use of illegally obtained evidence in criminal proceedings on matters other than guilt
§ 179 Exceptions to exclusion: (a) Attenuation of taint
§ 180 Exceptions to exclusion: (b) Intervening illegal conduct

TITLE 7. RELEVANCY AND ITS COUNTERWEIGHTS

CHAPTER 16. RELEVANCE
§ 185 The meaning of relevancy and the counterweights

CHAPTER 17. CHARACTER AND HABIT
§ 186 Character, in general
§ 187 Character in issue
§ 188 Character as circumstantial evidence: General rule of exclusion
§ 189 Character for care in civil cases
§ 190 Bad character as evidence of criminal conduct: Other crimes
§ 191 Good character as evidence of lawful conduct: Proof by the accused and rebuttal by the government
§ 192 Character in civil cases where crime is in issue
§ 193 Character of victim in cases of assault, murder, and rape
§ 195 Habit and custom as evidence of conduct on a particular occasion

CHAPTER 18. SIMILAR HAPPENINGS AND TRANSACTIONS
§ 196 Other claims, suits, or defenses of a party
CHAPTER 19. INSURANCE AGAINST LIABILITY
§ 201 Insurance against liability as proof of negligence

CHAPTER 20. EXPERIMENTAL AND SCIENTIFIC EVIDENCE

I. SCIENTIFIC TESTS IN GENERAL
§ 202 Pretrial experiments
§ 203 Scientific evidence: Admissibility and weight [Retitled]

II. PARTICULAR TESTS
§ 204 Physics and electronics: Speed detection and recording
§ 205 Biology and medicine: Drunkenness and blood, tissue, and DNA typing
§ 206 Psychology: Lie detection; drugs and hypnosis; eyewitness testimony; profiles and syndromes
§ 207 Criminalistics: Identifying persons and things

III. STATISTICAL STUDIES
§ 208 Surveys and opinion polls
§ 209 Correlations and causes: Statistical evidence of discrimination

IV. PROBABILITIES AS EVIDENCE
§ 210 Identification evidence and probabilities [Retitled]
§ 211 Paternity testing