

# Index

## ADMISSIBILITY

- Generally, § 1:1
- Admissibility for truth of contents, § 18:2
- Admissibility versus weight
  - generally, § 1:6 to § 1:10
  - assessing credibility/reliability of evidence, § 1:8
  - deference to triers of fact on appeal, § 1:10
  - demeanor of witness, § 1:9
  - evidence from prior proceedings, § 1:15
    - generally, § 1:15
    - implied undertaking rule, § 1:16
  - evidence taken before trial, § 1:11
    - death or unavailability of witness, § 1:11
    - use of discovery evidence in same proceeding, § 1:12
  - matters affecting weight, § 1:7
- Hearsay evidence, § 16:1, § 16:2
- Limited admissibility, § 1:2
- New/fresh evidence on appeal, § 1:11, § 1:12
  - generally, § 1:11
  - child welfare cases, § 1:12
- Objections to admissibility, § 1:5
- Opinion evidence, generally, § 14:1
  - see also, Expert/Opinion Evidence
- Prejudicial effect of evidence, § 1:3
- Prior inconsistent statements, § 17:1
- Trier's reasons for accepting evidence, § 1:4
- Trier's reasons for rejecting evidence, § 1:4

## ADVERSE WITNESSES

- Generally, § 10:13

## AFFIDAVITS

- Cross-examination on
  - generally, § 11:10
  - affidavit of records, § 11:12
  - affidavits to obtain search warrant, in administrative context, § 11:14

## AFFIDAVITS—Cont'd

- Cross-examination on—Cont'd
  - right to, § 11:2
  - scope, § 11:1, § 11:11
  - summary judgment motions, § 11:10
  - use of leading questions, § 11:2
- Hearsay principles applicable, to, § 17:1

## AMBIGUITY IN WRITTEN CONTRACT

- See Parol, Evidence Rule

## BEST EVIDENCE RULE

- Generally, § 18:5, § 18:6

## BURDEN OF PROOF

- Generally, § 3:1
- Evidentiary burden
  - generally, § 3:8
  - res ipsa loquitur, § 3:9
- Legal burden
  - balance of probabilities
    - cases where standard met, § 3:13
    - cases where standard not met, § 3:14
  - meaning, § 3:5
- civil evidence burden, § 3:2
- specific proceedings, § 3:5
  - MVA threshold motions, § 3:4
  - summary judgment application, § 3:3
- Specific types of cases
  - cases involving allegations of sexual abuse, § 3:11
  - constitutional cases, § 3:14
  - family law cases, § 3:10
  - insurance cases, § 3:13
  - proving testamentary instruments, § 3:12

## CHARACTER EVIDENCE

- Generally, § 2:12

## CHILDREN

- See Competence; Credibility

## CIRCUMSTANTIAL EVIDENCE

- Generally, § 2:13

## **COGENCY OF EVIDENCE**

Admissibility versus weight of evidence,  
§ 1:6 to § 1:10

Admission of new evidence upon appeal,  
§ 1:11, § 1:12

## **COLLATERAL CONTRACT**

See Parol Evidence Rule

## **COMPELLABILITY**

See also Privilege

Generally, § 6:13

Failure of witness to testify, § 6:17

Procedure to obtain testimony, § 6:16

Self-incrimination, § 6:14

Statutory provisions, § 6:15

## **COMPETENCE**

Counsel as witness, § 6:11

Incompetence, types of

children, § 6:10

crime, § 6:7

husbands, § 6:9

interest, § 6:7

lack of mental capacity, § 6:6

parties to action, § 6:8

wives, § 6:9

Judge as witness, § 6:12

Oath

comprehending, § 6:2

form, § 6:4

statutory authorities for, § 6:3

Test for competence, § 6:1

## **CORROBORATION**

Eyewitness evidence, § 1:8

## **CREDIBILITY**

Assessment of, § 1:8

Deference to trier of fact, § 1:10

## **CROSS-EXAMINATION**

See also Previous Convictions, Cross-examination on

Communication with counsel during,  
cross-examination, § 11:16

Cross-examination of experts, § 11:7 to  
§ 11:9

generally, § 11:7

class proceedings, § 11:8

summary judgment motion, § 11:9

## **CROSS-EXAMINATION—Cont'd**

Cross-examination on affidavits, § 11:10  
to § 11:14

generally, § 11:10

affidavit of records, § 11:12

affidavits to obtain search warrant in  
administrative context, § 11:14

scope of the cross-examination, § 11:11

summary judgment motions, § 11:13

Cross-examinations pursuant to s. 40 of  
Construction Act (Ont.)

generally, § 11:17

Failure to cross-examine, § 11:6

Impeachment by cross-examination,  
§ 11:4, § 11:5

generally, § 11:4

prior inconsistent statements, § 11:5

Right to cross-examine, § 11:2

Role of trial judge in cross-examination,  
§ 11:15

Rule in Browne and Dunn, § 11:6

Scope of cross-examination, § 11:1

Use of leading questions, § 11:3

## **DEMONSTRATIVE EVIDENCE**

Audio and videotape

generally, § 19:3

surveillance video in personal injury  
actions, § 20:4

Introduction, § 19:1

Maps, sketches, charts, models and  
surveys, § 19:4

PowerPoint slides, § 19:5

Probative value versus prejudicial effect,  
§ 19:2

Re-enactment, § 19:6

Use in opening address, § 19:7

Viewing or inspection by trier of fact,  
§ 20:5

## **DNA SAMPLES**

Seizure of, § 1:5

## **DOCUMENTARY EVIDENCE**

Admissibility for truth of contents, § 18:2

Authenticating documents

generally, § 18:3

electronic documents, § 18:4

Best evidence rule

generally, § 18:5

electronic records, § 18:6

## INDEX

### DOCUMENTARY EVIDENCE—Cont'd

- Documents from criminal proceedings, § 18:6
  - certificate of conviction, § 18:10
  - investigative records, § 18:12
  - probation orders, § 18:13
  - transcripts from criminal proceedings, § 18:11
  - wiretap communications, § 18:14
- General, § 18:1
- Secondary evidence, § 18:5
  - introduction, § 18:7
  - loss or destruction of primary evidence, § 18:8
  - primary evidence requires clarification, § 18:9

### EXAMINATION-IN-CHIEF

- See also Witnesses
- Exclusion of witnesses, § 9:20
- Intervention by judge, § 9:6
- Manner of testimony, § 9:5
- Memory and prior statements
  - aide memoire, § 9:13
  - past recollection recorded, § 9:14
  - present recollection revived/refreshed, § 9:15
  - prior consistent statements, § 9:16 to § 9:18
  - prior inconsistent statements, § 9:19
- Non-expert opinion evidence, § 9:7
- Oath-helping, § 9:12
- Witness immunity, § 9:21

### EXCEPTIONS TO THE HEARSAY RULE

- Ancient documents, § 17:50
- Continual evolution of exceptions, § 17:1
- Declaration made in course of duty/
  - business records, § 17:44 to § 17:48
  - business records, § 17:44, § 17:45
  - common law exception, § 17:44, § 17:45
  - statutory provisions, § 17:45
- electronic records, § 17:46
- medical records, § 17:47, § 17:48
  - common law exception, § 17:47
  - statutory provisions, § 17:48
- Declarations as to family history, § 17:42
- Declarations of physical or mental, conditions
  - generally, § 17:26 to § 17:33

### EXCEPTIONS TO THE HEARSAY

#### RULE—Cont'd

- Declarations of physical or mental, conditions—Cont'd
  - mental state or intention, § 17:27 to § 17:33
    - generally, § 17:27
  - child protection proceedings, § 17:31
  - civil actions, § 17:30
  - statements of accused persons, § 17:29
  - statements of deceased victims of crime, § 17:28
  - testamentary intent, § 17:32
  - written statements, § 17:33
- physical condition, § 17:26
- Dying declarations, § 17:34
- General principles, § 17:1
- Principled approach
  - generally, § 17:2 to § 17:22
  - necessity
    - generally, § 17:3 to § 17:13
    - certification motion in class action, § 17:13
    - death, § 17:3
    - evidence recanted, § 17:10
    - impairment of memory, § 17:9
    - mental disability, § 17:8
    - prior proceedings, § 17:11
    - prior statement of spouse, § 17:5
    - records or documents, § 17:12
    - statements of children, § 17:4
    - where witness is or may be available, § 17:6
    - witness out of jurisdiction, § 17:7
  - reliability
    - generally, § 17:14 to § 17:22
    - affidavit evidence, § 17:15
    - impairment of memory, § 17:19
    - mental disability, § 17:18
    - miscellaneous, § 17:22
    - motive to lie/tell the truth, § 17:20
    - statements of children, § 17:17
    - statements of deceased, § 17:16
    - witness recants, § 17:21
- Public documents, § 17:49
- Res gestae
  - generally, § 17:35 to § 17:41
  - calls to 911, § 17:36
  - documents in possession rule, § 17:41

## EXCEPTIONS TO THE HEARSAY

### RULE—Cont'd

#### Res gestae—Cont'd

- statements of accused persons, § 17:38
- statements of agents, § 17:40
- statements of victims of crime, § 17:37
- statements of witnesses, § 17:39

#### Statements against interest

- generally, § 17:23 to § 17:25
- statements against penal interest, § 17:25

- statements against proprietary or pecuniary interest, § 17:24

#### Statements of co-conspirators, § 17:43

## EXPERT/OPINION EVIDENCE

#### Ability to testify, § 14:3

#### Admissibility, § 14:2

#### Exclusion of, § 14:28

- expert evidence on credibility or, truthfulness of witness, § 14:30
- where expert evidence not, necessary, § 14:29
- where prejudicial effect outweighs, probative value, § 14:31

#### Expert, § 14:3

#### Expert's report

- generally, § 14:23 to § 14:27
- admissibility, § 14:26, § 14:27
- generally, § 14:26
- where author report not available, § 14:27

#### formal requirements, § 14:25

#### what constitutes a written, § 14:24

#### Expert witnesses

- generally, § 14:8 to § 14:14
- conflicts of interest, § 14:11
- court appointed, § 14:9
- exclusion of experts, § 14:12
- immunity from lawsuits, § 14:13
- jointly retained experts, § 14:10
- number of, § 14:8
- partiality or bias, § 14:14

#### Inspection of property, § 14:19

#### Matters open to lay opinion

- generally, § 14:58
- child protection cases, § 14:67
- commercial matters, § 14:66
- credibility, § 14:63
- experiment evidence, § 14:65
- handwriting, § 14:64

## EXPERT/OPINION EVIDENCE

### —Cont'd

#### Matters open to lay opinion—Cont'd

- identification, § 14:59
- intoxication/sobriety, § 14:60
- mental or emotional state, § 14:61
- other matters open to lay opinion, § 14:68
- physical condition of person or thing, § 14:62

#### Notice requirements, § 14:22

#### Novel scientific evidence, § 14:7

#### Novel scientific techniques, § 14:7

#### Opinion determining ultimate issue, § 14:4 to § 14:6

- generally, § 14:4
- cases where evidence admitted, § 14:6
- cases where evidence not admitted, § 14:5

#### Opinion usurping court's function, § 14:4 to § 14:6

- generally, § 14:4
- cases where evidence admitted, § 14:6
- cases where evidence not admitted, § 14:5

#### Privilege, § 14:32

#### Professional negligence and standard of, care

- generally, § 14:53
- medical negligence cases, § 14:54

#### Reply or rebuttal, § 14:21

#### Report

- generally, § 14:23 to § 14:27
- admissibility, § 14:26, § 14:27
- generally, § 14:26
- where author report not available, § 14:27

#### formal requirements, § 14:25

#### what constitutes a written, § 14:24

#### Second hand, § 14:20

#### Specific types of expert evidence

- generally, § 14:33 to § 14:44
- animal-related evidence, § 14:43
- anthropological evidence, § 14:38
- construction evidence, § 14:40
- economic, financial or accounting, evidence, § 14:36
- engineering evidence, § 14:37
- handwriting, § 14:44
- historical evidence, § 14:39
- legal opinion evidence, § 14:35

## EXPERT/OPINION EVIDENCE

### —Cont'd

- Specific types of expert evidence—Cont'd
  - linguistic evidence, § 14:42
  - miscellaneous expert evidence, § 14:44
  - psychological or psychiatric evidence, § 14:34
  - real estate evidence, § 14:41
  - scientific and medical evidence, § 14:33
- Use in specific proceedings
  - generally, § 14:45 to § 14:54
  - administrative proceedings, § 14:57
  - class actions, § 14:46
  - constitutional cases, § 14:56
  - family law proceedings, § 14:47
  - personal injury actions, § 14:49 to § 14:52
    - accident related evidence, § 14:50
    - future care costs, § 14:52
    - future loss of income, § 14:51
    - medical evidence, § 14:49
    - sexual assault cases, § 14:48
    - summary judgment motions, § 14:45
- Weight of expert evidence, § 14:15 to § 14:18
  - generally, § 14:15
  - factors affecting weight, § 14:17
  - little/no weight accorded to opinion, § 14:18
  - weight versus admissibility, § 14:16

## HEARSAY EVIDENCE

- See also Exceptions to the, Hearsay Rule
- Admissibility versus weight, § 1:6, § 1:7
- Classification as hearsay, criteria for, § 16:3
- Conduct as hearsay, § 16:2
- General principles, § 16:1
- Newspaper articles as hearsay, § 17:43
- Non-hearsay
  - distinguished from hearsay, § 16:3
- Objections to admissibility, § 1:5
- Opinion evidence by non-expert as hearsay, § 17:1
- Principled approach, § 17:2
  - test for necessity, § 17:3 to § 17:13
  - test for reliability, § 17:14 to § 17:22
- Purpose of hearsay, § 16:3
- Reason for rule, § 16:3

## HOSTILE WITNESSES

- Generally, § 10:13

## IMMUNITY

- Witness, § 9:21

## IMPEACHING YOUR OWN WITNESS

- Common law
  - generally, § 10:1, § 10:3
  - adverse, meaning of, § 10:13
  - Alberta, § 10:5
  - British Columbia, § 10:4
  - Manitoba, § 10:7
  - New Brunswick, § 10:9
  - Newfoundland and Labrador, § 10:12
  - Nova Scotia, § 10:10
  - Ontario, § 10:8
  - Prince Edward Island, § 10:11
  - Saskatchewan, § 10:6
- Impeachment by cross-examination, § 11:4, § 11:5
  - generally, § 11:4
  - prior inconsistent statements, § 11:5
- Rules of court, § 10:2
- Statutory provisions, § 10:2

## INTERPRETERS

- Abuse by dishonest witness, § 8:3
- Adequacy of translation, § 8:5
- Charter right to, § 8:6
- Demeanour assessment difficult, § 8:3
- Discretion of trial judge, § 8:2
- Effect upon evidence, § 8:3
- Foreign official documents, § 8:7
- General principles, § 8:1
- Inaccurate translation, § 8:5
- Selection, § 8:4
- Test for employing, § 8:2

## JUDICIAL NOTICE

- Generally, § 5:1
- Effect of, § 5:11
- Examples of, § 5:12 to § 5:23
  - behaviour, § 5:15
  - business practices, § 5:18
  - culture, § 5:17
  - effects of alcohol and drugs, § 5:16
  - geography, § 5:13
  - history, § 5:12
  - information on government websites, § 5:21
  - language, § 5:19

**JUDICIAL NOTICE—Cont'd**

- Examples of, § 5:12 to § 5:23—Cont'd
  - miscellaneous, § 5:22, § 5:23
    - facts not properly the subject of, judicial notice numbered, § 5:23
    - facts properly the subject of, judicial notice, § 5:22
  - nature, § 5:14
  - science, § 5:14
  - social attitudes, § 5:15
  - technology, § 5:20
- Judicial notice of facts, § 5:10
  - sources of information, § 5:9
- Judicial notice of law, § 5:2 to § 5:5
  - building codes, § 5:5
  - by-laws, § 5:5
  - foreign jurisdictions, § 5:3
  - laws of the province, § 5:2
  - publication in Royal Gazette, § 5:4
- Legislative facts, § 5:7
- Statutory provisions, § 5:6

**LAYPERSONS**

- Opinion evidence by, see Expert/Opinion, Evidence

**LEADING QUESTIONS**

- Generally, § 9:8
- Exemptions to rule, § 9:10
- Rationale, § 9:9

**LEGAL ADVICE PRIVILEGE**

- See Privilege

**LITIGATION PRIVILEGE**

- See Privilege

**NECESSITY AND RELIABILITY TEST**

- Exception to hearsay, as, § 17:1

**NOTICE OF EVIDENCE**

- Generally, § 1:1

**OATH-HELPING EVIDENCE**

- Limited admissibility, § 1:3
- Prejudicial effect, § 1:5

**OPERATING MIND TEST**

- See Confessions

**PAROL EVIDENCE RULE**

- Generally, § 15:1
- Ambiguity and uncertainty, § 15:4
- Collateral agreements, § 15:2

**PAROL EVIDENCE RULE—Cont'd**

- Condition precedent, § 15:8
- Consideration, § 15:9
- Fraud, duress, misrepresentation, § 15:7
- Subsequent oral, § 15:3
- Surrounding circumstances, § 15:5
- Usage, customs, course of dealings, § 15:6

**PLEADINGS**

- Admissions
  - form of evidence, § 7:4
  - withdrawal, § 7:5
- Define issues, § 7:1
- Evidence not to be pleaded, § 7:3
- Material facts, § 7:1
- Parameters of evidence, § 7:2

**POLYGRAPH TESTS**

- Assessing credibility/reliability, § 1:8

**PREJUDICIAL EFFECT OF EVIDENCE**

- Generally, § 1:3
- Discretion to disallow, § 1:1
- Limited admissibility, § 1:2
- New/fresh evidence on appeal, § 1:11, § 1:12
- Objections to admissibility, § 1:5

**PRESUMPTIONS AND INFERENCES**

- Generally, § 4:1
- Adverse inference, § 4:21, 4:22
- Prima facie, § 4:2
  - prima facie case, § 4:3
  - prima facie evidence, § 4:4
- Specific types of presumptions
  - generally, § 4:5
  - death, § 4:16, § 4:17
    - presumption, § 4:16
    - rebutting the presumption, § 4:17
  - doctrine of spoliation, § 4:20
  - legitimacy, § 4:14, § 4:15
    - presumption, § 4:14
    - rebutting the presumption, § 4:15
  - marriage, § 4:12, § 4:13
    - presumption, § 4:12
    - rebutting the presumption, § 4:13
  - mental competence, § 4:6, § 4:7
    - presumption, § 4:6
    - rebutting the presumption, § 4:7



**PRESUMPTIONS AND INFERENCES**

**—Cont'd**

- Specific types of presumptions—Cont'd
  - regularity, § 4:18, § 4:19
    - presumption, § 4:18
    - rebutting the presumption, § 4:19
  - resulting trust/advancement, § 4:10, § 4:11
    - presumption, § 4:10
    - rebutting the presumption, § 4:11
  - testamentary competence, § 4:6, § 4:7
    - presumption, § 4:6
    - rebutting the presumption, § 4:7
  - undue influence, § 4:8, § 4:9
    - presumption, § 4:8
    - rebutting the presumption, § 4:9

**PRIOR CONSISTENT STATEMENTS**

- Generally, § 9:16
- Application of rule, § 9:17
- Exceptions to rule, § 9:18

**PRIOR INCONSISTENT STATEMENTS**

- Examination-in-chief, § 9:19
- Hearsay, as exceptions to, § 17:1

**PRIVILEGE**

- Absolute privilege, court proceedings, § 6:58
- Confidentiality order, § 6:75
- Counselling records, § 6:69 to § 6:72
- Court records, § 6:65
- Criminal investigations, § 6:64
- Crown brief, § 6:64
- Experts, § 14:32
- General principles, § 6:18
  - generally, § 6:40
  - use of word without prejudice, § 6:41
- Government information (ss. 37-39 Canada, Evidence Act), § 6:61
- Journalist and sources, § 6:67
- Litigation privilege
  - generally, § 6:49, § 6:54
  - expert reports, § 6:51, § 6:55
  - inadvertent disclosure, § 6:57
  - insurance cases, § 6:56
  - investigation of accident or incident, § 6:52
  - surveillance, § 6:53
  - used in earlier litigation, § 6:50
- Ministry files, § 6:66
- Parliamentary privilege, § 6:62

**PRIVILEGE—Cont'd**

- Physician and patients, § 6:73, § 6:74
- Police informer privilege, § 6:63
- Police records, § 6:64
- Privacy interests, § 6:68
- Professional governing bodies, records of, § 6:60
- Psychological records, § 6:69 to § 6:72
- Sealing order, § 6:75
- Solicitor-client privilege
  - generally, § 6:19 to § 6:33
  - bankruptcy proceedings, § 6:28
  - common interest and joint retainer, privilege, § 6:23
  - communications with third party, retained by solicitor, § 6:25
  - factual information, § 6:23
  - fraud or crime exception, § 6:33
  - government lawyers, § 6:26
  - law society investigations, § 6:31
  - lawyer's accounts, § 6:27
  - lawyer's brief or work product privilege, § 6:24
  - legislative abrogation of, § 6:32
  - non-privileged communications with solicitor, § 6:21
  - privilege distinguished from, confidentiality, § 6:20
  - real estate transactions, § 6:29
  - wills and estates matters, § 6:30
- Statutory privilege, § 6:59
- Waiver of solicitor-client privilege
  - generally, § 6:34 to § 6:39
  - actions not amounting to waiver, § 6:39
  - implied waiver of the privilege, § 6:36
  - inadvertent disclosure, § 6:38
  - where state of mind placed in issue, (reliance on legal advice, obtained), § 6:37
  - who may waive the privilege?, § 6:35
- Without prejudice
  - concluded settlement agreement, § 6:43
  - exceptions to the privilege, § 6:47
  - insurance cases, § 6:45
  - mediation, § 6:42
  - piercing the privilege, § 6:47
  - proceedings to enforce or interpret the agreement, § 6:44
  - settlement, § 6:40
  - subsequent court proceedings, § 6:46

**PRIVILEGE—Cont’d**

- Without prejudice—Cont’d
  - use of term without prejudice, § 6:41
  - waiver of privilege, § 6:48

**REAL OR PHYSICAL EVIDENCE**

- Generally, § 20.1
- Audio and Videotape Generally, § 20.2
- Seized following Charter violation, § 1.11
- Surreptitious Recordings in Family Law Cases, § 20.3
- Surveillance Video in Personal Injury Actions, § 20.4
- Use During Opening Address, § 20.6
- Viewing or Inspection by Trier of Fact, § 20.5

**REBUTTAL EVIDENCE**

- See Reply Evidence

**RE-EXAMINATION**

- Discussion with counsel prior to, § 12:1
- Further cross-examination, § 12:3
- General principles, § 12:1
- Purpose, § 12:1
- Scope, § 12:2
- When permissible, § 12:3

**RELEVANCE**

- See also Character Evidence;, Circumstantial Evidence; Similar Fact, Evidence
- Generally, § 2:1
- Appeals from relevance ruling, § 2:4
- Collateral evidence, § 2:3
- Legal relevance, § 2:2
- Logical relevance, § 2:2
- Similar fact evidence, § 2:5 to § 2:11
  - administrative cases, § 2:11
  - allegations of acts of dishonesty, § 2:9
  - allegations of negligence, § 2:10
  - allegations of sexual misconduct, § 2:8
  - general principle, § 2:5
  - prior discreditable conduct, § 2:6
  - risk of collusion, § 2:7

**REPLY EVIDENCE**

- Application of rule, § 13:2
- Countering surprise evidence, § 13:3
- Elastic approach to rule, § 13:2
- General principle, § 13:1, § 13:2
- Opinion evidence, § 13:2
- Rationale for rule, § 13:3

**REPLY EVIDENCE—Cont’d**

- When permissible, § 13:2

**RES GESTAE**

- See Exceptions to the, Hearsay Rule

**RULE IN BROWNE AND DUNN**

- Generally, § 11:6

**RULE IN HODGE’S CASE**

- Generally, § 2:13

**SIMILAR FACT EVIDENCE**

- Generally, § 2:12

**TRANSLATION**

- See Interpreters

**VIEWS**

- Opinion determining ultimate issue, § 14:4 to § 14:6
- Opinion usurping court’s function, § 14:4 to § 14:6

**VOIR DIRE**

- Practice and procedure, § 1:11
- Voluntariness of confession, § 1:11
- Waiver of, § 1:11
- When required, § 1:11

**WEIGHT OF EVIDENCE**

- Admissibility versus weight, § 1:6
- Assessing credibility/reliability of evidence, § 1:8
- Demeanour of witness, § 1:9
- Matters affecting weight, § 1:7

**WITNESSES**

- See also Expert/Opinion Evidence
- Cross-examination, see Cross-examination
- Examination-in-chief, see Examination-in-chief
- Exclusion of, § 9:20
- Impeaching own witness, § 10:2
  - see also, Impeaching Your Own Witness
- Leading questions
  - generally, § 9:8
  - exceptions, § 9:10
  - rationale for, § 9:9
  - trial judge may ask, § 9:20
- Manner of testimony, § 9:5
- Memory generally, § 9:12
- Oath-helping, § 9:11



## INDEX

### WITNESSES—Cont'd

Past recollection recorded, § **9:14**  
Present recollection revived, § **9:15**  
Prior consistent statements, § **9:16 to**  
    **§ 9:18**  
Prior inconsistent statements of own, wit-  
ness, § **9:19**

### WITNESSES—Cont'd

Subpoenas, § **9:2**  
Summons, § **9:2**  
Undertaking to call, § **9:3**  
Will-say statements, § **9:4**

