

Table of Contents

CHAPTER 1. IS IT EVIDENCE?

- § 1:1 Generally
- § 1:2 An Overview of the Law of Evidence
- § 1:3 Evidence Defined
- § 1:4 Testimony—Generally
- § 1:5 —Cross-Examination
- § 1:6 Real Evidence
- § 1:7 Direct Evidence and Circumstantial Evidence
- § 1:8 Documents
- § 1:9 “Scientific” Evidence
- § 1:10 “Premature” Evidence
- § 1:11 Jury Aids/Aids to the Court

CHAPTER 2. CAN IT BE ADDUCED?

I. INTRODUCTION

- § 2:1 Generally

II. COMPETENCY

- § 2:2 Introduction
- § 2:3 Spouses
- § 2:4 Children and the Mentally Impaired
- § 2:5 Judges, Jurors and Lawyers
- § 2:6 Regarding Third Party Records

III. COMPELLABILITY

- § 2:7 Introduction
- § 2:8 The Right to Silence of the Accused in a Criminal Prosecution
- § 2:9 The Subsequent Use of Incriminating Evidence
- § 2:10 Compellability Under s. 83.28 of the *Criminal Code* (Terrorism)
- § 2:11 The Spouse of an Accused in a Criminal Prosecution
- § 2:12 Complainants in Sexual Assault Prosecutions

CHAPTER 3. IS PROOF UNNECESSARY?

- § 3:1 Introduction

- § 3:2 Presumptions
- § 3:3 Judicial Notice—When Can Judicial Notice Be Taken?
- § 3:4 —What About “Historical” Facts?
- § 3:5 —Do *Charter* Cases Merit Particular Judicial Notice?
- § 3:6 Admissions
- § 3:7 —In Civil Cases
- § 3:8 —In Criminal Cases
- § 3:9 Legislative Facts, Social Facts, Social Context

CHAPTER 4. WHAT IS IT WORTH?

- § 4:1 Introduction
- § 4:2 Relevance
- § 4:3 Relevance, Threshold Relevance, Weight and Prejudice
- § 4:4 Admissibility and Weight in Opinion Evidence
- § 4:5 Materiality
- § 4:6 Evidential Burden
- § 4:7 Unreliable Witnesses
- § 4:8 Eyewitnesses

CHAPTER 5. SHOULD IT BE EXCLUDED?

I. INTRODUCTION

- § 5:1 Generally

II. HEARSAY

- § 5:2 What is Hearsay?
- § 5:3 The Traditional Applications of and Exceptions to the Hearsay Rule
- § 5:4 Creation of the Contemporary Rule
- § 5:5 A Concise Statement of the Contemporary Rule
- § 5:6 The Two Criteria: Reliability and Necessity
- § 5:7 Admissions of a Party
- § 5:8 Business Records
- § 5:9 Declarations Against Interest
- § 5:10 Dying Declarations
- § 5:11 Prior Identification
- § 5:12 Prior Testimony
- § 5:13 Prior Inconsistent Statements
- § 5:14 Public Documents
- § 5:15 Ancient Documents
- § 5:16 *Res Gestae* (Spontaneous Utterances)

TABLE OF CONTENTS

- § 5:17 State of Mind
- § 5:18 Statutory Modification of the Hearsay Rule

III. ORAL HISTORY

- § 5:19 A Special Case

IV. OPINION

- § 5:20 Generally
- § 5:21 Lay Opinion
- § 5:22 Expert Opinion
- § 5:23 Opinion on the Ultimate Issue
- § 5:24 The Basis for the Opinion

V. PRIVILEGE

- § 5:25 The General Principle
- § 5:26 Privilege Is Not Like Other Exclusionary Rules
- § 5:27 Privilege Belongs to the Client and Can Be Waived
By the Client
- § 5:28 Two Kinds of Privilege
- § 5:29 Onus of Establishing Privilege
- § 5:30 Is Privilege An All-Or-Nothing Proposition?
- § 5:31 What is the Procedure For Ascertaining Privilege In
Cases Where Partial Privilege May Be
Appropriate?
- § 5:32 Solicitor-Client
- § 5:33 Litigation Privilege
- § 5:34 Settlement Privilege
- § 5:35 Clergy
- § 5:36 Doctors, Counsellors, Journalists and Others

VI. SELF-SERVING EVIDENCE

- § 5:37 Generally
- § 5:38 Prior Consistent Statements and Exculpatory
Statements
- § 5:39 Exceptions That Allow Self-Serving Evidence
- § 5:40 —Recent Fabrication
- § 5:41 —Sexual Assault
- § 5:42 —Res Gestae
- § 5:43 Videorecorded Evidence of Children

VII. CONFESSIONS

- § 5:44 Confessions Generally

§ 5:45 Incriminating Statements and Young Offenders

VIII. ILLEGALLY OBTAINED EVIDENCE

§ 5:46 Generally

§ 5:47 Treatment Under the *Charter*

§ 5:48 Civil Litigation

IX. CHARACTER

§ 5:49 Generally

§ 5:50 Bad Character of Third Parties

§ 5:51 Evidence of Good Character

§ 5:52 Character Evidence in Civil Trials

§ 5:53 Character Evidence in Bail Hearings

X. CRIMINAL RECORD

§ 5:54 Generally

XI. SIMILAR FACT

§ 5:55 Introduction

§ 5:56 Overview

§ 5:57 Propensity

§ 5:58 Similar Fact Evidence Led by an Accused

§ 5:59 Similar Fact Evidence In Civil Cases

XII. PRIOR JUDICIAL DECISIONS

§ 5:60 Generally

XIII. PUBLIC INTEREST IMMUNITY

§ 5:61 Generally

§ 5:62 The Competing Values

§ 5:63 An “Immunity” Rather Than a “Privilege”

§ 5:64 The Courts as Final Arbiter

§ 5:65 Claims Based Upon Avoiding Disclosure of Police
Informant Identity

§ 5:66 Claims Based Upon Cabinet Confidentiality

§ 5:67 Relationship Between Common Law and Statute

XIV. BEST AND PAROL EVIDENCE RULES

§ 5:68 Best Evidence Rule

§ 5:69 Parol Evidence Rule

XV. PREJUDICIAL

§ 5:70 Generally

TABLE OF CONTENTS

XVI. THE RULE IN *BROWNE V. DUNN* (FAILURE TO CROSS-EXAMINE)

§ 5:71 Generally

XVII. CHARTER S. 24, FOREIGN-LANGUAGE DOCUMENTS, AND MOTIVES OF A LEGISLATIVE BODY

§ 5:72 *Charter S. 24*

§ 5:73 Foreign-Language Documents

§ 5:74 Motives of a Legislative Body

CHAPTER 6. IS THERE A PROBLEM WITH THE QUESTION ITSELF?

- § 6:1 Introduction
- § 6:2 Ambiguous or Vague
- § 6:3 Argumentative
- § 6:4 Assuming Facts Not in Evidence
- § 6:5 Badgering
- § 6:6 Compound
- § 6:7 Leading
- § 6:8 Personal Opinion of Counsel
- § 6:9 Putting the Onus on the Witness
- § 6:10 Re-examination Raising New Matters
- § 6:11 Rejection of Evidence in Prior Cases
- § 6:12 Repetitive
- § 6:13 Sexual History
- § 6:14 Speculative or Hypothetical
- § 6:15 Truthfulness of Other Witnesses
- § 6:16 Unsupported Allegation

CHAPTER 7. IS THERE A PROBLEM WITH THE QUESTIONER?

§ 7:1 The Role of the Judge

CHAPTER 8. IS IT TOO LATE TO INTRODUCE NEW EVIDENCE?

- § 8:1 Introduction
- § 8:2 Rebuttal Evidence
- § 8:3 Reopening a Case
- § 8:4 Fresh Evidence on Appeal

APPENDIX

Appendix A. *Canada Evidence Act*

Table of Cases
Index