
SUMMARY OF CONTENTS

PREFACE.....	III
TABLE OF CASES.....	XXIX
TABLE OF FEDERAL RULES OF EVIDENCE.....	LXIX
Prologue	1
Chapter 1. Relevancy and Related Problems.....	3
1. Introduction.....	3
2. Evident Virtue: Concepts and Procedures of the Logocratic Method.....	10
3. Relevancy: Additional Issues, Examples, and Methods of Analysis	24
4. Relevance and Prejudice	34
5. Sufficiency and Circumstantial Evidence	56
6. Probability and Statistical Evidence in Decisionmaking.....	73
7. Negative Inferences Based on Disbelief of Testimony	107
8. Preservation of Issues for Appeal	110
Chapter 2. Advanced Analysis of Reasoning About Evidence.....	119
1. From Enthymeme to Argument: Logocratic Method and the Virtues and Vices of Arguments	121
2. Summary of the Arguing Virtues	141
3. Defeasibility as a Strength-Virtue and Weakness-Vice in an Argument: Vital for Understanding Evidentiary Arguments.....	142
Chapter 3. Real Proof.....	147
1. Introduction.....	147
2. Conditions of Admissibility	150
3. Demeanor	171
4. Views	181
5. Demonstrations and Experiments.....	184
6. Reproductions of the Event and of Evidence of the Event.....	194
7. Blackboards, Maps, Models and the Like	225
8. Writings and Related Matters	229
Chapter 4. Testimonial Proof.....	287
1. Introduction: The Nature of Testimonial Proof.....	287
2. Competency	306
3. Preparation of Witnesses	369
4. Form of Examination.....	386
5. Credibility.....	440
Chapter 5. Hearsay	549
1. Introduction.....	549
2. Definition and Scope.....	561
3. Prior Statements of Witnesses.....	615
4. Former Testimony	651
5. Admissions	679
6. Declarations Against Interest.....	726

7. Business Entries and Public Records.....	756
8. Excited and Contemporaneous Utterances.....	798
9. Physical or Mental Condition of Declarant.....	821
10. Dying Declarations.....	860
11. Forfeiture by Wrongdoing.....	870
12. Miscellaneous Exceptions.....	884
13. Residual Exception.....	897
14. Constitutional Restraints: Crawford and Its Progeny.....	908
Chapter 6. Circumstantial Proof: Further Problems.....	965
1. Evidence of Other Crimes.....	965
2. Evidence of a Criminal Defendant's Reputation and Opinion Evidence of His Character; Evidence of Victim's Character.....	1047
3. Evidence of Reputation and Opinion of Character in Civil Cases.....	1085
4. Similar Occurrences.....	1091
5. Habit and Custom.....	1113
6. Repairs; Liability Insurance.....	1125
7. Compromises.....	1135
8. Forensic Argument.....	1148
Chapter 7. Expert Evidence.....	1155
1. The Nature and Function of Expert vs. Lay Evidence.....	1155
2. Cases and Issues Under Daubert.....	1176
3. Clarifications and Extensions of the Fed.R.Evid. 702 Framework After Daubert.....	1206
4. Application Areas for Expert Testimony Before and After Daubert.....	1220
5. Applications of Fed.R.Evid. 704: Opinion on an Ultimate Issue.....	1249
6. The Basis of Expert Testimony Under Fed.R.Evid. 703.....	1276
7. Court-Appointed Experts, Discovering Expert Opinion, Compelling Expert Testimony Before and After the Federal Rules of Evidence.....	1319
Chapter 8. Procedural Considerations.....	1337
1. Introduction: What Does the Court Know at the Start of Litigation?.....	1337
2. Burdens of Proof.....	1339
3. Presumptions and Related Subjects.....	1417
Chapter 9. Judicial Notice.....	1501
1. General Considerations.....	1501
2. Facts.....	1508
3. Law.....	1569
Chapter 10. Privileges.....	1575
1. Introduction.....	1575
2. Privilege Belonging to the Individual: The Privilege Against Self- Incrimination.....	1578
3. The Attorney-Client Privilege.....	1676
4. The Spousal Privileges.....	1773
5. The Physician-Patient, Psychotherapist-Patient and Similar Counselor- Client Privileges.....	1792
6. Other Relationship Privileges.....	1811

7. Institutional and Institutional Process Privileges 1824

8. Conflicts..... 1847

INDEX..... 1855

TABLE OF FEDERAL RULES OF EVIDENCE..... 1818

Prologue 1

Chapter 1. Relevancy and Related Problems..... 3

Introduction..... 3

A. The Relevancy Rules and Doctrines: Logical, Conditional, and Pragmatic Relevancy 4

Sprint v. Mendelsohn..... 5

 Notes..... 6

B. Reasoning with Relevancy Rules..... 7

 (1) Constructing a Chain of Inferences to Apply the Relevancy Rules..... 7

 (2) The Inferential Problems with Conditional Relevancy..... 9

Evident Virtue: Concepts and Procedures of the Logocratic Method..... 10

A. The Term ‘Logocratic’ and the Basic Utility of the Logocratic Method for the Evidence Analyst..... 10

B. Using *Knapp v. State* to Show the Logocratic Method at Work..... 11

Knapp v. State..... 12

C. What Exactly Is Evidence?..... 13

 (1) Opening Questions About the Nature of Evidence..... 13

 (2) Argument, and the Argument Conception of Evidence..... 14

D. Arguments and Rules in Their Natural (Non-Formal) Habitats: The Enthymemes..... 15

 (1) Rule Enthymemes in *Knapp*..... 16

 (2) -Argument-Enthymemes in *Knapp*, and its “Argumentation”..... 18

 (3) Enthymemes of Special Importance for Evidence Analysts: Evidentiary Enthymemes and *Underlying Evidential Claims*..... 19

Relevancy: Additional Issues, Examples, and Methods of analysis..... 24

People v. Adamson..... 24

Notes..... 27

Relevance and Prejudice..... 34

Roberts v. Whelan..... 34

Notes..... 35

State v. Poe..... 39

Notes..... 41

Old Chief v. United States..... 40

Notes..... 51

Sufficiency and Circumstantial Evidence..... 50

Notes on Disjunction of “Direct” from “Circumstantial” Evidence..... 56

Regan v. Outrecoxyk..... 57

Notes..... 60

State v. Brewer..... 67

Notes..... 69