



# The New Wigmore, A Treatise on Evidence: Expert Evidence

*David H. Kaye, David E. Bernstein, Jennifer L. Mnookin*

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*The New Wigmore: A Treatise on Evidence* is an authoritative guide with answers to evolving questions in **civil and criminal litigation**. The series presents the same quality of research, thought, and analysis as the original *Wigmore*, creating a genuine present-day counterpart to the seminal evidence treatise.

*Selected Rules of Limited Admissibility*, by David Leonard, provides a sophisticated framework for lawyers and judges to understand and apply the rules that exclude evidence for policy reasons. Included are extensive discussions of:

- The latest amendments to Federal Rule 408
- Party-oriented limited admissibility in criminal cases
- The types of agreements that qualify as “Mary Carter” agreements
- Evidence of nolo contendere pleas when the party who entered the plea brings a civil action based on the same event
- Admissibility of evidence of investigations conducted by a party
- Remedial measures taken before the event giving rise to the action or taken by a third party, or required by a government authority
- The use of limiting instructions and proper timing
- The use the doctrine of “detrimental reliance” to enforce a plea agreement the government seeks to abolish
- The admissibility of settlement agreements that, if not disclosed, might lead to distorted fact-finding
- The propriety of informing the jury that there has been a settlement of claims involving a part

*Evidentiary Privileges*, by Edward J. Imwinkelried, offers unique analysis of recent evidentiary problems including application of the **attorney-client privilege** to government agencies and corporate entities, and the difficulty of determining exactly who holds the privilege. In these two volumes, you’ll find also a practical framework for evaluating the existence or scope of new privileges, as well as coverage of issues like these:

- The common interest or joint defense privilege
- Skirmishes over the DOJ’s policies regarding corporate waiver of **attorney-client privilege**
- Privilege for mediation proceedings *Burns v. Commonwealth*, where the Virginia Supreme Court sharply limited the protection for confidential spousal communications
- The latest cases recognizing a constitutional right to informational privacy
- Protections for journalists and who qualifies
- The governmental **attorney-client privilege**
- The First Circuit decision holding that in certain circumstances, even when an individual corporate officer has a personal **attorney-client privilege** with corporate counsel, the corporation may unilaterally waive the privilege
- The latest cases on the waiver consequences of inadvertent production during pretrial discovery

*Expert Evidence*, by David H. Kaye, David E. Bernstein and Jennifer L. Mnookin, provides in depth coverage of the topics that lawyers and judges must know when dealing with expert testimony about medicine, engineering, psychology, economics, and forensic science, among other areas. It covers the topics common to all such testimony and focuses on scientific and statistical evidence, providing sophisticated and

up-to-date explanations and analyses of:

- The principles and policies underlying all the approaches to admitting scientific evidence, from the traditional relevance standard to the most restrictive interpretations of the Supreme Court's watershed opinion in *Daubert v. Merrell Dow Pharmaceuticals*.
- An in-depth look at the continuing importance and practical operation of the Frye standard.
- Qualifications for expert witnesses.
- Permissible subject matter and allowable bases for expert testimony.
- The learned treatise exception to the hearsay rule.
- The impact of evidence-based medicine and more rigorous legal standards for proof of causation in product liability and medical malpractice cases.
- The logic of statistical proof in both civil and criminal cases, including survey evidence, econometric proof, and Bayes' rule and the "prosecutor's fallacy" discussed by the Supreme Court in *McDaniel v. Brown*.
- The findings of the National Academy of Sciences on the limitations on forensic science evidence and the need to reform the system for producing this evidence.
- The range of permissible ways—both qualitative and quantitative—to present pattern and impression identification evidence of identity, such as fingerprints, handwriting exemplars, and ballistic and other toolmarks, so as to satisfy both scientific and legal precepts
- The type of opinions on mental states barred by Rule 704, and the interplay between Rule 703 and the Confrontation Clause.
- The future of the hearsay rule and Confrontation Clause as they apply to laboratory reports following the Crawford revolution and its development in *Melendez-Diaz v. Massachusetts*.

The latest volume, *Evidence of Other Misconduct and Similar Events*, by David P. Leonard, is a comprehensive, scholarly analysis of when evidence of crimes, wrongs, or acts other than those at issue in a trial may be admitted into evidence. The author analyzes the history of the prohibition on character evidence in England and the United States and the development of exceptions to the rule, discusses how courts should analyze questions of character evidence, and treats in detail the various exceptions such as motive, opportunity, preparation, plan, modus operandi, and identity.

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