

Evidence Handbook, (1994, Sydney: Law Book Company).

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Reviewed by Jeffrey S Kinsler* *

Mastering the law of evidence is difficult for the student and practitioner alike. The seemingly infinite evidence rules, each with its own intricacies, challenge even the most learned among us. Evidence combines centuries of common law and decades of state and Commonwealth legislation into a comprehensive and perplexing series of rules and exceptions. But even a complex lexicon like the law of evidence can be understood if the proper sources are used. The *Evidence Handbook* is one such source.

The *Evidence Handbook* is an excellent tool to aid students and practitioners in the study of the law of evidence, as it is both informative and well written. Used in conjunction with one of the leading casebooks or texts, the *Evidence Handbook* would make a fine supplemental text in any evidence or skills course. The *Evidence Handbook* contains a blend of materials rarely found in a such a concise package. Besides a succinct account of the substantive law of evidence, the *Evidence Handbook*, as described in detail below, provides the reader with a survey of Australia's adversarial system, practical advice on trial tactics and strategy, comparative legal analysis, recent innovations in the law, and just the right amount of critical legal scholarship. The authors have successfully combined these distinct subjects into a concise and comprehensive survey of the law of evidence. Considering the unique blend of substantive law, procedural law, practical advice and critical reasoning, this book is perfectly designed for small group instruction.

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about this forgery until after September?

W: I did say something.

Re-Examination

Plaintiff(P): The defence has suggested that your first statement about the forgery was made after you discovered that you were not getting anything from the deceased's will. Is that true? Is it the first time you said something?

W: No. I told my brother that Stephen told me that he had altered the will.

P: When did you do that?

W: Early in April.

P: Your Honour, we will call this witness' brother to substantiate this testimony.

Anyone who has struggled to explain complex evidentiary principles to students will find the testimonial examples in the *Evidence Handbook*, such as the one immediately above, extremely helpful. The law of evidence can be fully understood only in practical application. The testimonial examples are as close to practical application as many students will come in the classroom. As the final part of each chapter, the authors conclude with a series of review questions designed not only to test the reader's comprehension of the substantive law, but also to examine his or her ability to apply the rules to a realistic set of facts.

Besides its coherent format, the *Evidence Handbook* also contains useful comparative legal analysis, both interstate and international. Although the authors are from South Australia, the *Evidence Handbook* is written so that it can be used in any law school in Australia. The text strives to portray the law of evidence from a national perspective. Where

the state laws differ, however, the text illuminates the important distinctions. The same is true where the law of the Commonwealth differs from that of the states.

The *Evidence Handbook* also describes many of the differences in the evidence laws of Australia and Great Britain. This is especially true with regard to recent changes the British have made to the common law. For example, the authors do a fine job explaining the difference in the way the British and Australians handle inadvertent disclosure of privileged information. In addition to British law, the *Evidence Handbook* makes occasional reference to American law on issues yet to be resolved in Australia. The text also demonstrates, at least implicitly, the need to codify Australia's law of evidence.

Recent changes in the law, as well as technological innovations, receive more than adequate attention in the *Evidence Handbook*. The text explains the significance of important new decisions from the High Court such as *Pollitt v The Queen*.¹ The authors also do superb work in covering the evidentiary nuances of recent technological changes, especially those involving computer generated evidence. Alternative dispute resolution also receives a fair mention.

The *Evidence Handbook* contains more than the law of evidence. Chapter One of the book depicts the adversarial system, including an overview of civil procedure. Likewise, Chapter Six gives a brief survey of criminal procedure. Moreover, blended throughout the book are references to practical trial advice and strategy. For instance, in the chapter on burdens of proof, the authors do well explaining the difference between the "tactical burden" and the "evidentiary burden." Such a distinction is often overlooked in the classroom. The text also contains practice points often ignored in evidence books, such as the fact that privileged documents should not be used to refresh a witness' memory.

In the preface of the book, the authors acknowledge that their primary focus is on the practical aspects of the law of evidence, yet the text is not without critical analysis. Where appropriate, the authors have addressed gender and cultural differences in the law of evidence, especially in the

1 (1992) 66 ALJR 613.

area of sexual assault. Although not its principle mission, the *Evidence Handbook* does an adequate job dealing with social issues.

In summary, the *Evidence Handbook* is an invaluable tool to the student of evidence law. Used in conjunction with one or more of the leading casebooks or texts on evidence law, the *Evidence Handbook* will facilitate the learning and teaching of evidence law, especially in small group sessions. As a teacher of substantive and skills courses and as a former practitioner, I highly recommend the *Evidence Handbook* as a supplement text to be used in evidence or trial-level skills courses.