



# The Law of Evidence

By John Henry Wigmore

# Book summary & main ideas

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## Summary:

The Law of Evidence by John Henry Wigmore is a comprehensive guide to the rules of evidence in the United States. It covers the history of the law of evidence, the basic principles of evidence, the rules of evidence, and the application of the rules in practice. The book is divided into four parts. The first part covers the history of the law of evidence, including the development of the common law, the development of the rules of evidence, and the development of the federal rules of evidence. The second part covers the basic principles of evidence, including the relevancy of evidence, the burden of proof, and the admissibility of evidence. The third part covers the rules of evidence, including

the hearsay rule, the best evidence rule, the authentication rule, and the privilege rule. The fourth part covers the application of the rules of evidence in practice, including the use of expert testimony, the use of circumstantial evidence, and the use of documentary evidence. The book also includes a discussion of the various theories of evidence, such as the theory of relevance, the theory of probability, and the theory of proof. The book is an invaluable resource for anyone interested in the law of evidence.

Main ideas:

***#1. The Burden of Proof: The burden of proof is the obligation of a party to prove a disputed assertion or charge. It is the duty of the party who asserts a fact to prove it, and the burden of proof is on the party who makes the allegation.***

The burden of proof is an important concept in the law of evidence. It is the obligation of a party to prove a disputed assertion or charge. It is the duty of the party who asserts a fact to prove it, and the burden of proof is on the party who makes the allegation. This means that the party making the allegation must provide sufficient evidence to support their claim.

The burden of proof is an important factor in determining the outcome of a case. It is the responsibility of the party making the allegation to provide sufficient evidence to support their claim. If the party fails to do so, then the allegation will not be accepted as true. The burden of proof is also important in determining the credibility of a witness. If a witness fails to provide sufficient evidence to support their testimony, then their credibility may be questioned.

The burden of proof is an important concept in the law of evidence and it is essential that parties understand their obligations when making an allegation. It is the responsibility of the party making the allegation to provide sufficient evidence to support their claim. If the party fails to do so, then the allegation will not be accepted as true.

***#2. Relevancy: Relevancy is the logical connection between evidence and the facts in issue. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable.***

Relevancy is the logical connection between evidence and the facts in issue. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the

action more or less probable. Relevancy is an important concept in the law of evidence, as it determines which evidence is admissible in a court of law. Evidence must be relevant to the facts in issue in order to be considered by the court. Relevancy is determined by the judge, who must decide whether the evidence is relevant to the facts in issue and whether it should be admitted.

Relevancy is a key concept in the law of evidence, as it helps to ensure that only relevant evidence is presented in court. Relevancy is determined by the judge, who must decide whether the evidence is relevant to the facts in issue and whether it should be admitted. Relevancy is also important in the context of legal argument, as it helps to ensure that only relevant arguments are presented to the court. Relevancy is a fundamental principle of the law of evidence, and it is essential for

ensuring that only relevant evidence is presented in court.

**#3. *Hearsay: Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible because it is unreliable and lacks the opportunity for cross-examination.***

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. It is generally inadmissible in court because it is considered unreliable and lacks the opportunity for cross-examination. Hearsay is not considered a reliable form of evidence because it is not made under oath or subject to cross-examination. The person making the statement is not present in court to be questioned, and the statement is not made under the penalty of perjury. Therefore, the statement is not subject to

the same level of scrutiny as other forms of evidence.

The hearsay rule is based on the idea that the best evidence is direct evidence, which is evidence that is given by a witness who has personal knowledge of the facts.

Direct evidence is considered more reliable than hearsay because it is given under oath and is subject to cross-examination. Hearsay is not considered reliable because it is not given under oath and is not subject to cross-examination.

The hearsay rule is an important part of the law of evidence. It is designed to ensure that only reliable evidence is admitted in court. By excluding hearsay, the court is able to ensure that only evidence that is reliable and subject to cross-examination is admitted. This helps to ensure that justice is served and that



the truth is revealed.

***#4. Opinion Evidence: Opinion evidence is testimony by a witness as to his or her opinion of a fact in issue. Opinion evidence is generally inadmissible because it is not based on the witness's personal knowledge.***

Opinion evidence is testimony by a witness as to his or her opinion of a fact in issue. This type of evidence is generally inadmissible in court because it is not based on the witness's personal knowledge. Instead, it is based on the witness's subjective opinion, which is not considered reliable enough to be admitted as evidence. Opinion evidence can be used in certain circumstances, such as when a witness is an expert in a particular field and can provide an opinion based on their expertise. However, even in these cases, the opinion must be based on facts

that the witness has personally observed or has knowledge of.

Opinion evidence can be used to support a party's case, but it is not considered as reliable as other types of evidence. This is because opinion evidence is based on the witness's subjective opinion, which may be biased or inaccurate. Additionally, opinion evidence is not considered to be as probative as other types of evidence, such as direct or circumstantial evidence. Therefore, it is generally not given much weight in court.

In some cases, opinion evidence may be used to impeach a witness's credibility. This is when a witness's opinion is used to challenge the accuracy of their testimony. For example, if a witness gives testimony that is inconsistent with their opinion, the opposing party may use the opinion evidence to show that the witness is not

credible.

Overall, opinion evidence is generally inadmissible in court because it is not based on the witness's personal knowledge. However, in certain circumstances, opinion evidence may be used to support a party's case or to impeach a witness's credibility.

***#5. Character Evidence: Character evidence is evidence of a person's character or reputation. Character evidence is generally inadmissible because it is not relevant to the facts in issue.***

Character evidence is evidence of a person's character or reputation. It is generally inadmissible in court because it is not relevant to the facts in issue.

Character evidence is not considered reliable enough to be used as proof of a

person's guilt or innocence. Instead, it is used to show that a person's character or reputation is such that it is likely that they committed the crime in question. For example, if a person has a history of violence, it may be used to show that they are more likely to have committed a violent crime.

Character evidence is also used to show that a person is more likely to have acted in a certain way. For example, if a person has a history of being honest and trustworthy, it may be used to show that they are more likely to have acted honestly in a particular situation. Character evidence can also be used to show that a person is more likely to have acted in a certain way because of their character or reputation. For example, if a person has a reputation for being a liar, it may be used to show that they are more likely to have lied in a particular situation.

Character evidence is generally inadmissible because it is not relevant to the facts in issue. It is not considered reliable enough to be used as proof of a person's guilt or innocence. Instead, it is used to show that a person's character or reputation is such that it is likely that they committed the crime in question.

**#6. *Documentary Evidence:***  
***Documentary evidence is evidence that is contained in a document.***  
***Documentary evidence is generally admissible if it is relevant and authenticated.***

Documentary evidence is evidence that is contained in a document. This type of evidence can be used to prove a variety of facts in a legal proceeding. Documentary evidence can include written documents, photographs, audio recordings, video

recordings, and other types of records. Documentary evidence is generally admissible if it is relevant and authenticated. Authentication is the process of verifying that the document is genuine and that it is what it purports to be. Authentication can be done through a variety of methods, such as comparing the document to other documents, examining the document for signs of tampering, or having a witness testify as to the authenticity of the document.

In order for documentary evidence to be admissible, it must be relevant to the case. Relevance is determined by the judge or jury, who must decide whether the evidence is relevant to the facts of the case. If the evidence is deemed to be relevant, then it can be admitted into evidence. Documentary evidence can be used to prove a variety of facts, such as the identity of a person, the date of an

event, or the contents of a contract.

Documentary evidence can be a powerful tool in a legal proceeding. It can provide a clear and concise record of facts that can be used to prove or disprove a variety of claims. Documentary evidence can also be used to corroborate or refute the testimony of witnesses. In order for documentary evidence to be admissible, it must be relevant and authenticated. If the evidence is deemed to be relevant and authenticated, then it can be admitted into evidence.

**#7. *Demonstrative Evidence:***  
***Demonstrative evidence is evidence that is used to illustrate a point or to demonstrate a fact. Demonstrative evidence is generally admissible if it is relevant and authenticated.***

Demonstrative evidence is evidence that is

used to illustrate a point or to demonstrate a fact. It can be physical objects, photographs, diagrams, videos, or other visual aids that are used to help explain a concept or to demonstrate a point.

Demonstrative evidence is generally admissible if it is relevant and authenticated. It is important to note that demonstrative evidence is not considered to be direct evidence, as it does not directly prove or disprove a fact. Rather, it is used to help explain a concept or to provide context for a fact.

Demonstrative evidence can be used in a variety of ways. For example, it can be used to explain a complex concept or to demonstrate a point. It can also be used to help explain a witness's testimony or to provide visual evidence of a crime scene. In addition, it can be used to help explain a legal argument or to provide visual evidence of a contract or agreement.



When using demonstrative evidence, it is important to ensure that it is relevant and authenticated. Relevance means that the evidence must be related to the facts of the case. Authentication means that the evidence must be verified as being accurate and reliable. If the evidence is not relevant or authenticated, it may be excluded from the trial.

***#8. Real Evidence: Real evidence is evidence that consists of physical objects. Real evidence is generally admissible if it is relevant and authenticated.***

Real evidence is evidence that consists of physical objects. This type of evidence is often used in criminal cases, as it can provide tangible proof of a crime. Real evidence can include items such as weapons, clothing, documents, and other

objects that can be used to prove a point. Real evidence is generally admissible if it is relevant and authenticated.

Authentication is the process of verifying that the evidence is what it is claimed to be. This can be done through a variety of methods, such as comparing the evidence to known samples, or through expert testimony.

Real evidence can be very powerful in a court of law, as it can provide direct proof of a crime or other event. It can also be used to corroborate other types of evidence, such as witness testimony.

However, it is important to remember that real evidence can be subject to misinterpretation or manipulation, so it is important to ensure that it is properly authenticated and presented in a way that is fair and accurate.

## **#9.      *Direct Evidence: Direct evidence***

***is evidence that directly proves a fact in issue. Direct evidence is generally admissible if it is relevant and authenticated.***

Direct evidence is evidence that directly proves a fact in issue. This type of evidence is generally considered to be the most reliable and persuasive form of evidence. Direct evidence is typically admissible in court if it is relevant to the case and has been properly authenticated. Examples of direct evidence include eyewitness testimony, physical evidence, and documents.

Eyewitness testimony is considered to be direct evidence because it is a firsthand account of an event. Physical evidence is also direct evidence because it is a tangible object that can be used to prove a fact in issue. Documents are also considered to be direct evidence because

they are written records that can be used to prove a fact in issue.

Direct evidence is generally considered to be more reliable and persuasive than circumstantial evidence. This is because direct evidence is based on firsthand accounts or tangible objects, whereas circumstantial evidence is based on inferences and assumptions. Therefore, direct evidence is often given more weight in court than circumstantial evidence.

**#10. *Circumstantial Evidence:*  
*Circumstantial evidence is evidence that is used to infer a fact in issue. Circumstantial evidence is generally admissible if it is relevant and authenticated.***

Circumstantial evidence is evidence that is used to infer a fact in issue. It is evidence that does not directly prove the fact in

question, but instead provides circumstantial evidence that suggests the fact in question is true. Circumstantial evidence can be used to prove a wide variety of facts, including the identity of a person, the existence of a contract, or the cause of an injury.

Circumstantial evidence is generally admissible if it is relevant and authenticated. Relevancy means that the evidence must be related to the fact in question. Authentication means that the evidence must be authenticated by a witness or other reliable source. In addition, the evidence must be reliable and trustworthy.

The Law of Evidence by John Henry Wigmore provides an in-depth look at the use of circumstantial evidence in the courtroom. It explains the different types of circumstantial evidence, how it is used,

and how it is evaluated by the court. It also provides guidance on how to present circumstantial evidence in a persuasive manner.

**#11. *Impeachment: Impeachment is the process of attacking the credibility of a witness. Impeachment is generally allowed if the witness has made a statement that is inconsistent with his or her prior testimony.***

Impeachment is the process of attacking the credibility of a witness. It is a tool used by attorneys to challenge the truthfulness of a witness's testimony. Impeachment is generally allowed if the witness has made a statement that is inconsistent with his or her prior testimony. This inconsistency can be used to cast doubt on the witness's credibility and the accuracy of their testimony. Impeachment can also be used to challenge the witness's qualifications or

expertise, or to introduce evidence that the witness has a bias or prejudice that could affect their testimony.

Impeachment is a powerful tool that can be used to discredit a witness and weaken their testimony. It is important for attorneys to understand the rules of impeachment and how to effectively use it in court.

Impeachment can be used to challenge the accuracy of a witness's testimony, as well as their qualifications and credibility. It is important to remember that impeachment is not a substitute for a thorough cross-examination, and should only be used when necessary.

**#12. Privileges: Privileges are legal rules that protect certain communications from disclosure. Privileges are generally inadmissible because they are not relevant to the facts in issue.**

Privileges are legal rules that protect certain communications from disclosure. They are based on the idea that certain relationships between people should be kept confidential, and that the public interest in protecting these relationships outweighs the public interest in obtaining the truth. Privileges are generally inadmissible because they are not relevant to the facts in issue. For example, the attorney-client privilege prevents a lawyer from disclosing confidential communications between the lawyer and the client. Similarly, the spousal privilege prevents a spouse from testifying against the other spouse in a criminal trial.

The purpose of privileges is to protect the privacy of individuals and to encourage open communication between parties. Privileges also serve to protect the public interest by ensuring that certain relationships remain confidential. For



example, the attorney-client privilege encourages clients to be open and honest with their lawyers, which helps to ensure that the lawyer can provide effective legal advice. Similarly, the spousal privilege encourages spouses to be open and honest with each other, which helps to ensure that the marriage remains strong.

In addition to protecting the privacy of individuals, privileges also serve to protect the public interest by ensuring that certain relationships remain confidential. For example, the attorney-client privilege helps to ensure that lawyers are able to provide effective legal advice without fear of disclosure. Similarly, the spousal privilege helps to ensure that spouses are able to communicate openly and honestly without fear of disclosure.

***#13. Judicial Notice: Judicial notice is the process of taking judicial notice***

***of a fact without requiring proof.  
Judicial notice is generally allowed if  
the fact is not subject to reasonable  
dispute.***

Judicial notice is a concept in the law of evidence that allows a court to recognize certain facts without requiring proof from either party. This is done when the fact is so well-known or indisputable that it would be a waste of time to require proof. For example, a court may take judicial notice of the fact that the sun rises in the east and sets in the west.

In order for a court to take judicial notice of a fact, it must be one that is not subject to reasonable dispute. This means that the fact must be so widely accepted that it is beyond dispute. For example, a court may take judicial notice of the fact that the United States is a democracy, but it would not take judicial notice of the fact that a

particular political party is the most popular in the country.

Judicial notice is an important concept in the law of evidence because it allows courts to recognize facts without requiring proof from either party. This helps to streamline the legal process and ensure that the court is able to make decisions based on the most accurate information available.

**#14. Presumptions: Presumptions are legal rules that allow a fact to be inferred from another fact.**

**Presumptions are generally allowed if the fact is not subject to reasonable dispute.**

Presumptions are legal rules that allow a fact to be inferred from another fact.

Presumptions are generally allowed if the fact is not subject to reasonable dispute.

For example, a presumption of regularity may be applied to official acts, such as the presumption that a public officer has properly performed his or her duties. Similarly, a presumption of innocence may be applied to criminal proceedings, such that the accused is presumed to be innocent until proven guilty.

Presumptions are also used to fill gaps in the evidence. For example, a presumption of survivorship may be applied to determine the ownership of property when two people die at the same time. In this case, the presumption is that the property belongs to the survivor, even though there is no direct evidence of who survived.

Presumptions can also be used to establish a legal standard. For example, a presumption of negligence may be applied to a defendant in a civil case, such that the defendant is presumed to be negligent

unless he or she can prove otherwise.

Presumptions are an important part of the law of evidence, as they allow the court to draw reasonable inferences from the facts presented. However, presumptions are not absolute, and can be rebutted by evidence to the contrary.

***#15. Best Evidence Rule: The best evidence rule is a rule that requires the best available evidence to be presented in court. The best evidence rule is generally inadmissible because it is not relevant to the facts in issue.***

The Best Evidence Rule is a legal principle that requires the best available evidence to be presented in court. This rule is based on the idea that the best evidence is the most reliable and accurate evidence available. The rule is generally inadmissible because it is not relevant to

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***#16. Authentication: Authentication is the process of proving that a document is genuine. Authentication is generally allowed if the document is relevant and authenticated.***

Authentication is the process of proving that a document is genuine. Authentication is an important part of the law of evidence, as it helps to ensure that the document presented in court is reliable and trustworthy. Authentication is generally allowed if the document is relevant and authenticated. Authentication involves

verifying the identity of the author of the document, as well as verifying the accuracy of the documents contents. Authentication can be done through a variety of methods, such as comparing the document to other documents, examining the document for signs of tampering, or using a witness to testify to the authenticity of the document. Authentication is an important part of the legal process, as it helps to ensure that the evidence presented in court is reliable and trustworthy.

**#17. Admissibility: Admissibility is the process of determining whether evidence is relevant and reliable. Admissibility is generally determined by the judge based on the facts of the case.**

Admissibility is an important concept in the law of evidence. It is the process of

determining whether evidence is relevant and reliable enough to be admitted in a court of law. The judge is responsible for making the determination of admissibility, based on the facts of the case. Generally, evidence must be relevant to the case and must be reliable in order to be admitted. Relevance is determined by whether the evidence has a tendency to prove or disprove a fact in issue. Reliability is determined by whether the evidence is trustworthy and credible.

The admissibility of evidence is a crucial part of the legal process. It ensures that only relevant and reliable evidence is presented in court. This helps to ensure that justice is served and that the truth is revealed. Without admissibility, evidence could be presented that is not relevant or reliable, which could lead to an unfair outcome. Therefore, it is important that the judge carefully consider the admissibility of



evidence before allowing it to be presented in court.

**#18. *Exclusionary Rule: The exclusionary rule is a rule that prohibits the admission of evidence that was obtained in violation of the law. The exclusionary rule is generally inadmissible because it is not relevant to the facts in issue.***

The exclusionary rule is a fundamental principle of criminal law that prohibits the admission of evidence obtained in violation of the law. This rule is based on the idea that evidence obtained in violation of the law is not reliable and should not be used to determine the guilt or innocence of a defendant. The exclusionary rule is designed to protect the rights of individuals and to ensure that the government does not use illegally obtained evidence to convict individuals of crimes.

The exclusionary rule applies to all types of evidence, including physical evidence, documents, and statements. The rule applies to evidence obtained in violation of the Fourth Amendment, which protects individuals from unreasonable searches and seizures. It also applies to evidence obtained in violation of the Fifth Amendment, which protects individuals from self-incrimination. The exclusionary rule also applies to evidence obtained in violation of other constitutional rights, such as the right to counsel.

The exclusionary rule is an important part of the criminal justice system. It ensures that the government does not use illegally obtained evidence to convict individuals of crimes. It also serves as a deterrent to law enforcement officers who may be tempted to violate the law in order to obtain evidence. The exclusionary rule is an

important part of the criminal justice system and should be respected and enforced.

***#19. Burden of Production: The burden of production is the obligation of a party to produce evidence in support of its case. The burden of production is generally on the party who makes the allegation.***

The burden of production is an important concept in the law of evidence. It is the obligation of a party to produce evidence in support of its case. Generally, the burden of production is on the party who makes the allegation. This means that the party must provide evidence to prove the truth of their claim. If the party fails to do so, then the claim may be dismissed.

The burden of production is an important part of the legal process. It ensures that

parties are held accountable for their claims and that the truth is revealed. It also helps to ensure that the legal process is fair and that all parties are given a chance to present their case. The burden of production is an important part of the legal system and should be taken seriously by all parties involved.

***#20. Burden of Persuasion: The burden of persuasion is the obligation of a party to persuade the trier of fact that its case is more likely true than not true. The burden of persuasion is generally on the party who makes the allegation.***

The burden of persuasion is an important concept in the law of evidence. It is the obligation of a party to persuade the trier of fact that its case is more likely true than not true. This burden is generally placed on the party who makes the allegation. For

example, in a criminal trial, the prosecution has the burden of persuasion to prove the defendant's guilt beyond a reasonable doubt. In a civil trial, the plaintiff has the burden of persuasion to prove the defendant's liability by a preponderance of the evidence.

The burden of persuasion is distinct from the burden of production. The burden of production is the obligation of a party to present evidence in support of its case. This burden is generally placed on the party who has the burden of persuasion. For example, in a criminal trial, the prosecution has the burden of production to present evidence of the defendant's guilt. In a civil trial, the plaintiff has the burden of production to present evidence of the defendant's liability.

The burden of persuasion is an important concept in the law of evidence. It is the

obligation of a party to persuade the trier of fact that its case is more likely true than not true. This burden is generally placed on the party who makes the allegation. It is important to note that the burden of persuasion is distinct from the burden of production. The burden of production is the obligation of a party to present evidence in support of its case. This burden is generally placed on the party who has the burden of persuasion.

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