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QUESTIONS & ANSWERS:
EVIDENCE

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QUESTIONS & ANSWERS: EVIDENCE

Multiple-Choice and Short-Answer Questions and Answers

THIRD EDITION

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MATTHEW BENDER

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PREFACE

The law of evidence is complex, but if you work hard at it, you can develop an understanding of the individual rules and of the way the rules interact to form a coherent system. The key to learning evidence law is to ask several questions about each problem:

(1) What is the questioned evidence? (This is a very important step; isolating the exact evidence at issue often provides clues to the rules that must be satisfied for the evidence to be admissible.)

(2) What is the evidence offered to prove?

(3) Is the evidence relevant when offered for that purpose?

(4) If the evidence is relevant, are there any other rules of evidence that might require its exclusion?

These simple steps will always get you off to a good start. You can also develop a series of more specific questions for each area of evidence law. For example, if you suspect that the problem might deal with witness impeachment, here are the questions you should ask after you have answered those listed above:

(1) Is the offered to impeach or support the credibility of a witness?

(2) If the evidence is offered to impeach or support a witness's credibility, what method of impeachment is involved? (Among many possibilities: Is this impeachment by contradiction? Is it impeachment by showing a bad character for truthfulness? Is it impeachment by showing that the witness did not have a good opportunity to observe the event about which she has testified, or by showing that her capacity to observe, remember, or narrate is impaired?)

(3) Are there any specific rules that govern the use of the evidence for that method of impeachment? If so, have those rules been followed? To determine whether the rules have been followed, ask:

(a) Is the evidence admissible only after the opponent has offered evidence to the contrary?

(b) Are there limits on the form the evidence may take?

(4) If there are no rules that specifically govern this method of impeachment, would admission of the evidence violate any other rules, such as FRE 403?

(5) Do any foundational requirements apply, such as giving the witness an opportunity to explain or deny the statement or showing the evidence to the witness, apply? If so, have those rules been followed?

If you work methodically through each problem, and if you *read the rules* with care, you will succeed.

Though the explanations in this book contain a good deal of information you will find useful, the purpose of this book is not to teach you the rules of evidence. The book's main purposes are to test what you have learned from reading your primary course materials and from the classroom, to broaden your understanding of that material, and to help you to see where you might need to devote additional study time. In this book, you will find questions and answers in sixteen main subject areas that correspond to the basic topics you are likely to cover in an evidence course. There is also a practice final exam that tests your knowledge of rules from most of these subject areas. The practice final also contains questions that require you to apply two or more different rules. Though the book is organized in roughly the same way as some of the popular texts, it will work for you even if your class covers the material in a different order.

The problems in this book are based almost entirely on the Federal Rules of Evidence. The Federal Rules have been extremely influential in the development of state evidence codes, and where there are differences between federal practice and the law of particular states, those differences are usually quite easy to learn once you have mastered the Federal Rules. Because the Multistate Bar Examination tests federal evidence law, you need to learn the Federal Rules in any event. Throughout the book, "Federal Rules of Evidence" is abbreviated "FRE."

One final thought: Take the time to answer every question as carefully as possible. If the question calls for a short answer, write out the entire answer. It is easy to look at a problem, think briefly about how you would answer the question, and then read the answer printed in the book. Try to avoid this shortcut. It is a much better test of your understanding, and much more beneficial to the learning process, for you to write out an answer to each short answer question before you look at the response printed in the book.

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