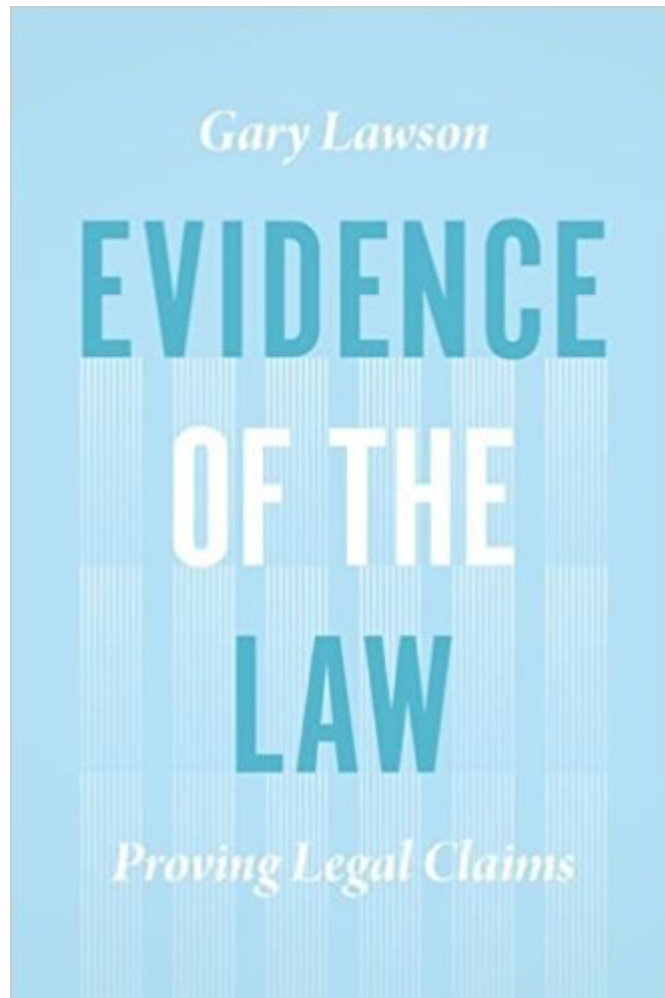




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Evidence Of The Law: Proving Legal Claims



Synopsis

How does one prove the law? If your neighbor breaks your window, the law regulates how you can show your claim to be true or false; but how do you prove that in breaking your window your neighbor has broken the law? American jurisprudence devotes an elaborate body of doctrineâand an equally elaborate body of accompanying scholarly commentaryâto worrying about how to prove facts. It establishes rules for the admissibility of evidence, creates varying standards of proof, and assigns burdens of proof that determine who wins or loses when the facts are unclear. But the law is shockingly inexplicit when addressing these issues with respect to the proof of legal claims. Indeed, the entire language of evidentiary proof, so sophisticated when it comes to questions of fact, is largely absent from the American legal system with respect to questions of law. As Gary Lawson shows, legal claims are inherently objects of proof, and whether or not the law acknowledges the point openly, proof of legal claims is just a special case of the more general norms governing proof of any claim. As a result, similar principles of evidentiary admissibility, standards of proof, and burdens of proof operate, and must operate, in the background of claims about the law. This book brings these evidentiary principles for proving law out of the shadows so that they can be analyzed, clarified, and discussed. Viewing legal problems through this lens of proof illuminates debates about everything from constitutional interpretation to the role of stipulations in litigation. Rather than prescribe resolutions to any of those debates, *Evidence of the Law* instead provides a set of tools that can be used to make those debates more fruitful, whatever oneâs substantive views may be. As lawyers, judges, and legal subjects confront uncertainty about what the law is, they can, should, and must, Lawson argues, be guided by the same kinds of abstract considerations, structures, and doctrines long used to make determinations about questions of fact.

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â œEvidence of the Law illuminates how many of the issues that are treated explicitly for factual disputes (for example, admissibility rules and burdens and standards of proof) are also present in disputes about questions of lawâ however, they are typically presupposed or left implicit in legal doctrine, reasoning, and decision making. Those who specialize in any doctrinal area of law will see how these epistemological issues apply in their domains, and those who specialize in areas of evidence, proof, and procedure will see ways in which their conceptual tools may have broader applicability throughout the law. This is a book that should be read by every law professor, and probably every judge and litigator, as well.â • (Michael S. Pardo, University of Alabama School of Law coauthor of "Minds, Brains, and Law: The Conceptual Foundations of Law and Neuroscience")â œTwenty years ago, Lawson wrote an extremely good and potentially highly influential article titled 'Proving the Law.' As lawyers and judges and legal subjects confront uncertainty about what the law is, they can and should, Lawson argued, be guided by the same kinds of considerations and structures and doctrines long used to make determinations about uncertain questions of fact. This idea is novel, important, and right, but it has not penetrated legal thought nearly as much as it should have. Adding detail, applications, embellishments, and implementation to the idea, Evidence of the Law will increase the influence and visibility and usefulness of Lawsonâ s important argument.â • (Frederick Schauer, University of Virginia School of Law author of "Thinking Like a Lawyer" and "The Force of Law")â œThis is a very, very good book. Evidence of the Law is original, smart, careful, and extremely well-written, and makes a genuinely valuable contribution on a topic of major significance to virtually every field of law. It strikes just the right balance between high theory and the discussion of real-world legal examples and practical problems; between backward-looking analysis and forward-looking suggestions; and between seriousness and lighthearted humor. As Lawson says in his conclusion, â This book was not written in order to argue. It was written in order to help start a conversation. I believe that there is value in talking about evidence of the law. What say you?â â  Speaking for myself, I will be delighted to join that conversation.â • (Joseph L. Hoffmann, Indiana University Maurer School of Law)

Gary Lawson is the Philip S. Beck Professor at the Boston University School of Law. He is coauthor

of The Origins of the Necessary and Proper Clause and The Constitution of Empire: Territorial Expansion and American Legal History and the author of seven editions of Federal Administrative Law. He lives in Acton, MA.

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