

# New York Evidence (Book Review)

Robert L. Callahan

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

Callahan, Robert L. (1960) "New York Evidence (Book Review)," *St. John's Law Review*: Vol. 34 : No. 2 , Article 27.  
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol34/iss2/27>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

provision for a permanent professional staff for the continuous re-examination of the practice provisions and for the formulation of proposals for their improvement. If the product of the staff work has merit, it will readily win approval, whether the power of ultimate decision is vested in the legislature or in a body of judges. I am happy to see that the Advisory Committee's report contemplates a process of continuous re-examination by a professional staff. Professor Prashker's own career is a demonstration of the prime importance of continuous study by experts. He initiated many far-sighted and useful reforms which have been incorporated into our practice, in some instances by action of the legislature and in other instances by action of the courts.

A professional colleague of Professor Prashker has recently pronounced this judgment: "This book is undoubtedly the best short work in the field and a fitting tribute to the man who contributed so much to procedure and procedural reform in this state."<sup>9</sup> I concur.

PHILIP HALPERN.\*



NEW YORK EVIDENCE. By Edith L. Fisch. New York: Lond Publications, 1959. Pp. 678. \$15.00.

Anyone who undertakes to turn out a complete work on the law of evidence within the confines of a single volume assumes a monumental burden. The author of *Fisch on New York Evidence* has borne that burden remarkably well.

In 581 pages of text, the author has dealt with most of the rules of evidence and their exceptions normally found in more pretentious works on the subject. Nor is the work a mere cursory treatment of the subject matter in outline form. The author has presented the various rules of evidence as they apply in New York, has traced their growth and development and has analyzed and evaluated them.

The order of treatment of the various rules appears to be somewhat novel and unique, but this does not detract from the value of the work which contains a critical analysis of the basic problems posed by the law of evidence. Instead, it demonstrates that the author has exercised a high degree of discrimination in the choice of subject matter for discussion.

---

<sup>9</sup> Peterfreund, *Civil Practice*, 34 N.Y.U.L. REV. 1563, 1564 (1959).

\* Associate Justice of the Appellate Division, Fourth Department, New York State Supreme Court.

The style adopted by the author makes this book extremely readable and understandable.

The busy New York practitioner will find in this volume an invaluable aid to preparation for trial. Diligent research by the author is reflected in the voluminous citations contained in the footnotes and, if there is a New York decision on the particular subject, it will in all probability be found therein. In those instances where no New York decision is available, the author has been able to come up with a decision from some other jurisdiction.

The author has not, however, contented herself with an analysis and evaluation of the rules of evidence which is her declared objective. She has gone further and made sweeping recommendations for the abolition of certain of the rules of privilege, notably the privilege against self-incrimination and the privilege against disclosure of confidential communications between husband and wife. These rules of privilege are so fundamental and have so long existed that they should not be swept aside without compelling reason. The reasons advanced by the author do not seem to justify so substantial a change in these fundamental rules of evidence.

At first blush, it would appear that this text would be of questionable value for use in the classroom because of its general limitation to a discussion of the law of New York which, in many important instances, is contrary to the general rule. A close examination of the subject matter, however, demonstrates that in every instance where this is so, the author has painstakingly pointed out the conflict.

Apparently, it is the intention of the author to supplement this volume in the future since various sections are reserved for future use.

This is an excellent feature and should serve to recommend the book to the lawyer who is primarily interested in finding the law of New York and finding it quickly, for with this treatise, the New York lawyer will be furnished with a ready, current and useful guide.

This book will be a valuable adjunct to the practicing lawyer's library and should take its place along with the other recognized texts on the subject.

ROBERT L. CALLAHAN.\*

---

\* Professor of Law, St. John's University School of Law.