

#### EVIDENTIAL LEGAL REASONING

This book offers a transnational perspective of evidentiary problems, drawing on insights from different systems and legal traditions. It avoids the isolated manner of analyzing evidence and proof within each Common Law and Civil Law tradition. Instead, it features contributions from leading authors in the evidentiary field from a variety of jurisdictions and offers an overview of essential topics that are of both theoretical and practical interest. The collection examines evidence not only as a transnational field, but in a cross-disciplinary context. Each chapter engages with the interdisciplinary themes cutting through the issues discussed, benefiting from the expertise and experience of their diverse authors.

Jordi Ferrer-Beltrán is full professor of Legal Philosophy and director of the Chair of Legal Culture at the University of Girona. He is co-editor of Quaestio Facti, International Journal on Evidential Legal Reasoning and member of the International Association of Procedural Law and of the Council of the International Association of Evidence Science.

Carmen Vázquez is Associate Professor of Legal Philosophy at the University of Girona. She is \_academic coordinator of the Master's Degree on Evidentiary Reasoning at the University of Girona and the Università degli Studi di Genova. She is a member of the editing committee of Quaestio Facti, International Journal on Evidential Legal Reasoning. Member of the Council of the International Association of Evidence Science.





## Evidential Legal Reasoning

# CROSSING CIVIL LAW AND COMMON LAW TRADITIONS

Edited by

## JORDI FERRER BELTRÁN

University of Girona

### CARMEN VÁZQUEZ

University of Girona





#### CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781316516997

DOI: 10.1017/9781009032049

© Cambridge University Press 2022

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2022

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: World Congress on Evidential Legal Reasoning (1st : 2018 : Universitat de Girona) | Ferrer Beltrań, Jordi, editor. | Vázquez Rojas, Carmen, editor.

TITLE: Evidential legal reasoning: crossing civil law and common law traditions / edited by Jordi Ferrer Beltrán, Universitat de Girona; Carmen Vázquez, Universitat de Girona. DESCRIPTION: Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2020. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2021041366 (print) | LCCN 2021041367 (ebook) | ISBN 9781316516997 (hardback) | ISBN 9781009032049 (ebook)

SUBJECTS: LCSH: Evidence (Law) – Congresses. | LCGFT: Conference papers and proceedings.

CLASSIFICATION: LCC K2261.A6 W67 2018 (print) | LCC K2261.A6 (ebook) | DDC 347/.06–dc23/eng/20220208

LC record available at https://lccn.loc.gov/2021041366

LC ebook record available at https://lccn.loc.gov/2021041367

ISBN 978-1-316-51699-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



#### Contents

List of Figures	page viii
List of Tables	ix
List of Contributors	X
Introduction	
Jordi Ferrer Beltrán and Carmen Vázquez	1
PART I EVIDENCE AS AN AREA OF KNOWLEDGE	11
1 Evidence as a Multidisciplinary Field: What Do the Law and the Discipline of Law Have to Offer?	
William Twining	13
2 New Directions for Evidence Science, Complex Adaptative Systems, and a Possibly Unprovable Hypothesis About	
Human Flourishing	
Ronald J. Allen	34
PART II CONVERGENCES BETWEEN SYSTEMS	51
3 The Transformation of Chinese Evidence Theories and System: From Objectivity to Relevancy	
Baosheng Zhang and Ping Yang	53
4 Truth Finding and the Mirage of Inquisitorial Process	
Adrian A. S. Zuckerman	71

V



vi Contents

5	Evidential Remedies for Procedural Rights Violations: Comparative Criminal Evidence Law and Empirical Research Sarah Summers	84
6	Common Law Evidence and the Common Law of Human Rights: Towards a Harmonic Convergence?	
	John Jackson	98
	PART III ON EVIDENTIAL INFERENCES	123
7	Group Deliberative Virtues and Legal Epistemology Amalia Amaya	125
8	On Probatory Ostension and Inference Giovanni Tuzet	138
9	Inferences in Judicial Decisions About Facts Michele Taruffo	159
10	Silence as Evidence Hock Lai Ho	171
11	Sanctions for Acts or Sanctions for Actors? Frederick Schauer	198
	PART IV EXPERT EVIDENCE	215
12	From Institutional to Epistemic Authority: Rethinking Court Appointed Experts	
	Carmen Vázquez	217
13	Latent Justice: Fingerprint Evidence and the Limits of Adversarialism in England, Australia and New Zealand <i>Cary Edmond</i>	248
14	Prevention and Education: The Path towards Better Forensic Science Evidence Marina Gascón Abellán	206
		296
15	Evidentiary Practices and Risks of Wrongful Conviction: An Empirical Perspective	
	Mauricio Duce I	222



	Contents	vii
	PART V STANDARDS OF EVIDENCE AS DECISION-MAKING RULES	359
16	Burdens of Proof and Choice of Law Dale A. Nance	361
17	Is It Possible to Formulate a Precise and Objective Standard of Proof? Some Questions Based on an Argumentative Approach to Evidence Daniel González Lagier	375
18	Prolegomena to a Theory of Standards of Proof: The Test Case for State Liability for Undue Pre-trial Detention Jordi Ferrer Beltrán	395
Inde	ex	<del>42</del> 7



## Figures

3.1	Generalisation used in the judgment made by the Court	
	of First Instance in the case of Nian	page 60
5.1	Presence of counsel at trial	88
5.2	Extent of legal aid provision by the court	89
5.3	Extent of legal aid provision according to the charge	89
5.4	First contact with the accused (according to counsel)	90
5.5	Type of evidence referred to in the oral verdict in convicting	
	the accused	01



#### Tables

3.1	The Number of Criminal Judgments Containing the Word	
	'Relevance' during the Period from 1979 to 2017	page 65
5.1	Fair trial violations raised or observed	90
5.2	Violation of right to counsel raised or observed at trial	92



#### Contributors

RONALD J. ALLEN, Northwestern University

Amalia Amaya, National Autonomous University of Mexico and University of Edinburgh

MAURICIO DUCE, Diego Portales University

GARY EDMOND, University of New South Wales

JORDI FERRER BELTRÁN, University of Girona

MARINA GASCÓN ABELLÁN, University of Castilla La Mancha

DANIEL GONZÁLEZ LAGIER, University of Alicante

HOCK LAI Ho, National University of Singapore

JOHN JACKSON, University of Nottingham

DALE NANCE, Case Western Reserve University

FREDERICK SCHAUER, University of Virginia

SARAH SUMMERS, University of Zurich

MICHELE TARUFFO, University of Girona

GIOVANNNI TUZET, Bocconi University

WILLIAM TWINING, University College London

CARMEN VÁZQUEZ, University of Girona

PING YANG, China Academy of Discipline Inspection and Supervision

BAOSHENG ZHANG, China University of Political Science and Law

ADRIAN A. S. ZUCKERMAN, University of Oxford