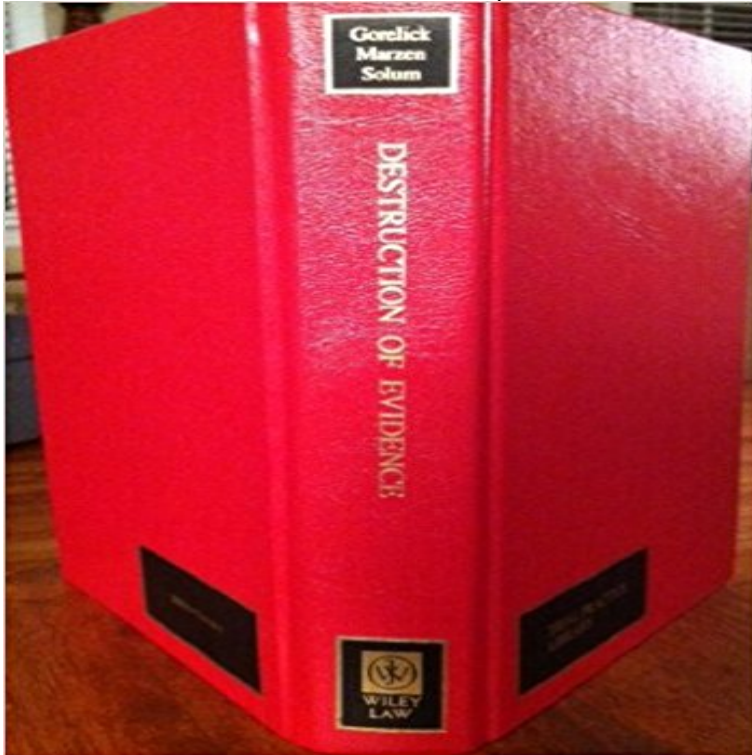


Destruction of Evidence (Trial Practice Library)



A practice manual as well as an authoritative resource, *Destruction of Evidence* analyzes issues from the standpoints of civil litigation, criminal litigation, and the laws of professional responsibility. *Destruction of Evidence* also discusses in-depth such areas as: the spoliation inference, the tort of spoliation, discovery sanctions, ethics, and routine destruction. Also included is an expanded discussion of discovery sanctions, including procedural issues, choice-of-law considerations, the requirements for preserving sanctions issues for appellate review, burdens of proof, and appellate review. The supplement keeps you up to date on the continuing development of the controversial torts of both first- and third party spoliation of evidence:

Massachusetts has declined to recognize a cause of action in tort for intentional or negligent spoliation of evidence. The Supreme Court of Mississippi did not recognize an independent cause of action for the intentional spoliation of evidence against first or third party spoliators. Nevada declined to recognize an independent tort spoliation of evidence when weighed against the potentially endless litigation over a speculative loss, and by the cost to society of promoting onerous record and evidence retention policies. Constitutional implications in the realm of criminal law. Many states within the last year have been addressing the potential for due process violations when evidence is destroyed and are continuing to adopt and expand the rules dictated by *Brady*, *Trombetta*, and *Youngblood*. While each of these new jurisdictions refused to find due process violation, this trend recognizes the increased potential for constitutional violations when evidence is destroyed: Hawaii refused to find a constitutional violation where a police officer failed to save her completed police

report, citing Brady The Supreme Court of Mississippi ruled that a defendant was not denied due process by spoliation of crime scene evidence, citing Trombetta Nevada, using a bad faith standard, ruled that an independent laboratory's failure to refrigerate a defendant's blood sample did not violate due process. A New Jersey court did not find a due process violation where the police had lost a videotape of the administration of breath tests for a DUI charge. Oklahoma ruled that a defendant's due process rights were not violated when the police destroyed latent crime scene fingerprints, citing Youngblood. Using an exculpatory evidence standard, the Supreme Court of South Dakota ruled that the State's release of a rape victim's vehicle without notice to the defendant did not violate the defendant's due process rights.

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