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Evidence (Quick Study: Law)



AMERICA'S #1 LEGAL REFERENCE CHART

EVIDENCE

BASED ON FEDERAL RULES OF EVIDENCE

Blue text = admissible Red text = inadmissible

JUDICIAL NOTICE

- Judicial notice is the acceptance of a fact as true without the necessity of formal proof (i.e., admissible facts of common knowledge in the community or facts capable of verification by such accessible sources of unimpeachable authority).
- May be taken for the first time on appeal.

LEGISLATIVE FACTS

- Advises court/tribunal's notice distinguishes legislative facts from adjudicative facts.
- Legislative facts are those relevant to "legal reasoning" and the "law-making process" (include statutory law and judicial decisions).

ADJUDICATIVE FACTS

- Adjudicative facts are the facts of the particular case.
 - Who did what, when, where, how, with whom, and with what motive.
 - Facts that normally would go to jury except that judicial notice may be taken because no reasonable person could dispute them because they are generally known or come from sources "whose accuracy cannot be reasonably questioned" (e.g., the reliability of radar speed tests, the leading point of water).
- Federal Rules of Evidence (FRE) govern only adjudicative facts.

MANDATORY JUDICIAL NOTICE

- Facts that are so universally known that they cannot reasonably be disputed (adjudicative), must be noticed by a party (201(a)).
 - Meaning of legal expressions (legislation).
 - Meaning of English words and phrases (legislation).
 - Federal and state law and official regulations of the federal state or federal government (legislation).
 - Federal and state rules of procedure (legislation).
- Rules 9-11 reflect the court's reasoning process and use judicial notice (201(a) note).

PERMISSIVE JUDICIAL NOTICE

- On its own, the court may take judicial notice of certain matters (201(b)).
 - Facts that are not reasonably subject to dispute and are capable of accurate determination from indisputable sources, such as almanacs and encyclopedias (e.g., year of birth on a particular date).
 - Facts that are such common knowledge locally that they cannot be reasonably disputed (e.g., the location of a certain road).
 - Records of state or federal courts.
 - Laws of other states or nations.
 - Administrative regulations and orders.
- FRE recognize judicial notice only to adjudicative facts formally (rules A-C).

EFFECT OF JUDICIAL NOTICE

- Civil case: Reading on jury to accept as conclusive any fact judicially noticed.
- Criminal case: Jury instructed that if any fact is not required to accept any fact judicially noticed as conclusive (201(g)).

JUDICIAL RULINGS

RULINGS ON EVIDENCE (103)

- Relevance only if substantial rights of party is affected (see U.S.A. (Case) and the nature of the error was called to the attention of the judge (that subject to abuse of discretion of the trial court).
 - Continuation for purposes is reversed only if judge error seriously affects trial (see Johnson v. U.S.).
 - Timely objection or offer of proof to preserve record for appeal, no need to move chain of error after the court ruling (201(e)).
 - The objection is necessary if "plain error" or fundamental error that affects reliability of verdict.
 - Relevance: Trial error is not harmless when it affects verdict (J. Neal v. McAninch).
- Suppression of material evidence favorable to defendant (see Peretz (Agiles, Whittier)).
- Prosecution withholding incriminating evidence violates Due Process "where the evidence is material either to guilt or to punishment" (Road v. 303).

- Jury cases: To prevent inadmissible evidence (e.g., comments) from being suggested to the jury by any means.
 - The court addresses questions regarding the following:
 - Qualification to be a witness.
 - Whether privilege exists.
 - Admissibility of evidence.
 - The court should advise evidence conditionally subject to the introduction of fact to establish the relevance of the evidence.
 - The court holds hearings outside hearing of jury (usually in pretrial motion to suppress testimony), as well as hearings on other preliminary matters, as judge suggest.

BURDEN OF PROOF (301)

Burden of proof consists of burden of production (going forward with the evidence) and the burden of persuasion.

BURDEN OF PRODUCTION: "BURDEN OF GOING FORWARD"

- Provides evidence to show fact exists.
 - Must be sufficient to enable reasonable juror to support a verdict for the party with the burden (such as making a prima facie case).
 - Without evidence, but does not give jury: the court would direct a verdict against the party who bears the burden.
- Burden is on party who asserts fact; burden may shift once party has satisfied burden of going forward with evidence.

PRESUMPTIONS

Indications that the issue of fact is required to flow from the evidence in the absence of a contrary showing a presumption shifts the burden to the opposing party to disprove the presumed fact.

- Rebuttable presumptions** shift the burden of going forward with the evidence on the opposing party, or a directed verdict is entered against it.
 - If the opposing party meets its burden of going forward with the evidence, the case goes to the jury or judge.
 - If the opposing party does not meet its burden, a directed verdict is entered against it.
- Non-rebuttable** (strong) (irrebuttable) (stare)
 - A presumption is not evidence that carries a **preference** assumption of fact that disappears after the introduction of sufficient evidence to sustain a contrary finding.
 - Under this theory, the burden of persuasion is in the possession of a fact does where it was at the beginning.
 - Conclusive presumptions** carry of substantive law that cannot be rebutted by producing evidence to the contrary.

BURDEN OF PERSUASION

- Present legally sufficient evidence to persuade trier of fact on all issues; burden on plaintiff to prove the allegations in the complaint, and burden on defendant to prove all affirmative defenses; burden does not shift.
- Standards of proof:
 - Preponderance of evidence**: Fact of case is more probable or likely to exist than not to exist.
 - Clear and convincing evidence**.
 - Evidence of fact at issue is highly probable or reasonable certain.
 - Higher standard than preponderance of evidence.
 - Beyond a reasonable doubt**.
 - Sufficient evidence to convince juror of case; nature of defendant.
 - Standard used in criminal case.
 - The court will instruct jury as to which party has burden.

KINDS OF PROOF

DIRECT EVIDENCE

- Proves a proposition **directly**; goes directly to material issue, without inference (e.g., eyewitness testimony on issue of who killed victim, i.e., eyewitness saw defendant shoot victim).

CIRCUMSTANTIAL EVIDENCE

- Tends to prove issue **indirectly** through inference; evidence of a **substantial** fact from which, alone or in conjunction with other facts, evidence of a material or ultimate fact can be inferred (e.g., on issue of who killed victim, defendant in room standing over victim, body holding a gun in New York hand).



Synopsis

In both civil and criminal cases, evidence must be introduced to prove a case, but as in all law, it can only be introduced if it passes certain tests. Is a statement hearsay? Are there exceptions to hearsay rules? What kinds of character evidence are acceptable, and when? Who has the final say as to what evidence can be introduced? The admissibility of evidence can win or lose a case, so don't be caught in the dark; with our newly updated and expanded Evidence guide, color-coded text highlights admissible and inadmissible evidence in our handy, 3-panel format.

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Customer Reviews

What BarCharts are NOT: a comprehensive study guide. You cannot do well on a law school exam or bar exam relying solely upon BarCharts. That is not their purpose. What BarCharts ARE: a condensed overview of the black letter law. Use them as a quick reference to understand the material during the semester. Use them as a REVIEW of the material you (should) have already studied for the exam. In law school, BarCharts were the last thing I skimmed over before taking an exam. It's a good refresher. Same with the bar exam. I skimmed over my BarCharts both nights before the exam.

This is a great study tool for Evidence. It covers the basics of what you will need to know for the class and the bar exam. I would recommend learning everything on this chart early in the class so you will not have to cram. However, if you have waited until the last minute to start preparing for the

final, this chart will help you learn the basics.

Purchased to help with the paralegal program I'm doing. A great go to for an overview. Very happy with them!

Thorough, but very "busy" so hard to reference quickly.

It works perfectly and great service!

Good review, thorough.

Overall, this is a good, quick study sheet.

I'm studying for the bar. This is a great way to refresh before tackling practice exams and essays?

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