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# Evidence (Quick Study: Law)

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## Quick Study LAW 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 easily accessible sources of unquestioned accuracy).
- May be taken for the first time on appeal.

#### LEGISLATIVE FACTS

- Advisory committee's notes distinguish legislative facts from adjudicative facts.
- Legislative facts are those relevant to "legal reasoning" and the "lawmaking 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 their accuracy because they are generally known or come from sources whose accuracy cannot be reasonably questioned (e.g., the reliability of radar speed tests, the boiling 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 reported by a party (FRE), include:
  - Meaning of legal expressions (legislative)
  - Meaning of English words and phrases (legislative)
  - Federal and state law and official regulations of the federal state or federal government (legislative)
  - Federal and state rules of procedure (legislative)
- Items A-D reflect the court's lawmaking process and not judicial notice (FRE) notes.

#### PERMISSIVE JUDICIAL NOTICE

- On its own, the court may take judicial notice of certain matters (FRE):
  - Facts that are not essentially subject to dispute and are capable of accurate determination from indisputable sources, such as almanacs and encyclopedias (e.g., time of sunset 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 requires judicial notice only to adjudicative facts formally (Items A-C).

#### EFFECT OF JUDICIAL NOTICE

- Civil case:** Finding on jury to accept or disprove any fact judicially noticed.
- Criminal case:** Jury instructed that if they believe or are required to accept any fact judicially noticed, it can be used (FRE).

### JUDICIAL RULINGS

#### RULINGS ON EVIDENCE [103]

- Prevents** only if **substantial right** of party is affected (see U.S. v. *Olson*) 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 perjury is allowed only if judge's error seriously affects trials between (*Johnson v. U.S.*)
  - Standby objection or offer of proof to preserve record for appeal, so need to move claim of error after the court's ruling (FRE).
  - Its absence is necessary if "plain error" or fundamental error that affects substance of justice.
  - Waiver:** Trial error is not harmless when it affects conduct (32 *Neal v. McArthur*).
- Suppression of material evidence favorable to defendant violates Due Process (*Nguyen v. White*)
- Prosecution withholding incriminating evidence violates Due Process "where the evidence is material either to guilt or to punishment" (*Brady v. M.D.*)
- Jury views:** To prevent inadmissible evidence (e.g., confessions) from being suggested to the jury by the lawyer.

#### PRELIMINARY QUESTIONS [104]

- The court determines questions regarding the following:
  - Qualification to be a witness.
  - Whether privilege exists.
  - Admissibility of evidence.
- The court should admit evidence conditionally subject to the introduction of fact to establish the admissibility of the evidence.
- The court holds hearings outside-hearing of jury (usually in pretrial system to suppress confessions), as well as hearings on other preliminary matters, as judge requests.

### BURDENS 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"

- Prevents evidence to show fact exists.
  - Must be sufficient to enable reasonable juror to support a verdict for the party with the burden (e.g., making a prima facie case).
  - Without evidence, but does not go to 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:** Inferences that the trier of fact is required to draw 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:** place 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.
- "Swearing burden" theory (applicable state):**
  - A presumption is not evidence but rather a preliminary assumption of fact that disappears after the introduction of sufficient evidence to make a contrary finding.
  - Under this theory, the burden of persuasion is in the possession of a fact state where it was at the beginning.
  - Conclusive presumptions:** Rules of substantive law that cannot be rebutted by producing evidence to the contrary.

#### BURDEN OF PERSUASION

- Prevent legally sufficient evidence by persuasive view 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 issue is more probable or likely to exist than not to exist.
  - Clear and convincing evidence:**
    - Existence of fact is more highly probable or reasonable certain.
    - Higher standard than preponderance of evidence.
  - Beyond a reasonable doubt:**
    - Sufficient evidence to overcome presumption of innocence of defendant.
    - Highly used in criminal cases.
    - 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, or, confession on defendant's guilt).

#### CIRCUMSTANTIAL EVIDENCE

- Tends to prove issue indirectly through inference (inference of a **concluded fact** from which, alone or in conjunction with other facts, existence of a material or ultimate fact can be inferred (e.g., on issue of who killed victim, defendant is seen standing over victim's body holding a gun in New York hotel).



## 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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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.

Great product!!!!

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

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

Excellent overview of evidence. I would not be getting through class if it wasn't for this chart.

very helpful in course full of rules, exceptions to the rules and exceptions to the exceptions

In a nutshell format. Good information of yhe Federal rules. Worth your while.

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