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# Evidence (Quick Study: Law)

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# EVIDENCE

BASED ON FEDERAL RULES OF EVIDENCE

Blue text = admissible Red text = inadmissible

**JUDICIAL NOTICE**

1. Judicial notice is the acceptance of a fact as true without the necessity of formal proof (i.e., finding probable facts of common knowledge in the community or facts capable of verification by easily accessible sources of unquestioned accuracy).

2. May be taken at the first time on appeal.

**LEGISLATIVE FACTS**

1. Advisory committee's notes distinguish legislative facts from adjudicative facts.

2. Legislative facts are analogous to "legal reasoning" and the "background process", include statutory law and judicial decisions.

**ADJUDICATIVE FACTS**

1. Adjudicative facts are the facts of the particular case.

A. What did who, when, where, with whom, and with what motive.

B. Facts that normally would go tojury 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 disputed" (e.g., maps, charts, tables, other species texts, the boiling point of water).

2. Federal Rule of Evidence (FRE) 201: "Facts not otherwise excluded."

**MANDATORY JUDICIAL NOTICE**

1. Facts that are so universally known that they cannot reasonably be disputed (adjudicative), must be requested by a party (FRE 201).

A. Meaning of legal expressions (legislative).

B. Meaning of English words and phrases (legislative).

C. Federal and state law and official regulations of the various state or federal government (legislative).

D. Federal and state rules of procedure (legislative).

E. Rules 9-11 reflect the court's discretion to accept or not rule on notice (FRE 201(a) note).

**PERMISSIVE JUDICIAL NOTICE**

1. On its own, the court can accept or not rule on notice (FRE 201).

A. Facts that are not reasonably subject to dispute and are capable of accurate determination from indisputable sources, such as distances and encyclopedias (e.g., time of sunset on a particular date).

B. Facts that are such common knowledge locally that they cannot reasonably be disputed (e.g., the location of a certain road).

C. Reasons for a particular action.

D. Laws of other states or nations.

E. Administrative regulations and codes.

2. FRE recognizes judicial notice only to adjudicative facts formally (items A-C).

**EFFECT OF JUDICIAL NOTICE**

1. Civil case: Ruling on jury to accept as conclusive any fact judicially noticed.

2. Criminal case: Jury instructed that it may, but is not required to, accept any fact judicially noticed as conclusive (FRE 201(g)).

**JUDICIAL RULINGS**

**RULINGS ON EVIDENCE [103]**

1. **Exercising only if substantial right of party is affected** (see U.S. v. Daniel) and the nature of the issue was called to the attention of the judge (but subject to abuse of discretion of the trial court).

A. Trial court for power to accept or disallow evidence (e.g., trial before Johnson's U.S.).

B. Trial court for offer of proof or to preserve record or appeal; no need to reverse unless of record after the court's ruling (FRE 103).

C. No objection is necessary if "plain error" or fundamental error that affects validity of verdict.

D. **Barbers**: Trial court is not bound to what it tells the verdict (377 U.S. 546, 551).

E. Suppression of material evidence (allowable to defendant) (see *People v. Rykys v. Whitley*).

F. Prohibition withholding unnecessary evidence (allowable) (see *People v. White*): "where the evidence is material either to guilt or to punishment" (Rule 5, 202).

G. Jury notice: To prevent inadvertent evidence (e.g., contamination) from being suggested to the jury by any source.

**PRELIMINARY QUESTIONS [104]**

1. The court determines questions regarding the following:

A. Qualification to be a witness.

B. Whether privilege exists.

C. Admissibility of evidence.

2. The court should admit evidence conditionally subject to the introduction of fact to establish the admissibility of the evidence.

3. The court holds hearings outside hearing of jury (usually a pretrial motion to suppress evidence), as well as hearings on other preliminary matters, as justice requires.

**KINDS OF PROOF**

**DIRECT EVIDENCE**

1. Prove a proposition directly, give directly or material issue without inference (e.g., eyewitness testimony on issue of who killed victim, i.e., eyewitness saw defendant shoot victim).

**CIRCUMSTANTIAL EVIDENCE**

1. Used to prove facts indirectly through inference (inference of a collateral 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 his/her 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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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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