



EVIDENCE FUNDAMENTALS

WHAT EVIDENCE IS • WHAT IT IS NOT • DIRECT VS CIRCUMSTANTIAL

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WHAT IS EVIDENCE?

Evidence is information presented to prove or disprove a fact in issue in a case.

It can be anything that helps the fact-finder understand the truth.



WHAT IS NOT EVIDENCE?

Evidence is **NOT**:

- ✗ Arguments or opinions of counsel
- ✗ Questions asked by the MDJ
- ✗ Findings or conclusions
- ✗ Personal belief or speculation
- ✗ Matters outside the record

Stick to the facts. Leave the opinions and arguments out.



DIRECT EVIDENCE

"I saw it."

PROOFS A FACT WITHOUT
NEEDING ANY INFERENCE.

EXAMPLES

- An eyewitness testifies they saw the event.
- A video recording shows what happened.
- A confession admits the act.
- A document directly proves a fact.



CIRCUMSTANTIAL EVIDENCE

"Facts suggest it."

PROOFS A FACT BY INFERENCE
FROM OTHER PROVED FACTS.

EXAMPLES

- Fingerprints at the scene.
- Motive, opportunity, and behavior.
- Possession of stolen property.
- Blood found on clothing.



REAL (PHYSICAL) EVIDENCE

Tangible items that can be seen, touched, or tested.

EXAMPLES:



WEAPONS

CLOTHING

VEHICLES

SHELLS

DNA



DOCUMENTARY EVIDENCE

Written, recorded, or stored information.

EXAMPLES:



REPORTS

PHOTOS

VIDEOS

LETTERS

TEXTS



REMEMBER

DIRECT EVIDENCE IS **NOT** AUTOMATICALLY STRONGER
THAN CIRCUMSTANTIAL EVIDENCE.

Both may establish facts, support findings, and support conviction.



KEY TAKEAWAY: Evidence helps the fact-finder discover the truth.
It must be relevant, admissible, and fairly presented.





EVIDENCE IN HEARINGS & TRIALS

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HOW EVIDENCE MOVES THROUGH THE PROCESS

1 WHERE EVIDENCE IS USED

Evidence is presented—and decisions are made—at different stages.



PRELIMINARY HEARING

The MDJ decides if there is probable cause to bind the defendant over for trial.



MOTIONS & HEARINGS

Evidence is used to decide legal issues before trial.



TRIAL

Evidence is presented to determine the facts and decide guilt or innocence.



SENTENCING

Evidence helps the court decide the appropriate sentence.

THE GOAL AT EVERY STAGE:



**THE RULES OF EVIDENCE
ENSURE THE PROCESS IS
FAIR, RELIABLE & JUST.**

2 WHO PRESENTS EVIDENCE

Both sides have the opportunity to present evidence.



THE PROSECUTION

Has the burden to prove the defendant's guilt beyond a reasonable doubt.



THE DEFENSE

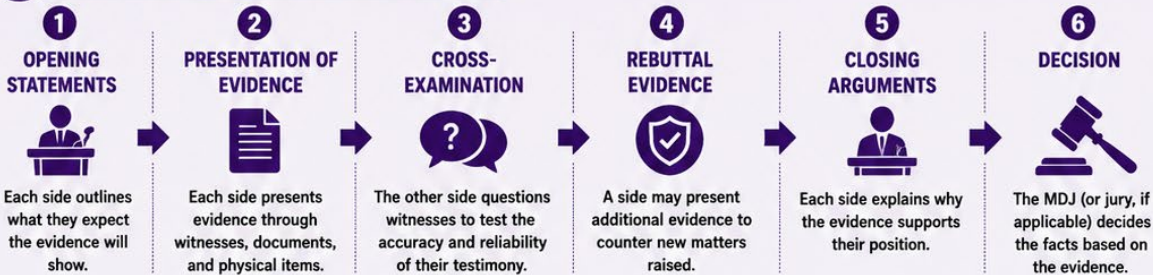
May present evidence, cross-examine, and challenge the prosecution's evidence.



THE MDJ (JUDGE)

- Decides what evidence is admissible.
- Rules on objections.
- Decides legal issues.

3 THE FLOW OF EVIDENCE AT TRIAL



4 BURDEN OF PROOF



The prosecution must prove the defendant's guilt **BEYOND A REASONABLE DOUBT.**

The defendant does not have to prove innocence.

5 WHAT THE MDJ CONSIDERS

- ✓ Is the evidence relevant? (Does it make a fact more or less probable?)
- ✓ Is it admissible? (Does a rule allow it?)
- ✓ Is it reliable and trustworthy? (Is the source credible?)
- ✓ Is its probative value greater than any risk of unfair prejudice? (Rule 403)



REMEMBER



Evidence is not about winning arguments. It is about discovering and proving the truth in a fair and lawful way.



KEY TAKEAWAY: Evidence is how facts are proven. The rules of evidence ensure only reliable, relevant, and fair evidence is used to seek the truth.





RELEVANCE, ADMISSIBILITY & OBJECTIONS

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RELEVANT FIRST. ADMISSIBLE NEXT. OBJECT WHEN NEEDED.

1 RELEVANCE (Pa.R.E. 401)

EVIDENCE IS RELEVANT IF:



It has any tendency to make a fact more or less probable than it would be without the evidence.



The fact is of consequence in determining the action.

RELEVANCE IS A LOW BAR —
IF IT HELPS, **EVEN A LITTLE**, IT IS RELEVANT.

2 ADMISSIBILITY (Pa.R.E. 402–403)

RELEVANT EVIDENCE IS ADMISSIBLE
UNLESS A RULE, LAW, OR PRIVILEGE SAYS OTHERWISE.



BUT EVEN RELEVANT EVIDENCE
MAY BE EXCLUDED IF:



Its probative value is substantially outweighed by a danger (Pa.R.E. 403), such as unfair prejudice.



It causes undue delay, wastes time, or is needlessly cumulative.



It violates another rule of evidence, law, or protective order.



THINK: RELEVANCE GETS YOU IN THE DOOR. ADMISSIBILITY KEEPS YOU IN THE ROOM.

3 OBJECTIONS (Pa.R.E. 103)

OBJECTIONS HELP THE MDJ:



Keep the evidence reliable and fair



Create a record for appeal



Prevent improper evidence from reaching the fact-finder

OBJECTION!

STATE THE
SPECIFIC
GROUND.
BE CLEAR.
BE TIMELY.



COMMON OBJECTIONS & GROUNDS



IRRELEVANT

Does not relate to a fact of consequence.



LEADING

Calls for a yes/no answer or suggests the answer.



HEARSAY

Out-of-court statement offered to prove the truth of the matter asserted.



FOUNDATION

Lack of proper foundation or authentication.

PREJUDICIAL (RULE 403)

Probative value is substantially outweighed by unfair prejudice, confusion, or waste of time.



SPECULATION

Calls for a witness to guess or speculate about something.

TIMING MATTERS



Object as soon as the ground becomes apparent.



If evidence is admitted without objection, it may be assumed admissible.



If the MDJ sustains your objection, the witness must stop answering.



KEY TAKEAWAYS

- ✓ Is it relevant? If not, object.
- ✓ Is it admissible? Check the rules.
- ✓ If improper, object and state the specific ground.



GOOD OBJECTIONS =
FAIR TRIALS

PROTECT THE RECORD. PROTECT THE RIGHTS.



THE GOAL IS NOT TO KEEP OUT EVIDENCE — IT IS TO ENSURE ONLY PROPER EVIDENCE COMES IN.





WITNESSES: COMPETENCY & CREDIBILITY

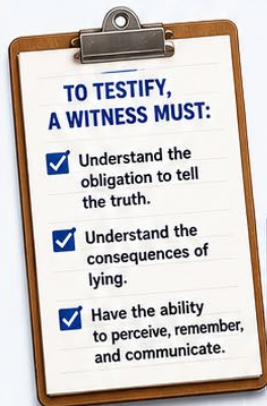
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WHO CAN TESTIFY? • HOW WEIGH THEIR TESTIMONY?

1 COMPETENCY (Pa.R.E. 601)

EVERY PERSON IS COMPETENT TO BE A WITNESS
unless a rule provides otherwise.



SEEKING A DETERMINATION OF INCOMPETENCY (Pa.R.E. 104)

If a party claims a witness is not competent, the MDJ must hold a hearing and determine competency before the witness may testify.



THE BAR IS LOW. INCLUDE, DON'T EXCLUDE.
Doubt goes to the weight, not the competency.

2 CREDIBILITY (Pa.R.E. 607, 608, 609)

CREDIBILITY IS FOR THE FACT-FINDER TO DECIDE.

Test the testimony. Weigh the truth.



OBSERVES DEemeanor

Way of speaking, body language, attitude.



CONSIDERS MEMORY

Ability to recall events clearly and accurately.



EXAMINES CONSISTENCY

Compare testimony with other evidence and prior statements.



EVALUATES PLAUSIBILITY

Does it make sense? Does it fit with common experience?



LOOKS FOR BIAS OR MOTIVE

Does the witness have a reason to lie or exaggerate?



REVIEW PRIOR STATEMENTS

Inconsistencies may affect how much weight to give.

IMPEACHMENT TOOLS

Parties may challenge credibility using:



PRIOR INCONSISTENT STATEMENTS



BIAS, INTEREST, OR MOTIVE



REPUTATION FOR TRUTHFULNESS (RULE 608)



CRIMINAL CONVICTIONS (RULE 609)



COMPETENCY GETS THE WITNESS IN THE DOOR.



CREDIBILITY DETERMINES HOW FAR THEY GO.

3 FACTORS THAT AFFECT CREDIBILITY (Examples)



TIME & OPPORTUNITY

Was the witness in a position to see, hear, or know what they testified about?



OBSERVATION CONDITIONS

Lighting, distance, obstructions, noise, stress, or other conditions may affect perception.



MEMORY & ACCURACY

Memory fades. Details change. Strong memory today doesn't prove perfect memory then.



CONSISTENCY OF TESTIMONY

Look for consistency within testimony and with other evidence.



MOTIVE & BIAS OF THE WITNESS

Financial interest, friendship, animosity, or self-protection can influence testimony.



CHARACTER FOR TRUTHFULNESS

Evidence of a witness's general reputation for truthfulness may be considered.



EXPERIENCE & BELIEVABILITY

Demeanor, intelligence, experience, and common sense play a role.



REMEMBER

*The witness is not the evidence.
Test the testimony. Trust the truth.*



KEY TAKEAWAY

- ✓ Competency = ability to testify.
- ✓ Credibility = believability of the testimony.
- ✓ The fact-finder is the ultimate judge of credibility.

CREDIBILITY IS EARNED. TRUTH IS PROVEN.



"Not all testimony is equal. It is the fact-finder's job to decide what they believe."





CHARACTER EVIDENCE & OTHER ACTS EVIDENCE

KNOW THE RULES. PROTECT THE FACTS. SEEK THE TRUTH.

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1 CHARACTER EVIDENCE

Pa.R.E. 404(a)

GENERAL RULE



A PERSON'S CHARACTER OR CHARACTER TRAIT **CANNOT** BE USED TO PROVE THAT THE PERSON ACTED IN CONFORMITY WITH THAT TRAIT ON A SPECIFIC OCCASION.

CHARACTER



GENERALLY
OUT



EXCEPTIONS

Certain situations allow character evidence to come in.

★ EXCEPTIONS



Accused Offers the Evidence

If the accused introduces evidence of a pertinent trait, the other side may rebut it.



Character of the Victim

In certain cases, the accused may offer evidence of the victim's character trait.



Character is an Essential Element of a Charge, Claim, or Defense



Truthfulness or Untruthfulness

Character for truthfulness may be admitted when credibility of a witness is at issue.

FOCUS ON WHAT THEY **DID**, NOT WHAT THEY **ARE**.



2 OTHER ACTS EVIDENCE

Pa.R.E. 404(b)

GENERAL RULE



EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS **NOT ADMISSIBLE** TO PROVE THE PERSON ACTED IN CONFORMITY THEREWITH.

MAY BE ADMITTED FOR A PROPER PURPOSE, SUCH AS:



MOTIVE

Shows a reason for doing the act charged.



INTENT

Shows state of mind or intent to commit the act charged.



IDENTITY

Shows the act was done by the same person.



PLAN

Shows a scheme or plan including the act charged.



KNOWLEDGE

Shows awareness of a fact.

ABSENCE OF MISTAKE OR ACCIDENT



Shows the act was done intentionally, not by mistake.

AND NOT LIMITED TO THESE PURPOSES



Other proper purposes may apply.



REMEMBER:

EVIDENCE IS **NOT** ADMITTED BECAUSE SOMEONE IS A **BAD PERSON**.

It must be for a proper purpose.



THE BOTTOM LINE:

The rules of evidence keep trials fair by focusing on relevant facts, not character judgments or past mistakes.





PRIVILEGES & HEARSAY HIGHLIGHTS

PROTECT CONFIDENTIAL COMMUNICATIONS. APPLY EXCEPTIONS. SEEK THE TRUTH.

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1. ATTORNEY-CLIENT PRIVILEGE

Protects confidential communications between attorney and client made for the purpose of obtaining legal advice.



2. SPOUSAL PRIVILEGES

- Spousal Communications Privilege
- Adverse Spousal Testimony Privilege

Protects marital communications and certain testimony.



3. PHYSICIAN-PATIENT PRIVILEGE

Protects confidential communications for diagnosis or treatment.



4. MENTAL HEALTH PRIVILEGE

Protects confidential communications with mental health professionals for diagnosis or treatment.

PRIVILEGES

CONFIDENTIAL COMMUNICATIONS
GENERALLY STAY OUT



★ ONLY THE HOLDER
CAN WAIVE THE PRIVILEGE ★



5. CLERGY PRIVILEGE

Protects confidential communications made to a member of the clergy in their spiritual capacity.



6. SCHOOL RECORDS / FERPA PRIVILEGE

Protects student education records from disclosure.



7. NEWS REPORTER PRIVILEGE

Protects confidential sources and unpublished information.



8. DRUG & ALCOHOL TREATMENT PRIVILEGE

Protects records and communications related to treatment for drug or alcohol abuse.



IMPORTANT:

Privileges create important exceptions to otherwise relevant evidence. If no privilege applies (or it is waived), the evidence may be admitted.



HEARSAY EXCEPTIONS

SOME OUT-OF-COURT STATEMENTS CAN COME IN



HEARSAY IS GENERALLY EXCLUDED.
THESE EXCEPTIONS APPLY.

1

PRESENT SENSE IMPRESSION



"I just saw him run."

Statement about an event made while the witness was perceiving it or immediately afterwards.

2

EXCITED UTTERANCE



"He hit me!"

Statement relating to a startling event made while the declarant was under the stress of excitement.

3

STATEMENTS FOR MEDICAL TREATMENT OR DIAGNOSIS



"My head has been hurting."

Statement made for the purpose of medical diagnosis or treatment.

4

BUSINESS RECORDS



Records of a regularly conducted activity made at or near the time by someone with knowledge.

5

PUBLIC RECORDS



Records or statements of public offices or agencies setting out matters observed pursuant to law.

6

OTHER EXCEPTIONS MAY APPLY



Such as prior testimony, statements against interest, or dying declarations.



REMEMBER

- ✓ Privileges protect confidential communications.
- ✓ Hearsay is generally out of court.
- ✓ Exceptions allow some statements in.
- ✓ The MDJ applies the rules to ensure fairness.



KEY TAKEAWAY

FOCUS ON THE WHY:

- ✓ Why is this information protected?
- ✓ Why does this statement qualify?
- ✓ Apply the rule. Protect the rights.

Seek the truth. Do justice.



THE RULES OF EVIDENCE EXIST TO DISCOVER TRUTH WHILE PROTECTING FAIRNESS.

