

EVIDENCE ISSUE CHECKLIST

RELEVANCE

- Logical relevance
- Legal relevance
- Exclusions based on public policy
 - Liability insurance
 - Subsequent safety measures
 - Settlement offers and withdrawn guilty pleas
 - Admissions accompanied by offers to pay medical expenses

WITNESSES

- Competence and personal knowledge
- Lay opinion
- Expert opinion
- Cross-examination

TESTIMONIAL EVIDENCE

- Leading questions
- Improper questions
- Non-responsive answers
- Refreshing recollection
- Past recollection recorded

CHARACTER EVIDENCE

- In civil cases
- In criminal cases
 - D opening door – reputation/opinion evidence
 - Prosecution response
 - Cross-examination – specific acts
 - Own witness – reputation/opinion
 - Extrinsic evidence - Specific acts of prior misconduct – MIMIC
 - Prior acts of sexual assault/child molestation
 - Victim in a criminal case
 - D: reputation or opinion evidence
 - P: reputation or opinion evidence
 - Rape victim's past behavior
 - Exceptions in a criminal case
 - Exceptions in civil cases
- Habit evidence

IMPEACHMENT

- Prior inconsistent statement – cross examination/extrinsic evidence (foundation)
 - Hearsay issue – exception
- Bias, interest or motive to misrepresent/exaggerate – extrinsic evidence (foundation)
- Prior conviction of a crime – extrinsic evidence (foundation)
 - Crimes involving dishonesty
 - Felonies less than 10 years ago
 - Hearsay issue – exception
- Truthfulness – reputation/opinion evidence
 - Specific instances on cross examination – no extrinsic evidence allowed
- Sensory deficiencies – cross examination/extrinsic evidence
- Rehabilitation after impeachment
 - Truthfulness – reputation/opinion evidence
 - Prior consistent statements

AUTHENTICATION

- Writing
 - Handwriting
 - Reply letter doctrine
- Photographs
- Authentication of voice
 - Phone conversations
- Self-authenticating documents
- Best evidence rule
 - Applicability
 - Substitutes
- Judicial notice

HEARSAY

- Hearsay within hearsay
- Non-hearsay
 - Statements not offered for truth
 - Admissions by party-opponent
 - Adoptive admission
 - Various admissions
 - Prior statements
 - Prior inconsistent statement given under oath
 - Prior consistent statement to rebut a charge of untruthfulness
 - Prior statement of identification by a witness
- Exceptions – unavailability required:
 - Former testimony
 - Statement against interest
 - Dying declaration
 - Personal or family history
- Exceptions – availability immaterial
 - Present state of mind
 - Excited utterance
 - Present sense impression
 - Present bodily condition
 - Statement for medical treatment/diagnosis
 - Recorded recollection
 - Business records
 - Public records/reports
 - Ancient documents
 - Learned treatise
 - Judgements
 - Market reports
 - Documents affecting property interests

PRIVILEGES

- Attorney-client privilege
- Psychotherapist/social-worker privilege
- Physician-patient privilege
- Spousal privilege
- Confidential marital communications privilege
- Privilege against self-incrimination

ROLES OF JUDGE/JURY

- Preliminary facts decided by judge
- Preliminary facts decided by jury

