

# Rules Of Evidence Cheat Sheet

EVIDENCE

### JUDICIAL NOTICE

**DEFINITION**  
1. Acceptance of a fact as true without the necessity of formal proof

**LEGISLATIVE FACTS**  
1. Advisory Committee notes distinguish Legislative from Adjudicative Facts

**DEFINITION:** Those facts that are relevant to "legal reasoning" and the "lawmaking process"

**ADJUDICATIVE FACTS**  
1. The facts of the particular case  
a. Who did what, when, where, how, with whom and with what motive?

2. 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"

3. The reliability of radar speed tests  
4. The boiling point of water

**MANDATORY JUDICIAL NOTICE**  
1. Facts that are so universally known that they cannot reasonably be disputed (adjudicative)  
a. Must be requested by a party [2011(d)]

2. Meaning of legal expressions (legislative)  
3. Meaning of English words and phrases (legislative)  
4. Federal and State law (legislative)  
5. Federal and State rules of procedure (legislative)  
a. [2011(a) note] treat 2 through 5 as part of court's reasoning process and not as judicial notice

**PERMISSIVE JUDICIAL NOTICE**  
1. On its own, court may take judicial notice of certain matters [2011(c)]  
a. Facts that are not reasonably subject to dispute and are capable of accurate determination from indisputable sources (almanacs, encyclopedias)  
i. Ex: Time of sunset on a particular date  
b. Facts that are such common knowledge locally, that they cannot be reasonably disputed  
i. Ex: The location of a certain road  
c. Records of State or Federal Court  
d. Laws of other States or nations  
e. Administrative regulations and orders

2. Federal Rules recognize judicial notice only to adjudicative facts (formally in - c above)

**EFFECT OF JUDICIAL NOTICE**  
1. Civil Case: Binding on jury to accept as conclusive any fact judicially noticed  
2. Criminal Case: Jury instructed that it may, but not required to, accept any fact judicially noticed as conclusive [2011(g)]

### BURDENS OF PROOF [301]

**BURDEN OF PRODUCTION**

**BURDEN OF GOING FORWARD**  
• **PROVIDE EVIDENCE TO SHOW FACT EXISTS**  
1. Must be sufficient to enable reasonable juror to support a verdict for the party with the burden (also called making a prima facie case)

• **WITHOUT EVIDENCE, FACT DOES NOT GO TO JURY**  
1. Court would direct a verdict against the party who bears the burden

**BURDEN ON PARTY WHO ASSERTS FACT**  
1. Burden may shift

**PRESEPTIONS**  
1. Definition: A deduction that the truth of fact is required to draw from the evidence in the absence of a contrary showing  
a. A presumption shifts the burden to the opposing party to disprove the presumed fact

2. Rebuttable Presumptions: Place the burden of going forward with the evidence on the opposing party - or a directed verdict is entered against it  
a. If opposing party meets its burden of going forward with the evidence, the case goes to the jury or judge  
i. If not, a directed verdict is entered against it

3. Majority view: **Bursting Bubble Theory:** A presumption is not evidence, but a **preliminary assumption of fact** which disappears after the introduction of sufficient evidence to sustain a contrary finding  
a. Under this theory, the burden of persuasion as to the existence of a fact stays where it was at the beginning

4. **Conclusive Presumptions:** Rules of substantive law which cannot be rebutted by producing evidence to the contrary

### KINDS OF PROOF

**DIRECT EVIDENCE**  
1. Proves a proposition directly  
a. Goes directly to material issue without inference  
i. Ex: Eyewitness testimony on issue of who killed victim (eyewitness saw Defendant shoot victim)

**CIRCUMSTANTIAL EVIDENCE**  
1. Leads to prove issue indirectly through inference  
a. Evidence of a collateral fact from which, alone or in conjunction with other facts, existence of a material or ultimate fact can be inferred  
i. Ex: Defendant is seen standing over victim's body holding a gun in his/her hand (on issue of who killed victim)

### JUDICIAL RULINGS

**RULINGS ON EVIDENCE [103]**  
1. **Relevance** - only if substantial right of party is affected [See U.S.S. Ct. and the nature of the error was called to the attention of the judge]

a. Conviction for perjury reversed only if judge's error actually affects trial's fairness [Johnson v. US]

b. Timely objection or Offer of Proof to preserve record for appeal  
i. No need to renew claim of error after court's ruling [16N(x)]  
c. No objection necessary if "plain error"

d. **Habes** - trial error is not harmless when it affects verdict [Johnson v. McIninch]

i. Suppression of material evidence favorable to defendant violates due process [Dolan v. Hartley]

2. **Jury error** - to prevent inadmissible evidence (conferences) from being introduced to the jury by any means

### 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**  
1. Burden does not shift

**STANDARDS OF PROOF**  
1. **Preponderance of Evidence**  
a. Fact at issue is more probable or likely to exist than not to exist

2. **Clear and Convincing Evidence**  
a. Existence of fact at issue is highly probable or reasonably certain  
b. Higher standard than Preponderance of Evidence

3. **Beyond a Reasonable Doubt**  
a. Sufficient evidence to overcome presumption of innocence of Defendant  
b. Standard used in criminal cases  
c. Court will instruct jury as to which merits burden

### RELEVANCE

**TESTS FOR RELEVANCE**

**IS EVIDENCE RELEVANT TO ISSUE?**  
1. Does it tend to prove or disprove a fact of consequence?  
a. **Materiality** - whether the evidence being offered relates to an issue in the case  
i. Look to the pleadings and applicable substantive law  
ii. Certain matters like bias and credibility of witnesses are always in issue

b. **Probative value** - whether evidence logically tends to prove proposition for which it is offered  
i. Trial: Regard "materiality" and "probative value" as parts of single test for relevant evidence [401]

**LIMITS ON OTHERWISE RELEVANT EVIDENCE**  
1. All relevant evidence is admissible, except as excluded by some specific rule [402]

2. **Limited Admissibility** - when the evidence can be relevant to many issues, it may be admissible to one, but not another, for some reason  
a. Jury instructions tell jury for which issue it is admissible and to disregard to all other issues

**EXCLUSION OF EVIDENCE**  
1. Judicial discretion, no matter how relevant, when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence [403]

a. Even when admissible for a limited purpose because it is relevant on one issue, the judge may exclude it if it will greatly influence the jury's ability to disregard the nonadmissible issue

b. The probative value of "shocking," gruesome photographs, although possibly probative of some issues, may be substantially outweighed by likelihood of unfair prejudice under 403

c. **Unfair surprise** - not ground for exclusion [403 note]

i. Additional ground for exclusion in some states

d. **Abuse of discretion** to admit prior judgment of conviction despite offer to stipulate [OMB Chief's US]

**DETERMINING RELEVANCY**  
1. Most relevancy problems involve **circumstantial evidence** - is it probative or so unduly confusing that it should be excluded on discretionary grounds?

2. **Previous Accidents** - generally not relevant in personal injury case (just tends to prove Plaintiff is prone to litigate, and risk of confusion and unfair prejudice outweigh probative value)  
a. Evidence of prior injury may be relevant to prove present claim is false and as to credibility  
b. Previous similar accidents and injuries to others by same conditions is admissible to prove:  
i. Existence of a dangerous condition on defect

## Rules of Evidence Cheat Sheet

Understanding the rules of evidence is crucial for anyone involved in the legal system, whether as a legal professional, a student, or a layperson. Evidence rules govern what information can be presented in court, how it can be obtained, and the manner in which it can be used. This cheat sheet provides an overview of the essential rules of evidence, including admissibility, types of evidence, and various exceptions that may apply.

# Introduction to the Rules of Evidence

The rules of evidence serve several purposes within the judicial system. They aim to ensure fairness in trials, promote the search for truth, and protect individuals from arbitrary decision-making. These rules vary between jurisdictions, but many adhere to the guidelines established by the Federal Rules of Evidence in the United States. Fundamental principles include:

1. **Relevance:** Evidence must be relevant to be admissible.
2. **Materiality:** Evidence must be significant and applicable to the case.
3. **Competence:** Evidence must be competent, meaning it is legally obtained and reliable.

## Types of Evidence

Understanding the various types of evidence is essential for applying the rules of evidence effectively. Evidence can generally be classified into two main categories: direct and circumstantial evidence.

### Direct Evidence

Direct evidence supports the truth of an assertion directly, without the need for any inference or presumption. Examples include:

- Eyewitness testimony
- A confession from a defendant
- Video or audio recordings capturing the event

## **Circumstantial Evidence**

Circumstantial evidence requires a judge or jury to make inferences to connect it to a conclusion of fact. Examples include:

- Fingerprints found at a crime scene
- Motive and opportunity established through alibi
- Behavior patterns that suggest guilt

## **Admissibility of Evidence**

To determine whether evidence is admissible, courts typically consider several factors. The admissibility process often involves a pre-trial hearing, where judges assess whether the evidence meets the established legal standards.

## **Relevance**

For evidence to be admissible, it must be relevant. This means it must make a fact more or less probable than it would be without the evidence. Courts use the following guidelines:

- Materiality: The evidence must pertain to a fact that is at issue in the case.
- Probative Value: The evidence must have the potential to prove something pertinent to the case.

## **Hearsay Rule**

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Generally, hearsay is inadmissible, but there are numerous exceptions, including:

1. Excited Utterance: A statement made in response to a startling event.
2. Present Sense Impression: A statement made while or immediately after perceiving an event.
3. Business Records: Records kept in the regular course of business.

## Exceptions to the Rules of Evidence

Certain exceptions allow evidence that would typically be inadmissible to be presented in court.

Understanding these exceptions is critical for legal practitioners.

### Character Evidence

Character evidence refers to evidence of a person's character or character traits. Generally, character evidence is not admissible to prove conduct. However, exceptions exist:

- In criminal cases, a defendant may introduce evidence of their good character.
- If the defendant opens the door to character evidence, the prosecution may rebut it.

### Prior Bad Acts

Evidence of prior bad acts can be admissible under certain conditions. It may be used to establish:

- Motive
- Opportunity
- Intent
- Preparation
- Plan
- Knowledge

However, the evidence must be relevant and should not be used solely to paint the defendant in a negative light.

## **Expert Witness Testimony**

Expert witnesses can provide testimony that is based on specialized knowledge, skill, experience, training, or education. To be admissible, expert testimony must:

1. Be based on sufficient facts or data.
2. Be the product of reliable principles and methods.
3. Apply those principles and methods reliably to the facts of the case.

## **Burden of Proof**

The burden of proof is a fundamental aspect of the rules of evidence and refers to the obligation of a party to prove their assertions. It typically falls on the party who brings the claim.

## **Standards of Proof**

The standard of proof varies depending on the type of case:

- Preponderance of the Evidence: Used in civil cases; the evidence must show that something is more likely true than not.
- Clear and Convincing Evidence: A higher standard than preponderance; often used in cases involving fraud or termination of parental rights.
- Beyond a Reasonable Doubt: The highest standard, used in criminal cases, requiring the evidence to eliminate reasonable doubt regarding the defendant's guilt.

# **Preservation of Evidence**

The preservation of evidence is vital to ensure that it remains intact for trial. Parties are generally required to preserve evidence that they know or should know is relevant to ongoing or potential litigation.

## **Spoliation of Evidence**

Spoliation refers to the destruction or alteration of evidence. Courts may impose sanctions for spoliation, which can include:

- Adverse inference instructions to the jury.
- Dismissal of claims or defenses.
- Monetary sanctions against the offending party.

## **Conclusion**

The rules of evidence form the backbone of the legal system, ensuring that trials are conducted fairly and that only reliable information is presented to courts. Understanding these rules—including the types of evidence, admissibility standards, and exceptions—is essential for anyone involved in legal proceedings. Mastering the rules of evidence can help legal professionals effectively advocate for their clients and uphold the integrity of the judicial process. Whether you are a student, attorney, or interested party, having a cheat sheet on the rules of evidence can serve as a valuable resource in navigating the complexities of the legal system.

# Frequently Asked Questions

## What is a rules of evidence cheat sheet?

A rules of evidence cheat sheet is a concise reference tool that summarizes the key principles and rules governing the admissibility of evidence in legal proceedings.

## Why is a rules of evidence cheat sheet useful for law students?

It helps law students quickly understand and recall essential rules and concepts during exams, class discussions, or practical applications in legal settings.

## What are some common topics covered in a rules of evidence cheat sheet?

Common topics include types of evidence (e.g., direct vs. circumstantial), hearsay rules, relevance, authentication, and the exclusionary rule.

## How can legal practitioners benefit from a rules of evidence cheat sheet?

Legal practitioners can use it as a quick reference to prepare for trials, ensure compliance with evidentiary rules, and enhance their arguments in motions and hearings.

## Are there any online resources available for rules of evidence cheat sheets?

Yes, many legal education websites, law schools, and legal blogs provide downloadable or printable cheat sheets that summarize the rules of evidence for easy access.

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