



**CALIFORNIA BAR EXAM**  
**MULTIPLE-CHOICE QUESTION EXAM CONTENT MAP**  
**EVIDENCE**

The topics listed below are illustrative of those covered in Evidence, but are not exhaustive. Applicants should assume that the Federal Rules of Evidence have been adopted and apply to all questions. The percentages listed next to each section represent the approximate percentage of questions on the exam that will be drawn from this subject.

**I. Presentation of Evidence – 25%**

- A. General Provisions
  - 1. Roles of judge and jury
  - 2. Burden of production and burden of persuasion
  - 3. Presumptions and inferences
  - 4. Materiality and probative value
  - 5. Offers of proof
  - 6. Judicial notice
  - 7. Preliminary questions
  - 8. Rule of completeness
- B. Objections and Motions to Strike
  - 1. Trial judge's discretion to control order and presentation of evidence
  - 2. Common objections to questions
  - 3. Nonresponsive answers
- C. Types of Evidence
- D. Witnesses
  - 1. Mode and order of witnesses
  - 2. Form and scope of examination
  - 3. Lay opinion testimony
  - 4. Competency
  - 5. Personal knowledge
  - 6. Truthfulness
  - 7. Refreshing recollection
- E. Impeachment
  - 1. Use of impeachment material
  - 2. Prior inconsistent statement
  - 3. Bias
  - 4. Conviction of crime
  - 5. Opinion or reputation

**II. Relevance – 32%**

- A. Definition
- B. Laying a Foundation
- C. Exclusion of Relevant Evidence
  - 1. Probative value
  - 2. Discretionary exclusion (undue prejudice, confusion, waste of time)

- D. Character Evidence
  - 1. Forms of character evidence
    - a. Character traits of defendants
    - b. Victim character evidence
      - (1) Rape shield law
  - 2. Prohibited uses of character evidence
  - 3. Exceptions allowing character evidence
    - a. Mercy rule
    - b. Character in issue
    - c. Accused character trait of sexual offenses
  - 4. Specific acts for noncharacter purposes
  - 5. Cross-examination and rebuttal of character witnesses
- E. Habit or custom practice
- F. Similar occurrences and contracts
- G. Authentication and Identification
- H. Expert Testimony
  - 1. Acceptable testimony
  - 2. Qualification of experts
  - 3. Basis of expert testimony
  - 4. Opinion on ultimate issue
  - 5. Disclosure of underlying facts or data

### III. Privileges and Public Policy Exclusions – 9%

- A. Sources and Scope of Privileges and Policy Exclusions
- B. Particular Privileges
  - 1. Spousal Privileges
  - 2. Marital Communications Privilege
  - 3. Physician-patient
  - 4. Psychotherapist-patient
  - 5. Attorney-client
    - a. Work-product doctrine
  - 6. Clergy and penitent
- C. Public Policy Exclusions
  - 1. Subsequent remedial measures
  - 2. Settlement negotiations and offers of compromise
  - 3. Plea negotiations and withdrawn plea offers
  - 4. Liability insurance
  - 5. Payment of medical expenses

### IV. Hearsay – 25%

- A. In General
  - 1. Hearsay rule
  - 2. Conduct as hearsay
  - 3. Multiple hearsay
  - 4. Unavailability of declarant as necessary or unnecessary for specific exceptions
- B. Hearsay Exemptions
  - 1. Prior statement of witness
    - a. Prior sworn inconsistent statement
    - b. Prior consistent statement
    - c. Prior identification
  - 2. Statement by opposing party
    - a. Adoptive statements
    - b. Authorized statements
    - c. Vicarious statements
    - d. Co-conspirator's statements
  - 3. Statements used for non-hearsay purposes
    - a. Effect on listener
    - b. Evidence of declarant's or victim's state of mind
    - c. Legally operative facts and verbal acts
    - d. Statements showing declarant's knowledge
    - e. Statements showing absence of mistake or showing *mens rea*

- C. Hearsay Exceptions
  - 1. Requiring unavailability of declarant
    - a. Former testimony
    - b. Statement against interest
    - c. Dying declaration
    - d. Statement of personal or family history
    - e. Forfeiture by wrongdoing
  - 2. Not requiring unavailability of declarant
    - a. Business records
    - b. Present sense impression
    - c. Excited utterance
    - d. Statements of mental, emotional, or physical condition
    - e. Statement made for medical diagnosis or treatment
    - f. Past recollection recorded
    - g. Public records and reports
    - h. Learned treatises
    - i. Ancient documents
    - j. Commercial lists or similar compilations
    - k. Prior judgments
    - l. Residual exception
    - m. Rule of completeness
- D. Confrontation Clause

**V. Contents of Writings, Recordings, and Photographs – 9%**

- A. Requirement of the Original
  - 1. Best evidence rule
- B. Duplicates
- C. Missing or lost documents
- D. Summaries