



## CALIFORNIA BAR EXAMINATION CONTENT MAP EVIDENCE

Applicants should be prepared to answer questions that have issues concerning the Federal Rules of Evidence and the California Evidence Code. Applicants should be prepared to compare and contrast the differences between the Federal Rules and the California Evidence Code, especially where the California rules of evidence have no specific counterparts in the Federal Rules.

The topics listed below are illustrative of those covered in Evidence, but are not exhaustive.

### I. Presentation of Evidence

#### A. General provisions

1. Roles of judge and jury
2. Burden of production and burden of proof
3. Presumptions and inferences
4. Materiality and probativeness
5. Offers of proof
6. Direct and circumstantial evidence
7. Demonstrative and documentary evidence
  - a. Authentication
  - b. Best evidence rule
8. Testimonial evidence
  - a. Competency
    - (1) Personal knowledge
    - (2) Truthfulness
9. Objections and motions to strike
10. Limited admissibility
11. Rulings on evidence to preserve claims of error
12. Judicial notice

#### B. Relevance

1. Definition
2. Laying a foundation
3. Habit or routine practice
4. "Opening the door" on a subject
5. Introducing part of a transaction
6. Exclusion of relevant evidence
  - a. Discretionary exclusion (undue prejudice, confusion, waste of

time)

- b. Exclusion for public policy reasons
  - (1) Subsequent remedial measures
  - (2) Settlement negotiations and offers
  - (3) Plea negotiations
  - (4) Mediation
  - (5) Liability insurance
  - (6) Payment of medical expenses
  - (7) Victim's sexual history

## II. Witnesses

- A. Form and scope of examination
  - 1. Permissible and objectionable questions and answers
    - a. Direct examination
    - b. Cross-examination
- B. Opinion testimony
  - 1. Lay witness
  - 2. Expert witness
- C. Character evidence
  - 1. Prohibited uses of character evidence
    - a. Exceptions in criminal cases
      - (1) Character of the defendant
      - (2) Character of the victim
    - b. Exceptions in civil cases
  - 2. Forms of character evidence
    - a. Reputation or opinion
    - b. Specific instances of conduct
  - 3. Independent relevance of specific acts of misconduct
    - a. Motive
    - b. Intent
    - c. Absence of mistake or accident
    - d. Identity
    - e. Common plan or scheme
    - f. Similar acts to prove opportunity, knowledge, or other material fact
  - 4. Cross-examination and rebuttal of character witnesses
- D. Impeachment
  - 1. Use of impeachment material
  - 2. Prior inconsistent statement
  - 3. Bias
  - 4. Conviction of crime
    - a. Crime of dishonesty
    - b. Felony
      - (1) Remoteness of conviction
      - (2) Means of proof

- c. Bad acts probative of truthfulness
  - d. Reputation for untruthfulness
  - e. Rehabilitation
- E. Evidentiary and testimonial privileges and related protections
  - 1. Sources and scope of privileges
  - 2. Assertion and waiver of privileges
  - 3. Exceptions to privileges
  - 4. Particular privileges
    - a. Spousal immunity and marital communications
    - b. Physician and patient
    - c. Psychotherapist and patient
    - d. Counselor/caseworker and victim
    - e. Attorney and client
    - f. Clergy and penitent
    - g. Trade secrets
    - h. Criminal defendant immunity and compelled self-incrimination
    - i. Vote disclosure
    - j. Newspersons
    - k. Official information (governmental secrets) and identity of informer
    - l. Work-product doctrine

### III. Hearsay

- A. Hearsay rule
- B. Conduct as hearsay
- C. Multiple hearsay
- D. Unavailability of declarant as necessary or unnecessary for specific exceptions
- E. Exceptions and exclusions
  - 1. Admissions by party-opponent
  - 2. Business records
  - 3. Prior inconsistent and consistent statements
  - 4. Prior statement of identification
  - 5. Present sense impression and excited utterance
  - 6. Statements of mental, emotional, or physical condition
  - 7. Statement made for medical diagnosis
  - 8. Past recollection recorded
  - 9. Former testimony
  - 10. Statements against interest
  - 11. Adoptive admissions
  - 12. Dying declaration
  - 13. Public records and reports
  - 14. Learned treatises
  - 15. Ancient documents

16. Commercial publications
  17. Prior judgments
  18. Residual exception
- F. Statements used for non-hearsay purposes
1. Statement offered to show effect on listener
  2. Statement offered as evidence of declarant's state of mind
  3. Statements constituting legally-operative facts

**IV. Authentication and identification**

**V. Contents of writings, recordings, and photographs**