Topic Page: Evidence

Definition: **Evidence** from *The SAGE Glossary of the Social and Behavioral Sciences*

Anything used to determine the truth of an assertion. In a criminal case, evidence is material used to determine guilt or innocence. Although various types of direct, physical, testimonial, and circumstantial evidence are usually admissible in criminal cases, there are notable exceptions. Hearsay evidence is generally inadmissible, and physical evidence can be suppressed (i.e., excluded from consideration) if it is gathered in violation of a defendant's constitutional rights. A defense attorney seeking to have evidence suppressed will request a Mapp hearing, asking the judge to apply the exclusionary rule.

See also

Circumstantial Evidence, Exclusionary Rule (political science, sociology), Testimony

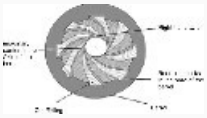

Image from: **Rifling in the barrel of a firearm. Source:...** in *Encyclopedia of Crime and Punishment*

Summary Article: **evidence**
From *The Columbia Encyclopedia*

in law, material submitted to a judge or a judicial body to resolve disputed questions of fact. The rules discussed in this article were developed in England for use in jury trials. Today, they are generally observed in all countries having the common law, although they have been extensively modified by statute in some jurisdictions. The first juries were not neutral triers of fact; rather they were convened because of their immediate knowledge of the dispute before the court. Later, the practice developed of having witnesses testify before an impartial jury. The groundwork of the rules of evidence was laid between 1500 and 1700.

The Role of Evidence in a Trial; Burdens of Proof

In criminal trials, the prosecution has to prove each element necessary to its case beyond a reasonable doubt. In civil trials, on the other hand, a party has the burden only of proving affirmative contentions by a preponderance of the evidence. Thus the plaintiff must offer some proof of each of the elements that combine to constitute the defendant's alleged wrong (see procedure), while the defendant must prove his or her affirmative defenses, e.g., in a suit for negligence, that the plaintiff's own negligence contributed to the injury.

Satisfying the burden of proof requires the prosecutor or the plaintiff to present evidence first. At the close of this presentation the criminal or civil defendant may move for acquittal or a nonsuit if admissible evidence supporting necessary contentions has not been offered. Proof may be dispensed with when an adversary formally admits a fact either in the pleadings or in court, or when the court may take judicial notice of the fact, i.e., when the fact is universally known or is easily ascertainable by the judge beyond reasonable dispute.

In recent years the problems of procuring evidence have been eased somewhat by the introduction of broader discovery (i.e., disclosure) rules. In civil cases, these rules compel each party to a suit to allow the other to have access to its witnesses and to certain types of evidence before the trial. In criminal cases, the judge has the discretionary power to order discovery; in any event, the prosecutor must release all exculpatory evidence on request.

Allegedly damaging errors in the admission of evidence are reviewable on appeal if an objection was made during the trial. In their final summing up, the attorneys may make any assertion that is supported to some degree by evidence. British judges and U.S. federal and, in some jurisdictions, state judges are permitted to comment on the credibility of the witnesses and the weight of the evidence. However, the judge must tell the jury that they are not bound by his or her remarks.

See also verdict.

Admissible Evidence

Evidence is often presented in a tense, emotional atmosphere in a courtroom long after the event in question took place. The object of the law of evidence is to assure a high probability that questions of fact are resolved correctly. To that end, material introduced at the trial is ordinarily restricted to items of great probative value; that which may arouse unreasoning passion is ordinarily excluded. The nature of the legal controversy and the written pleadings determine what assertions of fact each party must prove or disprove to win the case, and an item of evidence that at best has a remote bearing on the factual issues must be excluded as irrelevant or immaterial. A judge prefers direct evidence (such as an official document or a witness's assertion of immediate knowledge of the question at issue) to indirect or circumstantial evidence, which merely tends to establish the issue by proving surrounding circumstances from which the principal fact may be inferred.

In addition to being relevant, evidence must be competent, i.e., it must not fall under an exclusionary rule. Obviously if the evidence is documentary (e.g., a birth certificate introduced to prove a person's age) or if it is “real” (e.g., a bloody garment exhibited to prove that the victim suffered injury), there can be a question only whether the proffered evidence is itself incompetent. The courtroom presentation of documentary evidence has been complicated by new computer technologies and the digitalization of information, which make the successful forging of texts and photographs far easier than previously.

Witnesses

Most evidence is offered by witnesses who testify before the court. Here, the question of the witness's personal competency must be resolved; it must be shown that the witness was able to know, understand, and remember the matters on which he or she is to be examined. Thus, a witness must possess the sensory faculties needed to apprehend the facts reported and must not be considered mentally ill or incompetent. Children offered as witnesses are examined by the judge to determine their intelligence and understanding.

The witness is first directly examined by the party who offers him or her, then is cross-examined by the adversary. No witness may express an opinion on any matter when the jury can draw its own conclusions from the facts; but on technical questions an expert witness (e.g., a physician) may state an opinion. Hearsay declarations (e.g., testimony concerning a statement made out of court by a person not now before the court) usually are excluded on the grounds that the person who made the statement is not available for cross-examination or for evaluation by the judge or jury. Only when the circumstances of the statement afford a high probability of its truth may it be admitted.

A witness may be excused from testifying about certain matters if he or she pleads personal privilege. In general, information confided in the course of the relations of attorney and client, priest and penitent, physician and patient, and husband and wife is subject to this privilege. In some jurisdictions such witnesses are incompetent to testify (cannot testify). Witnesses are further protected by the

Fifth Amendment privilege of withholding evidence that might be self-incriminating. Criminal defendants have the privilege of refusing to take the witness stand (in which case the jury may make no negative assumptions concerning the reasons for such a refusal) and, in most situations, evidence of previous criminal convictions is inadmissible. Under the common law, parties to a civil suit and the defendant in a criminal action were not permitted to testify, but these rules have been abandoned.

Bibliography

Among the many modern treatises on the law of evidence those of J. H. Wigmore are often accorded the highest authority.

See also studies by M. J. Saks and R. Van Duizend (1983);.
P. Achinstein (1984);.
I. Younger and M. Goldsmith (1984);.
J. H. Friedenthal and M. Singer (1985).


The Columbia Encyclopedia, © Columbia University Press 2018

APA

evidence. (2018). In P. Lagasse, & Columbia University, *The Columbia encyclopedia* (8th ed.). New York, NY: Columbia University Press. Retrieved from https://search.credoreference.com/content/topic/evidence

Chicago

"evidence." In *The Columbia Encyclopedia*, by Paul Lagasse, and Columbia University. 8th ed. Columbia University Press, 2018. https://search.credoreference.com/content/topic/evidence

Harvard

evidence. (2018). In P. Lagasse & Columbia University, *The Columbia encyclopedia*. (8th ed.). [Online]. New York: Columbia University Press. Available from: https://search.credoreference.com/content/topic/evidence [Accessed 17 September 2019].

MLA

"evidence." *The Columbia Encyclopedia*, Paul Lagasse, and Columbia University, Columbia University Press, 8th edition, 2018. *Credo Reference*, https://search.credoreference.com/content/topic/evidence. Accessed 17 Sep. 2019.