

Courtroom Terms

EVIDENCE Anything that can be presented to the senses that is offered to prove the existence or nonexistence of a fact (i.e., testimony, writings and physical objects, demonstrations stipulations, judicial notice, visiting the scene).

DIRECT EVIDENCE: Evidence that directly proves a fact without an inference and if true, conclusively establishes that fact (e.g., confession (“I killed John Smith.”), eye witness to crime or victim of crime (“The defendant stole my purse.”).)

CIRCUMSTANTIAL EVIDENCE: Evidence that proves a fact from which an inference of the existence of another fact may be drawn (e.g., fingerprints left at the scene, defendant seen standing over a dead body with a smoking gun in his hand).

BURDEN OF PROOF: The degree of proof, required for the party bringing the action to prevail or win the case.

“PROOF BEYOND A REASONABLE DOUBT”: The burden of proof used in all criminal cases. “Beyond a reasonable doubt is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.”

“PREPONDERANCE OF THE EVIDENCE”: The burden of proof used mostly in civil cases which is met by showing that the existence of a particular fact is more probable than not (i.e., more than 50% of the evidence supports existence of the fact).

“CLEAR AND CONVINCING EVIDENCE”: The burden requiring a somewhat higher degree of proof than a “preponderance” of the evidence and is used in probation hearings, parole hearings and bar disciplinary hearings; less proof than “beyond a reasonable doubt”.

“STRONG SUSPICION”: The burden of rational suspicion or reasonable or probable cause used in preliminary hearings and grand jury indictments.

RELEVANCE: Having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

MATERIALITY: Essentially the same as relevance.

PROBATIVE VALUE: Degree of relevancy, strong probative value = high relevancy; slight probative value = weak relevancy.

WEIGHT: Evidence is sufficiently relevant to be admissible and the jury must decide what weight or credit to give it.

FOUNDATION: Those facts necessary for a witness to give an opinion or to testify on another point which are preliminary and established prior to such opinion or testimony.

HEARSAY: An out-of-court statement offered to prove the truth of the matter asserted therein. Such statements are inadmissible because there is depravation by one party to cross-examine. There are exceptions to the hearsay rule if the statement is offered not to prove the truth of the matter asserted, but merely to prove the words were spoken.

EXPERT OPINION: Opinion of someone who has qualified by virtue of his training, education and experience to give a hypothetical opinion in the area of his expertise.

HYPOTHETICAL QUESTION: Question based on assumed facts, which are in evidence or will be in evidence, upon which the expert is qualified to give an opinion.

EXPERTISE: Subject matter within which, by virtue of expert’s training, character and experience such expert can give an opinion.

DEMEANOR: The behavior and attitude of a witness while testifying which can reflect on his credibility.

Courtroom Terms

CREDIBILITY: A character trait for honesty or truthfulness.

IMPEACHMENT: The attacking of the credibility of a witness.

REHABILITATION: Efforts to support the believability of a witness after an attack has been made to impeach the witness.

LAY OPINION: The opinion of someone other than an expert is to value of property, identifications, speed, distances, insanity, or intoxication with proper foundation having been established.

TRIER-OF-FACT: If a jury is waived the judge is the trier-of-fact. A jury is the trier-of-fact in a jury trial.

VOIR DIRE: A French word which means to speak the truth. Questioning of a jury panel to seat those who will try the case.

PREJUDICIAL EVIDENCE: Evidence which has little or slight probative value yet has a high risk of being unduly prejudicial and is excluded from the trial.

MIRANDA WARNING: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present during any interview, which is now or at any other time. If you cannot afford an attorney the court will appoint one free of charge prior to any questioning if you so desire. Do you understand each of these rights that I have explained to you? ... Having your rights in mind, are you willing to talk with me?