

# MBE Subject Matter Outline: Evidence

NOTE: All Evidence questions should be answered according to the Federal Rules of Evidence, as currently in effect. Approximately one-quarter of the Evidence questions on the MBE will be based on category I, one-third on category II, one-quarter on category V, and the remainder on categories III and IV.

# MBE Subject Matter Outline: Evidence

## **I. Presentation of evidence**

### A. Introduction of evidence

1. Requirement of personal knowledge
2. Refreshing recollection
3. Objections and offers of proof
4. Lay opinions
5. Competency of witnesses
6. Judicial notice
7. Roles of judge and jury
8. Limited admissibility



# MBE Subject Matter Outline: Evidence

## B. Presumptions

## C. Mode and order

1. Control by court
2. Scope of examination
3. Form of questions
4. Exclusion of witnesses



# MBE Subject Matter Outline: Evidence

## D. Impeachment, contradiction, and rehabilitation

1. Inconsistent statements and conduct
2. Bias and interest
3. Conviction of crime
4. Specific instances of conduct



# MBE Subject Matter Outline: Evidence

D. Impeachment, contradiction, and rehabilitation (cont.)

5. Character for truthfulness

6. Ability to observe, remember, or relate accurately

7. Impeachment of hearsay declarants

8. Rehabilitation of impeached witnesses

9. Contradiction

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E. Proceedings to which evidence rules apply



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## **II. Relevancy and reasons for excluding relevant evidence**

### A. Probative value

#### 1. Relevancy

#### 2. Exclusion for unfair prejudice, confusion, or waste of time

### B. Authentication and identification



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- C. Character and related concepts
  - 1. Admissibility of character
  - 2. Methods of proving character
  - 3. Habit and routine practice
  - 4. Other crimes, acts, transactions, and events
  - 5. Prior sexual misconduct of a defendant



# MBE Subject Matter Outline: Evidence

## D. Expert testimony

1. Qualifications of witnesses
2. Bases of testimony
3. Ultimate issue rule
4. Reliability and relevancy
5. Proper subject matter for expert testimony

## E. Real, demonstrative, and experimental evidence



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## **III. Privileges and other policy exclusions**

- A. Spousal immunity and marital communications
- B. Attorney-client and work product
- C. Physician/psychotherapist-patient
- D. Other privileges
- E. Insurance coverage
- F. Remedial measures
- G. Compromise, payment of medical expenses, and plea negotiations
- H. Past sexual conduct of a victim



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## **IV. Writings, recordings, and photographs**

- A. Requirement of original
- B. Summaries
- C. Completeness rule



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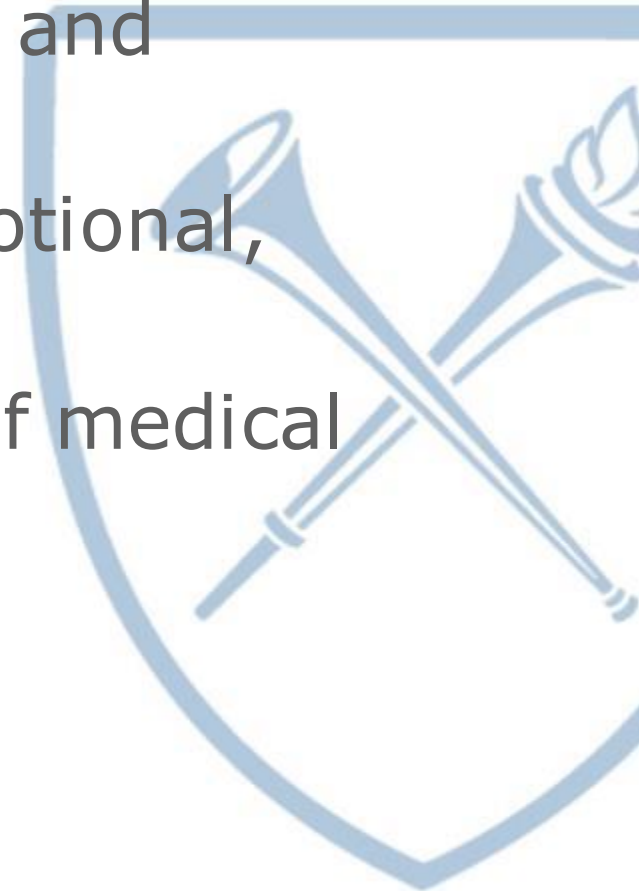
## **V. Hearsay and circumstances of its admissibility**

### A. Definition of hearsay

1. What is hearsay
2. Prior statements by witness
3. Statements attributable to party-opponent
4. Multiple hearsay

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- B. Present sense impressions and excited utterances
- C. Statements of mental, emotional, or physical condition
- D. Statements for purposes of medical diagnosis and treatment
- E. Past recollection recorded
- F. Business records



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G. Public records and reports

H. Learned treatises

I. Former testimony; depositions

J. Statements against interest

K. Other exceptions to the hearsay rule

L. Right to confront witnesses

