

## EVIDENCE

### PRESENTATION OF EVIDENCE

#### NOTES

### WITNESSES

#### > Lay Witness:

- Anyone can be a witness
- Testify as to knowledge/perception
- Must take oath/affirmation
- Judge/juror may not be a witness
- Child may be a witness

*Example:*

- o *How fast the car was going*
- o *It looked like it was about 4 PM*



#### **AdaptiTip**

Lay witness cannot testify to legal conclusions

#### > Expert Witness:

- 1) Lay foundation/qualify the expert
- 2) Can use outside evidence
- 3) Can give opinion on conclusion
- 4) CANNOT give opinion on mental state of defendant if element of crime

*Example:*

- o *If Jon is admitted as an expert on the New York Jets, he is not an expert on the National Football League*
- o *If Jon is admitted as an expert on the Godfather trilogy, he is not an expert in television*
- o *If Jon is admitted as an expert in tort law, he is not an expert in contract law*

#### > Control of Witnesses:

- The Court can take steps to keep "Reasonable Control"

#### > Leading Questions Not Allowed on Direct

##### ▶ Exceptions:

- Cross-examination
- Hostile witness
- Adverse party
- Shy witness/child
- Jog memory
- Lay foundation

> **Refreshing Memory/Recollection:**

- 1) May show anything to witness
- 2) But NOT read into evidence

> **Witnesses Must Not be Present in Courtroom**

▶ **Exceptions:**

- If they are a party
- Statute allows
- Needed

**THE JUDGE & THE JURY**

> **Judge:** Rules of Law + Admissibility

vs.

**Jury:** Questions of Fact + Weight

**OBJECTIONS & OFFERS OF PROOF**

> **Objection to Admission:**

- 1) Timely
- 2) Grounds

> **Offer of Proof:**

- 1) Evidence was excluded
- 2) Preserves for appeal

**BURDEN OF PERSUASION & PRODUCTION**

> **Burden of Production:**

- The plaintiff/prosecution must prove each element

> **Burden of Persuasion:**

- **Civil:** Preponderance of the evidence (51%+)
- **Criminal:** Beyond a reasonable doubt



**Definition – Presumption**

Conclusion the judge must come to once a party meets its burden

➤ **Rebuttable Presumption:**

- If the presumption is rebutted with evidence – the jury **MAY** conclude
- If the presumption is **NOT** rebutted – the jury **MUST** conclude

➤ **Conclusive Presumption:**

- No rebuttal evidence may be offered

**IMPEACHMENT**

➤ **Character** = Defendant

**vs.**

**Impeachment** = Witness on the stand

➤ **Impeachment:**

- Attacking witness credibility
- Generally admissible



**AdaptiTip**

Look for two statements in impeachment questions



**HYPOTHESIS**

- 1) Jon witnesses a car accident. Jon is called to the stand. On direct, Jon says he saw the guy go through the red light and hit the lady. On cross, the defense asks if Jon wears glasses, if he was wearing them that day, and if it was foggy and misty that day. Can the defense ask Jon those questions?
- 2) Jon witnesses a car accident. He is called to the stand. He says he told the police officer that the light was red. The police officer takes the stand and says Jon told him the light was yellow. Can the officer come to the stand to impeach Jon?



### **HYPO**

Jon witnesses a car accident. Jon says the light was red. Now on cross-examination, he is asked if he knocked over an old lady for a marble rye, if he committed larceny, and if he cheated on his final exam in law school. Is this a regular impeachment question?

#### **> Prior Felony Convictions:**

- 1) Felony within 10 years
- 2) Passes balancing test

#### **> Prior Convictions Regarding Honesty/Truthfulness:**

- 1) Felony or Misdemeanor
- 2) Proved by reputation, opinion, or acts

#### **> Prior Bad Acts (Not Convictions):**

- In general – Not Admissible
- Regarding honesty/truthfulness – Admissible
- No extrinsic evidence



### **HYPO**

If Jon is asked if he cheated on his law school exam, can the Registrar be brought in to prove that Jon did cheat on his exam?

#### **> Collateral Matter:**

- Not relevant to the case
- Cannot be used to impeach

#### **> Impeachment AND Substantive Evidence:**

- When the statement is also not hearsay