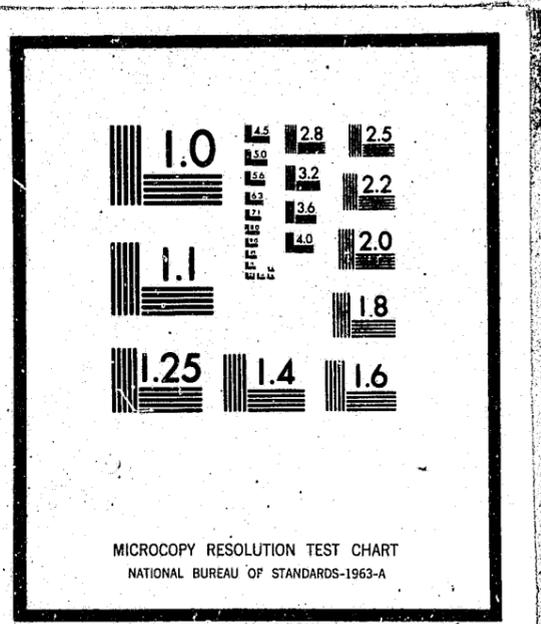


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SOUTH CAROLINA LAW
ENFORCEMENT ETV
TRAINING PROGRAM

RULES OF EVIDENCE PART VI STUDY WORKBOOK

Prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

South Carolina **LAW ENFORCEMENT - ~~E.T.V.~~ TRAINING PROGRAM** - From Crime to Court
Educational Television

Rules of Evidence,

PART VI 6

BY

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Sponsored by

South Carolina Law Enforcement Division
in cooperation with
South Carolina Educational Television Network

Endorsed by

South Carolina Governor Robert E. McNair
South Carolina Sheriffs' Association
South Carolina Law Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

Program Objective

This material will present many aspects of the "rules of evidence", e.g., the hearsay rules, dying declarations, evidence of previous convictions or crimes, continuity of the possession of evidence, and other related topics.

LAW ENFORCEMENT - E.T.V. TRAINING PROGRAM

Rules of Evidence - Part VI

Review and Study Workbook

INSTRUCTIONS: This study workbook is designed to be of use both during the group discussion period and by you on your own at home. It should serve as 1) an effective aid for the group discussion which follows each television program, 2) a means of privately checking to see how well you learned the points covered in this lesson, and 3) an opportunity to review the material on your own, at home, to be sure that you have gotten all out of the program that you want to.

Here is how the Study Workbook is to be used.

FOR THE GROUP DISCUSSION PERIOD

For the group discussion periods which follow the television programs, the discussion leader will provide you with directions. Just be sure that you write your answers in the space between the dashed lines and not in the blanks of the items themselves.

FOR HOME REVIEW AND STUDY

Use the workbook for review and study on your own as follows:

Cover the printed text of the workbook with a blank sheet of paper. Slide the blank paper down until you come to an asterisk or star (*). Read the text material above the star until you come to a numbered blank. To complete the sentence correctly requires that you write an answer of one or several words.

Write the word or words in the blank space provided, which you think completes the sentence correctly.

Sometimes you will be asked to fill in more than one blank to complete an item.

After you have filled in all of the blanks which are contained in an item, slide the blank paper down just far enough to reveal the numbered correct answer(s) which you filled in during the group discussion period. They will correspond to the numbered blank or blanks which you have just filled in.

In this way, you can both check to see how well you have learned the content of the television program and can immediately find out, item by item, whether the answer you give is correct.

Even after the workbook has been filled in, both in the blanks and between the dashed lines, it provides an excellent means for review.

An item might go like this, for example:

The legal meaning of hearsay differs very little from its popular meaning. With very few exceptions, any testimony given as to fact, in either a civil or a criminal case, must be from a person who knows such fact from (1) _____.

* (The star indicates that you should not slide your paper further down until you have given your answer--after you have written your answer, slide the paper down to reveal the answer column.)

Answer: (1) his own senses +

As another example, a sentence of the workbook may call for more than one answer:

In other words, testimony, given as to fact, in a civil or criminal case, must be based on something the witness has actually (2) _____, (3) _____, (4) _____, (5) _____, or (6) _____.

*

Answers: (2) seen (3) heard (4) tasted (5) smelled (6) felt

(answer may be in any order)

+ Note: In some cases there may be other words which mean the same thing as those used in the answer. When this is true, the important fact is that you have given an answer which does not differ significantly in meaning from the one given as the correct answer.

And now to proceed with your study and review!

Suppose that a person has testified under oath at a preliminary hearing. Subsequently, he dies or disappears before the trial. That testimony may/may not (7) _____ be read by the court stenographer at the trial.

*

Answer: (7)

In the State of South Carolina, a right that the defendant has in every case is the right of (8) _____.

*

Answer: (8)

At a preliminary hearing, the State witnesses are under (9) _____ and may or may not be cross-examined, as the defendant wishes.

*

Answer: (9)

The defendant is/is not (10) _____ on trial at the preliminary hearing.

*

Answer: (10)

Suppose there has been a mistrial. At the second trial a key witness, who testified at the first trial, cannot be found. His sworn testimony from the first trial can/cannot (11) _____ be read into the record of the second one.

*

Answer: (11)

The hearsay rule means, generally, that a person may not testify as to anything (12) _____ by someone else, or to any fact that has been made known to the witness from any other source than his own (13) _____.

*

Answers: (12) (13)

It may be noted that the number of exceptions to the statement above are (14) _____.

*

Answer: (14)

One exception to the general hearsay rule is the case of (15) _____ declarations.

*

Answer: (15)

Even though a dying declaration may be considered to be good evidence, it should be realized that nevertheless it is (16) _____ evidence.

*

Answer: (16)

There are circumstances in which hearsay can be used in court to convict a defendant, even on so extreme a charge as (17) _____.

*

Answer: (17)

In general, there are two principal reasons why hearsay evidence is not admitted to court: First, the person who made the original statement to the witness did not do so under (18) _____; and, second, the witness' informant is not subject to (19) _____.

*

Answers: (18) (19)

There are three requirements that must be met before anyone can testify in court about something he heard a dying person say:

1. The statement must be (20) _____ related to the case.
2. The person who made it must have been dying and must have actually died (21) _____ thereafter.
3. The dying person must have (22) _____ or

*

_____ that he was dying.

Answers: (20)

(21)

(22)



The reasoning behind the dying statement rule is that a dying person who knows that death is imminent is not very likely to

(23) _____.

*

Answer: (23)

Consider the following facts:

An officer arrives on the scene of a crime. He finds a dying man, shot several times, lying on the ground. The man says, "John Doe shot me." He dies a few minutes later.

Considering the 3-requirements rule which was just covered, the officer can/cannot (24) _____ testify as to the dead man's statement--or dying declaration.

*

Answer: (24)

The reason that the officer cannot testify as to the dying man's statement is that, although the declaration passes two of the tests, it does not meet the requirement that (25) _____.

*

Answer: (25)



Suppose, in the case above, that the wounded man, instead of only saying, "John Doe shot me"; had added, "I don't believe I am going to make it." Considering the 3-requirements rule, the officer can/still cannot (26) _____ testify as to the dead man's statement--or dying declaration.

*

Answer: (26)

The fact that a person knows that he has been shot is/is not (27) _____ enough to establish the fact that he believes himself to be dying.

*

Answer: (27)

The words, for example, of a doctor, priest, minister, or rabbi telling a dying person that he is going to die are/are not (28) _____ enough in themselves to establish a dying declaration. It must be apparent that the dying person (29) _____ the statements which were made to him.

*

Answers: (28) (29)

Suppose that a doctor stated to a dying man, "You are not going to make it." The now deceased replied, "Sure, John Doe shot me, but you're crazy. Of course, I'm going to make it." -- As this would show that he did not believe he was dying, it would rule out his statement as a (30) _____.

*

Answer: (30)

A deceased does not necessarily have to make an oral statement, when thinking he is going to die, for it to be accepted.

If a wounded man were not able to speak, but could communicate by some recognized sign, such as (31) _____, that would be a sufficient answer.

*

Answer: (31)

Consider the following facts:

A person is found severely wounded. He cannot speak. He is conscious, however. A police officer says to him, "You're hit pretty bad. We're trying to get help to you. You have a good chance of pulling through!"

The wounded man shakes his head hopelessly, indicating disagreement. The officer, suspecting a particular person, says -- "Who shot you, John Smith?" In obvious response, the wounded man nods his head, "yes."

This could/could not (32) _____ be admitted in evidence because it does/does not (33) _____ meet all the requirements.

*

Answer: (32) (33)

Obviously, when a person dies, he is as likely to be in the presence of a nurse, ambulance driver, attendant, or a deacon of a church as he is to be in the presence of a doctor, priest, or a rabbi. However, it doesn't really matter whether the person who informs someone of impending death is technically qualified to do so. The important thing is to be able to show that the dying man (34) _____ he was dying.

*

Answer: (34)

If a dying man knew that the person who told him he was dying was a doctor, it would be stronger evidence that the dying man (35) _____, but it is not legally necessary that such an informer be medically qualified.

*

Answer: (35)

Generally, in the trial of an accused person for a crime, evidence of another crime, previously committed by the accused, may/may not (36) _____ be used.

*

Answer: (36)

The general rule above applies, usually, when direct evidence is involved.

There are exceptions to the rule. Any witness, including the accused, if he chooses to take the stand, may be cross-examined concerning previous crimes involving (37) _____.

*

Answer: (37)

The exception, cited above, is allowed in order to attack the witness' (38) _____.

*

Answer: (38)

Suppose that a witness (having volunteered to take the stand) has been convicted of burglary in New York State in a previous year. He is asked on cross-examination whether or not this is so. If he lies and denies it, he is liable for an indictment charging (39) _____.

*

Answer: (39)

In the example above, if he admits his previous conviction, he may not be questioned as to (40) _____.

*

Answer: (40)

A crime of moral turpitude, about which any witness may be (41) _____
_____ to attack his believability, is one that was a
crime under (42) _____.

*

Answers: (41) _____ (42) _____

Some examples of crimes of moral turpitude are (43) _____,
(44) _____, (45) _____, (46) _____, (47) _____,
-- _____.

*

Answers: (43) _____ (44) _____ (45) _____
(46) _____ (47) _____

Acts that were legal before (48) _____
_____ made them unlawful--such as drunk driving, illegal
liquor violations, traffic violations -- are not crimes of moral turpitude.

*

Answer: (48) _____

A witness may/may not (49) _____ be questioned about
prior convictions which are not crimes of moral turpitude.

*

Answer: (49) _____

In comparison to prior convictions involving moral turpitude, the
rule as to (50) _____ is much
more strict.

*

Answer: (50) _____

There is good reason why the rule regarding direct evidence is much
more strict. The fact that another crime was committed by a defendant,
either before or after the offense for which he is on trial, is no proof
that he is guilty of the one for which he is being tried.

The fact of another crime, if known to the jury members, would
almost certainly prejudice the case against the accused.

The State or prosecution usually is prohibited from presenting
direct evidence of other "unrelated crimes." By unrelated crimes is
meant crimes that (51) _____

*

Answer: (51) _____

Suppose that an accused person is on trial for a burglary in South
Carolina in 1967. The court records show that he was convicted for the
same offense in California in 1960 and again in Florida in 1962.

The Solicitor may/may not (52) _____ give evidence
of such prior convictions in presenting his current case.

*

Answer: (52) _____

Any witnesses, even a defendant testifying in his own behalf, may be cross-examined as to any prior conviction for a crime involving moral turpitude.

The purpose of such cross-examination, legally speaking, is not to show previous convictions alone. It is for the purpose of (53) _____

*

Answer: (53)

For example, burglary is a crime involving moral turpitude. Once the defendant takes the stand, he becomes not only a defendant but also a (54) _____

*

Answer: (54)

There are a few restricted exceptions in which the solicitor may present in his case direct evidence of previous crimes. An exception to the general rule usually is only made when two or more crimes are so closely linked together in time and circumstances that one cannot be fully shown without the other.

In such a case, (55) _____ evidence as to all may be admitted.

*

Answer: (55)

Consider the case described during the TV program in which a Mr. Harris murdered three members of the Bills family after one of them had killed his son. The fact of the shooting and the deaths of the Bills family could be shown.

However, with regard to murder, it also must be shown that there existed (56) _____

*

Answer: (56)





One important aspect of the legal rules of evidence involves the way evidence is handled from the time it is collected until it is presented to the court. In other words, there are legal requirements relative to the necessity that the (57) _____ of the possession of evidence must be established.

*

Answer: (57)

Suppose that a bottle of whiskey, taken in evidence, is placed in an unlocked general storage room so that at the trial the officer cannot truthfully say that the contents of the bottle are now the same as when he got it.

Or suppose that a murder bullet is not properly marked and kept in a safe place so that it can be traced at every single step from the time it was taken from the dead person's body until it is placed in evidence at the trial.

In both of these cases it would be difficult or impossible to establish the (58) _____ of the possession of the evidence.

*

Answer: (58)



Suppose that a wife calls police headquarters and says, "My husband just left home driving our car in a very drunken condition. Please find him before he kills someone."

The dispatcher who took the call could not testify at the trial of the husband for drunk driving as to the latter's state of drunkenness because the dispatcher (59) _____

*

Answer: (59)

Assuming that she was willing to do so, the wife could/could not (60) _____ so testify.

*

Answer: (60)

Suppose an accused person has been identified in a police lineup by a witness. An officer who saw and heard such identification made could/could not (61) _____ testify at the trial.

*

Answer: (61)

One of the most effective rights any accused person has at his trial is that of (62) _____ of any witness against him.

*

Answer: (62)

A major reason why an officer could not testify at a trial that an accused person had been identified, within his hearing, by a witness, is that the accused would be denied, thereby, the right to (63) _____ the real witness (that is, the person who had made the identification.)

*

Answer: (63)

Sometimes good and important photographs are thrown out of court due to the fact that there has been some (64) _____ before the photograph was taken.

*

Answer: (64)

In view of the possibility of photographs being thrown out, many police officers have resorted to the use of crime scene sketches to aid them in their testimony.

A sketch of a scene made by a police officer is admissible if (65) _____

*

Answer: (65)

When describing the physical aspects of a location, (66) _____
_____ are most important, and it must be shown that
they were made with care.

*

Answer: (66)

Sketches, like notes, are/are not (67) _____
evidence in themselves.

*

Answer: (67)

It is important for investigating officers to make sketches of
accident scenes and scenes of crimes. When accuracy of testimony will
add to the case, a jury will be impressed that an officer had the
professional know-how to take the time and pains to make measurements
and note relative positions of objects on the scene.

The above method is much more convincing than (68) _____
_____.

*

Answer: (68)

Any time a witness testifies from his notes or sketches, those
notes and sketches are subject to (69) _____,
and may be shown to (70) _____.

*

Answers: (69) (70)

An investigator can/cannot (71) _____ refer to his notes
while in the witness chair.

*

Answer: (71)

There are some rules regarding the use of notes. For example, they
must have been made by (72) _____.

*

Answer: (72)

Suppose that two officers had made an investigation together. In
such a case, one officer may/may not (73) _____ testify from
notes made by another officer.

*

Answer: (73)

Also, for notes to be acceptable, they must have been made at the time of the investigation or (74) _____.

*

Answer: (74)

Suppose that an officer, while testifying, reads from notes which are incorporated in a notebook. The question arises as to whether other materials in the notebook, unrelated to the crime, is available to be reviewed by the defendant's attorney or the jury. Obviously, there could be material there which would weaken the police officer's testimony.

First of all, any page that had to do with the case being tried (75) _____.

*

Answer: (75)



Next, as a practical matter, there is nothing to prevent the defense attorney from (76) _____.

*

Answer: (76)

As a matter of good practice, the officer's entire notebook should be (77) _____.

*

Answer: (77)

NOTE: In conclusion, may we emphasize again the importance and desirability of each of you maintaining the written material presented to you by your discussion leaders.

Please feel free to communicate with the Office of the Attorney General of South Carolina should any problem arise in your work for which you might wish some advice.

THANK YOU FOR YOUR COOPERATION

END