

[Note: Numbers in brackets refer to the printed pages of the Emanuel Law Outline where the topic is discussed.]

Emanuel Law Outlines Evidence

Chapter 1 BASIC CONCEPTS

I. KINDS OF EVIDENCE

A. Direct versus circumstantial [11]

1. Direct evidence: Direct evidence is evidence which, if believed, automatically resolves the issue. (*Example:* W says, "I saw D strangle V." This is direct evidence on whether D strangled V.)

2. Circumstantial: Circumstantial evidence is evidence which, even if believed, does not resolve the issue unless *additional reasoning* is used. (*Example:* W says, "I saw D running from the place where V's body was found, and I found a stocking in D's pocket." This is only circumstantial evidence of whether D strangled V.)

3. Probative value: The probative value of direct evidence is not necessarily higher than circumstantial evidence, but it will sometimes be more readily admitted by the judge.

B. Testimonial versus real and demonstrative: [458]

1. Testimonial: Testimonial evidence arises when W makes assertions in court. The fact-finder must rely on W's interpretation of W's sensory data, W's memory, etc.

2. Real and demonstrative: Real evidence is a thing involved in the underlying event (e.g., a weapon, document, or other tangible item). Demonstrative evidence is a tangible item that illustrates some material proposition (e.g., a map, chart, summary). The fact-finder may interpret either real or demonstrative evidence by use of its own senses, without intervening sensing and interpreting by a witness.

II. CONDITIONS FOR ADMITTING EVIDENCE

A. Relevant: Only *relevant* evidence may be admitted. (FRE 402) [10 - 16]

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