

EVIDENCE

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EVIDENCE

evidence, n. (14c) **1.** Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact <the bloody glove is the key piece of evidence for the prosecution>. [Cases: Criminal Law ¶661; Federal Civil Procedure k2011; Trial ¶33, 43.] **2.** See *fact in evidence* under FACT. **3.** The collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute <the evidence will show that the defendant breached the contract>. **4.** The body of law regulating the admissibility of what is offered as proof into the record of a legal proceeding <under the rules of evidence, the witness's statement is inadmissible hearsay that is not subject to any exception>. — Also termed (in sense 4) *rules of evidence*. [Cases: Criminal Law ¶661; Federal Civil Procedure k2011; Trial ¶43.] — **evidence, vb.**

“Evidence is any matter of fact which is furnished to a legal tribunal, otherwise than by reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact.” James B. Thayer, *Presumptions and the Law of Evidence*, 3 Harv. L. Rev. 141, 142 (1889).

“Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptance, the term ‘evidence’ includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. ‘Evidence’ has also been defined to mean any species of proof legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, and the like.” 31A C.J.S. *Evidence* § 3, at 67–68 (1996).

adminicular evidence. *Rare.* Corroborating or auxiliary evidence presented for the purpose of explaining or completing other evidence.

admissible evidence. (18c) Evidence that is relevant and is of such a character (e.g., not unfairly prejudicial, based on hearsay, or privileged) that the court should receive it. — Also termed *competent evidence*; *proper evidence*; *legal evidence*. [Cases: Criminal Law ¶661; Federal Civil Procedure k2011; Trial ¶43.]

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autoptic evidence. See *demonstrative evidence*.

best evidence. (17c) Evidence of the highest quality available, as measured by the nature of the case rather than the thing being offered as evidence. • The term is usu. applied to writings and recordings. If the original is available, it must be offered rather than a copy or oral rendition. Fed. R. Evid. 1002. — Also termed *primary evidence*; *original evidence*. See BEST-EVIDENCE RULEE. Cf. *secondary evidence*. [Cases: Criminal Law ¶¶398–403; Evidence ¶¶157–187.]

“In some circumstances, ‘best evidence’ may mean that evidence which is more specific and definite as opposed to that which is merely general and indefinite or descriptive. However, ‘best evidence’ or ‘primary evidence’ is variously defined as that particular means of proof which is indicated by the nature of the fact under investigation as the most natural and satisfactory, or as that kind of proof which under any possible circumstances affords the greatest certainty of the fact in question; or as evidence which carries on its face no indication that better remains behind.” 32A C.J.S. Evidence § 1054, at 417 (1996).

character evidence. (1949) Evidence regarding someone's general personality traits or propensities, of a praiseworthy or blameworthy nature; evidence of a person's moral standing in a community. Fed. R. Evid. 404, 405, 608. • Character evidence is usu., but not always, prohibited if offered to show that the person acted in conformity with that character. Cf. *reputation evidence*. [Cases: Criminal Law ¶¶375; Evidence ¶¶106; Witnesses ¶¶333–362.]

circumstantial evidence. (18c) 1. Evidence based on inference and not on personal knowledge or observation. — Also termed *indirect evidence*; *oblique evidence*. Cf. *direct evidence* (1). [Cases: Criminal Law ¶¶338(2), 552; Evidence ¶¶100, 587.] 2. All evidence that is not given by eyewitness testimony.

“*Indirect evidence* (called by the civilians, *oblique*, and more commonly known as *circumstantial evidence*) is that which is applied to the principal fact, indirectly, or through the medium of other facts, by establishing certain circumstances or minor facts, already described as evidentiary, from which the principal fact is extracted and gathered by a process of special inference....” Alexander M. Burrill, *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* 4 (1868).

“Some circumstantial evidence is very strong, as when you find a trout in the milk.” Henry David Thoreau, *Journal*, 11 Nov. 1850, in 2 *Journal of Henry D. Thoreau* 94 (Bradford Torrey & Francis H. Allen eds., 1962).

“Evidence of some collateral fact, from which the existence or non-existence of some fact in question may be inferred as a probable consequence, is termed circumstantial evidence.” William P. Richardson, *The Law of Evidence* § 111, at 68 (3d ed. 1928).

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“Testimonial evidence readily defines itself by its name; it is any assertion by a human being, offered to evidence the truth of the matter asserted. Circumstantial evidence is any and all other evidence. Scientifically the term ‘circumstantial’ is indefensible, for it does not correlate with ‘testimonial’; a more correct equivalent would be ‘nontestimonial.’ But no one has yet invented an acceptable substitute for ‘circumstantial.’” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 38 (1935).

clear and convincing evidence.(17c) Evidence indicating that the thing to be proved is highly probable or reasonably certain. • This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials. — Also termed *clear and convincing proof*. See REASONABLE DOUBT. Cf. PREPONDERANCE OF THE EVIDENCE. [Cases: Evidence ¶596(1).]

communicative evidence. See *testimonial evidence*.

competent evidence. 1. See *admissible evidence*. 2. See *relevant evidence*.

conclusive evidence.(17c) 1. Evidence so strong as to overbear any other evidence to the contrary. — Also termed *conclusive proof*. [Cases: Criminal Law ¶549; Evidence ¶584(1).] 2. Evidence that so preponderates as to oblige a fact-finder to come to a certain conclusion.

concomitant evidence.(17c) Evidence that, at the time of the act, the alleged doer of the act was present and actually did it.

conflicting evidence.(1803) Evidence that comes from different sources and is often irreconcilable.

corroborating evidence.(17c) Evidence that differs from but strengthens or confirms what other evidence shows (esp. that which needs support). — Also termed *corroborative evidence*. Cf. *cumulative evidence*.

credible evidence.(17c) Evidence that is worthy of belief; trustworthy evidence.

critical evidence.(18c) Evidence strong enough that its presence could tilt a juror's mind. • Under the Due Process Clause, an indigent criminal defendant is usu. entitled to an expert opinion of the merits of critical evidence. — Also termed *crucial evidence*.

crucial evidence. See *critical evidence*.

cumulative evidence.(18c) Additional evidence that supports a fact established by the existing evidence (esp. that which does not need further support). Cf. *corroborating evidence*. [Cases: Criminal Law ¶675; Federal Civil Procedure k2011; Trial ¶56.]

demeanor evidence.(1909) The behavior and appearance of a witness on the witness stand, to be considered by the fact-finder on the issue of credibility. [Cases: Criminal Law ¶553; Evidence ¶588.]

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demonstrative evidence (di-m~~on~~-str<<schwa>>-tiv). (17c) Physical evidence that one can see and inspect (i.e. an explanatory aid, such as a chart, map, and some computer simulations) and that, while of probative value and usu. offered to clarify testimony, does not play a direct part in the incident in question. • This term sometimes overlaps with and is used as a synonym of real evidence. — Also termed *illustrative evidence*; *autoptic evidence*; *autoptic proference*; *real evidence*; *tangible evidence*. See *nonverbal testimony* under TESTIMONY. Cf. *real evidence*; *testimonial evidence*. [Cases: Criminal Law ¶404.5–404.85; Evidence ¶188–198.]

“There remains a source of proof, distinct from either circumstantial or testimonial evidence, viz., what the tribunal sees or hears by its own senses. Whether this should be termed ‘evidence’ or not is a question of words, open to difference of view. But it is universally conceded to be an available source of proof. Bentham’s term for it, ‘real evidence,’ came into wide vogue, but is ambiguous. The term ‘autoptic proference’ (etymologically meaning ‘showing to the tribunal’s own vision’) is preferable.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 39 (1935).

derivative evidence.(1961) Evidence that is discovered as a result of illegally obtained evidence and is therefore inadmissible because of the primary taint. See EXCLUSIONARY RULE; FRUIT-OF-THE-POISONOUS-TREE DOCTRINE. [Cases: Criminal Law ¶394.1(3).]

direct evidence.(16c) 1. Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. — Also termed *positive evidence*. Cf. *circumstantial evidence*; *negative evidence*. [Cases: Criminal Law ¶549; Evidence ¶587.] 2. See *original evidence* (1).

“A little reflection shows that no disputed case will ordinarily be proved solely by circumstantial or solely by testimonial evidence. Ordinarily there is evidence of *both kinds*. The matter has been obscured by the use of the term ‘direct evidence,’ — a term sometimes used to mean testimonial evidence in general, but sometimes also limited to apply only to testimony directly asserting the fact-in-issue.... The term ‘direct’ evidence has no utility.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 40 (1935).

documentary evidence.(18c) Evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible. [Cases: Criminal Law ¶429–446; Evidence ¶325–383.]

downright evidence.See DOWNRIGHT EVIDENCE.

evidence aliunde.See *extrinsic evidence* (1).

evidence-in-chief. (18c) Evidence used by a party in making its case-in-chief. [Cases: Criminal Law ¶682; Federal Civil Procedure k2015; Trial ¶61.]

exclusive evidence.(18c) The only facts that have, or are allowed by law to have, any probative force at all on a par-

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ticular matter in issue.

"[T]here is an important class of rules declaring certain facts to be exclusive evidence, none other being admissible. The execution of a document which requires attestation can be proved in no other way than by the testimony of an attesting witness, unless owing to the death or some other circumstance his testimony is unavailable. A written contract can generally be proved in no other way than by the production of the writing itself, whenever its production is possible." John Salmond, *Jurisprudence* 485 (Glanville L. Williams ed., 10th ed. 1947).

exculpatory evidence (ek-sk<<schwa>>l-p<<schwa>>-tor-ee). (18c) Evidence tending to establish a criminal defendant's innocence. *Fed. R. Crim. P. 16*. • The prosecution has a duty to disclose exculpatory evidence in its possession or control when the evidence may be material to the outcome of the case. See BRADY MATERIAL. [Cases: *Criminal Law* ¶359, 1992.]

expert evidence. (16c) Evidence about a scientific, technical, professional, or other specialized issue given by a person qualified to testify because of familiarity with the subject or special training in the field. — Also termed *expert testimony*. *Fed. R. Evid. 702–705*. See DAUBERT TEST. [Cases: *Criminal Law* ¶469–494; *Evidence* ¶505–574.]

extrajudicial evidence. (18c) Evidence that does not come directly under judicial cognizance but nevertheless constitutes an intermediate link between judicial evidence and the fact requiring proof. • It includes all facts that are known to the tribunal only by way of inference from some form of judicial evidence. See JUDICIAL NOTICE. Cf. *judicial evidence*.

extrinsic evidence. (17c) 1. Evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement. • Extrinsic evidence is usu. not admissible to contradict or add to the terms of an unambiguous document. — Also termed *extraneous evidence*; *parol evidence*; *evidence aliunde*. [Cases: *Evidence* ¶384–469.] 2. Evidence that is not legitimately before the court. Cf. *intrinsic evidence*. 3. Evidence that is calculated to impeach a witness's credibility, adduced by means other than cross-examination of the witness. • The means may include evidence in documents and recordings and the testimony of other witnesses. See *Fed. R. Evid. 608(b)* & note.

"Under [Federal Rule of Evidence] 608(b), if the witness denies engaging in untruthful misconduct, the cross-examiner must 'take the witness' answer,' meaning the questioner may not introduce extrinsic evidence to contradict the witness' denial through other witness testimony or the introduction of impeaching documents, or indeed any other evidence than the cross-examination, even if the questioner waits until it is his turn to put on evidence." Paul F. Rothstein, *The Federal Rules of Evidence* 312 (3d ed. 2003).

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fabricated evidence. (18c) False or deceitful evidence that is unlawfully created, usu. after the relevant event, in an attempt to achieve or avoid liability or conviction. — Also termed *fabricated fact*.

false evidence. See *false testimony* under TESTIMONY.

forensic evidence. (18c) Evidence used in court; esp., evidence arrived at by scientific or technical means, such as ballistic or medical evidence. [Cases: Evidence ¶150.]

foundational evidence. (1946) Evidence that determines the admissibility of other evidence.

habit evidence. (1921) Evidence of one's regular response to a repeated specific situation. Fed. R. Evid. 406. [Cases: Criminal Law ¶385; Evidence ¶138.]

hearsay evidence. See HEARSAY.

illegally obtained evidence. (1924) Evidence obtained by violating a statute or a person's constitutional or other right, esp. the Fourth Amendment guarantee against unreasonable searches, the Fifth Amendment right to remain silent, or the Sixth Amendment right to counsel. [Cases: Criminal Law ¶394.1–394.6; Evidence ¶154.]

illustrative evidence. See *demonstrative evidence*.

immaterial evidence. (18c) **1.** Evidence lacking in probative value. **2.** Evidence offered to prove a matter that is not in issue. [Cases: Criminal Law ¶382; Evidence ¶143.]

impeachment evidence. (1861) Evidence used to undermine a witness's credibility. Fed. R. Evid. 607–610. [Cases: Witnesses ¶311–409.]

impertinent evidence. See *irrelevant evidence*.

incompetent evidence. (18c) Evidence that is for any reason inadmissible. [Cases: Criminal Law ¶385; Evidence ¶148.]

incriminating evidence. (1878) Evidence tending to establish guilt or from which a fact-trier can infer guilt.

inculpatory evidence (in-k<<schwa>>l-p<<schwa>>-tor-ee). (1849) Evidence showing or tending to show one's involvement in a crime or wrong.

indirect evidence. See *circumstantial evidence* (1).

indispensable evidence. (18c) Evidence without which a particular fact cannot be proved.

insufficient evidence. (17c) Evidence that is inadequate to prove or support a finding of something. • This term usu. describes a case that is not strong enough to even get to the fact-finder. [Cases: Evidence ¶584–601.]

intrinsic evidence. (17c) **1.** Evidence brought out by the examination of the witness testifying. **2.** Evidence existing within a writing. Cf. *extrinsic evidence* (2).

irrelevant evidence. Evidence not tending to prove or disprove a matter in issue. Fed. R. Evid. 401–403. — Also

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termed *impertinent evidence*. See IRRELEVANT. [Cases: Criminal Law ¶338; Evidence ¶99.]

judicial evidence.(17c) Evidence produced in court, consisting of all facts brought to the attention of or admitted into evidence before the tribunal. Cf. *extrajudicial evidence*.

legal evidence.(17c) 1. See *admissible evidence*. 2. All admissible evidence, both oral and documentary, of such a character that it reasonably and substantially proves the point rather than merely raising suspicion or conjecture.

material evidence.(17c) Evidence having some logical connection with the facts of consequence or the issues. Cf. *relevant evidence*; *immaterial evidence*. [Cases: Criminal Law ¶382; Evidence ¶143.]

mathematical evidence.(18c) 1. Loosely, evidence that establishes its conclusions with absolute certainty. 2. Evidence pertaining to mathematical or statistical matters, or probabilities.

mediate evidence.See *secondary evidence*.

medical evidence.(18c) Evidence furnished by a doctor, nurse, or other qualified medical person testifying in a professional capacity as an expert, or by a standard treatise on medicine or surgery. [Cases: Criminal Law ¶473, 476; Evidence ¶555.10.]

moral evidence.(17c) Loosely, evidence that depends on a belief, rather than complete and absolute proof. • Generally, moral evidence is testimonial.

multiple evidence.(1926) Evidence with probative or other value on more than one issue but usu. admitted into evidence for one specific purpose. • Impeachment evidence, for example, may not be probative on a particular issue but may nonetheless affect the jury's perceptions of several issues.

negative evidence.(17c) Evidence suggesting that an alleged fact does not exist, such as a witness's testifying that he or she did not see an event occur. • Negative evidence is generally regarded as weaker than positive evidence because a positive assertion that a witness saw an event is a stronger statement than an assertion that a witness did not see it. But a negative assertion will sometimes be considered positive evidence, depending on the witness's opportunity to see the event. For instance, testimony that the witness watched the entire game and saw no riot in the stands is stronger than testimony stating only that the witness did not see a riot. — Also termed *negative testimony*. Cf. *direct evidence* (1). [Cases: Criminal Law ¶387; Evidence ¶147, 586.]

newly discovered evidence.(18c) Evidence existing at the time of a motion or trial but then unknown to a party, who, upon later discovering it, may assert it as grounds for reconsideration or a new trial. See Fed. R. Civ. P. 60(b).

[Cases: Criminal Law ¶938; Federal Civil Procedure k928, 2350, 2655; New Trial ¶99.]

no evidence.See NO EVIDENCE.

oblique evidence.See *circumstantial evidence* (1).

Black's Law Dictionary (9th ed. 2009), *admissible evidence*, *autopsy evidence*, *best evidence*, *character evidence*, *circumstantial evidence*, *clear and convincing evidence*, *communicative evidence*, *competent evidence*, *conclusive evidence*, *concomitant evidence*, *conflicting evidence*, *corroborating evidence*, *credible evidence*, *critical evidence*, *crucial evidence*, *cumulative evidence*, *de-meanor evidence*, *demonstrative evidence*, *derivative evidence*, *direct evidence*, *documentary evidence*, *downright evidence*, *evidence aliunde*, *evidence-in-chief*, *exclusive evidence*, *exculpatory evidence*, *expert evidence*, *extrajudicial evidence*, *extrinsic evidence*, *fabricated evidence*, *false evidence*, *forensic evidence*, *foundational evidence*, *habit evidence*, *hearsay evidence*, *illegally obtained evidence*, *illustrative evidence*, *immaterial evidence*, *impeachment evidence*, *impertinent evidence*, *incompetent evidence*, *incriminating evidence*, *inculpatory evidence*, *indirect evidence*, *indispensable evidence*, *insufficient evidence*, *intrinsic evidence*, *irrelevant evidence*, *judicial evidence*, *legal evidence*, *material evidence*, *mathematical evidence*, *mediate evidence*, *medical evidence*, *moral evidence*, *multiple evidence*, *negative evidence*, *newly discovered evidence*, *no evidence*, *oblique evidence*, *opinion evidence*, *oral evidence*, *original evidence*, *parol evidence*, *partial evidence*, *personal evidence*, *positive evidence*, *preappointed evidence*, *preliminary evidence*, *presumptive evidence*, *prima facie evidence*, *primary evidence*, *privileged evidence*, *probable evidence*, *probative evidence*, *proffered evidence*, *proper evidence*, *prospectant evidence*, *Queen's evidence*, *cereal evidence*, *rebuttal evidence*, *relevant evidence*, *reputation evidence*, *retrospectant evidence*, *satisfactory evidence*, *scientific evidence*, *secondary evidence*, *secondhand evidence*, *secret evidence*, *signature evidence*, *slight evidence*, *state's evidence*, *substantial evidence*, *substantive evidence*, *substitutionary evidence*, *sufficient evidence*, *tainted evidence*, *tangible evidence*, *testimonial evidence*, *traditionary evidence*, *unwritten evidence*.

probable evidence. See *presumptive evidence*.

probative evidence (prōb-ə-*tiv*). (1877) Evidence that tends to prove or disprove a point in issue. Cf. *relevant evidence*. [Cases: *Criminal Law* §338; *Evidence* §99.]

proffered evidence (prōf-ə-*rd*). (1904) 1. Evidence that is offered to the court to obtain a ruling on its admissibility. 2. Evidence whose admissibility depends on the existence or nonexistence of a preliminary fact. [Cases: *Evidence* §117; *Federal Civil Procedure* k2011.]

proper evidence. See *admissible evidence*.

prospectant evidence (prō-*spek-tiv*). (1924) Evidence that, before someone does an act, suggests that the person might or might not do the act. • This evidence typically falls into any of five categories: (1) moral character or disposition, (2) physical and mental capacity, (3) habit or custom, (4) emotion or motive, and (5) plan, design, or intention.

Queen's evidence. *English law.* Testimony provided by one criminal defendant, usu. under a promise of pardon, against another criminal defendant. — Also termed (when a king reigns) *King's evidence*. See *state's evidence*.

real evidence. (17c) 1. Physical evidence (such as clothing or a knife wound) that itself plays a direct part in the incident in question. — Also termed *physical evidence*. [Cases: *Criminal Law* §405; *Evidence* §188.] 2. See *demonstrative evidence*.

“Anything which is believed for any other reason than that someone has said so, is believed on real evidence.” John Salmond, *Jurisprudence* 480 (Glanville L. Williams ed., 10th ed. 1947).

rebuttal evidence. (1859) Evidence offered to disprove or contradict the evidence presented by an opposing party. • Rebuttal evidence is introduced in the rebutting party's answering case; it is not adduced, e.g., through cross-examination during the case-in-chief of the party to be rebutted. — Also termed *rebutting evidence*. [Cases: *Criminal Law* §683; *Federal Civil Procedure* k2015; *Trial* §62.]

relevant evidence. (18c) Evidence tending to prove or disprove a matter in issue. • Relevant evidence is both probative and material and is admissible unless excluded by a specific statute or rule. *Fed. R. Evid.* 401–403. — Also termed *competent evidence*. Cf. *material evidence*; *probative evidence*. [Cases: *Criminal Law* §338; *Evidence* §99.]

reputation evidence. (1888) Evidence of what one is thought by others to be. • Reputation evidence may be introduced as proof of character when character is in issue or is used circumstantially. *Fed. R. Evid.* 405(a). — Also termed *reputational evidence*. Cf. *character evidence*. [Cases: *Criminal Law* §375; *Evidence* §106; *Witnesses* §333–362.]

Black's Law Dictionary (9th ed. 2009), *adminicular evidence*, *admissible evidence*, *autoptic evidence*, *best evidence*, *character evidence*, *circumstantial evidence*, *clear and convincing evidence*, *communicative evidence*, *competent evidence*, *conclusive evidence*, *concomitant evidence*, *conflicting evidence*, *corroborating evidence*, *credible evidence*, *critical evidence*, *crucial evidence*, *cumulative evidence*, *de-meanor evidence*, *demonstrative evidence*, *derivative evidence*, *direct evidence*, *documentary evidence*, *downright evidence*, *evidence aliunde*, *evidence-in-chief*, *exclusive evidence*, *exculpatory evidence*, *expert evidence*, *extrajudicial evidence*, *extrinsic evidence*, *fabricated evidence*, *false evidence*, *forensic evidence*, *foundational evidence*, *habit evidence*, *hearsay evidence*, *illegally obtained evidence*, *illustrative evidence*, *immaterial evidence*, *impeachment evidence*, *impertinent evidence*, *incompetent evidence*, *incriminating evidence*, *inculpatory evidence*, *indirect evidence*, *indispensable evidence*, *insufficient evidence*, *intrinsic evidence*, *irrelevant evidence*, *judicial evidence*, *legal evidence*, *material evidence*, *mathematical evidence*, *mediate evidence*, *medical evidence*, *moral evidence*, *multiple evidence*, *negative evidence*, *newly discovered evidence*, *no evidence*, *oblique evidence*, *opinion evidence*, *oral evidence*, *original evidence*, *parol evidence*, *partial evidence*, *personal evidence*, *positive evidence*, *preappointed evidence*, *preliminary evidence*, *presumptive evidence*, *prima facie evidence*, *primary evidence*, *privileged evidence*, *probable evidence*, *probative evidence*, *proffered evidence*, *proper evidence*, *prospectant evidence*, *Queen's evidence*, *real evidence*, *rebuttal evidence*, *relevant evidence*, *reputation evidence*, *retrospectant evidence*, *satisfactory evidence*, *scientific evidence*, *secondary evidence*, *secondhand evidence*, *secret evidence*, *signature evidence*, *slight evidence*, *state's evidence*, *substantial evidence*, *substantive evidence*, *substitutionary evidence*, *sufficient evidence*, *tainted evidence*, *tangible evidence*, *testimonial evidence*, *traditionary evidence*, *unwritten evidence*.

retrospectant evidence (re-tr<<schwa>>-spek-t<<schwa>>nt). (1929) Evidence that, although it occurs after an act has been done, suggests that the alleged doer of the act actually did it <when goods have been stolen, and the thief is sought, a person's later possession of those goods amounts to retrospectant evidence that this person took them>. — Also termed *traces*.

satisfactory evidence. (17c) Evidence that is sufficient to satisfy an unprejudiced mind seeking the truth. — Also termed *sufficient evidence*; *satisfactory proof*. [Cases: Evidence ¶584(1).]

scientific evidence. (17c) Fact or opinion evidence that purports to draw on specialized knowledge of a science or to rely on scientific principles for its evidentiary value. See DAUBERT TEST. [Cases: Criminal Law ¶388; Evidence ¶150, 505–574.]

secondary evidence. (17c) Evidence that is inferior to the primary or best evidence and that becomes admissible when the primary or best evidence is lost or inaccessible. • Examples include a copy of a lost instrument or testimony regarding a lost instrument's contents. — Also termed *mediate evidence*; *mediate testimony*; *substitutionary evidence*. See Fed. R. Evid. 1004. Cf. *best evidence*. [Cases: Criminal Law ¶398, 403; Evidence ¶157–187.]

secondhand evidence. See HEARSAY.

secret evidence. (1983) Classified information that may be used against a defendant in an immigration proceeding but withheld from the defendant, the defendant's lawyer, and the public on national-security grounds. • The use of secret evidence was made easier under the Anti-Terrorism and Effective Death Penalty Act of 1996. [Cases: Aliens, Immigration, and Citizenship ¶423.]

signature evidence. Highly distinctive evidence of a person's prior bad acts. • While ordinarily inadmissible, signature evidence will be admitted if it shows, for example, that two crimes were committed through the same planning, design, scheme, or modus operandi, and in such a way that the prior act and the current act are uniquely identifiable as those of the defendant. See Fed. R. Evid. 404(b). [Cases: Criminal Law ¶369.15; Evidence ¶129(5), 133.]

slight evidence. (18c) A small quantity of evidence; esp., the small amount of evidence sufficient to remove a presumption from a case or for a rational fact-finder to conclude that something essential has not been established beyond a reasonable doubt. See SLIGHT-EVIDENCE RULE.

state's evidence. (1886) Testimony provided by one criminal defendant — under a promise of immunity or reduced sentence — against another criminal defendant. See TURN STATE'S EVIDENCE.

substantial evidence. (17c) 1. Evidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla. See SUBSTANTIAL-EVIDENCE RULE. [Cases: Administrative Law and Procedure ¶791; Evidence ¶597.] 2. The product of adequately controlled investigations, including clinical studies, car-

Black's Law Dictionary (9th ed. 2009), *adminicular evidence*, *admissible evidence*, *autoptic evidence*, *best evidence*, *character evidence*, *circumstantial evidence*, *clear and convincing evidence*, *communicative evidence*, *competent evidence*, *conclusive evidence*, *concomitant evidence*, *conflicting evidence*, *corroborating evidence*, *credible evidence*, *critical evidence*, *crucial evidence*, *cumulative evidence*, *deanor evidence*, *demonstrative evidence*, *derivative evidence*, *direct evidence*, *documentary evidence*, *downright evidence*, *evidence aliunde*, *evidence-in-chief*, *exclusive evidence*, *exculpatory evidence*, *expert evidence*, *extrajudicial evidence*, *extrinsic evidence*, *fabricated evidence*, *false evidence*, *forensic evidence*, *foundational evidence*, *habit evidence*, *hearsay evidence*, *illegally obtained evidence*, *illustrative evidence*, *immaterial evidence*, *impeachment evidence*, *impertinent evidence*, *incompetent evidence*, *incriminating evidence*, *inculpatory evidence*, *indirect evidence*, *indispensable evidence*, *insufficient evidence*, *intrinsic evidence*, *irrelevant evidence*, *judicial evidence*, *legal evidence*, *material evidence*, *mathematical evidence*, *mediate evidence*, *medical evidence*, *moral evidence*, *multiple evidence*, *negative evidence*, *newly discovered evidence*, *no evidence*, *oblique evidence*, *opinion evidence*, *oral evidence*, *original evidence*, *parol evidence*, *partial evidence*, *personal evidence*, *positive evidence*, *preappointed evidence*, *preliminary evidence*, *presumptive evidence*, *prima facie evidence*, *primary evidence*, *privileged evidence*, *probable evidence*, *probative evidence*, *proffered evidence*, *proper evidence*, *prospectant evidence*, *Queen's evidence*, *real evidence*, *rebuttal evidence*, *relevant evidence*, *reputation evidence*, *retrospectant evidence*, *satisfactory evidence*, *scientific evidence*, *secondary evidence*, *secondhand evidence*, *secret evidence*, *signature evidence*, *slight evidence*, *state's evidence*, *substantial evidence*, *substantive evidence*, *substitutionary evidence*, *sufficient evidence*, *tainted evidence*, *tangible evidence*, *testimonial evidence*, *traditionary evidence*, *unwritten evidence*

ried out by qualified experts that establish the effectiveness of a drug under FSA regulations. 21 USCA § 355(e). **substantive evidence** (s<<schwa>>b-st<<schwa>>n-tiv). Evidence offered to help establish a fact in issue, as opposed to evidence directed to impeach or to support a witness's credibility. [Cases: Criminal Law ¶337; Evidence ¶266.]

substitutionary evidence. See *secondary evidence*.

sufficient evidence. See *satisfactory evidence*.

tainted evidence. (1876) Evidence that is inadmissible because it was directly or indirectly obtained by illegal means. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE. [Cases: Criminal Law ¶394; Evidence ¶154.]

tangible evidence. Physical evidence that is either real or demonstrative. See *demonstrative evidence*; *real evidence*.

testimonial evidence. (1831) A person's testimony offered to prove the truth of the matter asserted; esp., evidence elicited from a witness. — Also termed *communicative evidence*; *oral evidence*. Cf. *demonstrative evidence*. [Cases: Trial ¶43.]

“An assertion is testimonial evidence whether made out of court or in court, if it is offered with a view to persuading the tribunal of the matter asserted.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 120 (1935).

traditionary evidence. (18c) Evidence derived from a deceased person's former statements or reputation. • Traditionary evidence is admissible to prove ancestry, ancient boundaries, or similar facts, usu. when no living witnesses are available to testify. [Cases: Boundaries ¶35(2); Evidence ¶274, 302.]

unwritten evidence. (18c) Evidence given orally, in court or by deposition.

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