

Evidence

Hon. Nick Chu
Travis County Probate Court No. 2

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Funded by a Grant from the Texas Court of Criminal Appeals

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What is 'Evidence' in the Courtroom?

Testimony from witnesses and documents or items

Each party may offer these as their evidence at trial

The other party may try to keep them out of evidence by objecting.

The court decides what should come in after an objection based on the Rules of Evidence

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When Do The Rules Apply in Criminal Cases?

- The Rules of Evidence always apply to a criminal proceeding in a justice court.

Code of Criminal Procedure Art. 45.011

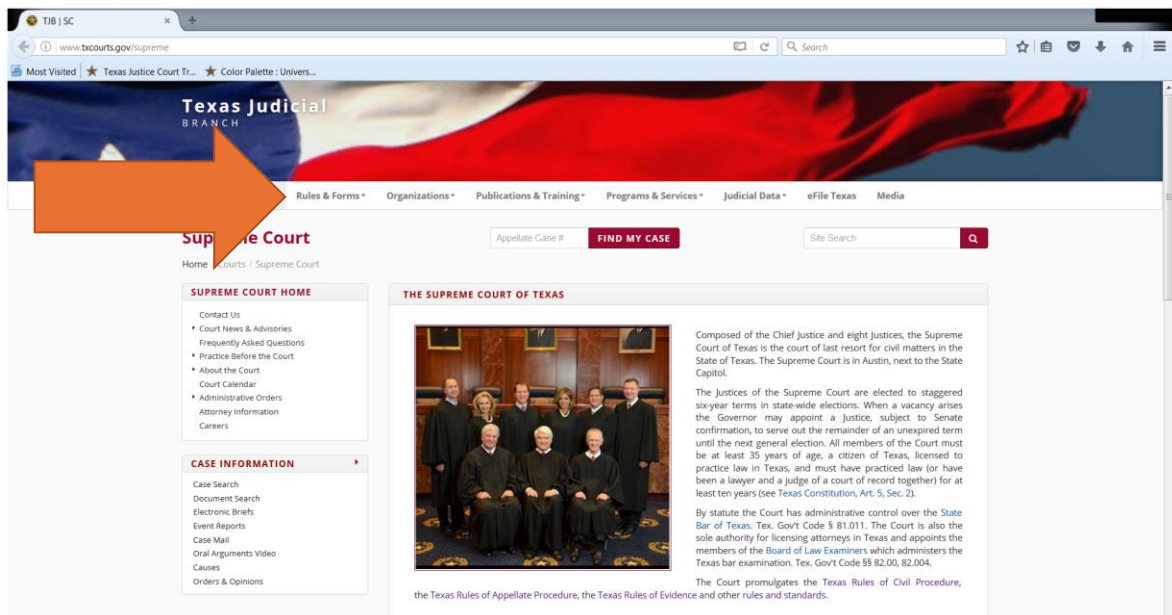
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Where to Find the Texas Rules of Evidence

- <https://www.txcourts.gov/>
- TJCTC Trial Notebook Ch. 7

Remember, the rules should be made available at your court! --Texas Rules of Civil Procedure 500.3 (f)

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Rules & Forms

Home / Rules & Forms / Rules & Standards

RULES & STANDARDS

For any questions about the rules, please call (512) 463-4097.

Rule	Effective Date	Proposed Changes
Texas Rules of Civil Procedure <input type="checkbox"/>	September 1, 2016	
Texas Rules of Appellate Procedure <input type="checkbox"/>	September 1, 2016	
Texas Rules of Evidence <input type="checkbox"/>	June 14, 2016	
Statewide Rules Governing Electronic Filing in Criminal Cases <input type="checkbox"/>	November 1, 2015	
Texas Rules of Judicial Administration <input type="checkbox"/>	March 22, 2016	
Texas Code of Judicial Conduct <input type="checkbox"/>	August 22, 2002	
Rules of Judicial Education <input type="checkbox"/>	November 25, 2013	
Judicial Branch Certification Commission Rules <input type="checkbox"/>	September 1, 2014	
Texas Disciplinary Rules of Professional Conduct <input type="checkbox"/>	March 22, 2016	
Texas Rules of Disciplinary Procedure <input type="checkbox"/>	March 22, 2016	
Judicial Bypass Rules under Ch. 33 of the Family Code <input type="checkbox"/>	January 1, 2016	

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TEXAS RULES OF EVIDENCE	
Effective June 1, 2020	
ARTICLE I.	GENERAL PROVISIONS
Rule 101.	Title, Scope, and Applicability of the Rules; Definitions
Rule 102.	Purpose
Rule 103.	Rulings on Evidence
Rule 104.	Preliminary Questions
Rule 105.	Evidence That Is Not Admissible Against Other Parties or for Other Purposes
Rule 106.	Remainder of or Related Writings or Recorded Statements
Rule 107.	Rule of Optional Completeness
ARTICLE II.	JUDICIAL NOTICE
Rule 201.	Judicial Notice of Adjudicative Facts
Rule 202.	Judicial Notice of Other States' Law
Rule 203.	Determining Foreign Law
Rule 204.	Judicial Notice of Texas Municipal and County Ordinances, Texas Register Contents, and Published Agency Rules
ARTICLE III.	PRESUMPTIONS
Rule 301.	[No Rules Adopted at This Time]
ARTICLE IV.	RELEVANCE AND ITS LIMITS
Rule 401.	Test for Relevant Evidence
Rule 402.	General Admissibility of Relevant Evidence
Rule 403.	Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons
Rule 404.	Character Evidence; Crimes or Other Acts
Rule 405.	Methods of Proving Character
Rule 406.	Habit; Routine Practice
Rule 407.	Subsequent Remedial Measures; Notification of Defect
Rule 408.	Compromise Offers and Negotiations
Rule 409.	Offers to Pay Medical and Similar Expenses
Rule 410.	Pleas, Plea Discussions, and Related Statements
Rule 411.	Liability Insurance
Rule 412.	Evidence of Previous Sexual Conduct in Criminal Cases
ARTICLE V.	PRIVILEGES
Rule 501.	Privileges in General
Rule 502.	Required Reports Privileged By Statute
Rule 503.	Lawyer-Client Privilege
Rule 504.	General Provisions

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CHAPTER 7: THE TEXAS RULES OF EVIDENCE IN JUSTICE COURTS

A. Application of the Rules and Objections



This chapter is only a summary of the most commonly applicable rules of evidence in justice court cases. The full text of the Rules of Evidence can be found at <https://www.txcourts.gov/rules-forms/rules-standards/>.

The rules of evidence are the guidelines for how a court should determine what information is considered in a case. This could mean testimony from a witness, or it could mean items like documents, picture, or videos.



In criminal cases, the rules of evidence **always** apply just as they do in county and district court. *Code of Criminal Procedure Art. 45.011.*

In civil cases, the rules of evidence generally **do not** apply. However, the court **may** choose to apply a rule of evidence to make sure the trial is fair to all parties. *Rule 500.3(e).*

How do you know when to allow a rule of evidence in a civil case?

Applying the rules of evidence is more of an issue in a jury trial, because the court may need to keep the jury from hearing information that could improperly influence their verdict. The court will need to rely on its judgment to decide if information goes too far.

In a bench trial, the court would hear the information even if a party wanted to object, so the court would simply use its judgment to ignore information that should not be considered as part of the case.

First Rule of Evidence?

- Only apply the rules when an objection is made!!

How Do You Respond to an Objection?

- **Sustained** – if you agree with the objection and are *not* going to allow the evidence.
- **Overruled** - if you disagree with the objection and *are* going to allow the evidence.

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Now Let's Look at Some Specific Rules!

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Texas Rules of Evidence 402

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Relevance

- All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority.
- Evidence which is not relevant is inadmissible.

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What Does “Relevance” Mean?

- Evidence that tends to make a fact more or less likely than it would be without the evidence.
- The fact should be “of consequence” in determining the action.

Texas Rules of Evidence 401

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- A picture of the posted speed limit sign on the stretch of road the defendant was traveling on at the time of the citation ***is relevant***. The music the defendant was listening to ***is not relevant*** to determine if he was speeding.

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Relevance Example Video

- <https://www.youtube.com/watch?v=GSu7BGbyJqc>
- Cut off 2:10 to the end. Set to play in full screen and have captions. Don't cover up the slide title.

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Texas Rules of Evidence 602

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Personal Knowledge

A witness can only talk about things they have personal knowledge of. They can prove knowledge by their own testimony.

This rule does not apply to a witness's expert testimony under Rule 703.

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- The law enforcement officer testified that the defendant read a book called "How to get out of a speeding ticket." The officer saw it on the front seat of the car.
- What did the officer actually see?
- What does the officer actually have personal knowledge of?

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Unfair Prejudice

Texas Rules of Evidence 403

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Unfair Prejudice (Often Called “403”)

The court may exclude relevant evidence if its “probative value is substantially outweighed by a danger of unfair prejudice” (confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence).

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What Does That Mean?

- Most evidence is 'prejudicial' to the other side.
- This rule applies to evidence – even if it would be admissible – if it is **too** prejudicial.
- Usually, it's evidence that is too extreme or distracting.

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Unfair Prejudice Example

- The state wants to offer testimony about the defendant's speed and how the officer determined it, but the defendant has already admitted the speed in his testimony.
- Would you allow the additional testimony into evidence?

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Hearsay

Texas Rules of Evidence 801(d)

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General Rule

- Generally, statements made outside of court are not admissible.
- Those statements are not as reliable as ones made in court, under oath.
- The hearsay rules consider who said something, why they said it, and the setting in which it was said to determine if the statement is reliable enough to be used in court.

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According to the Rules of Evidence

- *The following are allowed into evidence under the hearsay rule.....*

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Not for the Truth of the Matter Asserted

Out of court statements **can** be allowed as evidence if the evidence is just showing that the statement was **made**, not that the statement is **true**.

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Truth of the Matter Asserted

- Offering an out of court statement to show that the statement is true is called “using the statement for the truth of the matter asserted” and is not allowed under the hearsay rule.
- If the statement is not being “used for the truth,” it can be admitted into evidence.

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Truth of the Matter Asserted Example

- Officer is explaining why he pulled over a car and says dispatch told him a blue Corvette license ABC 123 was driving erratically.
- The statement from dispatch **can** be used to show why the officer pulled the car over but **cannot** be used as proof the car was actually driving erratically.

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Opposing Party Statement

- Was made by the opposing party, or
- Was made by an authorized person or agent on behalf of the opposing party.

Texas Rules of Evidence 801 (e)(2)

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Opposing Party Statement Examples

- During a traffic stop for speeding, the officer testifies that the defendant told him, “I didn’t know the speed limit changed when I entered town.”

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Excited Utterance

A statement relating to a startling event or condition, made while the person who made the statement was under the stress of excitement that it caused.



Texas Rules of Evidence 803 (2)

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Excited Utterance Example

- The passenger of the defendant pulled over for speeding testified that while they were pulled over, a sports car went by quickly and startled the DPS trooper. The trooper said, “now there’s a car that was definitely speeding.”

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But What About...

- What if it had been several hours since the startling event?
- Would that impact this hearsay exception?

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Public Records

- Public records are allowed into evidence if they include a public officer's activities during a time they had a legal duty to report.
- **But this does not include law enforcement reports in a criminal case. *Why not?***
 - Criminal defendant has the right to cross examine witnesses.
 - Law enforcement should be able to testify from their own memory.
 - Hearsay within hearsay

Texas Rules of Evidence 803 (8)

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Credibility & Character of a Witness

Impeachment
Opinion and Reputation for Truthfulness
Impeachment by a Criminal Conviction
Crimes and Other Acts

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Impeachment

- Impeachment means to attack the credibility – or believability – of a witness.
- The credibility of a witness may be attacked by **any party**, including the party calling the witness.

A party can always try to show that a witness is lying, biased, or wrong.

Texas Rules of Evidence 607

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Opinion and Reputation for Truthfulness

- This is the only quality about a witness that can be criticized.
- Cannot say they are a bad person or immoral.
- Can only present evidence that a witness **is** truthful after the character of that witness for truthfulness has been attacked by opinion or reputation evidence.
- *This is an exception to hearsay.*

Texas Rules of Evidence 608

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Opinion and Reputation for Truthfulness

- Generally, cannot use a specific act that a person took (specific instances of conduct).
- Only a prior crime can be used as a specific act.
- Can use “opinion and reputation” evidence.

Texas Rules of Evidence 404, 608

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Plaintiff: Mr. Smith, do you know Ms. Johnson?

Witness: Yes, I do.

Plaintiff: How do you know her?

Witness: I have known her for 10 years, and we are neighbors.

Plaintiff: How well do you know her?

Witness: She is an acquaintance; I do not socialize or do business with her.

Plaintiff: Are you aware of her reputation for truthfulness in your community?

Witness: Well, I know what everyone thinks of her generally, if that's what you mean.

Plaintiff: Yes, please tell us what you understand is her reputation for telling the truth.

Witness: She has a reputation as a liar. People in our community do not think she is the sort of person who tells the truth.

Plaintiff: Have you heard of any specific times she was not truthful?

Objection! Court: Sustained

Plaintiff: Have you ever seen Ms. Johnson do anything deceitful?

Objection! Court: Sustained.

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Impeachment by Evidence of a Criminal Conviction

- **Shall** allow into evidence to attack a witness's character for truthfulness if:
 - The party gave notice to the other side that they plan to use the conviction,
 - The conviction was within the last 10 years,
 - The crime was a felony or involved moral turpitude, &
 - The probative value outweighs its prejudicial effect to a party.



Texas Rules of Evidence 609 (a)

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Crimes and Other Acts

- **Cannot be used to say, “you did it before, so you did it this time.”**
- Can only be used for another purpose, such as: motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.
 - Highly technical.
 - Rare in justice court.

Texas Rules of Evidence 404

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Opinions of Witnesses

Expert opinions
Lay opinions

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Expert Witness

- Many people are experts on topics and can testify to them if their scientific, technical, or other specialized knowledge will help to understand the evidence or determine a fact in the case.
- Must be qualified as an expert by knowledge, skill, experience, training, or education.

Texas Rules of Evidence 702

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What's an Example of an Expert Witness You May Have in a Justice Court Case?

- Could an officer be an expert regarding the radar device they used to detect speeding?

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Opinion by Lay Witness

- Lay witness means someone who is not testifying based on special knowledge or training.
- If a person sees or hears something, they should be able to draw a conclusion from it.
- Should be rationally based on the witness's perception.
- Helpful to clearly understanding the witness's testimony or to determining a fact at issue.

Texas Rules of Evidence 701

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What's an Example of Lay Witness Testimony?

- Could a lay witness testify to their opinion about whether another person appeared angry?

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Privileged Communications

Texas Rules of Evidence 503, 504, & 509

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Privileged Communications

- Generally, parties cannot ask for information discussed between an attorney-client, doctor-patient, clergy, or spouses.

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Miscellaneous Evidence that Shouldn't be Admitted

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Must Not Be Admitted into Evidence in Criminal Cases

- Any withdrawn plea of guilty or nolo contendere.
- Any statement made during plea discussions with a prosecuting attorney (if it did not result in a plea of guilty or nolo contendere).

Texas Rules of Evidence 410

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Generally Applicable Evidence Rules for Trial

Control of the court
Excluding witnesses
Refreshing memory

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Control of the Court

- Can exercise reasonable control over the trial.
 - Make sure procedures are effective for determining the truth.
 - Avoid wasting time. (Ex: Set time limits on questioning witnesses.)
 - Protect witnesses from harassment or undue embarrassment.
(Ex: Stop repetitive questions or attempts to pressure the witness into an answer.)

Texas Rules of Evidence 611

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Excluding Witnesses (Sequestration or Invoking The Rule)

- Can order all witnesses except the parties to leave during testimony. (On request or court can do this on its own)
- Exceptions:
 - Someone “essential” to the party’s case (like an expert).
 - The victim in a criminal case, unless the court thinks they could be influenced by other testimony.
 - In civil, the spouse of the party.

Texas Rules of Evidence 614 & Texas Rules of Civil Procedure 500.7

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Refreshing Memory



- Sometimes a witness forgets what happened.
- They can be reminded by reviewing a document or item and then testifying if their memory has been “refreshed.”
- The other side is entitled to:
 - See the document or item, to cross-examine the witness about it, & introduce parts that relate to the testimony of the witness.

Texas Rules of Evidence 612

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Let's Try Some Scenarios!

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Evidence Scenario #1

While driving home from work, the defendant ran a red light and hit another car. The defendant got out of their car and said to the person they hit: "Are you ok? I don't know what happened. I was only looking at my phone for a second."

The prosecutor called the person as a witness to testify to what the defendant said at the scene of the accident.

Defendant objects to hearsay. Should the defendant's statements be admitted?

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Evidence Scenario #2

A defendant was charged with going 75 in a 60 and pled not guilty. He says that he never saw a sign saying the speed limit had dropped.

At trial, the defendant calls a witness who says that she lives near the road and has her own radar gun that she uses regularly to see how fast people are driving. She says everyone, including police officers, drive 75 all of the time on that stretch of road. She also says that when the officer in question drove away from the traffic stop that day, he was going 70 mph.

The prosecutor objects to relevance. Should the testimony be admitted?

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Evidence Scenario #3

Prosecutor calls Witness, who testifies that he witnessed the defendant's assault on Victim.

Witness will testify that Victim said, "Help me, she is killing me!"

Defense counsel objects, claiming hearsay.

Should the testimony be admitted?

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What Tricky Scenarios Have You Seen?

- Any interesting evidence scenarios that you have ruled on?
- Anything you weren't sure how to rule on?

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Questions?

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Thank You!