

**Bar Exam Cram Sheet: EVIDENCE With CALIFORNIA DISTINCTIONS in RED****RELEVANCE**

**Logical Relevance:** Evidence is relevant if it has a tendency to make the existence of any consequential fact more or less probable (FRE 401; *CEC 210, 350*)

**Legal Relevance:** Relevant evidence may be deemed inadmissible if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or waste of time (FRE 403; *CEC 352*)

**Public Policy Exclusions**

- **Proof of Liability Insurance:** Inadmissible to show negligence, but may prove agency, ownership/control, bias or prejudice (FRE 411). *Inadmissible to prove negligence (CEC 1155)*
- **Subsequent Remedial Measures:** Inadmissible to show negligence or culpable conduct, but may prove ownership/control, impeachment, and destruction of evidence (FRE 407). *CA – Does not apply in products liability cases (is admissible in product liability cases in CA), but court may still exclude under legal relevance.*
- **Offers to Compromise/Settle:** Inadmissible to prove validity of claim, but may prove bias of witness, explain delay (if undue delay claimed), obstruction of justice (FRE 408)
- **Offer to Pay Medical Expenses:** Offers or actual payments inadmissible to prove liability, but factual statement of liability is severed and admissible (FRE 409). *Both statements are inadmissible (CEC 1152a)*
- **Pleas/Offer to Plead:** Inadmissible in civil or criminal case, but may prove perjury or to impeach (FRE 410). *Same for CEC 1153, but Prop 8 offers are admissible in criminal case subject to CEC 352.*
- **CA-Mediation:** *Inadmissible documents – documents prepared for mediation; notes; correspondence; anything related to mediation (CEC 1115-1128). Policy: encourages mediation without fear.*

**FORM OBJECTIONS:** Objections to Questions: Leading; Misleading; Cumulative; Assumes Facts Not in Evidence; Compound; Harassing; Argumentative; Ambiguous; Speculative; and Calls for Narrative.

Objections to Answers: Non-Responsive (responds to more than is asked or answers different question); Lacks Proper Foundation (stricken from record upon objection).

**PROPER FOUNDATION & RELIABILITY (CAR: Competency, Authentication, Reliability)**

**Witness Competence:** FRE personal knowledge, testify truthfully, under oath. *CEC – same as FRE except where witness is under 10 or is mentally impaired, then promise to tell truth.*

**Lay Witness:** knowledge must be based on personal perception (ability and adequate opportunity to perceive); helpful to trier of fact. Not based on scientific knowledge (FRE only).

*Sanity (CEC 870): witness may testify to sanity of person. Intimate acquaintance/witness is the subscribing witness to a document in dispute signed by person whose sanity is in question/or by expert.*

**Expert Witness:** 1) matter is beyond common experience; 2) would assist trier of fact; 3) qualified; 4) expert has proper basis for his opinion.

**Authentication:** WRITINGS: personal knowledge; self-authentication; public records; reply letter doctrine; ancient writings/documents (20 years or older, but 30 for CA); handwriting; admission by opposing party; reproductions (*CEC 1550*); photos; x-rays; docs affecting title (*CEC 1600-1605*). VOICES: personal knowledge. PHYSICAL OBJECTS: personal knowledge.

**Reliability:** In addition to competence and authentication, evidence must also be shown to be reliable.

**Judicial Notice:** Courts may recognize as true an indisputable fact that is common knowledge or is capable of verification through sources of unquestionable accuracy. Conclusive in civil cases, but NOT in criminal cases (FRE 201). (*CA judge may take judicial notice in criminal case*). **Discretionary:** court may take, requested or not. **Mandatory:** shall take, if requested with information.

**Special Issues:**

- **Dead Man Acts:** When offered in civil case against deceased's estate, party interested in outcome is incompetent to testify about a conversation with the deceased. (*NOT in CA*)
- **Judges and jurors** may NOT testify at the trials they're presiding or sitting.
- **Insanity:** Insane person may testify if he understands the duty to testify truthfully and has capacity to testify accurately