



DIVISION 1: PRELIMINARY PROVISIONS AND CONSTRUCTION

Definitions, etc. 1-12 This code shall be known as the Evidence Code; rules of construction, severability, definitions, grammatical directions, operative date, etc.

DIVISION 2: WORDS AND PHRASES DEFINED

Words	100	Definitions in this Division govern construction of code unless provision or context otherwise requires.
&	105	"Action" - includes a civil action and a criminal action.
Phrases	110	"Burdens of producing evidence" - means obligation to produce evidence to avoid adverse ruling on issue.
Defined	115	"Burden of proof" - means obligation of party to establish belief concerning a fact in mind of trier of fact (by preponderance, clear and convincing, or beyond reasonable doubt). Except as otherwise provided by law, burden of proof requires proof by a preponderance of the evidence. [Ed. Note: See § 501 for burden in criminal case.]
	120	"Civil action" includes civil proceedings.
	125	"Conduct" - includes all active and passive behavior, both verbal and nonverbal.
	130	"Criminal action" - includes criminal proceedings.
	135	"Declarant" - means person who makes a statement.
	140	"Evidence" - means testimony, writings, objects, or sensory data offered to prove existence/nonexistence of a fact.
	145	"The hearing" means the hearing at which question under this code arises, not earlier or later hearing.
	150	"Hearsay evidence" - defined in § 1200.
	160	"Law" - includes constitutional, statutory and decisional law.
	165	"Oath" - includes affirmation or declaration under penalty of perjury.
	170	"Perceive" - means to acquire knowledge through one's senses.
	175	"Person" - includes natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.
	177	"Dependent Person" means person (regardless of whether the person lives independently) with physical or mental impairment that substantially restricts normal activities or ability to protect his or her rights; includes person whose abilities have significantly diminished because of age.
	180	"Personal property" - includes money, goods, chattels, things in action, and evidences of debt.
	185	"Property" - includes both real and personal property.
	190	"Proof" is the establishment by evidence of requisite degree of belief concerning a fact in the mind of fact-finder.
	195	"Public employee" means an officer, agent, or employee of a public entity.
	200	"Public entity" includes a nation, state, county, city, district, public agency, etc., whether foreign or domestic.
	205	"Real property" includes lands, tenements, and hereditaments.
	210	"Relevant evidence" means evidence, including credibility evidence, tending to prove any disputed fact of consequence.
	215	"Spouse" includes "registered domestic partner" as required by Section 297.5 of the Family Code.
	220	"State" means California, unless applied to different parts of the United States.
	225	"Statement" means (a) oral or written verbal expression or (b) nonverbal conduct intended as a substitute therefor.
	230	"Statute" - includes a treaty and a constitutional provision.
	235	"Trier of fact" - includes (a) the jury and (b) the court, except when court is determining admissibility of evidence.
Unavailability	240	(a) "Unavailable as a witness" means declarant in (1), exempted by privilege; (2) disqualified; (3) dead or too physically or mentally ill to attend or testify; (4) absent and beyond court's process; (5) absent, and counsel after reasonable diligence has been unable to compel attendance; (6) persistent in refusing to testify despite having been held in contempt for refusal to testify. (b) Declarant is not "unavailable" if absence is due to proponent's wrongdoing. (c) Expert testimony of trauma resulting from crime may establish "unavailability."
Writing	250	"Writing" means handwriting, printing, photographing, transmitting by electronic or facsimile, and every other means of recording a communication, including pictures, sounds, or symbols, and any record thereby created.
Original	255	"Original" means the writing itself or any counterpart intended to have same effect; the negative and any print of a photo; and computer data printouts shown to be accurate.
Duplicate	260	"Duplicate" - a counterpart produced by same impression as the original or by other accurate reproduction.

DIVISION 3: GENERAL PROVISIONS

	300	Applicability of Code - Applies to all actions before the Supreme Court, a court of appeal, or superior court, including actions conducted by a referee, court commissioner, or similar officer, but not to grand jury.
Duty of Court	310	All questions of law, and all issues of fact preliminary to admission of evidence, are to be decided by the court; foreign law determined as provided by Division 4 (Judicial Notice).
	311	If foreign or other state law cannot be determined, court may apply California law or dismiss action without prejudice.
	312	Jury is the trier of fact, and determines value of evidence and credibility of witnesses.
	320	Court in its discretion shall regulate the order of proof, except as provided by law.
	330	Only relevant evidence is admissible.
Polygraph	351	All relevant evidence is admissible, except as otherwise provided by statute.
	351.1	Evidence regarding polygraph examinations is inadmissible unless all parties stipulate to admissibility; statements made during a polygraph examination are not excluded if otherwise admissible.
	351.2	In civil action for personal injury or wrongful death, evidence of discovery of person's immigration status is not permitted.
	351.3	(a) In a civil action not governed by Section 351.2, evidence of a person's immigration status shall not be disclosed in open court by a party-attorney unless the presiding judge first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. (b) This section does not (1) apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense; (2) impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action; (3) prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.
	351.4	(a) In a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. (b) This section does not do any of the following: (1) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense. (2) Limit discovery in a criminal action. (3) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.

Bergers Guide To California Evidence

Guillaume Favre



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