



STUDYING FOR AN EVIDENCE FINAL ON A COLD WINTER'S NIGHT

Alice B. Richards

'Twas the night before Evidence, and all through the school,
Students were cramming each Evidence Rule.

We started with relevance, but that rule is blurry,
Is it prejudicial? Or confusing the jury?

We moved on to hearsay, and as we were taught,
We have to decide if it's assertive or not.

And even if so, we all look to see,
If it's deemed non-hearsay under 801(d).

Did the witness speak earlier, consistent or not?
Did they identify a person? Are they subject to cross?

Did the party speak of their own volition?
'Cause if they did, it's in on admission.

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And if they sat silent while their girlfriend did gossip,
It may be in too as admission adopted.

To continue our studies, we call it hearsay,
But can it come in under some other way?

Were they explaining to the doctor depression?
Or were they describing a present impression?

Were they excited? Or does it show intent?
Is it a recollection recorded if their memory's spent?

Is it a record of business? Or made by a public official?
Could be out in Criminal, and Civil if too prejudicial.

But we can't give up now, because exceptions . . . there's more!
If the declarant can't testify, look to Rule 804.

Is it former testimony? Or was the declarant dying?
A statement against interest? Then they probably weren't lying.

Then there's the catchall . . . is admission deserved?
Yes, if trustworthy, material, and the interests of justice are served.

And now we must look to the law of our Nation,
And see if Defendant is allowed confrontation.

Is the statement testimonial, or made in an emergency situation?
This all determines the need for cross-examination.

We now move away from hearsay and relevance,
And on to the admission of character evidence.

If the accused offers first, he opens the door,
For prosecution to rebut and offer some more.

Studying for an Evidence Final

The evidence must be opinion or reputation,
Except specific is allowed on cross-examination.

The victim is shielded regarding sexual offenses,
But the accused has the use of three limited defenses.

Moving along, and now we're at trial,
We have to make sure testimony's worthwhile.

Is the witness competent? Can they tell the truth?
Do they have personal knowledge? Where is the proof?

Is the witness an expert with specialized knowledge?
Did they learn facts at work or study at college?

Can we test their methods? Is there peer review?
Rate of error, acceptance? Just to name a few.

And once there's a witness within counsel's reach,
Have they done anything that can get them impeached?

Are they biased, or influenced? And how's their eyesight?
Can they say for sure just who caused the fight?

Or if they've been convicted within 10 years past,
Was it a felony or misdemeanor, or just a prior bad act?

Are they contradicting themselves, and does it even matter?
Yes if it's relevant, and more than collateral.

You can try to repair, but only after attack.
The court has discretion as to the meaning of that.

Then there's judicial notice, facts offered as truth,
Without the need to offer some proof.

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And we can't forget protected relations,
Such as attorney-client communications.

Husband and wife are protected as well,
Via two privileges; well that's mighty swell!

The testimonial privilege is held by just one,
It dies with divorce when the marriage is done.

Marital communications must be confidential,
They're held by both which is consequential.

It continues on even after death,
Unless they're involved in joint crime such as real estate theft.

And evidence must be authenticated.
Meaning sufficient proof, then the jury weighs it.

And last but not least, the "best evidence rule,"
When you use a writing as your advocacy tool.

Original needed, but duplicates are okay,
When there's no genuine question and of course no foul play.

We students soon realized that we knew every rule,
So we packed up our bags and departed the school.

And once warm in bed, as we reached for the light,
We heard the prof say, "Good luck to you all, and to all a good
night!"¹

GB

¹ Hearsay?