RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

1: Law of evidence in South Africa - Wikipedia

violation of the Texas Disciplinary Rules. Several States Bar Association's have opined that a lawyer, or his paralegal or investigator, can't direct a third person to "friend" the individual to obtain information.

A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty. Testimony â€" or a certification under Rule â€" that a diligent search failed to disclose a public record or statement if: A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization. A statement of fact contained in a certificate: A made by a person who is authorized by a religious organization or by law to perform the act certified; B attesting that the person performed a marriage or similar ceremony or administered a sacrament; and C purporting to have been issued at the time of the act or within a reasonable time after it. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker. The record of a document that purports to establish or affect an interest in property if: A the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it; B the record is kept in a public office; and C a statute authorizes recording documents of that kind in that office. A statement in a document that was prepared before January 1, , and whose authenticity is established. Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations. A statement contained in a treatise, periodical, or pamphlet if: If admitted, the statement may be read into evidence but not received as an exhibit. A reputation in a community â€" arising before the controversy â€" concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation. Evidence of a final judgment of conviction if: A the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; B the conviction was for a crime punishable by death or by imprisonment for more than a year; C the evidence is admitted to prove any fact essential to the judgment; and D when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant. The pendency of an appeal may be shown but does not affect admissibility. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter: A was essential to the judgment; and B could be proved by evidence of reputation. Notes of Advisory Committee on Proposed Rules The exceptions are phrased in terms of nonapplication of the hearsay rule, rather than in positive terms of admissibility, in order to repel any implication that other possible grounds for exclusion are eliminated from consideration. The present rule proceeds upon the theory that under appropriate circumstances a hearsay statement may possess circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the declarant in person at the trial even though he may be available. The theory finds vast support in the many exceptions to the hearsay rule developed by the common law in which unavailability of the declarant is not a relevant factor. The present rule is a synthesis of them, with revision where modern developments and conditions are believed to make that course appropriate. In a hearsay situation, the declarant is, of course, a witness, and neither this rule nor Rule dispenses with the requirement of firsthand knowledge. It may appear from his statement or be inferable from circumstances. Exceptions 1 and 2. In considerable measure these two examples overlap, though based on somewhat different theories. The most significant practical difference will lie in the time lapse allowable between event and statement. The underlying theory of Exception [paragraph] 1 is that substantial contemporaneity of event and statement negative the likelihood of deliberate of conscious misrepresentation. Moreover, if the witness is the declarant, he may be examined on the statement. If the witness is not the declarant, he may be examined as to the circumstances as an aid in evaluating the statement. Morgan, Basic Problems of Evidence â€" The theory of Exception [paragraph] 2 is simply that circumstances may produce a condition of excitement which temporarily stills the capacity of reflection and produces utterances free of conscious fabrication. Spontaneity is the key factor in each instance, though arrived at by somewhat different routes. Both are needed in order to avoid needless niggling. While the

theory of Exception [paragraph] 2 has been criticized on the ground that excitement impairs accuracy of observation as well as eliminating conscious fabrication, Hutchins and Slesinger, Some Observations on the Law of Evidence: Spontaneous Exclamations, 28 Colum. Since unexciting events are less likely to evoke comment, decisions involving Exception [paragraph] 1 are far less numerous. Illustrative are Tampa Elec. With respect to the time element, Exception [paragraph] 1 recognizes that in many, if not most, instances precise contemporaneity is not possible, and hence a slight lapse is allowable. Under Exception [paragraph] 2 the standard of measurement is the duration of the state of excitement. Obviously there are no pat answers and the character of the transaction or event will largely determine the significance of the time factor. Participation by the declarant is not required: Whether proof of the startling event may be made by the statement itself is largely an academic question, since in most cases there is present at least circumstantial evidence that something of a startling nature must have occurred. For cases in which the evidence consists of the condition of the declarant injuries, state of shock , see Insurance Co. United States, 93 U. United States, 97 U. Industrial Commission, 78 Colo. Moreover, under Rule a the judge is not limited by the hearsay rule in passing upon preliminary questions of fact. However, when declarant is an unidentified bystander, the cases indicate hesitancy in upholding the statement alone as sufficient, Garrett v. Permissible subject matter of the statement is limited under Exception [paragraph] 1 to description or explanation of the event or condition, the assumption being that spontaneity, in the absence of a startling event, may extend no farther. See Sanitary Grocery Co. A Reappraisal of Rule 63 4 , 6 Wayne L. Exception 3 is essentially a specialized application of Exception [paragraph] 1 , presented separately to enhance its usefulness and accessibility. United States, U. The rule of Mutual Life Ins. The same guarantee of trustworthiness extends to statements of past conditions and medical history, made for purposes of diagnosis or treatment. It also extends to statements as to causation, reasonably pertinent to the same purposes, in accord with the current trend, Shell Oil Co. Industrial Commission, 2 Ill. Statements as to fault would not ordinarily qualify under this latter language. Under the exception the statement need not have been made to a physician. Statements to hospital attendants, ambulance drivers, or even members of the family might be included. Conventional doctrine has excluded from the hearsay exception, as not within its guarantee of truthfulness, statements to a physician consulted only for the purpose of enabling him to testify. While these statements were not admissible as substantive evidence, the expert was allowed to state the basis of his opinion, including statements of this kind. The distinction thus called for was one most unlikely to be made by juries. The rule accordingly rejects the limitation. This position is consistent with the provision of Rule that the facts on which expert testimony is based need not be admissible in evidence if of a kind ordinarily relied upon by experts in the field. Many additional cases are cited in Annot. The guarantee of trustworthiness is found in the reliability inherent in a record made while events were still fresh in mind and accurately reflecting them. The principal controversy attending the exception has centered, not upon the propriety of the exception itself, but upon the question whether a preliminary requirement of impaired memory on the part of the witness should be imposed. The authorities are divided. If regard be had only to the accuracy of the evidence, admittedly impairment of the memory of the witness adds nothing to it and should not be required. Nevertheless, the absence of the requirement, it is believed, would encourage the use of statements carefully prepared for purposes of litigation under the supervision of attorneys, investigators, or claim adjusters. Hudson Pulp and Paper Corp. No attempt is made in the exception to spell out the method of establishing the initial knowledge or the contemporaneity and accuracy of the record, leaving them to be dealt with as the circumstances of the particular case might indicate. Multiple person involvement in the process of observing and recording, as in Rathbun v. Locating the exception at this place in the scheme of the rules is a matter of choice. There were two other possibilities. The first was to regard the statement as one of the group of prior statements of a testifying witness which are excluded entirely from the category of hearsay by Rule d 1. The other possibility was to include the exception among those covered by Rule Since unavailability is required by that rule and lack of memory is listed as a species of unavailability by the definition of the term in Rule a 3 , that treatment at first impression would seem appropriate. The fact is, however, that the unavailability requirement of the exception is of a limited and peculiar nature. Accordingly, the exception is located at this point rather than in the context of a rule where

unavailability is conceived of more broadly. Exception 6 represents an area which has received much attention from those seeking to improve the law of evidence. The Commonwealth Fund Act was the result of a study completed in by a distinguished committee under the chairmanship of Professor Morgan. Some Proposals for its Reform 63 With changes too minor to mention, it was adopted by Congress in as the rule for federal courts. A number of states took similar action. Model Code Rule and Uniform Rule 63 13 also deal with the subject. Difference of varying degrees of importance exist among these various treatments. These reform efforts were largely within the context of business and commercial records, as the kind usually encountered, and concentrated considerable attention upon relaxing the requirement of producing as witnesses, or accounting for the nonproduction of, all participants in the process of gathering, transmitting, and recording information which the common law had evolved as a burdensome and crippling aspect of using records of this type. In their areas of primary emphasis on witnesses to be called and the general admissibility of ordinary business and commercial records, the Commonwealth Fund Act and the Uniform Act appear to have worked well. The exception seeks to preserve their advantages. On the subject of what witnesses must be called, the Commonwealth Fund Act eliminated the common law requirement of calling or accounting for all participants by failing to mention it. United States, F. Model Code Rule and Uniform Rule 63 13 did likewise. The exception follows the Uniform Act in this respect. The element of unusual reliability of business records is said variously to be supplied by systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them, or by a duty to make an accurate record as part of a continuing job or occupation. The result is a tendency unduly to emphasize a requirement of routineness and repetitiveness and an insistence that other types of records be squeezed into the fact patterns which give rise to traditional business records. They are problems of the source of the recorded information, of entries in opinion form, of motivation, and of involvement as participant in the matters recorded.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

2: Preservation of Evidence in Criminal Cases | www.enganchecubano.com

The Federal Rules of Evidence were adopted by order of the Supreme Court on Nov. 20, , transmitted to Congress by the Chief Justice on Feb. 5, , and to have become effective on July 1, Pub.

To download a quick reference to the types of evidence outlined in this article click on: Understanding Types of Evidence. The first rule is that evidence must be relevant to the investigation. That said, there are many types of evidence that, while not admissible in court, can be valuable to an investigator trying to reach a conclusion in a workplace investigation or other non-criminal investigation. And even some evidence that is not admissible on its own may be admissible in conjunction with other types of evidence. Analogical evidence uses a comparison of things that are similar to draw an analogy. Consider it with skepticism, and in combination with other, more reliable, kinds of evidence. Circumstantial Evidence Also known as indirect evidence, this type of evidence is used to infer something based on a series of facts separate from the fact the argument is trying to prove. It requires a deduction of facts from other facts that can be proven and, while not considered to be strong evidence, it can be relevant in a workplace investigation, which has a different burden of proof than a criminal investigation. Need a tool for tracking and reporting on your investigation and the evidence you collected? Download our free Investigation Report Template. Demonstrative Evidence An object or document is considered to be demonstrative evidence when it directly demonstrates a fact. Examples of this kind of evidence are photographs, video and audio recordings, charts, etc. This includes email, text messages, instant messages, files and documents extracted from hard drives, electronic financial transactions, audio files, video files. Investigators need to either develope specific technical expertise or rely on experts to do the extraction for them. Preserving digital evidence is also challenging because, unlike physical evidence, it can be altered or deleted remotely. Direct Evidence The most powerful type of evidence, direct evidence requires no inference. The evidence alone is the proof. Documentary Evidence Most commonly considered to be written forms of proof, such as letters or wills, documentary evidence can also include other types of media, such as images, video or audio recordings, etc. Exculpatory Evidence This type of evidence can exonerate a defendant in a â€” usually criminal â€” case. Prosecutors and police are required to disclose to the defendant any exculpatory evidence they find or risk having the case dismissed. Forensic evidence is generally considered to be strong and reliable evidence and alongside helping to convict criminals, its role in exonerating the innocent has been well documented. Its use in workplace investigations is generally limited to serious cases that may end up in court. Hearsay Evidence Hearsay evidence consists of statements made by witnesses who are not present. While hearsay evidence is not admissible in court, it can be relevant and valuable in a workplace investigation where the burden of proof is less robust than in court. Physical Evidence As would be expected, evidence that is in the form of a tangible object, such as a firearm, fingerprints, rope purportedly used to strangle someone, or tire casts from a crime scene, is considered to be physical evidence. Statistical Evidence Evidence that uses numbers or statistics to support a position is called statistical evidence. This type of evidence is based on research or polls. Testimonial Evidence One of the most common forms of evidence, this is either spoken or written evidence given by a witness under oath. It can be gathered in court, at a deposition or through an affidavit. She writes about topics related to workplace investigations, ethics and compliance, data security and e-discovery, and hosts i-Sight webinars.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

3: Rules of Evidence in Criminal Trials | www.enganchecubano.com

A method the courts use to uphold the constitutional protections against unreasonable searches and seizures, as well as to control the investigator's actions and prevent illegally obtained evidence from being used at trial is known as the _____.

Providing such intrusive investigative measures in the RPE is a first for international ized criminal tribunals and courts, though the use of such measures is not uncommon. A decision authorizing special investigative measures, however, must include: Rule 33 1 lists the requirements: Under Rule 33 2 , the Specialist Prosecutor must seek judicial approval of special investigative measures no later than 24 hours after the fact. Rule 33 3 provides that if the KSC Panel denies the request, the Specialist Prosecutor must immediately terminate the measures. Rule 31 1 a provides that special investigative measures may be authorised with regard to crimes within the jurisdiction of the Specialist Chambers. Thus, all offences under Article 6 of the Law, fall within the category of offences in respect of which interception orders may be made. The SCCC also found that Rules 31 to 33 lacked sufficient precision regarding the duration of interception. It noted that while Rule 32 2 a imposes a day limitation, nothing in the Rule prevents the Specialist Prosecutor from repeatedly obtaining a new decision after the day expiration date. The Rules must specify, at a minimum, the circumstances under which a warrant may be renewed and the conditions under which it must be cancelled. The SCCC criticized the lack of a procedure for retaining, storing, and securing information obtained during investigations. While Rule 43 provides that the Specialist Prosecutor is responsible for such measures, the SCCC found that there was no clear procedure to be followed for the destruction of such data or where the data collected is not relevant to a criminal investigation. Search and Seizure Rules 34 to 36 govern searches and seizures conducted by the Specialist Prosecutor. Rule 35 2 requires the Specialist Prosecutor to file a request for judicial approval of the search and seizure no later than 24 hours after its initiation. Rule 35 3 specifies that the Panel shall approve the search and seizure only if all the conditions under Rule 35 1 are met. Rule 36 concerns the execution of a search and seizure. Under Rule 36 1 , before the Specialist Prosecutor executes a search and seizure, he must: Rule 36 2 provides that in exceptional circumstances requiring an immediate search and seizure such as where delay would jeopardize the investigation or cause irreversible harm to persons or property , the Specialist Prosecutor must request approval of a Panel no later than 24 hours after the initiation of the search and seizure. It reasoned that these rules are unclear as to whether they were intended to govern the execution of searches and seizures following judicial authorization, or those executed without judicial authorization. Expert Examinations Rule 38 provides for expert examination of hair, saliva, or other swab samples, blood samples and body tissues, DNA, and other similar material. It is a unique provision, not contained in the RPE of other international ized criminal tribunals and courts. In order to collect and examine these materials, the Specialist Prosecutor must get voluntary written consent from the person concerned or judicial authorization. Rule 38 5 concerns the retention and destruction of the materials collected. The SCCC declared Rule 38 1 unconstitutional because it does not provide sufficient safeguards for examinations in cases where a person does not give his or her consent. The SCCC considered that even in urgent and exceptional circumstances that make it impossible to seek judicial authorization, an after-the-fact judicial review must be done. It found that Rule 38 5 creates a possibility that the materials are retained regardless of the nature and gravity of the offense with which the person was charged, and regardless of whether that person was a suspect, an accused, or a third person. Rule 38 5 also fails to ensure that materials are not retained longer than necessary. Rights of persons during investigations, interview recording, and other procedural matters Rules 39 to 44 concern the rights of persons during investigation. Nothing too trailblazing, but worth a general discussion. Rule 39 provides anyone under investigation the rights: Rule 40 contains the specific rights of suspects during the investigation. Rule 41 3 requires the presence of Specialist Counsel when the suspect is brought in for questioning, confrontation, a police line-up, or reconstruction of a crime scene. Rule 41 requires that all questioning of suspects by the Specialist Prosecutor be video-recorded. The detailed procedure in Rules 41 1 a - f provide a step-by-step breakdown of how the Specialist Prosecutor must conduct such

interviews. For example, if the questioning has been interrupted, Rule 41 b requires the Specialist Prosecutor to record the time when the questioning was interrupted and when it resumed. Rule 41 2 provides that in exceptional circumstances, when the recording is not possible, a suspect may still be questioned, but the Specialist Prosecutor must record reasons for not following the procedure. Unfortunately, there is no similar Rule requiring the video-recoding of interviews of witnesses. While video-recording of interviews can be resource-consuming, the value of having full-length video or even audio recordings cannot be underestimated. The questions and answers were written out after an unrecorded interview and then read out for the audio recording. Rule 42 provides that confessions given out of court during questioning by the Specialist Prosecutor will be considered free and voluntary if the suspect is afforded all of his or her rights under Rule 40 to be informed of the charges, remain silent, have Specialist Counsel, etc. Under Rule 43, the Specialist Prosecutor is responsible for storing and maintaining the security of information obtained during investigation until it is tendered into evidence. Rule 44 contains provisions on how investigations are to be terminated. If the Specialist Prosecutor does not issue an indictment within a reasonable time, the suspect can request the Specialist Prosecutor to terminate the investigation. If the request is denied or not considered, the suspect may request a Single Judge to consider the matter. Compensation for Unlawful Arrests Under Rule 48, investigated persons are entitled to compensation in case of an unlawful arrest. Under Rule 48 1 , a request for compensation must be made within six months of the decision rendering the arrest or detention unlawful. Rule 48 2 specifies that the Panel must consider the consequences of the unlawful arrest and detention on the personal, family, social, and professional situation of the person. Although there is no similar provision in the statutes of other international ized criminal tribunals and courts, the ICTR Appeals Chamber recall that the ICTR and ICTY share the same Appeals Chamber has held that a remedy for a violation of the rights of the accused may include an award of financial compensation. In Barayagwiza at the ICTR, the Appeals Chamber held Barayagwiza was entitled to financial compensation if found not guilty or a reduction of sentence if found guilty to account for violations of his rights to be informed of the charges against him and to be tried without delay. Barayagwiza was arrested in Cameroon in ; at that time, there was no indictment against him and the transfer to Rwanda was rejected. Barayagwiza made an initial appearance in February , pleading not guilty. The Trial Chamber dismissed his motion to nullify the arrest. On interlocutory appeal, the Appeals Chamber found a violation of his rights to be properly informed of the charges against him and to be brought before a tribunal without delay. Subsequently, the Appeals Chamber held that Barayagwiza was entitled to an effective remedy for the violation of his rights either financial compensation or a reduction of sentence. However, they were left without response. In that case, Rwamakuba was acquitted of all charges. Rule 52 complements Article 35 and regulates the execution of arrest warrants. Rule 52 5 obligates the Kosovo national authorities to comply with arrest warrants and detain and transfer the person without delay under the conditions set in the warrant. It is yet to be seen to what extent the national authorities will cooperate and whether there will be any difficulties in enforcing this provision. Detention facilities are in both states, depending on where the proceedings are taking place. Every two months, a specially assigned individual Judge reviews the detention of a suspect, on his or her own initiative or upon a request from the suspect of the Specialist Prosecutor. The total duration of the detention including possible extensions justified by investigative measures must not exceed one year. At the end of one year, unless the Pre-Trial Judge has been assigned, the suspect must be released. Next Post In the next post , I will discuss the Rules covering the proceedings from the pre-trial to the appeal.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

4: 15 Types of Evidence and How to Use Them in Investigations | i-Sight

When juries are asked to evaluate a case, they are instructed in the rules of evidence. In this episode, J. Warner discusses three important evidence instructions: 1. Possibilities are irrelevant, 2.

Spouses Referees Note, however, that evidence by a director or trustee in an insolvency or similar inquiry under company legislation is not binding on others. Predecessors in title Master and servant Nominal and real parties Even if Mdani stands as law, it is possible that the courts would allow such evidence in the future on the basis of their power to admit hearsay evidence in certain circumstances. Although it is not entirely clear, the SCA in the Shaik appeal seems to say that executive statements which are adduced to prove the truth of their contents should be dealt with under the statutory law relating to hearsay evidence. Admissibility of statements not amounting to full confessions by accused in criminal trial[edit] At common law, statements made informally by the accused are only admitted if proved to have been made freely and voluntarily. A threat or promise per se is insufficient to render the statement inadmissible, if it did not influence the mind of the accused. On the restrictive interpretation, it refers to any person whom the accused might reasonably believe is able to influence the course of the prosecution, like a police official, a prosecutor, a magistrate, a complainant, etc. Les Roberts believes that this one will continue to be preferred. Separate rules apply for statements qualifying as confessions. See S v Orrie and S v Molimi. Onus of proving that statement made freely and voluntarily[edit] At common law, the onus is on the State to prove beyond reasonable doubt that statement was made freely and voluntarily. Section A of the CPA purports to place an onus on the accused to show that an admission made in writing was not made freely and voluntarily if it appears ex facie the document that it was made freely and voluntarily. The Constitutional Court has ruled, in S v Zuma , that similar provisions for confessions are unconstitutional; almost certainly it would rule similarly in the case of admissions. Method of determining in criminal trial whether admission made freely and voluntarily[edit] Admissibility is determined by way of a "trial within a trial," on the basis of evidence led by the parties on this specific issue, in a form similar to that of a trial proper. Formal admissions[edit] The general rule is that parties must prove their case by evidence. Formal admissions constitute an exception to this general rule. The rationale for formal admissions is that they save time and costs. The system encourages people to admit facts which are not in dispute, so that the trial is not derailed and unnecessarily delayed by extraneous and superfluous issues. Distinct from informal admissions[edit] Informal admissions, on the one hand, are usually made out of court, although they can be made in formal settings even to a magistrate, for example ; that, however, does not make them formal. Formal admissions, on the other hand, are usually made as part of the pleadings, or in the court itself. The weight to be accorded to an informal admission depends on the circumstances. Formal admissions cannot be withdrawn or contradicted without compliance with certain formalities. Formal admissions need to be clear and unequivocal, because of their implications. Section 15 of the CPEA provides that it is not necessary for a party to prove a fact formally admitted; nor is it competent to disprove a fact so admitted. Withdrawal of formal admission is only possible in the event of compliance with formalities. The court will only allow withdrawal if satisfied that it was a bona fide mistake, and that there is no prejudice to opposing party. The party seeking withdrawal must give a full and satisfactory explanation for the withdrawal, supported by evidence like an affidavit. Even after withdrawal, a formal admission may still be taken into account as an item of evidence; it may still constitute an informal admission, in other words. Formal admissions in criminal trials[edit] Formal admissions under s of CPA[edit] In criminal trials, either side the defence or the prosecution may now make formal admissions in favour of the other side. They are made under section of the CPA. Previously statutory provision was made only for the defence to make admissions, although at common law it was accepted as a matter of practice that the State could also make admissions. Section has now been amended to cover admissions made by either side. Therefore, a formal admission under section immediately became conclusive of the fact covered thereby. In S v Sesetse , however, the Appellate Division held that an admission only becomes conclusive proof at end of the trial. Not much turns on this disagreement. Withdrawal of a formal admission in criminal trial is possible, if the formalities have been

complied with, but a withdrawn admission may still have some evidentiary value. There is a need for clarity: Formal admissions should be worded and recorded carefully, to eliminate ambiguity. Note that section provides for the setting aside of a plea of guilty in a wider variety of situations than those covered by the withdrawal of other formal admissions: Plea of not guilty[edit] If the accused gives a plea explanation, in terms of section of the CPA, he is asked by the presiding officer whether anything not placed in issue by the plea explanation may be formally recorded as an admission under section If it is so recorded, it is the same as any other section admission. Even if the accused does not so agree, the admissions remain evidential material, and are similar to informal admissions; indeed, they have the effect of an informal admission. Generally[edit] Courts should be wary about accepting formal admissions from an unrepresented accused on points beyond the personal knowledge of the accused. This occurs all too often in practice. Admissions during cross-examination civil and criminal [edit] Explicit assertions by the cross-examiner may constitute admissions, eliminating the need for proof. This would constitute an admission that the defendant was the driver. This underscores the need for caution and care in cross-examination. Summary[edit] The first thing to decide is whether an admission is formal or informal. If there is no conclusive proof in this regard, in a criminal trial one must ask if it is a confession or not. Confessions in a criminal trial[edit] A confession is a special type of informal admission in a criminal trial. It has been defined as an unequivocal admission of guilt, equivalent to plea of guilty in a court of law. In terms of section , a confession is admissible only if made freely and voluntarily; in sound and sober senses; and without undue influence. Note the stricter requirements here than for an ordinary admission. In addition, a confession to a peace officer, other than a justice of the peaceâ€”that is, to a police official lower than the rank of officer a captain or higher â€”is not admissible unless it is confirmed and reduced to writing in the presence of a magistrate. They have tended to regard a statement as not being a confession if there is any opening for a valid defence. Previously there was some debate on this issue, but now it has been decided that such statements are to be judged objectively. Even if the statement does not constitute an unequivocal admission to the main charge alleged, but objectively constitutes a full admission to some lesser charge competent verdict , this will amount to confession, and section will apply. Consumption of alcohol or loss of temper does not per se lead to the conclusion that accused was not in sound and sober senses. Violence, or threat of violence, would clearly constitute undue influence. The concept also includes subtler influences such as the promise of some benefit, or an implied threat or promise. Influences which come from the accused herself do not constitute undue influence: Was the accused in fact influenced? Failure to advise the accused of his rights at the time of the arrest can be taken into account to decide whether there was improper influence. Confessions to peace officers who are not magistrates or justices of peace are not admissible unless confirmed and reduced to writing before magistrate. In practice this means that confessions to police officials below officer rankâ€”that is, up to and including the rank of inspector, and below the rank of captainâ€”will not be admissible unless confirmed and reduced to writing before a magistrate. The rationale for this is the elimination of the undesirable practice of enforced confessions, and "trial by police station" instead of trial by court. The meaning of "peace officer" is defined in section 1 of the CPA. It includes magistrate, justice of peace, police officials and other categories. The proviso to section 1 exempts from the prohibition those peace officers who are also magistrates or justices of peace. Police officials of commissioned-officer rank lieutenant and higher are also justices of the peace, and therefore included in the exemption. In practice, therefore, the exclusion of confessions applies to constables, sergeants and warrant officers in the SAPS, as well as to certain categories of other officials referred to in definition of "peace officer. The mere presence of a disqualified official when a confession is made does not render that confession inadmissible. For example, if a disqualified official is in the presence of a more senior police official who is also a justice of the peace, or acting as interpreter for such more senior police official when the confession made, or present when a confession is made to a private person, the confession would be admissible, if other admissibility requirements have been met. In practice, if it is so confirmed and reduced to writing before a magistrate or justice, it is regarded as a new confession, and the inquiry will be about whether that confession complies with the usual admissibility requirements. In practice, it is far preferable to have the suspect taken before the magistrate if there is to be a confession. It is especially undesirable to have the

confession made to a commissioned officer who is involved in the investigation. Section 1 b of the CPA made two changes: A confession to magistrate note the non-inclusion of a justice of peaceâ€”is admissible on its mere production, without need for further proof, if certain requirements are met. In S v Zuma , the Constitutional Court struck down the second of these changes as being unconstitutional, because it sought to introduce a reverse onus. The first was not struck down, but on its own it does not do much. The effect is that common-law onus beyond reasonable doubt once again applies. Procedure to prove confession admissible[edit] A confession is proved to be admissible by way of a "trial within a trial," whereby each side leads evidence, and then argues on its admissibility. The content of the confession itself usually cannot be placed before court at this stage, unless exceptional circumstances apply, as in S v Lebone , where it was necessary to refer to the contents of the confession to refute the allegation made by the accused that he had been coached by the police as to what to say. Evidence at a trial within trial is not per se admissible at the main trial, whether the confession is allowed or excluded. If the confession is ruled admissible at the trial within a trial, the evidence to prove the confession still has to be led at the main trial. Inadmissible confession subsequently becoming admissible[edit] Generally an accused cannot waive the admissibility requirements of a confession. But section 3 of CPA renders an inadmissible confession admissible if the accused adduces evidence, whether in chief or in cross-examination, of the confession, and the court considers that that part of the evidence so adduced is in favour of accused. Evidence may be admitted even if discovered in consequence of an inadmissible confession or admission. Evidence of pointing out, or anything discovered in consequence of pointing out, is admissible even if the pointing out is part of an inadmissible confession. The rationale for this is that, while confession evidence improperly obtained may be unreliableâ€”the person may confess, for example, to avoid some harm or threat of harmâ€”concrete evidence discovered in consequence thereof, or pointing out, etcetera, is not so tainted: There is no threat to reliability. This rationale does not give value to section 35 5 of Constitution, which clearly envisages that improperly-obtained evidence may be excluded, even if otherwise reliable. Previously the courts took the view that whatever led to the pointing out was irrelevant. The pointing out itself was admissible. A witness, otherwise compellable, is not obliged to answer certain questions. See Ferreira v Levin. Privilege is different from other rules that exclude evidence. Such other rules tend to exclude because of some doubt about reliability, whereas privilege excludes evidence because it aims to protect some higher value than the search for truth. The granting of privilege is therefore not lightly made. It is to be distinguished from competence and compellability.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

5: Investigator II

The parol evidence rule, which bars the admission of extrinsic evidence to vary the terms of a written agreement, is usually considered a matter of substantive law, not of rule of evidence. Accordingly, we will not deal with it here.

Business Opportunities Investigator II Questions about the employment opportunities posted here may be emailed to hrla calbar. Employees of The State Bar of California receive a range of competitive benefits. In addition the INV II determines what evidence is needed to support the allegations, collects evidence, researches case and statutory law and interviews witnesses to determine the appropriate course of action. The INV II locates and interviews the complaining witnesses, respondents and other relevant parties, explaining the functions and limitations of the discipline system. The INV II is responsible for gathering evidence, ordering court files, obtaining insurance files and issuing subpoenas for bank and other business records. The INV II arranges for the appearance of witnesses to present testimony and may appear as a witness in administrative, civil or criminal proceedings. The INV II is responsible for interacting and cooperating with federal, state and local law enforcement agencies. The INV II may perform a number of other similar or related duties which may not be specifically included within this position description, but which are consistent with the general level of the job and the responsibilities described. Techniques and methods of investigation. Principles of identification, preservation and presentation of evidence. Sources of information and methods used in locating persons. Problem identification, analysis and evaluation. Computer information systems including personal computer applications, spreadsheet programs and work processing. Principles of effective writing and verbal presentation. Business math for completing non-technical calculations such as addition, subtraction, multiplication and division. Possess visual capability and digital dexterity to operate a computer and other standard office equipment. Review and analyze complex written documents. Communicate clearly and effectively in person and in writing. Travel by air and automobile. Deal effectively with persons of diverse behavior and temperament, to gain insight into their motivations credibility. Qualifications Bachelor degree in a field that develops skills related to investigation, or equivalent academic achievement, and Minimum four 4 years of experience in an investigative position. Proof of automobile insurance coverage will be required at the time of employment. Successful completion of the State Bar validated standard tests for the position. Accomplished computer keyboarding skills.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

6: Evidence - Wikipedia

The rules of evidence are a set of guidelines which are commonly used to decide what types of evidence are admissible in court and what can be used to prove or disprove an allegation.

Guide to Crime Scene Investigation Crime scene investigation is also termed forensic science. Forensic science encompasses a wide range of sciences to solve questions pertaining to the legal system. Crime Scene Investigators must be fluent in photography, evident collection and processing, and must have excellent writing skills. A comprehensive guide to crime scene investigations with a section concentrating on responding officers. Association for Crime Scene Reconstruction: The organization is dedicated to researching, improving, and exchanging methods of crime scene reconstruction. High Tech Crime Investigation Association: The association focuses on promoting information and ideas on investigating methods and processes. Description of duties and responsibilities of a crime scene investigator. Explains the investigation process and duties of a first responder. A detailed guide to crime scene response. Protecting the Crime Scene: Garrison of the Michigan Forensics Services Unit explains the importance of protecting the scene. Evidence Collection Evidence Collection: Crime Scene Evidence Collection: Advice for collecting evidence at crime scenes. Also list several types of items that may need to be processed. A brief explanation on collecting evidence, methods of collection, and chain of custody procedures. A slide presentation on preserving evidence. Explains the four methods to preserving crime scene evidence. A guide for Law Enforcement: An in-depth guide for protecting and preserving crime scene evidence. A comprehensive handbook on digital evidence. Lists five video taping techniques. Lists and effectively describes five practices for collecting videotape evidence. A guide to identifying and collecting audio and video evidence. Procedures for collecting and processing digital, video, electronic, and audio evidence. The PNP Crime Laboratory provides a brief history of crime scene photography and functions of photographers. The basics of crime scene photography. Guidelines for human remains detection for dog handlers. A synopsis about footwear and tire impressions. An article stating the importance of imprint evidence. Lawrence Chow describes what physical evidence is. Federal Rules of Evidence: This article gives comprehensive information on the essentials of DNA evidence for law enforcement. A career guide to forensic photography. Crime Scene Investigation Certificate: A career guide to forensics. An overview to crime scene investigating, work conditions and academic requirements. How to Become a CSI: The International Crime Scene Investigators Association guide to becoming a crime scene investigator. Forensic Books Forensic Medicine: A summary of Forensic Medicine: Clinical and Pathological Aspect. Concepts, Debates and Practice. Read Forensic Discovery in its entirety. Computer Forensics and Investigations: Crime Scene to Court: The Essentials of Forensic Science. The home security information provided by this website is made available for information purposes only. The information is provided "as is" with no warranty of any kind. If you choose to follow the do it yourself home security , cell phone security , or any other home security information given here, you do so at your own risk. The authors do not assume responsibility for your actions.

7: Federal Rules of Evidence | Federal Rules of Evidence | LII / Legal Information Institute

Kosovo Specialist Chambers - Part 5: The Rules of Procedure and Evidence (Investigations and Arrest and Detention) This is the fifth post in my series on the Kosovo Specialist Chambers ("KSC"), a hybrid internationalized set of chambers founded to try war crimes, crimes against humanity, and other crimes under Kosovo law committed during.

8: Guide to Crime Scene Investigation

Mastery and knowledge of criminal procedures and the rules of evidence enable the investigator to gather evidence against a suspect that can withstand court challenges Laws of arrest, search and seizure.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

9: Washington State Courts - Court Rules

That said, there are many types of evidence that, while not admissible in court, can be valuable to an investigator trying to reach a conclusion in a workplace investigation or other non-criminal investigation.

RULES OF EVIDENCE FOR THE INVESTIGATOR, PART 2 pdf

Backpack Mysteries Books Collectors luck in Spain Making a constitution Active Primary Mathematics 2B Oxford illustrated history of britain Taxes by Franziska Karpinsky No. 8. Diary kept during the expedition against the Zamorin from 4th December 1716 to 25th April 1717. Basic chord progressions guitar V.1. Introduction and text. v.2. Notes The Seven Zones And Their Characteristics Research methods and statistics umbc The hidden art of Hollywood Knitting in the Nordic tradition Reel 3. May 18, 1822 March 26, 1823 Tle module grade 9 household services Inside the endless house Piaggio mp3 250 manual A mug at Charleys Cuneiform to computer Party Italy (Now This Is Life) Aposotlical institution of episcopacy demonstrated A defence of Catholic principles, in a letter to a Protestant minister Teaching and learning elementary and middle school mathematics Bpl gas connection 2017 list A horse to brag about Man In Genesis And In Geology Peptide growth factors. The Third Crusade Swinburne, a biographical approach. Steaming down Argent Street T is for Tar Heel Advancing aging policy as the 21st century begins XII. Pollys Enemy, 121 Ch. 35. Reconstructive head and neck surgery Fanuc system 6m maintenance manual Walls Inside And Out The Official Patients Sourcebook on Arachnoiditis America Anonymous Transplant Production in the 21st Century Political correctness a short history of an ideology