

§ 7.1

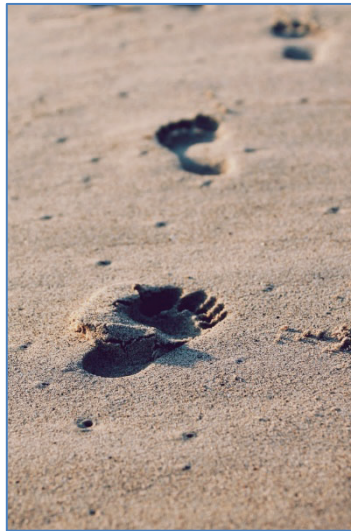
The Facts and the Law

The Law Uses Facts to Seek the Truth

EVIDENCE: JUST THE FACTS

Two elements make up the fabric of litigation: Facts and law. Ultimately, the court will decide how the law applies to the facts.

The attorney and paralegal must try to anticipate the relevant legal issues and persuade the court through research and subsequent legal arguments. Legal research will aid a lawyer in anticipating what law could apply to the facts. Legal research is discussed extensively in Volume 2.



However, before the applicable law can be researched, the relevant facts (to which the law will eventually apply) must be ascertained.

When we are talking about facts, we are talking about evidence. Because when facts are presented at court in support of a client's position, those facts become evidence. Evidence is information that tends to prove or disprove a fact in question.

Even after finding evidence, many questions must be answered before trial. How much weight will a given piece of evidence carry? What is the difference between direct and circumstantial evidence? Which evidence would be admissible? All of these questions involve a very important aspect of the law: procedure. Evidence and procedure are close relations.

There are specific procedures for civil cases, criminal cases, and even subject matter cases, such as bankruptcy, domestic relations, and probate. A paralegal with a foundational understanding of evidence, and evidentiary procedure, will be a more valuable employee.

EVOLVING LANDSCAPE

A Digital World

Consider the following scenarios.

- *A wife and mother disappears without a trace, leaving only the children and the father.*
- *A politician is alleged to have lied about his taxes.*
- *During a divorce, a wife alleges physical abuse inflicted by her husband.*

As you read the above, ask yourself: *What evidence could exist?*

There is certainly **physical evidence** that would be helpful. Is there evidence of blood? Are there tax returns? Are there photographs detailing injuries.

There is potential **oral evidence**: What do the children say? Did anyone witness malfeasance? Did anyone witness the abuse?

There is another category of evidence. Today it is almost impossible to imagine a case that does not involve some form of digital or **electronic evidence**. Such as:

- Can cell phone tower data track a missing person's movements?
- Are there electronic bank records?
- Is there any closed-circuit surveillance video?

Electronic evidence can be a cross between oral and physical evidence. It is the cutting edge of evidentiary procedure and research.

§ 7.2

Introduction to Evidence

The Facts

Evidence is that which tends to prove or disprove a fact in issue. Not all evidence is admissible. As an investigator, however, do not concern yourself with admissibility. Your job is to find evidence. Let the lawyer worry about admissibility.

For almost every piece of evidence the following question will be asked: Is the evidence *direct* or *circumstantial*? Think of these two types of evidence together. Both are valid types of evidence and, assuming the evidence is admissible, may be presented to, and considered by, a jury or judge.

direct evidence

evidence (generally from personal observation) that tends to establish a fact without the need of an inference

circumstantial evidence

evidence of one fact requiring an inference to establish another fact

Evidence is also either *oral* or *physical*. Typically, if the evidence can be touched, it is physical. If the evidence involves testimony under oath, it is oral.

physical evidence

evidence that can be touched; also called *tangible* or *demonstrative* evidence

oral evidence

evidence given verbally; also called *testimonial* evidence

A single piece of evidence can be both *direct* and *circumstantial*. This may sound confusing at first, but it is really quite simple. It depends on the perspective of the question being asked. In other words, a single piece of evidence can be *direct* as to one question, and *circumstantial* as to another.

Example

Your client, Randy, has been charged with robbing a bank. There is a photograph taken by a surveillance camera that shows him entering the bank, walking toward a teller named Melissa. He displayed no gun or note.

As to the question, "Was Randy at the bank on the day of the robbery?"

The picture would be direct evidence that Randy was at the bank.