

# BASIC EVIDENCE & CROSS-EXAMINATION

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# EVIDENCE

What is Evidence?

Define Evidence.

# EVIDENCE

Merriam-Webster Definition: “something that furnishes proof”

Diego’s Definition: Evidence consists of factual bits that can prove or disprove something.

# EVIDENCE

Evidence can cut both ways.

There are always two sides to every story.

# PERSPECTIVE

Marshall as many facts as possible to make your story more credible and reasonable.

KNOW YOUR STORY BETTER THAN THE OTHER SIDE

KNOW THE FACTS THAT MAKE UP YOUR STORY

Understand the source of your facts: The more credible the source, the stronger your evidence.

\* Be prepared to defend the credibility of your facts

Understand the perspective from the other side:

\* Know the source of the other side's facts

# BURDEN OF PROOF

## **What is Burden of Proof?**

The party with the burden of proof

(a) is required to go first so that it can provide sufficient evidence establishing its claim or defense

And

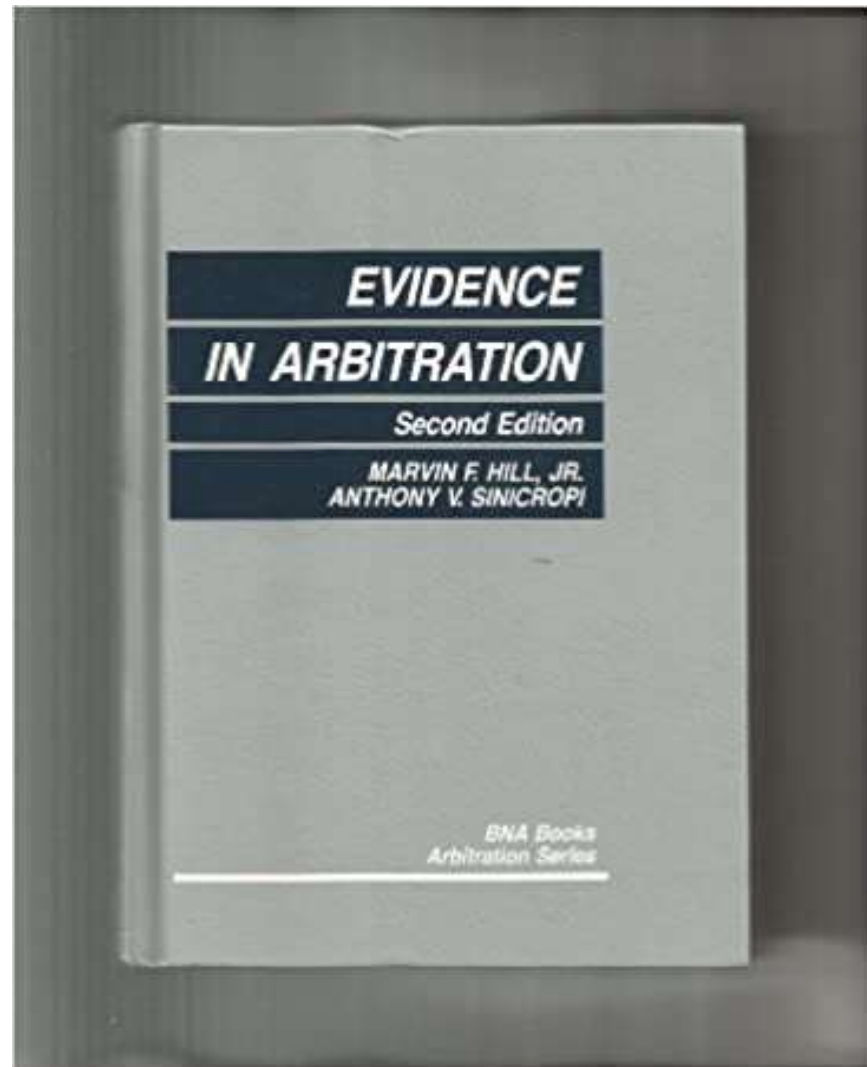
(b) is required to produce persuasive evidence that it should prevail on its claim or defense

**Contract Cases – Union has the Burden of Proof**

**Discipline/Discharge Cases – Employer has the Burden of Proof**

**Arbitrability – Party challenging arbitrability of grievance has the Burden of Proof**

# SOURCES OF EVIDENCE



# TYPES OF EVIDENCE

## DIRECT EVIDENCE

- Oral Testimony from Witness
- Written Documents
- Things

## CIRCUMSTANTIAL EVIDENCE

- Any form of evidence which raises an inference with respect to some fact other than the testimony which is offered as evidence to truths of the matter asserted.



# RELEVANCY

What is relevancy? What makes evidence relevant?

Relevancy is the tendency of evidence to be related to the issue or issues in dispute. Relevant evidence is evidence that more probably establishes or disproves a key fact necessary to proving or disproving a claim or defense asserted by a party.

# OBJECTIONS

What is an Objection?

An objection alerts the Arbitrator to a problem with the evidence.

Human witnesses can only testify to matters within their personal knowledge. The witness can only testify to matters he actually did (e.g., something he said or actually did), sensed (e.g., saw, heard, smelled or touched) or thought (e.g., perceptions or beliefs based on matters he sensed)

Documents can only speak to the matters stated in the document.

# PURPOSE OF OBJECTIONS

## Court Objections vs. Arbitration Objections

### Reasons to object in arbitration:

1. Put the Arbitrator on notice that the evidence being objected to should not be given probative weight.
2. Save time (e.g., “asked and answered;” reading a document that is already admitted into evidence)

# COMMON OBJECTIONS

Form of the Question (e.g., asking for information outside the witness's personal knowledge or compound questions)

Repetitious

Confusing

Speculation

Leading Questions (not allowed on direct, but allowed with hostile witnesses)

# DIRECT AND CROSS- EXAMINATION

**DIRECT EXAMINATION** – the party calling the witness elicits evidence in narrative fashion. (Who, What, Where, When and How). No leading questions. Witness’s testimony must be credible.

**CROSS-EXAMINATION** – Examination of a witness called by the other party. Purpose of X-examination:

- Disclose facts/admissions not mentioned on direct
- Correct misstatements of fact
- Impeach reliability and credibility of the witness

# KEYS TO EFFECTIVE CROSS- EXAMINATION

1. **STICK TO THE FACTS.** Ask leading questions about the facts. Use leading questions to get witness to agree to as many facts favorable to your perspective. **Do not ask a question you don't already know the answer to!**
2. **ALWAYS CONSIDER THE WITNESS'S CREDIBILITY AND RELIABILITY.** Make sure the witness can truthfully/accurately testify to facts he presented on direct. Make sure he's telling the truth and has a reputation for speaking the truth.
3. **DO NOT ARGUE WITH THE WITNESS.**

# KEYS TO EFFECTIVE CROSS- EXAMINATION

Example of Effective Cross Examination on the Facts

[https://www.youtube.com/results?search\\_query=my+cousin+vinny+court+scene+lglasses](https://www.youtube.com/results?search_query=my+cousin+vinny+court+scene+lglasses)

# EVIDENCE





# KEYS TO EFFECTIVE CROSS- EXAMINATION

Example of Effective Factual Impeachment

<https://youtu.be/FcM42ZF48IY>

# KEYS TO EFFECTIVE CROSS- EXAMINATION

Example of Effective Follow Up Direct

<https://www.youtube.com/watch?v=i0-6JMv-5a8&t=16s>

QUESTIONS?

