



by John A. Tarantino

HIGHLIGHTS

This supplement contains important information about the latest changes in the law. It will help you to stay current with the most recent developments and perhaps one step ahead of opposing counsel. Look for these items inside:

NEW TEXT DISCUSSIONS

- Jencks Act (18 U.S.C. §3500), §102
- Judicial Findings of Fact, §623
- Relevant Evidence, §801
- Relevant Evidence vs. Irrelevant Evidence, §802
- Exclusion of Relevant Evidence, §803
- Habit and Corporations, §880.2

NEW DISCUSSIONS OF FEDERAL RULES OF EVIDENCE

- Rule 105, limited admissibility, §802
- Rule 201, judicial notice, §850
- Rule 401, relevant evidence, §801
- Rule 402, relevant and irrelevant evidence, §802
- Rule 403, prejudice, confusion outweigh relevance, §801
- Rule 406, habit, §880.2
- Rule 608(b), ban on extrinsic evidence, §341.11
- Rule 611(a), evidence summaries, §810
- Rule 612, writings used to refresh memories, §102
- Rule 613, exception to ban on extrinsic evidence, §341.11
- Rule 806, impeachment of hearsay declarants, §341.11
- Rule 1002, original document required to prove content of writing, recording or photograph, §810
- Rule 1003, admissibility of duplicates, §810
- Rule 1004, admissibility of other evidence of contents, §810
- Rule 1006, secondary evidence summaries, §810

HELPFUL NEW CASES

- **Rule 403 is only used when probative value is substantially outweighed by danger of unfair prejudice.** *United States v. Bunnell*, 280 F.3d 46 (1st Cir. 2002).
- **To prove contents of lost insurance policy, insured can rely on secondary evidence rather than producing original policy under Rule 1004(1).** *Burt Rigid Box, Inc. v. Travelers Prop. Cas. Corp.*, 302 F.3d 83 (2nd Cir. 2002).
- **Court must comply with defense request to perform Rule 403 balancing test on the record when considering admission of defendant's prior arrests under Rule 404(b).** *United States v. Alarcon*, 261 F.3d 416 (5th Cir. 2001).
- **Evidence authorized by Rule 32(a) cannot be excluded as hearsay unless it would be inadmissible even if delivered in court.** *United States*, 291 F.3d 993 (7th Cir. 2002).
- **If defendant attempts to explain away a prior conviction during direct exam, then he has "opened the door" to impeachment on the details of the conviction.** *United States v. Williams*, 272 F.3d 845 (7th Cir. 2001).
- **Settlement letter is relevant evidence of amount in controversy if it reflects a reasonable estimate of plaintiff's claim.** *Cohn v. Petsmart, Inc.*, 2002 WL 206384 (9th Cir. 2002).
- **Trial court may not take judicial notice based on court's personal experience.** *United States v. Mariscal*, 285 F.3d 1127 (9th Cir. 2002).
- **Court's decision to allow evidence under Rule 403 after striking balance between probative value and unfair prejudice is reversible only for abuse of discretion.** *United States v. Novaton*, 271 F.3d 968 (11th Cir. 2001).
- **It is not appropriate to judicially notice factual findings from an opinion issued by another judge.** *U.S. Steel LLC v. Tieco Inc.*, 261 F.3d 1275 (11th Cir. 2001).

EXPANDED AND IMPROVED INDEX AND MORE!

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