CHAPTER 1. THE GEORGIA EVIDENCE CODE, ITS SCOPE, AND ITS INTERPRETATION

- § 1:1 Introduction
- § 1:2 Broad applicability of Georgia rules with narrow exceptions
- § 1:3 Interpretation of the Georgia rules
- § 1:4 General interpretative principles

CHAPTER 2. PRESERVING AND ETHICALLY OBTAINING EVIDENCE

A. PRESERVING EVIDENCE AND AVOIDING SPOLIATION

- § 2:1 Duty to preserve evidence in civil cases
- § 2:2 Preservation and production of evidence in civil cases
- § 2:3 Presumption for non-production of documents that should exist
- § 2:4 Preservation and disclosure of evidence in criminal cases—Constitutional requirements
- § 2:5 —Statutory requirements

B. ETHICAL LIMITATIONS ON COMMUNICATIONS WITH PERSONS REPRESENTED BY COUNSEL; RELATIONSHIP TO SPOLIATION

- § 2:6 Improper contact with a person known to be "represented by counsel" in a "matter"
- § 2:7 Improper ex parte contact with plaintiff's treating physicians
- § 2:8 Improper ex parte contact with represented persons in criminal proceedings

C. OBTAINING EVIDENCE FROM NON-PARTIES

- § 2:9 Obtaining evidence from non-parties who reside in Georgia for use in Georgia state court criminal or civil cases
- § 2:10 Obtaining evidence from non-parties who reside outside Georgia for Georgia state court civil or criminal cases

- § 2:11 Obtaining evidence from Georgia residents for civil or criminal cases filed outside of Georgia
- § 2:12 Use of subpoenas
- § 2:13 Payment of witness fees
- § 2:14 Protection from and compelling compliance with subpoena
- § 2:15 Failure of subpoenaed party to attend to testify or to produce evidence

D. OBTAINING EVIDENCE FROM A PARTY TO A CIVIL CASE

- § 2:16 All discovery tools are available against a party to a civil case
- § 2:17 Notice to produce

CHAPTER 3. RELEVANCE IS REQUIRED FOR ADMISSIBILITY BUT RELEVANT EVIDENCE MAY BE EXCLUDED FOR UNFAIR PREJUDICE

- § 3:1 Three Georgia rules apply to admissibility of all evidence
- § 3:2 The general rule is to admit all, but only, relevant evidence
- § 3:3 Excluding relevant evidence for unfair prejudice under Georgia Rule 403

CHAPTER 4. JUDICIAL NOTICE

- § 4:1 Judicial notice of adjudicative facts and legislative
- § 4:2 Judicial notice of adjudicative facts: purpose and procedure
- § 4:3 Identifying adjudicative facts that are subject to judicial notice
- § 4:4 Effect of judicial notice: distinction between civil or criminal proceedings
- § 4:5 Judicial notice of law, legislative facts, and related matters
- § 4:6 Judicial notice of another state's law or of foreign country's law
- § 4:7 Judicial notice of local Georgia ordinances or resolutions
- § 4:8 Judicial notice of state administrative regulations
- § 4:9 Judicial notice of federal case law
- § 4:10 Judicial notice of federal regulations
- § 4:11 Judicial notice of judicial proceedings
- § 4:12 Judicial notice of governmental and administrative matters

CHAPTER 5. COMPETENCY OF LAY WITNESSES AND SCOPE OF LAY TESTIMONY

- § 5:1 General rule of competency for fact witnesses
- § 5:2 Competency of fact witnesses—Diminished mental capacity and mental illness
- § 5:3 —Children
- § 5:4 —Physical and communicative limitations
- § 5:5 —Spouse of a party
- § 5:6 Scope of lay witness testimony—Personal knowledge required
- § 5:7 —Lay opinion testimony including ultimate issues
- § 5:8 ——Examples

CHAPTER 6. CHARACTER AND CREDIBILITY

- § 6:1 Character evidence generally inadmissible
- § 6:2 General rules limiting form of character evidence
- § 6:3 Five express exceptions to admit character evidence and distinct limitations on form
- § 6:4 Opening the door to rebuttal character evidence and limitations on rebuttal evidence
- § 6:5 Required and permitted forms of evidence of character or character traits
- § 6:6 Attacking or supporting any witness's character for truthfulness
- § 6:7 Who may attack a witness's character for truthfulness by impeachment
- § 6:8 Supporting a witness's character for truthfulness: bolstering
- § 6:9 Attacking or bolstering the credibility of a witness
- § 6:10 Attacking the credibility of another witness—Proper and improper impeachment
- § 6:11 Attacking the credibility of a witness—Evidence of prior criminal conviction
- § 6:12 Supporting the credibility of a witness: proper and improper bolstering
- § 6:13 Other means to attack credibility—Showing bias or interest
- § 6:14 —Impeachment through prior inconsistent statement
- § 6:15 Other means to support credibility—Prior consistent statement
- § 6:16 —Prior consistent statement under child hearsay statute
- § 6:17 Admissibility of polygraph tests to attack or support credibility

§ 6:18 Character evidence of a criminal victim

CHAPTER 7. EVIDENCE OF OTHER ACTS IN CRIMINAL CASES

§	7:1	Introduction
§	7:2	Georgia Rule 404(b)—Admissibility of evidence of other crimes, wrongs, or acts generally
§	7:3	—Relevance for one purpose is sufficient for "other act" evidence
§	7:4	—When other act is relevant to show motive
§	7:5	—When other act is relevant to show intent
§	7:6	—When other act is relevant to show knowledge
§	7:7	—When other act is relevant to show absence of mistake or accident
§	7:8	—When other act is relevant to show opportunity
§	7:9	—When other act is relevant to show preparation
§	7:10	—When other act is relevant to show plan
§	7:11	—When other act is relevant to show identity
§	7:12	—Cases holding other act evidence inadmissible for any purpose
8	7:13	—Balancing under Georgia Rule 403
-	7:14	—Preponderant evidence defendant committed the other act
§	7:15	Specific "other act" rules applicable to certain sex offense or molestation cases
§	7:16	Evidence of past sexual behavior of victim in certain sex offense cases
§	7:17	Evidence of prior offenses in certain sexual assault cases
§	7:18	Evidence of prior offenses in certain child molestation proceedings
§	7:19	Evidence of prior offenses in certain civil sexual assault or child molestation proceedings
§	7:20	Admissibility of different DUI violations
§	7:21	Admissibility of defendant's participation in criminal gang activity

CHAPTER 8. OTHER SPECIFIC RULES INCLUDING OR EXCLUDING OTHER ACTS

- § 8:1 Introduction
- § 8:2 Relevance of habit of a person or routine practice of an organization
- § 8:3 Exclusion of subsequent remedial measures; exceptions
- § 8:4 Exclusion of offers of compromise and at mediation; exceptions
- § 8:5 Offers to pay medical expenses

- § 8:6 Pleas and statements made during plea discussions
- § 8:7 Insurance against liability or absence of liability insurance
- § 8:8 Exclusion in certain civil proceedings of certain statements by health care providers as admissions

CHAPTER 9. HEARSAY

§ 9:1	Overview
§ 9:2	Objection to hearsay is required
§ 9:3	Hearsay defined
§ 9:4	Certain statements by definition excluded from being hearsay
§ 9:5	Testifying witness's prior consistent or inconsistent statement is not hearsay
§ 9:6	Testifying child witness's prior statement describing certain sexual contact or physical abuse is admissible
§ 9:7	Testifying witness's prior statement identifying a person is not hearsay
§ 9:8	Admission by party opponent is not hearsay
§ 9:9	Admission in a party's own statement offered against the party is not hearsay
§ 9:10	Admission which a party has manifested an adoption or belief in its truth is not hearsay
§ 9:11	Certain admissions by an agent or employee of a party are not hearsay
§ 9:12	Certain admissions by a co-conspirator of a party are not hearsay
§ 9:13	Admissions: personal knowledge not necessary
§ 9:14	Judicial admissions in a party's pleadings are admissible
§ 9:15	Exclusion under the Confrontation Clause of testimonial statements in criminal cases
§ 9:16	Exceptions to hearsay; res gestae replaced
§ 9:17	Declarant's availability immaterial—Present sense impression
§ 9:18	—Excited utterance
§ 9:19	—Statement of existing mental, emotional, or physical condition
§ 9:20	—Statement for purposes of medical diagnosis or treatment
§ 9:21	—Recorded recollections
§ 9:22	 Records of regularly conducted activity or the absence of such records (business records)
§ 9:23	—Public records and reports, records of vital statistics and the absence of such records
§ 9:24	—Regularly kept records of religious organizations of facts of personal or family history

§ 9:25	—Certificates regarding marriage, baptisms, and
	similar certificates
§ 9:26	—Family records
§ 9:27	 Records of documents affecting an interest in property and statements in documents establishing or affecting an interest in property
§ 9:28	—Ancient documents
§ 9:29	—Market reports and commercial publications
§ 9:30	—Learned treatises
§ 9:31	—Reputation concerning personal or family history
§ 9:32	—Reputation concerning boundaries or general history
§ 9:33	—Reputation of person's character
§ 9:34	—Judgments
§ 9:35	—Narrative medical reports
§ 9:36	Declarant unavailable—Unavailability defined
§ 9:37	—Exception for wrongful procurement
§ 9:38	—Testimony at a previous judicial proceeding
§ 9:39	—Dying declarations
§ 9:40	—Declaration against pecuniary or penal interest
§ 9:41	Residual hearsay exception
§ 9:42	Hearsay within hearsay
§ 9:43	Additional evidence admissible if hearsay was admitted to attack or support the credibility of a
	declarant

CHAPTER 10. AUTHENTICATION AND IDENTIFICATION OF DOCUMENTS, RECORDS, PHOTOGRAPHS, RECORDINGS, AND PHYSICAL EVIDENCE

§ 10:1	Introduction
§ 10:2	Role of judge and jury in determining admissibility and actual authenticity
§ 10:3	Self-authenticating documents or records
§ 10:4	Authentication of other writings, recordings, photographs, and physical objects as a condition of admissibility
§ 10:5	Identification of medical bills
§ 10:6	Admission of photographs, motion pictures, videotapes, and audio recordings when witness is unavailable
§ 10:7	Admission of the original of a writing, recording, or photograph is generally required to prove its contents
§ 10:8	Admitting a "duplicate" in lieu of the "original" to prove the contents of a writing, recording, or photograph

§ 11:21 § 11:22

§ 10:9	Proving the contents of a writing, recording, or
	photograph by other evidence
§ 10:10	Proving the contents of public records
§ 10:11	Summary may be admitted to prove the contents of
	voluminous writings, recordings, or photographs
§ 10:12	Proving contents of a writing, recording, or
	photograph through party's testimony or written
	admission of its contents
§ 10:13	Establishing authenticity through a party's answers
	to requests for admission
§ 10:14	Uniform Electronic Transactions Act

CHAPTER 11. EVIDENTIARY EXCLUSIONS BASED ON CONSTITUTIONAL PRIVILEGES

Introduction to three constitutional privileges
Privilege against self-incrimination
—Personal and not available to artificial persons
—Four aspects
—Privilege of an accused in a criminal case not to be a witness against himself
—Psychiatric examinations
—Privilege of the accused to remain silent
—Privilege of an accused not to incriminate himself through non-testimonial actions
—Privilege of a witness not to testify to incriminating facts
—Admissibility of unlawfully-obtained statements for impeachment purposes
—Waiver of right by consent
Right to counsel
Search and seizure—The exclusionary rule
——Consent to search
——Inevitable discovery exception
—Warrant requirement
—Warrantless searches
—Cell phone information and electronic devices
—Automobile searches
—Search by private individuals not covered
—Schools

CHAPTER 12. STATUTORY PRIVILEGES AND PUBLIC POLICY EXCLUSIONS

§ 12:1 Statutory exclusion for certain admissions and communications under Georgia Rule 501

—Electronic surveillance, wiretapping

§ 12:2 Confidential communications between spouses

§ 12:3	Compelling spousal testimony in certain cases
§ 12:4	Attorney-client privilege
§ 12:5	—Corporate clients
§ 12:6	Accountant-client privilege
§ 12:7	Physician-patient privilege
§ 12:8	Medical review board and peer review privilege
§ 12:9	Veterinarian-patient privilege
§ 12:10	
§ 12:11	Clergy privilege
§ 12:12	2 Governmental privileges, state matters, and secrets of state
§ 12:13	3 Informant privilege
§ 12:14	
§ 12:18	
CHA	APTER 13. EXPERT WITNESSES
§ 13:1	When lay opinion testimony is prohibited but expert
3 20,2	opinion testimony is required
$\ 13:2$	When expert testimony is required
§ 13:3	Subjects of expert testimony—Market value of
	chattels or real property
§ 13:4	—Mental competency and insanity
§ 13:5	—Physical condition
§ 13:6	—Vehicle speed
§ 13:7	—Due care
§ 13:8	—Truthfulness
§ 13:9	Georgia Rule 702 now applicable to civil, criminal, and other proceedings
§ 13:10	Three distinct requirements for admissibility of expert opinions
§ 13:11	Relevance of each expert opinion
§ 13:12	2 Qualifications of the expert to give each opinion
§ 13:13	3 Qualifications of standard of care experts in certain professional malpractice actions
§ 13:14	4 Propriety of expert opinion on ultimate factual issue
§ 13:18	5 Three aspects of reliability
§ 13:16	6 —Facts and data
§ 13:17	7 —Methodology
§ 13:18	
§ 13:19	
§ 13:20	
§ 13:2	
§ 13:22	1 0
8 13.99	· · ·

§ 13:24	Bloodhound evidence in criminal cases under <i>Harper</i> v. State
§ 13:25	HGN test results in criminal cases under <i>Harper v.</i> State
§ 13:26	Ballistic evidence including atomic absorption tests in criminal cases under <i>Harper v. State</i>
§ 13:27	Fingerprint evidence in criminal cases under Harper v. State
§ 13:28	Court-appointed experts
§ 13:29	Excluding expert opinions
§ 13:30	Expert testimony at summary judgment
§ 13:31	Examination of experts at trial through hypothetical questions
§ 13:32	Cross-examination of expert witnesses
§ 13:33	Experiments and out-of-court reenactments
§ 13:34	Jury consideration of expert opinion

CHAPTER 14. EVIDENCE AND PRE-TRIAL **MOTIONS**

- Evidence in summary judgment practice § 14:1
- § 14:2 Pre-trial rulings to exclude evidence—Motions in
- § 14:3 —Criminal cases—Motions to suppress
- § 14:4 Pre-trial rulings to admit evidence—Motions in limine
- Pre-trial rulings to exclude expert testimony § 14:5

CHAPTER 15. BURDENS AND **PRESUMPTIONS**

- § 15:1 Burden of production distinguished from burden of persuasion at trial § 15:2 Allocation of burdens Preponderant evidence § 15:3 § 15:4 Clear and convincing evidence § 15:5 Reasonable doubt § 15:6 Number of witnesses: when more than one is required § 15:7 Sufficiency of a party's own testimony Uncontroverted testimony § 15:8 § 15:9 Positive and negative testimony § 15:10 Circumstantial evidence Proof of a negative or affirmative defense § 15:11
- Affirmative defenses in criminal cases—Burden-§ 15:12 shifting and due process
- —Specific defenses § 15:13
- -Insanity § 15:14
- § 15:15 Nature of presumptions

- § 15:16 Operation and effect of presumptions
- § 15:17 Statutory presumptions: due process concerns
- § 15:18 Conflicting presumptions
- § 15:19 Other presumptions

CHAPTER 16. ADMISSION OF EVIDENCE AND CONTROL OF TRIAL

- § 16:1 Preliminary questions of admissibility and the trial court's screening function
- § 16:2 Court's duty to prevent the jury from hearing inadmissible evidence and to control the mode of interrogating witnesses and presenting evidence
- § 16:3 Sequestration of witnesses and exceptions to "the rule"
- § 16:4 Oral, in-person testimony generally required
- § 16:5 Oath or affirmation
- § 16:6 Direct examination; use of leading questions
- § 16:7 Cross-examination; limitations on
- § 16:8 Re-direct examination; limitations on
- § 16:9 Re-cross examination; limitations on
- § 16:10 Court's power to question witnesses; improper court opinions on the evidence
- § 16:11 Specific objections with grounds must be made to avoid waiver
- § 16:12 Formal exceptions unnecessary
- § 16:13 Offer of proof to preserve exclusion of evidence
- § 16:14 Demonstrative evidence and illustrative materials
- § 16:15 Persons as evidence
- § 16:16 Demonstrations
- § 16:17 Blackboards, diagrams, charts, models, posters, overhead projectors
- § 16:18 Other writings for comparison
- § 16:19 Physical objects
- § 16:20 The jury view
- § 16:21 Evidence that goes out with jury; continuing witness rule
- § 16:22 Judge and jurors generally precluded from testifying; exception

CHAPTER 17. SUBSTANTIVE EVIDENTIARY RULES: PAROL EVIDENCE AND COLLATERAL SOURCES

- § 17:1 Introduction
- § 17:2 Parol evidence—The principal parol evidence rules
- § 17:3 —Contracts subject to Georgia's Commercial Code
- § 17:4 —Contracts and instruments outside Georgia Commercial Code

§ 17:5	——Meaning of "instruments"
§ 17:6	— —Use of parol evidence to show no valid
	instrument existed
§ 17:7	——Admissibility of later agreements
§ 17:8	 — Use of parol evidence to explain ambiguity
§ 17:9	— — Use of parol evidence to complete partial written
	contracts
§ 17:10	——Doctrine of merger or integration
§ 17:11	——Parol evidence in the form of collateral
	agreements
§ 17:12	——Instrument with a merger clause
§ 17:13	——Receipts for payment
§ 17:14	—Rule for contracts subject to Statute of Frauds
§ 17:15	Collateral source rule
§ 17:16	—Exceptions

APPENDICES

Appendix A. Georgia Evidence Code

Appendix B. Federal Rules of Evidence

Table of Laws and Rules

Table of Cases

Index