

Table of Contents

CHAPTER 1. GENERAL PRINCIPLES

§ 1:1 Introduction

I. THE ORDER OF TRIAL

§ 1:2 Common model

§ 1:3 Variations

§ 1:4 Alabama Rules of Evidence 101, 102, and 1101

§ 1:5 Federal practice

II. PRODUCTION OF WITNESSES AND EVIDENCE

§ 1:6 Generally

A. WITNESS SUBPOENAS

1. Issuance

§ 1:7 Civil actions

§ 1:8 Criminal prosecutions

2. Service

§ 1:9 Civil actions

§ 1:10 Criminal prosecutions

§ 1:11 Enforcement

§ 1:12 Continuances and the right to compulsory process

B. SUBPOENA DUCES TECUM

§ 1:13 Generally

§ 1:14 Civil actions

§ 1:15 Criminal proceedings

III. RULE 103—OFFERING AND OBJECTING TO EVIDENCE

§ 1:16 Introduction

A. OFFERING EVIDENCE

§ 1:17 Oral testimony

§ 1:18 Tangible evidence

B. OBJECTING TO EVIDENCE

§ 1:19 Generally

§ 1:20 —Necessity of a timely objection

§ 1:21 —Necessity of a specific objection

§ 1:22 —General objections

§ 1:23 Necessity of exceptions; withdrawal of objections;
right to argument on objections; necessity of
rulings on objections

§ 1:24 Necessity of an objection to preserve error; plain
error; necessity of proper record on appeal

§ 1:25 Harmless error

§ 1:26 Invited error and related doctrines

§ 1:27 Mistrial premised on evidentiary error

§ 1:28 Motion for new trial because of evidentiary error

§ 1:29 Federal practice

C. MOTIONS IN LIMINE

§ 1:30 Alabama practice

§ 1:31 Federal practice

IV. RULE 104—PRELIMINARY QUESTIONS OF ADMISSIBILITY

§ 1:32 Preliminary questions of admissibility

§ 1:33 Questions of admissibility generally

§ 1:34 Conditional relevancy

§ 1:35 Hearing of jury

§ 1:36 Federal practice

§ 1:37 Questions of admissibility generally

§ 1:38 Relevancy conditioned on fact

§ 1:39 Hearings on preliminary matters

V. RULE 105—LIMITED ADMISSIBILITY

§ 1:40 Alabama practice

§ 1:41 Federal practice

VI. RULE 106—THE RULE OF COMPLETENESS

§ 1:42 Alabama practice

§ 1:43 Federal practice

TABLE OF CONTENTS

§ 1:44 Federal rules

VII. JUDICIAL COMMENT ON THE EVIDENCE

§ 1:45 Alabama practice

§ 1:46 Federal practice

VIII. CLOSING ARGUMENT

§ 1:47 Alabama practice

§ 1:48 Federal practice

CHAPTER 2. JUDICIAL NOTICE

§ 2:1 Generally

§ 2:2 Judicial notice of adjudicative facts

§ 2:3 —Scope

§ 2:4 —Kinds of adjudicative facts subject to judicial notice

§ 2:5 — —Facts generally known within the jurisdiction

§ 2:6 — —Facts capable of accurate and ready determination

I. MECHANICS OF JUDICIALLY NOTICING ADJUDICATIVE FACTS

§ 2:7 Discretionary of mandatory

§ 2:8 Opportunity to be heard

§ 2:9 Time of taking notice

§ 2:10 Jury instructions

II. KINDS OF ADJUDICATIVE FACTS JUDICIALLY NOTICED

A. ALABAMA PRACTICE

§ 2:11 Geographic and historic facts

§ 2:12 Almanac and statistical facts

§ 2:13 Medical facts

§ 2:14 Scientific, natural, and mechanical facts

§ 2:15 Facts concerning business and economic conditions

§ 2:16 Facts concerning professions, occupations, and business practices

§ 2:17 Language, words, phrases, and abbreviations

§ 2:18 Customs, habits, and common phrases

- § 2:19 Law related facts
- § 2:20 Facts concerning public officers and official positions
- § 2:21 Organization, rules, and procedures of Alabama courts
- § 2:22 Records and decisions in same action or proceeding
- § 2:23 Records and decisions in other action or proceeding
- § 2:24 Miscellaneous facts

B. FEDERAL PRACTICE

- § 2:25 Federal Rule of Evidence 201
- § 2:26 —Generally
- § 2:27 —Kinds of facts judicially noticed

III. JUDICIAL NOTICE OF LEGISLATIVE FACTS

- § 2:28 Generally
- § 2:29 Mechanics of judicially noticing legislative facts
- § 2:30 Kinds of facts judicially noticed: factual basis of legislation
- § 2:31 Kinds of facts judicially noticed: factual basis of legal rules
- § 2:32 Federal practice

IV. JUDICIAL KNOWLEDGE OF THE LAW

- § 2:33 Generally
- § 2:34 Public laws of Alabama
- § 2:35 Private or local laws of Alabama
- § 2:36 Municipal ordinances
- § 2:37 Official state proclamations, orders, proceedings, and acts
- § 2:38 State administrative rules and regulations
- § 2:39 Laws of other states
- § 2:40 Laws of the United States and rules and regulations of federal administrative agencies
- § 2:41 Laws of foreign countries and international law
- § 2:42 Federal practice

TABLE OF CONTENTS

**CHAPTER 3. PRESUMPTIONS;
BURDENS OF PROOF, PRODUCTION,
AND PERSUASION**

§ 3:1 Generally

I. PRESUMPTIONS

§ 3:2 Introduction to presumptions

A. ALABAMA PRACTICE

§ 3:3 Alabama Rule of Evidence 301

§ 3:4 Effect of Rule 301 on prior practice

§ 3:5 —Generally

§ 3:6 —Thayer-Wigmore effect: Rule 301(B)(1)

§ 3:7 —Morgan effect: Rule 301(B)(2)

§ 3:8 —Presumptions, rebuttal, quantum of proof
required

B. FEDERAL PRACTICE

§ 3:9 Generally

**C. CIVIL CASES GOVERNED BY THE ERIE
DOCTRINE**

§ 3:10 Alabama practice

§ 3:11 Federal practice

D. PRESUMPTIONS IN CRIMINAL CASES

§ 3:12 Federal and state practice

**II. BURDEN OF PROOF: PRODUCTION AND
PERSUASION**

§ 3:13 Introduction

A. BURDENS OF PRODUCTION

§ 3:14 The risk of nonproduction

§ 3:15 Allocating the risk of nonproduction

§ 3:16 Quantum of proof required to survive the risk of
nonproduction

**B. TESTING THE SUFFICIENCY OF
EVIDENCE IN CIVIL CASES**

- § 3:17 Judgment as a matter of law
- § 3:18 Alternative motion for new trial
- § 3:19 Conditional rulings on grant of motion for
judgment as a matter of law
- § 3:20 Denial of motion for judgment as a matter of law
- § 3:21 Motion for summary judgment
- § 3:22 Motion for involuntary dismissal in a non-jury
case
- § 3:23 Testing the sufficiency of the evidence on appeal
in civil cases

**C. TESTING THE SUFFICIENCY OF
EVIDENCE IN CRIMINAL CASES**

- § 3:24 Motion for judgment of acquittal
- § 3:25 Testing the sufficiency of the evidence on appeal
in criminal cases

D. BURDENS OF PERSUASION

- § 3:26 The risk of nonpersuasion
- § 3:27 Allocating the risk of nonpersuasion
- § 3:28 Degree of persuasion generally

**E. REQUIRED DEGREE OF PERSUASION:
CIVIL ACTIONS**

- § 3:29 Reasonable satisfaction
- § 3:30 Preponderance of the evidence
- § 3:31 Clear and convincing evidence

**F. TESTING THE WEIGHT OF THE
EVIDENCE IN CIVIL CASES**

- § 3:32 Jury cases
- § 3:33 Non-jury cases

**G. REQUIRED DEGREE OF PERSUASION:
CRIMINAL PROSECUTIONS**

- § 3:34 Proof beyond a reasonable doubt
- § 3:35 Motion for a new trial

TABLE OF CONTENTS

**H. CRIMINAL PROSECUTIONS SPECIAL
PROBLEMS OF PROOF AND PERSUASION**

- § 3:36 Circumstantial evidence
- § 3:37 Testimony of accomplices
- § 3:38 Elements of defense
- § 3:39 Ancillary matters

**CHAPTER 4. RELEVANCE AND
LIMITATIONS ON THE ADMISSION OF
RELEVANT EVIDENCE**

**I. INTRODUCTION TO MATERIALITY AND
RELEVANCE**

A. ALABAMA PRACTICE

- § 4:1 Generally
- § 4:2 —Materiality
- § 4:3 —Relevance

B. FEDERAL PRACTICE

- § 4:4 Generally

**C. SPECIAL PROBLEMS OF RELEVANCE AND
ADMISSIBILITY**

- § 4:5 Alabama practice
- § 4:6 Age, occupation, and other preliminary matters
- § 4:7 Collateral source rule
- § 4:8 Comparable sales of property to prove value
- § 4:9 Continuing conditions or conduct
- § 4:10 Frauds and misrepresentations
- § 4:11 Gang membership
- § 4:12 Intoxication
- § 4:13 Lawsuits
- § 4:14 Motive
- § 4:15 Relevant actions of non-parties
- § 4:16 Self-serving statements
- § 4:17 Similar events, occurrences, accidents, and
injuries in civil cases
- § 4:18 Spoliation
- § 4:19 Subject specific relevance rules

- § 4:20 Uncommunicated mental operations of the witness
- § 4:21 Wealth and economic condition
- § 4:22 Scientific, technical, and practical experiments and demonstrations
- § 4:23 Escape, attempted escape, flight, attempted flight, and other post-crime conduct
- § 4:24 Real and demonstrative evidence

II. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE

- § 4:25 Alabama practice
- § 4:26 Federal practice

III. GROUNDS FOR EXCLUDING EVIDENCE

- § 4:27 Generally
- § 4:28 Remoteness
- § 4:29 “Competence,” applied to evidence, has no meaning
- § 4:30 Nondiscretionary exclusion of relevant evidence
- § 4:31 Federal practice

IV. EVIDENCE OF CHARACTER

- § 4:32 Generally

A. ALABAMA PRACTICE

- § 4:33 Generally
- § 4:34 Character of an accused
- § 4:35 Character of a victim
- § 4:36 Character of witnesses
- § 4:37 Character of others
- § 4:38 Civil cases

B. FEDERAL PRACTICE

- § 4:39 Generally
- § 4:40 Specific permissible uses
- § 4:41 —Character of accused
- § 4:42 —Character of a victim
- § 4:43 —Character of witness

TABLE OF CONTENTS

§ 4:44 Civil cases

C. EVIDENCE OF OTHER CRIMES, WRONGS
AND ACTS; ALABAMA PRACTICE

1. Alabama Practice

§ 4:45 Use as part of the prosecutor's case-in-chief

a. Specific Areas of Admissibility

§ 4:46 Res gestae

§ 4:47 Identity

§ 4:48 Common scheme, plan, or design

§ 4:49 Knowledge

§ 4:50 Consciousness of guilt

§ 4:51 Motive

§ 4:52 Intent

§ 4:53 Absence of mistake or accident

§ 4:54 Proof of specific crimes

§ 4:55 Other special purposes

b. Other Areas of Admissibility

§ 4:56 Use as part of the defendant's case-in-chief

§ 4:57 Use in rebuttal and cross examination

§ 4:58 Use in civil cases

§ 4:59 Reasonable notice to accused required

§ 4:60 Relationship to Rule 13.3(c), Alabama Rules of
Criminal Procedure

§ 4:61 Reminder of Rule 103, first clause

§ 4:62 Reminder of Rule 103(A)(1)

2. Federal Practice

§ 4:63 Generally

§ 4:64 Motive

§ 4:65 Intent

§ 4:66 Opportunity

§ 4:67 Absence of mistake or accident

§ 4:68 Knowledge

§ 4:69 Identity

§ 4:70 Common scheme, plan, or design

§ 4:71 Other purposes

§ 4:72 —The complete story

§ 4:73 —Sex crimes

§ 4:74 —Other special purposes

- § 4:75 Use as part of the defendant's case in chief
- § 4:76 Use in prosecution's rebuttal
- § 4:77 Use in civil cases
- § 4:78 Reasonable notice to accused required

V. METHODS OF PROVING CHARACTER

A. ALABAMA PRACTICE

1. Character to Prove Conduct

- § 4:79 Generally
- § 4:80 Character in issue
- § 4:81 Cross examining character witnesses

B. FEDERAL PRACTICE

- § 4:82 Generally
- § 4:83 Direct examination
- § 4:84 Cross examination of character witnesses

VI. HABIT, CUSTOM, AND ROUTINE PRACTICES

- § 4:85 Generally
- § 4:86 Alabama practice
- § 4:87 Federal practice

VII. SUBSEQUENT REMEDIAL MEASURES

- § 4:88 Alabama practice
- § 4:89 Federal practice

VIII. COMPROMISE AND OFFERS TO COMPROMISE

- § 4:90 Alabama practice
- § 4:91 Federal practice

IX. PAYMENT OF MEDICAL EXPENSES

- § 4:92 Alabama practice
- § 4:93 Federal practice

X. PLEAS AND RELATED NEGOTIATIONS

- § 4:94 Alabama practice

TABLE OF CONTENTS

§ 4:95 Federal practice

XI. LIABILITY INSURANCE

§ 4:96 Alabama practice

§ 4:97 Federal practice

XII. RAPE SHIELD LAW

§ 4:98 Alabama practice

§ 4:99 Federal practice

**XIII. EVIDENCE OF SIMILAR CRIMES IN
SEXUAL ASSAULT AND CHILD
MOLESTATION CASES; FEDERAL
PRACTICE**

§ 4:100 Generally

CHAPTER 5. PRIVILEGES

I. NON-CONSTITUTIONAL PRIVILEGES

§ 5:1 Generally

§ 5:2 Alabama practice

§ 5:3 Federal practice

II. ATTORNEY-CLIENT PRIVILEGE

§ 5:4 Alabama practice

§ 5:5 Federal practice

A. WORK PRODUCT

§ 5:6 Alabama practice

§ 5:7 Federal practice

III. PSYCHOTHERAPIST-PATIENT PRIVILEGE

§ 5:8 Alabama practice

§ 5:9 Federal practice

§ 5:10 Client-counselor privilege

IV. HUSBAND-WIFE PRIVILEGE

§ 5:11 Alabama practice

- § 5:12 —Marital communications privilege
- § 5:13 —Testimonial privilege
- § 5:14 Federal practice

V. COMMUNICATIONS TO CLERGY PRIVILEGE

- § 5:15 Alabama practice
- § 5:16 Federal practice

VI. POLITICAL VOTE PRIVILEGE

- § 5:17 Alabama practice
- § 5:18 Federal practice

VII. TRADE SECRETS

- § 5:19 Alabama practice
- § 5:20 Federal practice

VIII. SECRETS OF STATE AND OTHER OFFICIAL INFORMATION: GOVERNMENTAL PRIVILEGES

- § 5:21 Alabama practice
- § 5:22 Federal practice

IX. INFORMER PRIVILEGE

- § 5:23 Generally
- § 5:24 Alabama practice
- § 5:25 Federal practice

X. NEWSPERSONS PRIVILEGE

- § 5:26 Alabama practice
- § 5:27 Federal practice

XI. WAIVER OF PRIVILEGES

- § 5:28 Alabama practice
- § 5:29 Federal practice

XII. COMMENT ON, OR INFERENCE TO BE DRAWN FROM, CLAIM OF PRIVILEGE

- § 5:30 Generally

TABLE OF CONTENTS

XIII. CONSTITUTIONAL PRIVILEGES

§ 5:31 Generally

CHAPTER 6. WITNESSES

I. COMPETENCE

A. GENERAL RULE OF COMPETENCE

§ 6:1 Alabama practice

§ 6:2 Federal practice

B. COMMON LAW DISQUALIFICATIONS

§ 6:3 Conviction of a crime

§ 6:4 Defendant in a criminal case

§ 6:5 Interest in the case—Civil cases

§ 6:6 —Criminal cases

§ 6:7 Religious belief

§ 6:8 Dead man's statute

C. PERSONAL KNOWLEDGE

§ 6:9 Alabama practice

§ 6:10 Federal practice

D. OATH OR AFFIRMATION

§ 6:11 Alabama practice

§ 6:12 Federal practice

E. INTERPRETERS

§ 6:13 Alabama practice

§ 6:14 Federal practice

**F. CONNECTION WITH THE CASE ON TRIAL
AS A JUDGE, ATTORNEY OR OTHER**

§ 6:15 Judges

§ 6:16 Attorneys

§ 6:17 Others

§ 6:18 Federal practice

G. COMPETENCY OF JUROR AS WITNESS

§ 6:19 At the trial

- § 6:20 Inquiry into validity of verdict or indictment
- § 6:21 Federal practice

II. EXAMINATION OF WITNESSES

A. IMPEACHMENT AND CONTRADICTION

- § 6:22 Generally
- § 6:23 Effect of impeachment
- § 6:24 Contradiction
 - 1. Who May Impeach
- § 6:25 Alabama practice
- § 6:26 Federal practice

B. IMPEACHMENT BY EVIDENCE OF CHARACTER

- § 6:27 Alabama practice
- § 6:28 Federal practice
 - 1. Impeachment by Evidence of Specific Acts Not Resulting in Conviction
- § 6:29 Alabama practice
- § 6:30 Federal practice

C. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

- 1. Alabama Practice
 - § 6:31 Generally
 - § 6:32 Time limit
 - § 6:33 Effect of pardon, annulment, or certificate of rehabilitation
 - § 6:34 Juvenile adjudications
 - § 6:35 Pendency of appeal
- 2. Federal Practice
 - § 6:36 Generally
 - § 6:37 Time limit
 - § 6:38 Effect of pardon, annulment, or certificate of rehabilitation
 - § 6:39 Juvenile adjudications
 - § 6:40 Pendency of appeal

TABLE OF CONTENTS

§ 6:41 Other considerations

D. IMPEACHMENT OF EVIDENCE OF
RELIGIOUS BELIEF

§ 6:42 Alabama practice

§ 6:43 Federal practice

E. CONTROL BY THE COURT

1. Control by the Court

§ 6:44 Alabama practice

§ 6:45 Federal practice

2. Form of Examination

§ 6:46 Generally

§ 6:47 Specific objections

§ 6:48 Non-responsive answers

§ 6:49 Federal practice

3. Cross Examination

§ 6:50 Generally

§ 6:51 —Alabama practice generally

§ 6:52 —Alabama practice criminal cases

§ 6:53 —Federal practice

4. Redirect and Recross Examination

§ 6:54 Redirect

§ 6:55 Recross

§ 6:56 Federal practice

5. Rebuttal Evidence

§ 6:57 Alabama practice

§ 6:58 Federal practice

6. Motion to Reopen Case

§ 6:59 Alabama practice

§ 6:60 Federal practice

F. REFRESHING RECOLLECTION

§ 6:61 Alabama practice

§ 6:62 Federal practice

G. IMPEACHMENT BY INCONSISTENT
STATEMENTS OR CONDUCT

§ 6:63 Alabama practice

§ 6:64 Federal practice

H. CALLING AND INTERROGATION OF
WITNESSES BY COURT

§ 6:65 Alabama practice

§ 6:66 Federal practice

I. THE “RULE” AND OTHER EXCLUSIONS OF
PERSONS FROM TRIALS

1. Alabama Practice

§ 6:67 Sequestration of witnesses

§ 6:68 Exclusion of the public

2. Federal Practice

§ 6:69 Generally

J. IMPEACHMENT BY EVIDENCE OF BIAS,
PREJUDICE OR INTEREST

§ 6:70 Alabama practice

§ 6:71 Federal practice

K. IMPEACHMENT BY EVIDENCE OF BIAS,
PREJUDICE OR INTEREST

§ 6:72 Alabama practice

§ 6:73 Federal practice

L. CORROBORATION AND REHABILITATION

1. Alabama Practice

§ 6:74 Generally

§ 6:75 Prior consistent statements

§ 6:76 —Fresh complaint

§ 6:77 —Statement of identification

§ 6:78 —Rehabilitation

§ 6:79 Evidence of truthful character

§ 6:80 Evidence of lack of bias or interest

TABLE OF CONTENTS

2. Federal Practice

- § 6:81 Generally
- § 6:82 Evidence of prior consistent statements
- § 6:83 Evidence of lack of bias or interest

CHAPTER 7. OPINIONS AND EXPERT TESTIMONY

I. OPINION TESTIMONY BY LAY WITNESS

- § 7:1 Alabama Rule of Evidence 701
- § 7:2 —Generally

A. LAY OPINION TESTIMONY

- § 7:3 Generally
- § 7:4 Collective facts or shorthand rendition of the facts
- § 7:5 General principals of admissibility

B. KINDS OF LAY OPINIONS PERMITTED

1. Alabama Practice

- § 7:6 Generally
- § 7:7 Condition and characteristics of things
- § 7:8 Damages
- § 7:9 Identity
- § 7:10 Intoxication
- § 7:11 Physical and mental condition
- § 7:12 Physical and mental abilities of others
- § 7:13 Speed, distance, duration, and accident related facts
- § 7:14 Value
- § 7:15 Accidental nature of occurrences

2. Federal Practice

- § 7:16 Generally

II. ADMISSIBILITY OF EXPERT TESTIMONY AND QUALIFICATIONS OF EXPERTS

A. ALABAMA PRACTICE

- § 7:17 Generally

1. Specific Areas of Expert Testimony

- § 7:18 Generally
- § 7:19 Causation and due care
- § 7:20 Identity
- § 7:21 Location and actions of participants in shootings
or similar acts
- § 7:22 Medical facts
- § 7:23 Medical malpractice
- § 7:24 Modus operandi of criminals
- § 7:25 Professional malpractice
- § 7:26 Value
- § 7:27 Vehicular accident related facts
- § 7:28 Defect or absence of defect in product liability
cases
- § 7:29 Cell phone data

B. FEDERAL PRACTICE

- § 7:30 Generally

III. SCIENTIFIC EVIDENCE

- § 7:31 Generally
- § 7:32 Alabama practice
- § 7:33 Federal practice

IV. EXAMINATION OF EXPERTS

- § 7:34 Alabama practice
- § 7:35 Federal practice

V. OPINION ON THE ULTIMATE ISSUE

A. ALABAMA PRACTICE

- § 7:36 Alabama Rule of Evidence 704
- § 7:37 Ultimate issue rule
- § 7:38 Testimony involving application of a legal
definition

B. FEDERAL PRACTICE

- § 7:39 Generally

**VI. DISCLOSURE OF FACTS OR DATA
UNDERLYING EXPERT OPINION**

- § 7:40 Alabama practice

TABLE OF CONTENTS

§ 7:41 Federal practice

VII. EFFECT OF EXPERT OPINION

§ 7:42 Generally

VIII. APPOINTMENT OF EXPERTS

§ 7:43 Alabama practice

§ 7:44 Federal practice

CHAPTER 8. HEARSAY

**I. HEARSAY AND THE CONFRONTATION
CLAUSE**

§ 8:1 Introduction

**II. DEFINITION OF HEARSAY AND GENERAL
RULE OF EXCLUSION**

§ 8:2 Alabama practice

§ 8:3 Federal practice

A. PRIOR STATEMENTS OF A WITNESS

1. Alabama Practice

§ 8:4 Generally

§ 8:5 Prior inconsistent statements

§ 8:6 Prior consistent statements

§ 8:7 Prior identification

2. Federal Practice

§ 8:8 Generally

B. ADMISSIONS

§ 8:9 Alabama practice

§ 8:10 Federal practice

1. Parties Own Statements

a. Alabama Practice

§ 8:11 Generally

§ 8:12 Pretrial statements of an accused

§ 8:13 Guilty pleas and related matters

b. Federal Practice

§ 8:14 Generally

**2. Statements of Which the Party Has
Manifested an Adoption or Belief of Truth**

§ 8:15 Alabama practice

§ 8:16 Federal practice

**3. A Statement by a Person Authorized by
the Party to Make a Statement
Concerning the Subject**

§ 8:17 Alabama practice

§ 8:18 Federal practice

4. Statement by Agent or Servant

§ 8:19 Alabama practice

§ 8:20 Federal practice

5. Statements by Conspirators

§ 8:21 Alabama practice

§ 8:22 Federal practice

6. Parties and Privies

§ 8:23 Alabama practice

§ 8:24 Federal practice

7. Judicial Admissions

§ 8:25 Alabama practice

§ 8:26 Federal practice

III. ADMISSIBILITY OF HEARSAY

§ 8:27 Alabama practice

§ 8:28 Federal practice

**IV. RES GESTAE AND SPONTANEOUS
DECLARATIONS**

§ 8:29 Alabama practice

§ 8:30 Federal practice

A. PRESENT SENSE IMPRESSIONS

§ 8:31 Alabama practice

TABLE OF CONTENTS

§ 8:32 Federal practice

B. SPONTANEOUS DECLARATIONS OR
EXCITED UTTERANCES

§ 8:33 Alabama practice

§ 8:34 Federal practice

C. THEN EXISTING MENTAL, EMOTIONAL,
OR PHYSICAL CONDITION

1. Alabama Practice

§ 8:35 Generally

§ 8:36 Statements of present state of mind or emotion

§ 8:37 Statements of pain, physical condition, or bodily
feelings

2. Federal Practice

§ 8:38 Generally

D. STATEMENTS FOR THE PURPOSES OF
MEDICAL DIAGNOSIS OR TREATMENT

§ 8:39 Alabama practice

§ 8:40 Federal practice

E. RECORDED RECOLLECTION

§ 8:41 Alabama practice

§ 8:42 Federal practice

F. RECORDS OF REGULARLY CONDUCTED
ACTIVITY

1. Alabama Practice

§ 8:43 Generally

§ 8:44 Business records

§ 8:45 Hospital records

2. Federal Practice

§ 8:46 Investigative reports by states agencies

G. ABSENCE OF ENTRIES IN REGULARLY
KEPT RECORDS

§ 8:47 Alabama practice

§ 8:48 Federal practice

H. PUBLIC RECORDS AND REPORTS

1. Alabama Practice

§ 8:49 Generally

§ 8:50 Police reports

§ 8:51 Rule 803(8) of the Alabama Rules of Evidence

2. Federal Practice

§ 8:52 Generally

I. RECORDS OF VITAL STATISTICS

§ 8:53 Alabama practice

§ 8:54 Federal practice

J. ABSENCE OF PUBLIC RECORD OR ENTRY

§ 8:55 Alabama practice

§ 8:56 Federal practice

K. RECORDS OF RELIGIOUS ORGANIZATIONS

§ 8:57 Alabama practice

§ 8:58 Federal practice

L. MARRIAGE, BAPTISMAL, AND SIMILAR CERTIFICATES

§ 8:59 Alabama practice

§ 8:60 Federal practice

M. FAMILY RECORDS

§ 8:61 Alabama practice

§ 8:62 Federal practice

N. RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY

§ 8:63 Alabama practice

§ 8:64 Federal practice

TABLE OF CONTENTS

O. STATEMENT IN DOCUMENTS
AFFECTING AN INTEREST IN
PROPERTY

- § 8:65 Alabama practice
- § 8:66 Federal practice

P. STATEMENTS IN ANCIENT DOCUMENTS

- § 8:67 Alabama practice
- § 8:68 Federal practice

Q. LABELS ON MEDICINE CONTAINERS,
MARKET REPORTS, LISTS, AND TABLES

- § 8:69 Generally
- § 8:70 Alabama practice
- § 8:71 Federal practice

R. TREATISES AND PUBLISHED WORKS OF
SCIENCE

- § 8:72 Alabama practice
- § 8:73 Federal practice

S. REPUTATION OF PERSONS

- § 8:74 Alabama practice
- § 8:75 Federal practice

T. REPUTATION AS TO BOUNDARIES AND
MATTERS OF PUBLIC INTEREST

- § 8:76 Alabama practice
- § 8:77 Federal practice

U. REPUTATION AS TO A PERSON'S
CHARACTER

- § 8:78 Alabama practice
- § 8:79 Federal practice

V. JUDGEMENT OF PREVIOUS CONVICTION

- § 8:80 Alabama practice
- § 8:81 Federal practice

**W. JUDGMENT AS TO PERSONAL, FAMILY,
OR GENERAL HISTORY OR BOUNDARIES**

- § 8:82 Alabama practice
- § 8:83 Federal practice

V. UNAVAILABILITY OF THE WITNESS

- § 8:84 Generally
- § 8:85 Alabama practice
- § 8:86 Federal practice

A. FORMER TESTIMONY

1. Alabama Practice

- § 8:87 Generally
- § 8:88 Unavailability of the witness
- § 8:89 Nature of former proceedings and opportunity for examination
- § 8:90 Identity of issues and parties
- § 8:91 Proof of prior testimony

2. Federal Practice

- § 8:92 Generally

B. DYING DECLARATIONS

1. Alabama Practice

- § 8:93 Generally
- § 8:94 Impending death
- § 8:95 Use on behalf of accused

2. Federal Practice

- § 8:96 Generally

C. STATEMENTS AGAINST INTERESTS

1. Alabama Practice

- § 8:97 Generally
- § 8:98 Declaration against interest distinguished from admissions
- § 8:99 Nature of the interest declared against
- § 8:100 Both in support of and in derogation of interest
- § 8:101 Criminal cases

TABLE OF CONTENTS

2. Federal Practice

§ 8:102 Generally

D. DECLARATION AS TO PEDIGREE

§ 8:103 Alabama practice

§ 8:104 Federal practice

E. DECLARATIONS BY DECEASED PERSONS
AS TO ANCIENT RIGHTS AND
BOUNDARIES

§ 8:105 Generally

F. CHILD HEARSAY EXCEPTIONS

§ 8:106 Generally

G. FORFEITURE BY WRONGDOING

§ 8:107 Alabama practice

§ 8:108 Federal practice

VI. HEARSAY WITHIN HEARSAY

§ 8:109 Alabama practice

§ 8:110 Federal practice

VII. CREDIBILITY OF DECLARANT

§ 8:111 Alabama practice

§ 8:112 Federal practice

VIII. THE “RESIDUAL” EXCEPTION

§ 8:113 Generally

**CHAPTER 9. AUTHENTICATION AND
IDENTIFICATION**

§ 9:1 Generally

I. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

A. ALABAMA PRACTICE

§ 9:2 Generally

1. Authentication of Tangible Objects and Substances

§ 9:3 Generally

§ 9:4 Distinctive characteristics

§ 9:5 Chain of custody

2. Authentication of Writings and Documents

§ 9:6 Generally

§ 9:7 Public records

§ 9:8 Scientific treatises

§ 9:9 Letters

§ 9:10 Emails and texts

§ 9:11 Ancient documents

§ 9:12 Business records

§ 9:13 Documents produced in response to a motion to produce

§ 9:14 Handwriting

3. Photographs, Recordings, and the Like

§ 9:15 Generally

§ 9:16 Photographs, motion pictures, and videotapes

§ 9:17 Sound recordings and transcripts of conversations

4. Authentication of Intangibles

§ 9:18 Voice identification

§ 9:19 Telephone calls

§ 9:20 Electronic evidence

B. FEDERAL PRACTICE

§ 9:21 Generally

II. SELF-AUTHENTICATING DOCUMENTS

§ 9:22 Alabama practice

§ 9:23 Federal practice

III. TESTIMONY OF SUBSCRIBING WITNESS

§ 9:24 Alabama practice

TABLE OF CONTENTS

§ 9:25 Federal practice

**CHAPTER 10. THE ORIGINAL WRITING
OR “BEST EVIDENCE” RULE; THE
PAROL EVIDENCE RULE**

**I. THE ORIGINAL WRITING (OR “BEST
EVIDENCE”) RULE**

§ 10:1 Generally

§ 10:2 Alabama Rule of Evidence 1001

§ 10:3 Federal Practice

A. REQUIREMENT OF ORIGINAL

§ 10:4 Alabama practice

§ 10:5 Federal practice

B. ADMISSIBILITY OF DUPLICATES

§ 10:6 Alabama practice

§ 10:7 Federal practice

**C. ADMISSIBILITY OF OTHER EVIDENCE OF
CONTENTS**

§ 10:8 Generally

§ 10:9 Originals lost or destroyed

§ 10:10 Original not obtainable

§ 10:11 Original in possession of opponent

§ 10:12 Collateral matters

§ 10:13 Failure to object

§ 10:14 Federal practice

D. PUBLIC RECORDS

§ 10:15 Alabama practice

§ 10:16 Federal practice

E. SUMMARIES

§ 10:17 Alabama practice

§ 10:18 Federal practice

F. TESTIMONY OR WRITTEN ADMISSION OF PARTY

- § 10:19 Alabama practice
- § 10:20 Federal practice

G. FUNCTIONS OF COURT AND JURY

- § 10:21 Alabama practice
- § 10:22 Federal practice

H. THE PAROL EVIDENCE RULE

- § 10:23 Generally
- § 10:24 Merger and merger clauses
- § 10:25 Use of parol evidence when writings are incomplete
- § 10:26 Collateral agreements
- § 10:27 Use of parol evidence in construction and interpretation of writing
- § 10:28 Invalidating documents through parol evidence
- § 10:29 Subsequent oral agreements
- § 10:30 Evidence of and receipts for the payment of money

CHAPTER 11. MISCELLANEOUS RULES

- § 11:1 Scope
- § 11:2 Rule 1101—General applicability
- § 11:3 —Rules inapplicable
- § 11:4 Rule 1102—Title
- § 11:5 Rule 1103—Effective date
- § 11:6 Federal practice; Rule 1101—Rules inapplicable

CHAPTER 12. REAL AND DEMONSTRATIVE EVIDENCE

I. INTRODUCTION

- § 12:1 Generally
- § 12:2 Alabama practice
- § 12:3 Federal practice

TABLE OF CONTENTS

II. ADMISSIBILITY OF TANGIBLES

A. ALABAMA PRACTICE

§ 12:4 Generally

1. Specific Instances

§ 12:5 Child admissible to show resemblance

§ 12:6 Scars, injuries, disabilities, or other aspects of physical appearance

§ 12:7 Weapons admissible for various purposes

§ 12:8 Clothing admissible for various purposes

§ 12:9 Controlled substances admissible to corroborate identity and possession

§ 12:10 Other instrumentalities of crime or tort admissible for various purposes

§ 12:11 Documentary evidence generally

§ 12:12 Documentary evidence handwriting samples

B. FEDERAL PRACTICE

§ 12:13 Tangible objects

§ 12:14 Wounds, injuries, and disabilities

§ 12:15 Handwriting samples

III. PHOTOGRAPHS, MOVIES, SLIDES, SOUND RECORDINGS, VIDEOTAPES AND THE LIKE ADMISSIBLE FOR VARIOUS PURPOSES

§ 12:16 Generally

§ 12:17 Photographs

§ 12:18 Sound recordings

§ 12:19 Videotapes

§ 12:20 The silent witness doctrine and sound recordings, x-rays, and the like

§ 12:21 Federal practice

IV. ITEMS DISPLAYED TO AID THE FACT FINDER'S UNDERSTANDING OF ORAL TESTIMONY; MAPS, MODELS, REPLICAS AND DUPLICATES

§ 12:22 Generally

§ 12:23 Maps, charts, graphs, diagrams, sketches, and information tables

§ 12:24 Federal practice

V. DEMONSTRATIONS AND EXPERIMENTS

A. ALABAMA PRACTICE

§ 12:25 Generally

B. FEDERAL PRACTICE

§ 12:26 In-court demonstrations and experiments

§ 12:27 Out-of-court experiments

VI. VIEWS

§ 12:28 Alabama practice

§ 12:29 Federal practice

Table of Laws and Rules

Table of Cases

Index