

NY CLS CPLR, Art. 45

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Article 45 Evidence (§§ 4501 — 4551)

Article 45 Evidence

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Advisory Committee Notes:

The advisory committee considered it beyond the scope of its powers to provide a completely integrated system of evidence modeled on the Uniform Rules of Evidence since the “rules of evidence in civil cases are applicable also to criminal cases.” Code Crim Proc § 392. The committee is impressed, however, with the desirability of considering adoption of the Uniform Rules of Evidence by this state. Adopted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association, they are under serious study in other states. See, e.g., Committee on the Revision of the Law of Evidence, Report to the Supreme Court of New Jersey (May 25, 1955); Commission to Study the Improvement of the Laws of Evidence including the Uniform Rules of Evidence, Report to the Senate and Assembly of the State of New Jersey (November, 1956); Committee on Uniform Rules of Evidence, Preliminary Draft of the Rules of Evidence, 27 Utah Bar Bull. 5 (1957) (submitted to the

Supreme Court of Utah); but cf. Report of the Evidence Code Committee, 10 Mo Bar J 177 (1954). Accordingly, the advisory committee recommends the appointment of a committee consisting of those familiar with both criminal and civil procedure to consider the adoption of the Uniform Rules of Evidence by this state.

In view of this recommendation, this article has, in the main, been limited to a recodification of former statutes. The most important changes are in the modification of the judicial notice provision, CPA § 344-a and the adoption of the Uniform Rules of Evidence provision on opinion of lay and expert witnesses. Some sections have been dropped as unnecessary in the light of more general provisions and others dealing with substantive matters have been transferred to the Consolidated and Unconsolidated Laws.

Privileges and the recent provision excluding eavesdropping evidence in certain cases are based on a legislative determination that the benefit to be derived by having the truth revealed in a litigated case is outweighed by the harm to society that would result from the use of certain evidence at a trial.

CPA §§ 338 and 339, which dealt respectively with proof of mitigating circumstances despite a plea of justification and mitigation as a partial defense are omitted. The former is unnecessary because inconsistent defenses are permitted by CPLR rule 3014 and the latter is covered by § 3018(b). Cf. § 3025(c).

Research References & Practice Aids

Cross References:

This article referred to in § 4543.; CLS Men Hyg § 33.16.; CLS Pub Health § 18.

Books and records as prima facie evidence, CLS Bus Corp § 624.

Record of shareholders, CLS Bus Corp § 1315.

Certification of notarial signatures, CLS Exec § 133.

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Evidence pertaining to enforcement of environmental conservation law, CLS ECL §§ 71-1703, 71-1705.

Rules of evidence, CLS Mult D § 354.

Appointment of court evaluator, CLS Men Hyg § 81.09.

Legal presumptions; evidence, CLS Pub Health § 10.

Public health council; meetings; by-laws, CLS Pub Health § 222.

Houses of prostitution; injunction; jurisdiction, complaint and parties to the action, CLS Pub Health §§ 2321., 2324.

Organization and records; minutes as evidence; destruction of certain records, CLS Pub Ser § 7.

Certified copies of papers filed to be evidence, CLS Pub Ser § 17.

Reparations and refunds, CLS Pub Ser § 113.

Deeds for cemetery purposes; presumption, CLS Relig Corp § 7-a.

Order not conclusive in ejectment, CLS RPAPL § 1143.

Release of rents reserved by leases in perpetuity, CLS RPAPL § 1901.

Discharge of record of ancient mortgages presumed paid, CLS RPAPL § 1931.

Action for use and occupation, CLS Real P § 220.

Laws and decrees of foreign countries appointing agents and attorneys and recording of the same, CLS Real P § 331.

Official examiner's report of title; other evidence of title, CLS Real P § 380.

Proceedings upon the petition; notice of hearing, CLS Real P § 385.

Certificate of sale as evidence, CLS Real P Tax § 1168.

Return of unpaid taxes, CLS Real P Tax § 1436.

Injuries to employees, CLS R R § 64.

Record of ordinances, CLS Sec CI Cities § 39.

Determination of surrogate, CLS Tax § 231.

Effect of nonpayment of taxes, CLS Tax § 258.

Penalties; how recovered, CLS Tax § 277.

Effect of failure to pay tax, CLS Tax § 278.

Investigation of accidents, CLS Trans § 117.

Rate bureau regulation, CLS Trans § 142.

Proof of ordinance; maps, CLS Town § 134.

Damages for insufficient fence, CLS Town § 307.

Form of negotiable instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note", CLS UCC § 3-104.

Date, antedating, postdating, CLS UCC § 3-114.

Notice to purchaser, CLS UCC § 3-304.

Consideration, CLS UCC § 3-408.

Cancellation and renunciation, CLS UCC § 3-605.

Jurisprudences:

6A NY Jur 2d Article 78 and Related Proceedings § 322. .

51 NY Jur 2d Eminent Domain § 430. .

57 NY Jur 2d Evidence and Witnesses § 3. .

58 NY Jur 2d Evidence and Witnesses §§ 456., 519. .

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