DOWNLOAD PDF THE EVIDENCE IS REAL AND CONVINCING, AT LEAST TO A PERSON WHO DOES NOT WILLFULLY RESIST IT

Chapter 1 : Skepticism (Stanford Encyclopedia of Philosophy)

Clear and convincing evidence: Greater that preponderance of evidence but less than beyond a reasonable doubt. Used to decide specific issues in criminal and quasi-criminal cases The level of factual proof used in civil cases involving issues of personal liberty.

Although admitting that he had not filed his returns, he testified that he had not acted willfully because he sincerely believed, based on his indoctrination by a group believing that the federal tax system is unconstitutional and his own study, that the tax laws were being unconstitutionally enforced and that his actions were lawful. Cheek was convicted, and the Court of Appeals affirmed. A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Statutory willfulness, which protects the average citizen from prosecution for innocent mistakes made due to the complexity of the tax laws, United States v. Characterizing a belief as objectively unreasonable transforms what is normally a factual inquiry into a legal one, thus preventing a jury from considering it. Rather, they reveal full knowledge of the provisions at issue and a studied conclusion that those provisions are invalid and unenforceable. Congress could not have contemplated that a taxpayer, without risking criminal prosecution, could ignore his duties under the Code and refuse to utilize the mechanisms Congress provided to present his invalidity claims to the courts and to abide by their decisions. Cheek was free to pay the tax, file for a refund, and, if denied, present his claims to the courts. Also, without paying the tax, he could have challenged claims of tax deficiencies in the Tax Court. Cheek has been a pilot for American Airlines since He filed federal income tax returns through but thereafter ceased to file returns. In , petitioner unsuccessfully sought a refund of all tax withheld by his employer in As a result of his activities, petitioner was indicted for 10 violations of federal law. He was further charged with three counts of willfully attempting to evade his income taxes for the years , , and in violation of 26 U. In those years, American Airlines withheld substantially less than the amount of tax petitioner owed because of the numerous allowances and exempt status he claimed on his W-4 forms. At trial, the evidence established that between and , petitioner was involved in at least four civil cases that challenged various aspects of the federal income tax system. During this time period, petitioner also attended at least two criminal trials of persons charged with tax offenses. In addition, there was evidence that in or an attorney had advised Cheek that the courts had rejected as frivolous the claim that wages are not income. He admitted that he had not filed personal income tax returns during the years in question. He testified that as early as , he had begun attending seminars sponsored by, and following the advice of, a group that believes, among other things, that the federal tax system is unconstitutional. Some of the speakers at these meetings were lawyers who purported to give professional opinions about the invalidity of the federal income tax laws. Cheek produced a letter from an attorney stating that the Sixteenth Amendment did not authorize a tax on wages and salaries but only on gain or profit. He therefore argued that he had acted without the willfulness required for conviction of the various offenses with which he was charged. In the course of its instructions, the trial court advised the jury that to prove "willfulness" the Government must prove the voluntary and intentional violation of a known legal duty, a burden that could not be proved by showing mistake, ignorance, or negligence. The court further advised the jury that an objectively reasonable good-faith misunderstanding of the law would negate willfulness, but mere disagreement with the law would not. After several hours of deliberation, the jury sent a note to the judge that stated in part: Is there any additional clarification you can give us on this point? The District Judge responded with a supplemental instruction containing the following statements: When the jury resumed its deliberations, the District Judge gave the jury an additional instruction. This instruction stated in part that "an honest but unreasonable belief is not a defense and does not negate willfulness," id. The court also instructed the jury that "persistent refusal to acknowledge the law does not constitute a good faith misunderstanding of the law. Approximately two hours later, the jury returned a verdict finding petitioner guilty on all counts. In its opinion

in this case, the court noted that several specified beliefs, including the beliefs that the tax laws are unconstitutional and that wages are not income, would not be objectively reasonable. II The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system. United States, 7 Pet. United States, 98 U. United States, U. Holmes, The Common Law Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common-law rule has been applied by the Court in numerous cases construing criminal statutes. The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common-law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term "willfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws. In United States v. The Court held that the defendant was entitled to an instruction with respect to whether he acted in good faith based on his actual belief. In Murdock, the Court interpreted the term "willfully" as used in the criminal tax statutes generally to mean "an act done with a bad purpose," id. Subsequent decisions have refined this proposition. Still later, United States v. The jury was given an instruction on willfulness similar to the standard set forth in Bishop. The defendants were convicted but the Court of Appeals reversed, concluding that the latter instruction was improper because the statute required a finding of bad purpose or evil motive. Bishop, supra, and prior cases," ibid. As "the other Courts of Appeals that have considered the question have recognized, willfulness in this context simply means a voluntary, intentional violation of a known legal duty. We concluded that after instructing the jury on willfulness, "an additional instruction on good faith was unnecessary. Taken together, Bishop and Pomponio conclusively establish that the standard for the statutory willfulness requirement is the "voluntary, intentional violation of a known legal duty. In particular, he challenges the ruling that a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law, if it is to negate willfulness, must be objectively reasonable. We agree that the Court of Appeals and the District Court erred in this respect. Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. We deal first with the case where the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation he is accused of violating, a case in which there is no claim that the provision at issue is invalid. In such a case, if the Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable. In this case, if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Knowledge and belief are characteristically questions for the factfinder, in this case the jury. Characterizing a particular belief as not objectively reasonable transforms the inquiry into a legal one and would prevent the jury from considering it. It is common ground that this Court, where possible, interprets congressional enactments so as to avoid raising serious constitutional questions. Department of Justice, U. Of course, the more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws and will find that the Government has carried its burden of proving knowledge. B Cheek asserted in the trial court that he should be acquitted because he believed in good faith that the income tax law is unconstitutional as applied to him and thus could not legally

impose any duty upon him of which he should have been aware. Those cases construed the willfulness requirement in the criminal provisions of the Internal Revenue Code to require proof of knowledge of the law. Claims that some of the provisions of the tax code are unconstitutional are submissions of a different order. Rather, they reveal full knowledge of the provisions at issue and a studied conclusion, however wrong, that those provisions are invalid and unenforceable. Thus in this case, Cheek paid his taxes for years, but after attending various seminars and based on his own study, he concluded that the income tax laws could not constitutionally require him to pay a tax. We do not believe that Congress contemplated that such a taxpayer, without risking criminal prosecution, could ignore the duties imposed upon him by the Internal Revenue Code and refuse to utilize the mechanisms provided by Congress to present his claims of invalidity to the courts and to abide by their decisions. There is no doubt that Cheek, from year to year, was free to pay the tax that the law purported to require, file for a refund and, if denied, present his claims of invalidity, constitutional or otherwise, to the courts. Cheek took neither course in some years, and when he did was unwilling to accept the outcome. Of course, Cheek was free in this very case to present his claims of invalidity and have them adjudicated, but like defendants in criminal cases in other contexts, who "willfully" refuse to comply with the duties placed upon them by the law, he must take the risk of being wrong. For this purpose, it makes no difference whether the claims of invalidity are frivolous or have substance. It is so ordered. I concur in the judgment of the Court because our cases have consistently held that the failure to pay a tax in the good-faith belief that it is not legally owing is not "willful. It is quite impossible to say that a statute which one believes unconstitutional represents a "known legal duty. Madison, 1 Cranch , , 2 L. There is, moreover, no rational basis for saying that a "willful" violation is established by full knowledge of a statutory requirement, but is not established by full knowledge of a requirement explicitly imposed by regulation or order. The law already provides considerable incentive for taxpayers to be careful in ignoring any official assertion of tax liability, since it contains civil penalties that apply even in the event of a good-faith mistake, see, e. To impose in addition criminal penalties for misinterpretation of such a complex body of law is a startling innovation indeed. I find it impossible to understand how one can derive from the lonesome word "willfully" the proposition that belief in the nonexistence of a textual prohibition excuses liability, but belief in the invalidity i. One may say, as the law does in many contexts, that "willfully" refers to consciousness of the act but not to consciousness that the act is unlawful. Or alternatively, one may say, as we have said until today with respect to the tax statutes, that "willfully" refers to consciousness of both the act and its illegality. But it seems to me impossible to say that the word refers to consciousness that some legal text exists, without consciousness that that legal text is binding, i. It seems to me that we are concerned in this case not with "the complexity of the tax laws," ante, at , but with the income tax law in its most elementary and basic aspect: Is a wage earner a taxpayer and are wages income? See United States v. That being so, it is incomprehensible to me how, in this day, more than 70 years after the institution of our present federal income tax system with the passage of the Income Tax Act of , 38 Stat. One might note in passing that this particular taxpayer, after all, was a licensed pilot for one of our major commercial airlines; he presumably was a person of at least minimum intellectual competence. Petitioner should be grateful for this further protection, rather than be opposed to it. If that ensues, I suspect we have gone beyond the limits of common sense. While I may not agree with every word the Court of Appeals has enunciated in its opinion, I would affirm its judgment in this case.

Chapter 2 : Glossary of Legal Terms â€" Judicial Education Center

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected.

Ordinary Incredulity Even before examining the various general forms of skepticism, it is crucial that we distinguish between philosophical skepticism and ordinary incredulity because doing so will help to explain why philosophical skepticism is so intriguing. Consider an ordinary case in which we think someone fails to have knowledge. Suppose Anne claims that she knows that the bird she is looking at is a robin and that I believe that if Anne were to look more carefully, she would see that its coloration is not quite that of a robin. Its breast is too orange. Further, it seems that it flies somewhat differently than robins do, i. Thus, there are two grounds for doubting that Anne knows that it is a robin: The flight pattern of this bird is not typical of robins. This is a case of ordinary doubt because there are, in principle, two general ways that are available for removing the grounds for doubt: The alleged grounds for doubt could be shown to be false; or It could be shown that the grounds for doubt, though true, can be neutralized. In other words, Anne could show that a is false. But in order to remove grounds for doubt, it is not necessary that Anne show that the alleged grounds are false. Alternative 2 is available. It could be granted that the bird in question flies in a way that is not at all typical of robins. But suppose that on closer inspection we see that some of its tail feathers have been damaged in a way that could cause the unusual flight pattern. Because the bird has difficulty gliding and flying in a straight line, it flaps its wings much more rapidly than is typical of robins. Thus, although we can grant that b is true, we would have explained away, or neutralized, the grounds for doubt. The point here is that in this case, and in all ordinary cases of incredulity, the grounds for the doubt can, in principle, be removed. As Wittgenstein would say, doubt occurs within the context of things undoubted. If something is doubted, something else must be held fast because doubt presupposes that there are means of removing the doubt. That is, we think our general picture of the world is rightâ€"or right enoughâ€"so that it does provide us with both the grounds for doubt and the means for potentially removing the doubt. Thus, ordinary incredulity about some feature of the world occurs against a background of sequestered beliefs about the world. We are not doubting that we have any knowledge of the world. Far from it, we are presupposing that we do know some things about the world. In contrast, philosophical skepticism attempts to render doubtful every member of some class of propositions that we think falls within our ken. One member of the class is not pitted against another. The grounds for either withholding assent to the claim that we can have such knowledge or denying that we can have such knowledge are such that there is no possible way either to answer them or to neutralize them by appealing to another member of the class because the same doubt applies to each and every member of the class. Thus, philosophical doubt or philosophical skepticism, as opposed to ordinary incredulity, can not, in principle, be removed. Or so the philosophical skeptic will claim! To clarify the distinction between ordinary incredulity and philosophical doubt, let us consider two movies: The Truman Show and The Matrix. But he begins to wonder whether the world surrounding him is, in fact, what it appears to be. Some events seem to happen too regularly and many other things are just not quite as they should be. Eventually, Truman obtains convincing evidence that all his world is a stage and all the men and women are merely players. The crucial point is that even had he not developed any doubts, there is, in principle, a way to resolve them had they arisen. Such doubts, though quite general, are examples of ordinary incredulity. Contrast this with the deception depicted in The Matrix. See Irwin , for collections of articles on The Matrix. Put another way, the philosophical skeptic challenges our ordinary assumption that there is evidence available that can help us to discriminate between the real world and some counterfeit world that appears in all ways to be identical to the real world. Ordinary incredulity arises within the context of other propositions of a similar sort taken to be known, and, in principle, the doubt can be removed by discovering the truth of some further proposition of the

relevant type. On the other hand, philosophical skepticism about a proposition of a certain type derives from considerations that are such that they cannot be removed by appealing to additional propositions of that typeâ€"or so the skeptic claims. These movies illustrate one other fundamental feature of the philosophical arguments for skepticism, namely, that the debate between the skeptics and their opponents takes place within the evidentialist account of knowledge which holds that knowledge is at least true, sufficiently justified belief. The debate is over whether the grounds are such that they can make a belief sufficiently justified so that a responsible epistemic agent is entitled to assent to the proposition. A corollary of this is that strictly reliabilist or externalist responses to philosophical skepticism constitute a change of subject. A belief could be reliably produced, i. For example, consider the belief that there is a god. The three possible propositional attitudes are: Of course, there are other attitudes one could have toward p when not considering whether p is true. One could just be uninterested that p or be excited or depressed that p. But, typically, those attitudes are either ones we have when we are not considering whether p is true or they are attitudes that result from our believing, denying or withholding p. For example, I might be happy or sorry that p is true when I come to believe that it is true. Philosophers have differed about what that attitude is. Some take it to be something akin to being certain that p or guaranteeing that p Malcolm , 58â€" Others have taken it not to be a form of belief at all because, for example, they claim that one can know that p without believing p as in a case in which I might in fact remember that Queen Victoria died in but not believe that I remember it and hence might be said not to believe it Radford For the purposes of this essay we need not attempt to pin down precisely the nature of the pro-attitude toward p that is necessary for knowing that p. It is sufficient for our purposes to stipulate that assent is the pro-attitude toward p required to know that p. I will take such types of propositions to contain tokens some of which are generally thought to be known given what we ordinarily take knowledge to be. Thus, it would not be epistemically interesting if we did not know exactly what the rainfall will be on March 3 in New Brunswick, NJ, exactly ten years from now. That kind of thing a fine grained distant future state is not generally thought to be known given what we ordinarily take knowledge to be. Now, consider this meta proposition concerning the scope of our knowledge, namely: We can have knowledge of EI-type propositions. Given that there are just three stances we can have toward any proposition when considering whether it is true, we can: Assent that we can have knowledge of EI-type propositions. Assent that we cannot have knowledge of EI-type propositions. That is, deny that we can have knowledge of EI-type propositions. Withhold assent to both the proposition that we can have knowledge of EI-type propositions and withhold assent to the proposition that we cannot have such knowledge. The attitude portrayed in 2 has gone under many names. I will follow the terminology suggested by Sextus Empiricus. According to Sextus, they assented to the claim that we cannot have knowledge of what I have called EI-type propositionsâ€"although it is far from clear that this was an accurate description of their views. See the entry on ancient skepticism. Perhaps the prime example was Carneades â€" BCE. What underlies this form of skepticism is assent to the proposition that we cannot know EI-type propositions because our evidence is inadequate. The primary source of Pyrrhonian Skepticism is the writing of Sextus Empiricus who lived at the end of the second century CE. The Pyrrhonians withheld assent to every non-evident proposition. That is, they withheld assent to all propositions about which genuine dispute was possible, and they took that class of propositions to include both the meta proposition that we can have knowledge of EI-type propositions and the meta proposition that we cannot have knowledge. Indeed, they sometimes classified the Epistemists and the Academic Skeptics together as dogmatists because the Epistemists assented to the proposition that we can have knowledge, while the Academic Skeptics assented to the denial of that claim. The Academic Skeptic thinks that her view can be shown to be the correct one by an argument or by arguments. The Pyrrhonian would point out that the Academic Skeptic maintains confidence in the ability of reason to settle mattersâ€"at least with regard to the extent of our knowledge of propositions in the EI-class. A possible Cartesian reply could be as simple as paraphrasing Luther: Here I stand, as a philosopher with confidence in reason, and as such I can do no other. But regardless of the adequacy of either of the responses, the point here is that the Pyrrhonians did not claim that they had a

compelling argument whose conclusion was that withholding assent to non-evident propositions was the appropriate epistemic attitude to have. Although recently there has been a renewed interest in Pyrrhonism, it is fair to say that when contemporary philosophers write or speak about skepticism they usually are referring to some form of Academic Skepticism. Thus, we will now turn to that form of skepticism, and it is that form that will be the primary focus of this essay, although we will consider some aspects of Pyrrhonism later. However, in the voice of the non-skeptical interlocutor, he replies that even though the senses have misled him, he can neutralize that purported basis for doubt by pointing out that we are able to determine when our senses are not trustworthy. Thus, this is a case of ordinary incredulity because he appeals to some knowledge of the world gained through our senses to neutralize this basis for doubt. For example, in looking at a straight stick in water, even though it appears bent, we know from past sense experiences not to accept the testimony of our senses at face value in such situations because we have learned that straight sticks look bent in water. Thus, we can neutralize the potentially knowledge-robbing proposition that my senses have deceived me on some occasions by conjoining it with another proposition to which we assent, namely, that I can distinguish between the occasions when my senses are trustworthy and those when they are not. Thus, no basis for philosophical Academic Skepticism has been located. Descartes next seriously considers dreaming. Would he still have some knowledge of the external world? Yes; because in dreams and in waking life there are some common general features. So, if he were dreaming, he would not know in particular what is going on about him at that moment, but that does not imply that he fails to have any knowledge of the external world at that moment. We have not found any reason for doubting that there are material objects in general or that they have a spatial location, or are in motion or at rest, or can exist for a long or short period of time. Again, no basis for Academic Skepticism has been established. For we can neutralize this apparent ground for doubting all of our beliefs about material objects because there are some truths about material objects and their properties that remain unchallenged in both our experiences while dreaming and our experiences while being awake. Thus, Descartes believes that he has located a basis for doubting each of his supposed former pieces of knowledge about the external world that cannot be repulsed by locating another proposition to which he is entitled. He has found a proposition that, if true, would by itself defeat the justification he has for his assenting to propositions about the external world and at this point in the Meditations which is such that 1 he does not have a way to deny it and such that 2 he has no way to neutralize its effect. That proposition can be put this way: My epistemic equipment is not reliable. It could be argued that the rest of the Meditations is designed to provide a way of showing that the Author of his being is perfect and, although he Descartes has made errors in the past, if his epistemic equipment is deployed properly and his will is constrained, error can be avoided.

Chapter 3 : Climate change denial - Wikipedia

Testimonial evidence is the most basic form of evidence and the only kind that does not usually require another form of evidence as a prerequisite for its admissibility. See Evid. Code Â§ (b); Fed R. Evid.

She has long suspected physical abuse by a relative. Smith were married for twenty years. Both have children by their first marriages. Six months before he dies Mrs. Smith drives him to your office, where he executes a will leaving everything to her outright. His previous will left Mrs. Smith the estate in trust, and upon her death to his children. Now his children are petitioning for probate of the previous will. And you thought a probate practice would keep you out of the courtroom? Chances are a probate practice will eventually land you in court, whether representing a party or as a witness. Preliminary Procedure Pure probate litigation is commenced in Probate Court, in accordance with Rule 4. Typically, the deputy will serve the Notice akin to a summons, form N and the petition on the defendant, in hand if possible, or by some other means calculated to give the defendant actual notice of the action. At the point you may face a choice: Either continue to litigate in Probate Court, or remove to Superior Court. Bear in mind that an action to set aside will must be brought and must remain in Probate Court. Thus it is inexpensive compared with Superior Court. In Superior Court there are trailing dockets, while in Probate Court you will probably have a date certain for trial, a huge advantage. The judge will have good familiarity with issues common in such litigation. The hearing will be jury-waived, for better or worse. Because the trial will be to the judge alone, a practitioner who might not have the experience to perform a jury trial can, with care and work, do a good job for his or her client. Superior Court, conversely, will be much slower: The discovery period alone will be six months or more. The court may be more adept at addressing discovery disputes and related issues. The trial may be jury-waived, although on most issues any party can elect to try the case to a jury, provided the election is timely made. Trial scheduling orders appear now in the Probate Court as well, but perhaps motions to enlarge may be met with more sympathy by a probate judge. The characteristics of each court may dictate your choice of forum. Is your case factually complex, demanding a long investigation, and are the facts such that no deep expertise in probate law is required to appreciate the argument? Try the case in Superior Court. But if the case is simpler and turns on issues closely identified with probate law â€" e. Within twenty days of the matter being filed in Probate Court, either party can remove to the Superior Court of the same county, or to another county if the Superior Court can assert personal jurisdiction over the defendant in that county. If the Probate Court pleading acting as the complaint is amended by either party, either party has another opportunity to ask for removal. The Will Contest A will contest is a little like a murder trial: Perhaps because the author of the will is not around to defend it, the cases reveal a societal bias in favor of giving effect to wills unless there is the strongest evidence of incapacity. The person seeking to overturn a will faces a major challenge. There are two primary grounds for challenging a will: Challenges on the basis of mistake and fraud occur very rarely. Keep in mind that there is no presumption of testamentary capacity. If you are the proponent of any will, whether or not challenged, you must make your prima facie case that the will was executed in accordance with law by an individual possessed of testamentary capacity. If the will is challenged, your entry into evidence of a self-proving will is sufficient to shift to the petitioner the burden of proving, by preponderance of the evidence, that the will should not be allowed. Estate of Mary Dodge, A. Testamentary Capacity Testamentary capacity is very different from contractual capacity. Estate of Marquis, A. Therefore, a man lacks testamentary capacity who is incapable of comprehending that he owns acres on Northeast Harbor, that such land is worth millions, and that he also owns liquid assets commensurate with such wealth. The same man would lack testamentary capacity who understands the scope of his wealth but who cannot keep straight in his head that he has three children, one of whom is dead but whose children survive. On the other hand, take the same man with the same mental deficits but possess him of nothing more than a simple house on a town lot and a few thousand in the bank, and a court might well deem him to have the power to devise by will, at least to the natural objects of his

bounty. It follows that testamentary capacity may turn on the complexity of the proposed will. One may possess the testamentary capacity to understand that he is omitting a child with a long prison record in favor of two others less criminally inclined, yet lack the capacity to execute a will creating a tax avoiding trust which funds a complex scheme of inheritance. The practitioner considering the drafting of a will for an individual whose capacity may reasonably be challenged must bear this principle in mind: If Aunt Ida leaves her savings bonds to a home for wayward cats, be prepared to demonstrate rather well that she intended to do exactly that. How does one prove testamentary capacity? The challenge, therefore, is to prove that the testator had such mental capacity that he or she must have intended to execute the offered will. That the error survived to be in the published will may be evidence that the testator lacked capacity to understand or perhaps even to read the will. If you will allow such an error into a will you draft, let it not be in the will of one whose capacity may be challenged. An earlier will may also be evidence, if it suggests that the challenged will represents a logical evolution in the estate plan. Remember, once a doctor has offered an opinion in writing he or she will feel obliged to provide further testimony consistent with that all important first opinion. Interviewing nurses and aides is likewise critical, of course. A person can be demented or insane, and yet if he or she can for a few moments possess testamentary capacity, he or she can execute a will during that interval. In Re Loomis, Me 81, A. Perhaps there is evidence that mornings were when this person was at his or her best, and that is when the will execution occurred. Similarly, a drunk may possess testamentary capacity if execution occurs early in the day â€" another lesson for the practitioner preparing a will for a person who drinks to excess. There are other ways you can minimize the possibility of a will being contested. Occasionally, when a will contest is a real possibility but the testator presents him or herself well, the execution may be videotaped. The obvious peril of video is that the testator may come off looking not at all well, and then the video becomes damning rather than supporting. And it looks hardly better that the family or attorney decided to dispose of an unflattering videotape. A common and sensible alternative is a detailed, factual memorandum written by the attorney immediately after the will signing ceremony and showing the basis for the assertion of testamentary capacity. If you suspect a will contest may occur, perhaps the execution should be witnessed by three witnesses and a notary if the will will be self-proving. The witnesses should have no interest whatsoever in the property disposed of in the will. Each witness should actually see the signature occur. The testator should initial page margins. A witness should read aloud the attestation language. This is logical when one considers that a person who is getting on in years, becoming forgetful and even a bit feeble, is surely more susceptible to influence that rises to the level required to sustain a will challenge. Therefore any investigation of undue influence should undertake a thorough investigation into the physical and mental condition of the testator. Any person making a will is influenced. Influence rises to a level which will void a will when the influence is coercive, or destructive of free agency. In Re Crockett, Me. Circumstances frequently seen in cases of undue influence include: Domineering behavior on the part of the suspect may also be seen. That the challenged will disposes of the property in an illogical manner, or in a manner which departs from the previous will or previous declarations of intent. Evidence that the testator was unusually susceptible to influence, perhaps because of illness especially mental illness or loneliness. Circumstantial evidence of an effort to gain undue influence, such as persuading the testator to keep from others the fact that he changed his will. Unusual circumstances surrounding the execution of the will, such as the will not having been executed under the supervision of a lawyer but perhaps in the presence of the influencer , or the alleged influencer insisting on remaining in the room while the testator is being counseled. In Re Will of Fenwick, A. The person challenging the will must prove undue influence by clear and convincing evidence. Commissioner of Mental Health, A. The burden is high; to see just how high, you may want to read Estate of Horne, A. Then put together a paper trail showing income into the estate and out. If the funds are commingled, you must of course show in whose account the funds were held. The assistance of an accountant will likely be required, either simply to assist your investigation of for eventual use as an expert witness. Your causes of action may include breach of fiduciary duty, conversion, and fraud. The individual may be commanded to bring documents, and the section

provides for interrogatories as well. Perhaps a useful technique would be to serve interrogatories and a request for production in advance of the examination. Some courts provide for the examination to be before the court. Others, including Cumberland County, generally provide that the examination is in the nature of an out of court deposition. Either way the section provides a means of inexpensively placing a suspected person under oath for examination. Sometimes the person suspected of foul play has become the personal Representative, or is otherwise disinclined to discharge his or her duty to marshal the assets of the estate. If you suspect physical or emotional abuse of the decedent, you will probably be made aware of whether the Department of Human Services has investigated. If there has been an investigation, and if a civil action alleging the abuse is pending in Superior Court , obtain the D. In the normal course records of D. The Clifford Order motion asks the D.

Chapter 4 : John L. CHEEK, Petitioner, v. UNITED STATES. | US Law | LII / Legal Information Institute

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. or s. , and may be subject to discipline pursuant to s. , and, if applicable, shall be removed from office, employment, or the contractual relationship.

Calendar - List of cases scheduled for hearing in court. Capital Crime - A crime possibly punishable by death. Caption - The heading on a legal document listing the parties, the court, the case number, and related information. Case Law - Law established by previous decisions of appellate courts. Cause - A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice. Caveat - A warning; a note of caution. Certified Copy â€" A copy of a document with a certificate attesting to its accuracy and completeness by the officer who has custody of the original. Denied - Stands for "certiorari denied"; a writ of certiorari is a discretionary method by which a superior court chooses the cases it wishes to hear. If an appellate court grants a writ of certiorari, it agrees to take the appeal. Usually refers to a request for the Supreme Court to review a decision of the Court of Appeals. Challenge - Term used in a jury trial for an attemp to exclude a potential juror. Challenge for Cause - Objection to the seating of a particular juror for a stated reason usually bias or prejudice for or against one of the parties in the lawsuit. The judge has the discretion to deny the challenge. Distinguished from peremptory challenge, which they party can usually exercise as a matter of right. Change of Venue - Moving a lawsuit or criminal trial to another place for trial. Venue may be changed when a cases has received so much local publicity as to create a likelihood of bias in the jury pool. Charges multiple - A case with more than one count or offense listed on the court file. Charging Document - A citation, information, indictment or notice to appear, indicating that the named person committed a specific criminal offense or civil infraction. Chief Judge - Presiding or administrative judge in a court. Circumstantial Evidence - All evidence except eyewitness testimony. Evidence from which an inference must be drawn. Examples include documents, photographs, and physical evidence, such as fingerprints. Citation - A written notice to appear in court, usually to answer a violation of traffic law or other minor criminal laws. Civil Action - Non-criminal cases in which one private individual, business, or government sues another to protect, enforce, or redress private or civil rights. Civil Contempt â€" Contempt can be civil or criminal depending on the purpose the court seeks to achieve through its punishment. Contempt is civil when the purpose of punishment is to coerce the defendant to perform an act previously ordered by the court, which the defendant has not done, such as paying child support. Compare with Criminal Contempt. Civil Procedure - The set of rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals. Class Action - A lawsuit brought by one or more persons on behalf of a larger group. Clear and Convincing Evidence - Standard of proof commonly used in civil lawsuits and in regulatory agency appeals. It governs the amount of proof that must be offered in order for the plaintiff to win the case. It may take the form of commutation or pardon. Closing Argument - The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence. Codicil - An amendment to a will. Collateral Estoppel â€" Rule that bars relitigation between the same parties of a particular issue or determinative fact when there is a prior judgment. Commit - To send a person to prison, asylum, or reformatory by a court order. It derives legal principles from the statements by judges in their written opinions, rather than from statutes enacted by legislative bodies. Commutation - The reduction of a sentence, as from death to life imprisonment. Co-Defendants - More than one person arrested and charged on the same criminal incident. See also contributory negligence. Compensatory Damages â€" Damages awarded to compensate the nonbreaching or injured party. Due process prohibits the government from prosecuting a defendant who is not competent to stand trial. Competent Witness â€" Every person is considered competent to be a witness. Complainant - The party who complains or sues; one who applies to the court for legal redress. Also called the plaintiff. Complaint â€" [Civil] The initial

paperwork filed in a civil action that states the claim for which relief is sought; in the complaint the plaintiff states the wrongs allegedly committed by the defendant. Conciliation - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but it may be less formal. Concurrent Jurisdiction â€" Authority vested in more than one court to hear and resolve specific types of disputes. Concurrent Sentences - Sentences of imprisonment for conviction of more than one crime, to be served at the same time, rather than one after the other. Condemnation - The legal process by which the government takes private land for a public use, paying the owners a fair price as determined by the court. Conditions of Release - Conditions upon which an arrested person is released pending trial. Consecutive Sentences - Successive sentences of imprisonment, one beginning at the expiration of another, imposed against a person convicted of two or more crimes. Conservators have somewhat less responsibility than guardians. Consideration â€" A bargained-for benefit or right. Consideration may be a promise to perform a certain act â€" for example, a promise to deliver goods, a promise not to do something, payment, or a promise to pay money, among other things. Whatever its particulars, consideration must be something of value to the people who are making the contract. Consolidation - Joinder of two or more separately filed criminal or civil complaints, so that the charges may be tried together. Contempt of Court â€"Behavior intended to lessen the dignity of a court. There are two types of contempt, direct and indirect. When the contumacious contemptuous conduct occurs before the judge, the contempt is direct and may be punished summarily. All other conduct not witnessed by the judge is indirect contempt. Before punishing indirect contempt, the court must give the accused party notice and an opportunity to be heard. See also Civil Contempt and Criminal Contempt. Continuance - Deferment of a trial or hearing to a later date. Contraband - Articles, the possession of which is prohibited by law. Contract - An agreement between two or more persons that creates an obligation to do or not to do a particular thing. A contract must have something of value promised or given, and a reasonable amount of agreement between the parties as to what the contract means. The parties must be legally capable of making binding agreements. New Mexico has abandoned the doctrine of contributory negligence in favor of comparative negligence. Conviction - A judgment of guilt against a criminal defendant. Corpus Delicti - Body of the crime. The objective proof that a crime has been committed. It sometimes refers to the body of the victim of a homicide or to the charred shell of a burned house, but the term has a broader meaning. For the state to introduce a confession or to convict the accused, it must prove a corpus delicti, that is, the occurrence of a specific injury or loss and a criminal act as the source of that particular injury or loss. Corroborating Evidence - Supplementary evidence that tends to strengthen or confirm the initial evidence. Costs - Fees required in the course of a law suit, beginning with the docketing or filing fee, and may include service fees, witness fees, publication fees, etc. Does not include attorney fees. Counsel - Legal adviser; a term used to refer to lawyers in a case. Counterclaim - A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit. Court - Government entity authorized to resolve legal disputes. Court Recorder - A deputy clerk who maintains the verbatim record of court proceedings on tape. Court Reporter - A certified person who maintains the verbatim record of court proceedings. Court Rules â€" Procedural rules adopted by a court that govern the litigation process. Court rules often govern the format and style of documents submitted to the court. Criminal Contempt - A criminal contempt is an act done in disrespect of the court or its process or which obstructs the administration of justice or tends to bring the court into disrepute. Criminal contempt can be direct or indirect. Direct contempt involves disorderly or insolent behavior in the presence of the judge that interferes with the course of a judicial proceeding; it is punishable summarily i. Indirect contempt involves willful disobedience of court orders away from the court, which tend to impede justice. For example, refusing to carry out lawful court orders, preventing service of process, withholding evidence, and bribing a witness are all considered indirect criminal contempt. A person charged with indirect contempt is entitled to notice and a hearing. Cross-Claim - A claim by codefendants or coplaintiffs in a civil case against each other and not against persons on the opposite side of the lawsuit.

Cross-Examination - The questioning of a witness produced by the other side. Cumulative Sentences - Sentences for two or more crimes to run consecutively, rather than concurrently. Return to top D Damages - Money awarded by a court to a person injured by the unlawful act or negligence of another person. Decision - The judgment reached or given by a court of law. Declaratory Judgment - A judgment of the court that explains what the existing law is or expresses the opinion of the court as to the rights and status of the parties, but which does not award relief or provide enforcement.

Chapter 5 : Interesting find in the vatican vault | IGN Boards

Hi there. I'm new to this subreddit, so I apologize if this is a topic that's already been discussed. (I didn't find anything useful when I.

Even though all scientists adhere to scientific skepticism as an inherent part of the process, by mid November the word "skeptic" was being used specifically for the minority who publicised views contrary to the scientific consensus. This small group of scientists presented their views in public statements and the media, rather than to the scientific community. In academic literature and journalism, the terms climate change denial and climate change deniers have well established usage as descriptive terms without any pejorative intent. Weart recognise that either option is problematic, but have decided to use "climate change denial" rather than "skepticism". They contrasted scientific skepticismâ€”which is "foundational to the scientific method"â€”with denialâ€”"the a priori rejection of ideas without objective consideration"â€”and the behavior of those involved in political attempts to undermine climate science. They said "Not all individuals who call themselves climate change skeptics are deniers. But virtually all deniers have falsely branded themselves as skeptics. By perpetrating this misnomer, journalists have granted undeserved credibility to those who reject science and scientific inquiry. History of climate change science Research on the effect of CO2 on the climate began in , when Joseph Fourier inferred the existence the atmospheric " greenhouse effect ". In , John Tyndall quantified the effects of greenhouse gases on absorption of infrared radiation. Svante Arrhenius in showed that coal burning could cause global warming, and in Guy Stewart Callendar found it already happening to some extent. With the Presidency of Ronald Reagan , global warming became a political issue, with immediate plans to cut spending on environmental research, particularly climate related, and stop funding for CO2 monitoring. Reagan appointed as Secretary of Energy James B. Edwards , who said that there was no real global warming problem. Congressman Al Gore had studied under Revelle and was aware of the developing science: The hearings gained enough public attention to reduce the cuts in atmospheric research. In Sherwood B. Idso published his book Carbon Dioxide: An Environmental Protection Agency EPA report in said global warming was "not a theoretical problem but a threat whose effects will be felt within a few years", with potentially "catastrophic" consequences. Public attention turned to other issues, then the finding of a polar ozone hole brought a swift international response. To the public, this was related to climate change and the possibility of effective action, but news interest faded. There was increasing media attention: Marshall Institute sought to spread doubt among the public, in a strategy already developed by the tobacco industry. As a counter-movement, they used environmental skepticism to promote denial of the reality of problems such as loss of biodiversity and climate change. The tobacco industry engaged the APCO Worldwide public relations company, which set out a strategy of astroturfing campaigns to cast doubt on the science by linking smoking anxieties with other issues, including global warming, in order to turn public opinion against calls for government intervention. The campaign depicted public concerns as "unfounded fears" supposedly based only on "junk science" in contrast to their "sound science", and operated through front groups , primarily the Advancement of Sound Science Center TASSC and its Junk Science website, run by Steven Milloy. It is also the means of establishing a controversy. Its website became central in distributing "almost every kind of climate-change denial that has found its way into the popular press. White has written that climate change denial has become the top priority in a broader agenda against environmental regulation being pursued by neoliberals. A majority of Americans also believe that scientists are still divided on the issue. Researchers from Lyman Briggs College took samples of conservative white males of different understandings of global warming and categorized them separately. Categorized into three groups: It was concluded that many of these conservative white males who self-report understanding global warming believe that the mass media has over exaggerated the effects of global warming and climate change and that the effects of it have never happened. Many people appear to be confused by climate science however, the study showed that the people who self

reported understanding global warming were most prone to denying. It was noted that prior research was found that public climate change policy support and behavior are significantly influenced by public beliefs, attitudes and risk perceptions. Where people live can account for some significance, since some people live in weather extreme areas, they could be desensitized to the overall change in climates as well. In the study, a model was constructed to determine the public opinion of climate change across the nation. Representative telephone based surveys were used to investigate opinions in four states: The number of local television stories about global warming has also increased, by fifteen-fold. Climate Central has received some of the credit for this because they provide classes for meteorologists and graphics for television stations. Scientists have known for over a century that even this small proportion has a significant warming effect, and doubling the proportion leads to a large temperature increase. Geological Survey, and other reports, is that human activity is the leading cause of climate change. The burning of fossil fuels accounts for around 30 billion tons of CO2 each year, which is times the amount produced by volcanoes. Water vapor has been incorporated into climate models since their inception in the late s. These arguments are based on short term fluctuations, and ignore the long term pattern of warming. These factors are already taken into account when developing climate models, and the scientific consensus is that they cannot explain the observed warming trend. He identified different positions argued by climate skeptics, which he used as a taxonomy of climate change skepticism: A few of them even deny that the rise in the atmospheric CO2 content is anthropogenic [while others argue that] additional CO2 does not lead to discernible warming [and] that there must be otherâ€”naturalâ€”causes for warming. Powell provides a more extended list, [4] as does climatologist Michael E. Mann in "six stages of denial", a ladder in which deniers have over time conceded acceptance of points, while retreating to a position which still rejects the mainstream consensus: Even if it is, the increase has no impact on the climate since there is no convincing evidence of warming. Even if there is warming, it is due to natural causes. Even if the warming cannot be explained by natural causes, the human impact is small, and the impact of continued greenhouse gas emissions will be minor. Fake experts, or individuals with views at odds with established knowledge, at the same time marginalising or denigrating published topic experts. Like the manufactured doubt over smoking and health , a few contrarian scientists oppose the climate consensus, some of them the same individuals. Selectivity, such as cherry picking atypical or even obsolete papers, in the same way that the MMR vaccine controversy was based on one paper: In , environmentalist Bill McKibben accused President Obama widely regarded as strongly in favour of action on climate change [] of "Catastrophic Climate-Change Denial", for his approval of oil-drilling permits in offshore Alaska. According to McKibben, the President has also "opened huge swaths of the Powder River basin to new coal mining. Gordin, David Morrison wrote: In his final chapter, Gordin turns to the new phase of pseudoscience, practiced by a few rogue scientists themselves. Climate change denialism is the prime example, where a handful of scientists, allied with an effective PR machine, are publicly challenging the scientific consensus that global warming is real and is due primarily to human consumption of fossil fuels. Scientists have watched in disbelief that as the evidence for global warming has become ever more solid, the deniers have been increasingly successful in the public and political arena. Public opinion on climate change Public opinion on climate change is significantly impacted by media coverage of climate change , and the effects of climate change denial campaigns. Campaigns to undermine public confidence in climate science have decreased public belief in climate change, which in turn have impacted legislative efforts to curb CO2 emissions. The author found the following barriers: If you want to be a nationalist in the 21st century, you have to deny the problem. If you accept the reality of the problem, then you must accept that, yes, there is still room in the world for patriotism, there is still room in the world for having special loyalties and obligations towards your own people, towards your own country. But in order to confront climate change, we need additional loyalties and commitments to a level beyond the nation. On the other hand, it has been argued that effective climate action is polycentric rather than international, and national interest in multilateral groups can be furthered by overcoming climate change denial. Lobbyists attempted to discredit the scientific research by creating doubt and manipulating debate. They worked to discredit the

scientists involved, to dispute their findings, and to create and maintain an apparent controversy by promoting claims that contradicted scientific research. Doubt would shield the tobacco industry from litigation and regulation for decades to come. Marshall Institute alleged to have made efforts to "downplay" global warming. Seitz stated in the s that "Global warming is far more a matter of politics than of climate. The proposed limits on greenhouse gases would harm the environment, hinder the advance of science and technology, and damage the health and welfare of mankind. Our children will enjoy an Earth with far more plant and animal life than that with which we now are blessed. This is a wonderful and unexpected gift from the Industrial Revolution. In again trying to manufacture the appearance of a grass-roots movement against "unfounded fear" and "over-regulation," Monbiot states that TASSC "has done more damage to the campaign to halt [climate change] than any other body. The study also found that the amount of money donated to these organizations by means of foundations whose funding sources cannot be traced had risen. Business action on climate change and ExxonMobil climate change controversy Several large corporations within the fossil fuel industry provide significant funding for attempts to mislead the public about the trustworthiness of climate science. Raymond sent letters that alleged the IPCC report was not "supported by the analytical work. The letter drew criticism, notably from Timothy Ball who argued the society attempted to "politicize the private funding of science and to censor scientific debate. The coalition was financed by large corporations and trade groups from the oil, coal and auto industries. The New York Times reported that "even as the coalition worked to sway opinion [towards skepticism], its own scientific and technical experts were advising that the science backing the role of greenhouse gases in global warming could not be refuted.

Chapter 6 : The Constitutional Definition of Treason

requiring the patentee to demonstrate by clear and convincing evidence that the accused infringer evidence that it did not willfully infringe. not be known.

History[edit] The rules of evidence were developed over several centuries and are based upon the rules from Anglo-American common law brought to the New World by early settlers. Their purpose is to be fair to both parties, disallowing the raising of allegations without a basis in provable fact. They are sometimes criticized as a legal technicality , but are an important part of the system for achieving a just result. Perhaps the most important of the rules of evidence is that, in general, hearsay testimony is inadmissible although there are many exceptions to this rule. There are several examples where presiding authorities are not bound by the rules of evidence. These include the military tribunals in the United States and tribunals used in Australia to try health professionals. Relevance and social policy[edit] This section needs additional citations for verification. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. October Main article: Relevance law In every jurisdiction based on the English common law tradition, evidence must conform to a number of rules and restrictions to be admissible. However, the relevance of evidence is ordinarily a necessary condition but not a sufficient condition for the admissibility of evidence. For example, relevant evidence may be excluded if it is unfairly prejudicial, confusing, or the relevance or irrelevance of evidence cannot be determined by logical analysis. There is also general agreement that assessment of relevance or irrelevance involves or requires judgements about probabilities or uncertainties. Beyond that, there is little agreement. Many legal scholars and judges agree that ordinary reasoning, or common sense reasoning, plays an important role. There is less agreement about whether or not judgements of relevance or irrelevance are defensible only if the reasoning that supports such judgements is made fully explicit. However, most trial judges would reject any such requirement and would say that some judgements can and must rest partly on unarticulated and unarticulable hunches and intuitions. According to Rule of the Federal Rules of Evidence FRE , evidence is relevant if it has the "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. California Evidence Code section also allows for exclusion to avoid "substantial danger of undue prejudice. The majority of people now reject the formerly-popular proposition that the institution of trial by jury is the main reason for the existence of rules of evidence even in countries such as the United States and Australia; they argue that other variables[clarification needed] are at work. Evidence of a confession may be excluded because it was obtained by oppression or because the confession was made in consequence of anything said or done to the defendant that would be likely to make the confession unreliable. Such illegal evidence is known as the fruit of the poisonous tree and is normally not permitted at trial. Authentication[edit] Certain kinds of evidence, such as documentary evidence, are subject to the requirement that the offeror provide the trial judge with a certain amount of evidence which need not be much and it need not be very strong suggesting that the offered item of tangible evidence e. This authentication requirement has import primarily in jury trials. If evidence of authenticity is lacking in a bench trial, the trial judge will simply dismiss the evidence as unpersuasive or irrelevant. Other kinds of evidence can be self-authenticating and require nothing to prove that the item is tangible evidence. Examples of self-authenticating evidence includes signed and certified public documents, newspapers, and acknowledged documents. Please help improve this section by adding citations to reliable sources. August Learn how and when to remove this template message In systems of proof based on the English common law tradition, almost all evidence must be sponsored by a witness , who has sworn or solemnly affirmed to tell the truth. The bulk of the law of evidence regulates the types of evidence that may be sought from witnesses and the manner in which the interrogation of witnesses is conducted such as during direct examination and cross-examination of witnesses. Other types of evidentiary rules specify the standards of persuasion e. Today all persons are

presumed to be qualified to serve as witnesses in trials and other legal proceedings, and all persons are also presumed to have a legal obligation to serve as witnesses if their testimony is sought. However, legal rules sometimes exempt people from the obligation to give evidence and legal rules disqualify people from serving as witnesses under some circumstances. Privilege rules give the holder of the privilege a right to prevent a witness from giving testimony. These privileges are ordinarily but not always designed to protect socially valued types of confidential communications. Some of the privileges that are often recognized in various U. A variety of additional privileges are recognized in different jurisdictions, but the list of recognized privileges varies from jurisdiction to jurisdiction; for example, some jurisdictions recognize a social workerâ€"client privilege and other jurisdictions do not. Witness competence rules are legal rules that specify circumstances under which persons are ineligible to serve as witnesses. For example, neither a judge nor a juror is competent to testify in a trial in which the judge or the juror serves in that capacity; and in jurisdictions with a dead man statute , a person is deemed not competent to testify as to statements of or transactions with a deceased opposing party. Often, a Government or Parliamentary Act will govern the rules affecting the giving of evidence by witnesses in court. Hearsay Hearsay is one of the largest and most complex areas of the law of evidence in common-law jurisdictions. The default rule is that hearsay evidence is inadmissible. Hearsay is an out of court statement offered to prove the truth of the matter asserted. A party is offering a statement to prove the truth of the matter asserted if the party is trying to prove that the assertion made by the declarant the maker of the out-of-trial statement is true. For example, prior to trial Bob says, "Jane went to the store. However, at both common law and under evidence codifications such as the Federal Rules of Evidence , there are dozens of exemptions from and exceptions to the hearsay rule. Circumstantial evidence[edit] Direct evidence is any evidence that directly proves or disproves a fact. The most well-known type of direct evidence is a testimony from an eye witness. In eye-witness testimonies the witness states exactly what they experienced, saw, or heard. Direct evidence may also be found in the form of documents. In cases that involve a breach of contract, the contract itself would be considered direct evidence as it can directly prove or disprove that there was breach of contract. Circumstantial evidence , however, is evidence that does not point directly to a fact and requires an inference in order to prove that fact. A common example of the distinction between direct and circumstantial evidence involves a person who comes into a building, when it may be raining. Legal burden of proof Different types of proceedings require parties to meet different burdens of proof , the typical examples being beyond a reasonable doubt, clear and convincing evidence, and preponderance of the evidence. Many jurisdictions have burden-shifting provisions, which require that if one party produces evidence tending to prove a certain point, the burden shifts to the other party to produce superior evidence tending to disprove it. One special category of information in this area includes things of which the court may take judicial notice. This category covers matters that are so well known that the court may deem them proved without the introduction of any evidence. For example, if a defendant is alleged to have illegally transported goods across a state line by driving them from Boston to Los Angeles , the court may take judicial notice of the fact that it is impossible to drive from Boston to Los Angeles without crossing a number of state lines. In a civil case, where the court takes judicial notice of the fact, that fact is deemed conclusively proved. In a criminal case, however, the defense may always submit evidence to rebut a point for which judicial notice has been taken. Evidentiary rules stemming from other areas of law[edit] Some rules that affect the admissibility of evidence are nonetheless considered to belong to other areas of law. These include the exclusionary rule of criminal procedure , which prohibits the admission in a criminal trial of evidence gained by unconstitutional means, and the parol evidence rule of contract law , which prohibits the admission of extrinsic evidence of the contents of a written contract. Evidence as an area of study[edit] In countries that follow the civil law system , evidence is normally studied as a branch of procedural law. All American law schools offer a course in evidence, and most require the subject either as a first year class, or as an upper-level class, or as a prerequisite to later courses. Furthermore, evidence is heavily tested on the Multistate Bar Examination MBE - approximately one-sixth of the questions asked in that test will be in the area of evidence. The MBE

predominantly tests evidence under the Federal Rules of Evidence , giving little attention to matters on which the law of different states is likely to be inconsistent. Tampering, falsification, and spoliation[edit] Main articles: Tampering is usually the criminal law variant in which a person alters, conceals, falsifies, or destroys evidence to interfere with a law-enforcement, governmental, or regulatory investigation, and is usually defined as a crime. Parallel construction is the creation of an untruthful, but plausible, explanation for how the evidence came to be held, which hides its true origins, either to protect sources and methods used, or to avoid the evidence being excluded as unlawfully obtained. Depending on the circumstances, acts to conceal or destroy evidence or misrepresent its true origins might be considered both tampering and spoliation.

Chapter 7 : Elder Abuse and Elder Financial Exploitation Statutes | EJI | Department of Justice

Steven Sloman, a professor at Brown, and Philip Fernbach, a professor at the University of Colorado, are also cognitive scientists. They, too, believe sociability is the key to how the human mind.

Sign in or Sign up today! Regis Scanlon In the Catholic bishops of the United States ordered a study be made of the problem of sexual abuse by clergy in America. For one thing, we now know that the study overlooked bishops in the "nature and scope" of the problem. With this new information about bishops, we, in fact, now know both the problem and solution. The Problem Since Part 4. Since that time, however, new information about bishops sexually abusing young men has come to light. And these nine bishops represent only the bishops with this problem that got caught. And this problem is not confined to the United States. This also led to a misdirection of the solution to the problem. This focus on protecting pre-pubescent children enabled the problem of homosexuality among bishops to escape the notice of the Catholic Church almost entirely. Check out our full CatholicMeToo coverage. To this point I would like to offer some concrete recommendations which would bring about a true solution to the problem. The media will be reluctant to report any homosexual relationship of bishops with seminarians or any other young man. Because the media is in favor of freedom for everyone to have homosexual relationships. They think that any Church acceptance of the practice of homosexuality is a step forward in justice and equality. If the bishops are not willing to do this, then they should resign. The past epidemic of clergy homosexual predation on the young is evidence of this. Is it really necessary to put these young men at risk just to satisfy the politically correct notion that we must consider homosexuals for the priesthood for the sake of justice? So, both entertaining impure thoughts and masturbation are intrinsically evil acts. This is the constant teaching of the Church. Now, obviously, a man does not engage in homosexual activity or sodomy without impure thoughts and masturbation. So how does it happen that men who are studying the Scriptures and the teachings of the Catholic Church in a seminary are not convinced of this? Is it possible that these seminarians are not being taught that entertaining impure thoughts and masturbation are mortal sins if done knowingly and willingly? Or worse yet, is it possible that they are being taught just the opposite: Considering this epidemic of homosexuality among bishops and seminarians, both are probably the case. So, here is a final recommendation for solving the clergy sexual abuse crisis in the Church. And this recommendation applies to heterosexual men in relation to women as it does to homosexual men in relation to other men. No seminarian or religious should be admitted into a seminary, religious life, vows or ordination who cannot refrain from entertaining impure thoughts and masturbation for at least one year. Yes, we may know men in the past who went on to be ordained or take religious vows even though they still occasionally knowingly and willfully masturbated or entertained impure thoughts. You can be sure that, if these men are now pure and happy, they have ceased masturbating and entertaining impure thoughts. Today we are living in a post-sexual revolution era when the priest must be stronger in the area of chastity to defend his purity. This regulation should be absolute. There are those who will say that this regulation is too strict and unfair to homosexual and heterosexual young men who want to study for the priesthood. But, if I am going to err, I would rather err by protecting young men and women from weak clergy, rather than risking their spiritual and psychological safety by being too lenient and wrapped up in consideration of political correctness and the so-called rights of homosexual and heterosexual weak priestly candidates. No one has a right to be a priest or religious. Republished with permission from Fr.

Chapter 8 : Are Brett Kavanaugh's Denials Convincing? Watch for Yourself - Hit & Run : blog.quintoapp.co

These are some of the more explicit statements from an administration that shows in ways subtle and not-at-all subtle that it often does not, as McIntyre would put it, "respect the truth.".

Crimes against at-risk adults and at-risk juveniles - classifications 1 Crimes against at-risk adults and at-risk juveniles shall be as prescribed in this section. If the offender is convicted of robbery of an at-risk adult or an at-risk juvenile, the court shall sentence the defendant to the department of corrections for at least the presumptive sentence under section Theft from the person of an at-risk adult or an at-risk juvenile by means other than the use of force, threat, or intimidation is a class 4 felony without regard to the value of the thing taken. Theft from the person of an at-risk elder by means other than the use of force, threat, or intimidation is a class 4 felony without regard to the value of the thing taken. Criminal exploitation of an at-risk elder is a class 5 felony if the thing of value is less than five hundred dollars. Criminal Financial Exploitation 11 Del. Crimes and Criminal Procedure. Offenses Relating to Children and Vulnerable Adults. Child Welfare; Sexual Offenses. Crimes Against a Vulnerable Adult Any person who commits, or attempts to commit, any of the crimes or offenses set forth in subsection f of this section against a person who is a vulnerable adult is guilty of a crime against a vulnerable adult. General Provisions Concerning Offenses. Criminal Financial Exploitation 31 Del. Definitions As used in this chapter: Physical abuse by unnecessarily inflicting pain or injury on an adult who is impaired; or b. A pattern of emotional abuse, which includes, but is not limited to, ridiculing or demeaning an adult who is impaired making derogatory remarks to an adult who is impaired or cursing or threatening to inflict physical or emotional harm on an adult who is impaired. Emergency does not mean psychiatric emergency as provided for in Chapter 50 of Title These services shall include, but not be limited to, adequate food and clothing, heated and sanitary shelter, medical care for physical and mental health needs, assistance in personal hygiene, protection from health and safety hazards, protection from physical or mental injury or exploitation. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an elderly person or a vulnerable adult to obtain or use the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult; b. The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult; and c. Lack of attention by a caregiver to physical needs of an adult who is impaired including but not limited to toileting, bathing, meals and safety; b. Failure by a caregiver to carry out a treatment plan prescribed by a health care professional for an adult who is impaired; or c. Intentional and permanent abandonment or desertion in any place of an adult who is impaired by a caregiver who does not make reasonable efforts to ensure that essential services, as defined in this section, will be provided for said adult who is impaired. Violations a Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired shall be guilty of a class A misdemeanor. Any subsequent conviction under this subsection shall be treated as a class C felony regardless of the amount of resources exploited. Where the abuse, mistreatment or neglect results in death, such person shall be guilty of a class A felony.

Chapter 9 : Chapter 13 - Argument: Convincing Others

It does not include evidence from documents and other physical evidence. Third Party - A person, business, organization or government agency not actively involved in a legal proceeding, agreement, or transaction, but affected by it.

Welcome to the most politicized science of our time. So what evidence would convince you that man-made climate change is possibly real? Keep in mind that despite what progressive dimwits like Naomi Klein might assert, the scientific evidence does not mandate any particular program. What about higher temperatures? Obviously, in order for there to be any man-made global warming, temperatures must be going up. Concentrations of greenhouse gases in the atmosphere have increased from parts per million in the late 18th century to around ppm today. And the trend in average global surface temperatures has been increasing since the late 19th century. Summed over the past 35 yearsâ€”that is, since the advent of satellite monitoringâ€”temperatures have increased by at most 0. Of course, correlation does not imply causation, but how sure can you be that the rise in the atmospheric concentration of greenhouse gases just happens to coincide with an entirely natural increase in average temperatures? Conversely, how sure can you be that a natural decline in average temperatures is not temporarily countering a trend toward to higher temperatures caused by accumulating greenhouse gases? Explanations based on natural variability work both ways. What about converging daytime and nighttime temperatures? Climatologists predicted that man-made warming would produce a decrease in the differences between low nighttime temperatures and high daytime temperatures. And indeed, a decrease between day and night temperatures has been occurring in the United States , China , Spain , and other regions. This phenomenon is global, although more recently daytime and nighttime temperatures have been increasing at about the same rate. Along with the observed increases in average temperature, heat waves have become more common since the s. What about earlier spring and later fall seasons? Many studies find that the onset of spring is occurring earlier than it did decades ago. A study reports that the advent of spring in the Northern Hemisphere occurs about 4 days earlier than in A European study found that spring is arriving about 3 days earlier , and a study reported that the growing season in the Northern Hemisphere is expanding. Part of the reason that spring is advancing is that the extent of snow cover in March and April in the Northern Hemisphere has been falling. What about disappearing glaciers and Arctic sea ice? The Arctic-wide melt season has lengthened at a rate of 5 days per decade from to , according to a study in Geophysical Research Letters. A review article looks at what satellite data are telling us about recent climate trends in the Arctic. Temperatures are rising at 0. Sea ice extent has been falling at 3. The Greenland ice sheet has been losing mass at a rate of 34 gigatons per year, though that has increased sevenfold since to an estimated gigatons per year. Ice is not melting only in the Arctic. The growing extent of sea ice in the Antarctic over the past decades is a climate change conundrum. On the face of it, more sea ice would indicate cooling rather than warming. Researchers are still trying to figure out what is going on. One idea is that warmer waters are melting the bases of freshwater Antarctic ice shelves. The fresh water then cools the sea surface thus promoting the freezing of more sea ice.