

Epicurean Rules of Evidence

Post by “Cassius” of January 19, 2021 at 8:22 AM

In accord with the nearby thread [Epicurean Logic and Reason: Deriving True Opinion Through Evidence From The Canon of Truth](#) I'd like to compile a list of "Epicurean Rules of Evidence." In this I am thinking by analogy to the "Federal Rules of Evidence" which govern trial practice in the United States. These are pretty technical but they also embody a lot of practical wisdom which is closely related to the core question of how we decide that something is evidence and how we process that evidence. I will link the Federal Rules and also quote them below.

As time goes by I want to expand this list below of specific Epicurean citations which relate to the processing of evidence. Where needed we can put the quote in brackets and reword the quote to make a "rule." I will be grateful if others will suggest additions, and I will revise this first post to add them with thanks to the person who suggested it.

EPICUREAN RULES OF EVIDENCE

1. The tests of truth are the sensations and the preconceptions and the internal sensations, of the last of which there are two, pleasure and pain. ["Thus in The Canon Epicurus says that the tests of truth are the sensations and preconceptions and the feelings; the Epicureans add to these the intuitive apprehensions of the mind." "The internal sensations they say are two, pleasure and pain." D.L. (Diogenes Laertius)]
2. All reasoning is dependent upon sensation. ["All reason is dependent upon sensations;..." D.L.]
3. Repeatability is way the truth of sensations is confirmed. ["...the fact of apperception confirms the truth of the sensations." D.L.]
4. Opinion as to the imperceptible must be based on that which can be perceived by means of coincidence, analogy, similarity, and combination, also considering reasoning based on what is perceived. ["...as regards the imperceptible we must draw inferences from phenomena. For all thoughts have their origin in sensations by means of coincidence and analogy and similarity and combination, reasoning too contributing something." D.L.; "And besides we must keep all our investigations in accord with our sensations, and in particular with the immediate apprehensions whether of the mind or of any one of the instruments of judgment, and likewise in accord with the feelings existing in us, in order that we may have indications whereby we may judge both the problem of sense perception and the unseen. - Epicurus Letter to Herodotus]
5. "We must grasp the ideas attached to words, in order that we may be able to refer to them and so to judge the inferences of opinion or problems of investigation or reflection, so that we may not either leave everything uncertain and go on explaining to infinity or use words devoid of meaning. For this purpose it is essential that the first mental image associated with each word should be regarded, and that there should be no need of

- explanation, if we are really to have a standard to which to refer a problem of investigation or reflection or a mental inference." Epicurus Letter to Herodotus
6. PD 22. We must consider both the real purpose, and all the evidence of direct perception, to which we always refer the conclusions of opinion; otherwise, all will be full of doubt and confusion. PD 22
 7. PD 23. If you fight against all sensations, you will have no standard by which to judge even those of them which you say are false. [PD23](#)
 8. PD 24. If you reject any single sensation, and fail to distinguish between the conclusion of opinion, as to the appearance awaiting confirmation, and that which is actually given by the sensation or feeling, or each intuitive apprehension of the mind, you will confound all other sensations, as well, with the same groundless opinion, so that you will reject every standard of judgment. And if among the mental images created by your opinion you affirm both that which awaits confirmation, and that which does not, you will not escape error, since you will have preserved the whole cause of doubt in every judgment between what is right and what is wrong. [PD24](#)
 9. PD 25. If on each occasion, instead of referring your actions to the end of nature, you turn to some other, nearer, standard, when you are making a choice or an avoidance, your actions will not be consistent with your principles. [PD25](#)
 10. Opinion may be true or false: if it is confirmed or not contradicted, it is true; if it is not confirmed or is contradicted, it is false. Some opinions must be considered to be awaiting confirmation, such as waiting to come near the tower and see how it looks to the near view. [D.L. "Opinion they also call supposition, and say that it may be true or false: if it is confirmed or not contradicted, it is true ; if it is not confirmed or is contradicted, it is false. For this reason was introduced the notion of the problem awaiting confirmation: for example, waiting to come near the tower and see how it looks to the near view." "And every image which we obtain by an act of apprehension on the part of the mind or of the sense-organs, whether of shape or of properties, this image is the shape or the properties of the concrete object, and is produced by the constant repetition of the image or the impression it has left. Now falsehood and error always lie in the addition of opinion with regard to what is waiting to be confirmed or not contradicted, and then is not confirmed or is contradicted." Epicurus Letter to Herodotus]

For Comparison, the [FEDERAL RULES OF EVIDENCE](#)

I think we can find a short list of the actual evidence principals, rather than all the procedural terms in which they are wrapped, but I will have to look further. It would be useful to find an older "hornbook" which lists the traditional rules of evidence in aphorism form. Some of the important ones follow as examples of issues that a full Epicurean Rules of Evidence might likely address:

Rule 401. Test for Relevant Evidence

Evidence is relevant if: **(a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and **(b)** the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness's competency regarding a claim or defense for which state law supplies the rule of decision.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of [Rule 702](#).

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Rule 703. Bases of an Expert

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on an Ultimate Issue

(a) In General — Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying an Expert

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.