
ADMISSIBILITY OF LEARNED TREATISE

CROSS-EXAMINATION OF AN EXPERT WITNESS

- Section 90.706 allows cross-examination of an expert witness with statements of fact and opinion in a learned treatise, if the expert witness recognizes either the author or the treatise as being authoritative.
- However, the court has the discretion to find writing authoritative despite an expert's failure to recognize the writing or the author. In such situations, the court must give the party proffering the article an opportunity to establish that the writing is authoritative through the testimony of other witnesses.ⁱ
- The expert need not have relied on the publication in forming their opinion for trial, Section 90.706(1).
- Section 90.706 does not allow statements in a learned treatise to be used as substantive evidence because the treatise is hearsay if it is offered as substantive evidence.ⁱⁱ

ADMISSIBILITY OF A LEARNED TREATISE CHECKLIST § 90.706

The Florida Evidence Code does not provide for a specific learned treatise exception to the hearsay rule however, permits certain literature to be used during cross-examination of an expert witness regardless of whether the expert relied on the treatise in forming his or her opinion.

This rule applies to the following publications:

- Statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing.
- The trial court can allow the learned treatise to be used for cross-examination if:
 - The expert witness recognizes the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative, OR
 - Notwithstanding the recognition by the expert witness of the authoritativeness of the writing, the trial court makes a finding that the author or the treatise, periodical, book, dissertation, pamphlet or other writing to be authoritative AND relevant to the subject matter.

ⁱ *Fravel v. Haughey*, 727 So. 2d 1033, 1034 (Fla. 4th DCA 1999)

ⁱⁱ *Green v. Goldberg*, 630 So. 2d 606, 609 (Fla. 4th DCA 1993)