

## TITLE 4 - WITNESSES AND EVIDENCE

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#### GENERAL PROVISIONS

##### **SECTION 47.020** Scope of title 4 of SECTION.

1. This title governs proceedings in the courts of this Reservation and before the tribal judge, except:
  - (a) To the extent to which its provisions are relaxed by a statute or procedural rule applicable to the specific situation; and
  - (b) As otherwise provided in subsection 3.
2. Except as otherwise provided in subsection 1, the provisions of [chapter 49](#) with respect to privileges apply at all stages of all proceedings.
3. The other provisions of this title do not apply to:
  - (a) Issuance of warrants for arrest, criminal summonses and search warrants.

- (b) Proceedings with respect to release on bail.
- (c) Sentencing, granting or revoking probation.

**SECTION 47.030 Purposes of title 4 of SECTION.** The purposes of this title are to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**SECTION 47.040 Rulings on evidence: Effect of error.**

1. Except as otherwise provided in subsection 2, error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

(a) In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection.

(b) In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

2. This section does not preclude taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

**SECTION 47.050 Rulings on evidence: Record of offer and ruling.** The judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. He may direct the making of an offer in question and answer form, and on request shall do so in actions tried without a jury, unless it clearly appears that the evidence is not admissible on any ground or is privileged.

**SECTION 47.060 Preliminary questions of admissibility: Determination.**

1. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the judge, subject to the provisions of [SECTION 47.070](#).

2. In making his determination he is not bound by the provisions of this title except the provisions of [chapter 49](#) with respect to privileges.

**SECTION 47.070 Preliminary questions of admissibility: Relevancy conditioned on fact.**

1. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

2. If under all the evidence upon the issue the jury might reasonably find that the fulfillment of the condition is not established, the judge shall instruct the jury to consider the issue and to disregard the evidence unless they find the condition was fulfilled.

3. If under all the evidence upon the issue the jury could not reasonably find that the condition was fulfilled, the judge shall instruct the jury to disregard the evidence.

**SECTION 47.080 Determinations of admissibility: Hearing of jury.** In jury cases, hearings on preliminary questions of admissibility, offers of proof in narrative or question and answer form, and statements of the judge showing the character of the evidence shall to the extent practicable, unless further restricted by [SECTION 47.090](#), be conducted out of the hearing of the jury, to prevent the suggestion of inadmissible evidence.

**SECTION 47.090 Preliminary hearings on confessions and evidence.** Preliminary hearings on the admissibility of confessions or statements by the accused or evidence allegedly unlawfully obtained shall be conducted outside the hearing of the jury. The accused does not by testifying at the hearing subject himself to cross-examination as to other issues in the case. Testimony given by him at the hearing is not admissible against him on the issue of guilt at the trial.

**SECTION 47.100 Weight and credibility.** [SECTION 47.060](#) to [47.090](#), inclusive, do not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

**SECTION 47.110 Limited admissibility.** When evidence which is admissible as to one party or for one purpose but inadmissible as to another party or for another purpose is admitted, the judge, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

**SECTION 47.120 Remainder of writings or recorded statements.**

1. When any part of a writing or recorded statement is introduced by a party, he may be required at that time to introduce any other part of it which is relevant to the part introduced, and any party may introduce any other relevant parts.
2. This section does not limit cross-examination.

### **JUDICIAL NOTICE**

**SECTION 47.130 Matters of fact.**

1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
2. A judicially noticed fact must be:
  - (a) Generally known within the territorial jurisdiction of the trial court; or
  - (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,↳ so that the fact is not subject to reasonable dispute.

**SECTION 47.140 Matters of law.** The laws subject to judicial notice are:

1. The Constitution and statutes of the United States, and the contents of the Federal Register.
2. Any other law of this tribe if brought to the attention of the court by its title and the day of its passage.

**SECTION 47.150 Discretionary and mandatory notice.**

1. A judge or court may take judicial notice, whether requested or not.
2. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.

**SECTION 47.160 Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter to be noticed.

**SECTION 47.170 Time of taking notice.** Judicial notice may be taken at any stage of the proceeding prior to submission to the court or jury.

### **PRESUMPTIONS**

**SECTION 47.180 Presumptions generally: Effect; direct evidence.**

1. A presumption, other than a presumption against the accused in a criminal action, imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.
2. As applied to presumptions, “direct evidence” means evidence which tends to establish the existence or nonexistence of the presumed fact independently of the basic facts.

**SECTION 47.190 Determination on evidence of basic facts.** When a presumption is made conclusive by tribal code or no direct evidence is introduced contrary to the existence of the presumed fact, the question of the existence of the presumed fact depends upon the existence of the basic facts and is determined as follows:

1. If reasonable minds would necessarily agree that the evidence renders the existence of the basic facts more probable than not, the judge shall direct the jury to find in favor of the existence of the presumed fact.
2. If reasonable minds would necessarily agree that the evidence does not render the existence of the basic facts more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.
3. If reasonable minds would not necessarily agree as to whether the evidence renders the existence of the basic facts more probable than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact if they find from the evidence that the existence of the basic facts is more probable than not, but otherwise to find against the existence of the presumed fact.

**SECTION 47.200 Determination on evidence of presumed fact: Where basic facts established.** When reasonable minds would necessarily agree that the evidence renders the existence of the basic facts more probable than not, but direct evidence is introduced contrary to the existence of the presumed fact, the question of the existence of the presumed fact is determined as follows:

1. If reasonable minds would necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.
2. If reasonable minds would necessarily agree that the direct evidence does not render the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find in favor of the presumed fact.
3. If reasonable minds would not necessarily agree as to whether the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact unless they find from the direct evidence that its nonexistence is more probable than its existence, in which event they should find against its existence.

**SECTION 47.210 Determination on evidence of presumed fact: Where basic facts lacking.** When reasonable minds would necessarily agree that the evidence does not render the existence of the basic facts more probable than not, but direct evidence is introduced concerning the existence of the presumed fact, the judge shall submit the matter to the jury with an instruction to determine the existence of the presumed fact from the direct evidence without reference to the presumption.

**SECTION 47.220 Determination on evidence of presumed fact: Where basic facts doubtful.** When reasonable minds would not necessarily agree as to whether the evidence renders the existence of the basic facts more probable than not, and direct evidence is introduced concerning the existence of the presumed fact, the question of the existence of the presumed fact is determined as follows:

1. If reasonable minds would necessarily agree that the direct evidence renders the existence of the presumed fact more probable than not, the judge shall direct the jury to find in favor of the existence of the presumed fact.
2. If reasonable minds would necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury to find against the existence of the presumed fact.
3. If reasonable minds would not necessarily agree that the direct evidence renders the nonexistence of the presumed fact more probable than not, the judge shall submit the matter to the jury with an instruction to find in favor of the existence of the presumed fact if they find from the evidence that the existence of the basic facts is more probable than not and unless they find the nonexistence of the presumed fact more probable than not, otherwise to find against the existence of the presumed fact.

**SECTION 47.230 Presumptions against accused in criminal actions.**

1. In criminal actions, presumptions against an accused recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this section.

2. The judge shall not direct the jury to find a presumed fact against the accused. When the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. Under other presumptions, the existence of the presumed fact may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negatives the existence of the presumed fact.

3. Whenever the existence of a presumed fact against the accused is submitted to the jury, the judge shall give an instruction that the law declares that the jury may regard the basic facts as sufficient evidence of the presumed fact but does not require it to do so. In addition, if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge shall instruct the jury that its existence must, on all the evidence, be proved beyond a reasonable doubt.

**SECTION 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another.

2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

3. Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation.

5. The judgment or order of a court, when declared by titles 2, 3 and 6 of the Nevada Revised Statutes to be conclusive; but such judgment or order must be alleged in the pleadings if there is an opportunity to do so; if there is no such opportunity, the judgment or order may be used as evidence.

6. Any other presumption which, by statute, is expressly made conclusive.

**SECTION 47.250 Disputable presumptions.** All other presumptions are disputable. The following are of that kind:

1. That an unlawful act was done with an unlawful intent.

2. That a person intends the ordinary consequences of his voluntary act.

3. That evidence willfully suppressed would be adverse if produced.

4. That higher evidence would be adverse from inferior being produced.

5. That money paid by one to another was due to the latter.

6. That a thing delivered by one to another belonged to the latter.

7. That things which a person possesses are owned by him.

8. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership.

9. That official duty has been regularly performed.

10. That a court or judge, acting as such, on this Reservation, was acting in the lawful exercise of his jurisdiction.

11. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

12. That a writing is truly dated.

13. That a letter duly directed and mailed was received in the regular course of the mail.

14. That a person not heard from in 3 years is dead.
15. That a child born in lawful wedlock is legitimate.
16. That the law has been obeyed.
17. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him, when such presumption is necessary to perfect the title of such person or his successor in interest.