

## 202. Direct and Indirect Evidence

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**Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.**

**Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.**

**As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.**

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### Directions for Use

An instruction concerning the effect of circumstantial evidence must be given on request when it is called for by the evidence. (*Shepherd v. Walley* (1972) 28 Cal.App.3d 1079, 1084 [105 Cal.Rptr. 387]; *Calandri v. Ione Unified School Dist.* (1963) 219 Cal.App.2d 542, 551 [33 Cal.Rptr. 333]; *Trapani v. Holzer* (1958) 158 Cal.App.2d 1, 6 [321 P.2d 803].)

### Sources and Authority

- Evidence Code section 410 provides: "As used in this chapter, 'direct evidence' means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact."
- Evidence Code section 600(b) provides: "An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action."
- The Assembly Committee on Judiciary Comment to section 600 observes: "Under the Evidence Code, an inference is not itself evidence; it is the result of reasoning from evidence."
- "[T]he fact that evidence is 'circumstantial' does not mean that it cannot

be ‘substantial.’ Relevant circumstantial evidence is admissible in California. Moreover, the jury is entitled to accept persuasive circumstantial evidence even where contradicted by direct testimony.” (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 548 [138 Cal.Rptr. 705, 564 P.2d 857], overruled on other grounds in *Soule v. GM Corp.* (1994) 8 Cal.4th 548 [34 Cal.Rptr.2d 607, 882 P.2d 298].)

- “The terms ‘indirect evidence’ and ‘circumstantial evidence’ are interchangeable and synonymous.” (*People v. Yokum* (1956) 145 Cal.App.2d 245, 250 [302 P.2d 406], *disapproved on other grounds*, *People v. Cook* (1983) 33 Cal.3d 400, 413 [189 Cal.Rptr. 159, 658 P.2d 86]; *People v. Goldstein* (1956) 139 Cal.App.2d 146, 152 [293 P.2d 495].)

### ***Secondary Sources***

1 Witkin, California Evidence (4th ed. 2000) Circumstantial Evidence, §§ 1, 2

3 Witkin, California Evidence (4th ed. 2000) Presentation at Trial, §§ 138–141

Jefferson, California Evidence Benchbook (3d ed. 1997) §§ 19.12–19.18

48 California Forms of Pleading and Practice, Ch. 551, *Trial*, § 551.62 (Matthew Bender)