

The Berlin Rules and the German Way: Europe's Model for Reforming the Rules of Evidence



Berlin Rules: Europe and the German Way by Paul Lever

★★★★☆ 4.6 out of 5

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Screen Reader	: Supported
Enhanced typesetting	: Enabled
Word Wise	: Enabled
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The Berlin Rules are a set of guidelines for reforming the rules of evidence in Europe. They were developed by a group of experts from 19 countries and were adopted by the Council of Europe in 2017. The Berlin Rules are based on the German approach to evidence, which emphasizes the importance of relevance, reliability, and fairness.

Relevance

Relevance is the first and most important factor in determining the admissibility of evidence. Evidence is only relevant if it has a logical connection to the issue being decided by the court. The Berlin Rules define relevance as "the logical connection between the evidence and the facts of the case".

The German approach to relevance is based on the theory of "conditional probability". This theory states that the value of evidence depends on the probability that the event the evidence tends to prove would not have occurred if the event that the evidence is offered to disprove had not occurred. In other words, the more likely it is that the evidence would have occurred even if the defendant had not committed the crime, the less relevant the evidence is.

The German approach to relevance is stricter than the approach taken in many other countries. In the United States, for example, evidence is generally admissible if it is relevant to any fact in issue. This means that even evidence that is only marginally relevant is often admitted. Under the Berlin Rules, however, evidence is only admissible if it is "directly relevant" to the issue being decided by the court.

Reliability

Reliability is the second most important factor in determining the admissibility of evidence. Evidence is only reliable if it is trustworthy. The Berlin Rules define reliability as "the trustworthiness of the evidence".

The German approach to reliability is based on the principle of "judicial scrutiny". This principle requires the court to carefully examine the evidence to determine whether it is trustworthy. The court will consider a number of factors in determining reliability, including:

- The source of the evidence
- The method by which the evidence was obtained
- The consistency of the evidence with other evidence

- The demeanor of the witness

The German approach to reliability is stricter than the approach taken in many other countries. In the United States, for example, evidence is generally admissible if it is "reliable". This means that even evidence that is only marginally reliable is often admitted. Under the Berlin Rules, however, evidence is only admissible if it is "highly reliable".

Fairness

Fairness is the third most important factor in determining the admissibility of evidence. Evidence is only fair if it is not unfairly prejudicial to the defendant. The Berlin Rules define fairness as "the just and equitable treatment of the parties".

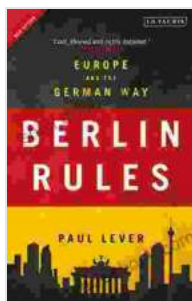
The German approach to fairness is based on the principle of "balancing". This principle requires the court to weigh the probative value of the evidence against the potential for unfair prejudice. The court will consider a number of factors in determining fairness, including:

- The seriousness of the crime
- The strength of the evidence
- The potential for unfair prejudice
- The availability of other evidence

The German approach to fairness is stricter than the approach taken in many other countries. In the United States, for example, evidence is generally admissible if it is more probative than prejudicial. This means that

even evidence that is unfairly prejudicial is often admitted. Under the Berlin Rules, however, evidence is only admissible if it is "fairly probative".

The Berlin Rules are a comprehensive and well-crafted set of guidelines for reforming the rules of evidence in Europe. They are based on the German approach to evidence, which emphasizes the importance of relevance, reliability, and fairness. The Berlin Rules are a valuable resource for judges, prosecutors, and defense attorneys who are working to improve the quality of justice in Europe.



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