

Rules Combining Several Structures

Some rules use more than one rule structure. Such a rule will use a larger structure like one of the examples set out in Chapter 7 of the text. However, the rule's subparts might use another rule structure. For instance, consider this rule governing attacks on the credibility of criminal defendants who testify at trial:¹

Evidence that the accused previously was convicted of a crime shall be admitted if the crime involved dishonesty or false statement by the accused or if the crime was punishable by death or imprisonment in excess of one year and the conviction's probative value outweighs its prejudicial effect.²

This rule uses the disjunctive (either/or) structure for its larger structure, like so:

Evidence of a prior conviction may be admitted if it falls within either of the following categories:

- A. if it involved dishonesty or false statement, or
 - B. if it was punishable by death or imprisonment in excess of one year and its probative value outweighs its prejudicial effect.
-

Notice, however, that subpart B contains two requirements (the punishment requirement and the comparison of probative value to prejudicial effect). Notice also that the inquiry about probative value and prejudicial effect is a balancing test. What's more, the cases interpreting this rule probably describe the factors to be considered in gauging "probative value" and "prejudicial effect." Thus, a more detailed outline of the rule might look like this:

Evidence of a prior conviction may be admitted if it falls within either of the following categories:

- A. if the conviction involved dishonesty or false statement; or

1. At a trial, the judge decides what testimony or documents can be admitted into evidence by applying the rules of evidence in effect for that court. If the judge refuses to admit a document into evidence, that information cannot be considered when deciding the case.

2. See Fed. R. Evid. 609(a) (paraphrased).

B. if both of the following are true:

1. the conviction was punishable by death or imprisonment in excess of one year; and

2. its probative value outweighs its prejudicial effect

a. probative value is gauged by: [List factors set out in the cases.]

b. prejudicial effect is gauged by: [List factors set out in the cases.]
