

IC 34-45-2

Chapter 2. Competent and Incompetent Witnesses

IC 34-45-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 4 of this chapter by P.L.252-2001 apply to the estate of an individual who dies after June 30, 2001.

As added by P.L.220-2011, SEC.574.

IC 34-45-2-1

Competent witnesses generally

Sec. 1. All persons, whether parties to or interested in the suit, are competent witnesses in a civil action or proceeding, except as otherwise provided.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-2

Insane persons considered incompetent witnesses

Sec. 2. Except as otherwise provided by statute, persons who are insane at the time they are offered as witnesses are not competent witnesses, whether or not they have been adjudged insane.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-3

Mentally incompetent persons and guardians

Sec. 3. (a) This section applies in all suits by or against any person adjudged to be a mentally incompetent person or against the mentally incompetent person's guardian:

- (1) founded upon any contract with, or demand against the protected person;
- (2) to obtain possession of the real or personal property of the protected person; or
- (3) to affect the protected person's property in any manner.

(b) Except as provided in subsection (c), neither party to the transaction is a competent witness to any matter that occurred before the appointment of the incompetent person's guardian.

(c) If the party to the transaction who is under guardianship is adjudged by the court to be competent to testify, the other party to the suit shall not be excluded.

(d) This section does not apply to a contract made or transaction had before February 27, 1903.

(e) Either party to a suit under this section has the right to call and examine an adverse party as a witness. The court may require a party to a suit or other person to testify. An abuse of discretion under this subsection is reviewable on appeal.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-4

Executors or administrators; depositions; evidence given by

decedent

Sec. 4. (a) This section applies to suits or proceedings:

- (1) in which an executor or administrator is a party;
- (2) involving matters that occurred during the lifetime of the decedent; and
- (3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator.

(b) This section does not apply in a proceeding to contest the validity of a will or a proceeding to contest the validity of a trust.

(c) This section does not apply to a custodian or other qualified witness to the extent the witness seeks to introduce evidence that is otherwise admissible under Indiana Rule of Evidence 803(6).

(d) Except as provided in subsection (e), a person:

- (1) who is a necessary party to the issue or record; and
- (2) whose interest is adverse to the estate;

is not a competent witness as to matters against the estate.

(e) In cases where:

- (1) a deposition of the decedent was taken; or
- (2) the decedent has previously testified as to the matter;

and the decedent's testimony or deposition can be used as evidence for the executor or administrator, the adverse party is a competent witness as to any matters embraced in the deposition or testimony.

As added by P.L.1-1998, SEC.41. Amended by P.L.252-2001, SEC.37.

IC 34-45-2-5**Contract actions involving heirs or devisees; competent witnesses**

Sec. 5. (a) This section applies to suits by or against heirs or devisees founded on a contract with or demand against an ancestor:

- (1) to obtain title to or possession of property, real or personal, of, or in right of, the ancestor; or
- (2) to affect property described in subdivision (1) in any manner.

(b) This section does not apply in a proceeding to contest the validity of a:

- (1) will; or
- (2) trust.

(c) Except as provided in subsection (d), neither party to a suit described in subsection (a) is a competent witness as to any matter that occurred before the death of the ancestor.

(d) A custodian or other qualified witness in a suit described in subsection (a) may present evidence that is admissible under Indiana Evidence Rule 803(6).

As added by P.L.1-1998, SEC.41. Amended by P.L.33-2004, SEC.1.

IC 34-45-2-6**Agent of decedent; transactions**

Sec. 6. (a) This section applies:

- (1) when an agent of a decedent testifies on behalf of an

executor, administrator, or heirs concerning any transaction the agent had:

(A) with a party to the suit, or the party's assignor or grantor; and

(B) in the absence of the decedent; or

(2) if any witness testifies on behalf of the executor, administrator, or heirs, to any conversation or admission of a party to the suit, or the party's assignor or grantor, made in the absence of the deceased.

(b) The party against whom the evidence is adduced, or the party's assignor or grantor, is competent to testify concerning the matters described in subsection (a).

As added by P.L.1-1998, SEC.41.

IC 34-45-2-7

Agent of decedent; contracts

Sec. 7. (a) Except as provided in subsection (b), a person who acted as an agent in the making or continuing of a contract with any person who has died, is not a competent witness, in any suit upon or involving the contract, as to matters occurring before the death of the decedent, on behalf of the principal to the contract, against the legal representatives or heirs of the decedent.

(b) If the person is called by the decedent's heirs or legal representatives, the person is a competent witness, as to matters about which the person is interrogated by the heirs or representatives.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-8

Unlawfully taking or damaging personal property

Sec. 8. If the defendant in a case:

(1) is charged with unlawfully taking or detaining personal property or having done damage to personal property; and

(2) defends the charge in the defendant's pleading by asserting that the defendant is the executor, administrator, guardian, or heir, and, as such, has taken or detained the property or has done the acts charged;

a person is not competent to testify who would not be competent if the defendant were the complainant. However, when the person complaining cannot testify, the defendant shall also be excluded.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-9

Husband or wife

Sec. 9. When the husband or wife is a party, and not a competent witness in his or her own behalf, the other shall also be excluded.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-10

Assignor or grantor; adverse party

Sec. 10. (a) In all cases in which:

- (1) executors, administrators, heirs, or devisees are parties; and
- (2) one (1) of the parties to the suit is incompetent under this chapter to testify against the parties described in subdivision (1);

the assignor or grantor of a party making the assignment or grant voluntarily shall be considered a party adverse to the executor or administrator, heir, or devisee.

(b) However, in all cases referred to in sections 4 through 9 of this chapter, any party to the suit has the right to call and examine any adverse party as a witness.

(c) The court may require any party to a suit or other person to testify. Any abuse of the court's discretion under this subsection is reviewable on appeal.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-11

Executors or administrators; contracts assigned

Sec. 11. In all actions by an executor or administrator, on contracts assigned to the decedent, when the assignor is alive and a competent witness in the cause:

- (1) the executor or administrator; and
- (2) the defendant or defendants;

are competent witnesses as to all matters that occurred between the assignors and the defendant or defendants before notice of the assignment.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-12

Effect of lack of religious belief; moral character

Sec. 12. Lack of belief in a supreme being or in the Christian religion does not render a witness incompetent. However, lack of religious belief may be shown upon the trial. In all questions affecting the credibility of a witness, the general moral character of the witness may be given in evidence.

As added by P.L.1-1998, SEC.41.

IC 34-45-2-13

Facts shown to affect credibility of witness

Sec. 13. Any fact that might have been shown to render a witness incompetent may be shown to affect the credibility of the witness.

As added by P.L.1-1998, SEC.41.