



# Legal Research, Writing, and Civil Litigation

## **Class 13**

# Rules of Evidence – Relevancy and its Limits

- **General Rule:**
  - Only evidence that is “relevant” (that tends to establish a fact that matters in the determination of a question before the trier of fact)
  - Evidence, though relevant, is not admissible
    - “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence”
- **Character Evidence:**
  - Evidence of a character trait of a person is not admissible to prove a particular action in conformity with that trait on a particular occasion.
  - Similarly, evidence of prior acts is not admissible to show that a person acted in a similar fashion on a given occasion.

# Rules of Evidence – Relevancy and its Limits (cont.)

- **Exceptions:**
  - good character of a criminal defendant (or rebuttal of that)
  - aggressive character of victim to show self defense
  - character evidence used to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident
  - can use character evidence if it reaches the level of a “habit, routine or practice”
- **Other points:**
  - Evidence of subsequent remedial measures to show dangerous condition is not admissible
  - Evidence of liability insurance is inadmissible

# Rules of Evidence – Hearsay

- “**Hearsay**” is defined as an out of court statement offered in court for the truth of the matter asserted.
- Hearsay is generally inadmissible, because by admitting hearsay, you are having the declarant “testify” without having to come to court, face the jury and be cross examined.
- Remember, it’s not that we don’t believe that the declarant actually said the statement (the witness in court said that the declarant did say it, so that part is regular testimony); it’s just that we don’t have reason to believe the declarant!
- Thus, if we have reasons to believe that the declarant was telling the truth, the hearsay rule may not apply.

# Rules of Evidence – Hearsay (cont.)

- The exceptions to the hearsay rule include:
  1. prior inconsistent statement made by that witness (to impeach the witness' testimony)
  2. "admission" of a party opponent
  3. present sense impression
  4. excited utterance
  5. statement made for the purpose of obtaining a medical diagnosis
  6. recollection that is recorded (in writing)
  7. memorandum or note kept in the ordinary course of business
  8. police reports
  9. vital statistics and records
  10. dying declarations
  11. statements against the declarant's own interests



# QUIZ TIME!