

## Suggested Beginning Evidence Template

Relevancy: Evidence having the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

Hearsay (Cluster of Issues): Not Admissible (Words & Documents)

### A. Hearsay Defined.

1. Out of Court (not prior sworn statement)
2. Statement: Oral or written assertion, or any conduct intended as an assertion.
3. Offered to Prove Truth of Matter Asserted. (Libel, False statement crimes)

### B. Non Hearsay (Despite looking like it)

1. Prior Statement by a Testifying Witness and
  - a. Inconsistent with Testimony + Under Oath
  - b. Consistent with Testimony + rebut charge of recent fabrication/motive/improper influence
  - c. Identification of person after Perceiving (Police Line-up or Identification)
2. Admission by Party Opponent (who offers it?)
  - + One of following (Agency and Common Sense)
    - a. Own statement
    - b. Adopted statement as true
    - c. Authorized statement of another
    - d. Agent statement, while in relationship
    - e. Co-conspirator, during conspiracy

C. Hearsay Exceptions.

1. Declarant Unavailable

(“Unavailable”—privilege, refuse, memory, dead/physical, subpoena avoided)

a. Former Testimony

b. Statement Under Belief of Impending Death—concerning cause of death

c. Statement Against Interest.

2. Availability—Who cares?

a. Present Sense Impression—while watch event

b. Excited Utterance—(911, Exclamation Point!)

i. startling event,

ii. under stress of excitement

c. Then Existing Mental/Physical Condition

d. Statements for Med. Tx.

e. Recorded Recollection—wrote memory down, can't remember now.

--Don't admit writing, read it to jury.

--vs. Refreshing memory (612)

f. Biz. Records (Police reports in civ, not crim)

g. [No Biz. Records]

Many more, less likely.

24. Residual—circumstantial guarantees of trustworthiness

D. Confrontation Clause (if crim law evidence Q).

--Tough to get it in.

## Experts (Cluster of Issues).

1. Assist Trier of Fact. Scientific, technical, specialized Knowledge
2. Qualified Expert (broad: knowledge, skill, experience, training)
3. Limits of Testimony—ultimate issue ok, mental state in criminal not.

## Other Bad Acts (Cluster of Issues)

1. Character Evidence: Defined, not admissible.

Except: Accused brings it up→Cross with specific,  
But NO extrinsic proof of bad acts.

Except: Pertinent character trait of Victim

2. 404(b), to show other than character (MIMIC)
  - a. Identity
  - b. Mental State

[vs. Habit: Routine Practice to show act, not character]

3. 609 Impeachment (Attack Credibility of Witness)
  - a. Felony (punish > 1 year)
    - + Probative Value (veracity value) > Prejudicial Effect
    - + 10 years not lapsed (since end of probation/sentence)
  - or b. Involved Dishonesty/False statement (10 years still)

## Privilege--Confidential Communications

1. Lawyer-Client
  - a. Relationship Established.
  - b. Claimed by lawyer or client (or workers)
  - c. Exceptions: fraud, breach of K, not confidential
2. Patient/Doctor (psychotherapist, podiatrist, chiropractor)
3. Wife-Husband, clergy-penitent
  - a. Spousal Privilege—R in criminal case to prohibit testimony by other spouse; all info, does not survive divorce.
  - b. Marital Communications—Confidential communications during marriage; survives divorce.

## Competency

1. Observe
2. Remember
3. Relate
4. Oath understanding

*Other Issues where Answer Seems to be: Not Admissible.*

## Subsequent Remedial Measures

But: if for another purpose, such as ownership & control of sidewalk in front of store.

## Offers to Compromise/Plea Bargaining

## Payment of Medical Expenses

## Liability Insurance.

## Habit/Routine Practice

*Other Issue where Answer Seems to be: Admissible.*

## Impeachment