STEPHENS ANDERSON & CUMMINGS

Let's Win This!

A Monthly Newsletter - What You Need to Know About Personal Injury Law

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October 2018 - Issue 8

It's October!

Along with cooler weather, October is the time for Halloween - ghosts, goblins, witches, and all manner of things that go bump in the night.

The thing about most tales of ghost sightings and other scary stories, though, is that they don't pass evidentiary muster. In fact, most of them are based on ....

....wait for it....

Hearsay!

Which brings us to Part 2 of our Evidence series. (In case you missed Part 1, you can find that here.)

People use the term "hearsay" all the time - usually to mean something isn't worthy of belief. While that sort of jives with the legal meaning, it's only part of the story.

So, read on! And remember - be safe while trick-or-treating this Halloween.

As always, if you have any questions about anything you see in *Let's Win This!* or want to talk about anything in the world of Personal Injury Law, we're as close as a phone call, and email, or a chat on the website.

Thanks and best regards -

p.s. - Forward this email to friends and family and let them know that they can get their own copies of *Let's Win This!* by clicking the button below!

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"Objection! Hearsay!"

What does this picture have to do with hearsay?

Well, nothing, really. But it's the month of Halloween and a picture of "ghosts" is appropriate, don't you think?

It also illustrates the point that evidence requires vigilance. Just because something is offered as evidence doesn't make it reliable.

In the 1890s, this picture was offered as evidence that ghosts could be found on a path through the woods just outside the Penn State University campus. It's an obvious double-exposure and was debunked a century ago. But it demonstrates that, when it comes to evidence, the judge has to be careful. (Remember our discussion about the judge's job of determining whether something is even worthy of consideration? If not, or you missed it, you can find it here.)

So, What Is Hearsay, Anyway?

Most of us have a general understanding of what hearsay is. It's one person talking about what another person said.

In the context of legal evidence, hearsay is when someone tries to *testify* about a statement made - usually by someone else - at an earlier time.

In Texas courts, the law of evidence, including that applicable to hearsay, pretty much starts with the Texas Rules of Evidence. Those Rules define hearsay this way:

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

Some of the terms used in that definition are also defined by the Rules. For instance, "statement" is an oral or written verbal expression OR nonverbal conduct *if* it is intended as

a substitute for verbal expression. So, nodding or shaking your head or shrugging your shoulders can be a statement and, thus, hearsay.

"To Prove the Truth of the Matter Asserted"

What about that "matter asserted" thing? What's that all about?

The definition of "matter asserted" is a tiny masterpiece of legal gobbledygook. It

"*includes any matter explicitly asserted, and any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief as to the matter*."

In other words, it is a "matter asserted" if someone is trying to get you to believe it because the person who said it believed it.

If they're trying to get you to believe only *that* it was said, rather than *what* was said, it's not hearsay. Confused? Look at it this way:

Let's say you're on the stand during a trial testifying about an incident you witnessed while standing near an intersection. Some folks are driving down the street in a convertible. As they approach the intersection, you hear someone in the car (presumably a passenger) yell, "Watch out! The light is red!" You can't see the light from their direction, so you don't actually know what color the light was.

If the lawyer asks you about what you heard, the passenger's statement may or may not be hearsay, depending upon why the lawyer is asking the question - i. e., what he is trying to prove.

If he wants to prove *that the light was red* - Hearsay.

If he wants to prove *that the driver was warned that it was red* - Not Hearsay. (The assumption here is, if it was loud enough for you to hear, then it was loud enough for the driver to hear.)

It gets more complicated. The lawyer might be able to use the statement to prove that the light was red, after all because, even though it's hearsay, the circumstances qualify it as an *exception* to the rule against hearsay. But we'll get to that later.

A statement can be hearsay even if the out-of-court statement was made by the same person who is testifying.

Huh?

Don't worry - a lot of lawyers (and even judges) get this one wrong. The fact is, however, if you're testifying about a conversation you had with someone, not only are the other person's statements hearsay, but so are yours. (Again - *if* those statements are being offered to prove that what was being said is true.)

The subject of evidence, in general, and hearsay, in particular, gives everyone headaches.

But there isn't anything more important in presenting your case. You simply cannot win a case unless you are able to present enough *admissible evidence* to persuade the jury.

The Hearsay Rule

Texas Rule of Evidence 802 is called "The Hearsay Rule" and it reads like this:

Hearsay is not admissible except as provided by statute or these rules or by

other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

Yes, the Rules are chock-full of gobbledygook.

What this rule means is that hearsay isn't good evidence unless some sort of exception applies to it. But - if you don't object and it's admitted - it can be considered adequate proof.

So ... hearsay technically is not good proof. But if you don't object to it, it's good enough.

That means it's important to know when to object.

As a result, probably the most common objection to offered evidence is that it is hearsay. The first thing a lawyer has to know is what is - and what isn't - hearsay.

Things are NOT Always What They Appear

The Rules declare that some "statements" you think would be hearsay are, in fact, not.

If you *testified* in a different court case and made a statement that is *inconsistent* with what you're saying in this case, that earlier statement is not hearsay and can be used to throw doubt on - impeach - your current testimony.

If someone accuses a witness of making something up to fit the case on trial and the witness made a *consistent* statement at an earlier time (whether during a court case or under oath or not), then the earlier statement is not hearsay and can be used to refute the charge of recent fabrication.

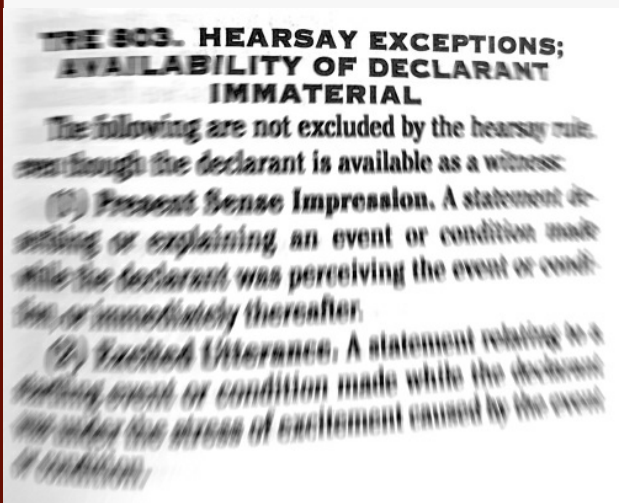
If your opponent in the current suit *admitted* something way back when, the admission is not hearsay.

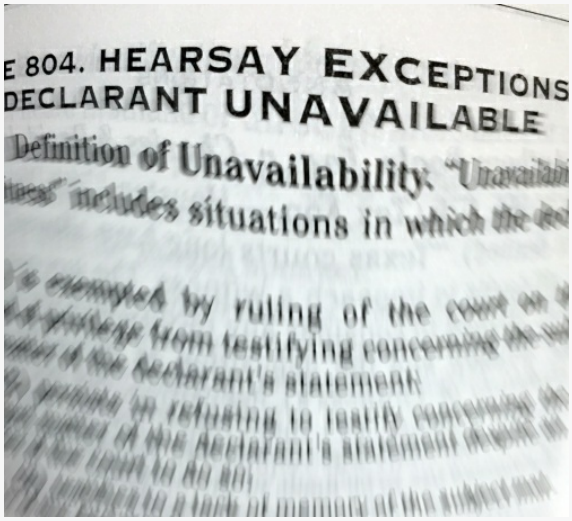
Testimony given in a deposition *in the same proceeding* is not hearsay. (Depositions are a HUGE part of personal injury practice. Several future issues of *Let's Win This!* will be devoted to them.)

Again - it's important to know if the statement that you want to get into evidence is classified as hearsay because, if it is, then it's not admissible.

Well, that is, unless it falls into one of the numerous exceptions to the Hearsay Rule. There are a lot of them. Some depend upon whether the "declarant" is available, some do not.

Yes, it's confusing. It can even make your eyes blur.





Which is where we'll pick up next time, when our ***Let's Win This!*** Evidence Series continues.

In the meantime - Be Safe, Happy Halloween! and Remember - if someone tells you that a friend of theirs swears they saw a ghost, you can say,

"Objection! Hearsay!"

STEPHENS ANDERSON & CUMMINGS

SAC's Weatherford Office Serves Residents of Parker & Surrounding Counties

At Stephens Anderson & Cummings we know that, when you've been injured, getting around can be a problem. Many of our clients are Parker County residents and we want to make it as convenient as possible for us to help them to pursue justice.

Besides, SAC has strong ties to Parker County. In fact, two of our partners are Parker County residents!

If you've read previous issues of *Let's Win This!* or follow our blog (which you can find here), you know that we have a deep commitment to community involvement. That commitment extends to all of the communities we serve.

Having an office in Weatherford gives us an investment in the area and allows us to truly be a part of the business and personal communities of Parker County.

The Weatherford Office is located at 123 Dallas Avenue, just off of the Courthouse square.

While it's only open by appointment, it's easy to schedule a time to stop by, have a cup of coffee, and discuss your situation with any of our lawyers.

If you're a resident of Parker County - or any of the nearby counties, whether Hood, Palo Pinto, Somervell, Jack, Wise, Erath, or others - or if it would just be easier for whatever reason to visit an office in Weatherford - we hope that you'll give us a call and come on in.

The telephone number for the Weatherford office is 817-458-0900 or toll-free at 877-927-9009.

Of course, you can also shoot us an email (or reply to this one) or chat through the website.

Let's Win This!

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Righting wrongs for seriously injured people isn't just a job for us - it's our calling.

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We're not "TV advertisers." We're real trial lawyers with a long track record of success.

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