

# CIVIL

## INTRODUCTION

### Types of Ev.

- **Distinction By How It Is Tendered**
  - **Testimonial Ev:** W testimony made to Ct re observations of rel. events
  - **Real Ev:** things (incl. docs as things) from which trier of fact able to draw own inferences
  - **Documentary Ev:** written statements tendered as testimony
- **Distinction by How It Proves A Fact**
  - **Direct Ev:** proves a fact in issue directly w/o the need for inference
  - **Circumstantial Ev:** proves a fact in issue indirectly through inference

### Process

- 1) What is the evidence?
- 2) Is Ev. **relevant** (ie, does it tend to prove/disprove a MF in issue)?
  - YES: prima facie admissible
  - NO: inadmissible
- 2) How do I want to use?
  - Re **issue**, and/or **credit** (PIS etc)?
- 2) Is there **exclusionary rule** (H/S, opinion, tendency, credibility)?
  - NO: prima facie admissible
  - YES: inadmissible unless exception
- 3) Is there **discretion** to exclude Evidence?
  - NO: prima facie admissible
  - YES: inadmissible
- 4) Should **warning/direction** be given re evidence?

### Voir Dire

- Jury absent (**s 189 UEA**)
- Standard of proof = Balance of Probs (**s 142 UEA**)
- Rules of Ev. probably apply (**s 189(7) UEA**)

### Waiver

- Rules of Ev. only be waived re relevant Ev.
- P must understand right to object and freely choose to exercise it
- Unlikely that failure to object can constitute waiver
- Unlikely that waiver applies in crim. cases
- Failure to exclude Ev. in the absence of objection is not an error of law

### UEA

- **P waiver:** parties may consent to waive these rules (s 190):
  - General rules about giving Ev. (ss 26-36)
  - Rules relating to XN-in-chief and re-XN (ss 37-39)
  - Rules relating to XXN (ss 40-46)