# JONES ON EVIDENCE
## CIVIL AND CRIMINAL
7TH EDITION

CLIFFORD S. FISHMAN

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Massachusetts Ann. Law ch. 233 § 21(A) is also substantively identical to the federal rule:

> § 21A. Evidence Relating to Reputation in a Group of Habitual Associates. Evidence of the reputation of a person in a group with the members of which he has habitually associated in his work or business shall be admissible to the same extent and subject to the same limitations as is evidence of such reputation in a community in which he has resided.

Each of these codifications incorporates the common law while recognizing that people now interact with others in a variety of "communities," not merely the residential community, and therefore permits evidence of a person's reputation among those different "communities."[4]

The following jurisdictions have not codified a provision dealing with reputation testimony as character evidence: Connecticut, the District of Columbia, Georgia, Missouri, New York, and Virginia. The law in those states does not differ significantly from those which have codified the rule. See generally Chapters 14-16.

## VI. PRIOR CONVICTIONS AND CIVIL JUDGMENTS

### § 35:49. In general

As a general proposition it would be fundamentally unfair to permit a litigant in a current trial to introduce a judgment in a prior case as proof of the underlying facts at issue in the current case. Unless the adverse party in the current trial already had a fair opportunity to contest the fact in the previous litigation,[1] to allow such evidentiary use would interfere with or prevent a litigant in the current case from having his or her "day in court."

There is a second reason why, as a general proposition, a judgment in one case should not be admissible in another case to prove any fact essential to that judgment. If offered for that purpose, the judgment is

4. See in Volume 3, see §§ 16:20-15:23, and in this volume, § 35:38, supra.

1. Where the party has had such an opportunity, the prior judgment is likely to satisfy the doctrines of res judicata, collateral estoppel or issue preclusion, subjects which are about as far beyond the scope of this treatise as the orbit of Pluto is beyond the Earth's. But these matters are discussed very briefly in § 35:55, for readers who want a brief overview and for whom Pluto is a bit too much of a trip.

hearsay.[2] It is an "assertion" (i.e. a "statement") made by the earlier judge or jury, "other than while testifying at the [current] trial or hearing, offered to prove the truth of the matter asserted."[3]

A judgment in a civil case, or a conviction in a criminal case, is not hearsay, however, if offered to prove that a judgment was rendered or a conviction was entered. If offered for this purpose, the judgment or conviction is an operative legal fact because it directly affects the legal rights of the parties. A civil judgment determines which party is entitled to money, property, or other relief. A conviction establishes that the defendant must submit to sentence imposed by the court, and even after the sentence has been served, may have continued legal impact. A convicted felon may be ineligible to vote and may be disqualified from certain professions, for example, and will be eligible for habitual offender status if he or she is again convicted of a felony.

A civil judgment *is* hearsay, however, if offered to prove the truth of a fact which underlies the judgment. That a jury found that D was negligent and that her negligence caused an auto collision at a particular intersection on January 1, 2002, if offered at a later trial to prove that D was negligent that day, would be hearsay, because the jury's verdict—its "statement"—was made "other than while testifying" at the new trial or hearing at which it is being offered. Similarly, that D was convicted of selling drugs to an undercover officer at 4 p.m. on December 1, 2001 at the corner of 14th and Girard in Washington, D.C., is hearsay, if offered to prove that D was in Washington and not, say, Chicago on that afternoon.

For both of these reasons—the fundamental unfairness of it, and the hearsay nature of a prior judgment when offered in a new trial, former judgments are not generally admitted for a hearsay purpose.

The law in most jurisdictions recognizes two narrow exceptions to the exclusion of a prior judgment as proof of the facts underlying the judgment. The first exception admits judgments of conviction for a serious crimes. Here the underlying theory is that the judgment is so trustworthy that the normal qualms are overcome. The second excep-

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**2.** In re Estate of Mask, 703 So. 2d 852, 857-858 (Miss. 1997).

**3.** This is the basic definition of hearsay codified in Fed. R. Evid. 801(c), Uniform Rule of Evidence 801(c), and corresponding state provisions. See generally Chapter 24, supra. Thus it is inappropriate to permit the general evidentiary use of a judgment in one trial as evidence in another, for the same reasons that it is inappropriate for a court to accept as true per judicial notice, factual findings made in another case. See § 2:106.

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