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Hearsay exceptions cheat sheet california

List of hearsay exceptions. What are the hearsay exceptions. List of california hearsay exceptions. Exceptions to hearsay california.

JUSTIA LAW US Law Outcomes and Statutes California Code 2015 California Code Evidence Codes EVID DIVISION 10 - HEARSAY EVIDENCE CHAPTER 2 - Exceptions to the Hearsay Rule 0 ratings0% found this document useful (0 votes)3K views1 page
Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible for three reasons. First, the declarant is not under oath at the time of the statement so no threat of perjury assures the witness is being truthful. Second, the declarant was not qualified as a witness when they made the statement, so there is no assurance they had personal knowledge to support their statement. Third, the declarant is not subject to cross-examination so the opposing party is put at a distinct disadvantage. In the case of a criminal defendant this violates the 6th Amendment right to confront opposing witnesses. Hearsay Exemptions Speakers knowledge of facts and circumstances surrounding the event; statements by a person who has no duty to form legal conclusions based in substantive law. No distinction in negligence cases, words that show knowledge or notice on the part of listener or are relevant to issue of motive Statement proves the writer had knowledge of the facts and shows connection to the claim at issue Statements used to demonstrate that the declarant believed them to be true, to demonstrate insanity or knowledge Employees – Must concern a matter w/in scope of agency - Be used against the party - Have been made during the existence of the relationship Narrower with respect to employees' statements -only an admission where negligent conduct of speaker is the basis for an employer's vicarious liability in the case under respondent superior NON-HEARSAY: The Federal rules specifically exempt some out of court statements from being hearsay, even though they are offered for truth. These fall under the broad category of certain prior statements of a declarant-witness and certain statements by the opposing party. Statements offered for truth True Facts of independent legal significance Effect on hearer CA Distinction Notes Co-conspirators: Made to 3rd parties Made w/in scope of partnership Express or implied adoption or acquiescence by silence: 1. Party heard and understood stmt 2. Party was physically and mentally capable of denying the accusation 3. A reasonable person would have denied the accusation A party's own statement offered against the party. Can be made by a party in the pleadings, either in the plaintiff's complaint, the defendant's answer, in the pre-trial motions, in depositions, in response to requests for admissions served in discovery, or otherwise in any type of written or oral statement.

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considered hearsay, but falls under exception Admissions by a party opponent ARE hearsay under California law but admissible under a statutory exception. (CEC 1220-1225) The statement need not have been made against interest when made, may be in the form of opinion, and personal knowledge not required. A statement consistent with the declarant's testimony and which is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying. NOT hearsay if made under oath subject to the penalty of perjury at a trial, hearing or other proceeding and the declarant testifies at the trial and is subject to cross-examination. (FRE 801(d)(1)) Otherwise ARE hearsay under the federal rules but can still be used to impeach the declarant who must be given an opportunity to explain or deny the statement and subjected to cross-examination. A prior statement by a witness offered to support the credibility of the witness' testimony. AFTER their credibility has been attacked, either because their later statements were inconsistent or else by express or implied suggestion their testimony is fabricated or influenced by bias or other improper motives. Under federal rules consistent prior statements that meet these criteria are NOT hearsay IF the declarant testifies at the trial and is subject to cross-examination about the prior statement. A statement of identification is a statement identifying a person as a participant in a crime or other event offered to prove the truth of the statement. Under federal rules statements of identification are NOT hearsay IF the declarant testifies at the trial and subject to cross-ex. Under California law inconsistent prior statements are admissible hearsay as long as the declarant is a witness and has been given an opportunity to explain or deny the statement or evidence is still subject to recall to testify.



Unavailability for purposes of hearsay is defined as follows: If the declarant is unavailable to testify as a witness AND IF the declarant was given an opportunity to testify at a trial, hearing or deposition where 2) the opposing party had an opportunity to cross-examine the declarant and 3) the declarant refused to testify or failed to appear at the trial, hearing or deposition without having been sworn or after being sworn, and there is no indication that the declarant has similar motives to question and challenge the declarant. Unavailability to prior deposition witness who lives 150 miles from courthouse. In civil case, no predecessor in interest/private right if opportunity and motive are similar. OK if offered against person who originally offered it into evd in the prior proceedings Broader than Federal Rule.


Includes statements against social interest of declarant because it risked making the declarant an object of hatred, ridicule, or social disgrace in the community - Does not require corroborating evidence All prior inconsistent statements are non-hearsay and admissible as substantive evidence Under California rules consistent prior statements that meet the Fed criteria are admissible hearsay but the declarant does not have to be subject to cross-examination about it. (CEC 1236, 791) Can only be admitted if they were made BEFORE the inconsistent statements or implications of bias, improper motives or motives to fabricate arose. admissible hearsay if the statement was made when the occurrence was 1) fresh in the witness' memory, and the witness testifies that he 2) made the identification at that time and it was 3) a true reflection of his opinion at the time. (CEC 1238) Hearsay Exceptions - Requiring Unavailability Former Testimony Statement Against Interest (Declarant cannot be a party) 1. 2. 3. 4. Unavailability Required Witness unavailability Statement is against financial or penal interest Against interest when made Reasonable person would not make statement unless he believed it to be true 5. If offered to exculpate accused, must have corroborating evidence Statement under Belief of Impending Death (Dying Declaration) 1. 2. 3. 4. Statement of Family or Personal History (Declarants own family history or relative's death) Forfeiture by Wrongdoing 1. Declarant must be a family member or closely associated 2.

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Concerning birth, marriage, divorce, death, relationship, etc. 3. Declarant had personal knowledge OJ Exception Witness unavailable Statement made while declarant believed death was imminent Describes the cause or circumstances of impending death occurred in homicide or in any civil case 1. Admissible if party against whom offered 2. engaged in or acquiesced in intentional wrongdoing 3. to procure declarants unavailability. No Federal equivalent Reliability Excited Utterance A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused. Present Sense Impression Past Physical Condition/Medical Diag A stmt describing or explaining an event, condition, made while or immediately after the declarant perceived it. Requires spontaneity. Stmt that is (1) made for and reasonably pertinent to - medical diagnosis/treatment; and describes medical history/symptoms/their inception and cause. Present State of Mind A broad range of statements qualify for this exception including claims of presently existing pain, emotions, worries, concerns, ambitions, desires, plans, hopes, intentions, fears, anxiety,existing health, sleepiness, insomnia, knowledge, and awareness. If a document is at least 20 years old and does not present irregularities admissible hearsay if it is a memorandum or recorded stmt of information about an event, condition that declarant made or witnessed when was contemporaneous with what was reported and knew, if (3) the statement was made and accurately reflected what was known by declarant Public Records Regularly kept records that a public agency has a duty to report or regularly keeps as normal course of business are admissible, though they may not be included in the category Annals, Reports, Publications Civil judgments can be included in the category Annals, Reports, Publications 1) a regularly conducted activity of any business, profession, occupation, institution, etc. is admissible if heard say prove that an event occurred or an act was committed If (3) a custodian or other qualified witness testifies to show facts concerning the source of the information unless 4) the Court finds evidence lacks trustworthiness. Evidence of a felony conviction or guilty plea may be admitted to prove a fact essential to the judgment Annals Document Recorded Recollection Public Records Unavailability Immaterial Business Records Judgements of Prior Convictions Vital Statistics Property Interest Documents Learned Treatises Family Records Market Reports Judgment in Prior Civil case Records that are not from a public agency are still admissible to prove the event occurred or act was committed if regularly kept records reported to a public office as req'd by law or made clergy or public official, OR regularly kept church records OR family records in family Bibles, genealogies, etc.

Handling the Hearsay Evidence Rule and Objections

TWO-STEP ANALYSIS	
<div><h1>1</h1><h2>Is the evidence hearsay?</h2><ul style="list-style-type: none">● Out-of-court statement<ul style="list-style-type: none">• "Out of court" means anything said by someone other than a witness on the stand.• Statements include writings.● Offered for the truth of the matter stated<ul style="list-style-type: none">• Hint: Investigating officers frequently testify about out-of-court statements, not for the truth of the matters stated, but to explain the officer's subsequent actions<p>If the evidence is not hearsay, there is no need to consider whether a hearsay exception applies.</p></div>	<div><h2>WHAT TO SAY</h2><p> Objection, Your Honor. The witness has testified to hearsay.</p><p> Objection. The question seeks evidence of an out-of-court statement that is being offered for the truth of the matter stated.</p><p> Your Honor, the evidence is not offered to prove the truth of the matter stated. Rather, it is being offered to explain the officer's subsequent action.</p></div>
<div><h1>2</h1><h2>Is there an applicable hearsay exception?</h2><div>Common Exceptions:</div><ul style="list-style-type: none">● Admission by a Party Opponent<p>The prosecution can introduce evidence of any out-of-court statement made by the defendant.</p>● Business Record<ul style="list-style-type: none">• Writing must be made in the regular course of business;• at / near the time of the event recorded, and• sources of information and method of preparation are trustworthy.</div>	<div><p> This is an exception to the hearsay rule, Your Honor. The statement is an admission by a party opponent.</p><p> Your Honor, an exception to the hearsay rule applies. This document is a business record and is therefore admissible.</p><p> Your Honor, the business records exception does not apply because a proper foundation has not been laid. There is no evidence of how or when the record was prepared, so the prosecution has not demonstrated that the sources of information and method of preparation are trustworthy.</p></div>

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Copies of recorded documents and statements of other documents affecting property interests may be admissible hearsay if a statute authorizes their recordation or they are otherwise relevant. Statements contained in historical works, history, medicine, books of science or art, treatises, and published maps are admissible hearsay. Market quotations, directories, tabulations and lists that people regularly depend on are admissible hearsay. (FRE 803(17); CEC 1340) This would include things like daily stock prices, weather reports and the telephone book.

inadmissible in subsequent criminal proceedings and generally inadmissible in civil proceedings - Applies in all civil and criminal cases - must be "dying" at the time the statement is made. (CEC 1242) No California caselaw has been found holding whether or not the declarant must be dead by the time of trial. No distinction - Applies only in serious felonies - Only if clear and convincing evidence declarant was killed or kidnapped - Prior stmt be recorded by law enforcement describing infliction or threat of physical abuse if: (1) declarant unavailable; (2) stmt made at/near time of injury; (3) in a writing, recorded or made to police or medical professionals; (4) trustworthy circumstances. Spontaneous Statement. must purport describe or explain the act, condition, or event perceived by.

