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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 US Law US Codes and Statutes California Code 2015 California Code Evidence Code - EVID DIVISION 10 - HEARSAY EVIDENCE CHAPTER 2 - Exceptions to the Hearsay Rule 0 ratings 0% found this document useful (0 votes) 3K views 1 page Hearsay (v.1-2017): Absent an exclusion, exemption, or exception hearsay evidence is inadmissible. 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 Circumstantial evidence of state of mind Vicarious party admission Admissions Adoptive Admission Admission by party opponent Prior Inconsistent Statement Prior Statements Prior Consistent Statement Prior identification Federal Statement has words forming legal significance based in substantive law. No Distinction In negligence case, words that show knowledge or notice on the part of listener or is 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 respondat 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 Type Facts of independent legal significance Effect on hearer CA Distinction Notes Co-conspirators: Made to 3rd party during and in furtherance of a conspiracy to commit a crime or civil wrong.

Partners 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.



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 a charge that the declarant intentionally fabricated it or derived it from a preconceived notion or plan of lying. 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)) Other than 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 the declarant 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 else is still subject to recall to testify. Former testimony is admissible hearsay if the declarant is unavailable to testify as a witness and it was given at 1) a trial, hearing or deposition where 2) the opposing party had an opportunity and 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/privy req't if opportunity and motive are similar - OK if offered against person who originally offered it into evid 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 unavailable 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.



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 Offered 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 or condition that declarant made or adopted when was 1) fresh in the witness' memory, 2) accurately reflects what witness once knew, if 3) the witness is now unable to testify fully and accurately about the events. Public Records. The regularly kept records of activities that a public agency has a duty to report or regularly keeps in the normal course of business are admissible, even though they are hearsay. Civil judgments can be included in this category Any report or record of activities, events, opinions, diagnoses, etc. 1) made by a person with personal knowledge 2) as a regularly practiced activity of any business, profession, occupation, institution, etc. is admissible, even if hearsay, to prove that an event occurred or an act was committed IF 3) a custodian or other qualified witness testifies to show these 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 any fact essential to the judgment Ancient Document Collected Recollection Public Records Unavailability Immaterial Business Records Judgements of Prior Convictions Vital Statistics Property Interest Documents Learned treatises Family Records Market Reports Judgement 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	
<h3>1</h3> <p>Is the evidence hearsay?</p>	<p>OBJECTIONS: WHAT TO SAY</p> <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>
<p>Out-of-court statement</p> <ul style="list-style-type: none">"Out of court" means anything said by someone other than a witness on the stand.Statements include writings.	
<p>Offered for the truth of the matter stated</p> <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>	
<h3>2</h3> <p>Is there an applicable hearsay exception?</p> <p>Common Exceptions:</p> <ul style="list-style-type: none">Admission by a Party OpponentBusiness Record	<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>



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. Not in section 1242. 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) trustworthiness circumstances.

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Does not require that event was an "exciting" one. Contemporaneous Statement stmt of past or present mental/physical condition admissible if for medical diag/treatment, but only if: (1) declarant was 12 or younger when stmt made and (2) stmt described an act of child abuse or neglect. Then Existing State of mind, emotion, physical condition. Exception: under federal law only when a statement against interest is offered in criminal defense. Corroborating evidence of inherent trustworthiness is required under the federal rule if the statement 1) would have exposed the declarant to criminal liability) is offered in criminal defense of another accused. The declarant must speak while under the stressful influence of a startling event or condition. An excited utterance requires a startling event and the declarant must be under stress at the time of the statement. "Immediately afterward" means an immediate verbal response upon perception of an event. The Federal wording of the rule is broader than to admit statements made to physician consulted for the purpose of enabling him to testify, even if no treatment contemplated. Under "Hillmon Doctrine" a person's stmt that they plan/intend to do something admissible as evidence of "present mental condition" to prove that they later did the thing they said they intended to do. Document must be at least 30 years old. The memorandum or recorded statement can NOT be offered into evidence as an exhibit by the party offering it, but it may be entered as an exhibit at the request of the opposing party. But police and law enforcement records cannot be admitted against a criminal defendant under this exception. Under California rules a claim based on business records MUST be authenticated by a custodian of records available to testify who is knowledgeable about who created the record offered, how and why, but the federal rules now allow the record to be admitted if it is certified by the custodian of records. California rules DO ALLOW a nolo contendere plea to be used as evidence of a conviction. The absence of existing records when they otherwise would exist also can be admitted as evidence as proof that an event did not occur or an act was not committed.

(FRE 803(7); CEC 1272) The absence of such records determined after a diligent search has been made for them can also be used to prove an event did not occur or an act was not committed.

(FRE 803(10); CEC 1284) Federal rules require these to be works expert witness relies on or brought to the expert's attention on cross- and claimed to be a reliable California hearsay exceptions cheat sheet. Exceptions to the Hearsay Rule Hearsay (v.1-2017): Absent an exclusion, exemption, or exception hearsay evidence is inadmissible. Hearsay is an out of court statement offered to prove the truth of the matter asserted, unless they are 'non-hearsay' or fall into one of the enumerated exceptions to the hearsay rule, some of which are discussed below. 2. 1 Jones v. U.S., 17 A.3d 628 (D.C. 2011) (On proper objection, the party seeking admission of the out-of-court statement has the burden to identify the appropriate exception and to explain how it is applicable). (1) Hearsay and Its Exceptions (see 37 U.S.F. L. Rev. 351 (2003)) (2) Expert Testimony and the Opinion Rule (see 37 U.S.F. L. Rev. 411 (2003)) (3) The Role of Judge and Jury (see 37 U.S.F. L. Rev. 1003 (2003)). The hearsay rule excludes out-of-court statements submitted for their truth, except as provided by law —such as when it falls within an established exception. Cal. Evid. Code § 1220, et seq.; FRE 801 (c), 803, 804 and 807. The rationale for excluding out-of-court statements attempted to be used in court. 2015 California Code Evidence Code - EVIDDIVISION1 - HEARSAY EVIDENCECHAPTER 2 - Exceptions to the Hearsay Rule. ARTICLE 1 - Confessions and Admissions 1220-1228.1. ARTICLE 2 - Declarations Against Interest 1230. Rule 803 - HEARSAY EXCEPTIONS: present sense impressions, excited utterances, statements of present mental state or physical condition, statements for medical diagnosis or treatment, recorded recollection, business records, learned treatises, reputation as to character, judgment of previous conviction. Hearsay Admission Exceptions Admissions - Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity. HEARSAY EXCEPTIONS - IT IS HEARSAY AND WE DON'T CARE. I. EXCEPTIONS BASED ON LACK OF TIME OR SUBJECTIVE CONCERNS A. PRESENT SENSE IMPRESSION - Rule 803(1) 1. ELEMENTS OF THE EXCEPTION 1. A statement 2. Describing or explaining an event or condition 3. Made while the declarant was perceiving the event or condition, or immediately thereafter. 2. Hearsay (v.1-2017): Absent an exclusion, exemption, or exception hearsay evidence is inadmissible. Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay is generally inadmissible for three reasons. Hearsay is a quick cheat sheet - you can get through 99% of hearsay stuff if you know: Hearsay: (1) Out of court statement (2) offered for the truth of the matter. Non-Hearsay purposes: mental state, notice, duress, impeachment, independent. operative legal effect (non-exclusive list). California, like other states, recognizes a long list of exceptions to the hearsay rule, including excited utterances, dying declarations, prior inconsistent statements and prior recollection recorded. The language of the code section reads: 1200. Hearsay (v.1-2017): Absent an exclusion, exemption, or exception hearsay evidence is inadmissible. 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 Existing law provides exceptions to the hearsay rule, including an exception in criminal prosecutions for statements made by victims, when under 12 years of age, describing any act or attempted act of child abuse with or on the child by another, as specified. California Trial Objections Cheat Sheet. A must-have for any trial binder. This PDF doc contains objections in court cheat sheet. This 10- page .pdf document contains the legal authorities for dozens of common evidentiary objections in a easy-to-read chart. (a) Subject to Section 125, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by the hearsay rule when: Hearsay Exceptions Chart - Hearsay Statements that are not hearsay. Statement where the declarant is unavailable. Skip to document. Ask an Expert. Rule 803 of the Federal Rules of Evidence provides numerous exceptions to the hearsay rule. The most common are present-sense impressions, excited utterances, and statements on mental, emotional, or physical condition. Documents including public records, business records, family records, and church records. Download California Bar Exam Evidence Hearsay Cheat Sheet. This document was uploaded by user and they confirmed that they have the permission to share it. If you are author or own the copyright of this book, please report to us by using this DMCA report form. Report DMCA. RULES OF EVIDENCE CHEAT SHEET (Please refer to "Simplified Rules of Evidence" section for the complete rule) Rules 402 and 403 - RELEVANT EVIDENCE is generally admissible unless it is unfairly prejudicial, may confuse the issue, or waste the court's time. Rule 404 - CHARACTER EVIDENCE is generally not admissible to prove conduct, except: recent discussion of the present California hearsay rule and its various exceptions. 2. 5 WIGMORE, EVIDENCE § 1638a (3d ed. 1940); McCOORMICK, EVIDENCE § 291 (1954). 3. CAL. CODE CIV. PROC. § 1920: ENTRIES IN OFFICIAL BOOKS PRIMA FACIE EVIDENCE. California Hearsay Objections Hearsay Admission Exceptions Admissions - Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual. California Trial Hearsay Exceptions. Categories & Exceptions Supporting Authorities. Hearsay Admissions Exceptions. Admissions Cal. Evid. Code § 1220. Adoptive Admissions Cal. Evid. Code § 1221. Authorized Admissions Cal. Evid. Code § 1222. Co-Conspirators' Admissions Cal. Evid. Code § 1223. Declarant's Liability Cal. Evid. Code § 1224. DIVISION 10 - HEARSAY EVIDENCE. CHAPTER 2 - Exceptions to the Hearsay Rule. ARTICLE 12 - Reputation and Statements Concerning Community History, Property Interests, and Character 1320-1324. ARTICLE 16 - Statements by Children Under the Age of 12 in Child Neglect and Abuse Proceedings 1360. All rights reserved. Unauthorized reproduction, in whole or in part is strictly prohibited.