

HEARSAY

DEFINITION OF HEARSAY

Hearsay is defined as “an out of court statement offered for the truth of the matter asserted.”

REASONS FOR HEARSAY RULE

- * Factfinder cannot evaluate Declarant's credibility, ability to remember or ability to observe at the time the out of court statement is made.
- * Out of court statement may not be under oath.
- * Declarant (if not testifying at trial) is not subject to cross-examination at trial.

THREE PRONGS MUST BE MET

The “Statement” must be:

1. An assertion (includes non-verbal communication such as a nod, shake of head, “okay” sign, etc.); and
2. Made out of court; and
3. Offered for the truth of the matter asserted.

IT SOUNDS LIKE HEARSAY, BUT IT'S NOT. NON-HEARSAY

Verbal Acts (Independent Legal Significance)

Examples: Contracts, Checks, Slander, Fraud

Effect on the listener / reader

Witness' Prior Inconsistent Statement (801)(e)(1))

Opposing Party's Statement (801(e)(2))

Deponent's Statement (801(e)(3))

HEARSAY EXCEPTIONS (RULE 803)

Present Sense Impression – 803 (1)

Statement describes event or condition made while or immediately after Declarant perceived it.

Excited Utterance – 803 (2)

Statement relates to a startling event or condition made while Declarant is under stress caused by the event / condition.

Then Existing Mental, Emotional or Physical Condition – 803 (3)

Statement relates to present mental, emotional or physical condition of Declarant.

Medical Diagnosis or Treatment – 803 (4)

Statement made to healthcare provider to facilitate diagnosis or treatment.

HEARSAY EXCEPTIONS (RULE 803) (Continued)

Recorded Recollection - 803 (5)

Witness no longer remembers statement, but wrote it down previously. If recorded statement meets test in Rule 803(5), witness may read statement, but only opponent can offer it.

Records of Regularly Conducted Activity (Business Records) - 803 (6)

Record must meet these requirements:

- * Regular practice of the business to make the record;
- * Kept in the course of a regularly conducted business activity;
- * Made at or near the time that the event or act occurred;
- * Made by person with knowledge of the event/act recorded.

HOWEVER: Record not admissible if circumstances indicate lack of trustworthiness. (803(6)(E).

HEARSAY EXCEPTIONS (RULE 803) (Continued)

Absence of Entry in Records - 803 (7)

Statement that certain business records cannot be located where they are expected to be found is admissible to prove matter did not exist or occur unless circumstances show lack of trustworthiness.

Public Records and Reports - 803 (8) (relating to civil cases)

(A) Record must set forth:

- (i)** the activities of the office or agency;
- (ii)** matters observed pursuant to legal duty to report; or
- (iii)** factual findings resulting from a legally authorized investigation made pursuant to authority granted by law; and

(B) Opponent fails to show the sources of information or other circumstances indicate a lack of trustworthiness.

HEARSAY EXCEPTIONS (RULE 803) (Continued)

Learned Treatises - 803 (18) – Use with Experts

Statements contained in scientific journals considered authoritative by the expert may be admissible and read when directing or cross-examining the expert, but the article will not be admitted as an exhibit.

Statement Against Interest - 803 (24)

Declarant's statement is admissible if:

- (1) a reasonable person in Declarant's position would not have made the statement unless believed to be true because
- (2) when made, it was so contrary to Declarant's proprietary or pecuniary interests; or
- (3) it invalidates Declarant's claim against another; or
- (4) it exposes Declarant to civil or criminal liability; or
- (5) it makes Declarant object of hatred, ridicule or disgrace.

HEARSAY WITHIN HEARSAY (RULE 805)

Even if a document itself is admissible because it meets a hearsay exception, it may contain statements which are hearsay which are not admissible unless they can meet the requirements of a hearsay exception.

If the statements cannot meet an exception, the Court may allow the admissibility of the document provided that the hearsay statement is redacted.