CCCBA – Crim, MCLE Spectacular
11/08/2024
Hearsay… What?
Speakers: Thomas Daly, Rachel Chapman, Danielle Jones

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HEAR…SAY WHAT!?

AGENDA

Hearsay Definition

Components

Non-Hearsay Purpose

Multiple Hearsay

Unavailable Witness

Exceptions

“HEARSAY EVIDENCE” EV. CODE 1200

STATEMENT

MADE OTHER THAN BY A WITNESS WHILE TESTIFYING

OFFERED TO PROVE THE TRUTH OF THE MATTER STATED

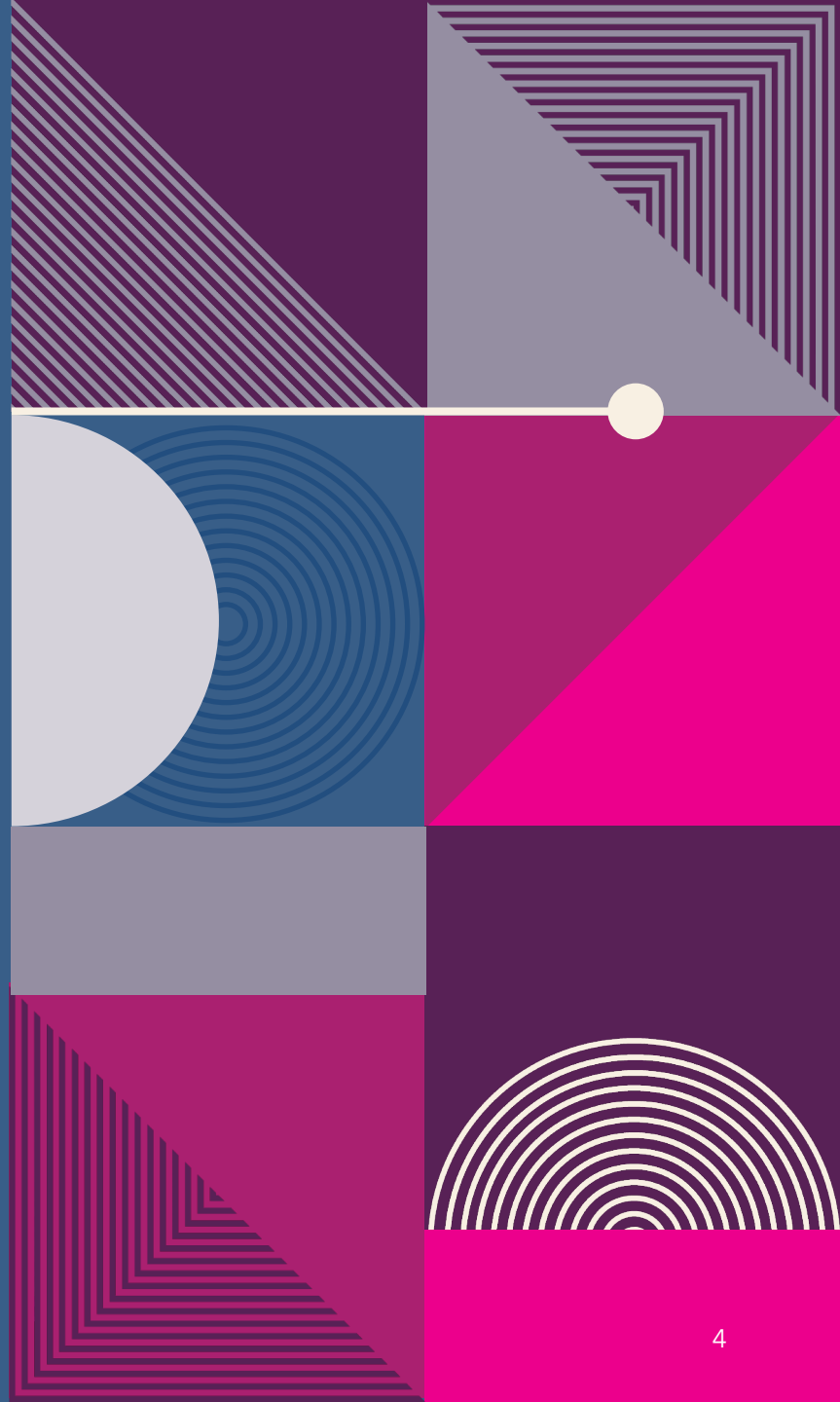
COMPONENTS

Speaker

Timing of the Statement

Conduct as a Statement

Truth of the Matter Asserted



"TRUTH OF THE MATTER ASSERTED"

Non-Hearsay Purposes

NON-HEARSAY PURPOSES

- Indicia
- Proving knowledge or notice
- Proving memory
- False statements
- Verbal acts
- Operative acts

MULTIPLE HEARSAY

AVAILABLE VS. UNAVAILABLE WITNESS

EVIDENCE CODE 240

- Privilege
- Disqualified
- Dead, Physical or Mental Illness
- Absent and Court unable to compel attendance
- Absent and party unable to secure attendance despite reasonable diligence
- Persistent in refusing to testify despite contempt finding

ARE THERE ANY EXCEPTIONS TO THE HEARSAY RULE??

..JUST A FEW

EXCEPTIONS .. JUST THE BEGINNING

- Testimony by Declaration
  - *Elkins v. Superior Court (2007) 41 Cal.4th 1337)*
- Party Admissions
  - *Section 1220*
- Adoptive Admissions
  - *Section 1221*
- Declaration Against Interest / Statement Against Interest
  - *Section 1230*
- *(Certified records?) (Judicial Notice?)*
- Business Records
  - *Section 1271*
- Official Records
  - *Section 1280*
- Prior Inconsistent Statements
  - *Section 1230*
  - *Section 770*

THANK YOU

CRIMINAL LAW SECTION

Danielle Jones

Rachel Chapman

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MCLE Spectacular
11/08/2024

CCCBA Criminal Law Section
Hear… Say What?!
Materials

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1200

§ 1200. The hearsay rule

Currentness

(a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

(b) Except as provided by law, hearsay evidence is inadmissible.

(c) This section shall be known and may be cited as the hearsay rule.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

COMMENT--SENATE COMMITTEE ON JUDICIARY

Section 1200 states the hearsay rule. It defines hearsay evidence and provides that such evidence is inadmissible unless it meets the conditions of an exception established by law. Chapter 2 (commencing with Section 1220) of this division contains a series of exceptions to the hearsay rule. Other exceptions may be found in other statutes or in decisional law. But the fact that certain evidence meets the requirements of an exception to the hearsay rule does not necessarily make such evidence admissible. The exception merely provides that such evidence is not inadmissible under the hearsay rule. If there is some other rule of law--such as privilege or the best evidence rule--that makes the evidence inadmissible, the court is not authorized to admit the evidence merely because it falls within an exception to the hearsay rule. See also Evidence Code § 352.

Although the California courts have excluded hearsay evidence since the earliest days of the State (see, *e.g.,* People v. Bob, 29 Cal.2d 321, 175 P.2d 12 (1946); Kilburn v. Ritchie, 2 Cal. 145 (1852)), the hearsay rule has never been clearly stated in statutory form. Code of Civil Procedure Section 1845 (superseded by Evidence Code Section 702) has at times been considered to be the statutory basis for the hearsay rule. People v. Spriggs, 60 Cal.2d 868, 872, 36 Cal.Rptr. 841, 844, 389 P.2d 377, 380 (1964). Analytically, however, Section 1845 does not deal with hearsay at all; it deals only with the requirement of personal knowledge. It is true that the section provides that there is an exception to the personal knowledge requirement "in those few express cases in which . . . the declarations of others, are admissible"; but "this section is inaccurate, so far as it refers to [this] exception. In such case the witness testifies merely to the making of the declaration, which he must have heard in order to be a competent witness to testify to

it, and hence, the fact to which he testifies is a fact within his own knowledge, derived from his own perceptions." Sneed v. Marysville Gas etc. Co., 149 Cal. 704, 708, 87 Pac. 376, 378 (1906).

"Hearsay evidence" is defined in Section 1200 as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." Under this definition, as under existing case law, a statement that is offered for some purpose other than to prove the fact stated therein is not hearsay. Smith v. Whittier, 95 Cal. 279, 30 Pac. 529 (1892). See Witkin, California Evidence §§ 215-218 (1958).

The word "statement" used in the definition of "hearsay evidence" is defined in Section 225 as "oral or written verbal expression" or "nonverbal conduct . . . intended . . . as a substitute for oral or written verbal expression." Hence, evidence of a person's conduct out of court is not inadmissible under the hearsay rule expressed in Section 1200 unless that conduct is clearly assertive in character. Nonassertive conduct is not hearsay.

Some California cases have regarded evidence of nonassertive conduct as hearsay evidence if it is offered to prove the actor's belief in a particular fact as a basis for an inference that the fact believed is true. See, *e.g.,* Estate of De Laveaga, 165 Cal. 607, 624, 133 Pac. 307, 314 (1913) ("the manner in which a person whose sanity is in question was treated by his family is not, taken alone, competent substantive evidence tending to prove insanity, for it is a mere extra-judicial expression of opinion on the part of the family"); People v. Mendez, 193 Cal. 39, 52, 223 Pac. 65, 70 (1924) ("circumstances of flight [of other persons from the scene of a crime] are in the nature of confessions . . . and are, therefore, in the nature of hearsay evidence") (overruled on other grounds in People v. McCaughan, 49 Cal.2d 409, 420, 317 P.2d 974, 981 (1957)).

Other California cases, however, have held that evidence of nonassertive conduct is not hearsay even though offered to prove that the belief giving rise to the conduct was based on fact. See, *e.g.,* People v. Reifenstuhl, 37 Cal.App.2d 402, 99 P.2d 564 (1940) (hearing denied) (incoming telephone calls made for the purpose of placing bets admissible over hearsay objection to prove that place of reception was bookmaking establishment).

Under the Evidence Code, nonassertive conduct is not regarded as hearsay for two reasons. *First,* one of the principal reasons for the hearsay rule--to exclude declarations where the veracity of the declarant cannot be tested by cross-examination--does not apply because such conduct, being nonassertive, does not involve the veracity of the declarant. *Second,* there is frequently a guarantee of the trustworthiness of the inference to be drawn from such nonassertive conduct because the actor has based his actions on the correctness of his belief, *i.e.,* his actions speak louder than words.

Of course, if the probative value of evidence of nonassertive conduct is outweighed by the probability that such evidence will be unduly prejudicial, confuse the issues, mislead the jury, or consume too much time, the judge may exclude the evidence under Section 352.

Under Section 1200, exceptions to the hearsay rule may be found either in statutes or in decisional law. Under existing law, too, the courts have recognized exceptions to the exclusionary rule in addition to those exceptions expressed in the statutes. See People v. Spriggs, 60 Cal.2d 868, 874, 36 Cal.Rptr. 841, 844, 389 P.2d 377, 380 (1964).

Notes of Decisions (755)

West's Ann. Cal. Evid. Code § 1200, CA EVID § 1200
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1201

§ 1201. Multiple hearsay

Currentness

A statement within the scope of an exception to the hearsay rule is not inadmissible on the ground that the evidence of such statement is hearsay evidence if such hearsay evidence consists of one or more statements each of which meets the requirements of an exception to the hearsay rule.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 650, p. 2007, § 8.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1965 Enactment

Section 1201 makes it possible to use admissible hearsay to prove another statement that is also admissible hearsay. For example, under Section 1201, an official reporter's transcript of the testimony at a previous trial may be used to prove the testimony previously given (Evidence Code § 1280); the former testimony may be used as evidence (Evidence Code § 1291) to prove that a party made a statement; and the party's statement is admissible against him as an admission (Evidence Code § 1220). Thus, under Section 1201, the evidence of the admission contained in the transcript is admissible because each of the hearsay statements involved is within an exception to the hearsay rule.

Although no California case has been found where the admissibility of "multiple hearsay" has been analyzed and discussed, the practice is apparently in accord with the rule stated in Section 1201. See, *e.g.,* People v. Collup, 27 Cal.2d 829, 167 P.2d 714 (1946) (transcript of former testimony used to prove admission). [7 Cal.L.Rev.Comm. Reports 1 (1965)].

1967 Amendment

This amendment is designed to clarify the meaning of Section 1201 without changing its substantive effect. [8 Cal.L.Rev.Comm. Reports 101 (1967)].

Notes of Decisions (35)

West's Ann. Cal. Evid. Code § 1201, CA EVID § 1201
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1202

§ 1202. Credibility of hearsay declarant

Currentness

Evidence of a statement or other conduct by a declarant that is inconsistent with a statement by such declarant received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing. For the purposes of this section, the deponent of a deposition taken in the action in which it is offered shall be deemed to be a hearsay declarant.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 1202 deals with the impeachment of a declarant whose hearsay statement is in evidence as distinguished from the impeachment of a witness who has testified. It clarifies two points. *First,* evidence to impeach a hearsay declarant is not to be excluded on the ground that it is collateral. *Second,* the rule applying to the impeachment of a witness--that a witness may be impeached by an inconsistent statement only if he is provided with an opportunity to explain or deny it--does not apply to a hearsay declarant.

When hearsay evidence in the form of former testimony has been admitted, the California courts have permitted a party to impeach the hearsay declarant with evidence of an inconsistent statement made by the hearsay declarant *after* the former testimony was given, even though the declarant was never given an opportunity to explain or deny the inconsistency. People v. Collup, 27 Cal.2d 829, 167 P.2d 714 (1946). Apparently, however, former testimony may not be impeached by evidence of an inconsistent statement made *prior* to the former testimony unless the would-be impeacher either did not know of the inconsistent statement at the time the former testimony was given or unless he had provided the declarant with an opportunity to explain or deny the inconsistent statement. People v. Greenwell, 20 Cal.App.2d 266, 66 P.2d 674 (1937), as limited by People v. Collup, 27 Cal.2d 829, 167 P.2d 714 (1946). The courts permit dying declarations to be impeached by evidence of contradictory statements by the deceased despite the lack of any foundation, for only in very rare cases would it be possible to provide the declarant with an opportunity to explain or deny the inconsistency. People v. Lawrence, 21 Cal. 368 (1863).

Section 1202 substitutes for this case law a uniform rule permitting a hearsay declarant to be impeached by inconsistent statements in all cases, whether or not the declarant has been given an opportunity to explain or deny the inconsistency. If the hearsay declarant is unavailable as a witness, the party against whom the evidence is admitted should not be deprived of both his right to cross-examine and his right to impeach. *Cf.* People v. Lawrence, 21 Cal. 368, 372 (1863). If the hearsay declarant

is available, the party electing to use the hearsay of such a declarant should have the burden of calling him to explain or deny any alleged inconsistencies.

Of course, the trial judge may curb efforts to impeach hearsay declarants if he determines that the inquiry is becoming too remote from the issues that are actually at stake in the litigation. Evidence Code § 352.

Section 1235 provides that evidence of inconsistent statements made by a trial witness may be admitted to prove the truth of the matter stated. No similar exception to the hearsay rule is applicable to a hearsay declarant's inconsistent statements that are admitted under Section 1202. Hence, the hearsay rule prohibits any such statement from being used to prove the truth of the matter stated. If the declarant is not a witness and is not subject to cross-examination upon the subject matter of his statements, there is no sufficient guarantee of the trustworthiness of the statements he has made out of court to warrant their reception as substantive evidence unless they fall within some recognized exception to the hearsay rule. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (72)

West's Ann. Cal. Evid. Code § 1202, CA EVID § 1202
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1203.1

§ 1203.1. Hearsay offered at preliminary examination; application of § 1203

Currentness

Section 1203 is not applicable if the hearsay statement is offered at a preliminary examination, as provided in Section 872 of the Penal Code.

Credits

(Added by Initiative Measure (Prop. 115), approved June 5, 1990, eff. June 6, 1990.)

Notes of Decisions (9)

West's Ann. Cal. Evid. Code § 1203.1, CA EVID § 1203.1
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 2. Exceptions to the Hearsay Rule
Article 1. Confessions and Admissions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1220

§ 1220. Admission of party

Currentness

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.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 1220 states existing law as found in subdivision 2 of Section 1870 of the Code of Civil Procedure. The rationale underlying this exception is that the party cannot object to the lack of the right to cross-examine the declarant since the party himself made the statement. Moreover, the party can cross-examine the witness who testifies to the party's statement and can explain or deny the purported admission. The statement need not be one which would be admissible if made at the hearing. See Shields v. Oxnard Harbor Dist., 46 Cal.App.2d 477, 116 P.2d 121 (1941).

In a criminal action, a defendant's statement is not admissible under this section unless it was made voluntarily. Evidence Code § 1204. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (824)

West's Ann. Cal. Evid. Code § 1220, CA EVID § 1220
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 2. Exceptions to the Hearsay Rule
Article 1. Confessions and Admissions (Refs & Annos)

West's Ann.Cal.Evid.Code § 1221

§ 1221. Adoptive admission

Currentness

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 1221 restates an exception found in subdivision 3 of Section 1870 of the Code of Civil Procedure. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (327)

West's Ann. Cal. Evid. Code § 1221, CA EVID § 1221
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 2. Exceptions to the Hearsay Rule
Article 2. Declarations Against Interest (Refs & Annos)

West's Ann.Cal.Evid.Code § 1230

§ 1230. Declarations against interest

Currentness

Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

COMMENT--ASSEMBLY COMMITTEE ON JUDICIARY

Except for the requirement that the declarant be shown to be unavailable as a witness, Section 1230 codifies the hearsay exception for declarations against interest as that exception has been developed by the California courts (People v. Spriggs, 60 Cal.2d 868, 36 Cal.Rptr. 841, 389 P.2d 377 (1964)) and possibly expends the exception. It is not clear whether the existing exception for declarations against interest applies to statements that make the declarant an object of hatred, ridicule, or social disgrace in the community.

Under existing law, a declaration against interest is admissible regardless of the availability of the declarant to testify as a witness. People v. Spriggs, 60 Cal.2d 868, 36 Cal.Rptr. 841, 389 P.2d 377 (1964). Section 1230, however, conditions admissibility upon the unavailability of the declarant in order to require the proponent of the evidence to use the in-court testimony of the declarant if it is possible to do so. If the declarant disappoints the proponent and testifies inconsistently, the proponent may then show the prior inconsistent statement as substantive evidence of the facts stated. See Evidence Code § 1235 and the Comment thereto.

Section 1230 supersedes the partial and inaccurate statements of the exception for declarations against interest found in Code of Civil Procedure Sections 1853, 1870(4), and 1946(1). See People v. Spriggs, 60 Cal.2d 868, 871-872, 36 Cal.Rptr. 841, 844-845, 389 P.2d 377, 380-381 (1964). The requirement that the declarant have "sufficient knowledge of the subject" continues the similar common law requirement stated in Code of Civil Procedure Section 1853 that the declarant must have had some peculiar means--such as personal observation--for obtaining accurate knowledge of the matter stated. See 5 Wigmore, Evidence § 1471 (3d ed. 1940).

Notes of Decisions (387)

West's Ann. Cal. Evid. Code § 1230, CA EVID § 1230
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 2. Exceptions to the Hearsay Rule
Article 7. Business Records (Refs & Annos)

West's Ann.Cal.Evid.Code § 1271

§ 1271. Admissible writings

Currentness

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;

(b) The writing was made at or near the time of the act, condition, or event;

(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 1271 is the business records exception to the hearsay rule. It is stated in language taken from the Uniform Business Records as Evidence Act (Sections 1953e-1953h of the Code of Civil Procedure) and from Rule 63(13) of the Uniform Rules of Evidence.

Section 1271 requires the judge to find that the sources of information and the method and time of preparation of the record "were such as to indicate its trustworthiness." Under the language of Code of Civil Procedure Section 1953f, the judge must determine that the sources of information and method and time of preparation "were such as to justify its admission." The language of Section 1271 is more accurate, for the cases hold that admission of a business record is not justified when there is no preliminary showing that the record is reliable or trustworthy. *E.g.,* People v. Grayson, 172 Cal.App.2d 372, 341 P.2d 820 (1959) (hotel register rejected because "not shown to be true and complete").

"The chief foundation of the special reliability of business records is the requirement that they must be based upon the first-hand observation of someone whose job it is to know the facts recorded. . . . But if the evidence in the particular case discloses

that the record was not based upon the report of an informant having the business duty to observe and report, then the record is not admissible under this exception, to show the truth of the matter reported to the recorder." McCormick, Evidence § 286 at 602 (1954), as quoted in MacLean v. City & County of San Francisco, 151 Cal.App.2d 133, 143, 311 P.2d 158, 164 (1957).

Applying this standard, the cases have rejected a variety of business records on the ground that they were not based on the personal knowledge of the recorder or of someone with a business duty to report to the recorder. Police accident and arrest reports are usually held inadmissible because they are based on the narrations of persons who have no business duty to report to the police. MacLean v. City & County of San Francisco, 151 Cal.App.2d 133, 311 P.2d 158 (1957); Hoel v. City of Los Angeles, 136 Cal.App.2d 295, 288 P.2d 989 (1955). They are admissible, however, to prove the fact of the arrest. Harris v. Alcoholic Bev. Con. Appeals Bd., 212 Cal.App.2d 106, 23 Cal.Rptr. 74 (1963). Similar investigative reports on the origin of fires have been held inadmissible because they were not based on personal knowledge. Behr v. County of Santa Cruz, 172 Cal.App.2d 697, 342 P.2d 987 (1959); Harrigan v. Chaperon, 118 Cal.App.2d 167, 257 P.2d 716 (1953).

Section 1271 will continue the law developed in these cases that a business report is admissible only if the sources of information and the time and method of preparation are such as to indicate its trustworthiness. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (458)

West's Ann. Cal. Evid. Code § 1271, CA EVID § 1271
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 10. Hearsay Evidence (Refs & Annos)
Chapter 2. Exceptions to the Hearsay Rule
Article 8. Official Records and Other Official Writings (Refs & Annos)

West's Ann.Cal.Evid.Code § 1280

§ 1280. Record by public employee

Currentness

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

(a) The writing was made by and within the scope of duty of a public employee.

(b) The writing was made at or near the time of the act, condition, or event.

(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1996, c. 642 (A.B.1387), § 4.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 1280 restates the substance of and supersedes Sections 1920 and 1926 of the Code of Civil Procedure. Although Sections 1920 and 1926 declare unequivocally that entries in public records are prima facie evidence of the facts stated, "it has been held repeatedly that those sections cannot have universal literal application." Chandler v. Hibberd, 165 Cal.App.2d 39, 65, 332 P.2d 133, 149 (1958). In fact, the cases require the same showing of trustworthiness in regard to an official record as is required under the business records exception. Behr v. County of Santa Cruz, 172 Cal.App.2d 697, 342 P.2d 987 (1959); Hoel v. City of Los Angeles, 136 Cal.App.2d 295, 288 P.2d 989 (1955). Section 1280 continues the law declared in these cases by explicitly requiring the same showing of trustworthiness that is required in Section 1271. See the Comment to Section 1271.

The evidence that is admissible under this section is also admissible under Section 1271, the business records exception. However, Section 1271 requires a witness to testify as to the identity of the record and its mode of preparation in every instance. In contrast, Section 1280, as does existing law, permits the court to admit an official record or report without necessarily requiring a witness to testify as to its identity and mode of preparation if the court takes judicial notice or if sufficient independent evidence shows that the record or report was prepared in such a manner as to assure its trustworthiness. See, *e.g.,* People v. Williams, 64 Cal. 87, 27 Pac. 939 (1883) (census report admitted, the court judicially noticing the statutes prescribing the method of preparing the report); Vallejo etc. R.R. v. Reed Orchard Co., 169 Cal. 545, 571, 147 Pac. 238, 250 (1915) (statistical report of state agency admitted, the court judicially noticing the statutory duty to prepare the report). [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (274)

West's Ann. Cal. Evid. Code § 1280, CA EVID § 1280
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 125

§ 125. Conduct

Currentness

"Conduct" includes all active and passive behavior, both verbal and nonverbal.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

This broad definition of "conduct" is self-explanatory. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (1)

West's Ann. Cal. Evid. Code § 125, CA EVID § 125
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 135

§ 135. Declarant

Currentness

"Declarant" is a person who makes a statement.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Ordinarily, the word "declarant" is used in the Evidence Code to refer to a person who makes a hearsay statement as distinguished from the witness who testifies to the content of the statement. See Evidence Code § 1200 and the Comment thereto. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

West's Ann. Cal. Evid. Code § 135, CA EVID § 135
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 175

§ 175. Person

Currentness

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1994, c. 1010 (S.B.2053), § 103.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

This broad definition is similar to definitions found in other codes. *E.g.,* Govt.Code § 17; Vehicle Code § 470. See also Code Civ.Proc. § 17. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (4)

West's Ann. Cal. Evid. Code § 175, CA EVID § 175
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 210

§ 210. Relevant evidence

Currentness

"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

This definition restates existing law. *E.g.,* Larson v. Solbakken, 221 Cal.App.2d 410, 419, 34 Cal.Rptr. 450, 455 (1963); People v. Lint, 182 Cal.App.2d 402, 415, 6 Cal.Rptr. 95, 102-103 (1960). Thus, under Section 210, "relevant evidence" includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred. This retains existing law as found in subdivisions 1 and 15 of Code of Civil Procedure Section 1870, which are superseded by the Evidence Code. In addition, Section 210 makes it clear that evidence relating to the credibility of witnesses and hearsay declarants is "relevant evidence." This restates existing law. See Code Civ.Proc. §§ 1868, 1870(16) (credibility of witnesses), which are superseded by the Evidence Code, and Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence), 6 Cal.Law Revision Comm'n, Rep., Rec. & Studies Appendix at 339-340, 569-575 (1964) (credibility of hearsay declarants). [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (430)

West's Ann. Cal. Evid. Code § 210, CA EVID § 210
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 225

§ 225. Statement

Currentness

"Statement" means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

The significance of this definition is explained in the Comment to Evidence Code Section 1200. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (16)

West's Ann. Cal. Evid. Code § 225, CA EVID § 225
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Limited on Constitutional Grounds by People v. Herrera, Cal., July 01, 2010

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 240

§ 240. Unavailable as a witness

Effective: January 1, 2011
Currentness

(a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is any of the following:

(1) Exempted or precluded on the ground of privilege from testifying concerning the matter to which his or her statement is relevant.

(2) Disqualified from testifying to the matter.

(3) Dead or unable to attend or to testify at the hearing because of then-existing physical or mental illness or infirmity.

(4) Absent from the hearing and the court is unable to compel his or her attendance by its process.

(5) Absent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process.

(6) Persistent in refusing to testify concerning the subject matter of the declarant's statement despite having been found in contempt for refusal to testify.

(b) A declarant is not unavailable as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the declarant from attending or testifying.

(c) Expert testimony that establishes that physical or mental trauma resulting from an alleged crime has caused harm to a witness of sufficient severity that the witness is physically unable to testify or is unable to testify without suffering substantial trauma may constitute a sufficient showing of unavailability pursuant to paragraph (3) of subdivision (a). As used in this section, the term "expert" means a physician and surgeon, including a psychiatrist, or any person described by subdivision (b), (c), or (e) of Section 1010.

The introduction of evidence to establish the unavailability of a witness under this subdivision shall not be deemed procurement of unavailability, in absence of proof to the contrary.

Credits

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1984, c. 401, § 1; Stats.1988, c. 485, § 1; Stats.2010, c. 537 (A.B.1723), § 1.)

Editors' Notes

COMMENT--ASSEMBLY COMMITTEE ON JUDICIARY

Usually, the phrase "unavailable as a witness" is used in the Evidence Code to state the condition that must be met whenever the admissibility of hearsay evidence is dependent upon the declarant's present unavailability to testify. See, *e.g.,* Evidence Code §§ 1230, 1251, 1291, 1292, 1310, 1311, 1323. See also Code Civ.Proc. § 2016(d)(3) and Penal Code §§ 1345 and 1362, relating to depositions.

"Unavailable as a witness" includes, in addition to cases where the declarant is physically unavailable (*i.e.,* dead, insane, or beyond the reach of the court's process), situations in which the declarant is legally unavailable (*i.e.,* prevented from testifying by a claim of privilege or disqualified from testifying). Of course, if the declaration made out of court is itself privileged, the fact that the declarant is unavailable to testify at the hearing on the ground of privilege does not make the declaration admissible. The exceptions to the hearsay rule that are set forth in Division 10 (commencing with Section 1200) of the Evidence Code do not declare that the evidence described is necessarily admissible. They merely declare that such evidence is not inadmissible under the hearsay rule. If there is some other rule of law--such as privilege--which makes the evidence inadmissible, the court is not authorized to admit the evidence merely because it falls within an exception to the hearsay rule. Accordingly, the hearsay exceptions permit the introduction of evidence where the declarant is unavailable because of privilege only if the declaration itself is not privileged or is not inadmissible for some other reason.

Subdivision (b) is designed to establish safeguards against sharp practices and, in the words of the Commissioners on Uniform State Laws, to assure "that unavailability is honest and not planned in order to gain an advantage." Uniform Rules of Evidence, Rule 62 Comment. Under this subdivision, a party may not arrange a declarant's disappearance in order to use the declarant's out-of-court statement. Moreover, if the out-of-court statement is that of the party himself, he may not create "unavailability" under this section by invoking a privilege not to testify.

Section 240 substitutes a uniform standard for the varying standards of unavailability provided by the superseded Code of Civil Procedure sections providing hearsay exceptions. *E.g.,* Code Civ.Proc. § 1870(4), (8). The conditions constituting unavailability under these superseded sections vary from exception to exception without apparent reason. Under some of these sections, the evidence is admissible if the declarant is dead; under others, the evidence is admissible if the declarant is dead or insane; under still others, the evidence is admissible if the declarant is absent from the jurisdiction. Despite the express language of these superseded sections, Section 24 may, to a considerable extent, restate existing law. Compare People v. Spriggs, 60 Cal.2d 868, 875, 36 Cal.Rptr. 841, 845, 389 P.2d 377, 381 (1964) (generally consistent with Section 240), with the older cases, some but not all of which are inconsistent with the Spriggs case and with Section 240. See the cases cited in Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence), 6 Cal.Law Revision Comm'n, Rep., Rec. & Studies Appendix at 411 note 7 (1964).

Notes of Decisions (180)

West's Ann. Cal. Evid. Code § 240, CA EVID § 240

Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 2. Words and Phrases Defined (Refs & Annos)

West's Ann.Cal.Evid.Code § 250

§ 250. Writing

Effective: January 1, 2003
Currentness

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.2002, c. 945 (A.B.1962), § 1.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

"Writing" is defined very broadly to include all forms of tangible expression, including pictures and sound recordings. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (44)

West's Ann. Cal. Evid. Code § 250, CA EVID § 250
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 3. General Provisions (Refs & Annos)
Chapter 4. Admitting and Excluding Evidence (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 350

§ 350. Only relevant evidence admissible

Currentness

No evidence is admissible except relevant evidence.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 350 restates and supersedes that portion of Code of Civil Procedure Section 1868 requiring the exclusion of irrelevant evidence. [7 Cal.L.Rev.Comm. Reports 1 (1965)].

Notes of Decisions (172)

West's Ann. Cal. Evid. Code § 350, CA EVID § 350
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 3. General Provisions (Refs & Annos)
Chapter 4. Admitting and Excluding Evidence (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann.Cal.Evid.Code § 352

§ 352. Discretion of court to exclude evidence

Currentness

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Section 352 expresses a rule recognized by statute and in several California decisions. Code Civ. Proc. §§ 1868, 2044 (superseded by the Evidence Code); Adkins v. Brett, 184 Cal. 252, 258, 193 Pac. 251, 254 (1920) ("the matter [of excluding prejudicial evidence] is largely one of discretion on the part of the trial judge"); Moody v. Peirano, 4 Cal.App. 411, 418, 88 Pac. 380, 382 (1906) ("a wide discretion is left to the trial judge in determining whether [evidence of a collateral nature] is admissible or not"). [7 Cal.L.Rev.Comm.Reports 1 (1965)].

Notes of Decisions (3145)

West's Ann. Cal. Evid. Code § 352, CA EVID § 352
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 6. Witnesses (Refs & Annos)
Chapter 5. Method and Scope of Examination (Refs & Annos)
Article 2. Examination of Witnesses

West's Ann.Cal.Evid.Code § 770

§ 770. Evidence of inconsistent statement of witness; exclusion; exceptions

Currentness

Unless the interests of justice otherwise require, extrinsic evidence of a statement made by a witness that is inconsistent with any part of his testimony at the hearing shall be excluded unless:

(a) The witness was so examined while testifying as to give him an opportunity to explain or to deny the statement; or

(b) The witness has not been excused from giving further testimony in the action.

Credits
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

Under Section 2052 of the Code of Civil Procedure, extrinsic evidence of a witness' inconsistent statement may be admitted only if the witness was given the opportunity, while testifying, to explain or deny the contradictory statement. Permitting a witness to explain or deny an alleged inconsistent statement is desirable, but there is no compelling reason to provide the opportunity for explanation *before* the inconsistent statement is introduced in evidence. Accordingly, unless the interests of justice otherwise require, Section 770 permits the judge to exclude evidence of an inconsistent statement only if the witness during his examination was not given an opportunity to explain or deny the statement *and* he has been unconditionally excused and is not subject to being recalled as a witness. Among other things, Section 770 will permit more effective cross-examination and impeachment of several collusive witnesses, since there need be no disclosure of prior inconsistency before all such witnesses have been examined.

Where the interests of justice require it, the court may permit extrinsic evidence of an inconsistent statement to be admitted even though the witness has been excused and has had no opportunity to explain or deny the statement. An absolute rule forbidding introduction of such evidence where the specified conditions are not met may cause hardship in some cases. For example, the party seeking to introduce the statement may not have learned of its existence until after the witness has left the court and is no longer available to testify. For the foundational requirements for the admission of a hearsay declarant's inconsistent statement, see Evidence Code § 1202 and the Comment thereto. [7 Cal.L.Rev.Comm.Reports 1 (1965)].

Notes of Decisions (357)

West's Ann. Cal. Evid. Code § 770, CA EVID § 770
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 11. Writings (Refs & Annos)
Chapter 2. Secondary Evidence of Writings (Refs & Annos)
Article 3. Photographic Copies and Printed Representations of Writings (Refs & Annos)

West's Ann.Cal.Evid.Code § 1552

§ 1552. Printed representation of computer-generated information

Effective: January 1, 2013
Currentness

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.

(c) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530.

Credits
(Added by Stats.1998, c. 100 (S.B.177), § 4, operative Jan. 1, 1999. Amended by Stats.2012, c. 735 (S.B.1303), § 1.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1998 Addition

Subdivision (a) of Section 1552 continues former Section 1500.5(c) without substantive change, except that the reference to "best available evidence" is changed to "an accurate representation," due to the replacement of the Best Evidence Rule with the Secondary Evidence Rule. See Section 1521 Comment. See also Section 255 (accurate printout of computer data is an "original").

Subdivision (b) continues former Section 1500.5(d) without substantive change. [26 Cal.L.Rev.Comm. Reports 369 (1996)].

Notes of Decisions (16)

West's Ann. Cal. Evid. Code § 1552, CA EVID § 1552
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Annotated California Codes
Evidence Code (Refs & Annos)
Division 11. Writings (Refs & Annos)
Chapter 2. Secondary Evidence of Writings (Refs & Annos)
Article 3. Photographic Copies and Printed Representations of Writings (Refs & Annos)

West's Ann.Cal.Evid.Code § 1553

§ 1553. Printed representation of video or digital images

Effective: January 1, 2013
Currentness

(a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system.

Credits
(Added by Stats.1998, c. 100 (S.B.177), § 5, operative Jan. 1, 1999. Amended by Stats.2012, c. 735 (S.B.1303), § 2.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1998 Addition

Section 1553 continues the last three sentences of the second paragraph of former Section 1500.6 without substantive change, except that the reference to “best available evidence” is changed to “an accurate representation,” due to the replacement of the Best Evidence Rule with the Secondary Evidence Rule. See Section 1521 Comment. [26 Cal.L.Rev.Comm. Reports 369 (1996)].

Notes of Decisions (12)

West's Ann. Cal. Evid. Code § 1553, CA EVID § 1553
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure
Title 3. Additional Provisions Regarding Criminal Procedure (Refs & Annos)
Chapter 7. Examination of the Case, and Discharge of the Defendant, or Holding Him to Answer (Refs & Annos)

West's Ann.Cal.Penal Code § 872

§ 872. Order holding defendant to answer; probable cause; testimony of law enforcement officer; officer qualifications

Effective: January 1, 2014
Currentness

(a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty, I order that he or she be held to answer to the same."

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

(c) For purposes of subdivision (b), a law enforcement officer is any officer or agent employed by a federal, state, or local government agency to whom all of the following apply:

(1) Has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

(2) Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws.

Credits

(Enacted in 1872. Amended by Code Am.1880, c. 60, p. 37, § 1; Stats.1905, c. 570, p. 762, § 1; Stats.1981, c. 1026, p. 3941, § 1; Initiative Measure (Prop. 115), approved June 5, 1990, eff. June 6, 1990; Stats.2005, c. 18 (A.B.557), § 1; Stats.2013, c. 125 (A.B.568), § 1.)

Notes of Decisions (287)

West's Ann. Cal. Penal Code § 872, CA PENAL § 872
Current with urgency legislation through Ch. 1002 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

LOCAL RULES OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

Rule 5.17. Family Court Services Appointments (Mediation, Information Gathering and Child Custody Recommended Counseling)

(b) **Types of Family Court Services Appointments**.
Confidential Mediation (Tier I below) shall be made available in all cases in which child custody counseling/visitation is at issue; the remaining services, including any additional Tier I appointments, shall be scheduled at the discretion of and as directed by the family law judicial officer according to the needs of the case (Family Code section 3170).

(1) **Confidential Mediation (Tier I)**. Tier I referrals provide confidential mediation for families who have been unable to reach an agreement regarding custody, parenting time, and/or visitation.

(a) In most cases, parties must attend Tier I confidential mediation before a judicial officer will consider a higher tier process. In an appropriate case, the judicial officer may order a referral of the parties to expedited or emergency child custody recommending counseling (Tier III) without first attending confidential mediation (Tier I).

(b) Children shall not participate in Tier I unless directed by the court, the Family Court Services administrator, or the Family Court Services mediator (Family Code section 3180).

(c) Tier I is confidential except that the mediator shall report any suspected child abuse, elder abuse, if someone is a danger to themselves or others, and/or if the mediator receives information that a parent has committed or intends to commit a serious crime (Penal Code section 11166). (Rule 5.17(b)(1) revised effective 1/1/23)

(2) **Information Gathering (Tier II)**. Tier II referrals are for the purpose of gathering information. A judicial officer has the discretion to include any specific areas of inquiry in a Tier II referral including, but not limited to, contact with law enforcement, contact with Child Protective Services, and interviews with the child(ren) or other collateral contacts. A Tier II summary report shall be submitted to the court. The confidentiality of Tier II sessions is limited because a report is provided to the court. (Rule 5.17(b)(2) revised effective 1/1/19)

(3) **Child Custody Recommending Counseling (Tier III)**. Tier III referrals are child custody recommending counseling sessions. If an agreement is reached, the child custody recommending counselor will document the agreement. Otherwise, the child custody recommending counselor will prepare a summary report and submit a recommendation to the court, the litigants and the litigants' attorney(s). The confidentiality of Tier III sessions is limited because a report is provided to the court.

(4) If parties are later referred to Tier II or Tier III, the Tier I mediator will not be assigned to conduct Tier II or Tier III in the absence of unusual circumstances as determined by the Director of Family Court Services or order of the court after a hearing before a judicial officer.

West's Annotated California Codes
California Rules of Court (Refs & Annos)
Title 5. Family and Juvenile Rules (Refs & Annos)
Division 3. Juvenile Rules (Refs & Annos)
Chapter 13. Cases Petitioned Under Sections 601 and 602 (Refs & Annos)
Article 1. Initial Appearance (Refs & Annos)

Cal.Rules of Court, Rule 5.756
Formerly cited as CA ST TRIAL CT Rule 1473

Rule 5.756. Conduct of detention hearing

Currentness

(a) Right to inspect (§ 827)

The child, the parent, the guardian, and counsel are permitted to inspect and receive copies of police reports, probation reports, and any other documents filed with the court or made available to the probation officer in preparing the probation recommendations.

(b) Examination by court (§ 635)

Subject to the child's privilege against self-incrimination, the court may examine the child, the parent, the guardian, and any other person present who has knowledge or information relevant to the issue of detention and must consider any relevant evidence that the child, the parent, the guardian, or counsel presents.

(c) Evidence required

The court may base its findings and orders solely on written police reports, probation reports, or other documents.

Credits
(Formerly Rule 1473, adopted, eff. Jan. 1, 1998. Renumbered Rule 5.756 and amended, eff. Jan. 1, 2007.)

Notes of Decisions (2)

Cal. Rules of Court, Rule 5.756, CA ST FAM JUV Rule 5.756
Current with amendments received through Oct. 1, 2024. Some rules may be more current, see credits for details.

West's Annotated California Codes
California Rules of Court (Refs & Annos)
Title 5. Family and Juvenile Rules (Refs & Annos)
Division 1. Family Rules (Refs & Annos)
Chapter 8. Child Custody and Visitation (Parenting Time) Proceedings (Refs & Annos)
Article 5. Children's Participation in Family Court (Refs & Annos)

Cal.Rules of Court, Rule 5.250

Rule 5.250. Children's participation and testimony in family court proceedings

Effective: January 1, 2023
Currentness

(a) Authority and overview

This rule is intended to implement Family Code section 3042. No statutory mandate, rule, or practice requires children to participate in court or prohibits them from doing so.

(b) Children's participation

When a child wishes to participate in a court proceeding involving child custody and visitation (parenting time):

(1) The court should find a balance between protecting the child, the statutory duty to consider the wishes of and input from the child, and the probative value of the child's input while ensuring all parties' due process rights to be aware of and to challenge evidence relied on by the court in making custody decisions.

(2) The court must:

(A) Consider a child's participation in family law matters on a case-by-case basis; and

(B) Not permit a child addressing the court about child custody or visitation (parenting time) to do so in the presence of the parties. The court must provide an alternative to having the child address the court in the presence of the parties to obtain input directly from the child.

(3) Notwithstanding the prohibition in (b)(2)(B), the court:

(A) May permit the child addressing the court about child custody or visitation (parenting time) to do so in the presence of the parties if the court determines that doing so is in the child's best interests and states its reasons for that finding on the record; and

(B) Must, in determining the best interests of the child under (b)(2)(A), consider whether addressing the court regarding child custody or visitation (parenting time) in the presence of the parties is likely to be detrimental to the child.

(c) Determining if the child wishes to address, or has changed their choice about addressing, the court

(1) The following persons must notify the persons in (c)(2) if they have information indicating that a child in a custody or visitation (parenting time) matter either wishes to address the court or has changed their choice about addressing the court:

(A) An attorney appointed to represent the child in the case;

(B) An evaluator;

(C) An investigator;

(D) A child custody recommending counselor who provides recommendations to the judicial officer under Family Code section 3183; and

(E) Other professionals serving on the case.

(2) The notice described in (c)(1) must be given, as soon as feasible, to the following:

(A) The parties or their attorneys;

(B) The attorney appointed to represent the child;

(C) Other professionals serving on the case; and then

(D) The judicial officer.

(3) The following persons may inform the court if they have information indicating that a child wishes to address the court:

(A) A party; and

(B) A party's attorney.

(4) In the absence of information indicating a child wishes to address the court, the judicial officer may inquire whether the child wishes to do so.

(d) Guidelines for determining whether addressing the court is in the child's best interest

(1) When a child indicates that he or she wishes to address the court, the judicial officer must consider whether involving the child in the proceedings is in the child's best interest.

(2) If the child indicating an interest in addressing the court is 14 years old or older, the judicial officer must hear from that child unless the court makes a finding that addressing the court is not in the child's best interest and states the reasons on the record.

(3) In determining whether addressing the court is in a child's best interest, the judicial officer should consider the following:

(A) Whether the child is of sufficient age and capacity to reason to form an intelligent preference as to custody or visitation (parenting time);

(B) Whether the child is of sufficient age and capacity to understand the nature of testimony;

(C) Whether information has been presented indicating that the child may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the child may benefit from addressing the court;

(D) Whether the subject areas about which the child is anticipated to address the court are relevant to the court's decisionmaking process; and

(E) Whether any other factors weigh in favor of or against having the child address the court, taking into consideration the child's desire to do so.

(e) Guidelines for receiving testimony and other input

(1) If the court precludes the calling of a child as a witness, alternatives for the court to obtain information or other input from the child may include, but are not limited to:

(A) The child's participation in child custody mediation under Family Code section 3180;

(B) Appointment of a child custody evaluator or investigator under Family Code section 3110 or Evidence Code section 730;

(C) Admissible evidence provided by the parents, parties, or witnesses in the proceeding;

(D) Information provided by a child custody recommending counselor authorized to provide recommendations under Family Code section 3183(a); and

(E) Information provided from a child interview center or professional so as to avoid unnecessary multiple interviews.

(2) If the court precludes the calling of a child as a witness and specifies one of the other alternatives, the court must require that the information or evidence obtained by alternative means and provided by a professional or nonparty:

(A) Be in writing and fully document the child's views on the matters on which the child wished to express an opinion;

(B) Describe the child's input in sufficient detail to assist the court in its adjudication process;

(C) Be provided to the court and to the parties by an individual who will be available for testimony and cross-examination; and

(D) Be filed in the confidential portion of the family law file.

(3) On deciding to take the testimony of a child, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which the child can be open and honest. In each case in which a child's testimony will be taken, courts should consider:

(A) Where the testimony will be taken, including the possibility of closing the courtroom to the public or hearing from the child on the record in chambers;

(B) Who should be present when the testimony is taken, such as: both parents and their attorneys, only attorneys in the case in which both parents are represented, the child's attorney and parents, or only a court reporter with the judicial officer;

(C) How the child will be questioned, such as whether only the judicial officer will pose questions that the parties have submitted, whether attorneys or parties will be permitted to cross-examine the child, or whether a child advocate or expert in child development will ask the questions in the presence of the judicial officer and parties or a court reporter; and

(D) Whether a court reporter is available in all instances, but especially when testimony may be taken outside the presence of the parties and their attorneys and, if not, whether it will be possible to provide a listening device so that testimony taken in chambers may be heard simultaneously by the parents and their attorneys in the courtroom or to otherwise make a record of the testimony.

(4) In taking testimony from a child, the court must take special care to protect the child from harassment or embarrassment and to restrict the unnecessary repetition of questions. The court must also take special care to ensure that questions are stated in a form that is appropriate to the witness's age or cognitive level. If the child is not represented by an attorney, the court must inform the child in an age-appropriate manner about the limitations on confidentiality and that the information provided to the court will be on the record and provided to the parties in the case. In the process of listening to and inviting the child's input, the court must allow but not require the child to state a preference regarding custody or visitation and should, in an age-appropriate manner, provide information about the process by which the court will make a decision.

(5) In any case in which a child will be called to testify, the court may consider the appointment of minor's counsel for that child. The court may consider whether such appointment will cause unnecessary delay or otherwise interfere with the child's ability to participate in the process. In addition to adhering to the requirements for minor's counsel under Family Code section 3151 and rules 5.240, 5.241, and 5.242, and subdivision (c) of this rule, minor's counsel must:

(A) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and indicate to the child the possibility that information provided to the court will be on the record and provided to the parties in the case;

(B) Allow but not require the child to state a preference regarding custody or visitation (parenting time) and, in an age-appropriate manner, provide information about the process by which the court will make a decision;

(C) Provide procedures relevant to the child's participation and, if appropriate, provide an orientation to the courtroom where the child will be testifying; and

(6) No testimony of a child may be received without such testimony being heard on the record or in the presence of the parties. This requirement may not be waived by stipulation.

(f) Additional responsibilities of court-connected or appointed professionals

In addition to the duties in (c), a child custody evaluator, a child custody recommending counselor, or an investigator assigned to meet with a child in a family court proceeding must:

(1) Provide information to the child in an age-appropriate manner about the limitations on confidentiality and the possibility that information provided to the professional may be shared with the court on the record and provided to the parties in the case;

(2) Allow but not require the child to state a preference regarding custody and visitation (parenting time), and, in an age-appropriate manner, provide information about the process by which the court will make a decision; and

(3) Provide to the parents of the child participating in the court process information about local court procedures relevant to the child's participation and information about how to best support the child in an age-appropriate manner during the court process.

(g) Methods of providing information to parents and supporting children

Courts should provide information to parties and parents and support for children when children want to participate or testify or are otherwise involved in family law proceedings. Such methods may include but are not limited to:

(1) Having court-connected professionals meet jointly or separately with the parents or parties to discuss alternatives to having a child provide direct testimony;

(2) Providing an orientation for a child about the court process and the role of the judicial officer in making decisions, how the courtroom or chambers will be set up, and what participating or testifying will entail;

(3) Providing information to parents or parties before and after a child participates or testifies so that they can consider the possible effect on their child of participating or not participating in a given case;

(4) Including information in child custody mediation orientation presentations and publications about a child's participation in family law proceedings;

(5) Providing a children's waiting room; and

(6) Providing an interpreter for the child, if needed.

(h) Education and training

Education and training content for court staff and judicial officers should include information on children's participation in family court processes, methods other than direct testimony for receiving input from children, and procedures for taking children's testimony.

Credits

(Adopted, eff. Jan. 1, 2012. As amended, eff. Jan. 1, 2023.)

Editors' Notes

ADVISORY COMMITTEE COMMENT

Rule 5.250 does not apply to probate guardianships except as and to the extent that the rule is incorporated or expressly made applicable by a rule of court in title 7 of the California Rules of Court.

Cal. Rules of Court, Rule 5.250, CA ST FAM JUV Rule 5.250

Current with amendments received through Oct. 1, 2024. Some rules may be more current, see credits for details.

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