



earsay

The Honorable Mariya Weekes

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What is Hearsay?

A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

- Fla. Stat. §90.801(1)(c)

“Except as provided by statute, hearsay evidence is inadmissible”

- Fla. Stat. §90.802

Hearsay Examples

- ▶ **Police Reports:** Generally contain statements by third persons of their recollection of events to an officer. These may also contain hearsay within hearsay. Police reports are not business records or public records for the purpose an exception to the hearsay rule.
- ▶ **Affidavits of Third Parties:** Witness affidavits contain statements that are not admissible and the witness must be present to testify and be cross examined.

Hearsay Examples

- ▶ **Voicemail or E-mail from Non-Party:** Unless an exception applies, a voicemail or an e-mail from a non-party is likely inadmissible hearsay.
- ▶ **Statements by a child's teacher:** Unless an exception applies, statements by a child's teacher that could impact timesharing are likely inadmissible hearsay.

HEARSAY EXCEPTIONS

How to admit hearsay
statements



Unavailable Declarant (Fla. Stat. §90.804)

When is a declarant unavailable?

- ▶ Exempt from testifying by ruling of the Court on privilege grounds
 - ▶ Witness persistently refuses to testify in spite of court order to do so
 - ▶ Witness's lack of memory to a degree where the declarant's effectiveness is destroyed
 - ▶ Physical or mental illness or infirmity precluding testimony
 - ▶ Witness is absent from the hearing and their testimony could not be procured by other means
- ▶ **Exceptions to the Rules:**
 - ▶ This exception does not apply where a witness is "unavailable" due to the procurement or wrongdoing of the party who is presenting and rely upon the hearsay statements.

Common Hearsay Exceptions

(Fla. Stat. §90.803)

Spontaneous Statement

- ▶ A spontaneous descriptive statement
- ▶ Must describe or explain an event or condition at the time it happens or immediately thereafter

Excited Utterance

- ▶ A statement made about an event or condition while the declarant was under the stress or excitement of what occurred
- ▶ Requires stress or excitement at the time

Mental, Emotional or Physical Condition

- ▶ A statement about the declarant's then-existing statement of mind, emotion or physical condition
- ▶ Cannot be a statement about another person
- ▶ Only to prove state of mind, emotion or physical condition

Spontaneous Statement

A police officer walks into a home where there is a domestic disturbance. One party accuses the other of throwing a laptop at them. The person who threw the laptop immediately reacted stating “I didn’t mean to hit her with it.”

Excited Utterance

Two drivers are in a car crash and a witness is a passenger in one car. The witness jumps out of the car, screaming at her driver “He may have run a red light, but you were texting!”

This statement is made with excitement at the height of stress as the parties were just in a car crash.

Mental, Emotional, or Physical Condition

A couple is divorcing and one spouse co-owns a small business. The business is not doing well, and the parties dispute the cause. The spouse that owns the business testifies that her business partner stated at their meeting that she was recently diagnosed with cancer and hasn't been able to focus on work lately.

The business partner's statement is a statement describing her physical condition (cancer diagnoses) and her mental or emotional state (inability to focus on work).

Common Hearsay Exceptions

(Fla. Stat. §90.803)

Business Records

- ▶ Memo, report, record, etc. kept in the regular course of business
- ▶ Requires authenticating testimony or a business records affidavit

Public Records

- ▶ Record, report, written statement, etc. kept by public offices or agencies describing activities of the office or agency, or matters observed as part of their duty
- ▶ Does not include police reports

Vital Statistics

- ▶ Birth records; death records; marriage records
- ▶ Kept by public office

Business Records

In a divorce proceeding, the parties have one child who plays travel hockey. The travel hockey program keeps attendance records of all practices because unexcused absences from practice leads to missed playing time.

The parties' child complains to the GAL that she has had less playing time recently. It turns out one parent often disregards practice. The other parent learns of this and seeks to introduce the attendance records into evidence.

The records are admissible either with a records custodian testifying to their authenticity or a business records affidavit.

Public Records

Parties dispute who paid the real estate taxes of a property jointly owned by them for the past 5 years.

The county tax collector's office records the identity of the party who pays taxes each year and it is reflected on a "paid bill."

One party to the dispute seeks to introduce the tax collector's "paid bill" for the subject property.

This is admissible as a hearsay exception because the "paid bill" is a report regularly kept by the county tax collector, a public official (or office).

Vital Statistics

Two parties are divorcing, and over the course of litigation, one party discovers their “spouse” was previously married to another person and 2 days after their marriage, that other person was deported. There is no record of a the “spouse’s” divorce or annulment of the prior marriage.

The discovering party seeks to introduce the marriage record of the prior marriage at a hearing. The marriage record is a vital statistic.

Hearsay Exceptions

Special Circumstances

Child victim statement

- ▶ Statement by a child who is a victim, not simply a statement by a child
- ▶ Describes act(s) of neglect, sexual abuse, and/or child abuse
- ▶ Child is unavailable and there is other corroborative evidence
- ▶ Requires a hearing to determine admissibility, where the Court will consider reliability of statement(s)
- ▶ Court evaluates mental and physical age and maturity of child
- ▶ Court must make findings of fact on the record

Guardian ad Litem

- ▶ Guardian ad Litem cannot testify to hearsay, unless there is a waiver of hearsay or other exception that applies

These are the basics.

Don't ignore the dive deeper
into special circumstances



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today

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