

California College Republicans Judicial Board

HEARSAY IN BRIEF

Hearsay is perhaps the most complicated evidentiary issue in the legal system, and in the interest of completeness the Judicial Board Rules of Evidence, hereinafter the Rules of Evidence, concerning hearsay are extensive. The purpose of this document is to clarify the Rules concerning statements of hearsay. For reference, the rules concerning hearsay may be found in Article VIII of the Rules of Evidence.

Hearsay, as defined by the *Wex Legal Dictionary*, is an out of court statement offered to prove the truth of whatever it asserts. For the purposes of the Rules of Evidence, the statement at issue need not only be verbal, but can also be a written statement. In layman's terms, a statement of hearsay is any statement, written or verbal, made out of court and offered in court to prove the truth of the statement itself. The rule against hearsay is rooted in the belief that such testimony is unreliable, and it often is — the proponent is under no obligation to be truthful in a statement made out of court. There are exceptions to the rule against hearsay for statements that are considered to be especially reliable, which are outlined in Rule 803. It is important to distinguish a statement that is considered to be hearsay but falls under one of the exceptions in 803 from a statement that is not considered to be hearsay. Out-of-court statements not considered to be hearsay are outlined in Rule 801(d).

A statement of hearsay is not admissible in court if the parties care about the truth of the statement. For example: suppose a person stopped at the scene of an automobile accident. The injured driver of the crashed vehicle stumbled up to them and said "Aliens made me crash!" If the matter at issue in court is whether aliens caused the accident, the driver's statement must be excluded by the rule against hearsay unless it falls under one of the exceptions outlined in Rule 803. However, the statement is admissible to prove, for example, that the driver was capable of speech after the accident. The admissibility of the statement depends on the issue at trial and whether the statement is offered to prove that issue.

It is important to note that just because a statement is not excluded by the rule against hearsay does not mean it is automatically admissible — there still may be other reasons to exclude the statement. Returning to the previous example, if the matter at issue in court is *not* the true cause of the accident, an objection of relevance pursuant to Rule 401 may be welcome.

For any questions on hearsay or other evidentiary matters, please contact the Judicial Board.