

# The Rule Against Hearsay And Its Exceptions Litigator Series

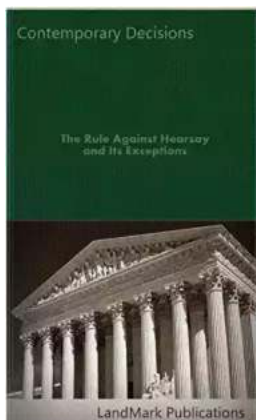
## Understanding the Rule Against Hearsay in Legal Proceedings

The rule against hearsay is a fundamental principle in the legal system designed to ensure the accuracy and fairness of evidence presented in trials and other legal proceedings. Hearsay refers to statements made outside of the courtroom that are offered as evidence to prove the truth of the matter asserted in court.

The primary purpose of the hearsay rule is to prevent the admission of unreliable and potentially misleading evidence. Hearsay statements are considered unreliable because the person who made the statement is not present in court to be cross-examined and tested for their credibility. Thus, these statements may lack the necessary trustworthiness required for use in legal proceedings.

## Exceptions to the Rule Against Hearsay

While the rule against hearsay generally prohibits the admission of hearsay evidence, there are several well-recognized exceptions that allow for its admission. These exceptions have been developed over time to address situations where hearsay evidence is deemed reliable or necessary for a fair trial.



## The Rule Against Hearsay and Its Exceptions (Litigator Series) by LandMark Publications(Kindle Edition)

★★★★★ 5 out of 5

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### ***Exception 1: Statements Made Under Oath***

One of the exceptions to the hearsay rule is when a statement is made under oath. Statements made under oath, such as in a deposition or during sworn testimony, carry more weight as they are given under the penalty of perjury. This exception ensures that individuals are held accountable for the truthfulness of their statements, even if they cannot be physically present in court.

### ***Exception 2: Statements Against Interest***

Another exception to the hearsay rule is when a statement is against the declarant's interest. These statements are viewed as more reliable because there is an apparent risk or disincentive for the declarant to make false or incriminating statements. The exception is particularly relevant when the declarant has made statements that are personally damaging or self-incriminating.

### ***Exception 3: Dying Declarations***

Dying declarations are an exception to the hearsay rule that allows statements made by individuals who believe they are about to die to be admitted as evidence. Dying declarations are viewed as inherently reliable, as the declarant typically has no motivation to fabricate or misrepresent facts when facing imminent death.

### ***Exception 4: Present Sense Impression***

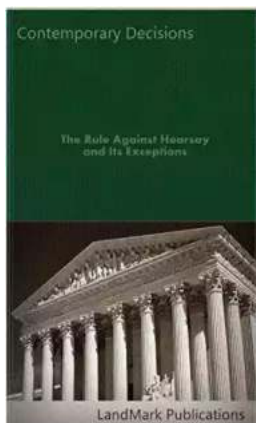
The present sense impression exception allows for the admission of statements made contemporaneously with the perceived event. These statements are

considered reliable because they are made at the same time as the event being described, reducing the likelihood of memory distortion or manipulation. For example, a witness stating, "I saw the defendant assault the victim" immediately after witnessing the event falls under the present sense impression exception.

### **Exception 5: Business Records**

Business records exception permits the admission of records made and kept in the course of regularly conducted business activity. These records are considered trustworthy due to the routine nature of their creation and maintenance. For example, medical records, financial statements, and invoices fall under this exception.

The rule against hearsay is a crucial component of the legal system, aiming to maintain the integrity of evidence presented in court. While there are exceptions to this rule, it is important for litigators to understand and apply them appropriately, ensuring their cases are presented with credible and trustworthy evidence.



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THIS CASEBOOK contains a selection of 195 U. S. Court of Appeals decisions that analyze, interpret and discuss the rule against hearsay and its exceptions. The selection of decisions spans from 2005 to the date of publication.

A proponent of hearsay evidence must establish five elements in order to satisfy Rule 807: "(1) circumstantial guarantees of trustworthiness; (2) materiality; (3) probative value; (4) the interests of justice; and (5) notice." *United States v. Ochoa*, 229 F.3d 631, 638 (7th Cir. 2000) (citing *United States v. Hall*, 165 F.3d 1095, 1110 (7th Cir. 1999)). *US v. Moore*, (7th Cir. 2016).

Rule 807 provides that a hearsay statement is not excluded by the rule against hearsay, even if not covered by an exception in Rule 803 or 804, if the statement (1) has "equivalent circumstantial guarantees of trustworthiness" to statements admitted under the enumerated exceptions, (2) is offered as evidence of a material fact, (3) is more probative on the point offered than any other reasonably available evidence, and (4) will best serve the general purposes of the rules of evidence and the interests of justice. We have said that this exception to the rule against hearsay "was necessary to permit courts to admit evidence in exceptional circumstances where the evidence was necessary, highly probative, and carried a guarantee of trustworthiness equivalent to or superior to that which underlies the other recognized exceptions." *United States v. Renville*, 779 F.2d 430, 439 (8th Cir. 1985). *US v. Stoney End of Horn*, (8th Cir. 2016).

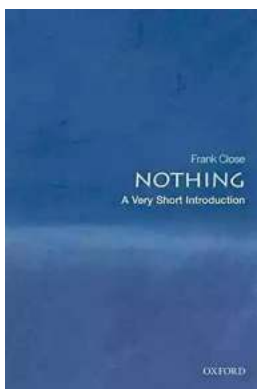
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"[P]rior inconsistent statements by a witness are not hearsay and are competent as substantive evidence if the declarant testifies at trial and is subject to cross-examination concerning the statement, and the prior inconsistent statement was given under oath at a 'trial, hearing, or other proceeding.'" *United States v. Wilson*, 806 F.2d 171, 175-76 (8th Cir. 1986) (quoting Fed. R. Evid. 801(d)(1)(A)).

"The district court has considerable discretion in determining whether prior statements are inconsistent with trial testimony." *United States v. Matlock*, 109 F.3d 1313, 1319 (8th Cir. 1997) (citing *United States v. Russell*, 712 F.2d 1256, 1258 (8th Cir. 1983) (per curiam); *United States v. Thompson*, 708 F.2d 1294, 1302 (8th Cir. 1983) ("The district court should have considerable discretion to determine whether evasive answers are inconsistent with statements previously given." (citation omitted))). *US v. Dean*, (8th Cir. 2016).

\* \* \*

Federal Rule of Evidence 801 provides that a statement offered against a party is not hearsay if the statement was "made by the party's coconspirator during and in furtherance of the conspiracy." Fed. R. Evid. 801(d)(2)(E). Statements can further the conspiracy in a number of ways. "Some examples include comments designed to assist in recruiting potential members, to inform other members about the progress of the conspiracy, to control damage to or detection of the conspiracy, to hide the criminal objectives of the conspiracy, or to instill confidence and prevent the desertion of other members." *Johnson*, 200 F.3d at 533. A coconspirator's statement may satisfy the "in furtherance" requirement even if the statement was not "exclusively, or even primarily, made to further the conspiracy." *United States v. Cruz-Rea*, 626 F.3d 929, 937 (7th Cir. 2010). *US v. Elder*, (7th Cir. 2016).



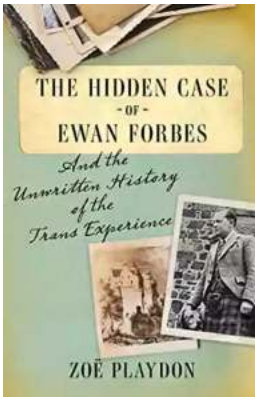
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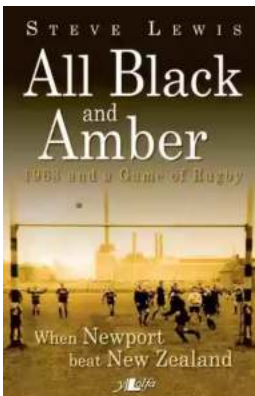
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