

Tests and Requirements

<p><u>Relevance</u></p> <p><u>Hearsay</u></p> <p><u>First-hand Hearsay Exception:</u> Civil – <u>Declarant Available</u> or <u>Declarant Not Available</u> Crim – <u>Declarant Available</u> or <u>Declarant Not Available</u></p> <p><u>Contemporaneous Mind Hearsay Exception</u></p> <p><u>Other Hearsay Exceptions:</u> <u>Multiple Relevancy</u> <u>Business Transaction</u> <u>Records Exception</u></p> <p><u>Admissions</u> <u>General</u> <u>Silence</u> <u>Denials by Parties (Exculpatory)</u></p> <p>Admissions Exceptions: <u>Related to Admissions</u> <u>First Hand</u> <u>Voluntary</u> <u>Reliability of Admissions</u> <u>Admissions made with Authority</u> <u>Oral Questioning</u> <u>Discretion to Exclude Admissions</u></p>	<p><u>Opinion Evidence</u> <u>Multiple Relevancy</u> <u>Can be Ultimate Issue</u></p> <p>Opinion Exceptions: <u>Lay Opinion</u> <u>ATSI</u> <u>Expert</u> <u>Discretion to Exclude</u></p> <p><u>Tendency & Coincidence</u> <u>Tendency in Civil</u> <u>Tendency in Crim</u> <u>Coincidence in Civil</u></p> <p>When Tendency/Coincidence Not Applicable <u>Presumption of Continuance</u> <u>Single Transaction Relationship</u></p> <p><u>Credibility Evidence</u></p> <p>Exception to Credibility <u>Q in Cross-Examination</u> <u>Rebutting Denials</u> <u>Expert Evidence</u> <u>Q in Re-Examination</u> <u>PCS of W</u></p> <p><u>Credibility of D in Criminal</u></p> <p><u>Character of D</u> <u>P or CO-D's Rebuttal of character of D</u></p> <p><u>Character of co-D</u></p>
---	--

Hearsay

<p>Relevant Section</p>	<p><u>S 59 The hearsay rule—exclusion of hearsay evidence</u></p> <p>(1) Evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation.</p> <p>(2) Such a fact is in this Part referred to as an asserted fact.</p> <p>(2A) For the purposes of determining under subsection (1) whether it can reasonably be supposed that the person intended to assert a particular fact by the representation, the court may have regard to the circumstances in which the representation was made.</p> <p>(3) Subsection (1) does not apply to evidence of a representation contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.</p>
<p>Requirement</p>	<p><u>1. It must be a ‘Previous Representation’</u></p> <ul style="list-style-type: none"> ❖ Dictionary, Part 1: previous representation: representation made otherwise in the course of giving evidence in the proceeding ❖ Dictionary, part 1: representation includes: <ul style="list-style-type: none"> ➤ Express or implied representation, ➤ Representation inferred from conduct, ➤ Representation not intended by its maker to be communicated or seen by other persons ➤ Representation for any reason, that is not communicated. ❖ Examples: <ul style="list-style-type: none"> ➤ <i>R v Rose</i>: courts defined ‘representation’ in broad sense, to surveys. ➤ <i>Lee v The Queen</i>: the term ‘representation’ to apply to statements and conduct, and will encompass all that those statements or conducts would convey to the observer. <p><u>2. Assertion of the Existence of a Fact</u></p> <ul style="list-style-type: none"> ❖ The previous representation must contain an assertion of

the existence of a fact.

➤ This is the most important content.

3. Intention to Assert the Existence of a Fact

- ❖ Declarant must have intended to assert the existence of a fact.
 - By virtue of s 59 (2A), the court may take into account the circumstances in which the representation was made to assist in determining whether there was an intention to assert those facts.
- ❖ Different Types of Intentions:
 - Express Intention
 - Implied/inferred Intention
 - *Wright v Tatham*: a letter containing normal business and social matters, to disprove the recipient's insanity had implied intention to assert representation that he was not insane.
 - In Evidence Act: implied assertion is caught by s 59, but only where it can be reasonably supposed that the declarant intended to assert the existence of the fact impliedly asserted to exist.
 - Unintended Implied Assertions
 - NOT hearsay
 - To establish, look at s 59 (2A) – reasonably supposed that not intended.
- ❖ *Hannes* case: the indentations on a notepad which were a 'note to self' were not hearsay because it had no intention to assert representation; now it is because of s 2A.

4. Hearsay Purpose

- ❖ The evidence must be adduced in proof of the asserted fact.
- ❖ Original use is unaffected by s 59. (by virtue of s 60)
- ❖ Examples:
 - *Subramaniam v Public Prosecutor*: D argued he was under duress, and the previous representation, containing threat, was admissible for non-hearsay basis, as the fact that the threat, regardless of its content, was said, was relevant.
 - *Thatcher v Charles*: a warning for civil trials that

	amounts to defence of negligence can be adduced as non-hearsay.
Process	<u>Hearsay Process</u> <ol style="list-style-type: none">1. What is the previous representation?2. Who is the Declarant?3. What did the declarant intend to assert?4. What purpose is the previous representation relevant to?<ul style="list-style-type: none">- If relevant for non-hearsay purpose, then admissible.- If relevant for hearsay purpose, then inadmissible unless exception applies.