

EVIDENCE ACT 2008 - SECT 59 - The hearsay rule—exclusion of hearsay evidence

(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.

(2) Such a fact is in this Part referred to as an asserted fact.

(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.

Translation	Any previous representation made by a person, is not admissible in court to prove a fact that a previous representation could have been reasonably intended to assert.			
Elements?	1. Representation	2. Previous?	3. Made by a person?	4. Intention to assert the fact?
	<p>UEA Dictionary “Representation”:</p> <ul style="list-style-type: none"> a) An express or implied representation (oral/writing); and b) Representation inferred from conduct; c) Representation <u>not</u> intended by its maker to be communicated or to be seen by another person; d) Representations that for any reason, is <u>not</u> communicated 	<p>UEA Dictionary</p> <ul style="list-style-type: none"> • ‘representation made otherwise than in course of proceedings’ <p>→ Period between witnessed events and start of trial</p>	<ul style="list-style-type: none"> • Restricted to people • <i>Humans have the ability to lie</i> <p>Example:</p> <ul style="list-style-type: none"> a) Photo of number plate exempt from hearsay rule → <i>camera cannot lie</i> b) Handwritten note of number plate caught by hearsay rule → <i>note written by human</i> → <u>can lie</u> 	<ul style="list-style-type: none"> • If evidence <u>used for a purpose</u> other than what could <u>reasonably</u> be inferred to be asserted → EXEMPT from hearsay rule • Express assertions AND • Implied assertions <ul style="list-style-type: none"> ○ Common beliefs → <i>when people say ‘Y’ that’s usually because they believe ‘X’</i> ○ <i>Wright v Tatham (1873) 112 ER 488</i> <ul style="list-style-type: none"> ▪ Captain inspected ship carefully before embarking. <ul style="list-style-type: none"> • From conduct, could infer/imply that Captain believed ship to be seaworthy ▪ Baron Parke: <ul style="list-style-type: none"> • that would be hearsay, (same as if Captain had expressly asserted the ship was seaworthy)
	<ul style="list-style-type: none"> • <i>Lee v R</i>, HCA broad scope → <i>applies to all statements and conduct to the observer</i> • <i>R v Rose NSWCCA</i> extended ‘representation’ to any inactivity • Written statements • Business records <p>Assertive conduct</p>			<p><i>Lee v R</i>, HCA:</p> <p><u>The fact that the statement or conduct concerned might unintentionally convey some assertion is not to the point. The inquiry is about what the person who made the representation intended to assert by it</u></p>