<u>LAWS2351 – Court, Process, Evidence & Proof – Sample Notes</u>

Hearsay

	Hearsay			
Key Principles	Hearsay: A prohibition on the use of a person's out-of-court ass	sertions as		
	equivalent to or in place of their in-court testimony			
		ntentional		
	Broad Scope: Catches all types of assertions – intentional, unintentional, implied, express, oral, documentary and those made by conduct.			
S 59 UEA	59. Hearsay rule – exclusion of hearsay evidence	٠		
0 33 OLA	(1) Evidence of a previous representation made by a person is no	t admissible to		
	prove the existence of a fact that it can reasonably be supposed			
	person intended to assert by the representation.			
	(2) Such a fact is in this Part referred to as an asserted fact.			
Element	Summary of Elements arising from s 59 UEA – Hearsay Rule			
Summary	1. Previous Representation			
	2. Made by a Person			
	3. Containing what can be reasonably be supposed to be an intended			
	assertion of fact			
	4. Adduced to prove the actual existence of a fact			
	Most time conscious elements:			
	Whether the declarant intended to assert a fact and what precisely the intended assertion of fact is; and			
	 Whether the forensic purpose in adducing the previous representation is to 			
	prove the actual existence of that intentionally asserted fact			
	Step 1: Previous Representation			
Representation	representation includes –			
UEA Dictionary	(a) an express or implied representation (whether oral or in writing	ing), or		
	(b) a representation to be inferred from conduct, or			
	(c) a representation not intended by its maker to be communica	ated to or		
	seen by another person, or			
	(d) a representation that for any reason is not communicated .			
	ls it:			
	a) Express or implied – (oral or in writing)b) Inferred from conduct			
	,			
	c) Not intended to be communicated or seen by other persond) Not communicated e.g., letter written but not sent			
	Previous Representation → Any representation made outside a current			
	reading Is considered a previous representation e.g., representations made in			
	interlocutory proceedings			
Caselaw	Representation vs. Hearsay	Lee		
Representation	Ratio: "Representation" = words that are intended to induce			
	action or inaction by the person who hears or reads them.	_		
Lance Const.	Breadth of 'Representation'	Rose		
Implied	❖ Failure of 300 students to respond to a police officer's request			
representation	for information about the deceased in a murder case was an implied representation that the students had no information			
	of the kind requested			
	Ratio: Representation can be made through silence/failure to			
	respond – intention to convey representation is irrelevant			
	Step 2: Made by a Person			
Key Principles	❖ Hearsay Rule → does NOT apply to representations produced	by		
Consider where	machines w/o human-input			
production of	Does not apply to animal communications – e.g., abduction case of			
representation	distressed barking dog			
involves	* Key Consideration: Whether its (the representations) creation required			
machine	human contribution and exactly what the nature of that contribution was.			

where available user 'logged on' by pressing assigned button to register presence in a room was not hearsay + Held: Activity of a computer - required a person - therefore hearsay + Ratio: Data will be considered to come from a person where: - There is human intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the intervention in the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the process and the process and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation on the data collection process AND - There is the make a particular representation and the data collection process AND - There is the make a particular representation on the make of the	Caselaw	❖ Facts: Hanson argued TV ratings data – collected by system	Hansen
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SA offence – Evidence of representations made by C to friends	Papakosm
about what happened to her & who done it if adduced to prove	as
details of the offence & the identity of the perpetrator	
❖ Aggravated assault – Evidence that he told acquaintance	Lee
after offence committed that he 'had done a job & fired two	
shots' – is hearsay if tendered to prove identity of person who	
committed the offence	
❖ Theft of Motor Vehicle - Records from factory where cars	Myers v
manufactured listing ID numbers is hearsay if adduced to prove	DPP
A had falsified rego details of car he was offering for sale	
❖ False Declaration to Customs Officials re country of origin	Patel v
of goods imported – evidence of labels on the goods'	Comptroll
packaging, identifying them as the produce of country different	er of
from what A declared is hearsay if adduced to prove country of	Customs
origin is that on labels	
> Representation: 'I am certifying that these goods come	
from Thailand' – hearsay if used to prove goods did come	
from Thailand	
❖ Murder - D raised diminished responsibility at trial	Welsh
defence - Evidence from D's psychiatrist that D told her in	
weeks to come b/4 offence that D was hearing voices in his	
head instructing him to attack D is hearsay if used to prove D	
was suffering from auditory hallucinations prompting	
committing murder	
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