

LAWS2351 – Court, Process, Evidence & Proof – Sample Notes

Hearsay

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Key Principles	<ul style="list-style-type: none">❖ Hearsay: A prohibition on the use of a person's out-of-court assertions as equivalent to or in place of their in-court testimony❖ 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 (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 .	
Element Summary	Summary of Elements arising from s 59 UEA – Hearsay Rule <ol style="list-style-type: none">1. Previous Representation2. Made by a Person3. Containing what can be reasonably be supposed to be an intended assertion of fact4. Adduced to prove the actual existence of a fact	
	Most time conscious elements: <ul style="list-style-type: none">❖ Whether the declarant <i>intended to assert a fact</i> and what <i>precisely the intended assertion of fact is</i>; and❖ Whether the forensic purpose in adducing the previous representation is to <i>prove the actual existence of that intentionally asserted fact</i>	
Step 1: Previous Representation		
Representation UEA Dictionary	representation includes – (a) an <u>express or implied representation</u> (whether oral or in writing), or (b) a <u>representation to be inferred from conduct</u> , or (c) a representation <u>not intended by its maker to be communicated to or seen by another person</u> , or (d) a representation that for any reason is not communicated .	
	Is it: <ol style="list-style-type: none">a) Express or implied – (oral or in writing)b) Inferred from conductc) 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	Representation vs. Hearsay <ul style="list-style-type: none">❖ Ratio: “Representation” = words that are intended to induce action or inaction by the person who hears or reads them.	Lee
Implied representation	Breadth of ‘Representation’ <ul style="list-style-type: none">❖ Failure of 300 students to respond to a police officer's request 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	Rose
Step 2: Made by a Person		
Key Principles Consider where production of representation involves machine	<ul style="list-style-type: none">❖ Hearsay Rule → does NOT apply to representations produced by machines w/o human-input<ul style="list-style-type: none">➢ Does not apply to animal communications – e.g., abduction case of distressed barking dog❖ Key Consideration: Whether its (the representations) creation required human contribution and exactly what the nature of that contribution was.	

Caselaw Some human intervention rendered collection hearsay	<ul style="list-style-type: none"> ❖ Facts: Hanson argued TV ratings data – collected by system 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: <ul style="list-style-type: none"> ➢ There is human intervention in the data collection process AND <ul style="list-style-type: none"> ➢ There is the intention to make a particular representation that lay behind that intervention 	Hansen Beverage Co v Bickfords (Australia) Pty Ltd
Recorded/interpreted by person = hearsay	<ul style="list-style-type: none"> ❖ Ratio: If the asserted fact was machine-generated it will not be hearsay; if it was recorded or interpreted by a person, then it may be 	O’Meara v Dominican Fathers
Step 3: Intended Assertions of Fact		
Key Principles	<ul style="list-style-type: none"> ❖ Intended assertions under s 59 are now assertions of fact that the maker of the representation can reasonably be supposed to have intended, having regard to the circumstances in which they were made ❖ Question: <i>Having regard to the circumstances in which it was made, what can it reasonably be supposed that the maker of the representation actually intended to assert?</i> 	
Caselaw Very act involuntary – can adduce evidence	<ul style="list-style-type: none"> ❖ Facts: Accused charged w. murder by shooting – claimed act was involuntary – sought to lead evidence of convo he had w. sister a month after event ❖ Legal Reasoning: Accused’s shooting of the deceased was not the ultimate result of the voluntary act or was done in the circumstances of some abnormality of the mind ❖ Held: Evidence ruled admissible 	O’Grady
Purpose Test	<ul style="list-style-type: none"> ❖ Crucial to identify: <ol style="list-style-type: none"> 1. How is it relevant to facts in issue, 2. What precisely it is (the evidence) being adduced to prove; and 3. How it will be used to prove that matter 	
	<ol style="list-style-type: none"> 1. Identify the previous representation. 2. Ask why the party is seeking to admit it. 3. Determine what fact (if any) the person intended to assert. 4. If the fact is being used to prove what the person meant to assert, it's hearsay. 5. If it's being used for another purpose (not to prove the asserted fact), it may be admissible as original evidence. 	
Caselaw – SEE EXCEPTION – relevant for non-hearsay purpose	<ul style="list-style-type: none"> ❖ Original Evidence: A previous representation is not hearsay if it is not being used to prove the truth of the assertion, but rather for another relevant purpose (e.g., state of mind, context, motive, or effect on the listener) 	Wing Cheong Li
Examples	<ul style="list-style-type: none"> ❖ Purpose for which representation is tendered is crucial 	
	<ul style="list-style-type: none"> ❖ Test: Is the evidence being used to prove a fact that the person intended to assert? <ul style="list-style-type: none"> ➢ Unintended implications (even if true) do not make it hearsay Key Examples: Hearsay	R v Lee (1998) 195 CLR 594
	<ul style="list-style-type: none"> ❖ Criminal Matter – Evidence of third-party confession is hearsay if adduced to prove that person who made confession committed the crime > accused <ul style="list-style-type: none"> ➢ Need to clearly identify representation – “I killed the victim [and the accused did not]” 	Baker; Blastland; Bannon
	<ul style="list-style-type: none"> ❖ Murder – Evidence made by deceased about who injured her & how is hearsay if adduced to prove source of injuries & how they were inflicted 	Abel

	❖ SA offence – Evidence of representations made by C to friends about what happened to her & who done it if adduced to prove details of the offence & the identity of the perpetrator	<i>Papakosmas</i>
	❖ Aggravated assault – Evidence that he told acquaintance 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	<i>Lee</i>
	❖ Theft of Motor Vehicle – Records from factory where cars manufactured listing ID numbers is hearsay if adduced to prove A had falsified rego details of car he was offering for sale	<i>Myers v DPP</i>
	❖ False Declaration to Customs Officials re country of origin of goods imported – evidence of labels on the goods' packaging, identifying them as the produce of country different from what A declared is hearsay if adduced to prove country of origin is that on labels ➤ Representation: ' <i>I am certifying that these goods come from Thailand</i> ' – hearsay if used to prove goods did come from Thailand	<i>Patel v Comptroller of Customs</i>
	❖ Murder – D raised diminished responsibility at trial 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	<i>Welsh</i>