

It's on My Phone

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Statutes

Writings

Evidence Code § 250. "Writing"

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Relevance

Evidence Code § 210. "Relevant evidence"

"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Evidence Code § 350. Only relevant evidence admissible

No evidence is admissible except relevant evidence.

Evidence Code § 351. Admissibility of relevant evidence

Except as otherwise provided by statute, all relevant evidence is admissible.

Authentication

Evidence Code § 1400. Authentication defined

Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law.

Evidence Code § 1401. Authentication required

(a) Authentication of a writing is required before it may be received in evidence.

(b) Authentication of a writing is required before secondary evidence of its content may be received in evidence.

Evidence Code § 1402. Authentication of altered writings

The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the alteration or appearance thereof. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did

not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

Evidence Code § 1410. Article not exclusive

Nothing in this article shall be construed to limit the means by which a writing may be authenticated or proved.

Evidence Code § 1411. Subscribing witness' testimony unnecessary

Except as provided by statute, the testimony of a subscribing witness is not required to authenticate a writing.

Evidence Code § 1412. Use of other evidence with subscribing witness's testimony required

If the testimony of a subscribing witness is required by statute to authenticate a writing and the subscribing witness denies or does not recollect the execution of the writing, the writing may be authenticated by other evidence.

Evidence Code §1413. Witness to the execution of a writing

A writing may be authenticated by anyone who saw the writing made or executed, including a subscribing witness.

Evidence Code § 1414. Authentication by admission

A writing may be authenticated by evidence that:

- (a) The party against whom it is offered has at any time admitted its authenticity; or
- (b) The writing has been acted upon as authentic by the party against whom it is offered.

Evidence Code § 1420. Authentication by evidence of reply

A writing may be authenticated by evidence that the writing was received in response to a communication sent to the person who is claimed by the proponent of the evidence to be the author of the writing.

Evidence Code § 1421. Authentication by content

A writing may be authenticated by evidence that the writing refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing.

Secondary Evidence

Evidence Code § 255. "Original"

"Original" means the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

Evidence Code § 260. "Duplicate"

A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic

rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

Evidence Code § 1520. Content of writing; proof

The content of a writing may be proved by an otherwise admissible original.

Evidence Code § 1521. Secondary evidence rule

(a) The content of a writing may be proved by otherwise admissible secondary evidence. The court shall exclude secondary evidence of the content of writing if the court determines either of the following:

(1) A genuine dispute exists concerning material terms of the writing and justice requires the exclusion.

(2) Admission of the secondary evidence would be unfair.

(b) Nothing in this section makes admissible oral testimony to prove the content of a writing if the testimony is inadmissible under Section 1523 (oral testimony of the content of a writing).

(c) Nothing in this section excuses compliance with Section 1401 (authentication).

(d) This section shall be known as the "Secondary Evidence Rule."

Evidence Code § 1523. Oral evidence of content of a writing; admissibility

(a) Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.

(b) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the proponent does not have possession or control of a copy of the writing and the original is lost or has been destroyed without fraudulent intent on the part of the proponent of the evidence.

(c) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the proponent does not have possession or control of the original or a copy of the writing and either of the following conditions is satisfied:

(1) Neither the writing nor a copy of the writing was reasonably procurable by the proponent by use of the court's process or by other available means.

(2) The writing is not closely related to the controlling issues and it would be inexpedient to require its production.

(d) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

Evidence Code § 1552. Printed representation of computer information or computer program

(a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or

unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) applies to the printed representation of computer-generated information stored by an automated traffic enforcement system.

(c) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530.

Evidence Code § 1553. Printed representation of images stored on video or digital medium

(a) A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

(b) Subdivision (a) applies to the printed representation of video or photographic images stored by an automated traffic enforcement system.

Hearsay

Evidence Code § 1200. The hearsay rule

(a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

(b) Except as provided by law, hearsay evidence is inadmissible.

(c) This section shall be known and may be cited as the hearsay rule.

Evidence Code § 225. "Statement"

"Statement" means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression.

Evidence Code § 175. Person

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

Evidence Code § 1201. Multiple hearsay

A statement within the scope of an exception to the hearsay rule is not inadmissible on the ground that the evidence of such statement is hearsay evidence if such hearsay evidence consists of one or more statements each of which meets the requirements of an exception to the hearsay rule.

Evidence Code § 1220. Admission of a party

Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.

Evidence Code § 1221. Adoptive admission

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.

Evidence Code § 1271. Business record

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code § 1280. Record by public employee

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Evidence Code § 1340. Commercial lists and the like

Evidence of a statement, other than an opinion, contained in a tabulation, list, directory, register, or other published compilation is not made inadmissible by the hearsay rule if the compilation is generally used and relied upon as accurate in the course of a business as defined in Section 1270.

Judicial Notice

Evidence Code § 452. Matters which may be judicially noticed

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

- (g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Cases

- Alvarez v. Jacmar et al.* (2002) 100 Cal. App. 4th 1190 (Duty under the business record exception)
- Collins v. Navistar* (2013) 214 Cal.App.4th 1486 (Expert may rely on compilation data under Evidence Code § 1340)
- Daniels v. DMV* (1983) 33 Cal. 3d 532 (Business records and course of business)
- Molenda v. DMV* (2009) 172 Cal.App.4th 974 (Official records and time of entry of record)
- People v. Beckley* (2010) 185 Cal.App.4th 509 (Insufficient authentication of photograph/gang roster)
- People v. Bryant, Smith and Wheeler* (2014) 60 Cal. 4th 335, 405 (Standard of review for trial court's evidentiary rulings is abuse of discretion.)
- People v. Catlin* (2001) 26 Cal. 4th 81 (Chain of Custody)
- People v. Chism* (2014) 58 Cal. 4th 1266 (Evidence Code 1553 creates a rebuttable presumption that the photo accurately depicts an image on the videotape even if enhanced)
- People v. Dawkins* (October 20 2014) 2014 Cal.App. LEXIS 951(Data automatically recorded by a computer system is presumed to be accurate. Questions regarding accuracy go to the weight to be given the data not its admissibility.)
- People v. Doggett* (1948) 83 Cal.App.2d 405 (Photograph authenticated by expert testimony.)
- People v. Fonville* (1973) 35 Cal.App.3d 693 (Disapproved on other grounds in *Donaldson v. Superior Court* (1982) 35 Cal.3d 24) (Tape-recorded conversation between D and his uncle authenticated by content.)
- People v. Goldsmith* (2014) 59 Cal.4th 1515 (ATES authentication and EV 1553 presumption)
- People v. Hawkins* (2002) 98 Cal.App.4th 1428 (Computer records and hearsay)
- People v. Hernandez* (1997) 55 Cal.App.4th 225 (Computer data analysis from LE Sherlock system is untrustworthy and lacks foundation)
- People v. Hood* (1997) 53 Cal.App.4th 965 (Computer animation not subject to Kelly Frye)
- People v. Kelly* (1976) 17 Cal.3d 24 (Foundation for new scientific techniques)
- People v. Martinez* (2000) 22 Cal.4th 106 (Official records and contemporaneous reporting)
- People v. McWhorter* (2009) 47 Cal.4th 319 (Digitally enhanced photos and Kelly Frye)
- People v. Nazary* (2010) 191 Cal.App.4th 727 (Date, time, and totals on an electronically-generated receipt are not hearsay because they are not statements made by a person.)
- People v. Peyton* (2014) 229 Cal. App. 4th 1063 (Business Record Exception)

People v. Rekte (2015) 232 Cal.App.4th 1237 (Defendant successfully rebutted presumptions under EC 1552 and 1553.)

People v. Valdez (2011) 201 Cal.App.4th 1429 (Authentication of photograph can be established by circumstantial evidence.)

Ragland v. U.S. Bank National Assn. (2012) 209 CA4th 182 (Judicial Notice of websites)