

# HEARSAY

## Evidence

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### What constitutes evidence?

- Evidence consists of testimony, writings, material objects or other things presented to the senses and offered to prove whether a fact exists or does not exist.
- Evidence is either direct or circumstantial.

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### Evidence can come in many forms.

- It can be an exhibit admitted into evidence.
  - the 'smoking' gun
  - a glove found on the ground
  - DNA
- It can be testimony.

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### Who may give testimony?

- The plaintiff
- The defendant (but not required in a criminal case)
- Witness(es)

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### Who is a **witness**?

- Someone who is testifying in court at this particular trial.
- Who has taken an oath “to tell the truth, the whole truth, and nothing but the truth.”
- Who may be subject to perjury if lying.
- Whose demeanor can be observed by the jury.
- Who can be cross-examined by the opposing side.

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A witness may testify about anything personally experienced through any of the **5 senses**.

- “I **saw** the defendant leave a 7/11 store.”
- “I **heard** a baby crying in the next room.”
- “I **smelled** something rotting.”
- “The tacos **tasted** funny.”
- “I **felt** very nauseated after taking the medicine.”

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Testimony can be someone's  
**opinion**

- (A doctor): "The patient's symptoms appeared be those of the swine flu."
- (A police officer): "Having examined the tire tracks, I believe that the Mercedes was speeding."
- (A linguist): "This clause of the contract is ambiguous."

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What testimony is **not** admissible?

- Testimony that is not **relevant**.
- **At issue**: Which party was at fault in a car accident last month.
- **Testimony**: "The driver of the Fiat had an argument with his girlfriend last week."
- **Hearsay**

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What is **hearsay**?

- *Federal Rules of Evidence*:  
"Hearsay" is a **statement**, other than one made by the **declarant** while testifying at the trial or hearing, offered in evidence to prove the **truth of the matter asserted**.
- A statement is an oral or written **assertion**.
- A declarant is **a person who makes a statement**.

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A **declarant** is a person who makes a statement.

- **Who is the declarant** of the statement: "I saw the defendant leave a 7/11 store." ?
- Situation 1, Witness: "I saw the defendant leave a 7/11 store."
- Situation 2, Witness: "I overheard my friend George say, 'I saw the defendant leave a 7/11 store'."

Situation 1 and/or Situation 2.

- **Which testimony is admissible?**

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- Hearsay" is a statement, **other than one made by the declarant while testifying at the trial or hearing**, offered in evidence to prove the truth of the matter asserted.
- Situation 1: The witness is testifying and is **also** the declarant (the one making the statement) and is testifying at the trial or hearing.
- Situation 2: The witness is testifying but is not the declarant; George, the **out-of-court** friend, is the declarant because he's the one that made the statement.

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A **statement** is an oral or written assertion

- Hint: A statement is an utterance that can be either **true** or **false**.
- Two ships having the same name is an example of referential indeterminacy.
- Shakespeare is not the greatest English-language playwright.
- Was *Deveaux* the first case about diversity of citizenship?
- Write your name and ID number on this test.

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### What cannot be an assertion?

1. A question: Who left the room?  
[interrogative] neither true nor false
2. A command: Leave the room.  
[imperative] neither true nor false
3. An assertion: Harry left the room.  
Is true or false.

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### Hearsay? yes or no?

Hearsay' is an **assertion**...offered in evidence to **prove the truth** of the matter asserted.

Issue: Who left the room?

Statement: Harry left the room.

Issue: What were Mary's last words?

Statement: Harry left the room.

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### Not all out-of-court statements are hearsay:

- If a statement by an out-of-court declarant is offered in evidence for a purpose other than "to prove the truth of the matter asserted", **then** it is **not** hearsay.
- **Issue:** Whether Mary was delirious following her brain surgery.
- **Mary's out-of-court statement on waking up from the surgery:** "I am flying over the Eiffel Tower with 3 angels."

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- **Issue:** Whether Mervyn felt threatened by the Godfather.
- **Godfather to Mervyn:** "I don't like you."
- **Issue:** Whether George knew where the final exam was held.
- **George to Harry:** "In what room is our final exam?"

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- **Issue:** Whether Joe's best friend Jim tried to kiss Joe's wife:
- **Joe's wife's statement to Joe:** "Jim tried to kiss me."
- **Issue:** Whether Joe had a reason for punching Jim in the nose.
- **Joe's wife's statement to Joe:** "Jim tried to kiss me."

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- Types of statements that are **not** hearsay
- **Verbal act:**  
**Issue:** Whether Pete made an oral offer to Henry.  
**Pete's statement:** "I'll sell you my car for \$1000."
  - **Hearer's reaction or state of mind:**
  - **Issue:** Whether Mervyn felt threatened by the Godfather.
  - **Godfather to Mervyn:** "I don't like you."

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- Speaker's indirect state of mind

Issue: Whether Mary was delirious following her brain surgery.

Mary's out-of-court statement on waking up from the surgery: "I am flying over the Eiffel Tower with 3 angels."

- Utterance for its own sake

Issue: Whether Manuel said something in Spanish.

Manuel's out-of-court statement: "Soy un buen estudiante."

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NOT hearsay:  
Statements offered to show:

1. Verbal act
2. Hearer's reaction or state of mind
3. Speaker's indirect state of mind
4. Utterance for its own sake

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