

Family Evidence Cheat Sheet

<p><u>General Issues</u></p> <p>EC applies to all Superior Court cases (EC 300)</p> <p>Judge controls order of proof (EC 320)</p> <p>Judge as factfinder must disregard inadmissible evidence (<i>Sanchez v. Sanchez</i> (1961) 55 Cal.2d 118, 125; <i>IRMO Davenport</i> (2011) 194 Cal.App.4th 1507, 1526.)</p> <p>Credibility factors (EC 780)</p> <p>If better evidence was available, distrust weaker evidence (EC 412)</p> <p>Suppression of evidence can affect credibility (EC 413)</p> <p>Official acts presumed to be properly performed (EC 664)</p> <p>No spousal privilege in Family (EC 972 & 984.)</p> <p>Incomplete communication, the rest can be presented, doesn't exclude the incomplete part (EC 356)</p> <p>Attorney statements aren't evidence (<i>J.P. v. Carlsbad Unified School Dist.</i> (2014) 232 Cal.App.4th 323, 343.)</p> <p>Negotiations & offers inadmissible only to prove liability (EC 1152(a))</p> <p>Except for agreements, no discussion of mediation (EC 1119)</p> <p>Mediation privilege doesn't apply to FCS (EC 1117)</p>	<p>Must judicially notice (EC 451)</p> <p>May judicially notice (EC 452)</p> <p>With sufficient notice & info, may turn to must judicially notice (EC 453)</p> <p>Hearsay declarants may be called as witnesses and crossed (EC 1203(a))</p> <p>Party wanting to cross hearsay declarant to get them to hearing (<i>People v. Gomez</i> (2004) 117 Cal.App.4th 531, 541)</p> <p style="text-align: center;"><u>Writings</u></p> <p>Everything is a writing (EC 250)</p> <p>Must authenticate writings (EC 1401)</p> <p>Authentication = evidence it is what it's claimed to be (EC 1400)</p> <p>Author not required for authentication (EC 1411)</p> <p>Admission or acting on can authenticate writing (EC 1414)</p> <p>May be authenticated by response (EC 1420)</p> <p>Official seals presumed genuine (EC 1452)</p> <p>Official signature presumed genuine (EC 1453)</p> <p>Copy of writing in public office possession presumed genuine (EC 1530)</p> <p>Testimony not admissible to prove contents of writing (EC 1523)</p>	<p>Everyone gets to see writing before questions asked (EC 768(b))</p> <p>Any documents used to refresh must be given to other side (EC 771(a))</p> <p>Recordings need transcript (CRC 2.1040)</p> <p>Non-English writings must be translated (CRC 3.1110(g))</p> <p style="text-align: center;"><u>Hearsay</u></p> <p>To be hearsay, must be statement by human (<i>People v. Goldsmith</i> (2014) 59 Cal.4th 258)</p> <p>Writing made by public employee in scope of duty, near time of event, and reliable is hearsay exception (EC 1280)</p> <p>CLETS and local criminal records are official records (<i>People v. Martinez</i> (2000) 22 Cal.4th 106.)</p> <p>Public employee to public employee communication falls under exception (<i>Hildebrand v. Department of Motor Vehicles</i> (2007) 152 Cal.App.4th 1562)</p> <p>Non-public employee statements not covered (<i>People v. Baeske</i> (1976) 58 Cal.App.3d 775)</p> <p>Report part of FCS duty (FC 3183(a))</p> <p>Statement by other side is exception (EC 1220)</p> <p>Spontaneous statement under stress of excitement of event is exception (EC 1240)</p>	<p style="text-align: center;"><u>Character</u></p> <p>Specific conduct inadmissible to prove character (EC 787)</p> <p>In dissolution, specific acts of misconduct inadmissible (FC 2335)</p> <p>DV admissible in disso for custody and support (<i>In re Marriage of Schu</i> (2016) 6 Cal.App.5th 470)</p> <p>Character inadmissible to prove conduct (EC 1101(a))</p> <p>Character other than honesty not admissible to attack or support credibility (EC 786)</p> <p>Evidence of good character inadmissible unless bad character presented (EC 790)</p> <p>Evidence of habit or custom permitted to show conformity (EC 1105)</p> <p style="text-align: center;"><u>Financial Issues</u></p> <p>Owner can give value (EC 813)</p> <p>Value must have basis (EC 814)</p> <p>Job listings admissible to show availability (<i>IRMO LaBass & Munsee</i> (1997) 56 Cal.App.4th 1331, 1338-1339)</p> <p>Compilations admissible (EC 1340)</p> <p>Kelley Bluebook admissible compilation (<i>People v. Zorich</i> (2020) 55 Cal.App.5th 881, 887-888; <i>People v. Jenkins</i> (2021) 70 Cal.App.5th 175, 188)</p>	<p>Bills/Receipts admissible for limited purpose of corroborating testimony and showing reasonable of cost (<i>PG&E v. G. W. Thomas Drayage & Rigging Co.</i> (1968) 69 Cal.2d 33)</p> <p style="text-align: center;"><u>Kids Statements</u></p> <p>Take special care to protect witnesses under the age of 14, or with cognitive impairments (EC 765(b))</p> <p>Statement of then existing mental, physical, or emotional state is exception (EC 1250)</p> <p>Statement by child under 12 for diagnosis or treatment related to abuse or neglect is exception (EC 1253)</p> <p>EC 1253 exception not required to be to doctor, can be to family and should be analyzed like FRE 803(4) (<i>People v. Brodit</i> (1998) 61 Cal.App.4th 1312)</p> <p>FRE 803(4) applies to statements to CWS workers (<i>U.S. v. Tome</i> (10th Cir. 1995) 61 F.3d 1446; <i>U.S. v. DeNoyer</i> (8th Cir. 1987) 811 F.2d 436)</p> <p>Kids testifying re preference are to be out of presence of parents (FC 3042(f) [may be some due process issues])</p>
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