



“It’s really important” is not found in the Evidence Code [Determining the Admissibility of Evidence]

Hon. Maria Puente-Porras
Hon. Kenneth McDaniel

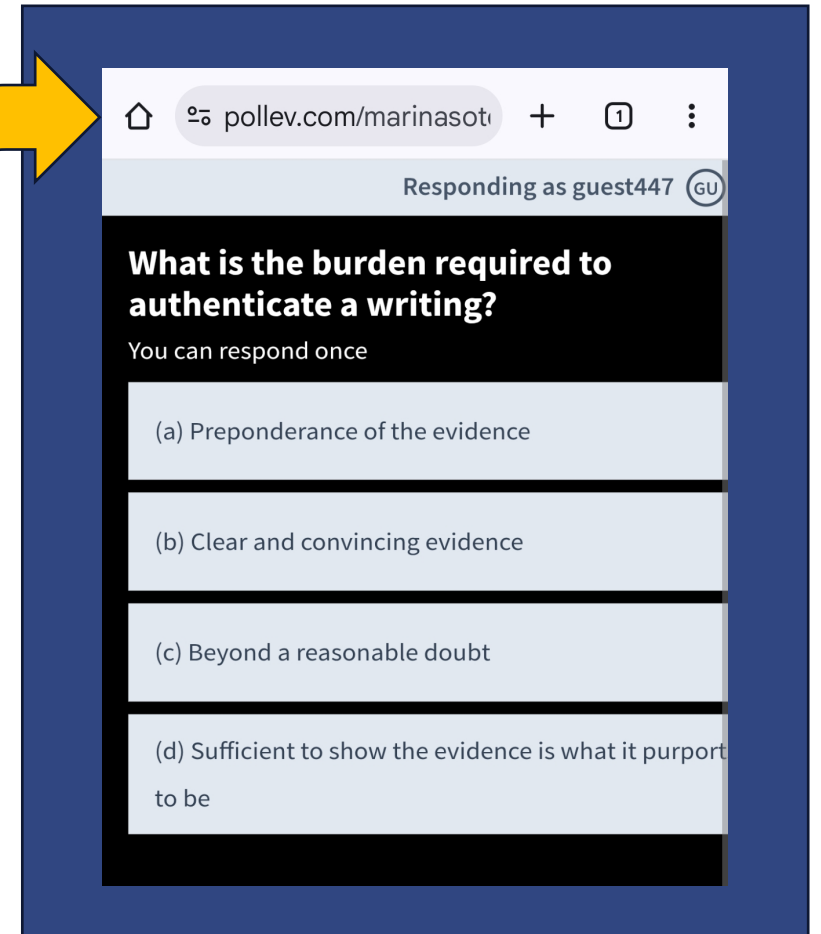
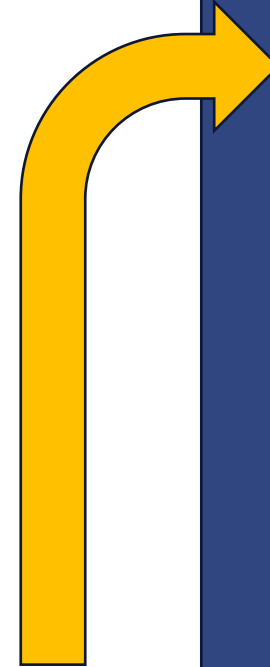
September 18, 2025

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Electronic Evidence & Writings

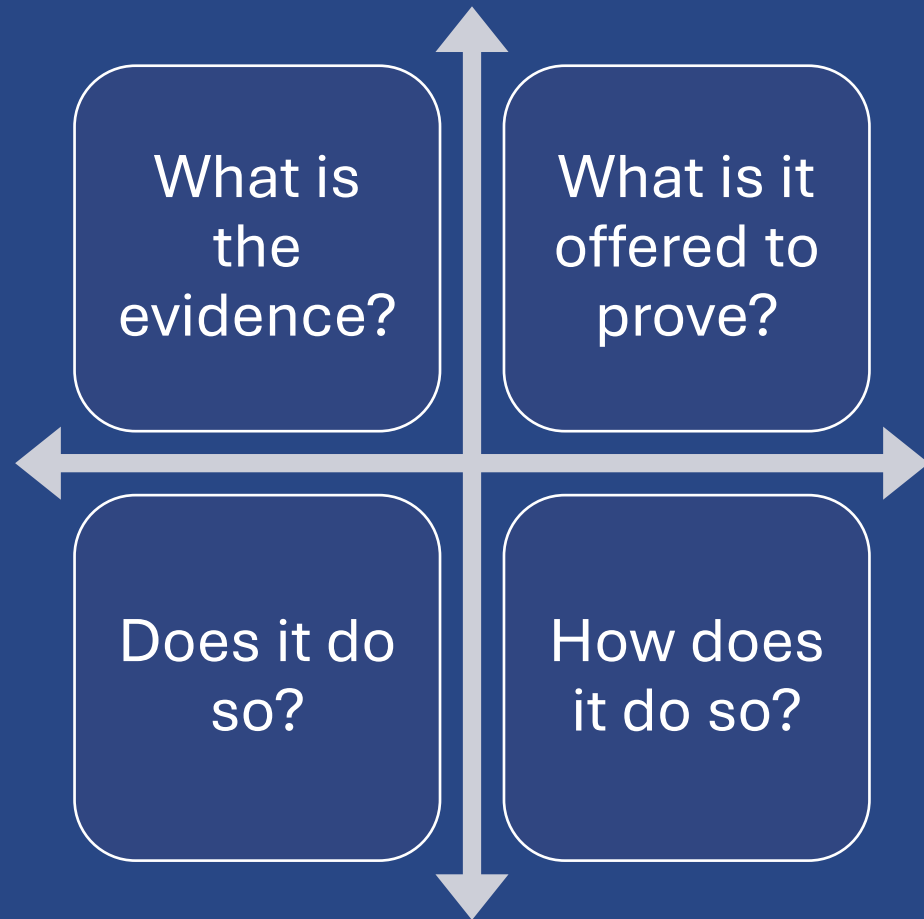
Writing [EC§ 250]

- “every other means of recording upon any tangible thing, any form of communication or representation”
- “regardless of the manner in which the record has been stored”

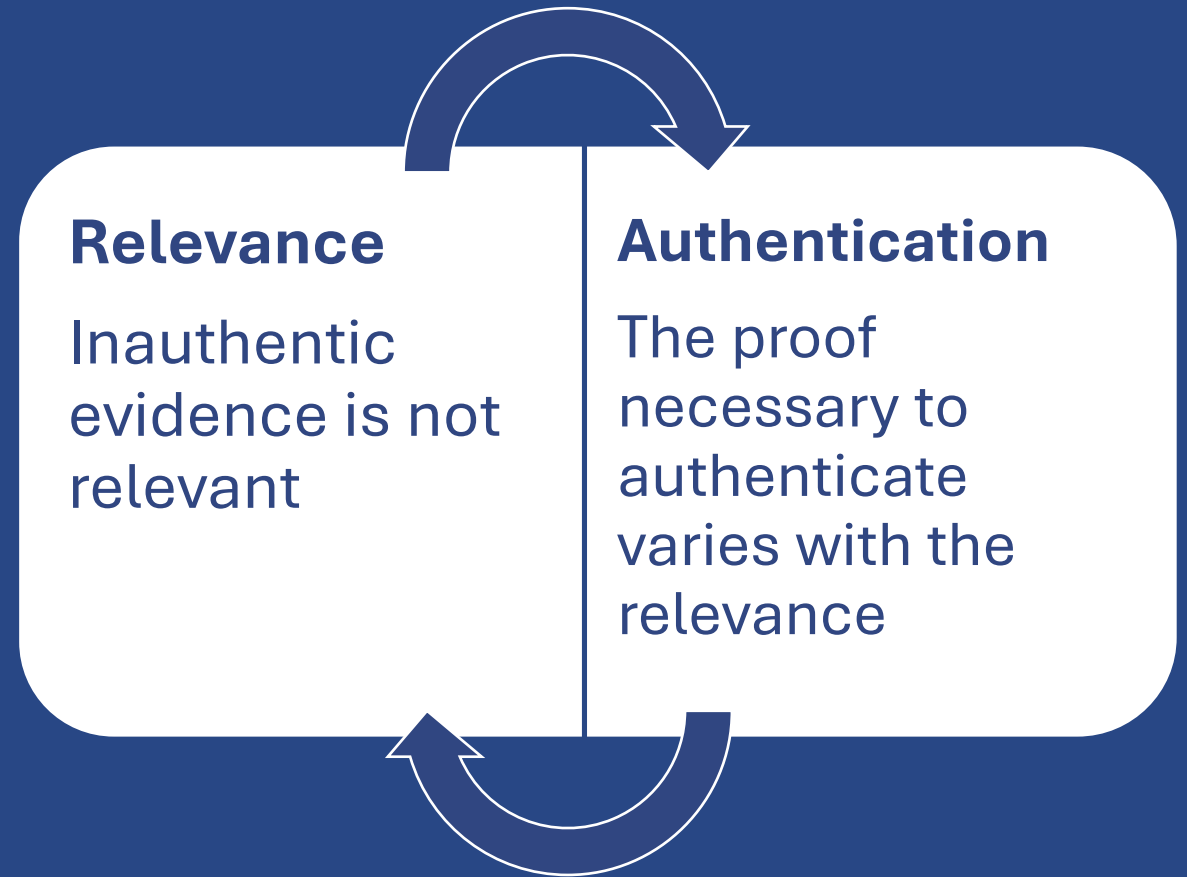
R-A-S-H Method

- **R**elevance
- **A**uthentication
- **S**econdary Evidence
- **H**earsay

Relevance



From “It’s on My Phone”, a presentation by
(Ret.) Hon. Jackson Lucky



People v. Goldsmith (2014) 59 Cal.4th 258

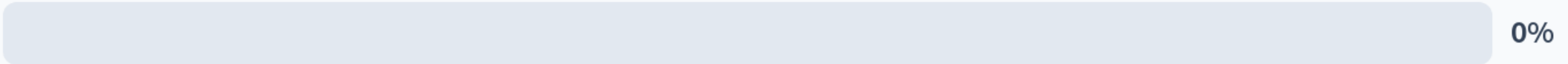
POLL

What is the burden required to authenticate a writing?

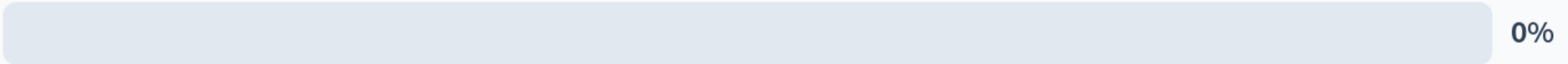
- (a) Preponderance of the evidence
- (b) Clear and convincing evidence
- (c) Beyond a reasonable doubt
- (d) Sufficient to show the evidence is what it purports to be

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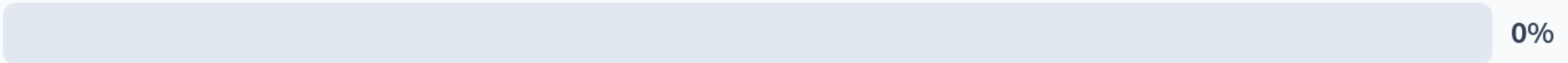
(a) Preponderance of the evidence



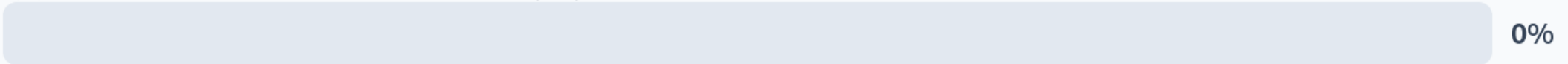
(b) Clear and convincing evidence



(c) Beyond a reasonable doubt



(d) Sufficient to show the evidence is what it purports to be



POLL

What is the burden required to authenticate a writing?

- (a) Preponderance of the evidence
- (b) Clear and convincing evidence
- (c) Beyond a reasonable doubt
- (d) Sufficient to show the evidence is what it purports to be

“The foundation requires that there be sufficient evidence for a trier of fact to find that the writing is what it purports to be, i.e., that it is genuine for the purpose offered. Essentially, what is necessary is a prima facie case. "As long as the evidence would support a finding of authenticity, the writing is admissible." (People v. Goldsmith (2014) 59 Cal.4th 258, 266.)

Means of Authenticating a Writing

Extrinsic

- EC§ 1413 – Witness to execution of writing
- EC§ 1414 – Adverse Party Admission or Reliance
- EC§ 1415 – Handwriting Evidence
- EC§ 1416 – Person Familiar w/ Handwriting
- EC§ 1418 – Handwriting Expert
- EC§ 1420 – Evidence of Reply
- EC§ 1421 – Authentication by Content

Self-Authentication

- EC§ 1530 – Copy of Writing in Official Custody
- EC§ 1531 – Certified Copy
- EC§ 1532 – Official Record of Recorded Writing
- EC§ 1552 – Printed Representation of CGI
- EC§ 1553 – Printed Representation of Video or Digital Images
- EC§ 1560-1567 – Business Records

Other Means

- Other Means of Authentication
 - EC§ 450-460 – Judicial Notice
 - CCP§§ 2033.10-2033.080 – Requests for Admission

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

- EC §1410

"There is no strict requirement as to how a party authenticates a writing."

- Ramos v. Westlake Services LLC (2015) 242 Cal. App. 4th 674. 684

POLL

During a custody exchange, Elliott walks child to Jamie's garage. Elliott says, "Give me a quick hug. I need hurry to my job." Jamie's Ring camera, located above the garage, automatically records the interaction.

In their child support proceedings, Elliott has and continues to claim they are unemployed. Jaime seeks to admit the Ring camera recording. Jaime testified as to how they retrieved the video, the basic processes of how the Ring camera works, and that the video depicts Elliott below Jaime's garage. Elliott objects to the admission of the video based on authentication.

What is the appropriate ruling to Elliott's objection?

- A. Admit
- B. Deny



Elliott objects to the admission of the video based on authentication. What is the appropriate ruling to Elliott's objection?

A. Admit

0%

B. Deny

0%

People vs. Goldsmith (2014) 59 Cal.4th 258, 266 [Red light ticket]



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**What if there is no
witness but a
camera?**

Goldsmith was cited for failing to stop at red traffic light in Inglewood.

Evidence was the 12 second video and several photos – generated by Automated Traffic Enforcement System (ATES).

Investigator with IPD testified, ATES operated by PD but maintained by Redflex [3rd party]. System operates independently and records events at intersection.

Redflex techs retrieve computerized information and IPD officer reviews all photos before a citation is printed or mailed.

Data bar imprinted by ATES on photos to show date, time, location and duration of red light at time of photo. The 12 second video shows the approach and progression of the vehicle through intersection

LEO has no personal knowledge of the incident and is not an expert in the area of ATES, just general knowledge.

Substantive v. Demonstrative Evidence

Substantive:
proves

Demonstrative:
clarifies or
explains

A photo may be substantive evidence.
The camera is “essentially a ‘silent
witness’ to the content of the
photographs [...] without question more
accurate and reliable than that of a
human witness.”

People v. Goldsmith (2014) 59 Cal.4th 258

Evidence Code §1553(a)

"[a] printed presentation of images stored on a video or digital medium is presumed to be an accurate presentation of the images it purports represent."



"a computer's print function has worked properly"

Authenticating Altered/Forged Writings



Evid.Code §1402

Altered or forged writings may still be authentic

Alteration and reason for alteration must be established



Law Revision Commission Comment to Section 1400

“But authentication, correctly understood, may involve a preliminary showing that the writing is forgery or is a writing found in particular files regardless of its authorship.”



Remember interplay between relevance and authentication: the purpose for which the writing is sought to be admitted determines the scope of foundation necessary for authentication.



Cases

Altered Writings: *People v Chism* (2014) 58 Cal.4th 1266

Forged Writings: *People v Flinner* (2020) 476 P.3d 824

POLL

Prosecution for murder with gang enhancement. P sought to introduce photograph from D's MySpace page depicting D using gang signs. MySpace profile identified it as D's page, included photo of D, contained posts by other people addressed to D (including D's sister), and included comments made by the page owner.

An investigator had printed the MySpace photograph a year before the incident.

Investigator testified that the MySpace page can only be modified by a password, but he had no expertise in social media. Investigator had no personal knowledge about who created the page, who uploaded the photographs, or how many people had access to the password.

D objects to admission of MySpace social media site for lack of authentication.

- A. Admit
- B. Deny

D objects to admission of MySpace social media site for lack of authentication. What is the appropriate ruling to D's objection?

A. Admit

0%

B. Deny

0%

Authentication by Content

People v. Valdez (2011) 201 Cal.App.4th 1429

- ❖ Author's testimony not required (§ 1411)
- ❖ Authenticity may be established by the contents of the writing (§ 1421) or by other means (§ 1410
 - ❖ [no restriction on "the means by which a writing may be authenticated"]."
- ❖ “Importantly, this consistent, mutually reinforcing content on the page helped authenticate the photograph and writings, with no evidence of incongruous elements to suggest planted or false material.”



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POLL

D on probation and may not lawfully possess firearms. LEO observes photos on D's Instagram account associated with D in which D possesses a firearm. When LEO arrive, someone throws two handguns out window of residence. D arrested in same clothes, in same location, and with same people, as depicted in photo.

No witness to photos testified. D objects to photographs on authentication grounds.

- A. Admit
- B. Deny

D objects to photographs on authentication grounds. What should the court do?

A. Admit

0%

B. Deny

0%

Authentication by “Any Other Means”

- **In re K.B. (2015) 238 Cal.App.4th 989**
 - “[A]uthentication “may be supplied by other witness testimony, circumstantial evidence, content and location” and “also may be established ` by any other means provided by law’ ([Evid. Code,] § 1400), including a statutory presumption. [Citation.]”
 - No expert witness foundation necessary
 - Only witness with sufficient familiarity with the social media account creation process



POLL

P files defamation claim against D based on 3 Yelp! reviews posted on P's Yelp!.

- Yelp! reviews posted w/in days of issuance of TRO protecting P and restraining D.
- Usernames of Yelp! posts not past clients.
- IP addresses for Yelp! posts registered to D and billed to D's business address.

P seeks to admit Yelp! posts. D objects based on authentication.

What should the court do?

A. Admit

B. Deny

P seeks to admit Yelp! posts. D objects based on authentication. What should the court do?

A. Admit

0%

B. Deny

0%

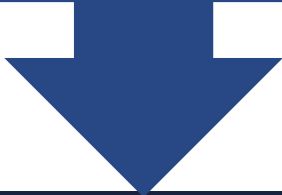
Authenticating “Anonymous” Evidence

- **Kinda v. Carpenter (2016) 247 Cal.App.4th 1268**
- Authentication may be based, in part, on inferences.
 - “In light of these foundational facts, the inference that the billing address and physical location were the same is equally if not more plausible than the inference that they were different. [...] The record was, therefore, admissible, and any dubious or conflicting inferences to be drawn would “go to the document's weight as evidence, not its admissibility.”
- Anonymous electronic evidence may be authenticated by circumstantial evidence
 - Timing, location, and content



Secondary Evidence Rule

No “best evidence rule”:
Secondary Evidence Rule Applies



Content of a writing may be proved by:

Original [EC §1520.]

Secondary evidence [EC
§1521(a)]

Testimony
[Only as provided in EC§1523]

POLL

- Alex and Sam are coming before you for a modification of child support:
- Alex alleges Sam sent Alex texts & pictures of Sam's home, with lots of money on the kitchen counter. Sam's texts include commentary about their wealth and Alex's lack of wealth.
- Hearing for child support modification before you. Alex alleges the phone on which they received the texts was destroyed and Alex can not retrieve the text messages. Sam says they do not have the messages and don't recall sending them.
- Alex seeks to testify about the contents of the text messages. Sam objects under (1) hearsay rule and (2) secondary evidence rule.
- Should the judicial officer sustain the hearsay objection? What about secondary evidence rule?

Should the judicial officer sustain the hearsay objection?

A. Yes

0%

B. No

0%

What about secondary evidence rule? Should the court sustain the objection?

A. Yes

0%

B. No

0%

POLL

- Alex and Sam are coming before you for a modification of child support:
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- Should the judicial officer sustain the hearsay objection? What about secondary evidence rule?

Hearsay

(1) If whether statements were made is at issue, then evidence of those statements is Nonhearsay. (P v. Fields (1998) 61 CA4th 1063, 1068-1069.)

(2) Party statement exception (EC §1220) for Sam's statements, if made.

Secondary Evidence Rule

- **Oral testimony generally inadmissible to prove content of writing unless exception in EC1523 applies**
 - **Original or not copy unavailable and original destroyed or lost without fraudulent intent**
 - **Original or copy not reasonably procurable**
 - **Writing consists of numerous accounts**
- **Exclusion of Secondary Evidence if:**
 - **Genuine dispute as to content**
 - **Evid.Code §1521(a)(1)**
 - **Admission would be unfair**
 - **Evid.Code §1521(a)(2)**
 - **Not authenticated**
 - **Evid.Code §1521(c)**

POLL

- In a hearing on health care cost reimbursements, Alex seeks to introduce computer-generated receipts reflecting payments made for doctor appointments for the child. The receipts reflect the name of the doctor's office, the date of payment, time of payment, and amount of payment. Sam objects to the receipts as hearsay. The receipts are:
 - (A) Hearsay
 - (B) Nonhearsay
 - (C) Covered under Business Records Exception
 - (D) Covered under Contemporaneous Statement Exception

Sam objects to the receipts as hearsay. The receipts are:

A. Hearsay

0%

B. Nonhearsay

0%

C. Covered under Business Records Exception

0%

D. Covered under Contemporaneous Statement Exception

0%

Electronic Evidence and Hearsay

People v. Hawkins (2002) 98 Cal.App.4th 1428

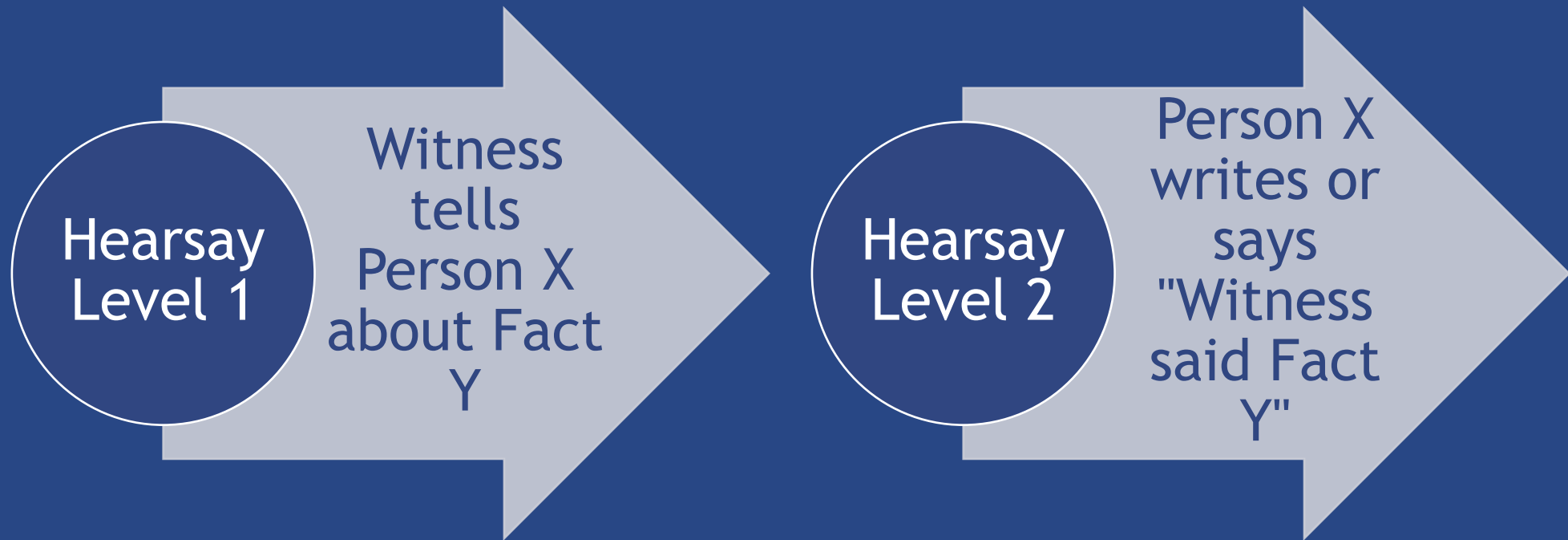
- Computer-generated information is not hearsay
 - “The Evidence Code does not contemplate that a machine can make a statement”
- Computer-generated information presumed accurate so long as proponent established the equipment worked properly

People v. Nazary (2010) 191 Cal.App.4th 727

- Date, time and totals on electronically-generated receipt are not hearsay because not statements made by a person

Electronic Evidence and Hearsay

Double Hearsay



A double hearsay statement is admissible if each level of hearsay comes within an exception to the hearsay rule.

Electronic Evidence and Hearsay

People v. Dawkins (2014) 230 Cal. App. 4th 991



Level 1
Exceptions/Nonhearsay

- Contemporaneous Statement
- Excited Utterance



Level 2
Exceptions/Nonhearsay

- Nonhearsay: No “statement” because no Declarant

Electronic Evidence and Hearsay

Business Records Exception

People v. Reyes (1974) 12 Cal.3d 486

- Recording act, condition or event vs. Diagnosis or Opinion
- Conclusion is neither an act, condition or event
- Some diagnoses are statement of fact or condition



Electronic Evidence and Hearsay

Business Records Exception

People vs. Lugashi (1988) 205 CA3 625

- EC §1271(c): “The custodian or other qualified witness testifies to its identity and the mode of its preparation”
- Who is a qualified witness to lay a foundation for electronic business records under EC 1271?

“[A] person who **generally understands the system's operation** and **possesses sufficient knowledge and skill to properly use the system and explain the resultant data**, even if unable to perform every task from initial design and programming to final printout, is a "qualified witness" for purposes of Evidence Code section 1271.”

Electronic Evidence



YourDosh Bank
16 High Street, Anytown, Anyshire YZ99 1XY

Account name: Mr John Smith
Sort code: 53-61-33
Account number: 99988877

Your current account statement:
1 February to 1 March 2011

Page 1 of 1

3 Your account summary

Balance at 1 February: £312.34
Total money in: £300.00
Total money out: £343.02
Balance at 1 March: £306.68 OD

4

Date	Description	Money out	Money in	Balance
	Balance brought forward			312.34
1 February	Card payment - High St Petrol Station	24.50		287.84
	Direct debit - Green Mobile Phone Bill	20.00		267.84
3 February	Cash withdrawal - YouDosh, Anytown High Street, timed 17:30-31 Jan	30.00		237.84
8 February	Cheque 00068	22.95		214.89
11 February	BACS - KleanKars, ref J55-999		300.00	514.89
16 February	Standing order - Rent to J Jones Cash withdrawal - WadBank, Randomford, timed 09:52 14 Feb	300.00		214.89
17 February	Card Payment - High St Petrol Station	40.00		67.14
	Direct debit - Home Insurance	23.00		44.14
19 February	Online transfer to A/C 1116932, Sort 01-92-10 ref: Mum	34.14		10.00
21 February	Card payment - QuidzGifts	15.00		5.00 OD
24 February	Balance carried forward			5.68 OD
28 February	Card payment - QuidzGifts	25.00		30.68 OD
1 March	Interest 29 Jan A/C 99988877	00.68		30.68 OD
	Charges 29 Jan A/C 99988877	25.00		30.68 OD
	Balance carried forward			30.68 OD

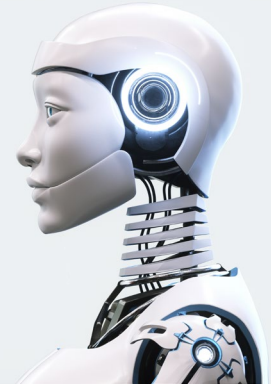
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Peer to
Peer
Cash
Apps

Artificial
Intelligence



Cryptocurrencies



Metadata!

JUDICIAL NOTICE



Matters so undisputably true that no evidence is needed to prove their truth.



Evid.Code §451 - Evidence the Court is required to judicially notice



Evid.Code §452 – Evidence the Court may judicially notice



Evid.Code §§453-458 – Procedures for Judicial Notice

Judicial Notice and Classified Ads

LaBass & Munsee (1997) 56 Cal.App.4th 1331, 1338-1339

“However, the court properly ruled the ads were admissible for the nonhearsay purpose of showing that offers to bargain existed.”

1997 Newspaper Job Listing

Authentication presumed under EC §645.1

Can judicially notice newspapers' existence per EC §452(h)

Listing is admissible for the nonhearsay purpose of showing that offers to bargain existed

2025 Electronic Job Listing

No presumption of authentication

Can judicially notice the existence of and access to websites per EC §452(h)

Listing is admissible for the nonhearsay purpose of showing that offers to bargain existed

What about Glassdoor.com or other sites listing industry salaries?

Whether to seek to exclude evidence

- **Swan v Hatchett (2023) 92 Cal.App.5th 1206**
 - Swan files for mod of s/s.
 - Court found Swan not credible
 - Neither Hatchett nor Dept submitted other evidence re: Swan's income apart from Swan
 - Court made findings of disparity in income/assets to support FC2030 attorney fee award payable by Swan
 - If Court ignored all of Swan's testimony, no basis to find disparity of income under FC2030

“finding Swan's evidence and testimony not credible had the effect ‘of **removing that testimony from the evidentiary mix.**’”

Consider minimum weight vs. exclusion of evidence

Fam.Code §217 Hearings

To hear, or not to hear, that is the reoccurring question.

What evidence is Court considering?

- Declarations / Live Testimony
- Fam.Code §217
- Cal. Rule of Court 5.111(c)(1)

Factors Court considers in determining whether to consider declarations or live testimony

- Cal. Rule of Court 5.113

IRMO Binette (2018) 24 Cal.App.5th 1119

- "THE "COURT: Nobody is presenting any testimony?"
- "[HUSBAND'S COUNSEL]: I believe testimony may be necessary depending on the tentative of the court...this judgment is ironclad."
- Husband's Counsel presented argument and referenced the pleadings.
- Court recited docs reviewed & considered. Court took the matter under submission after argument and ruled against Husband. Did Court err in not providing an evidentiary hearing?
- **COA: no error- Ct confirmed it had thoroughly read the record & absence of demand for live testimony, was sufficient to indicate it had considered the pertinent factors & found that material facts were not in controversy & live testimony was unnecessary.**

IRMO Pasco (2019) 42 Ca.App.5th 585

- Trial on mod of s/s
- W's atty and H's atty each made argument based upon declarations, what would "come out in the evidence" and "what the evidence will show."
- Court asked if matter submitted – W's atty "Yes"; H's atty "no audible response"
- Record does not reflect that either party sought to admit their exhibits.
- Court ruled no change of circumstances
- **COA: Finding not premised on evidence, "nearly silent" re: what was/was not considered.**
- **Unless parties' decs are offered into evidence, marked and subject to objections, they are not evidence which the court may consider in resolving disputed factual issues in a FC217 hearing.**

Questions?

