

Hearsay* JEOPARDY!!

The information used in this presentation is from the
Trial Handbook for Virginia Lawyers – Virginia Practice
Series, ch. 28 (2012 ed.).

Hearsay JEOPARDY!

Out-of-Court Statements and Writing	General Admissibility	General Sources of Confusion	Business Records/ Shopbook Rule	Potpourri
100	100	100	100	100
200	200	200	200	200
300	300	300	300	300
400	400	400	400	400

Out-of-Court Statements & Writings \$100

ANSWER:

The court should do this with an utterance that is made in committing fraud or conspiracy.

QUESTION:

What is let it in because it is not hearsay? VA. PRAC. TRIAL HANDBOOK § 28:2 (2012 ed.).



Out-of-Court Statements & Writings \$200

ANSWER:

As evidence of self defense to murder, defense counsel introduces statements made to the defendant about the victim's violent tendencies to show that the defendant reasonably believed the victim was violent. The court should do this.

QUESTION:

What is admit the evidence because it not hearsay? VA. PRAC. TRIAL HANDBOOK § 28:2 (2012 ed.).

Out-of-Court Statements & Writings \$300

ANSWER:

A tape with the voice of an unavailable witness and a defendant in the act of receiving stolen property were introduced. The witness's statements are not hearsay when offered not to prove the matter asserted, but for this reason instead.

QUESTION:

What is to show the basis of the defendant's incriminating statements on tape? *Atkins v. Virginia*, 412 S.E.2d 194, 197 (Va. 1991).

Out-of-Court Statements & Writings \$400

ANSWER:

Testimony concerning the out-of-court offer and acceptance elements of an oral contract are not hearsay because of this reason.

QUESTION:

What is the oral contract is the subject of the action and the statements themselves are facts to be proven in the case? VA. PRAC. TRIAL HANDBOOK § 28:2 (2012 ed.).

Hearsay JEOPARDY!

Out-of-Court Statements and Writing	General Admissibility	General Sources of Confusion	Business Records/ Shopbook Rule	Potpourri
	100	100	100	100
	200	200	200	200
	300	300	300	300
	400	400	400	400

Business Records & the Shopbook Rule - \$100

ANSWER:

Under the Shopbook Rule, a bookkeeper for a partnership may introduce this over a partner's objection.

QUESTION:

What is records of accounts and bills paid in ordinary course of business?

VA. PRAC. TRIAL HANDBOOK § 28:6 (2012)



Business Records & the Shopbook Rule - \$200

ANSWER:

Under the business records exception to the hearsay rule, the court should decide to do this with an NCIC report showing that a firearm was stolen.

QUESTION:

What is decide to admit the evidence? *Cooper v. Virginia*, 680 S.E.2d 361, 365 (Va. 2009).

Business Records & the Shopbook Rule - \$300

ANSWER:

It is impermissible practice under the Shopbook Rule to introduce contents of customers' complaints except for this limited notice purpose.

QUESTION:

What is to show notice of similar accidents if the prior accidents occurred under substantially the same circumstance and had been caused by the same or similar defects and dangers? *Ford Motor Co. v. Phelps*, 239 S.E.2d 454, 457 (Va. 1990).

Business Records & the Shopbook Rule - \$400

ANSWER:



Business Records & the Shopbook Rule -



ANSWER:

Under the business records exception to the hearsay rule, these records are admitted typically regardless of whether an erroneous price is occasionally recorded.

QUESTION:

What are computer-recorded, cash register records? *Fitzhugh v. Virginia*, 456 S.E.2d 163, 165 (1995).

Hearsay JEOPARDY!

Out-of-Court Statements and Writing	General Admissibility	General Sources of Confusion	Business Records/ Shopbook Rule	Potpourri
	100	100		100
	200	200		200
	300	300		300
	400	400		400



Potpourri - \$100

ANSWER:

Wrongful admission of hearsay evidence will usually be harmless error if this happens.

QUESTION:

What is when the content of the hearsay evidence is clearly proven by other evidence? *West v. Virginia*, 407 S.E.2d 22, 25 (Va. 1991).

Potpourri - \$200

ANSWER:

Dying declarations are admissible in homicide cases when the statements (1) relate to this and (2) are made under this impression.

QUESTION:

What are (1) relate to the facts and circumstances that caused the death and (2) are made under a sense of impending death, without expectation or hope of recovery? *Clark v. Virginia*, 351 S.E.2d 41, 46 (Va. 1986).

Potpourri - \$300

ANSWER:

Hearsay statements concerning paternity are admissible under the pedigree exception when these two factors are present.

QUESTION:

What is when the declarant is a relative and is shown to be deceased or out of state? *Marks v. Sanzo*, 345 S.E.2d 263 (Va. 1986).

Potpourri - \$400

ANSWER:

Evidence of statements made concerning family relationships, or “pedigree” is an exception to the hearsay rule. Name is one of the three specific requirements that must be met before statements concerning family relationships or pedigree will be admitted.

QUESTION:

What are (1) hearsay declaration must have been made by a member by blood or marriage of the family in question? *Lemons v. Harris*, 80 S.E. 740, 741 (Va. 1914). (2) The declarant must be dead, or at least unavailable to testify because he or she is beyond state boundaries? *Rawles v. Bazel*, 126 S.E. 690, 696 (1925). (3) No better evidence may be available? *Id.*

Hearsay JEOPARDY!

Out-of-Court Statements and Writing	General Admissibility	General Sources of Confusion	Business Records/ Shopbook Rule	Potpourri
	100	100		
	200	200		
	300	300		
	400	400		

General Sources of Confusion \$100

ANSWER:

The court should do this with a witness’s testimony concerning his or her own prior statements and writings.

QUESTION:

What is keep it out, subject to the hearsay rule?
Chestnut v. Ford Motor Co.,
445 F.2d 967, 972 (4th Cir. 1971).



General Sources of Confusion \$200

ANSWER:

In a contract case, an out-of-court statement may be admissible as a “verbal fact” for hearsay purposes but inadmissible under this contract rule.

QUESTION:

What is the parol evidence rule?
VA. PRAC. TRIAL HANDBOOK § 28:5 (2012 ed.)

General Sources of Confusion

\$300

ANSWER:

A court should do this if a party tries to introduce a stamped judicial record without a witness to authenticate it.

QUESTION:

What is admit it as an exception to the hearsay rule? *Taylor v. Virginia*, 502 S.E.2d 113, 117 (Va. 1998) (holding that a stamped date is hearsay, but the judicial records exception, codified in VA. CODE § 8.01-389, permits the stamped record to be admitted to prove filed

General Sources of Confusion

\$400

ANSWER:

Documents such as business records or salesman's log of sale calls are considered this hearsay rule because portions of them may contain hearsay statements overheard and recorded.

QUESTION:

What is double hearsay?
VA. PRAC. TRIAL HANDBOOK § 28:5 (2012 ed.).

Hearsay JEOPARDY!

Out-of-Court
Statements
and Writing

General
Admissibility

General
Sources of
Confusion

Business
Records/
Shopbook
Rule

Potpourri

100

200

300

400

General Admissibility – Keep it out or Let it in? \$100

ANSWER:

The evidence is generally not under oath.

QUESTION:

What is keep it out (usually)? *Hines v. Virginia*, 117 S.E. 843, 847 (Va. 1923).

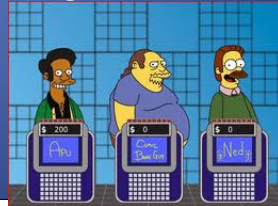
General Admissibility – Keep it out or Let it in? \$200

ANSWER:

An affidavit in support of a search warrant, especially where it contains the out-of-court statements of an informant.

QUESTION:

What is keep it out? *Neal v. Virginia*, 425 S.E.2d 521, 524 (Va. 1992).



General Admissibility – Keep it out or Let it in? \$300

ANSWER:

In a defamation case, a newspaper article relating to the judge's comments in a prior criminal trial involving the plaintiff.

QUESTION:

What is keep it out? *Ingles v. Dively*, 435 S.E.2d 641, 646 (Va. 1993).

General Admissibility – Keep it out or Let it in? \$400

ANSWER:

Not during sentencing, a party presents responsible unsworn information, including a victim's written report of loss for purposes of restitution.

QUESTION:

What is keep it out? *Smith v. Virginia*, 660 S.E.2d 691, 693 (Va. 2008).

Hearsay JEOPARDY!

Res Gestae	Past Recollection Recorded	Declarations against Penal Interest	Prior Consistent & Party Opponent	Potpourri
200	200	200	200	200
400	400	400	400	400
600	600	600	600	600
800	800	800	800	800

Prior Consistent Statement & Party Opponent's Statement - \$200

ANSWER:

If a witness is impeached based on a statement of bias, interest, or corruption, a statement is admissible if it was made at this time.

QUESTION:

What is when the statement was made before the time of the supposed bias, interest, or corruption? *Gurganus v. Virginia*, 513 S.E.2d 427, 428 (Va. 1999).

Prior Consistent Statement & Party Opponent's Statement - \$400

ANSWER:

If a witness is impeached by a claim of recent fabrication, or motive to falsify, the statement is admissible if made at this time.

QUESTION:

What is the statement was made before the motive to falsify existed or the effect of the statement could be foreseen? *Gurganus v. Virginia*, 513 S.E.2d 427, 428 (Va. 1999).

Prior Consistent Statement & Party Opponent's Statement - \$600

ANSWER:

Betty crashes into an off duty police officer's vehicle while driving under the influence. At trial, the investigating officer testifies that the off duty police officer told him, in Betty's presence, that the accident occurred at 1:05 A.M. The off duty police officer's statement is admissible under this exception to the hearsay rule.

QUESTION:

What is the adoptive admission exception? *Weinbender v. Virginia*, 398 S.E.2d 106, 108 (Va. 1990) (holding that a statement is admissible as an adoptive admission where that statement is made in the presence of a party and a reasonable person under the circumstances would have reacted if the statement were untrue).

Prior Consistent Statement & Party Opponent's Statement - \$800

ANSWER:

Mary, John's personal assistant, responds to a media inquiry regarding allegations of fraud committed by John's company by stating that "neither John nor the company has engaged in fraud in over one year." In a subsequent fraud action filed against John and his company, the court admits Mary's statement pursuant to this hearsay exception.

QUESTION:

What is the Admission by Party Opponent exception? *Raven Red Ash Coal Co. v. Herron*, 75 S.E. 752, 756 (Va. 1912).

Hearsay JEOPARDY!

Res Gestae	Past Recollection Recorded	Declarations against Penal Interest	Prior Consistent & Party Opponent	Potpourri
200	200	200		200
400	400	400		400
600	600	600		600
800	800	800		800

Potpourri - \$200

ANSWER:

Declarations of prior owners of real and personal property against the subsequent owners claiming the property are admissible if the statements were made at this time.

QUESTION:

What is if the statements were made while they were owners? *Walthall v. Johnston*, 2 Va. 275, 275 (1800).

Potpourri - \$400

ANSWER:

Co-parties may not be affected by one another's admissions unless this relationship exists between them.

QUESTION:

What is there is some joint enterprise or obligation which binds them together? *Fisher v. White*, 26 S.E, 573 , 575 (Va. 1897).

Potpourri - \$600

ANSWER:



Potpourri -



ANSWER:

An officer testifies for the prosecution that a criminal defendant told the officer he was out of state and knew nothing of the crime. The court should do this with the statement.

QUESTION:

What is let it in? The statement is not inculpatory or incriminating. *Alatishe v. Virginia*, 404 S.E.2d 81, 82 (Va. 1991).

Potpourri - \$800

ANSWER:

A party makes a vague protestation against excluding the evidence. The judge states that this protestation is not enough to admit the evidence for this reason.

QUESTION:

What is the statement does not assist the trial judge in making a rational determination? *Neal v. Virginia*, 425 S.E.2d 521, 524 (Va. 1992).



Hearsay JEOPARDY!

Res Gestae	Past Recollection Recorded	Declarations against Penal Interest	Prior Consistent & Party Opponent	Potpourri
200	200	200		
400	400	400		
600	600	600		
800	800	800		

Res Gestae - \$200

ANSWER:

This exception does not justify the admission of George's statement to John following a drug sale: "John you would have gotten a better deal if Jim was not present."

QUESTION:

What is the excited utterances exception? *Jones v. Virginia*, 396 S.E.2d 844, 851 (Va. 1990) ("The statement itself evinces deliberation. At a minimum, it does not overcome the presumption that it was deliberative.").

Res Gestae - \$400

ANSWER:

This exception allows the contents of a 9-1-1 phone conversation to be admissible, even where the declarant is answering questions, rather than relaying a spontaneous narrative.

QUESTION:

What is the excited utterances exception? *Caison v. Virginia*, 663 S.E.2d 553, 558 (Va. 2008).

Res Gestae - \$600

ANSWER:

During a murder trial for the death of Laura, Joan testified that “Laura told me that the defendant said ‘he would kill Laura if she tried to leave or take the boys away from him.’” The trial judge strikes Joan’s testimony because the statement does not meet this hearsay exception.

QUESTION:

What is the mental and physical state of mind exception? *West v. Virginia*, 407 S.E.2d 22, 24 (Va. 1991) (“Since the victim's state of mind was not relevant to any of the material issues raised at trial, her declarations did not fulfill the requirements of the ‘state of mind’ exception to the hearsay rule.”).

Res Gestae - \$800

ANSWER:

Based on this hearsay exception, a trial judge allowed the victim’s mother to testify that, during a phone conversation with the victim on the day of her death, the victim stated that “Johnnie” was with her at the shop.

QUESTION:

What is the present sense impression exception? *Foley v. Virginia*, 379 S.E.2d 915, 923 (Va. 1989) (“The declaration made by [the victim] was contemporaneous with the act of phoning her mother. . . . It also was spontaneous, as it reflected the victim’s personal perceptions at that time and was not a narrative reflection of a past event.”).

Hearsay JEOPARDY!

Res Gestae	Past Recollection Recorded	Declarations against Penal Interest	Prior Consistent & Party Opponent	Potpourri
	200	200		
	400	400		
	600	600		
	800	800		

Declarations against Penal Interests - \$200

ANSWER:

“After being advised of her *Miranda* rights, Jean told the officer that she and others had come to the airport ‘to steal and . . .to pick pockets.’”

This hearsay exception makes Jean’s statement admissible in the separate trial of her co-defendant.

QUESTION:

What is the declaration against penal interest exception? *Randolph v. Virginia*, 482 S.E.2d 101, 102 (Va. 1997).

Declarations against Penal Interests - \$400

ANSWER:

When declaring a penal interest, it may not be assumed that a witness will assert this constitutional right and hence be unavailable for that reason.

QUESTION

What is the Fifth Amendment? *Scaggs v. Virginia*, 359 S.E.2d 830, 831 (1987) (stating that unavailability must be proven).

Declarations against Penal Interests - \$600

ANSWER:

This element of the declaration against penal interest exception operates to bar from evidence a declarant’s hearsay statement when that declarant is incarcerated at the local prison at the time of the trial.

QUESTION:

What is the unavailability of the witness?
Langhorne v. Commonwealth, 409 S.E.2d 476, 482 (Va. 1991) (holding that the record reflected that a locally incarcerated witness was available to testify; therefore, the declaration against penal interest exception was inapplicable).

Declarations against Penal Interests - \$800

ANSWER:

A defendant may not introduce a statement he made to an investigator that he shot a victim during a struggle as a statement against interest because the statement was made with this intended purpose.

QUESTION:

What is because it is a self-serving hearsay statement intended to exculpate himself from criminal liability? *Schmitt v. Virginia*, 547 S.E.2d 186, 198 (2001).

Hearsay JEOPARDY!

Res Gestae	Past Recollection Recorded	Declarations against Penal Interest	Prior Consistent & Party Opponent	Potpourri
	200			
	400			
	600			
	800			

Past Recollections Recorded - \$200

ANSWER:

This exception allows the admission of a list of stolen items, dictated by a store clerk to deputies, even though the clerk did not write the list.

QUESTION

What is the past recollection recorded exception? *Bailey v. Virginia*, 456 S.E.2d 144, 147 (Va. 1995) (stating that where the witness “examined the lists and found them to be accurate, the lists were properly introduced under the ‘past recollection recorded’ exception”).

Past Recollections Recorded - \$400

ANSWER:

Based on this missing element, the past recollection recorded exception does not permit the admission of Jake’s statement, a man with a well known spotty memory, where Jake made the statement nine days after an event.

QUESTION:

What is the witness’s lack of a clear and accurate memory at the time of the statement? *Searce v. Virginia*, 561 S.E.2d 777, 780 (Va. 2002).



Past Recollections Recorded - \$600

ANSWER:

A witness’s affidavit made ten months after the event, in which the affidavit states specific facts about the witness’s intimate relationship with the defendant, is admissible because of this element of the past recollection recorded exception.

QUESTION:

What is the timeliness requirement? *Abney v. Virginia*, 657 S.E.2d 796, 801 (Va. 2008) (stating that where a witness records specific instances between herself and the defendant, “including places they went, things they did, and conversations they had, [such instances]. . . were ‘events’ [the witness] reasonably could have accurately recalled ten months later).

Past Recollections Recorded - \$800

ANSWER:

The past recollections recorded exception to the Hearsay Rule differs from refreshing the witness's recollection in these two respects.

QUESTION:

What is, in past recollection recorded, the witness cannot recall the events even when shown the document, and the document is admitted in evidence rather than simply shown to the witness to aid the witness' memory? VA. PRAC. TRIAL HANDBOOK § 28.13 (2012 ed.).

FINAL JEOPARDY

Category: Transcript of Prior
Testimony

Final Jeopardy!

ANSWER:

Where a juvenile victim of an alleged rape refuses to testify at trial, despite a court order to do so, warnings as to the possible consequences of refusing to testify, and a brief confinement, this happens.

QUESTION:

What is the witness may be held to be unavailable and a transcript of the preliminary hearing testimony may be admitted? *Scneider v. Virginia*, 625 S.E.2d 645, 690 (2002).