GOLDEN STATE EVIDENCE CODE

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(adopted from the California Evidence Code)

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100. General Provisions-Definitions

Unless the provision or context otherwise requires, these definitions govern the construction of this code.

110. Burden of producing evidence

"Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

115. Burden of proof

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

135. Declarant

"Declarant" is a person who makes a statement.

140. Evidence

"Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

145. The Hearing

"The hearing" means the hearing at which a question under this code arises, and not some earlier or later hearing.

170. Perceive

"Perceive" means to acquire knowledge through one's senses.

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

190. Proof
"Proof" is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

210. Relevant Evidence Defined

"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.

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.

235. Trier of Fact

"Trier of fact" includes (a) the jury and (b) the court when the court is trying an issue of fact other than one relating to the admissibility of evidence.

240. Unavailable Witness

(a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is any of the following:
(1) Exempted or precluded on the ground of privilege from testifying concerning the matter to which his or her statement is relevant.
(2) Dead or unable to attend or to testify at the hearing because of then-existing physical or mental illness or infirmity.
(3) Absent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process.
(b) A declarant is not unavailable as a witness if the death, inability, or absence of the declarant was brought about by the proponent of his or her statement for the purpose of preventing the declarant from attending or testifying.

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350. Irrelevant evidence inadmissible

No evidence is admissible except relevant evidence.

351. Relevant evidence admissible

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

352. Exclusion of relevant evidence

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

355. Limited relevance, scope

When evidence is admissible as to one party or for one purpose and is inadmissible as to another party or for another purpose, the court upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

410. Direct Evidence Defined

As used in this chapter, "direct evidence" means evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact.

413. Inference-Failure to explain or deny

In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case.

Chapter 3-Witnesses (Section 702-791)

702. Personal Knowledge

(a) Subject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter.
(b) A witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.

720. Expert Witness, Qualifications

(a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.
(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.
(c) The court shall determine if a witness is qualified under this section to offer an opinion. The proponent of such opinion shall have the burden of establishing the necessary foundation for said testimony by preponderance of evidence.

721. Expert Witness, Scope of Cross-Examination

(a) Subject to subdivision (b), a witness testifying as an expert may be cross-examined to the same extent as any other witness and, in addition, may be fully cross-examined as to (1) his or her qualifications, (2) the subject to which his or her expert testimony relates, and (3) the matter upon which his or her opinion is based and the reasons for his or her opinion.
(b) If a witness testifying as an expert testifies in the form of an opinion, he or she may not be cross-examined in regard to the content or tenor of any scientific, technical, or professional text, treatise, journal, or similar publication unless any of the following occurs:
(1) The witness referred to, considered, or relied upon such publication in arriving at or forming his or her opinion.

(2) The publication has been admitted in evidence.
(3) The publication has been established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
If admitted, relevant portions of the publication may be read into evidence but may not be received as exhibits.

760. Direct Examination

"Direct examination" is the first examination of a witness upon a matter that is not within the scope of a previous examination of the witness.

761. Cross-Examination

"Cross-examination" is the examination of a witness by a party other than the direct examiner.

762. Re-direct examination

"Redirect examination" is an examination of a witness by the direct examiner subsequent to the cross-examination of the witness. Redirect examination is limited to subjects addressed during cross-examination. Re-direct examination following recross-examination is limited to the subjects addressed during recross-examination.

763. Re-cross examination

"Recross-examination" is an examination of a witness by a cross-examiner subsequent to a redirect examination of the witness. Recross-examination is limited to subjects addressed during the preceding redirect examination.

764. Leading question defined

A "leading question" is a question that suggests to the witness the answer that the examining party desires.

765. Mode of examination

The court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth. The court shall require the questions are asked on a singular basis in a manner understood by the witness, parties, the court, and the trier of fact.

766. Non-responsive witness

A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party.

767. Leading questions

Except under special circumstances where the interests of justice otherwise require:
(1) A leading question may not be asked of a witness on direct or redirect examination.
(2) A leading question may be asked of a witness on cross-examination or recross-examination.

768. Examining witness with a writing

(a) In examining a witness concerning a writing, it is not necessary to show, read, or disclose to him any part of the writing.
(b) If a writing is shown to a witness, all parties to the action must be given an opportunity to inspect it before any question concerning it may be asked of the witness.

772. Order of Examination

(a) The examination of a witness shall proceed in the following phases: direct examination, cross-examination, redirect examination, recross-examination, and continuing thereafter by redirect and recross-examination.
(b) Each phase of the examination of a witness must be concluded before the succeeding phase begins.

780. Evaluating the credibility of witnesses; considerations

Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:
(a) His demeanor while testifying and the manner in which he testifies.
(b) The character of his testimony.
(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
(d) The extent of his opportunity to perceive any matter about which he testifies.
(e) His character for honesty or veracity or their opposites.
(f) The existence or nonexistence of a bias, interest, or other motive.
(g) A statement previously made by him that is consistent with his testimony at the hearing.
(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
(i) The existence or nonexistence of any fact testified to by him.
(j) His attitude toward the action in which he testifies or toward the giving of testimony.
(k) His admission of untruthfulness.

786. Character evidence; generally

Evidence of traits of his character other than honesty or veracity, or their opposites, is inadmissible to attack or support the credibility of a witness.

787. Character evidence; specific incidents inadmissible

Subject to Section 788, evidence of specific instances of his conduct relevant only as tending to prove a trait of his character is inadmissible to attack or support the credibility of a witness.

788. Character evidence, conviction of a felony

For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony.

790. Character; Good character to rebut bad character

Evidence of the good character of a witness is inadmissible to support his credibility unless evidence of his bad character has been admitted for the purpose of attacking his credibility.

791. Prior consistent statements

Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after:
(a) Evidence of a statement made by him that is inconsistent with any part of his testimony at the hearing has been admitted for the purpose of attacking his credibility, and the statement was made before the alleged inconsistent statement; or
(b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen.

Chapter 4-Opinion Testimony; Experts (Section 800-805)

800. Lay witness opinion

If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is:
(a) Rationally based on the perception of the witness; and
(b) Helpful to a clear understanding of his testimony.

801. Expert Opinion; Foundation

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

802. Expert Testimony; basis of opinion

A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.

803. Expert Witness; Exclusion of Improper Opinion

The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion. In such case, the witness may, if there remains a proper basis for his opinion, then state his opinion after excluding from consideration the matter determined to be improper.

805. Expert Opinion; Ultimate Issue

Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.

Chapter 5-Attorney-Client Privilege (Section 950-956)

950. Lawyer Defined.

As used in this article, "lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

951. Client Defined.

As used in this article, "client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

952. Confidential Communication Between Client and Lawyer Defined.

As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

954. Attorney-Client Privilege

Except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:
(a) The holder of the privilege;
(b) A person who is authorized to claim the privilege by the holder of the privilege; or
(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.
The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

956. Attorney-Client Privilege; Crime or Fraud.

There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

Chapter 6-Evidence Excluded by Extrinsic Policies; Character (Section 1100-1155)

1100. Proof of Character; General

Except as otherwise provided by statute, any otherwise admissible evidence (including evidence in the form of an opinion, evidence of reputation, and evidence of specific instances of such person's conduct) is admissible to prove a person's character or a trait of his character.

1101. Character Evidence; Non-Character Purpose

(a) Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.
(b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act.
(c) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness.

1102. Good Character of Defendant; Rebuttal

In a criminal action, evidence of the defendant's character or a trait of his character in the form of an opinion or evidence of his reputation is not made inadmissible by Section 1101 if such evidence is:
(a) Offered by the defendant to prove his conduct in conformity with such character or trait of character.
(b) Offered by the prosecution to rebut evidence adduced by the defendant under subdivision (a).

1104. Character Evidence; Care or Skill

Except as provided in Sections 1102 and 1103, evidence of a trait of a person's character with respect to care or skill is inadmissible to prove the quality of his conduct on a specified occasion.

1151. Subsequent remedial measures

When, after the occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is inadmissible to prove negligence or culpable conduct in connection with the event.

1152. Offer to Compromise; Humanitarian Assistance

Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.

1153. Evidence of Withdrawn Guilty Plea

Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

1154. Evidence of Acceptance of Settlement

Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act, or service in satisfaction of a claim, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove the invalidity of the claim or any part of it.

1155. Evidence of Insurance

Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible to prove negligence or other wrongdoing.

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Article 1-Hearsay Generally

1200. 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.

1201. Hearsay; Applicability of Exception

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.

1202. Hearsay; Prior Inconsistent Statement; Rebuttal

Evidence of a statement or other conduct by a declarant that is inconsistent with a statement by such declarant received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing.

Article 2-Confessions and Admissions

1220. Hearsay; Statement of Party Opponent

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.

1221. Hearsay; Adoptive Statement of Party Opponent

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.

1222. Hearsay; Authorized Statement of Party Opponent

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:
(a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the subject matter of the statement; and
(b) The evidence is offered either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

1223. Hearsay; Statement of a Co-Conspirator

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:
(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy;

(b) The statement was made prior to or during the time that the party was participating in that conspiracy; and
(c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

Article 3-Declarations Against Interest

1230. Hearsay; Declaration Against Interest

Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.

Article 4-Prior Statements

1235. Hearsay; Prior Inconsistent Statement

Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing.

1236. Hearsay; Prior Consistent Statement

Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement is consistent with his testimony at the hearing and is offered in compliance with Section 791.

1237. Hearsay; Past Recollection Recorded

(a) Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him while testifying, the statement concerns a matter as to which the witness has insufficient present recollection to enable him to testify fully and accurately, and the statement is contained in a writing which:
(1) Was made at a time when the fact recorded in the writing actually occurred or was fresh in the witness' memory;
(2) Was made (i) by the witness himself or under his direction or (ii) by some other person for the purpose of recording the witness' statement at the time it was made;
(3) Is offered after the witness testifies that the statement he made was a true statement of such fact; and
(4) Is offered after the writing is authenticated as an accurate record of the statement.
(b) The writing may be read into evidence, but the writing itself may not be received in evidence unless offered by an adverse party.

1238. Hearsay; Former Identification

Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him while testifying and:
(a) The statement is an identification of a party or another as a person who participated in a crime or other occurrence;
(b) The statement was made at a time when the crime or other occurrence was fresh in the witness'

memory; and
(c) The evidence of the statement is offered after the witness testifies that he made the identification and that it was a true reflection of his opinion at that time.

Article 5-Spontaneous, Contemporaneous, and Dying Declarations

1240. Hearsay; Spontaneous Statement

Evidence of a statement is not made inadmissible by the hearsay rule if the statement:
(a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and
(b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception.

1241. Hearsay; Contemporaneous Statement

Evidence of a statement is not made inadmissible by the hearsay rule if the statement:
(a) Is offered to explain, qualify, or make understandable conduct of the declarant; and
(b) Was made while the declarant was engaged in such conduct.

1242. Hearsay; Dying Declaration

Evidence of a statement made by a dying person respecting the cause and circumstances of his death is not made inadmissible by the hearsay rule if the statement was made upon his personal knowledge and under a sense of immediately impending death.

Article 6-Statements of Mental or Physical State

1250. Hearsay; Statement of State of Mind, Emotion, or Physical Sensation

(a) Subject to Section 1252, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by the hearsay rule when:
(1) The evidence is offered to prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when it is itself an issue in the action; or
(2) The evidence is offered to prove or explain acts or conduct of the declarant.
(b) This section does not make admissible evidence of a statement of memory or belief to prove the fact remembered or believed.

1251. Hearsay; Statement of State of Mind, Emotion, or Physical Sensation; Unavailable Declarant

Subject to Section 1252, evidence of a statement of the declarant's state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) at a time prior to the statement is not made inadmissible by the hearsay rule if:
(a) The declarant is unavailable as a witness; and
(b) The evidence is offered to prove such prior state of mind, emotion, or physical sensation when it is itself an issue in the action and the evidence is not offered to prove any fact other than such state of mind, emotion, or physical sensation.

1252. Hearsay; Limitations on use of Statement of State of Mind, Emotion, or Physical Sensation

Evidence of a statement is inadmissible under this article if the statement was made under circumstances such as to indicate its lack of trustworthiness.

Article 7-Business and Official Records

1270. Business Records; Definition

As used in this article, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not.

1271. Hearsay; Business Records

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.

1272. Hearsay; Absence of Business Record

Evidence of the absence from the records of a business of a record of an asserted act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if:
(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and
(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist.

1280. Hearsay; Record of 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.

1280.1 Hearsay; Record of Public Employee; Limitation

(a) Reports and records made pursuant to a law enforcement or official investigative duty, including but not limited to, police reports, Child and Adult Protective Services reports, OSHA post-accident reviews, traffic incident reports, are not subject to section 1280.
(b) Section 1280 shall not extend to the statement of any declarant reported or summarized within the official record. Such statements shall be redacted unless independently admissible.

1281. Hearsay; Birth, Death, Marriage Records

Evidence of a writing made as a record of a birth, fetal death, death, or marriage is not made inadmissible

by the hearsay rule if the maker was required by law to file the writing in a designated public office and the writing was made and filed as required by law. This section shall not extend to findings of a public coroner, pathologist, or inquest regarding the time, cause, or method of death in any criminal proceeding.

1284. Hearsay; Absence of Official Record

Evidence of a writing made by the public employee who is the official custodian of the records in a public office, reciting diligent search and failure to find a record, is not made inadmissible by the hearsay rule when offered to prove the absence of a record in that office.

Article 8-Former Testimony

1290. Former Testimony, Definition

As used in this article, "former testimony" means testimony given under oath in:
(a) Another action or in a former hearing or trial of the same action;
(b) A proceeding to determine a controversy conducted by or under the supervision of an agency that has the power to determine such a controversy and is an agency of the United States or a public entity in the United States;
(c) A deposition taken in compliance with law in another action; or
(d) An arbitration proceeding if the evidence of such former testimony is a verbatim transcript thereof.

1291. Hearsay; Former Testimony Exception

(a) Evidence of former testimony is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and:
(1) The former testimony is offered against a person who offered it in evidence in his own behalf on the former occasion or against the successor in interest of such person; or
(2) The party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing.
(b) The admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that former testimony offered under this section is not subject to:
(1) Objections to the form of the question which were not made at the time the former testimony was given.
(2) Objections based on competency or privilege which did not exist at the time the former testimony was given.

Article 9-Reputation

1320. Hearsay; Reputation in a Community

Evidence of reputation in a community is not made inadmissible by the hearsay rule if the reputation concerns an event of general history of the community or of the state or nation of which the community is a part and the event was of importance to the community.

1324. Hearsay; Reputation in a Community; Character or Trait

Evidence of a person's general reputation with reference to his character or a trait of his character at a

relevant time in the community in which he then resided or in a group with which he then habitually associated is not made inadmissible by the hearsay rule.

Article 10-Ancient Writings and Scientific and Similar Publications

1331. Hearsay; Ancient Writing

Evidence of a statement is not made inadmissible by the hearsay rule if the statement is contained in a writing more than 30 years old and the statement has been since generally acted upon as true by persons having an interest in the matter.

1341. Hearsay; Historical works, books or science or art, published maps or charts

Historical works, books of science or art, and published maps or charts, made by persons indifferent between the parties, are not made inadmissible by the hearsay rule when offered to prove facts of general notoriety and interest.

Article 11-Declarant Unavailable

1350. Hearsay; Declarant Unavailability Caused by Criminal Defendant

(a) In a criminal proceeding charging a serious felony, evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness, and all of the following are true:
(1) There is clear and convincing evidence that the declarant's unavailability was knowingly caused by, aided by, or solicited by the party against whom the statement is offered for the purpose of preventing the arrest or prosecution of the party and is the result of the death by homicide or the kidnapping of the declarant.
(2) There is no evidence that the unavailability of the declarant was caused by, aided by, solicited by, or procured on behalf of, the party who is offering the statement.
(3) The statement has been memorialized in a tape recording made by a law enforcement official, or in a written statement prepared by a law enforcement official and signed by the declarant and notarized in the presence of the law enforcement official, prior to the death or kidnapping of the declarant.
(4) The statement was made under circumstances which indicate its trustworthiness and was not the result of promise, inducement, threat, or coercion.
(5) The statement is relevant to the issues to be tried.
(6) The statement is corroborated by other evidence which tends to connect the party against whom the statement is offered with the commission of the serious felony with which the party is charged. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.
(b) If the prosecution intends to offer a statement pursuant to this section, the prosecution shall serve a written notice upon the defendant at least 10 days prior to the hearing or trial at which the prosecution intends to offer the statement, unless the prosecution shows good cause for the failure to provide that notice. In the event that good cause is shown, the defendant shall be entitled to a reasonable continuance of the hearing or trial.
(c) If the statement is offered during trial, the court's determination shall be made out of the presence of the jury. If the defendant elects to testify at the hearing on a motion brought pursuant to this section, the court shall exclude from the examination every person except the clerk, the court reporter, the bailiff, the prosecutor, the investigating officer, the defendant and his or her counsel, an investigator for the defendant, and the officer having custody of the defendant. Notwithstanding any other provision of law, the defendant's testimony at the hearing shall not be admissible in any other proceeding except the

hearing brought on the motion pursuant to this section. If a transcript is made of the defendant's testimony, it shall be sealed and transmitted to the clerk of the court in which the action is pending.
(d) As used in this section, "serious felony" means any of the felonies listed in subdivision (c) of Section 1192.7 of the Penal Code or any violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.
(e) If a statement to be admitted pursuant to this section includes hearsay statements made by anyone other than the declarant who is unavailable pursuant to subdivision (a), those hearsay statements are inadmissible unless they meet the requirements of an exception to the hearsay rule.

1390. Hearsay; Witness Unavailable Due to Misconduct By a Party

(a) Evidence of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party that has engaged, or aided and abetted, in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.
(b) (1) The party seeking to introduce a statement pursuant to subdivision (a) shall establish, by a preponderance of the evidence, that the elements of subdivision (a) have been met *before the evidence is introduced.*
(2) A finding that the elements of subdivision (a) have been met shall not be based solely on the unconfronted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.
(3) In deciding whether or not to admit the statement, the judge may take into account whether it is trustworthy and reliable.

Chapter 8-Writings (Section 1400-1562)

1400. Authentication of Writings; Definition

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.

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.

1413. Authentication; Subscribing Witness

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

1414. Authentication; Admission; Acts in Reliance

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.

1415. Authentication; Handwriting

A writing may be authenticated by evidence of the genuineness of the handwriting of the maker.

1416. Handwriting Authentication; Witness Qualification

A witness who is not otherwise qualified to testify as an expert may state his opinion whether a writing is in the handwriting of a supposed writer if the court finds that he has personal knowledge of the handwriting of the supposed writer. Such personal knowledge may be acquired from:
(a) Having seen the supposed writer write;

(b) Having seen a writing purporting to be in the handwriting of the supposed writer and upon which the supposed writer has acted or been charged;
(c) Having received letters in the due course of mail purporting to be from the supposed writer in response to letters duly addressed and mailed by him to the supposed writer; or
(d) Any other means of obtaining personal knowledge of the handwriting of the supposed writer.

1417. Handwriting Authentication; Proof by Comparison

The genuineness of handwriting, or the lack thereof, may be proved by a comparison made by the trier of fact with handwriting (a) which the court finds was admitted or treated as genuine by the party against whom the evidence is offered or (b) otherwise proved to be genuine to the satisfaction of the court.

1520. Writing; Original

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

1521. Writing; Secondary Evidence

(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."

1523. Writing; Oral Testimony Prohibited; Exception

(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.

1531. Official Writing; Certification

For the purpose of evidence, whenever a copy of an official writing is attested or certified, the attestation or certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be.

1532. Official Record of Writing

(a) The official record of a writing is prima facie evidence of the existence and content of the original recorded writing if:
(1) The record is in fact a record of an office of a public entity; and
(2) A statute authorized such a writing to be recorded in that office.
(b) The presumption established by this section is a presumption affecting the burden of producing evidence.

1560. Business Record; Definitions

As used in this article:
(1) "Business" includes every kind of business described in Section 1270.
(2) "Record" includes every kind of record maintained by a business.

1561. Business Records; Custodian of Records Affidavit

(a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:
(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.
(2) The copy is a true copy of all the records.
(3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.
(4) The identity of the records.
(5) A description of the mode of preparation of the records.
(b) If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit.

1562. Business Records; Admissibility Based Upon Custodian's Affidavit

If the original records would be admissible in evidence if the custodian or other qualified witness had been present and testified to the matters stated in the affidavit, and if the requirements of Section 1271 have been met, the copy of the records is admissible in evidence. The affidavit is admissible as evidence of the matters stated therein pursuant to Section 1561 and the matters so stated are presumed true. When more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this section is a presumption affecting the burden of producing evidence.