

EVIDENCE Professor Coyne

HEARSAY

Any *out-of-court statement* that is **offered to prove the truth of the matter asserted therein except a party's own statement offered against that party.**

Hearsay Exceptions

There are a total of 27 exceptions of which the following 16 are utilized fairly often.

3 Main Groups U-5 **U**navailability Exceptions
 S-5 **S**pontaneous Exceptions
 R-6 **R**ecords Exception

Unavailability Exceptions F.R.E. 804 (2 D's and 3 F's)

U	<u>Rule 804</u> Declarant Must Be Unavailable	1- Former <u>Testimony</u> 2- Declaration Against Interest 3- Dying Declaration 4- Statement of Family History 5- Forfeiture by Flight of a Witness (Waiver by misconduct of a party)
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Spontaneous Exceptions F.R.E. 803

S	<u>Rule 803</u> Declarant's Availability Does Not Matter	1- Present Physical Condition 2- Present Mental State 3- Statement For Treatment or Diagnosis 4- Excited Utterances 5- Present Sense Impression
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Records Exceptions F.R.E. 803

R	<u>Rule 803</u>	1- Past Recollection Recorded 2- Business Records 3- Public Records 4- Records of Vital Statistics 5- Documents Concerning Land 6- Judgments of Criminal Convictions
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F.R.E. 801 defines the following as non hearsay.

"A party's own statement offered against that party". This covers a broad array of material including:

- a) His own statement or one which he believes to be true.
- b) Agent's statement including someone authorized to speak, a servant's statement concerning something within scope of employment made while so employed and a co-conspirator's statement made in course of or in furtherance of the conspiracy.

OR

Prior statement of a witness who testifies at the present trial and the statement is:

- a) ***inconsistent with present testimony*** and ***prior statement was under oath*** in some judicial proceeding.
- b) ***consistent with present testimony and is offered to rebut charge of recent fabrication, improper influence or motive.***
- c) ***one of identification made after perceiving him.***