

What is hearsay



Hearsay is a testimony given in which the witness does not directly hear or experience what he or she is giving testimony to. In that case, the testimony being declared is hearsay because what is being asserted was not experienced first hand by the declarant, and therefore cannot really testify if it happened or not because the information came from someone else. This brings complications because the original or first-hand witness is not present in the court, and thus, cannot be cross-examined, or thoroughly scrutinized. For this reason, hearsay is generally unaccepted as evidence in the US court system, especially in criminal cases.

But as with all rules, there are exemptions to it as well. There are instances when hearsay is the only way to present a certain piece of evidence. For example, if the original witness has passed away, then presenting hearsay testimony is the only available course of action. In this case, the court must consider the hearsay evidence. Some common exemptions are dying declarations or a statement made while the person is dying; declarations against interest or when the person testifies to something that may cause some negative effect on the witness. . How has the Crawford vs. Washington case impacted the admissibility of hearsay evidence in criminal trials? The case of Crawford vs. Washington is a landmark court decision which necessitated the need redraw the rules guiding the use of hearsay evidence. The Supreme Court overturned the decision of the Washington Supreme Court and upheld the decision of the Washington Court of Appeals to reverse Michael Crawford's conviction for assault and attempted murder against Kenneth Lee.

The case revolved around whether Susan's recorded statements in the police station would be admissible as evidence against her husband. Under court rules, spouses are not allowed to testify against their partner, without the express permission of the suspect, or if the spouse is the complainant in the case. In *Crawford vs. Washington*, the plaintiff presented the court with Susan Crawford's testimony in front of the police; the defense argued that this evidence cannot be accepted because Michael, the suspect, cannot confront the testimony because Susan, as his spouse, cannot stand witness in his trial.

The court denied the defense's petition and accepted Susan's recorded statement made to the police where she said that Kenneth was not holding a weapon at that time. This testimony shattered the defense's not guilty plea by virtue of self-defense, and Michael was convicted of the crime. The element of hearsay in this case lies in the fact that Susan's recorded testimony is presented by the police, and Susan cannot be presented in court to corroborate or refute the statement because as Michael's wife, she cannot do so.

In this case, the Supreme Court overturned the conviction because Michael's right to confront the witnesses testifying against him was denied. Based on this, the Supreme Court decided to strike out Susan's recorded statement, and thus, there was insufficient evidence to convict Michael, and he was exonerated. 3. Discuss some of the situations where the exclusionary rule does not apply, despite the commission of some constitutional violation by the government. The Exclusionary Rule holds that any evidence that is

gathered through unlawful or unconstitutional means will not hold in any criminal trial.

Particularly, any evidence that is gathered through self-incrimination under duress or ignorance, and unlawful searches and seizures will not be recognized by any criminal court in the United States. The Exclusionary Rule is one of the principal ways to enforce a system of checks and balances within the US court system. This prevents any abuse or misuse from taking place. This rule is the reason why police are mandated by law to inform suspects of their Miranda Rights, especially when they will be detained and interrogated.

If the Miranda warning was not explicitly given, then any statements made during the ensuing interrogation will not be considered by the court. Of course there are exclusions to the Exclusionary Rule as well. The Exclusionary Rule is very specific only in so far as establishing the guilt or innocence of the suspect is concerned. This evidence can still be presented in order to question the reliability or honesty of the defendant's testimony. Another exclusion is called the inevitable discovery doctrine.

This doctrine argues that there are some pieces of evidence, gathered though an unlawful search, that would have eventually been discovered by elements of the law in the normal course of their investigation. This assumption maintains that the evidence would have been found; and that it is only a matter of time before it is discovered. There are also many cases wherein the exclusionary law may be challenged, depending on the circumstances that led to the unlawful search. 4. Discuss the Fifth

Amendment privilege against self incrimination and some of the various situations where it does not apply.

The Fifth Amendment ensures the privilege of an accused to refuse to answer questions that might further incriminate or be used against him. This right can be invoked at any given time; during investigation, up until the final deliberation of the case. The Fifth Amendment can only be invoked during a direct questioning or interrogation. This right against self-incrimination protects the individual from saying something that might further damage his or her case. There are cases when the individual may choose to disclose what he or she knows about a particular case in exchange for immunity.

The government often uses this to bait the “ bigger fishes”, for example in a criminal ring or network. In order to gather valuable information that would lead to more indictments, law enforcers offer immunity against criminal persecution. They may also be entered into the witness protection program to ensure the witnesses and their families’ safety. 5. Discuss the four major tests that govern the admissibility of confessions in criminal trials. The Fifth Amendment prevents and protects suspects from making self-incriminating statements, and because of this, the US courts do not accept confessions at face value.

Before accepting confessions as evidence in a court case, it must pass a four-pronged test made to establish if the confession was indeed given voluntarily; without threat or coercion of any kind. The first test asks whether the statement was given voluntarily or not. This establishes the circumstances surrounding the act of confession. The second determines if the confession was given in spite of being given the Miranda warning. This

means that the confession was given in full deliberation, and acceptance of the consequences of his confession.

The third test finds out if any sort of waiver was issued by the suspect. Finally, the fourth determines if the waiver, if there is one, is clear and unambiguous, without any room for double meaning or misinterpretation. In this case, a waiver refers to a document or a recorded statement that certifies that the suspect is relinquishing his/her legal rights and is giving a full confession. However, this waiver presupposes a thorough understanding of one's rights before these rights can actually be waived. If the suspect is not capable of such discernment, then the confession might be disputed. . How do some of the rules of evidence limit or even frustrate " the search for the truth? " Discuss the operation of these rules and their impact on " justice. "

The basic prerequisite of any case is being able to present enough evidence to determine if the suspect is guilty beyond reasonable doubt. If the evidence fails to show guilt beyond reasonable doubt, then the suspect should be acquitted. In a criminal case, the prosecutor has the burden of proof; meaning that the defense is not required to present any evidence if the prosecutor failed to make their case in the first place.

As such, being able to present material evidence is important for " justice". The problem is that sometimes, the rules governing the admissibility of evidence prevents the truth from coming out, and impairs the fair disposal of justice. However, it is a fair trade. The rules of evidence ensure that the rights of the accused are protected, even as the rights of the innocent are upheld. It is not foolproof, but it is the best arrangement that can be made

under the circumstances; a compromise to balance the rights of everyone involved.