

Louisianan Code of Evidence Articles Updates in 2019

Art. 702. Testimony by experts

A. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert has reliably applied the principles and methods to the facts of the case.

B. This Article shall also govern expert witnesses on the issue of memory and eyewitness identification. In a criminal case, if a party seeks to offer the testimony of a memory and eyewitness identification expert under this Article, such expert testimony may be considered for admission only if all provisions of Paragraph A of this Article are satisfied. A memory and eyewitness identification expert's testimony may not be admitted under this Article if there is physical or scientific evidence that corroborates the eyewitness identification of the defendant. An expert's testimony admitted under this Paragraph shall not offer an opinion as to whether a witness's memory or eyewitness identification is accurate.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 2014, No. 630, §1; Acts 2019, No. 115, §1, eff. June 5, 2019.

NOTE: No changes in law or result in a ruling on evidence admissibility shall be presumed or is intended by the Legislature of Louisiana by the passage of Acts 2014, No. 630.

Art. 801. Definitions

The following definitions apply under this Chapter:

A. Statement. A "statement" is:

- (1) An oral or written assertion; or
- (2) Nonverbal conduct of a person, if it is intended by him as an assertion.

B. Declarant. A "declarant" is a person who makes a statement.

C. Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted.

D. Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) In a criminal case, inconsistent with his testimony, provided that the proponent has first fairly directed the witness' attention to the statement and the witness has been given the opportunity to admit the fact and where there exists any additional evidence to corroborate the matter asserted by the prior inconsistent statement;

(b) Consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive;

(c) One of identification of a person made after perceiving the person; or

(d) Consistent with the declarant's testimony and is one of initial complaint of sexually assaultive behavior.

(e) A statement made by the victim of a sexually-oriented criminal offense to a healthcare provider during the course of a forensic medical examination as defined in R.S. 15:622 and the healthcare provider has documented that statement in writing during the course of the forensic medical examination.

(2) Personal, adoptive, and authorized admissions. The statement is offered against a party and is:

- (a) His own statement, in either his individual or a representative capacity;
- (b) A statement of which he has manifested his adoption or belief in its truth; or
- (c) A statement by a person authorized by him to make a statement concerning the

subject.

(3) Relational and privity admissions. The statement is offered against a party, and the statement is:

(a) A statement by an agent or employee of the party against whom it is offered, concerning a matter within the scope of his agency or employment, made during the existence of the relationship;

(b) A statement by a declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of the conspiracy, provided that a prima facie case of conspiracy is established;

(c) In a civil case, a statement by a declarant when the liability, obligation, or duty of the party against whom it is offered is derivatively based in whole or in part upon a liability, obligation, or duty of the declarant, or when the claim or right asserted by that party is barred or diminished by a breach of duty by the declarant, and when the statement would be admissible if offered against the declarant as a party in an action involving that liability, obligation, or breach of duty;

(d) In a civil case, a statement by a declarant when a right, title, or interest in any property or claim asserted by the party against whom it is offered requires a determination that a right, title, or interest exists or existed in the declarant during the time that that party now claims the declarant was the holder of the right, title, or interest, and when the statement would be admissible if offered against the declarant as a party in an action involving that right, title, or interest;

(e) A statement by a declarant offered against the party in an action for damages arising from the death of that declarant; or

(f) A statement by a minor child offered against a party in an action to recover for injury to that child, or against the person responsible for the child in an action to recover damages for losses caused by the child.

(4) Things said or done. The statements are events speaking for themselves under the immediate pressure of the occurrence, through the instructive, impulsive and spontaneous words and acts of the participants, and not the words of the participants when narrating the events, and which are necessary incidents of the criminal act, or immediate concomitants of it, or form in conjunction with it one continuous transaction.

E. Optical disk imaging system. "Optical disk imaging system" means a storage system that utilizes non-erasable Write Once Read Many (WORM) optical storage technology to record information on an optical disk with the use of laser technology, and that utilizes laser technology to retrieve and read previously stored information.

Acts 1988, No. 515, §1, eff. Jan. 1, 1989; Acts 1995, No. 346, §1; Acts 1995, No. 1300, §1; Acts 2004, No. 694, §1; Acts 2019, No. 237, §1.

