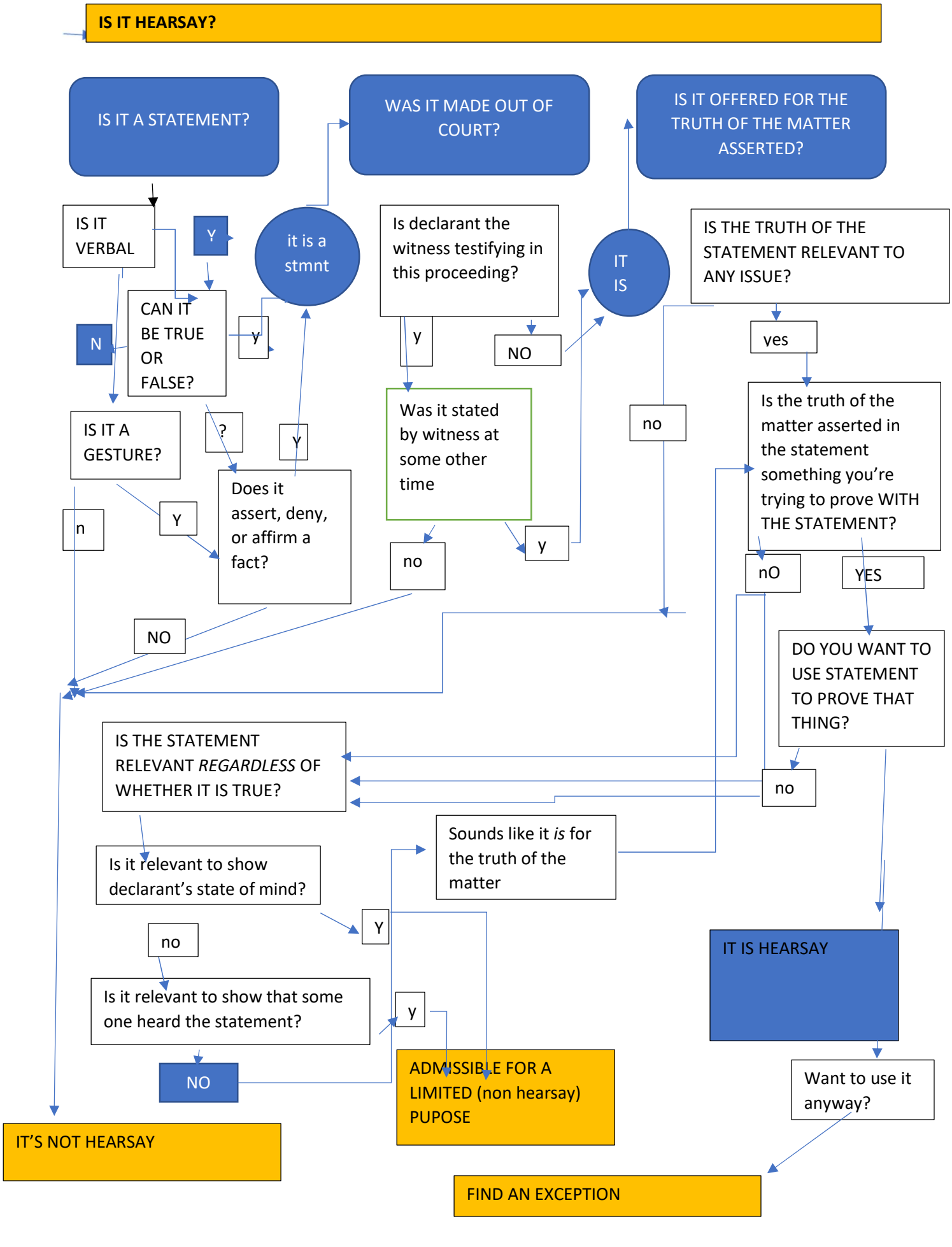
IS IT HEARSAY?
IS IT A STATEMENT?
WAS IT MADE OUT OF COURT?
IS IT OFFERED FOR THE TRUTH OF THE MATTER ASSERTED?
IS IT VERBAL
Y
it is a stmnt
Is declarant the witness testifying in this proceeding?
IT IS
IS THE TRUTH OF THE STATEMENT RELEVANT TO ANY ISSUE?
N
CAN IT BE TRUE OR FALSE?
y
y
NO
yes
IS IT A GESTURE?
?
Y
Was it stated by witness at some other time
no
Is the truth of the matter asserted in the statement something you're trying to prove WITH THE STATEMENT?
n
Y
Does it assert, deny, or affirm a fact?
no
y
nO
YES
NO
DO YOU WANT TO USE STATEMENT TO PROVE THAT THING?
IS THE STATEMENT RELEVANT *REGARDLESS* OF WHETHER IT IS TRUE?
no
Sounds like it *is* for the truth of the matter
Is it relevant to show declarant's state of mind?
Y
IT IS HEARSAY
no
Is it relevant to show that some one heard the statement?
y
NO
ADMISSIBLE FOR A LIMITED (non hearsay) PUPOSE
Want to use it anyway?
IT'S NOT HEARSAY
FIND AN EXCEPTION

EXCEPTIONS TO THE HEARSAY RULE

(A non-exhaustive list)

DECLARANT UNAVAILABLE:

§ 1227 – statements of deceased offered against Plaintiff in wrongful death action

§ 1230 -Declarations against interest

§ 1231 – Prior statements of deceased declarant

§ 1242 – Dying Declarations

§ 1291 – Former testimony of party

§ 1292 – Former testimony of non-party declarant in action w/ similar motive/interest

§ 1294 – Prior inconsistent statements of declarant/witness testimony admitted under § 1291

§ 1251 – Declarant's previously existing mental or physical state *

§ 1260 – Statements re: Declarant's will or trust*

§ 1261 – Statement of Decedent in estate action*

§§ 1310-1311 – Statements re family history *

§ 1323 – Statements concerning boundary*

§ 1350 – Criminal Defendant caused witness to be unavailable (6 Requirements)*

§ 1370 – Threats (5 Requirements) *

§ 1380 – Declarant victim of elder/dependent abuse*

§ 1390 – Where Party made declarant unavailable (or tried to) *

* Unless circumstances indicate untrustworthiness

DECLARANT IS PARTY/ DECLARATIONS AGAINST INTEREST

§ 1220 – Party Admission

§ 1221 – Adoptive admission

§ 1223 – Admission of co-conspirator

DECLARANT IS WITNESS

§ 1235 – prior inconsistent statement

§ 1236 – prior consistent statement of witness (See EC § 791)

§ 1237 – Past Recollection recorded.

§ 1238 – Prior Identification

CONSIDERED RELIABLE

§ 1240 – Spontaneous Statement

§ 1241 – Contemporaneous statement

§ 1250 – Declarant's then-existing mental or physical state

RECORDS:

§ 1270 – Definition of "Business" is broad, includes govt., activities, institutions

§ 1271 – Writings admissible as business records (4 requirements)

§ 1272 – Absence of Business record (2 requirements)

§1280 – Record by Public Employee (3 Requirements)

§ 1281 – Vital statistics (birth, death, marriage)

§ 1283 – Federal record of missing or "beleaguered" person

§ 1284 – absence of public record

§ 1300 – felony convictions

§ 1301 – Judgments offered to prove facts essential to judgment

§§ 1312, 1315, 1316 – family and/or church records.

§ 1330 – Recitals in records affecting property (statements in deeds, wills, etc.)

§1331 – Recitals in ancient writings

§1340 – Publications relied on in course of business

§ 1341 – Historical works

FAMILY History

§ 1281 – Vital records

§§ 1310-1316 – Statements and Records re: family history

REPUTATION

§ 1320 – Reputation concerning community history

§ 1324 – Reputation concerning character

§ 1321-1323, 1330 – Property, boundaries

DECLARANT IS A MINOR

§ 1228- statements re: sexual abuse to corroborate corpus delecti (6 requirements)

§ 1360 – Statements of child under 12 describing abuse

SELECTED ISSUES:

BUSINESS RECORD vs. RECORD BY PUBLIC EMPLOYEE:

Admission of business records, requires 4 elements, but if that business record is a record by public employee, you may not need the custodian of records

EC § 1270 – "BUSINESS" IS BROADLY DEFINED
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.

EC § 1271 – BUSINESS RECORDS - 4 REQUIREMENTS:
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.

EC § 1280 – RECORD BY PUBLIC EMPLOYEE – JUST 3 REQUIREMENTS
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.

EC § 1250 vs. NON HS PURPOSE TO SHOW STATE OF MIND

Statements relevant to non-HS purpose of declarant's state of mind like "I need an aspirin" and "I can't breathe" may also be admissible for truth under EC § 1250

EC § 1250 – Declarant's then existing state of mind
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.

EXPERT RELIANCE ON HEARSAY STATEMENTS

People v. Sanchez (2016)– HS RELIED ON BY EXPERT

When any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth. If the case is one in which a prosecution expert seeks to relate *testimonial* hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing.
(People v. Sanchez (2016) 63 Cal.4th 665, 686.)

Reid v. Google, inc. (2010) – COURTS FED UP W/ FRIVOLOUS OBJECTIONS

We recognize that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical.[9] Trial courts are often faced with "innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become." (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 711–712, 81 Cal.Rptr.3d 406.) Indeed, the *Biljac* procedure itself was designed to ease the extreme burden on trial courts when all "too often" "litigants file blunderbuss objections to virtually every item of evidence submitted." (*Demps, supra,* 149 Cal.App.4th at pp. 578–579, fn. 6, 57 Cal.Rptr.3d 204; *Biljac, supra,* 218 Cal.App.3d at p. 1419, fn. 3, 267 Cal.Rptr. 819; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 248, 254 & fn. 3, 100 Cal.Rptr.3d 296 [employer filed 324 pages of evidentiary objections, consisting of 764 specific objections, which the Court of Appeal characterized as the "poster child" for abusive objections].) To counter that disturbing trend, we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices. At the very least, at the summary judgment hearing, the parties—with the trial court's *533 encouragement—should specify the evidentiary objections they consider important, so that the court can focus its rulings on evidentiary matters that are critical in resolving the summary judgment motion.
(Reid v. Google, Inc. (2010) 50 Cal.4th 512, 532–533.)