

# Rules of Evidence in Small Claims Court

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***Why do we need to have rules about evidence? What are we trying to accomplish? (Hint: Remember that the rules about evidence were not developed with small claims court in mind!)***

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*“The rules of evidence applicable in the trial of civil actions generally are observed.”*

*NCGS 7A-222*

*“In a trial before the judge, sitting without a jury, the ordinary rules as to the competency of evidence applied in a trial before a jury are to some extent relaxed, for the reason that the judge with knowledge of the law is able to eliminate from the testimony he hears that which is immaterial and incompetent and consider that only which tends properly to prove the facts to be found.”*

*Muirhead Const. Co. v. Housing Authority of Durham, 1 N.C.App. 181, 60 S.E.2d 542 (1968)*

## **General Principles**

Evidence may be admissible or inadmissible. Generally, evidence is admitted unless objected to by a party. Evidence deemed inadmissible must be ignored by the judge, and a party lacking any other proof of an essential element of the case will lose.

The general rule is that evidence is admissible if it is relevant, unless that evidence is excluded from consideration by a specific rule.

When a rule of evidence provides that evidence of a certain type is not admissible, the reason is usually that surrounding circumstances render the reliability of the evidence questionable.

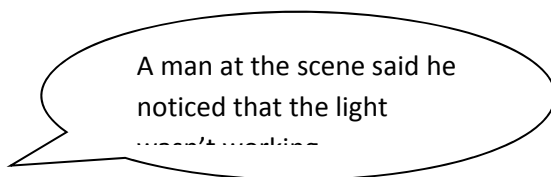
A magistrate must consider the reliability of all evidence presented in a case. Thus even in a case in which evidence is admitted which might have been excluded had an objection been raised, a magistrate may deem that evidence unreliable and refuse to consider it.

Evidence is relevant if it tends to prove that an important fact in a case is more or less likely. Small claims cases typically involve significant amounts of irrelevant evidence due to the parties' unfamiliarity with the law. For the purpose of making a decision, a magistrate merely ignores the surplus information provided by the parties. Frequent attempts to confine the testimony of a witness to material which is relevant often causes witnesses to feel intimidated and frustrated. It is generally more efficient to allow a witness to present all the information she or he has to offer, and then for the magistrate to separate out the wheat from the chaff.

The following sorts of information may be of doubtful reliability. If a party objects to the admission of such evidence, a magistrate may choose to refuse to admit the evidence, or may instead assure the objecting party that the magistrate will accord unreliable evidence appropriate weight.

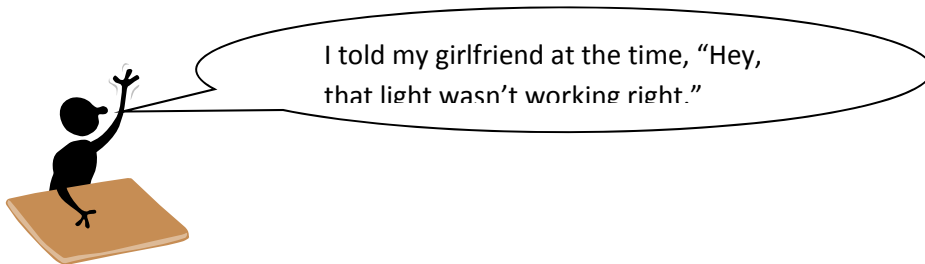
### Hearsay Evidence

Hearsay is defined as a statement made outside of court which is offered to prove that the content of the statement is accurate.



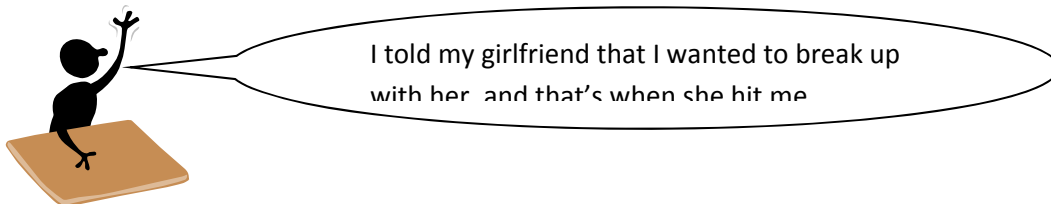


A statement doesn't have to be made by someone other than the witness to be hearsay.

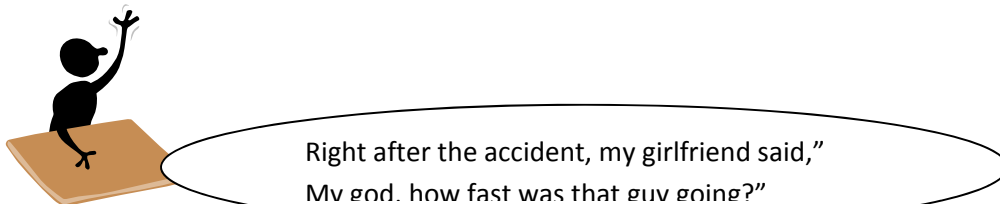
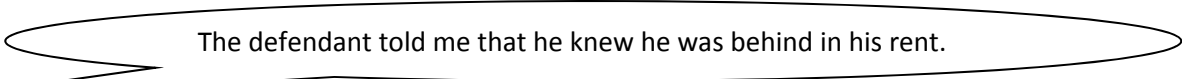


Exceptions to the hearsay rule:

A statement offered to prove something other than the truth of the statement itself is not hearsay.



Admissions



Excited utterances



### **Best Evidence Rule (paraphrased):**

When an action by a party is based on a right created by a written contract, and the content of that contract is in dispute, the party must either produce the contract or adequately explain why he is unable to do so.

### **G.S. 8-45: Verified statement of account**

In an action on an account for goods sold, rents, services rendered, or labor performed, or any oral contract for money loaned, a verified itemized statement of the account is admissible into evidence and is deemed correct unless disputed by the defendant.

“Itemized”: describes each item with price and item number, if there is one.

“Verified”: Accompanied by an affidavit from a person who (1) would be competent to testify at trial; (2) has personal knowledge of the particular account, or of the books and records of the business in general; and (3) swears that the account is correct and presently is owed by defendant to plaintiff.

# Business Records Exception

Writings or records of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge are admissible if kept in the regular course of business and if it was the regular course of business to make that record, unless the source of information or circumstances of preparation indicate a lack of trustworthiness.

## Determining Credibility: What Do You Think About?

- Motive to lie
- Corroborating evidence
- Demeanor
- Ability to testify to details
- Person in best position to observe
- Which version seems more likely