



You're Not a Court of Record . . .  
... but if you were . . .

1

---

---

---

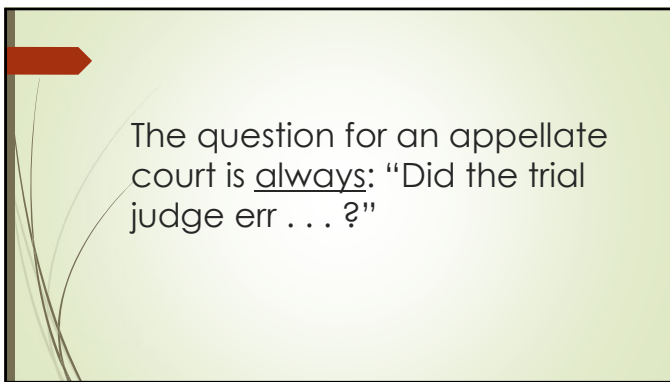
---

---

---

---

---



The question for an appellate court is always: "Did the trial judge err . . . ?"

2

---

---

---

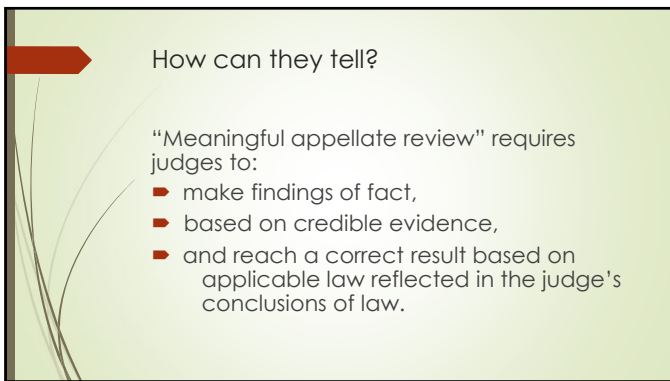
---

---

---

---

---



How can they tell?

"Meaningful appellate review" requires judges to:

- make findings of fact,
- based on credible evidence,
- and reach a correct result based on applicable law reflected in the judge's conclusions of law.

3

---

---

---

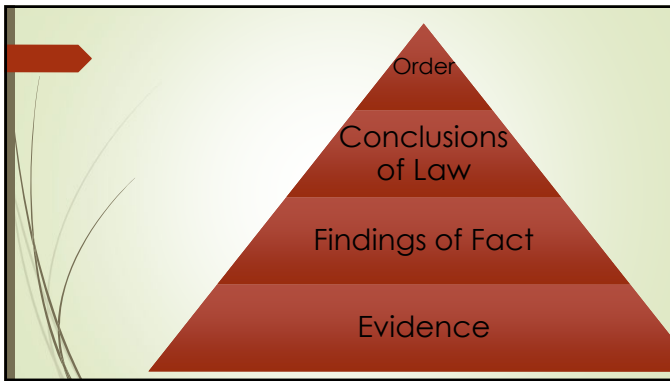
---

---

---

---

---



4

---

---

---

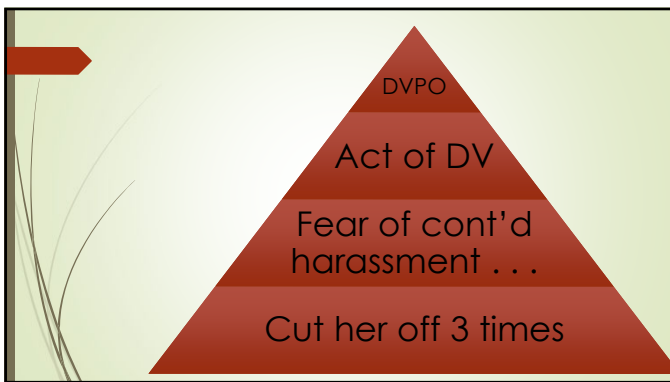
---

---

---

---

---



5

---

---

---

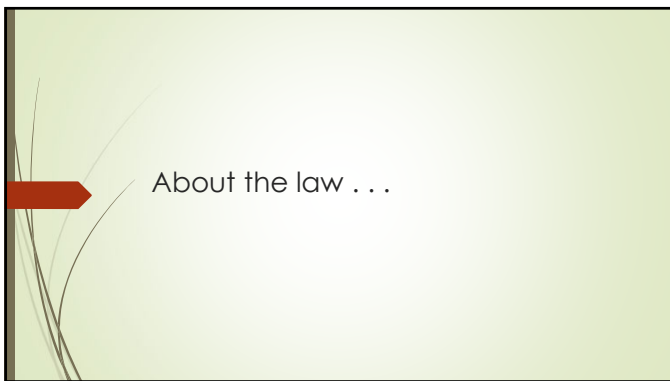
---

---

---

---

---



6

---

---

---

---

---

---

---

---

**Why** do you need to know the law?

Impossible to correctly decide a case unless you know what the law requires to support your order.

A novice may believe "It's just common sense," but a judicial official charged with making LEGAL decisions is only making regular-person decisions if they are unacquainted with relevant law.

7

---

---

---


---

---

---

---

---



The Law is vast . . . And for all practical purposes, unknowable

... and yet, you absolutely need to know it.

8

---

---

---

---

---

---

---

---

**How** do you know the law?

<b><u>Easily accessible resources:</u></b>	<b><u>Original sources:</u></b>
Publications	Statutes
Blog posts	Cases
Classroom/conference materials	
Memos	

**Legal experts:**  
Attorneys responsible for answering your questions at AOC & SOG  
Other judicial officials  
Attorneys appearing before you

9

---

---

---

---

---

---

---

---

How do **I** Know the Law?

10

---

---

---

---

---

---

---

---

How do **I** Know the Law?

11

---

---

---

---

---

---

---

---

What Law is relevant to **THIS** decision?

- What are the essential elements of the substantive claim?
- What defenses are available and responsive to the substantive claim?
- What procedural rules apply?

12

---

---

---

---

---

---

---

---

Understanding the Law: Rules for reading Statutes

1. Slowly read every word.
2. Always check for a definitions section.
3. Note particularly the following words:  
Subject to Notwithstanding Shall Must May Including
4. Watch out for cross-references.

13

---

---

---

---

---

---

---

---

1. Slowly read every word.
2. Always check for a definitions section.
3. Note particularly the following words:  
Subject to Notwithstanding Shall Must May Including
4. Watch out for cross-references.

*Jarrett v. Jarrett*: Statutory definition of act of domestic violence

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress;

14

---

---

---

---

---

---

---

---

*Jarrett v. Jarrett*: Statutory definition of act of domestic violence

GS 14-277.3A(b) Definitions  
2) Harasses or harassment. - Knowing conduct, including written or printed communication . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

1. Slowly read every word.
2. Always check for a definitions section.
3. Note particularly the following words:  
Subject to Notwithstanding Shall Must May Including
4. Watch out for cross-references.

15

---

---

---

---

---

---

---

---

**Jarrett v. Jarrett**

GS 50B-1 Domestic Violence; Definition  
 (2) Placing the aggrieved party . . . in fear of . . . continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress;

GS 14-277.3A(b) Definitions  
 2) *Harasses or harassment.* - Knowing conduct, including written or printed communication . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

Was plaintiff afraid of continued harassment?  
 Did plaintiff suffer substantial emotional distress as a result of defendant's behavior?  
 Was the defendant's behavior knowing?  
 Was it directed specifically at plaintiff?  
 Did the behavior torment . . . plaintiff?  
 Did defendant's behavior serve some legitimate purpose?

---

---

---

---

---

---

---

---

---

---

16

**Rules of Statutory Construction**

- Primary rule is to effectuate intent of legislature.
- Statutes related to same subject matter should be considered together (*in pari materia*).
- Statutes creating a criminal offense are construed strictly against the State.
- Presumption is against interpretation making some words redundant or "mere surplusage."
- Specific provisions trump language of general application.

---

---

---

---

---

---

---

---

---

---

17

**Rules of Statutory Construction**

- Statutes creating a criminal offense are construed strictly against the State.
- Presumption is against interpretation making some words redundant or "mere surplusage."

EXAMPLE: State v. Conley, 374 N.C. 209, 212, 839 S.E.2d 805, 807 (2020).  
 Defendant had 5 guns on school property. Five charges, or just one?

It shall be a Class 1 felony for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school.

---

---

---

---

---

---

---

---

---

---

18

Understanding the Law: Cases

- Opinions are either unpublished, per Rule 30(e), or published.  
*If the panel that hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.*
- Distinguish *dicta* from the holding of a case – statements necessary to the decision.

19

---

---

---

---


---

---

---

---

Sometimes you won't know.



20

---

---

---

---

---

---

---

---

Sometimes no one knows.

And sometimes we know that we don't know.

Plaintiffs also contend that the district court judge had no jurisdiction to consider the defendants' motion for sanctions. According to the plaintiffs, the magistrate's court was the only forum where the defendants could bring their motion. Defendants counter this argument by contending that the magistrate has no authority to impose sanctions.

Without deciding whether a magistrate has authority to render sanctions under Rule 11, we hold that the district court had jurisdiction to do so in this case.

*Chandak v. Elec. Interconnect Corp.*, 144 N.C. App. 258, 263, 550 S.E.2d 25, 29 (2001)

21

---

---

---

---

---

---

---

---



22

---

---

---

---

---

---

---

---

**What to do when we don't know.**

There is law about what courts should do when the law is unclear: consider the underlying concern, intention, or purpose of law we DO know.

Also, sometimes it's informative to know what other states have decided about this particular issue – especially if (1) lots have reached the same conclusion, or (2) lots of disagreement.

Most importantly, don't waffle! Resolve as best you can "the law" that applies for this issue on these facts and treat it as settled until something happens to change your mind.

23

---

---

---

---

---

---

---

---

**Ideally . . . You should begin each proceeding knowing:**

What is the general substantive law applicable to this sort of case?  
What general procedural rules apply to this sort of case?  
What common exceptions should I be aware of?  
What are some unknowns/"twists" I should be prepared for?

24

---

---

---

---

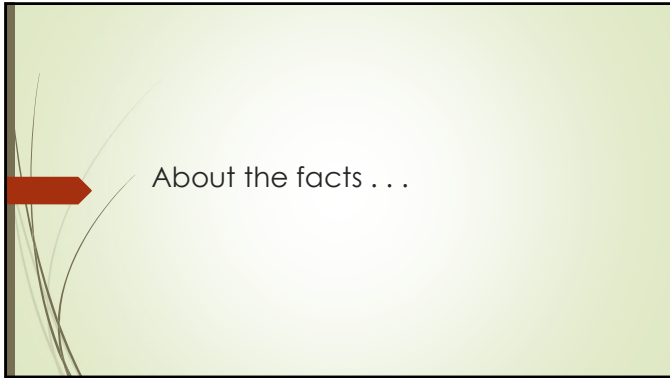
---

---

---

---





About the facts . . .

25

---

---

---

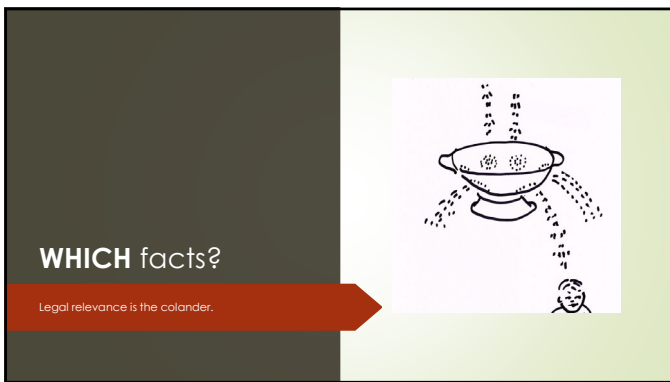
---

---

---


---

---



**WHICH facts?**

Legal relevance is the colander.



26

---

---

---

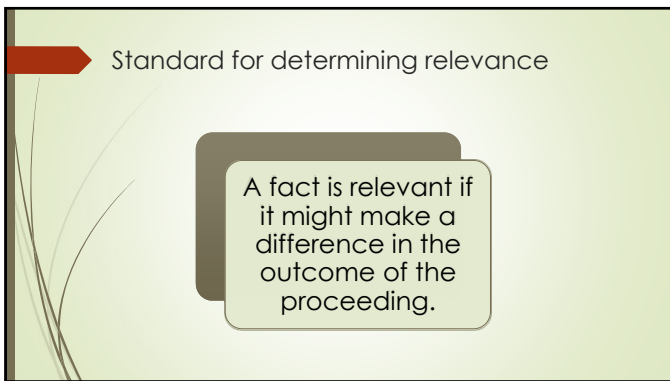
---

---

---

---

---



Standard for determining relevance

A fact is relevant if it might make a difference in the outcome of the proceeding.

27

---

---

---

---

---

---


---

---

In NC, there are two kinds of facts:

"Ultimate facts are the final facts required to establish the plaintiff's cause of action or the defendant's defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts."

The NC State Bar v. Key, 189 NC App 80 (2008).



28

---

---

---

---

---

---

---

---

In NC, there are two kinds of facts.

<p><b>Ultimate facts</b></p> <ul style="list-style-type: none"> <li>The plaintiff suffered substantial emotional distress as a result of defendant's behavior.</li> </ul>	<p><b>Evidentiary facts</b></p> <ul style="list-style-type: none"> <li>Her son testified that she appeared upset after each of these incidents.</li> <li>Plaintiff was admitted to a hospital because of heart problems related to the stress caused by defendant's behavior.</li> </ul>
---	--

29

---

---

---

---

---

---

---

---

Underlying question is always "How do you know?"

Answer: Facts, unless stipulated to by the parties, must be established by evidence.

30

---

---

---

---

---


---

---

---

Getting the evidence you need: how to ask a question if you really want to know the answer:

1. Avoid yes-or-no questions.
2. Really listen to the answer.  
 Follow-up: *What made you think that?*  
*Tell me more about that.*  
*Can you give me an example?*
3. Slow down! Don't interrupt, and don't be afraid of silence.
4. Ask one question at a time.
5. Gently bring back a drifting witness:  
*You were telling me about last night . . .*  
*You were saying he's been on the medication for how long now?*



31

---

---

---

---

---

---

---

---

A CRITICAL COMPONENT OF EVALUATING EVIDENCE IS DETERMINING WHAT WEIGHT TO GIVE IT.

32

---

---

---

---

---

---

---

---

Distinguish between an inference and a factual statement.

- When I went to pick up my puppy, she wasn't feeling well.
- The driver was confused and disoriented.
- I could tell the salesclerk was in a big hurry.
- He came at me in an aggressive way.

Urge the speaker to tell you how they knew: "Really? What did he do?"

33

---

---

---


---

---

---

---

---



### Assessing credibility

- Witness's ability and opportunity to observe events
- Witness's ability to provide details
- Has witness been consistent in story?
- Is testimony plausible, or does it seem unreasonable or unlikely?
- Does witness have motive to lie?
- Observations of demeanor.
- Consistency with other evidence (and lack of other evidence where it might be expected).

34

---

---

---


---

---

---

---

---



There are some questions with no single correct answer.

What amount of money compensates for the pain-and-suffering associated with a broken wrist?

What is the fair rental value of the house at 1308 Broken Stick Drive in your county if the air conditioning doesn't work in July?

What is a reasonable time for a landlord to repair a broken dishwasher?

35

---

---

---


---

---

---

---

---



### Jumping the gap!

Identify and answer smaller evidentiary questions, and then decide the ultimate question.

36

---

---

---

---

---

---

---

---

**Assuming you decide to use a secured bond:**

**Are the conclusions forming the basis for your decisions legally correct?**

*A secured bond is required because (1) it is necessary to assure defendant's presence for trial, and (2) to prevent defendant from injuring people.*

**Are those conclusions supported by your findings of fact?**

*Defendant's alcoholism poses a risk that he will re-offend if released. Defendant has no strong community or family ties to the area.*

**Are those findings of fact supported by the evidence?**

*Prior DWI offense 9 years ago.  
Lives alone, works sporadically, of Mexican ancestry, has lived here 5 years.*

37

---

---

---

---

---

---

---

---

**Inferences drawn from evidence**

DWI 9 years ago?  
Drinking close to home?  
Of Mexican ancestry?

\_\_\_\_\_

DV incident happened on Wednesday, waited until Friday  
Involved in custody dispute  
Sammie seems happy . . .  
Kendra's been drinking.

38

---

---

---

---

---

---

---

---