

Outline for Session 7: Evidence in Small Claims Court

What the law says:

G.S. 7A-222: *The rules of evidence applicable in the trial of civil actions generally are observed [in small claims court.]*

In the trial of civil actions in other trial courts, the courts have adopted the following rule:

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 (1968).

General principles:

- Evidence may be documentary (written), testimonial, or real (physical).
- All relevant evidence is admissible unless barred by another rule.
- The most common reasons relevant evidence is barred are
 - concerns about its authenticity and/or reliability,
 - privilege,
 - the probative value being outweighed by its prejudicial effect.

Relevance is the core principle.

G.S. 8C-1, Rule 401. Definition of "relevant evidence."

*"Relevant evidence" means evidence having any tendency to make the existence of **any fact that is of consequence to the determination of the action** more probable or less probable than it would be without the evidence.*

Another way to think about this is to ask what reasonable inferences can be drawn from specific evidence.

Some quick examples: Is this testimony relevant?

From a LL relevant to the issue of demand in a failure to pay rent SE case?

Yeah, I went over and discussed it with him (the tenant). ☐ Yes ☐ No

From a neighbor in the lawnmower case, relevant to ownership:

Paul (plaintiff) always had trouble keeping a job, and mostly his momma bought stuff and he just used it. ☐ Yes ☐ No

From a different neighbor in the lawnmower case:

Danny (defendant) did have a reputation for borrowing things without asking. I don't think he meant to steal them, but most of us knew to keep our stuff locked up.

___ Yes ___ No

[More about relevance](#)

Rule 404: Character evidence not admissible to prove conduct. (aka *propensity*).

Rule 406. Habit; routine practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Example: Defendant testifies that she always uses her turn signal when changing lanes, even if there's no one else on the road.

Rule 407. Subsequent remedial measures. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if those issues are controverted, or impeachment.

Rule 408. Compromise and offers to compromise. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or evidence of statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[Laying a foundation](#)

Rule 602. Lack of personal knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 701. Opinion testimony by lay witness. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Rule 901. Requirement of authentication or identification.

(a) General provision. – The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) . . . [T]he following are examples of authentication or identification conforming with the requirements of this rule:

1) Testimony of Witness with Knowledge. – Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. – Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

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(5) Voice Identification. – Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. – Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. – Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

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(9) Process or System. – Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

Rule 902. Self-authentication. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

{My paraphrase follows}

Certified copies of public records;

Official governmental publications;

Newspapers & magazines;

Acknowledged documents (accompanied by a certificate of acknowledgment)

Commercial paper & related documents

Contents of Writings, Recordings, & Photographs

Rule 1001. Definitions. For the purposes of this Article the following definitions are applicable:

(1) Writings and Recordings. – "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. – "Photographs" include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. – An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) Duplicate. – A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

Rule 1002. Requirement of original.

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.

(Duplicate generally okay, unless specific question raised about authenticity or fairness.)

Rule 1004. Admissibility of other evidence of contents.

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if (paraphrase: originals are lost, have been destroyed, are not obtainable through legal procedure, is in possession of opponent who refuses to produce it) or . . . is not closely related to a controlling issue.

Rule 1007. Testimony or written admission of party.

Contents of writings, recordings, or photographs may be proved by the testimony ... of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Hearsay

Summary of Rules 801 and 802:

- Hearsay “is a **statement**, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”
 - A **statement** is a written or spoken assertion, or even nonverbal conduct if intended to be an assertion.
 - Hearsay is inadmissible unless it falls within one of the exceptions to the Hearsay Rule.
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Exceptions to the Hearsay Rule

- **Rule 801(d).** Exception for Admissions by a Party-Opponent.
A statement is admissible as an exception to the hearsay rule if it is offered against a party and it is (A) his own statement, in either his individual or a representative capacity, or (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, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship or (E) a statement by a coconspirator of such party during the course and in furtherance of the conspiracy.

➤ **Rule 803.** . . . The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. – A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. (50 NC cases)

(2) Excited Utterance. – A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. (105 NC cases)

(3) Then Existing Mental, Emotional, or Physical Condition. . . . (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment . . . describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded Recollection. – A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but

may not itself be received as an exhibit unless offered by an adverse party. 44 NC cases

(6) Records of Regularly Conducted Activity. – A [written note, report, etc.] of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if

(i) kept in the course of a regularly conducted business activity and

(ii) it was the regular practice of that business activity to make the memorandum report, [or] record . . . as shown by the testimony of the custodian or other qualified witness, or by affidavit or by document under seal under Rule 902 of the Rules of Evidence made by the custodian or witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Authentication of evidence by affidavit shall be confined to the records of nonparties, and the proponent of that evidence shall give advance notice to all other parties of intent to offer the evidence with authentication by affidavit.

The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. 63 NC cases

(6) Absence of Entry in Records Kept in Accordance with the Provisions of Paragraph (6). – Evidence that a matter is not included in the memoranda, . . . to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a . . . record . . . was regularly made . . . unless the sources of information or other circumstances indicate lack of trustworthiness.

(7) Public Records and Reports. – Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law-enforcement personnel, or (C) in civil actions and proceedings and against the State in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

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(11) Records of Religious Organizations. . . .

(12) Marriage, Baptismal, and Similar Certificates. . . .

(13) Family Records. . . .

(14) Records of Documents Affecting an Interest in Property . . , if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property. – A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

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(17) Market Reports, Commercial Publications. – Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

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(21) Reputation as to Character. – Reputation of a person's character among his associates or in the community.

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(24) Other Exceptions. – A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it gives written notice stating his intention to offer the statement and the particulars of it, including the name and address of the declarant, to the adverse party sufficiently in advance of offering the statement to provide the adverse party with a fair opportunity to prepare to meet the statement.
