

**JUST THE FACTS,
MA'AM**

Dona/Session 3

1

In every proceeding, a magistrate is required to determine the relevant facts to which the law will apply.

"Perhaps the greatest of all the fallacies entertained by people about the law is . . . [t]hat the business of a court of justice is to discover the truth. Its real business is to pronounce upon the justice of particular claims, and incidentally to test the truth of the assertions of fact made in support of the claim in law, provided that those assertions are relevant in law to the establishment of the desired conclusion; and this is by no means the same thing."

There's the truth . . . and then there's the facts.
Don't let your inability to discern the first get in the way of your determining the second.

2

In NC, there are two kinds of facts:

"There are two kinds of facts: Ultimate facts, and evidentiary 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).

3

In NC, there are two kinds of facts:

Ultimate fact: The landlord demanded the rent at least ten days before filing this lawsuit.

Evidentiary facts: The landlord mailed a letter to tenant on July 5

The letter was addressed to T at the rental premises.

The letter stated that the landlord demanded that the tenant pay all rent due (\$1500) and that if T did not pay by July 24, the LL would file for eviction.


The letter was mailed on July 5.

This action was filed on July 25.

4

WHICH facts?

Relevance is the colander.



5

Standard for determining relevance

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

6

Let's practice:

In determining conditions of pretrial release in an assault case, which of these facts are relevant?

The defendant is married to the victim of the assault.
Relevant?

The defendant attends church regularly.
Relevant?

The defendant was intoxicated at the time of the incident.
Relevant?

The defendant claims the victim threw the first punch.
Relevant?

7

Magistrates determine facts based on evidence.

Test for relevance: does the offered evidence tend to make a fact more or less likely?

Let's practice: If the "fact" at issue is whether the defendant is married to the victim of the assault, is evidence that they have the same address relevant?

8

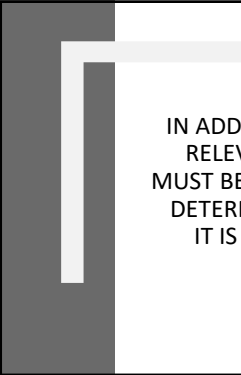
Sharing the same address?

Two things to note:

First, this itself is a fact which must be supported by the evidence – which might be a police report, or statements by the defendant and/or arresting officer.

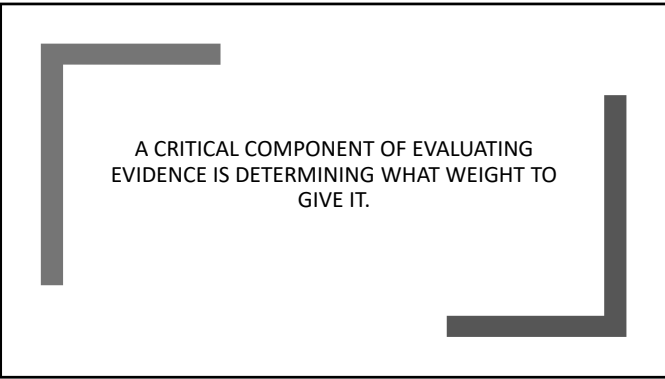
Remember that evidence may be relevant without being conclusive. There are other reasons two people might share the same address, but the fact that these two parties do "tends to make it more likely" that they are married, while the fact that they both have blue eyes does not. So this evidence is relevant.

9




IN ADDITION TO BEING RELEVANT, EVIDENCE MUST BE EVALUATED TO DETERMINE WHETHER IT IS TRUSTWORTHY.

10



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

11




Assessing credibility

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

12

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.
3. 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?



13

There are some questions with no single correct answer.

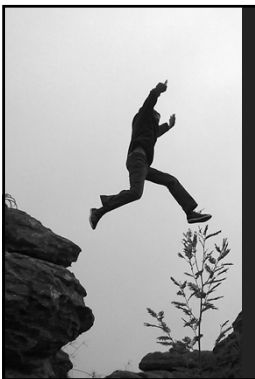
What amount of money compensates for the pain-and-suffering associated with a broken wrist?

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?

Are these parties in a "dating relationship?"

14



Jumping the gap!

Correct approach is to identify and answer smaller evidentiary questions, and then decide the ultimate question.

15
