

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:

(1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or

(3) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

(Amended effective January 1, 1990.)

Committee Comment - 1977

This rule is a codification of the common law. In application the rule requiring the production of the original writing is a rule of preference. If the original is available it must be produced if the contents are at issue. However, where the original is not available courts have traditionally permitted the admission of secondary evidence in the circumstances set out in the rule.