

A corporation sued a defendant for 10 fuel oil deliveries not paid for. The defendant denied that the deliveries were made.

At trial, the corporation calls its office manager to testify that the corporation's employees always record each delivery in duplicate, give one copy to the customer, and place the other copy in the corporate files; that he is the custodian of those files; and that his examination of the files before coming to court revealed that the 10 deliveries were made.

Is the office manager's testimony that the invoices show 10 deliveries admissible?

- A. No, because the records are self-serving.
- B. No, because the records must be produced in order to prove their contents.
- C. Yes, because it is based on regularly kept business records.
- D. Yes, because the office manager has firsthand knowledge of the contents of the records.

Explanation:

Under the **best evidence rule**, an original or reliable duplicate of a **recording, writing, or photograph** (collectively referred to as "document") must generally be produced to **prove its contents**. As a result, this rule only applies when a document's contents are at issue—ie, when:

the document is used to prove that an event occurred (eg, police incident report)

the document has a legal effect (eg, contract, will, power of attorney) *or*

the witness is testifying based on facts learned from the document, as opposed to personal knowledge (ie, knowledge based on firsthand observations or experience)

Here, the office manager learned of the 10 deliveries by examining the invoices that had been placed in the corporate files before coming to court—not through personal knowledge. As a result, the contents of those records cannot be proved through the office manager's testimony. Instead, an original or reliable duplicate of those records must be produced to prove their contents.

(Choice A) A document is self-serving if it primarily contains information that is helpful to its proponent. But this, without more, does not affect the admissibility of the document or related testimony.

(Choice C) The *invoices* are admissible under the **business records** exception to the hearsay rule because a corporate employee recorded each delivery as a regular practice of the corporation. But the office manager's *testimony* to the contents of the invoices is inadmissible unless the invoice records are produced.

(Choice D) The office manager would have had firsthand knowledge of the contents of the records had he, for example, personally observed the disputed deliveries. Merely examining the files before coming to court is not sufficient for him to testify to their contents.

Educational objective:

The best evidence rule only applies when the contents of a recording, writing, or photograph are at issue—eg, when a witness testifies based on facts learned from a document, as opposed to personal knowledge.

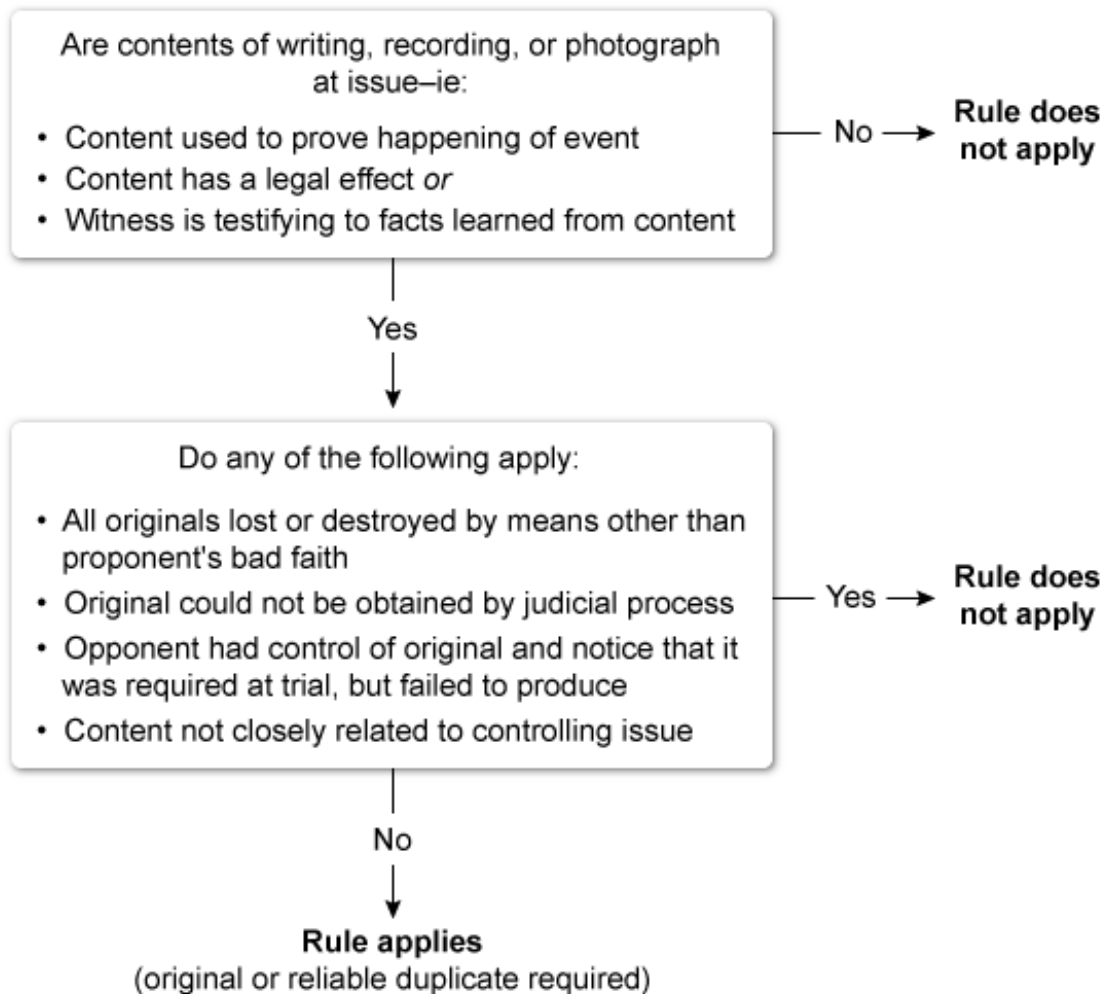
References

Fed. R. Evid. 1002–04 (best evidence rule).

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Best evidence rule (FRE 1001–04)



FRE = Federal Rules of Evidence