

# FLORIDA EVIDENTIARY OBJECTIONS

Your objection to evidence must be timely and specific. Unless the court has previously made a definitive ruling on the record, failure to make a timely and specific objection may constitute a waiver (§90.104). Make your objection succinctly and in a clear, firm voice. EXAMPLES: "Objection, Your Honor, the question calls for hearsay." "Objection, leading." While you generally voice your objection in front of the jury, do not argue your objection in front of the jury. If argument is required, request permission to approach the bench, then present your argument. Use the Evidence Code to bolster your argument. Below is a list of most of the common objections, a brief explanation, and authority for the objection based on the Florida Evidence Code.

1. **AMBIGUOUS** - Confusing question in that it is capable of being understood in more than one sense. § 90.612(1).
2. **ARGUMENTATIVE** - (1) Counsel's question is really jury argument in guise of a question. (Ex.: Counsel summarizes facts, states conclusion based on that evidence, and demands that witness agree) or (2), excessive quibbling with witness. § 90.612(1).
3. **ASKED AND ANSWERED** - Unfair to allow counsel to emphasize evidence through repetition. Greater leeway is permitted on cross-examination, but be especially ready to make this objection during the re-direct examination. § 90.612(1).
4. **ASSUMES A FACT NOT IN EVIDENCE** - Question assumes a "fact" that has no evidentiary basis. § 90.104(2); § 90.612(1).
5. **AUTHENTICATION LACKING** - Proof must be offered that the exhibit is in fact what it is claimed to be. § 90.901.
6. **BEST EVIDENCE RULE (or, ORIGINAL DOCUMENT RULE)** - If rule applies, original document must be offered or its absence accounted for. If contents of document are to be proved, rule usually applies. § 90.952.
7. **BEYOND SCOPE (OF DIRECT, CROSS, ETC.)** - Question unrelated to preceding examination by opposing counsel, or to credibility. §90.612(2). Remember, when responding to this objection on cross-exam, "credibility" is always "within the scope".
8. **BOLSTERING** - Improper to bolster the credibility of a witness before that witness's credibility is attacked. § 90.609(2).
9. **COMPOUND** - More than one question contained in counsel's question - answer could be misunderstood. § 90.612(1).
10. **CONCLUSION** - Except for an expert, witness must testify to facts within personal knowledge; conclusions are for the jury - and counsel during closing argument. § 90.604; § 90.701.
11. **CONFUSING** - Unfamiliar words, disjointed phrases; or confuses facts or evidence. § 90.612(1).
12. **COUNSEL TESTIFYING** - Opposing counsel is making a statement instead of asking a question. § 90.605.
13. **CUMULATIVE** - Judge has discretion to control repetitive evidence. Repeated presentation of the same evidence by exhibits or by more witnesses is unfair and wastes time. §§ 90.403 & 90.612(1).
14. **FOUNDATION** - Failure to lay proper predicate for testimony or exhibit (example: offer of "recorded recollection" without showing memory failure). **Note:** This objection may be found to be "too general" to preserve the objection for appeal, so if overruled, be more specific as to what the foundation lacks. § 90.604; § 90.901.
15. **HEARSAY (question)** - The answer would elicit hearsay, and no exception has been shown. § 90.802.  
**HEARSAY (answer)** - Question did not call for hearsay, but witness gave it anyway. Consider motion to strike and for mistrial or a request for judge to instruct jury to disregard the response. § 90.104(2); § 90.802.  
**Note:** In a criminal case, if hearsay is "testimonial" it is barred, under the Confrontation Clause, unless the witness is unavailable and defendant had prior opportunity to cross-examine witness. *Crawford v. Washington*, 541 U.S. 36 (2004).
16. **IMPROPER CHARACTER EVIDENCE** - Evidence of character and methods of proof are limited. §§ 90.404-405 & 90.608-611.
17. **IMPROPER CHARACTERIZATION** - The question or response has characterized a person or conduct with unwarranted suggestive, argumentative, or impertinent language. (Example: "He looked like a crook.") §§ 90.404-405 & 90.612(1).
18. **IMPROPER IMPEACHMENT** - Methods of impeachment are limited and specific. § 90.608.
19. **IMPROPER QUESTION or IMPROPER FORM** - Use only when you **know** the question is improper, but cannot think of the specific basis for the objection. This is better than failing to make **any** objection, as the judge may know it is an improper question and sustain, but it cannot be relied upon to preserve the objection for appeal. § 90.104(2); § 90.612.
20. **IRRELEVANT** - Would not tend to prove or disprove a material fact. Motion to strike may be appropriate. § 90.401.
21. **LEADING** - Form of question tends to suggest answer. (Permitted of course on cross-examination.) § 90.612(3).
22. **MISQUOTING WITNESS (or MISSTATING EVIDENCE)** - Counsel's question misstates prior testimony of witness. Similar to objection based on assuming fact not in evidence. § 90.104(2).
23. **NARRATIVE** - Question is so broad or covers such a large time period it would allow witness to ramble and possibly present hearsay or other inadmissible evidence before a specific objection could be made. Judge has broad discretion in this matter, however. §§ 90.104(2) & 90.612(1).
24. **OPINION** - Expert witness has not been qualified as such, or the testimony of a lay person would be an opinion which is beyond the scope permitted by the rules. §§ 90.604 & 90.701-702.
25. **PREJUDICE OUTWEIGHS PROBATIVE VALUE** - Object, ask to approach bench, and then argue that "the probative value of the evidence is substantially outweighed by the danger of unfair prejudice." May apply to exhibits as well as testimony. (Don't let the jury hear you object "that the evidence is prejudicial"--they may be impressed.) § 90.403.
26. **PRIVILEGED** - Answer would violate valid privilege (lawyer-client, husband-wife, clergy, etc.) §§ 90.502-506.
27. **SPECULATION** - Calls for conjecture; allows witness who lacks personal knowledge to guess. §§ 90.604.
28. **UNRESPONSIVE** - Answer includes testimony not called for by the question. Especially applicable to voluntary response by hostile witness. **Note:** An objection based **solely** on this ground is generally deemed appropriate only if made by the examining attorney; therefore, opposing counsel should try to find some additional basis for the objection. § 90.612(1); §90.104(2).

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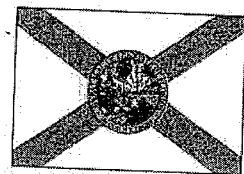
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# FLORIDA EVIDENCE CODE

## Summary Trial Guide \*



§90.-

### ★— GENERAL PROVISIONS

- 101 This chapter (Chapter 90) shall be known and cited as "Florida Evidence Code."  
102 This chapter is to supersede existing statutes or common law in conflict.  
103 **Scope:** Code applies to same proceedings as general law of evidence previously applied. Parol evidence rule not modified.  
104 (1) **Court may set aside or reverse judgement** when substantial rights are affected and (a) **if ruling admitted evidence**, a timely, specific, objection was made, or (b) **if ruling excluded evidence**, an offer of proof was made. **Once definitive ruling on the record is made, party need not renew objection** affecting substantial rights may be noticed even though such errors are not brought to attention of trial judge. (2) Court to conduct trial so that **inadmissible evidence** is not heard by jury. (3) **Fundamental errors**  
105 (1) **Preliminary questions** (qualifications, privileges, admissibility) are for the judge. (2) Court may admit evidence conditionally. (3) Hearings on confession must be outside jury's presence; other matters shall be similarly conducted if justice requires.  
106 **Judge may not sum up or comment on weight of evidence, credibility, or guilt.**  
107 **When evidence is admitted for a limited purpose**, the court, upon request, shall so inform the jury at the time it is admitted.  
108 (1) **When writing or statement** (or part) is introduced, adverse party may require the introduction of the remainder or a related writing if fairness requires. (2) **A transcript certified as correct by the court reporter** is prima facie a correct statement of the testimony and proceedings.

### ★— JUDICIAL NOTICE

- 201 **Mandatory judicial notice:** (1) Decisional law and statutes of Florida and U.S.; (2) statewide rules of Florida courts and federal rules adopted by U.S. Supreme Court; (3) rules of U. S. Supreme Court and U.S. Courts of Appeal.  
202 **Permissible judicial notice:** (1) Special and local acts of Congress and Florida Legislature; (2) statutes and decisional laws of all state and federal jurisdictions; (3) contents of Federal Register; (4) laws of foreign nations; (5) official acts of state and federal legislative, executive, and judicial departments; (6) records of any Florida court and any federal or state court of record; (7) rules of court of any Florida court, and any federal or state court not in dispute because generally known; (12) facts not subject to dispute because easily determined; (13) seals of any federal or state agency.  
203 **Compulsory judicial notice** of §90.202 matters is required upon timely written notice and sufficient information to court.  
204 Absent compliance with §90.203, before judicial notice is taken parties must be heard and source must be revealed.  
205 If judicial notice request is denied, judge must inform parties promptly.  
206 Court may instruct jury to accept fact judicially noticed. [Ed. Note: For criminal cases, see, *Cordova v. State*, 675 So. 2d 632 (Fla. 3d DCA, 1996)].  
207 Initial failure to take judicial notice does not preclude notice in subsequent proceedings.

### ★— PRESUMPTIONS

- 301 (1) A "**presumption**" is an assumption of fact which the law makes from the existence of other facts found. (2) A presumption is "**rebuttable**" unless law from which it arises makes it "**conclusive**." (3) Nothing in Evidence Code prohibits the drawing of an appropriate inference. (4) Sections 90.301-90.304 are applicable in civil cases only.  
302 Every rebuttable presumption either affects (1) the burden of producing evidence, or (2) burden of proof.  
303 Presumption to facilitate action rather than implement public policy is presumption affecting burden of producing evidence.  
304 In civil actions, all **rebuttable presumptions** not defined in § 90.303 are **presumptions affecting burden of proof**.

### ★— RELEVANCY AND CHARACTER

- 401 "**Relevant evidence**" is evidence tending to prove or disprove a material fact.  
402 **All relevant evidence is admissible**, except as provided by law.  
4025 **If person under age 18 gives birth to child and paternity of child is established under Chapter 742**, such evidence of paternity is admissible in crimes charged under § 794.011, § 794.05, § 800.04, and § 827.04(3).  
4026 **Statement or benevolent gesture expressing sympathy** for person involved in accident made to that person or that person's family is inadmissible in civil case, but statement of fault shall be admissible.  
403 **Relevant evidence is inadmissible if probative value is substantially outweighed by danger of unfair prejudice, confusion, or delay.**  
404 (1) **Character evidence is not admissible to prove action in conformity with it on a particular occasion except:**  
(a) **Character of accused:** Pertinent trait if offered first by accused, or by prosecution to rebut the trait.  
(b) **Character of victim** (except as provided by § 794.022, "Rape Shield Law"): Pertinent character trait of victim if offered first by accused, or by prosecution to rebut same; or **peaceful character** of victim by prosecution in homicide case to rebut evidence that victim was the aggressor.  
(c) **Character of witness:** As provided in §§ 90.608-610.  
(2) **Similar fact evidence** ("Williams Rule"). (a) Other crimes or acts admissible to prove motive, opportunity, intent, plan, knowledge, identity, etc. (not limited to these), but inadmissible to prove propensity. (b) If defendant charged with child molestation crime, another child molestation act is admissible on any relevant matter. "Child molestation" means conduct proscribed by the specific statutes listed in the rule when committed against person 16 years of age or younger. (c) 10 days notice required by state except for rebuttal or impeachment; limiting instruction required on request.  
405 (1) When admissible, **character may be proved by reputation (rule does not permit proof by opinion).**  
(2) **If character is essential element of charge, claim or defense, proof may also be made of specific instances of that person's conduct.**  
406 **Routine practice** is admissible to prove conduct of organization, whether corroborated or not and regardless of eyewitnesses.  
407 **Subsequent remedial measures** are not admissible to prove negligence, a product defect, or culpable conduct in connection with the event. May prove other matters, such as ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.  
408 **Offer to compromise disputed claim** as well as any relevant conduct or statements during negotiations are inadmissible to prove liability or value.  
409 **Evidence of furnishing or offering to pay medical expense** is not admissible to prove liability.  
410 **Withdrawn guilty plea; nolo contendere plea; or plea offer** is not admissible in civil or criminal case (statements may be admissible in perjury case).

### ★— PRIVILEGES

- 501 No privilege against testifying or producing evidence except as provided in code, statute, or Constitution.  
5015 **Professional journalist** has qualified privilege not to disclose information, or identity of source, obtained while actively gathering news. Does not apply to physical evidence, eyewitness observations, or recordings of crimes. Exception to privilege when "**compelling interest**" for disclosure exists.  
502 **Lawyer-Client Privilege:** May be claimed by client, or lawyer on client's behalf.  
503 **Psychotherapist-Patient Privilege:** May be claimed by patient, or psychotherapist on patient's behalf. "Psychotherapist" defined in rule to include doctor, psychologist, licensed or certified social worker, counselor, advanced registered nurse, etc., involved in treating mental or emotional conditions.  
5035 **Sexual Assault Counselor-Victim Privilege:** Requires written consent of victim prior to disclosure.  
5036 **Domestic Violence Advocate-Victim Privilege:** Domestic violence advocate must have been registered under § 39.905.  
504 **Husband-Wife Privilege:** If confidential communication during marriage, may be claimed by either spouse during and after marriage. Not available in proceeding brought by one spouse against other, or "spouse against spouse" crimes (or crime against child of either) or if offered by accused spouse.  
505 **Clergy Privilege:** May be claimed by the person or member of clergy.

## PRIVILEGES [Continued]

- 507 Person with privilege waives it if significant part voluntarily disclosed, unless disclosure itself is privileged communication.  
508 Privileged matter inadmissible against holder if erroneously compelled by judge or made without opportunity to claim privilege.  
509 Evidence Code does not abrogate any privileged communication made prior to July 1, 1977, if privileged when made.  
510 If party in civil case claims privileged communication necessary to adverse party, court may dismiss claim or affirmative defense to which it relates.

## ★ WITNESSES AND CREDIBILITY

- 601 Every person is competent to be a witness, except as otherwise provided by statute.  
602 (Dead Man's Statute) Repealed, effective July 1, 2005.  
603 Witness disqualified if incapable of (1) being understood directly or through interpreter or (2) understanding duty to tell the truth.  
604 Witness may not testify unless there is sufficient evidence that witness has personal knowledge (experts excepted).  
605 (1) Oath or affirmation required prior to testimony. (2) Court may exempt child from oath if child understands duty to tell truth.  
606 Interpreter to be appointed for witness who cannot hear, speak or understand English (also applies to child and mentally disabled).  
606 If a deaf person is a complainant, defendant, witness, party, or juror, a qualified interpreter must be appointed.  
607 (1) Presiding judge is not competent to testify as witness except by agreement on purely formal matters. (2) Juror is incompetent witness at trial, a after trial shall not testify to any matter which essentially inheres in the verdict or indictment.  
608 Any party (including party calling witness) may impeach by (1) prior inconsistent statements; (2) bias; (3) untruthful character or convictions; (4) defect in capacity to observe or remember; (5) contrary proof by other witnesses.  
609 Credibility of witness, including accused, may be impeached by reputation evidence (not opinion) except (1) such evidence may relate only truthfulness and (2) evidence of truthful character is admissible only after truthful character is attacked by reputation evidence.  
610 Convictions: (1) Admissible to impeach if crime punishable by death or imprisonment in excess of 1 year, or involved dishonesty or false statement regardless of punishment, with following exceptions: Not admissible (a) in civil trial if remote or (b) if juvenile adjudication. (2) Pendency of appeal pardon does not render conviction inadmissible; evidence of pendency of appeal admissible. (3) § 90.404 and § 90.608 not limited by this rule.  
611 Evidence of religious beliefs is not admissible to impeach or enhance credibility.  
612 (1) Judge controls mode and order of presentation of evidence. (2) Cross-examination limited to direct exam and credibility, but judge has discretion (3) Leading Questions: Should not be used on direct exam, unless necessary to develop testimony. Ordinarily permitted on cross, and permitted with hostile witness, adverse party, and witness identified with adverse party. Judge shall take special care to protect witness under age of 14.  
613 Writing used to refresh witness' memory: Adverse party may inspect it, cross-examine the witness on it, and introduce portions related to testimony.  
614 Prior statement of witness: (1) On motion, must be revealed to witness prior to examination on it. (2) No extrinsic evidence of prior inconsistent statement without opportunity to explain/deny/examine (except admissions). Extrinsic evidence admissible if witness does not distinctly admit making prior statement.  
615 (1) Court may call witness whom all parties may interrogate. (2) Court may interrogate witness in the interest of justice.  
616 Exclusion of witnesses: (1) Court may exclude witnesses at party's request; (2) Cannot exclude (a) natural party; (b) in civil case, a designated representative of party not a natural person; (c) person whose presence is essential to presentation; or (d) in criminal case, the victim, victim's next-of-kin or a lawful representative, unless on motion judge finds such presence prejudicial.

## ★ OPINIONS AND EXPERT TESTIMONY

- 701 Lay witness opinion: Permitted if necessary to accurately communicate the perceived facts and no special skill required.  
702 Expert opinion: Permitted if it will assist trier of facts, and witness qualified by knowledge, skill, experience, training or education. (Ed. Note: Legislation to replace Florida's *Frye* standard for expert testimony with the federal *Daubert* standard was introduced in the 2009 legislature but failed; reintroduction in the 2010 legislature should be expected.)  
703 Opinion evidence on ultimate issue: Permitted if otherwise admissible.  
704 Expert may give opinion based on data reasonably relied on by experts, even if such data is not admissible in evidence.  
705 (1) Prior disclosure of data underlying expert opinion: Not required on direct, but expert may be required to specify the data on cross. (2) Opponent may conduct voir dire examination directed at underlying data for opinion before expert opinion offered.  
706 Facts or opinions contained in treatise or other writing recognized by an expert or the court as authoritative may be used to cross-examine an expert.

- ★ HEARSAY [Editor's note: In a criminal case, if hearsay is "testimonial" it is barred, under the Confrontation Clause, unless the witness is unavailable and defendant had prior opportunity to cross-examine witness. *Crawford v. Washington*, 541 U.S. 36 (2004)]

- 801 (1) Hearsay Definitions:  
(a) "Statement" is an oral or written assertion, or nonverbal conduct if intended as an assertion.  
(b) "Declarant" is a person who makes statement.  
(c) "Hearsay" defined: A statement, other than one made by declarant while testifying at the trial or hearing, offered for the truth of matter asserted.  
(2) Statement is not hearsay if declarant testifies at trial or hearing and is subject to cross-exam, and statement is  
(a) Inconsistent with trial testimony and given under oath, subject to penalty of perjury, at a trial or proceeding or in a deposition; or  
(b) Consistent with declarant's testimony and offered to rebut charge of improper influence, motive, or recent fabrication; or  
(c) One of identification of a person after perceiving that person. [Ed. Note: A "description" is not an identification under this rule. *Puryear v. State*, 810 So.2d 901 (Fla. 2002)]
- 802 Hearsay is not admissible except as provided by statute (such as § 90.803 and § 90.804).
- 803 Hearsay exceptions (availability of declarant immaterial):  
(1) Spontaneous statement (describing or explaining an event or condition, made while perceiving it or immediately thereafter).  
(2) Excited utterance (relating to a startling event or condition, made while declarant was under stress of excitement caused by the startling event).  
(3) Then existing mental, emotional or physical condition (state of mind, intent, plan, motive, pain, health, etc. — but not memory or belief, unless a will).  
(4) Statement made for medical treatment or diagnosis (past or present symptoms; may be made by one legally responsible who knows facts).  
(5) Recorded recollection (insufficient recollection now, but correct account made by the witness when memory was fresh. Read into evidence but no exhibit unless opponent offers).  
(6) Business records. (a) Includes all businesses, professions, and callings. Requires: (1) record; (2) made at or near time; (3) information from person with knowledge; (4) in course of regularly conducted business; (5) regular practice to record; (6) all shown by custodian or other qualified witness or certification complying with subparagraph (c) and § 90.902(11). (b) Opinion or diagnosis evidence is inadmissible unless it would also be admissible under §§ 90.701-705. (c) Party intending to offer evidence by certification must serve reasonable written notice; motion opposing such evidence must be made by opposing party and determined by court before trial.  
(7) Absence of entry in business records (if matter was type regularly preserved).  
(8) Public records and reports (matters observed by police officer are excluded in criminal cases; however, the criminal case exclusion does not apply to affidavit otherwise admissible under § 316.1934 or § 327.354).  
(9) Records of vital statistics (births, deaths, marriages, if report made to public office pursuant to requirements of law).  
(10) Absence of public record or entry (may be proved by testimony, or by certificate in accord with § 90.902).  
(11) Records of religious organizations (births, marriages, divorces, deaths, parentage, ancestry, personal or family history).  
(12) Marriage, baptismal, and similar certificates (if certificate purports to be issued near time of act).  
(13) Family records (family Bible; charts; engravings on rings; tombstone; inscription on family portraits; etc.).

### 803 HEARSAY EXCEPTIONS (Continued):

- (18) **Admissions: Statement offered against a party** and is (a) party's own statement; (b) party's adopted statement; (c) an authorized statement; (d) party's agent's statement made during and within scope of agency, or (e) statement by a co-conspirator during and in furtherance of conspiracy.
- (19) **Reputation concerning personal or family history** (birth, marriage, divorce, death, relationship, ancestry, etc.).
- (20) **Reputation concerning boundaries or general history** (boundary reputation must arise before controversy).
- (21) **Reputation as to character** (among a persons's associates or in the community).
- (22) **Former Testimony** at the same or another proceeding or deposition if party against whom now offered, or in civil action a predecessor in interest (person with similar interest, had opportunity and motive to develop testimony. §§ 90.402 & 90.403 apply.
- [Ed. Note: In *In re Florida Evidence Code*, 782 So. 2d 339 (Fla. 2000), the Supreme Court declined to adopt this newly amended § 90.803(22), and the statute has been held to be unconstitutional in a criminal case where the witness was not shown to be unavailable, as violative of the Confrontation Clause of the Sixth Amendment. *State v. Abreu*, 837 So.2d 400 (Fla.2003). See also, *Grabau v. Department of Health*, 816 So. 2d 701 (Fla. 1st DCA 2002), a civil case where the court found the rule unconstitutional because it violates article V § 2(a), Fla. Const., and because it obviates and conflicts with Rule 804.]
- (23) **Statement by child with physical, mental, emotional, or development age of 11 or less** describing child abuse or neglect or sexual abuse or unlawful sex offense on or in presence of the child is admissible if (1) court finds reliability and (2) child testifies, or is unavailable and there is corroborative evidence of the offense. 10-day notice to defendant required in criminal cases.
- (24) **Statement of elderly person or disabled adult** describing act of abuse or neglect, exploitation, battery or any other violent act on such person.
- [Ed. Note: This rule, § 803 (24), was declared unconstitutional as applied to "elderly persons" in criminal cases. *Conner v. State*, 748 So. 2d 950 (Fla. 1999). For the rule application to "disabled adults" see *State v. Hosty*, 944 So.2d 255 (Fla. 2006)]

### 804 Hearsay exceptions (declarant unavailable).

- (1) "Unavailable" means (a) exempted by privilege; (b) refuses to testify; (c) lacks memory; (d) dead or ill; (e) absent despite process. However, no "unavailable" if absence caused by procurement or wrongdoing of proponent of evidence.
- (2) **Hearsay exceptions if declarant unavailable:**
- (a) **Former testimony** (if party against whom offered had opportunity and similar motive to examine or cross-examine).
- (b) **Statement under belief of impending death** concerning cause or circumstances (in civil or criminal trial).
- (c) **Statement against interest** (pecuniary, proprietary, or penal interest; if "penal," and offered to exculpate the accused, corroboration required).
- (d) **Statement of personal or family history** (declarant's own birth, adoption, marriage, divorce, ancestry, etc.).
- (e) **Statement on same subject matter as another statement made by declarant that has been previously admitted and is offered in the context of a proceeding previously covered by the Dead Man's Statute.**

805 Hearsay within hearsay is not excluded provided each part is a valid exception.

806 (1) **Credibility of hearsay declarant** may be attacked (and if attacked, then supported) as if declarant were a trial witness. No requirement to afford opportunity to explain or deny inconsistent statement. (2) If hearsay admitted against party, that party may call hearsay declarant and cross-examine.

### ★ = AUTHENTICATION AND IDENTIFICATION

901 **Authentication is required prior to admission** (i.e., evidence sufficient for finding that matter is what proponent claims).

[Editor's note: The Florida Evidence Code does not give specific examples, but the following 10 examples from the corresponding rule in the Federal Rules of Evidence are illustrative: (1) Testimony that evidence is what is claimed; (2) Opinion on genuineness of handwriting by non-expert; (3) Comparison by trier of fact or expert with authenticated specimen; (4) Distinctive characteristics in conjunction with circumstances; (5) Voice identification by hearing voice under circumstances connecting it with alleged speaker; (6) Telephonic conversation resulting from call made to assigned number with additional circumstances (including self-identification) showing that person answering is person called; (7) Public record, where there is evidence that it was authorized to be recorded, was in fact recorded, and is from a public office; (8) Ancient document where there is no suspicion as to authenticity, was from likely place and was 20 years or more old; (9) Evidence describing a process or system and showing it produces accurate result; (10) Method provided by statute or court rule.]

902 **Self-authentication** (extrinsic evidence not required):

- (1) **Public document under seal** with signature of custodian attesting to seal.
- (2) **Public document without seal** but with signature of government or court employee affixed in official capacity.
- (3) **Official foreign documents** attested to by official in accordance with foreign law, with final certification.
- (4) **Certified copies of official public records** when authorized to be recorded and actually recorded in public office, and certified by authorized person.
- (5) **Books, pamphlets, and other publications** issued by governmental authority.
- (6) **Newspapers and periodicals.**
- (7) **Inscriptions, signs, tags, or labels** affixed in course of business indicating ownership, control, or origin.
- (8) **Commercial papers and signatures thereon** to the extent provided in the Uniform Commercial Code.
- (9) **Any signature, document, or other matter declared by the Legislature** to be presumptively or prima facie genuine.
- (10) **Any document properly certified under the law of jurisdiction** where certification made.
- (11) **Original or duplicate admissible under § 90.803(6)** accompanied by certification or declaration by custodian or another qualified person.

903 **Testimony of subscribing witness** not necessary unless statute requiring attestation so requires.

904 **Photographs of property wrongfully taken** may be admissible in criminal prosecutions. Photos must bear written description of property, name of owner, theft location, name of investigating officer, date photo taken, and name of photographer. Such writing requires oath of investigating officer and signature of photographer. Upon filing, property may be returned to owner.

### ★ = CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

951 **Definitions:** (1) "Writings" and "recordings" include letters, words, or numbers, or their equivalent, in handwriting, printing, photography, magnetic impulse, electronic recording, or other form of data compilation.

(2) "Photographs" include still photos, x-ray film, video tapes, and motion pictures.

(3) "Original" includes counterpart intended for same effect; negative and any print from it; data print-out from computer shown to reflect data accurately.

(4) "Duplicate" includes counterpart of same impression as original by photographic, electronic, mechanical, chemical reproduction, or equivalent accurate technique, or an executed carbon copy not intended as original.

952 **(Best Evidence Rule).** Original of writing, recording, or photo is required to prove contents, unless statute provides otherwise.

953 **Duplicate** is admissible same as original unless: (1) Negotiable instrument; (2) Genuine question as to authenticity of original; or (3) Unfair under the circumstances.

954 **Original not required** (except as provided in § 90.953) and other evidence of contents of writing is admissible when

- (1) Original lost or destroyed (unless proponent lost or destroyed in bad faith);
- (2) Original cannot be obtained in state by judicial process;
- (3) Original under control of opponent, opponent put on notice, and does not produce; or
- (4) Writing, recording or photograph not related to controlling issue (i.e., collateral matter).

955 **Contents of public record** actually on file with government agency may be proved by self-authenticated copy.

956 **Voluminous documents may be presented in summary form.** Party must provide written notice and make documents available for copying.

957 **Contents of writings, recordings, or photographs** may be proved against a party by party's testimony, deposition, or written admission, without accountin