

60-467. Original document required as evidence; exceptions. (a) As tending to prove the content of a writing, no evidence other than the writing itself is admissible, except as otherwise provided in these rules, unless the judge finds that: (1) If the writing is a telefacsimile communication as defined in subsection (d) and is used by the proponent or opponent as the writing itself, such telefacsimile communication shall be considered as the writing itself; (2) (A) the writing is lost or has been destroyed without fraudulent intent on the part of the proponent, (B) the writing is outside the reach of the court's process and not procurable by the proponent, (C) the opponent, at a time when the writing was under the opponent's control has been notified, expressly or by implication from the pleadings, that it would be needed at the hearing, and on request at the hearing has failed to produce it, (D) the writing is not closely related to the controlling issues and it would be inexpedient to require its production, (E) the writing is an official record, or is a writing affecting property authorized to be recorded and actually recorded in the public records as described in exception (s) of K.S.A. 60-460 and amendments thereto or (F) calculations or summaries of content are called for as a result of an examination by a qualified witness of multiple or voluminous writings, which cannot be conveniently examined in court, but the adverse party shall have had a reasonable opportunity to examine such records before trial, and such writings are present in court for use in cross-examination, or the adverse party has waived their production, or the judge finds that their production is unnecessary.

(b) If the judge makes one of the findings specified in subsection (a), secondary evidence of the content of the writing is admissible. If evidence is offered by the opponent tending to prove that (1) the asserted writing never existed, (2) a writing produced at the trial is the asserted writing or (3) the secondary evidence does not correctly reflect the content of the asserted writing, the evidence is irrelevant and inadmissible upon the question of admissibility of the secondary evidence but is relevant and admissible upon the issues of the existence and content of the asserted writing to be determined by the trier of fact.

(c) If the procedure specified by subsection (b) of K.S.A. 60-245a, and amendments thereto, for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the copy of the records produced shall not be excluded under subsection (a).

(d) As used in this section, telefacsimile communication means the use of electronic equipment to send or transfer a copy of an original document via telephone lines.

History: L. 1963, ch. 303, 60-467; L. 1985, ch. 196, § 4; L. 1989, ch. 177, § 1; July 1.