

Alabama Rules of Evidence

Article IV. Relevancy and Its Limits

Rule 401.

Definition of “relevant evidence.”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Advisory Committee’s Notes

This rule is identical to the corresponding Federal Rule of Evidence and to the relevancy rule adopted by the overwhelming majority of states that have adopted modern evidence rules. The test of logical relevancy set forth in Rule 401 is a liberal one. Evidence is to be admitted if it possesses “any tendency,” in logic or experience, to lead to the fact or inference for which it is offered. The standard of probability under the rule is “more probable or less probable than it would be without the evidence.”

Rule 401 leaves unchanged the preexisting relevancy test that has applied historically under the common law of Alabama. See, e.g., *Aetna Life Ins. Co. v. Lavoie*, 470 So.2d 1060, 1078 (Ala.1984) (“whether the offered evidence bears any logical relationship to the ultimate inference for which it is offered”) (emphasis added), vacated, 475 U.S. 813 (1986); *Gafford v. State*, 122 Ala. 54, 25 So. 10, 12 (1899) (characterizing the issue as one of whether “the testimony offered to be introduced by defendant [would] have any tendency, even though slight, to shed light on the main inquiry”) (emphasis added); *Mattison v. State*, 55 Ala. 224, 232 (1876) (“Whatever tends to shed light on the main inquiry... is, as a general rule, admissible evidence.”); C. Gamble, *McElroy’s Alabama Evidence* § 21.01 (l) (4th ed. 1991).

Relevancy remains a question over which the trial court has wide discretion. *Eason v. Comfort*, 561 So.2d 1068 (Ala.1990); *Roberson v. Ammons*, 477 So.2d 957 (Ala.1985); *Ott v. Fox*, 362 So.2d 836 (Ala.1985) (observing that the trial judge has great discretion concerning the relevancy of evidence). That discretion is not unbridled. *Ham v. Hood*, 340 So.2d 763 (Ala.1976). However, the trial court’s ruling on relevancy will not be reversed unless it is plain that error was committed. *Harper v. Baptist Medical Center-Princeton*, 341 So.2d 133 (Ala.1976). Indeed, the trial court’s ruling on relevancy will not be disturbed on appeal unless discretion has been abused. *Ryan v. Acuff*, 435 So.2d 1244 (Ala.1983).

Not all relevancy questions are resolved by application of the test of logic alone. The concepts of remoteness and dissimilarity, for example, continue as factors to be considered in the trial court’s discretionary determination of relevancy. *Pack v. State*, 461 So.2d 910 (Ala.Crim.App.1984) (dissimilarity); *Kindig v. Rea*, 334 So.2d 681 (Ala.1976) (remoteness); C. Gamble, *McElroy’s Alabama Evidence* § 21.01(2) (4th ed. 1991). Additionally, some situations recur with such frequency that they give rise to individual, specific rules of relevancy. See, e.g., Ala.R.Evid. 404(a) (setting out a general exclusionary rule regarding character evidence

offered as a basis from which to infer how a person acted on the occasion at issue); Ala.R.Evid. 407 (declaring irrelevant subsequent remedial measures of a civil defendant when offered to prove antecedent negligence or culpable conduct); Ala.R.Evid. 411 (excluding evidence of a civil defendant's liability insurance coverage when offered to prove negligence).

Rule 401 merges the separate evidentiary concepts of materiality and relevancy. No relevant evidence is to be admitted unless its logical relevancy goes toward a fact or inference that is "of consequence to the determination of the action." By use of this phrase, Rule 401 adopts the common law materiality concept, as that concept has evolved. See C. Gamble & F. James III, *Perspectives on the Evidence Law of Alabama: A Decade of Evolution, 1977-1987*, 40 Ala.L.Rev. 95, 99 (1988); C. Gamble & G. Windle, *Subsequent Remedial Measures Doctrine in Alabama: From Exclusion to Admissibility and the Death of Policy*, 37 Ala.L.Rev. 547, 555 (1986) (distinguishing between materiality and relevancy in admission of post-accident safety measures). The broader phrase "of consequence," in lieu of the common law term "material," is adopted so as to include within the term "relevant evidence" that which is not necessarily in dispute and that which is no more than an aid to the trier of fact in understanding other facts that are material or in dispute. Charts and photographs, for example, fall into this category. See *State v. Howington*, 268 Ala. 574, 109 So.2d 676 (1959) (cross-examination of a witness may even pertain to irrelevant and immaterial matters as bearing on memory, accuracy, credibility, interest, or sincerity).