* **Relevant? (401-2)**
* **Conditional relevance? (104b)**
	+ Reasonable jury could find by preponderance?
* **Unfairprejudice/wot/misleading? (403)**
* **Limiting instruction? (105)**
* **Personal knowledge? (602)**
* **Hearsay? (801-2)**
	+ **Out of court?**
	+ **Assertion?**
		- Intended as assertion?
	+ **Offered for truth?**
	+ **Verbal act?**
	+ **Effect on listener?**
	+ **Notice?**
	+ **Declarant testifies? (801d1)**
		- Subject to cross?
		- Inconsistent?
			* Prior proceeding?
		- Consistent?
			* Post-motive?
		- ID after perceiving?
	+ **Admission of party-opponent? (801d2)**
		- Direct?
		- Adoptive?
		- Authorized?
		- Agency?
		- Conspiracy?
	+ **Present sense impression? (803(1))**
		- Narrating event?
		- While perceiving or immediately after?
	+ **Excited utterance? (803(2))**
		- Relates to startling event?
		- Declarant stressed? (subjective)
	+ **State of mind? (803(3))**
		- Describing self at that time?
		- Statement of future intent?
		- Memory/belief about past?
			* Declarant’s will?
	+ **Medical diagnosis/treatment? (803(4))**
		- Pertinent to diagnosis?
		- Investigative?
	+ **Recorded recollection? (803(5))**
		- Record exists?
		- Witness had knowledge?
		- Memory fresh at time?
		- Witness can’t remember?
		- Read into evidence?
			* Adverse party?
	+ **Business record? (803(6))**
		- Record?
		- Reg conducted biz activity?
		- reg course of biz?
		- At/near time of event?
		- Person w/ knowledge?
		- In-court testimony/cert?
	+ **Absence of biz record? (803(7))**
	+ **Public record? (803(8, 10))**
		- Activities of office/agency?
		- Matter observed w/ duty to report?
			* Law enforcement?
		- Factual findings and opinions?
		- Lack trustworthiness?
	+ **Declarant unavailable? (804a)**
		- Privilege?
		- Refusal to testify despite order?
		- Lack of memory?
		- Death/illness?
		- Can’t procure by rsbl means?
		- Forfeiture by wrongdoing?
	+ **Former testimony? 804b1**
		- Declarant unavailable?
		- Party or predecessor in interest?
		- Similar motive/opportunity?
		- Confrontation?
	+ **Dying declaration? 804b2**
		- Declarant unavailable?
		- Prosecution for homicide or civil suit?
		- Believed death imminent?
			* Objectively rsbl?
		- Relates to cause/circ of death?
	+ **Statement against interest? 804b3**
		- Declarant unavailable?
		- rsbl person would only make if believed true?
		- Against proprietary/$$/penal interest?
		- Criminal case?
			* Clearly trustworthy?
	+ **Forfeiture by wrongdoing? 804b6**
		- Declarant unavailable?
		- Party against whom … caused/acquiesced?
		- Intended – any part of intent?
		- Actually rendered unav?
		- Anticipatory?
		- Preponderance of evidence?
	+ **Residual? 807**
		- Not covered?
		- Equiv circumstantial guarantees?
		- Relevant?
		- More probative than any other ev?
		- Interests of justice served?
		- Close enough?
		- Strict?
	+ **Due Process?**
		- Gross miscarriage of justice?
			* Reliable?
		- Arbitrary?
	+ **Multiple hearsay?**
		- Each meets exception?
* **Confrontation clause?**
	+ **Non-testimonial?**
		- Ongoing emergency?
		- Doing investigation?
		- Intent of both? Objective?
	+ **Declarant testifies subject to c-e?**
	+ **Declarant unavailable and D had previous opportunity to c-e?**
	+ **Forfeiture by wrongdoing?**
* **Bruton?**
	+ **Joint trial?**
	+ **Co-conspirator statement?**
	+ **Inference based on other evidence? (ok)**
	+ **Blanks/symbols?**
	+ **Freelance editing?**
* **Refresh recollection?**
	+ **Showed opposing side?**
	+ **Memory not refreshed? → rec rec**
* **Character evidence?**
	+ **Habit? → Habit §**
	+ **Impeachment? → Impeachment**
	+ **Shows propensity?**
	+ **Character essential element?**
	+ **Crim case? 404a**
		- Initiated by accused?
		- Pertinent trait of accused/vic?
		- D opened door?
			* Government rebut?
			* Homicide?
				+ Rebut 1st aggressor?
	+ **Reputation or opinion? 405a**
		- D opened door?
		- Specific instances?
			* Cross-examination?
				+ Extrinsic evidence?
			* Good faith?
			* Pertinent to rep evidence offered?
			* Non-propensity purpose? 404b
				+ Motive, opportunity, intent, prep, plan, knowledge, identity, absence of mistake/acc? (non-exhaustive)
				+ Notice given?
			* rsbl jury could find by preponderance?
			* Reverse 404b? (MO)
				+ Propensity evidence about other defendant?
			* Doctrine of chances?
	+ **Habit? 406**
		- Routine practice?
		- Conformity therewith?
		- Regular response?
		- Semi-automatic?
		- Morally neutral?
* **Sexual misconduct?**
	+ **Rape shield? 412**
		- vic's sexual behavior/predisposition?
		- Source of physical evidence?
		- Prior sexual conduct?
		- Constitutional rights?
		- Victim put rep at issue?
			* Civil case?
			* Meets reverse 403?
	+ **False allegation?**
	+ **Prior sex crime? 413-15**
		- * Relevant?
			* Notice? 15 days?
			* Less generous 403? Factors – see outline
* **Impeachment? 607**
	+ **Defendant is witness?**
	+ **Bears on truthfulness? 608**
		- Opinion/rep?
		- Truthful character attacked?
	+ **Specific instances? 608b**
		- Bears on truthfulness?
		- Extrinsic evidence?
		- Good faith basis?
	+ **Prior conviction? 609**
		- Non-honesty?
			* Felony?
			* < 10 yrs?
			* Witness is accused?
				+ Probative value outweighs pjd?
		- Honesty?
			* Readily determinable?
			* → IN (no 403)
		- 403 balance?
			* Serious crime?
			* Similar crime?
			* Testimony important?
			* Credibility central?
			* Crime of deceit?
			* More recent?
			* Successful rehab?
			* Juvenile?
		- Defendant can appeal?
			* Took stand?
			* Was impeached?
	+ **Non-character?**
		- * Prior statement? 613b
				+ Extrinsic?
				+ Trying to circumvent hearsay?
				+ Witness opp to explain?
			* Bias? Extrinsic ok
			* Incapacity?
			* Specific contradiction?
				+ Collateral evidence?
	+ **Hearsay declarant?**
		- Attack same as witness → 806
	+ **Rehabilitation?**
		- Character was attacked?
		- Prior consistent statement?
			* Pre-motive?
* **Lay or expert testimony**
	+ **Opinion by lay witness? 701**
		- Based on witness’ perception?
		- Helpful to understanding testimony?
		- NOT based on scientific/tech/special knowledge?
	+ **Expert witness? 702-5**
		- Scientific/tech/special knowledge?
		- Helps jury understand fact?
		- Qualified by skill, exper, training, ed?
		- Sufficient facts/data?
		- Reliable principles/methods?
		- Applied reliably to facts of case?
		- Seeks to disclose inabl underlying data?
			* Meets reverse 403?
		- Ultimate issue? 704
			* Defendant’s mental state?
* **Privileged?**
	+ **Attorney-client?**
		- Confidential?
			* Subjectively intended?
			* Objectively reasonable?
			* 3d party?
		- Communication?
			* Discoverable?
			* Prepared for counsel?
			* Incidental?
				+ Payment of fees?
				+ ID of client?
		- b/w attorney and client?
			* Attorney-client relationship?
		- Facilitates legal services?
		- Work product doctrine?
			* Shows substantial need?
			* Hardship?
		- Joint defense?
		- Upjohn?
			* Communication from employees to corporate counsel?
			* Made at direction of superiors?
			* Matters w/n scope of EE duties?
			* Seeks legal advice for corp?
			* EEs knew purpose of communications?
		- Crime-fraud?
			* In furtherance of crim activity?
			* Bootstrap?
				+ Volume of materials?
				+ Relative impotance?
				+ Likelihood of establishing c-f?
		- Waived?
			* Not asserted?
			* Inadvertent? 502
				+ rsbl steps to prevent disclosure?
				+ Reasonable steps to rectify?
			* Court order? 502d
			* Implicit?
				+ Affirmative act?
				+ Put privileged info at issue?
				+ Privilege denies opposing party access to vital info?
	+ **Psychotherapist/patient?**
	+ **Marital?**
		- Confidential marital communications?
			* Confidential?
			* Communications?
			* b/w spouses?
			* During marriage?
		- Adverse spousal testimonial privilege?
			* Criminal case?
			* Married at time of testimony?
			* One spouse compelled?
			* Testifying spouse waived?
* **Authenticated? 901**
	+ **Reasonable jury could find?**
* **Original required? 1002**
	+ **Writing, recording, photo?**
	+ **Seeks to prove content?**
	+ **Duplicate? 1003**
	+ **Contents at issue?**
* **Special exception?**
	+ **Subsequent remedial measure? (407)**
		- Used for liability?
	+ **Settlement? (408)**
		- Used for liability?
	+ **Medical expense? (409)**
		- Used for liability?
		- Accompanying statement?
	+ **Plea bargain? (410)**
		- Waived?
		- Plea withdrawn?
		- Government seeks to use?
		- Paint fair picture?
	+ **Insurance? (411)**
		- Used for liability?
* **POLICY**
	+ **Shaping: Cost-benefit**
	+ **Shaping: Rights**
		- Definition?
	+ **Administrability**
	+ **Justice**
		- Reliance?
			* Companies/parties shape decisions relying on rules
		- Uniformity?
	+ **Institutional competence**
	+ **Whether intervention needed**
	+ **Intent of law vs. effects**
	+ **Law on books vs. law in action**
		- How will people react?
	+ **Incentives**
	+ **Inconsistent faith in juries**
	+ **Reasons for rules**
		- Efficiency
		- Legalities – Constitution, etc.
		- Externalities – effect on witness, reputation
		- Accuracy
		- Self-interest – keep lawyers employed
		- Finality
		- Social interests – family, etc.
	+ **Pillars**
		- Perception
		- Memory
		- Narration
		- Sincerity