* **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