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| ProofIntroduction  * Goal: recreate the past * Crim: jury, lots on the line, less flexy * Sources: CL, Statutory (CEA – start here), Charter * Movement: rule 🡪 principled approach w/ factors * Flexy and responsive * Unpredictable, discretion, length of trial  1. A Qualified Search for the Truth  1. Noel – Principles: search for truth, fair trial, deter police misconduct, admin of justice  * Principles: Fair Trail = Truth and Justice * PvP – at core * Prob: value for search for truth & degree * Prej: to search for truth, system of justice, values  1. Adversarial System  * Counsel: lead, test and counter * Judge: impartial d maker w/ vested interest in truth  2. Swain – Adversarial system fundamental, princ of respect for autonomy, but if put at issue then opens door  * murder, did not want to lead insanity defence  1. Discovery  * General rule of Disclosure: broad & timely: entire file * Except: 1) clearly irrelevant to case; 2) privileged; 3) crown discretionary: witness safety, ongoing invest (list, defence review under undertaking) * Only for use of D on that case * Remedy: * Pre & during: request, adjournment at fault of crown (11b), mistrial * Post test: 1) rsb possibility lead to different result/strategy? 2) D rsb aware?  3. Taillefer & Duguay – Discl: facilitates trial and make full a&d and linked to wrongful convictions  * Murder of 14 yr old; lots of evid missing re cred, theory, other ave of invest; one stay one retrial * Defence: must disclose expert or alibi; may disclose in hopes of dropping or avoid adjournment | Probative v Prejudicial Common Law basic test in search for truth context:   1. Probative? fact at issue more or less likely?  * a) relevance (more or less prob) + b) materiality (material issue in case) * weighing? a) quality (how much proves fact at issue) b) nexus (importance to fact at issue)  4. Palma – cumulative: relevant, materiality, admissib5. Arp – not high threshold: any relevance = prob value  1. Prej? – misuse and may not come to right result  * Extrinsic miscond: moral: a) gen propensity b) punish c) trier of f lower burden of proof; reason: d) complx  1. Weigh: importance v potential to mislead 2. Limiting Instruction: why hear and how use  6. BFF – extrinsic may be adm but re-trial if no jury instruc  * Sexual assault, domineering evid pre>pro until at issue  7. Seaboyer – defence test: pro substantially outweighed by Pre  * Sexual history relevant to consent; concerned with wrongful conv, liberty interests, onus of proof  8. Penney – Do not lead all pro: length of trials, tragedy of wrongful convictTypes  1. Direct/Circumstantial [9]  * Direct: direct use by trier of fact: eyewitness, camera, confession * Errors: 1) cred (lie), 2) reliab (mistake, limited view) * Circum: does not speak for self, need to infer: DNA, motive, eyewitness sees part * Errors: 3) mistaken inference  9. Dhillon – Traditional view: lots of time explaining about extra potential for error;Cdn Jud Council - now: evid as a whole, direct v draw inference w/ no mention of wrong |

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| 1. Use of Evidence  * Old: two stage process: disregard if to not believe or accept then weigh * Miller errors: a) contrary to holistic b) prob for std of proof, may have RD even if do not accept or believe * Current: Emphasize burden of proof and they will understand potential errors  10. Robert – do not need to prove each piece of evid BARD: 1) look at whole 2) not too high a stdrd on def evic  * Arson defence of accident, circ, do not need to prove each aspect of theory BARD that is too high  11. Baltrusaitis – same approach to crown evid  * kill brother, small error not enough to overturn  1. Real/Demonstrative  * First hand impression, directly inspected by court * Cred and Relib off the table so highly prob * Authentication required: admissions or prove   Photos & Videotapes   * Courts likes, often reliable and neutral [12] * Test: 1) accuracy and truly rep facts 2) fairness & absence of intent to mislead 3) verification under oath   Consider:  1) authenticated – call producer or verifier  2) not funda misleading 12. Penney – need to know purpose; test for adm of real  * seal kill video; propose is timing not ID: multiple formats, gaps, aimed at certain viewpt   3) inflaming – conscious or uncons prej to truth   * ppl not easily shocked to irrationality but  13. Kinkead - pvp not all or nothing; purpose is important  * kill sisters; purpose is theory; could make pt with less inflaming photos  1. Documents   1) authenticated? Party involved; transcriber verfi circ 14. Lowe v Jenkinson – doc not adm if not authenticated  * ICBC interview w/ one lawyer; purp not just to show that had so need authen  1. Judicial Notice  * Each proposition needs evidence, JN is exception * High bar since adversarial process: want presented and crossed  15. Olson v Olson – Jud Notice Test: of such common knowledge that not be the subject of rsb debate or immediately verifiable  * Sport involv lead to increased job prospect, no |  |

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| Extrinsic MisconductBad C of Accused  1. General Admissibility [16] – general propensity  Park - Evid tends to show bad chara or crim disp gen inad16. Cuadra - Analysis for EMc: 1) prej, yes 2) Pro to other then gen propensity 3) balancing 4) limiting  * witness saw punch and knife, inconsistent smt * Cred: 1) past inconsist stmt 2) how diff 3) explanation * 3) at issue, admits one event, other tip scale?  1. Similar Fact – specific propensity  * Here speaking to propensity but highly prej since same act (wrong results & court time) * **Presumptively inadmissible** * Context: multi witnesses or multi crime scenes – can apply to have evid adm on all counts * Do not need to be convicted but cannot use if acqui * Test: improbability of coincidence [17] * 1) a) proximity in time b) number of incidents c) similarity in AR d) context of AR * 2) collusion: Test: strong air of reality then onus on crown to show not  17. Handy – principled analysis if there is a specific propen; collusion may go to adm not just cred  * Wife interactions in 3rd party rape; not nexus  1. Post Offence Conduct  * **What are you trying to prove!!** – this is main issue * Acting consistently with someone who had committed act or making attempt to avoid prosecu – infer did it * Has probative value if: [18]  1. At least one rsb inference that acting to avoid prosec (speculative is mere guess, BC where hit and hid) 2. Still admissible if have >1 possible inference 3. Not BARD – look at as whole not too much weight 4. If Prej: do rest of analysis  18. White – jury to consider all as a whole with warning that may be other inferences; other inf do not block  * Left after murder occurred, ditch gun, check heat, no cheque – also robbery (did it v did something else)  Arcangioli – where goes to level of culp then not Prob  * Mur1 v mur 2 (did it v did it); OK: mansl v mur (plan)  19. Peavoy – post offence just another circ evid; cover up behaviour relevance depends on what inference  * murder, self def and intox, but cleaning and hiding * rel to sd (why cover up); not rel to mans and murd (would cover up both); rel to rebut intox (complex, but goes to intent in diff way, confusing for jury) * Evidence of innocence + seaboyer = should see but do not 🡪 unfairness of rule based approach  20. BSC – evid of inno may be adm under princ approach, need steps where easier to avoid; but no infer from silence  * rape, very cooperative, immediate sample offer | Bad C of Witness  * cred: logic, prior inconsist, demeanor in box, witness bias  1. Prior Convictions  * Propensity inadm, so need relevant to other issue [16] * cred: bad previous make more likely that lie [21] * Prob may consider [21 dissent]: 1) timing (to trial) 2) nature (fraud, theft, perjury) 3) bal perspect (d go after c wit cred?) 4) name of offence * **Canada Evid Act s12** – any [incl accused] witness may be questioned as to whether committed an offence * since once testify putting cred at issue * only get offence and date, details go to propensity  21. Corbett – CRA s12 applies to accused; bad conduct can go to credibility  * murder, charter challenge to incl of prior mur convict  1. Other Discred Conduct  * Non-accused, greater presumption that prior is admiss * So can go into details even if not convict  22. Cullen – do not admit events if acquittal; do admit more info as to details  * Assault by vehicle, cred key, error in leaving earlier acq assault and in not leaving crim record details  23. Titus – can cross on charge even if not yet convicted  * Murder, did not permit cross of crown witness  1. The **Vetrovec Witness**: huge issues for reliability   a) Do nothing and will come out – rejected [Kh diss]  b) Exclude – but prejudging cred, who there at deal? 24. Murrin – here cannot just exclude; other areas where adm take reliabitly into account presumpt inadm (hearsay, sim fact, expert); here presumpt adm (eywit, conf)  * Murder, jailhouse informant   c) Admit with special inst: issue i) who apply? ii) instruct?   * Eng: i) limited categories, ii) need corrob &indep evid * i) princ approach any witness w/ severe cred probs * one single (perjury conv, jailhouse informant, accomplish got sig deal) **or** combo (gen crim, crim record, vary versions, unexplained pass of time) * ii) instruction: 1) separate 2) gen reminder of why in category 3) entitled to use but dangerous 4) **confirm** * stress conf restore faith but does not get to BARD * evid backing up on v can be another * since [25], no issue if mention mat and ind, but lots of conv w jury not w jud  25. Kehla – confirmatory: a) goes to material, important part b) indep of v witness with no rsb possibility that tainted (another source & no influence)  * murder, two vetro w to prep, gf & met with accu  26. Dhillon – jailhouse implicit expect rewards, conf evid must go to important; tactics can trigger admiss  * jail house inform, evid show talking insuff, alleg that irrat focus on client may open door to bad charac |

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| 1. Other Dangerous Evid – **Eyewitness**  * Prob: to many element and unbiased * Issue: honest but mistaken * Esp where: stranger, difficult circ, proximity to events, crystallizing event, line up photos incor * Strong jury instru: 1) careful 2) note wrongful conv 3) eval weight: i. op to view, ii. closeness disc match accused, iii. distinctive trait, iv. corrobative evid  27. Gonsalves – issues with eyewitness  * car robbery, photo pack not perfect but ok, knew  Contexts  * Different statute * Prejudice, still concerned about time * General admis the same, but in crim jury avoid highly prej unless high prob (***Johnson***)  Civil  * No liberty issues, more flexy (***Tsoukas***)  36. Tsoukas – car crash: shoplifting and expert?  * Crim: only CEA prior or sim fact * Civ: relevant to cred so ok * **Collateral Evid Rule**: if just to cred, can cross but not call addnl evid to contradict (time saving)  Judge Alone  * Ability to make limited use of evid, less overw by expert * Dif admissibility btw jury and judge (***Malik***)  37. Malik – co-accused: jury🡪jud now conf adm  * 1) Self-editing witness is problematic 2) judge in making the ruling is aware that B has been named so prej already present 3) pretty sure can self instruct  Competence, Oath, Compellability  * General: everyone competent and compellab * Princ: importance of search for truth   Exceptions:   1. Charter: accu compet but not compel 2. No Oath (affirm-CEA): not compet (recog spec forum) 3. Communicate:  * **youth**: s16.1 strong presump can testify 3) understand and resp to ?s 6&7) promise to ‘tell truth’ cannot challenge at adm [38] * **mental**: s16 a) understand nature of oath b) communicate  38. JZS – provisions do not impose on right to full answ and def unless fundamentally unfair, can cross at trial  1. Spouses  * policy: preserve harmony & hub control * cl: no compet unless violence * **s4:** is compet and compel wit – * but: cannot compel discl of commu unless waive | Opinion Evid  * **essential** but **overuse undermining** (***J-LJ***): entire basis not on evid, bias, usurping, time and cost * unique: providing an opinion (not fact) * **presumption: exclusion**  28. Graat – Admissibility Police op re imp driving  * **everyday opinions** are admissible, danger in gap * Cannot: be in form of legal test or merely speculative  Expert Evidence  * Provide to support or rebut common sense inferences  1. Statutory Provisions affecting Adm  * Must meet statu deadline for disclosure CC 657.3  1. Threshold Adm   A) Mandatory Preconditions (***Mohan***)   1. Expertise (but super may lead to turn over decision) 2. Relevance (to an issue in question) 3. Necessity (inference impossible or counterintuitive)  * Not just helpful (J-LJ)   B) Broad PP Balancing (***Abbey***)   * barely meet preconds? * Going to issue? Usurp trier of fact * (list&evid 🡪 list&asksee🡪 list&h? 🡪 list&apply) * Most not nesc inadm, but avoid (***Mohan***) * Avoid ultimate issue w/ hypo (***Bleta, Abbey***) * Foundational prob if too general (only prej) * Not nesc out if miss one factor (***Palma***) * How leading? (***Abbey*** presentation affects balancing) * How long and complex? * Evidence about reliability? * Evidence that would confuse or overwhelm? * Reliability, incl issues of bias? (not just rel to expert)  29. Mohan – d: not within narrow class of docs30. Bleta – hypothetical ok, then show facts in case31. Palma – admissibility distg from weight  1. Particular matters  * Goes to Credibility 🡪 inadmissible (***Llorenz***) * OK if part of narrative, or recantation * Not stmt validity analysis or ‘I believe’ * Novel Scientific (***J-LJ***) * Risk if not reliable or less reliable or general propen * But: high Mohan ++ threshold of reliability  1. Generally accepted in sci community 2. Subject to peer review 3. Potential error rate known?  * Movement towards Limiting Admissibility * If issue can be simply stated: judge provide (***J-LJ***)  32. Llorenz – oath helping not adm, sexual crime33. J-LJ - IDable traits of group: like gen and spe propensity + specific ok but – goes to issue –sci not reliab34. DD – cannot draw inference from delay of young35. Abbey – tattoo as circ evid of gang crime |

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| ExaminationOrder of Calling  * Left to adversarial * Accused: * constitution right to be at trial; discretion to testi last (39. ***Smuk*** – assault police?) * never obliged to call * Crown: (40. ***Jolivet*** – crown not call witness) * No duty to assist defence * Presumed to call witnesses good for your side * Force call?: onus & oblig v vouching & lmt access   1) force - only s7 abuse of process  2&3) adverse inference judge or counsel   * a) court to consider pos reasons b) duty to court to give reasons – high threshold * **Reversible Error Test:** reasonable possibility that would have changed the outcome/caused prejudice to the d * Policy: expense, witne loss v error hard on accu * No error in cross, extra witnesses no dif (***Segura***) * D should have comment, but cred mention (***Jolivet***)  Direct Examination  1. Leading Questions (41. ***Maves*** – horses neglig)  * Not own: best truth, have access * Except: a) @start b) non contro to key (jud & fri agre) c) have probs young d) forget  1. Refreshing a Witness’ Memory  * Long delays, no oh well 🡪 truth   **Present Memory Revived** (42. ***Shargill*** - 3rd party, 6yr ok)   * Doc to revive, risk: taint w/ own (if too detailed ***Fliss***)   A) witness and jury out  B) clarify application w/ judge  C) put doc to court  D) maybe more leading  E) PMR - Consider appropriateness   * Contemp flexy, 3rd party taint, witn compelled?   F) if granted: **not admissib** just revive; jury instruction  **Past Recollection Recorded**   * No prior memory – higher thresh (Truth v no cross)   G) PRR - Require (miss one and out) (43. ***Fliss*** – tape in)   * 1) reliable (video-3rd notes) * 2) Timely (principled but short better) * 3) pres voucher (oath attached to prior stmt) * 4) orig copy if possible) * can apply to imperfect mem (44. ***JR*** - recorded, 16hrok, vouched)   H) Hearsay? | Cross Examination  * Strategy and know case * Truth v wafting in theories; fairness to wit * OK to cross about collateral -> cred (***Cassibo***-mag was not) * Crown care: no reverse onus, gen bad charct, irony * Leading or open ended * ok: bias, cred, relib, inconst, improb * limits: (45. ***Lyttle*** – drug debt, d forced to call crown) * Broad const right per s7 & 11 * a) rules of evid & cl: bad character, priv, irelv, repet, * b) statu: s10 – can cross on inconst prior stms * c) theory (detail🡪fact) - ok * threshold good faith: not know or reckless to false * does not need to be based on admis evid * can: any rsb adv by reason, exper or intuit * not: unwarranted innuendo * obligations (46. ***Carter***) – if putting scenario in closing * *Brown v Dunn* – if rely, put as prop to wit * Adverse infer: don’t want to punish for counsel * Rule aimed at 1) sig matters 2) holistic: given op to? * Only clearest: sig mat, did not go, now want rely  Re-Examination  * Truth v inefficient courts * Policy limit: length, ineff, unfair to split def   Exceptions:   * Reexamination: New matters raised cross (47. ***Moore***) * Only what was in cross – no cross (unless adver?) * Rebuttal: principled approach * **Test**: New **key issue** raised by d that **crown could not have rsb anticipated** (48. ***Krause***) * Not: collateral / cred |

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| Statement EvidPrior Consistent Statements  * Closer to time v oath, cross, sight for cred * General rule: cannot present (***Ay*** – came out in chief) * Proba: limited only to narrative * Prej: details lead to inf that reliabl not permit * May be able to save w/ limiting * Exceptions * Narrative (***Ay***) * Allegation of Recent Fabrication (***Stirling***) * Cross: **Triggering event** gave reason to change * Reexam: prior consist stmt **to rebut** (not cred!) * Similarity rebuts so can get into detail * Prior ID (***Swanston***) * Prob: mind fresh, no taint  Attack Cred of Own Wit  * Can be fatal to case – all elements in your witness * Treat w care since very hard to ignore for truth (***Milg***) * **S9(2) - cross on inconsist** (***Milgaard***- wrong convict) * 1) prior stmt 2) reduced to writing 3) inconsistent * purp: lmt cross to determine whether adverse * inability to remembe may be inconsist (***McInroy***)   A) advise making application (jury and wit out)  B) provide evid of inconsistency  C) judge evaluates  D) may need to prove stmt  E) opposing counsel cross circ of making  F) if inconsist: discr to permit addnl cross w/ **lmt inst**   * Expand evid if wit adopt * **S9 (1) – Broad Cross** to impeach wit * No bad character, usual rules of cross   G) s9(1) Requirements (***Hanes***)  1) prior stmt [not write]  2) adverse   * discretionary: broad notion that changed side * not lie: no logical explanation for change * should be surprise, not on notice (***Cassibo***)   ***Cassibo*** – broad cross of mother undermined rebut trigger; applied on reexam to cross; evid of past stmt in police notes; no reason for switch   * only if evid can aquit? (***McInroy***, CoA; SCC: 9(2)) * if accept 🡪 truth; if deny 🡪 cred only   H) Hearsay? | Privilege  * Search for truth v long term search for truth * Concept a) duty of conf b) court cannot break   1. Case by case (***National Post***)   1. communication orig in confide (antic conf) 2. confide integral to relation (ineffect w/o antic) 3. foster in public good 4. consider: this case public purp > pub interest in truth (allows nuanced call)  * Jump to 4 for: doc, psyco, min, report   2. Class Priv   * fundamental to syst, almost const 🡪 narrow exception * few new: solic client; informer priv (***Nat Post***) * Protects  1. Intended to be confide 2. Is legal advice 3. Not adv on how to break law  * Exceptions: * Waiver can be explicit or implicit (***Shirose*** – doj adv) * **Innocence at stake** – (***Brown***- another confessed) * High thres: priv barely overcome by wconvt fear  1. Evid that communica exists that *could raise* 2. Court review: *likely to raise* rsb dbt 3. Not avail from any other source 4. Unable to otherwise raise  * If discl: no transactional immunity, but also no derive or direct use and limited |

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| Hearsay  * Presumptively inadmissible (***Khelawon***) * General rule: in for cred but not for truth * for: close to time incr relb, shorter trials * but: oath (relb), see (cred), cross (truth) (***Baltzer***) * Principles: **necessary** and **reliable** * Inference drawn from fact that stmt said – not hearsay * A) Circ Evid going to motive (***Griffin***) * Not to infer motive but to infer that scared so may have had motive * Mini relib threshold   1) not made under circ of suspicion  2) made in ord manner, nat inf truthful   * B) Circ Evid going to state of mind (***Ratten***-upset)   **Business records Exception** (***Wilcox***– fish book)   * S30 – where oral adm (p>p), docs made in ordinary course of business * Presumes would be adm if testify (not prej>prob) * If not required: not part of busin - close (***Wilcox***) * (11) supplement not replace cl * (12) broad defn of busi and record * (10) limits: not during invest, lgl challenge, contra to public policy * CL – i) original ii) contemporaneously iii) in routine iv) of business v) recorder w/ personal know vi) duty to make record vii) no motive to misrep * Ex of rule based failing on sta and cl (***Wilcox***) * another established cl exception * broader principled approach: * necessa (will not remeb) and relib (system, almost meet others overcome hard cross) | Common law and Principled – Framework **(Mapara)** Initial conditions   * 1) out of court stmt 2) enter for truth (***Subramanium***) * 2) otherwise admissible (p v p) * 3) product of cohersion   Presume inadm unless:  a) Statutory exception - Almost meet may help (***Wilcox***)  b) cl exception –   * creates strong presume of admis * rare case excludes on princ approach  1. Past Recollection Recorded (not 9(1) or 9(2)) 2. ID 3. Dying Declaration: hopeless expectation of death 4. Res Gestea: spontaneous utterance 5. Oral History – truth seeking for s35 (***Mitchell***) 6. Narrative 7. Busi stmt in ord course 8. Present stmt of future intent 🡪 infer followed 9. Declarations against interest (***O’Brien***)  * princ: likely relib since not likely to do counter financial or liberty interest (wit:I did it🡪died)   i) circ where should apprehend vunul as result  ii) conc not too remote  b) could challenge an exception  c) necessary and reliable? (***BKG***)   * Onus: on a BoP; threshold then fact find weigh * Predictability v principles   1. **Necessity**   * Not physically avail – or radical change (***KGB***) * Should support w/ anal (***Parrot*** – old s16) * Not until you establish that followed regular means (***Pelletier*** – crime boss may come)   2. **Reliability** [overall weighing of both sets]  A) Holistic analysis of ***BKG***replacement factors   * 1) oath (degree of understanding of seriousness) * 2) presence (video – audio –transcript – wit – 3rd) * 3) cross (good if changed story so there)   frustrations: a) one party has witness and resources to check off b) narrow view of relib since does not look to content [what do with these old except?]   * may draw on reliab of similar stmts (***UFJ***) * spontaneous stmt of young child (*Khan*)   B) Inherent Trustworthiness/Relib (***Khelawon***)   * content flow logically? * Motive to lie? * Spontaneity * Cohersion or pressure? * Contemporaneous? * Outside collaborating evid?   d) final prob prej balancing |

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| Adm/ConfessionsAdmissions  * Formal: negotiated and agreed (***CC 655***) * Shorten trial, avoid prej going, ethical? * Client refuses, jury needs, crown has bed case * Cannot be forced, effici purp (***Castellani*** – arsenic)  Confessions/Statements  * Informal admissions * Not hearsay (will be in court), ltl easier get in (***Palma***) * Content * Relevant & prob>prej * Does not need to be full confession * Can urge to believe only part (***Hunter***-stmt to lwy) * Presumptively admissible (***Murrin***-relib at weight) * Admitted in its entirety (***Allison***- B&E explain) * Exception: **Partial Overhear** (***Hunter***) - Prej>prob   **Voluntariness**   * RULE: stmt to **person in position of authority** – crown **prove BARD** that voluntary * Not a produ of **fear or favour**: what brought about * Reliability is irrelevant * Duty of police to get stmt w/I rsb bounds (***Oickle***) * Render invol (if **causative**): (***Oickle***) * Direct or indirect threats * Improper inducement: legal but not moral/sprit * Coercion: misusing authority – cold * Made up evidence: sometimes * Operating mind: auto state * Other police trickery: shocking – chaplin * Reason: disparity of power * Princ: - unreliab 🡪 wc – p tactics 🡪integ justice * **Undercover conf** (***Grandinetti***) * Reliability issue due to pressure (hold back evid) * Generally adm w/ instruction * 1) vol – not authority * 2) manifestly unreliable – s7 – exceptional circ * 3) abuse of process – denigrate integ of jusd proc * **Another poten perp** (***Grandinetti***-old motive out jail) * Test: reasonable connection btw person and crime * Otherwise prej to truth seeking * Powerful due & can lead propensity (***Seaboyer***) * **Co-accused** (***Grewall***-edit easy) * Efficient, better for witnesses, no irrational verdicts * Rule: adm by accused not adm against co-accused * Policy: 1) not take stand 2) shift focus to others * Options   a) Separate: pass n&r hearsay, but inter of just  b) jury instruction: quite prej  c) edit: practical (esp wit) and substantial (still prob) | Charter Exclusion 10(b) – right to counsel upon detention (***Sinclair***- 1x only)   * police to inform and facilitate without delay * not informed or question b4 call   8 – no unrsb search or seizure   * police to have rsb and prob grounds * no warrant or incorrect grant   7 – princ of fundamental justice: right to silence   * passive undercover ok, active not (***Hebert***) * right against self incrim active undmi v search for truth * exists regardless of in custody, unless statu (***Turcotte***) * can choose to stop any time (***Turcotte***) * no infr guilt – speculative, value of right * can be alerted for narrative * ppl generall know so do not need to inform wit (***Grant***) * ***Singh*** – rsb efforts to get off silence ok (innocent bysta) * Is all cl voluntariness (cornerstone of syst, ***Grant***) * Special back and forth considerations:  1. What police saying – no oblig 2. Number of times – 18x and know system ok 3. Length of interview 4. Effect on accused   24(2) – inadmissible if bring system of justice into disrepute   * Old: 1) conscriptive – irrebut presump that inadm 2) non-consc (breach did not create) – rebut p adm * Problems: no categories in lang; why only balance one?, highly relib excl * ***Grant*** – honestly and somewhat rsbly thought detained * Back to pvp – long term repute consider:  1. Seriousness of infringing conduct (police) 2. Impact on charter rights of accused 3. Societal interest in trial on merits (relib)  * Stmts of accused strong out: core of 10(b) * Police know, vio volunt, not relib (even relib) * Bodily evidence: non intrusive likely in-hi relib * Real evidence: how private? Deliberate disreg or sloppy or honest mistake [policy: police whld]?   **Protection of Witness**   * Can force to talk for legit policy reasons (***Re 83.28***)   13 – incrim not used against you (dir or deriv)   * Applica in crim or civ where forced to test (***Nedelcu***) * Exceptions:  1. Perjury 2. Otherwise discovered   2. Inconsistent stmts   * Old ***Noel***: only peripheral for cred * Accused retrial: waived right 2x; no s13 (***Henry***) * Non accused retrial: heart of s13 (***Henry***) * Exchange of obligs * Can use innocuous (no inf g) 4 cred (***Nedelcu***) * Issues: jury interp ‘forgot’; loss of clarity |