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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 PrejudicialCommon 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 value1. 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 convictTypes1. 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 verifier2) not funda misleading12. 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 circ14. 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 Accused1. 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 trial1. 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 weight1. 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 young 35. 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 Examination1. 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 outB) clarify application w/ judgeC) put doc to courtD) maybe more leadingE) 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 inconsistencyC) judge evaluatesD) may need to prove stmtE) opposing counsel cross circ of makingF) 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 suspicion2) 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 remoteb) could challenge an exceptionc) 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 justb) jury instruction: quite prejc) edit: practical (esp wit) and substantial (still prob) | Charter Exclusion10(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
 |