

RULE 104 | PRELIMINARY QUESTIONS

(a) IN GENERAL. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) RELEVANCE THAT DEPENDS ON A FACT. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) CONDUCTING A HEARING SO THAT THE JURY CANNOT HEAR IT. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) the hearing involves the admissibility of a confession;
- (2) a defendant in a criminal case is a witness and so requests; or
- (3) justice so requires.

(d) CROSS-EXAMINING A DEFENDANT IN A CRIMINAL CASE. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) EVIDENCE RELEVANT TO WEIGHT AND CREDIBILITY. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

(As amended Mar. 2, 1987, eff. Oct. 1, 1987; Apr. 26, 2011, eff. Dec. 1, 2011.)