

Criminal Law, Criminal Procedure, and Evidence

<p>Conspiracy Conspiracy is an agreement or combination of two or more persons (two “guilty minds”) for the specific purpose of committing any crime. It requires an overt act in furtherance of the conspiracy by one or more of the parties.</p>	<p>Second Degree Homicide: Intent Second degree murder is the killing of another human with the intent to kill or inflict great bodily harm.</p> <p>Second Degree Homicide: Felony Murder A defendant is guilty of second degree murder if the death occurred while engaged in the perpetration or attempted perpetration of one of the following enumerated felonies (felony murder – same as first degree). Specific intent to kill is not necessary.</p> <p>Second Degree Homicide: Dangerous Substance The defendant is guilty of second degree murder if she unlawfully distributes or dispenses a controlled dangerous substance that is a direct cause of death of the recipient.</p>	<p>Battery Battery is the intentional use of force or violence upon the person or another.</p> <p>Simple Battery is a battery committed without the consent of the victim.</p> <p>Second Degree Battery is a battery where the offender intentionally inflicts serious bodily injury on the victim.</p> <p>Aggravated Battery is a battery committed with a dangerous weapon.</p> <p>Aggravated Second Degree Battery is a battery committed with a dangerous weapon when the offender intentionally inflicts serious bodily injury.</p>	<p>Theft/Unauthorized Use Theft is the (1) misappropriation or taking; (2) of anything of value; (3) that belongs to another; (4) either without the consent of the other or by means of fraudulent conduct, practices, or representations; and (5) with an intent to deprive the other permanently of the property.</p> <p>Unauthorized use is the intentional taking or use of a (<i>movable or motor vehicle</i>) that belongs to another without their consent or by means of fraudulent conduct but without the intention to deprive permanently.</p>
<p>Attempt A criminal attempt is an act or omission done, with the specific intent to commit a crime, for the purpose of and tending directly toward the accomplishing of the crime. Attempt requires a substantial step (beyond mere preparation) toward the commission of the crime.</p> <p>Attempted Murder To find the defendant guilty of first or second degree murder, it must be shown the defendant possessed the specific intent to kill and committed an overt act toward the accomplishment of that goal.</p>	<p>Manslaughter Manslaughter in Louisiana covers: (1) intentional killings that would otherwise be murder but are distinguishable by the existence of sufficient provocation; and (2) killings committed without any intent to cause death or great bodily harm.</p> <p>Manslaughter: Heat of Passion First or second degree murder will be reduced to manslaughter if the killing was committed in sudden passion or heat of blood caused by provocation sufficient to deprive an average person of his self-control and cool reflection.</p> <p>Unintentional Manslaughter The defendant will be guilty of unintentional manslaughter if he kills another without intending to cause death or great bodily harm when the offender: (1) engaged in the perpetration or attempted perpetration of any felony not enumerated in the murder statutes or any intentional misdemeanor directly affecting the victim; or (2) resisting lawful arrest in a way that is not inherently dangerous.</p>	<p>Assault Assault is the intentional placing of another in reasonable apprehension of receiving a battery.</p> <p>Simple Assault is an assault committed without a dangerous weapon.</p> <p>Aggravated Assault is an assault committed with a dangerous weapon.</p> <p>Aggravated Assault with a firearm is an assault committed with a firearm.</p>	<p>Robbery Simple Robbery is the (1) taking anything of value; (2) belonging to another; (3) from the person of another or that is in the immediate control of another; (4) by use of force or intimidation; (5) but not armed with a dangerous weapon.</p> <p>Armed Robbery is the taking of anything of value belonging to another from the person by use of force or intimidation while armed with a dangerous weapon.</p> <p>First Degree Robbery is the taking of anything of value belonging to another from the person of another, or in immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon.</p> <p>Second Degree Robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another when the offender intentionally inflicts serious bodily injury.</p>
<p>Solicitation Solicitation for Murder is the intentional solicitation by one person of another person to commit or cause to be committed a first or second degree murder.</p> <p>Inciting a Felony is the endeavor by one or more persons to incite or procure another person to commit a felony.</p>	<p>Negligent Homicide Negligent homicide is the killing of a human being by criminal negligence or by a dog or other animal when the owner is reckless and criminally negligent in confining or restraining the animal.</p>	<p>Kidnapping Simple Kidnapping is the (1) intentional and forcible seizing and carrying of any person from one place to another without their consent; (2) intentional taking, enticing, or decoying away a child under 14 for an unlawful purpose without the consent of the parent; (3) intentional taking of a person who has been lawfully committed to an institution for orphans, mental illnesses, or intellectual disabilities without consent of proper authority; (4) intentional taking by any parent of her child from any custody with the intent to defeat the jurisdiction of the court over the custody of the child; OR (5) taking by any person other than the parent of a child placed in his custody by any competent court in the state with intent to defeat the jurisdiction of the court over the custody of the child.</p> <p>Second Degree Kidnapping is the forcible seizing and carrying, or enticing or persuading, of any person to go from one place to another; or the imprisoning and forcible secreting of any person when the victim is: (1) used as a shield or hostage; (2) used to facilitate the commission or of flight from a felony; (3) physically injured or sexually abused; (4) imprisoned or kidnapped for 72 or more hours; OR (5) imprisoned or kidnapped when the offender is armed with a dangerous weapon or leaves the victim to reasonably believe he is armed.</p> <p>Aggravated Kidnapping is the intent to force the victim to give up anything of apparent present or prospective value, or grant any advantage or immunity to secure the release of the person under control: (1) forcible seizing and carrying of any person from one place to another; (2) enticing or persuading of any person to go from one place to another; OR (3) imprisoning or forcible secreting of any person.</p>	<p>Burglary Simple Burglary is the unauthorized entering of any dwelling or other structure, vehicle, watercraft, or cemetery with the intent to commit a felony or any theft therein.</p> <p>Aggravated Burglary is the unauthorized entering of any dwelling or other structure, vehicle, watercraft, or movable where a person is present, with the intent to commit a felony or any theft and the offender: (1) is armed with a dangerous weapon; (2) arms himself with a dangerous weapon after entering; or (3) commits a battery upon any person while entering, in, or leaving.</p> <p>Unauthorized Entry of Inhabited Dwelling is the intentional entry by a person without authorization into any inhabited dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person.</p> <p>Unauthorized Entry of Place of Business is the intentional entry without authority into any structure or premises, belonging to another, that is completely enclosed by any type of physical barrier that is at least 6 feet in height and is used, in whole or in part, as a business.</p> <p>Home Invasion is the unauthorized entry of any inhabited dwelling or other structure used as a home, when a person is present, with the specific intent to use force or violence against the person or to vandalize, deface, or damage property.</p>

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<p>First Degree Homicide The offender killed a human being with the specific intent to kill or inflict great bodily harm and there must be an aggravating circumstance.</p> <p>Aggravating circumstances include: (1) A defendant is guilty of first degree murder if the death occurred while he was engaged in the perpetration or attempted perpetration of aggravated kidnapping; second degree kidnapping; aggravated escape; aggravated arson; aggravated or first degree rape; aggravated burglary; armed robbery; assault by drive-by shooting; first degree robbery; second-degree and simple robbery; terrorism; or cruelty to juveniles.</p> <p>The defendant intentionally killed: (2) a fireman or police officer; (3) more than one person; (4) victim under 12 or over 65; (5) a taxi driver; (6) a correction facility employee.</p> <p>The defendant: (6) offered or received anything of value for the killing; (7) engaged in distribution or purchase of controlled substance; (8) committed ritualistic acts; (9) prevented or influenced testimony; (10) previously acted with specific intent to kill.</p>	<p>Vehicular Homicide Vehicular homicide is the killing of a human being, proximately or directly, by an offender engaged in the operation of, or in an actual physical control or, any motor vehicle, aircraft, watercraft or any other means of conveyance. AND (1) under the influence of alcohol or controlled dangerous substance; (2) blood alcohol .08 or any amount of controlled dangerous substance; (3) under combination of alcohol or drugs; or (4) knowingly consuming quantities of the drug that substantially exceeds the dosage.</p>	<p>False Imprisonment False imprisonment is the intentional confinement or detention of another without his consent and without proper legal authority.</p> <p>Defamation Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything that tends to expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit of public confidence of social intercourse.</p> <p>Video Voyeurism Video voyeurism is the use of any image recording device to observe another for a lewd purpose or where the persons has a reasonable expectation of privacy.</p> <p>Carjacking Carjacking is the intentional taking of a motor vehicle belonging to another person, in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, by force or intimidation.</p> <p>Extortion Extortion is the communication of threats to another with the intention to obtain anything of value or any acquittance, advantage, or immunity of any description.</p>	<p>Arson Arson is the intentional damaging by any explosive substance or the setting fire to any property of another, without the consent of the owner; or unintentional starting of a fire or causing an explosion while the offender is engaged in the perpetration or attempted perpetration of another felony.</p> <p>Aggravated Arson and Injury by Arson is if the defendant intentionally damages by any explosive, or sets fire to, any structure, watercraft or movable property and it is foreseeable that human life might be endangered.</p>
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<p>Criminal Damage to Property Simple Criminal Damage to Property is the intentional damaging of any property of another, without owner's consent, by any means other than fire or explosion.</p> <p>Aggravated Criminal Damage to Property Damage of Property is the intentional damaging of any structure, watercraft, or movable property, by any means other than fire or explosion, when it is foreseeable that human life might be endangered.</p>	<p>Possession and Use of Drugs Defendant committed a crime of simple possession of a controlled dangerous substance.</p> <p>Distribution of a Controlled Dangerous Substance Defendant committed the crime of possession of a controlled dangerous substance with the intent to distribute.</p> <p>Driving While Intoxicated The crime of operating a vehicle while intoxicated is the operating of any motor vehicle or other means of conveyance when the operator is under the influence of alcohol or other controlled dangerous substances.</p>	<p>Defense: Justification – Infancy Under the age of 10, a person cannot be held responsible for any crime.</p> <p>Defense: Justification – Insanity Because of a mental disease or defect, the defendant was incapable of distinguishing between right and wrong with the conduct in question.</p> <p>Defense: Justification – Intoxication Generally, it is immaterial if the defendant was intoxicated, except if: (1) intoxicated or drugged condition was involuntary and direct cause of criminal conduct; and (2) the intoxicated or drugged condition negates the existence of specific intent or special knowledge required for a particular crime.</p>	<p>Justifiable Homicide A homicide is justified when committed: (1) in self-defense by one who reasonably believes he is in imminent danger of death or great bodily harm; (2) to prevent a violent or forcible felony involving danger or great bodily harm; (3) reasonably believe someone will likely use unlawful force to commit a burglary or robbery of a dwelling, business, or car; or (4) to prevent the entry or to compel the intruder to leave. A person who is an aggressor cannot claim self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows he desires to withdraw.</p>
<p>Criminal Trespass Criminal trespass is when a person enters a structure, watercraft, or movable or immovable property owned by another without express, legal, or implied authorization.</p> <p>Criminal trespass is when a person remains on movable or immovable property owned by another without express, legal, or implied authorization.</p>	<p>Reckless Operation of a Vehicle The reckless operation a vehicle is the operation of any motor vehicle, aircraft, vessel, or other means of conveyance in a criminally negligent or reckless manner.</p> <p>Hit and Run A driver commits a hit and run when he is involved or causes an accident and intentionally fails to stop his vehicle at the scene, give his identity, or render reasonable aid.</p> <p>Failure to Seek Assistance A person who knows that another has suffered serious bodily injury must give reasonable assistance if it is safe to do so.</p>	<p>Defense: Justification – Duress Defendant compelled to act because of threats of death or great bodily harm and he reasonably believes the person making the threats is present and would carry out the threats immediately if the crime were not committed.</p>	<p>Defense of Others A person is justified in using non-deadly or deadly force in the defense of another when it is: (1) reasonably apparent the person attacked could have used such force himself; and (2) intervention was necessary to protect the other person.</p>
<p>Flight from Officer Intentional refusal to bring a vehicle to stop knowing that it has been given a visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense.</p> <p>Illegal Carrying of a Weapon The illegal carrying of a weapon is the intentional concealment of any firearm or other dangerous weapon.</p> <p>Possession of Firearm by Felon It is unlawful for a person who has been convicted of a crime of violence or felony to possess a firearm.</p>	<p>Defense: Mistake Fact: Reasonable ignorance or mistake of fact that negates the presence of any mental element required by a crime is a defense, unless precluded by the definition of the crime. Knowledge but wrong conclusion.</p> <p>Law: Ignorance of the existence of a criminal statute is not a defense. Bu it is allowable when: (1) the defendant reasonably relied on an act of the legislature repealing an existing criminal law or otherwise purporting to make his conduct lawful; or (2) defendant reasonably relied on the final judgment of a court of last resort that the law making his conduct criminal was unconstitutional.</p>	<p>Defense: Justification – Self-Defense An individual may use force on another person when he reasonably believes it is necessary to prevent a forcible offense against him.</p> <p>Defense: Justification – Defense of Property An individual may use force on another person when he reasonably believes it is necessary to prevent the other person from unlawfully entering a dwelling, a place of business, or motor vehicle he is lawfully inside, or to compel a person who has unlawfully entered to leave.</p>	

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<p>Fourth Amendment The Fourth Amendment provides that people are to be secure in the persons, houses, papers, and effects against unreasonable searches and seizures.</p> <p>To be reasonable under the Fourth Amendment, a seizure, defined as the exercise of control by the government over a person or thing, must be supported by probable cause or reasonable suspicion the suspected committed the crime.</p>	<p>Warrant Requirements Under the Fourth Amendment, police officers must have a search warrant or meet an exception to the warrant requirement. The warrant must be (1) issued by a neutral and detached magistrate; (2) based on probable cause established from facts submitted to the magistrate by a government agent upon oath or affirmation; and (3) particularly described the place to be searched and the items to be seized - the warrant must describe with reasonable precision the place to be searched and the items to be seized.</p> <p>There are six exceptions to the warrant requirement, meaning there are only six circumstances where a warrantless search is reasonable and valid under the Fourth Amendment.</p>	<p>Warrant Exception: Automobiles If the police have probable cause to believe that a vehicle contains contraband or fruits, instrumentalities, or evidence of a crime, they may search the vehicle without a warrant.</p> <p>If the police have full probable cause to search a vehicle, they can search the entire vehicle and all containers within the vehicle that might contain the object for which they are searching. Thus if the police have probable cause to believe drugs are within the vehicle, they can search any container.</p>
<p>Arrest An arrest occurs when the police take a person into custody against her will for purposes of criminal prosecution or interrogation. An arrest must be based on probable cause but does not generally need a warrant. The officer must have within his knowledge reasonably trustworthy facts and circumstances sufficient to warrant a reasonably prudent person to believe the suspect has committed a crime which arrest is authorized by law.</p> <p>Probable cause is based on the totality of the circumstances. Police do not need a warrant before arresting a person in a public place.</p>	<p>Invalidating a Warrant / Scope of Warrant To invalidate a search warrant issued on the basis of an affidavit, the claimant must prove: (1) a false statement was included in the affidavit by the affiant; (2) the affiant intentionally or recklessly included that false statement; and (3) the false statement was material to the finding of probable cause.</p> <p>The scope of the search is limited to what is reasonably necessary to discover the items described in the warrant. A search warrant does not authorize police to search persons found on the premises who are not named in the warrant. But they can search those incident to arrest.</p> <p>There is a limited authority to detain occupants on the premises when the search is being conducted.</p>	<p>Warrant Exception: Plain View The police may make a warrantless seizure when they: (1) are legitimately on the premises; (2) discover evidence, fruits or instrumentalities of crime, or contraband; (3) see such evidence in plain view; and (4) have probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of crime.</p>
<p>Investigatory Detention (Stop and Frisk) Police have the authority to briefly detain a person for investigative purposes even if they lack probable cause to arrest. To make such a stop, police must have a reasonable suspicion supported by articulable facts of criminal activity or involvement in a completed crime. They may conduct a frisk to ensure there are no weapons.</p> <p>The police can reach into the suspect's clothing and seize any item that the officer reasonably believes, based on its "plain feel", is a weapon or contraband.</p>	<p>Executing Warrant Only the police may execute a warrant. An officer executing a search warrant must knock and announce his authority and purpose and await admittance for a reasonable time or be refused admittance before using force to enter the place. No announcement is needed if the officer has reasonable suspicion, based on facts, that knocking and announcing would be dangerous or futile or that it would inhibit the investigation.</p>	<p>Warrant Exception: Consent The police may conduct a valid warrantless search if they have a voluntary consent to do so. The scope of the search is limited by the scope of consent, although it extends to any place where a reasonable person would believe it extends. Any person with apparent equal right to use or occupy the property may consent to a search, and any evidence found may be used against the owners or occupants. However, consent to search a dwelling is invalid in the presence of an objecting co-occupant.</p>
<p>Detention: Obtaining a Warrant If police have probable cause to believe the suspect has hidden drugs in his house, they can prohibit him from going into the house unaccompanied to prevent him from destroying drugs while they obtain a warrant.</p> <p>Detention: Automobile Stops (Stop and Frisk) Stopping a car is a seizure for Fourth Amendment purposes. Police officers may not stop a car unless they have at least reasonable suspicion the law has been violated. Police can seize occupants or order occupants out. They may only search the areas in which a weapon might be placed or hidden and the officer has reasonable belief that the occupant is dangerous.</p>	<p>Warrant Exception: Search Incident to Lawful Arrest The police may conduct a warrantless search incident to an arrest as long as it was made on probable cause.</p> <p>Warrant Exception: Search Incident to Lawful Arrest and Searching Cars After arresting the occupant of a car, the police may search the interior of the auto mobile incident to the arrest if: (1) the arrestee is unsecured and still may gain access to the interior of the vehicle; or (2) the police reasonably believe that evidence of the offense for which the person was arrested may be found in the vehicle.</p> <p>Warrant Exception: Search Incident to Lawful Arrest and Searching Phones In assessing whether a search incident to arrest involving cell phones, the court will balance the degree to which the search incident to arrest intrudes upon a person's privacy against the degree to which the search is needed to promote legitimate governmental interests.</p>	<p>Warrant Exception: Exigent Circumstances Hot Pursuit: Police officers in hot pursuit of a fleeing felon may make a warrantless search and seizure.</p> <p>Destruction of Evidence: Police officers may enter a home without a warrant to prevent the destruction of evidence. The police must have reason to believe the evidence is being destroyed.</p> <p>Evanescent Evidence: Police may seize without a warrant evidence likely to disappear before a warrant can be obtained.</p> <p>Emergency Aid: Emergencies that threaten health or safety if not immediately acted upon will justify a warrantless search.</p>

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<p>Voluntary Confessions For confessions to be admissible, the Due Process Clause of the Fourteenth Amendment requires that they be voluntary. Voluntariness is assessed by looking at the totality of the circumstances, including the suspect's age, education, and mental and physical condition, along with the setting, duration, and manner of police interrogation. An involuntary confession is a product of threats, coercion, or other duress.</p>	<p>Miranda – Interrogation Interrogation applies to express questioning. It also applies to any words and actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect.</p> <p><i>Miranda</i> does not apply to spontaneous statements not made in response to interrogation, although officers must give the warnings before any follow-up questioning.</p>	<p>Suggestive Lineup A suspect has a right to the presence of an attorney at any post-charge lineup or showup. An identification procedure is “suggestive” if it involves either the use of a single suspect or distracter/fillers who have a very different appearance from the suspect. A defendant can attack an identification as denying due process when the identification is unnecessarily suggestive and there is a substantial likelihood of misidentification.</p>
<p>5th A Right Against Self-Incrimination – <i>Miranda</i> There is a Fifth Amendment privilege against compelled self-incrimination. The <i>Miranda</i> warnings and a valid waiver are prerequisites to the admissibility of any statement made by the accused during custodial interrogation.</p> <p>A statement obtained through a custodial interrogation may not be used against a suspect in a criminal trial unless the suspect waives his right to remain silent and right to counsel after being so informed by the police. The officer must read the <i>Miranda</i> rights in full for any statements made thereafter to be admissible.</p>	<p>Miranda –Doing Nothing or Waive Rights If the detainee does not respond at all to the <i>Miranda</i> warnings, the Court will not presume a waiver of rights. But the court will also not presume that the detainee has asserted a right to remain silent or consult with an attorney. Therefore, the police may continue to question the employee.</p> <p>The detainee may waive his rights. To be valid, the government must show by a preponderance of the evidence the waiver was voluntary and knowing, looking at the totality of the circumstances.</p>	<p>Exclusionary Rule The exclusionary rule is a judge-made doctrine that prohibits the introduction, at a criminal trial, of evidence obtained in violation of a defendant's Fourth, Fifth, or Sixth Amendment Rights.</p> <p>Generally, not only must illegally obtained evidence be excluded, but also all evidence obtained or derived from exploitation of that evidence. The courts deem such evidence the tainted fruit of the poisonous tree.</p> <p>Exception: In applying the exclusionary rule, lower courts must balance the rule's purpose against its costs.</p>
<p>Miranda – Requirements Anyone in police custody and accused of a crime, no matter how minor, must be given <i>Miranda</i> warnings prior to interrogation by the police.</p> <p>After receiving <i>Miranda</i> warnings, a detainee can do nothing, waive his rights, assert the right to remain silent, or assert the right to consult with an attorney.</p>	<p>Miranda – Right to Remain Silent At any time, the detainee can indicate he wishes to remain silent. If he indicates, all questioning related to the particular crime must stop.</p> <p>The police may reinitiate questioning after the detainee has invoked the right to remain silent, as long as they “scrupulously honor” the detainee's request, i.e., they cannot badger the detainee into talking and must waive a significant time before reinitiating questioning.</p>	<p>Right to Confront Witnesses Under the confrontation clause, prior testimonial evidence may not be admitted unless: (1) the declarant is unavailable; and (2) the defendant had an opportunity to cross-examine the declarant at the time the statement was made.</p> <p>If the primary purpose of the police interrogation is to enable the police to help in an ongoing emergency (e.g. calling 911), the statements are nontestimonial. If they are made to establish or prove past events potentially relevant to a later criminal investigation, the statements are testimonial.</p>
<p>Miranda – Custody Determining custody is a two-step inquiry. First, the court should determine if a reasonable person under the circumstances would feel he was free to terminate the interrogation and leave. Second, if the freedom was curtailed, the court should determine whether the relevant environment presents the same inherently coercive pressures of a traditional arrest. The test depends on the objective circumstances of the interrogation.</p>	<p>Miranda – Right to Counsel At any time prior to or during interrogation, the detainee can invoke a right to counsel. The request must be unambiguous and specific, e.g., sufficiently clear that a reasonable police officer in the same situation would understand the statement to be a request for counsel. All questioning must cease until the detainee is provided with an attorney or initiates further questioning himself.</p> <p>Police cannot question the detainee about an unrelated crime.</p>	<p>Taking the Plea The judge must determine the plea is voluntary and intelligent. The plea must be done personally in open court and on the record. The court must ensure defendant knows the nature of the charge and the crucial elements; maximum possible penalty and mandatory minimum; and the right to not plead guilty and waiving the right to trial.</p> <p>Sixth Amendment The Sixth Amendment provides that in all criminal prosecutions, the defendant has a right to the assistance of counsel, which applies at all critical stages of a criminal prosecution.</p>

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<p>Relevance Evidence is relevant if it tends to make the existence of any fact of consequences to the outcome of the action more or less probable than it would be without the evidence. A trial judge has broad discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or waste of time.</p>	<p>Specific Acts of Misconduct When a person is charged with one crime, extrinsic evidence of other crimes or misconduct is inadmissible to prove the character of the person to show they acted in conformity.</p> <p>It is only admissible if independently relevant for other purposes (motive, intent, absence of mistake or accident, identity, common plan or scheme, res gestae).</p>	<p>Hearsay Defined A statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted.</p>
<p>Character Evidence The prosecution cannot initiate evidence of the bad character of the defendant to show he is more likely to have committed the crime he is accused of.</p> <p>Evidence of other crimes, wrongs, or acts is not generally admissible to prove the character of a person to show he acted in conformity therewith.</p>	<p>Authentication Real or documentary evidence will be admitted only if authenticated by proof that shows the evidence is what the proponent claims it is. It must be sufficient to support a jury finding of genuineness.</p> <p>Best Evidence Rule To prove the terms of a writing, the original writing must be produced if the terms of the writing are material. Secondary evidence of the writing is admissible only if the original is unavailable.</p>	<p>Statements that are Not Hearsay A prior statement by a testifying witness is not hearsay if the witness is subject to cross-examination about the statement.</p> <p>An opposing party's statement is not hearsay, i.e., any statement made by a party and offered against that party is not hearsay – called admissions of a party-opponent.</p> <p>Statements are not hearsay if they are events speaking for themselves under the immediate pressure of the occurrence.</p>
<p>Character Evidence Offered by D in Criminal Case A defendant puts her character in issue by calling a qualified witness to testify to her good reputation for a trait that is <i>pertinent</i> to the crime charged. The witnesses cannot testify to his own personal opinion of the defendant or to specific acts of conduct of the defendant to prove the trait in issue.</p> <p>If the defendant takes the stand, she puts her credibility at issue.</p> <p>If the defendant puts her character in issue by having a character witness testify as to the defendant's reputation, the prosecution may rebut the testimony by cross-examining the witness's knowledge of the reputation or by calling qualified witnesses to testify to the defendant's bad reputation for the pertinent trait.</p>	<p>Witnesses Witnesses are generally presumed to be competent until proof of the contrary is demonstrated. Personal knowledge of the matter is required and the witness must declare he will testify truthfully.</p> <p>A witness cannot read her testimony from a prepared memo. But a memo may be used to refresh the recollection of the witness, to substitute for the witness's forgotten testimony upon authentication of the memo, or in cross-examination of the witness.</p> <p>Louisiana allows "wide open" cross-examination, meaning a witness may be cross-examined on any matter relevant to any issue in the case, including credibility.</p> <p>Any matter that tends to prove or disprove the credibility of the witness will be admitted to impeach the witness's testimony. In criminal cases, evidence of a conviction of any crime is admissible to impeach the credibility of the witness, including the accused.</p>	<p>Hearsay Exception – Declarant Unavailable The testimony of a now unavailable witness, given at another hearing or a different proceeding, is admissible if: (1) the party against whom the testimony is offered was a party in the former action; (2) the former action involved the same subject matter; and (3) the party against whom testimony is offered had an opportunity at the prior proceeding to develop the declarant's testimony.</p> <p>A statement of a person may be admissible if it was against that person's pecuniary or proprietary interest when made, or would expose him to criminal or civil liability such that a reasonable person in the declarant's situation would have only made the statement if true.</p> <p>A statement made by an unavailable declarant is admissible if he believes death was imminent and the statement concerned the cause or circumstances of what he believed to be his impending death.</p> <p>Statement of personal or family history: Statements concerning births, marriages, divorces, relationship, genealogical status, etc. may be admissible.</p>
<p>Victim's Character If the defendant can show a hostile demonstration or overt act by the victim at the time of the offense charged, the defendant can introduce reputation evidence of a pertinent trait of the victim's character or evidence of prior threats by the victim against the defendant.</p> <p>Once the defendant has introduced reputation evidence of a bad character trait of the victim, the prosecution can counter with reputation evidence of the victim's good character for the same trait.</p> <p>In a homicide prosecution where the defendant pleads self-defense, evidence that the victim was the first aggressor opens the door to reputation evidence that the victim had character for peacefulness. This can be introduced regardless if the defendant introduced the victim's character for violent propensity.</p>	<p>Opinion Testimony by Expert Expert opinion testimony is admissible if the subject matter is where scientific, technical, or other specialized knowledge would help the trier of fact understand the evidence or determine a fact at issue. The opinion must be relevant and the methodology underlying the opinion must be reliable. They must be supported by a proper factual basis and may embrace the ultimate issue, although in a criminal case, an expert may not express an opinion as to the guilt or innocence of the accused.</p> <p>Opinion Testimony by Witness Opinion of lay witnesses is generally inadmissible, except in: (1) the general appearance or condition of a person; (2) the state of emotion of a person; (3) matters involving sense recognition; (4) voice or handwriting identification; (5) the speed of a moving object; (6) the value of his own services; (7) the rational or irrational nature of another's conduct; and (8) intoxication of another.</p>	<p>Hearsay Exception – Declarant Availability Immaterial A statement of a declarant's then-existing state of mind, emotion, sensation, or physical condition is admissible.</p> <p>An out of court statement related to a startling event, made while under the stress or the excitement from the event, is admissible.</p> <p>A statement is admissible if it explains an event or condition while it is happening or immediately thereafter.</p> <p>Declarations of physical condition, including a present bodily condition or past bodily condition, are admissible.</p> <p>Any records of regularly conducted activity are admissible, as are public records and reports, ancient documents affecting property, and other records.</p> <p>If witness's memory cannot be revived, a party can introduce a memo that the witness made at or near the time of the event.</p>