

Criteria	Issues	Discussion
Preservation: FRE 103	Motion in limine raised and preserved the issue; No need to reassert at trial; Alt: Plain error if motion in limine and abuse of discretion The objection must be: 1) made 2) timely 3) well-grounded Why Require Objections? 1) To avoid endless litigation 2) To help the court 3) To help the opposing side Four types of error: reversible, harmless, plain and constitutional Here we have reversible constitutional error on admission of hearsay affecting a substantial right of the defendant	Good (A- to A): 50-70 Satisfactory (B- to B+): 35-50 Unsatisfactory (C- to C+): 20-35 Very Poor (E to D+): 0-20 MAX: 70
Simple or Conditional FRE 104(a)/(b)	Whether statements heard/said not a major issue, but that would be 104(b) subject to <i>Huddleston</i> rationality standard 104(a): Predicate facts on admissibility, especially findings for <i>Crawford</i> Doctrine for the judge by a preponderance using <i>Bourjaily</i> . Abuse of discretion standard of review Distinguish ultimate fact-finding for jury and coincidence of judicial findings	Good (A- to A); Satisfactory (B- to B+); Unsatisfactory (C- to C+); Very Poor (E to D+) MAX: 70
Logical Relevance FRE 401/402	401(a) relevance (hypo: identification); 401(b) materiality (“of consequence”) TOMA: “Dee (a big person, i.e., an adult) did this to me”. Statutory elements under all three statutes 2903.11: Felonious Assault 2919.22: Endangering Children 2919.25: Domestic Violence 402[b] irrelevant not admissible; 402[a] relevant potentially admissible Relevance standard of the rules most liberal of possible four	Good (A- to A); Satisfactory (B- to B+); Unsatisfactory (C- to C+); Very Poor (E to D+) MAX: 70
Specific Rule(s) Hearsay: 801(a),(b),(c)	801(a)[1] Oral assertions; 801(b) by child LT and teacher(s) declarants; 801(c)[start] these “statements”; 801(c)(1) will not be made while testifying at the current trial, child declarant could not testify at trial because court found him incompetent; teacher declarants did testify; “I said” 801(c)(2) prosecution intends to offer LT’s words for TOMA.	Good (A- to A); Satisfactory (B- to B+); Unsatisfactory (C- to C+); Very Poor (E to D+) MAX: 70
FRE 802 +	802 Excludes; 3 Reasons Why Exclude Hearsay? (1) The absence of cross-examination; (2) The absence of demeanor evidence; (3) The absence of the oath 4 Reasons Why do we distrust Hearsay? Four Risks: (1) Risk of Faulty Memory; (2) Risk of Misperception; (3) Risk of "Ambiguity" or "Faulty Narration"; (4) Risk of Distortion No exception available; no need to elaborate	Good (A- to A); Satisfactory (B- to B+); Unsatisfactory (C- to C+); Very Poor (E to D+) MAX: 70
Specific Rule Constitutional: Crawford Doctrine	Sixth Amendment Confrontation Clause (quote it); Made applicable to states by 14 th Am. Due Process, <i>Pointer v. Texas</i> Crawford: <i>Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.</i> Davis: Testimonial occupies entire field; emergency doctrine Bryant: Objective totality of the circumstances test for primary purpose of interrogation + Arnold: Example of emergency Teachers are police agents la 9-1-1 operators (recent 6 th Am. Cases) Primary Purpose? Investigatory; Emphasis on no ongoing emergency, no imminent danger and no emergency medical needs Constitutional clearly erroneous findings require new trial	Good (A- to A); Satisfactory (B- to B+); Unsatisfactory (C- to C+); Very Poor (E to D+) MAX: 170
Balancing?	Need go no further At most UP not manageable by instructions, exclusion only choice	S/U; Max: 20