



## **I.R.E. 104. Preliminary Questions.**

### **Idaho Rules of Evidence 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.

(Adopted March 26, 2018, effective July 1, 2018.)

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