EVIDENCE ISSUE	FLORIDA	FEDERAL
Character Evidence	**90.404 Character Evidence When Admissible** **Other crimes**, **wrongs, or acts.** Section 90.404(2)(a) reflects the **Williams Rule** (a general rule of admissibility of relevant similar fact evidence even though the evidence points to the commission of another crime). -**10 day notice provision** -**No such requirement when impeachment or on rebuttal**.. --**Limiting Instruction** **Character of victim**. See FLORIDA STATUTE §794.022 for Florida's Rape Shield law which protects the victim of sexual battery from admission of prior sexual history at trial	**Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes** (b) **Other crimes**, **wrongs, or acts.** Evidence of other crimes, wrongs, or acts is **not admissible to prove the character** of a person in order to show that he acted in conformity therewith. It may, however, be **admissible** for other purposes, such as proof of **motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident**. •No specific notice provision however the Federal courts require reasonable notice

EVIDENCE ISSUE	FLORIDA	FEDERAL
Jurors	**90.607 Competency of Certain Persons as Witnesses.** **90.607 (2) Competence of Juror as witness.** Juror is incompetent witness at trial, and after trial shall not testify to matters which inhere in the verdict. "Federal Rule 606 is somewhat different in providing that a juror is incompetent to testify to any matter occurring during the course of the jury deliberations, except extraneous prejudicial information brought to the jury's attention and outside influences brought to bear on an individual juror. **Therefore, in federal court, jurors are incompetent to testify to quotient verdicts."** Ehrhardt at 607.2.	**Rule 606. Competency of Juror as Witness.** (a) At the trial. A member of the jury **may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror**. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury. (b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, **a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind** or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, **except** that a juror **may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention** or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Limiting Instruction	**90.107 Limited Admissibility**	**Rule 105. Limited Admissibility** When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, **the court, upon request, shall restrict the evidence** to its proper scope and instruct the jury accordingly.

Evidence Issue	Florida	Federal
Plea Negotiations	**90.410 Offer to Plead** Subsection four of the Federal Rule applies to discussions with "the prosecuting authority", **§90.410 contains no such limitation**. Federal Rule 410 requires (and §90.410 does not) that before a statement is admissible in a perjury or false statement prosecution, it must be made **"by the defendant under oath**, on the record and in the presence of counsel."	**Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements** Except as otherwise provided in this rule, evidence of the following is not, in any **civil or criminal proceeding**, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of **guilt** which was later withdrawn; (2) a plea of **nolo contendere;** (3) any **statement made in the course of any proceedings** under **Rule 11 of the Federal Rules of Criminal Procedure** or comparable state procedure regarding either of the foregoing pleas; or (4) any **statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.** However, such a statement **is admissible** (i) in any proceeding wherein another **statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it**, or (ii) in a criminal proceeding for perjury or false statement if the **statement was made by the defendant under oath**, on the record and in the presence of counsel.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Prejudicial Evidence	**90.403 Exclusion on Grounds of Prejudice or Confusion** The Florida Rule is similar. The last sentence of the rule is different but is probably superfluous.	**Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time** Although relevant, evidence may be **excluded if its probative value is substantially outweighed by the danger of unfair prejudice**, **confusion** of the issues, or **misleading** the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Proving Character	Section 90.405(1) provides **no provision for testimony with respect to opinion.** Opinion arises from personal knowledge. The foundation for admissibility of reputation evidence arises from witness' **knowledge of the person's reputation** for the trait involved. It is not necessary to have the witness testify that he has heard people discussing the character involved (lack of comment may be evidence of good reputation), but he must lay the foundation that he knows the person's reputation for the trait involved. This is not to be confused with knowledge of the person. Testimony as to an opinion of a person's character is inadmissible under 90.405. A final note to summarize the differences with respect to reputation testimony; by omission §90.405(1) **excludes opinion testimony and specific instances of misconduct. Ehrhardt at 405.1** "Section 405 (b) is the same as 90.405(2) except for a few stylistic differences." Ehrhardt at 405.3.	**Rule 405. Methods of Proving Character** (a) **Reputation or Opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. **(b) Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Rape Prosecution	**90.404 Character of Victim** The victim's reputation as to chastity may not be used to attack credibility. Two reasons exist; first, past sexual behavior is not probative of truthfulness, and, second, FLORIDA STATUTE §794.022 **Florida's Rape Shield Law** protects the victim of sexual battery from admission of prior sexual history at trial and expressly forbids its introduction for any purpose. Manner of dress is inadmissible to show victim incited the attack. The Shield Statute **does allow admissibility under terms similar to the Federal Rule**.	**Rule 412. Rape Cases; Relevance of Victim's Past Behavior** (a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault i**s not admissible**. (b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also **not admissible, unless** such evidence other than reputation or opinion evidence is - (1) admitted w/ written motion, offer of proof w/ **15days notice** (2)(A) past sex w/ others to show **source of semen or injury** (2)(B) past sex w/ accused to show **consent**

Impeaching your own Witness	90.608 Who May Impeach.	Rule 607. Who May Impeach.
	Any party **INCLUDING (SINCE 1990) the party calling the witness** may impeach by (a) prior **inconsistent** statements; (b) **bias**; (c) untruthful character or **convictions**; (d) defect in **capacity** to **observe** or remember; (e) by **contra testimony** of other witnesses. 90.608 (1) **WAS** the **voucher rule** that the party calling the witness vouches for the truthfulness of their own witness. **Bias**, **Interest, motive, and animus are never collateral matters on cross exam and are always proper.** Federal Rule 607, which permits a party to impeach its own witness, has been interpreted by the Fifth Circuit to permit the government to impeach a hostile witness with a prior inconsistent statement, even though a statement directly implicates the defendant. However, the **government may not use the statement if its primary purpose is to place before the jury substantive evidence, otherwise inadmissible, through the guise of impeachment.** See Ehrhardt at 608.2.	The **credibility** of a witness may be **attacked by any party, including the party calling him.**

Impeachment Of Character	Florida	Federal
Impeachment Of Character	**90.609 Character of Witness as impeachment.** **Credibility** of witness, including accused, may be **impeached** by **character or reputation** (but **only for untruthfulness**). Reputation for truthfulness admissible **only after attacked** by reputation evidence. "In order to prove reputation, it is necessary to lay the foundation that the witness is aware of the person's reputation in the community. See also 90.803 (21). Because reputation depends upon what is being discussed in the community, the **proper question on cross is "Have you heard?**; the question "do you know?" or "are you aware?" is not proper because it relates to the personal knowledge and opinion of the witness. If the witness has not heard the matter being discussed, it may indicate the person is not familiar with the reputation or the reputation is not an accurate reflection of character." Ehrhardt at 609.1. **Federal Rule 608 permits opinions** to be used as a method of proving character **When testing the basis for the person's opinion, it is proper to inquire as to his personal knowledge of certain facts;** it is **not proper to ask the witness whether "he has heard the facts being discussed."**	**Rule 608. Evidence of Character and Conduct of Witness.** (a) Opinion and reputation evidence of **character.** The **credibility** of a witness may be **attacked or supported** by evidence in the form of opinion or reputation, but **subject to these limitations:** (1) the evidence may refer only to **character for truthfulness or untruthfulness,** and (2) evidence of truthful character is **admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence** or otherwise. (b) **Specific instances of conduct.** Specific instances of the conduct of a witness, for the **purpose of attacking or supporting his credibility, other than conviction of crime** as provided in rule 609, **may not be proved by extrinsic evidence.** They **may**, however, in the discretion of the court, if probative of truthfulness or untruthfulness, **be inquired into on cross-examination** of the witness (1) concerning his **character for truthfulness or untruthfulness,** or (2) **concerning the character for truthfulness or untruthfulness of another witness** as to which character the witness being cross-examined has testified.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Convictions	**90.610 Conviction of certain crimes as impeachment.** Federal Rule 609 is the corresponding Federal Rule. There are two significant differences: Florida Rule **does not contain a balancing test or any provision excluding convictions** in criminal cases on the grounds that they are **too remote**. State v. Page (Fla 1984) held that **contrary to the federal courts' rulings misdemeanor convictions** for shoplifting and other **petit theft**, as well as any crime involving c**heating stealing or stealth** (US v Hayes, defined cocaine smuggling as a crime involving stealth), are admissible to impeach.. When Florida applies its 90.403 std, in lieu of the Fed Rule 609 std **it would seem to be an unusual case in which a Florida court would find convictions to be inadmissible.**	**Rule 609. Impeachment by evidence of Conviction of Crime.** **(a) General rule.** For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime shall be **admitted if elicited from him or established by public record during cross-examination** but **only if** the crime (1) was **punishable by death** or **imprisonment in excess of one year** under the law under which he was convicted, **and** the **court determines** that the **probative** value of admitting this evidence **outweighs** its **prejudicial** effect to the defendant, **or** (2) **involved dishonesty** or false statement, regardless of the punishment. **(b) Time limit.** Evidence of a conviction under this rule is **not admissible if a period of more than ten years** has elapsed **since** the date of the **conviction or** of the **release of the witness from the confinement** imposed for that conviction, **whichever is the later** date, **unless** the court determines, in the interests of justice, that the **probative** value of the conviction supported by specific facts and circumstances **substantially outweighs** its **prejudicial** effect. However, evidence of a conviction **more than 10 year old** as calculated herein, is **not admissible** unless the proponent gives to the adverse party sufficient **advance written notice** of such evidence.

Prior Statements	**90.614 Prior Statements of Witnesses.** **Federal Rule 613** (a) allows a witness to be **examined concerning a prior statement without its contents being disclosed** (Florida requires the stmt to be shown) to him. Federal Rule 613 (b) requires a witness be afforded an opportunity to explain or deny making a prior statement before extrinsic evidence of it is admissible.	**Rule 613. Prior Statements of Witnesses.** **(a) Examining witness concerning prior statement.** In examining a witness concerning a **prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him** at that time, but on request the same shall be shown or disclosed to opposing counsel.
Doctor Statements	**90.803[4] Statements for the Purpose of Medical Diagnosis or Treatment** contains additional language: "**by a person seeking the diagnosis or treatment**, or made by an **individual** who has knowledge of the facts and is **legally responsible** for the **person who is unable to communicate** the facts, which statements describe" Information supplied by the patient to such an "examining" physician is **admitted for the purpose of supplying a basis for the physician's opinion and not as substantive evidence.** **Statements made to the treating physician as to causation and fault are also inadmissible**.	**(4) Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment [insert Florida additional language here] and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

EVIDENCE ISSUE	FLORIDA	FEDERAL
Business Records	**90-803(6) Records of Regularly Conducted Business Activity** 90.803[6] is similar except the Federal Rule does not contain the equivalent of section 90.803[6][b]: "[b] No evidence in the form of an opinion is admissible unless such opinion would be admissible under 90.701-05 if the person whose opinion is recorded were to testify to the opinion directly."	**(6) Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, **made at or near the time** by, or from information transmitted **by, a person with knowledge**, if kept **in the course of a regularly conducted business** activity, and if it was the **regular practice of that business activity** to make the memorandum, report, record, or data compilation, all as shown by the **testimony of the custodian** or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
Ancient Documents	**90.803(16) Statements in Ancient Documents** The Florida Rule is the same.	**(16) Statements in Ancient documents.** Statements in a document in existence twenty years or more the authenticity of which is established.

Evidence Issue	Florida	Federal
Learned Treatises	**The Florida Rules contain no provision for Learned Treatises**. 90.706 permits a Learned Treatise, which is established as a reliable authority to be used during the cross examination (only) of an expert witness, regardless of whether the expert relied on the treatise in forming his or her opinion. Must establish the treatise as authoritative	**(18) Learned treatises.** To the extent called to the attention of an **expert witness** upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, **established as a reliable authority by the testimony or admission of the witness** or by other expert testimony **or by judicial notice**. If admitted, the statements may be **read into evidence but may not be received as exhibits.**

EVIDENCE ISSUE	FLORIDA	FEDERAL
Convictions as Hearsay	**The Florida Rule does not contain an exception to the hearsay rule for judgments of previous convictions.** **Example: A reckless driving conviction is not admissible in a subsequent civil case as evidence that the defendant was driving recklessly.** **Note that the absence of the exception does not affect the admissibility of a conviction when offered for some other admissible purpose, such as to impeach the credibility** of a witness pursuant to 90.610. **Federal Rule 803[22] contains a hearsay exception for evidence of final judgments entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year**, to prove a fact essential to sustain the judgment. **Excluded** from the exception are **judgments against persons other than the accused** which are offered by the prosecution for **purposes other than impeachment.** **A plea of Guilty is admissible as an admission under 90.803(18).**	**(22) Judgment of previous conviction.** Evidence of a **final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere),** adjudging a person guilty of a crime punishable by death or imprisonment in **excess of one year**, to prove any fact essential to sustain the judgment, but **not including**, when offered by the Government in a criminal prosecution for **purposes other than impeachment**, judgments against persons other than the accused. The **pendency of an appeal** may be shown but **does not affect admissibility**.

Catch All	**The Florida Rules do not have a Catch All Exception.** The Florida rule **does not contain** a "catch all" exception to the hearsay rule. The Federal Rule admits any hearsay statement, even though it is not admissible under a previously listed exception, which possesses the same guarantees of trustworthiness as do the previously listed twenty-three exceptions.	**(24) Other exceptions.** A statement not specifically covered by any of the foregoing exceptions but having **equivalent circumstantial guarantees of trustworthiness**, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is **more probative on the point for which it is offered than any other evidence which the proponent can procure** through reasonable efforts; and (C) the general purposes of these rules and the **interests of justice will best be served by admission** of the statement into evidence. However, a statement **may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it**, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Statements against Interest	**90.804[2][c] Statement Against Interest (declarant unavailable)** Although the Florida Rule provides that, "a **person** in the declarant's position would not have made the statement unless it were true." Both the Federal and Florida provisions apparently apply the same objective standard. The Florida Rule contains additional language not found in the Federal Rule: "A statement or confession which is offered against the accused in a criminal action, and which is **made by a codefendant or other person implicating both himself and the accused is not within this exception.**" The additional language attempts to codify the principles of Bruton. Under Bruton v. U.S. cited in California v. Green, Kaplan at 306-07, a confession which directly implicated both defendants was found to violate the rights of the non-confessing defendant. Under 90.804[2][c] statements of an unavailable co-defendant which were made during a custodial interrogation and which directly implicate or charge the defendant on trial are inadmissible when offered against the non-confessing defendant as declarations against interest.	**(3) Statement against interest.** A statement which was at the time of its making so far **contrary to the declarant's pecuniary or proprietary interest**, or so far tended to **subject him to civil or criminal liability, or to render invalid a claim by him against another,** that a **reasonable man** in his position **would not have made the statement** unless he believed it to be true. A **statement** tending to **expose** the **declarant** to **criminal liability** and o**ffered to exculpate the accused is not admissible unless corroborating circumstances** clearly indicate the trustworthiness of the statement. Williamson USSCT 1994 (only individually self-incriminating stmts are included as stmts against penal interest)

Special Thanks to Professor Charles Ehrhardt for his treatise on Florida Evidence. Specifically, as the treatise explains the differences between the Florida and the Federal Rules.