

**Rule 15-20. SDCL 19-19-104. 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 section does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.