

Topic 11: Cross-Examination of the Accused and The Shield

Proposition:	Authority
<p>The accused is only a competent witness for the defence.</p> <ul style="list-style-type: none"> - An accused may be asked questions in cross-examination which tend to incriminate him or her of the offence charged (even where they implicate the accused in other crimes at the same time). <ul style="list-style-type: none"> - Can decline to answer if tends to incriminate of another offence not charged. - Questions which tend to show that the accused is of bad character, or has committed, been charged with or convicted of any offence are forbidden. (CCCBC) Extends to the voir dire. - Accused gives evidence from witness box/wherever other witnesses give their evidence. 	<p>SAEA s 18(1)(a)</p> <p>(c) <i>Cornwell</i></p> <p>(d) <i>R v Vuvkov</i></p> <p>(e)</p>
<p>The right to silence and self-incrimination</p> <ul style="list-style-type: none"> - Prosecutor cannot comment on failure to give evidence (but judge and co-accused can). <ul style="list-style-type: none"> - But must not suggest this failure emanates from a consciousness of guilt. - Comments a judge may make: <ul style="list-style-type: none"> - No adverse inference of guilt from silence drawn. Silence not used to fill gaps in the prosecution case. 	<p>18(b) <i>R v Tran and Ta Weissensteiner</i></p>
<p>Issue Cross-Examination:</p> <ul style="list-style-type: none"> - Legislation only seeks to limit cross-examination as to credit – questions re offence charged admissible. <ul style="list-style-type: none"> - Permitted to show that the accused is guilty of the offence charged; establishing MF in issue. - Issue cross-examination relating to prior ‘charges’: <ul style="list-style-type: none"> - Questions cannot reveal CCCBC for the first time. If already known, admissible. - Where the cross-examination is not directed at proving the guilt of the accused being cross-examined, but directed at proving the innocence of the co-accused: <ul style="list-style-type: none"> - Questions relevant to issue: proof of D’s defence – admissible. 	<p>Sections 18(1)(c) and (d)(i)</p> <p><i>Jones v DPP</i></p> <p><i>Corak & Palmer</i></p>
<p>Cross-Examination as to Credit: Note – Accused has full benefit of any acquittals. Must state acquitted.</p> <ul style="list-style-type: none"> - Leave required to XXN on CCCBC. Prejudice is risk of propensity reasoning. Probative to rebut D’s new defence. <p>Losing the Shield:</p> <ul style="list-style-type: none"> - Following evidence of good character: <ul style="list-style-type: none"> - Where he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character; <ul style="list-style-type: none"> - Asked witness for the prosecution, or D has given, evidence of D’s good character. - Accused must act purposively to put their character in issue. Evidence given or question asked ‘with a view’ to giving evidence of good character. <ul style="list-style-type: none"> - It is sufficient that the question is asked, irrespective of the response (discretion to exclude). - Good character disclosed gratuitously by a witness; or adduced for the legitimate purpose of establishing facts relevant to the accused’s defence, will not bring exception into play. - The question is whether the defence intended to put character in issue by referring to conduct, disposition or reputation, either to suggest it is unlikely that the accused committed the crime, or to suggest the accused is a credible witness, or both. <ul style="list-style-type: none"> - Consider the impression broadly, not just analysing the actual words used in questions. 	<p><i>Garret v R. Storey</i>: can’t present to imply guilty. <i>Phillips v R</i>. Court has discretion to exclude if prej: <i>Watts</i></p> <p>Section 18(1)(d)(ii)</p> <p><i>R v Fuller</i></p> <p><i>Donnini v R</i> <i>R v Redd</i> <i>R v Ellis</i> <i>Donnini v R</i></p> <p><i>Crabbe</i>.</p>

