

2017 EVIDENCE NOTES

THE LAW OF EVIDENCE GOVERNS HOW EVIDENCED IS ACCESSED, USED AND
INTERPRETATED DURING TRIAL.

THE LAW OF EVIDENCE IS MOSTLY FOR DURING THE TRIAL.

The laws of evidence are not uniform yet in Australia.

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TOPIC 1: PROOF OF PRESUMPTION

BURDEN OF PROOF

CRIMINAL:

The burden of proof lies with the prosecution. There are some circumstances in which the burden of proof shifts to the defendant:

→ Kazal (charged for an act in preparation for a terrorist act – creating a document that would assist in a terrorist act) – The burden was shifted to Kazal to disprove that the document was for the purpose of the terrorist act.

- The entire burden doesn't shift – just a specific element
- 'Beyond reasonable doubt'

CIVIL:

The burden of proof is on the plaintiff (the party that commenced the proceedings)

→ 'On the balance of probabilities'

TOPIC 2: RELEVANCE

- 'The Fact in issue' – is any element associated with the charges that is not agreed upon. Any disputed fact after the pleadings process. Facts in issue are just the issues that are in dispute.
- Evidence can only be used in relation to a specific issue for which it is both relevant and admissible
- Logical relevance vs Legal relevance
- Probative value (correlates to the relevancy) - How much probative value does it have?
- **The evidence act is different to the common law**

EVIDENCE ACT 1955 – SECTION 55 (RELEVANT EVIDENCE)

- 1) *The evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding*
- 2) *In particular, evidence is not taken to be irrelevant only because it relates only to:*
 - a) *The credibility of a witness; or*
 - b) *The admissibility of other evidence; or*
 - c) *A failure to adduce evidence*

'if it were accepted' is read to mean, that you are not checking the credibility of the evidence at this point.