

Relevance and Admissibility

1. INTRODUCTION

Evidence that is irrelevant is inadmissible without the need to consider exclusionary rules.

For evidence to be admissible it must be relevant to the fact in issue in a trial *Smith v The Queen [2001]*

Evidence can be classified according to the nature of its connection to the facts in issue:

- **Direct evidence** is evidence which, if accepted, establishes the existence or non-existence of one or more of the facts in issue in the proceedings
- **Circumstantial evidence** is evidence from which the existence or non-existence of the facts in issue can be inferred – it is always inconclusive
- **Credibility evidence** is evidence which has no direct bearing on the facts in issue but which is relevant to the credibility of evidence which does not have such a bearing

2. DEFINITION OF RELEVANCE

The most acceptable test of relevancy is the question: **Does the evidence offered render the desired inference more probable than it would be without the evidence?**

Evidence should be capable of rendering material facts in issue:

- 'more probable than not' *Manenti v Melbourne and Metropolitan Tramways Board*
- 'sufficiently relevant' *R v Stephenson*
- Reach a significance that makes it 'worth considering' *In re Van Beelen*

Evidence should be both **logically** and **legally** relevant to proving/disprove the matter at issue in the proceedings *Hollingham v Head*

HOLLINGHAM V HEAD (1958)

FACTS: Tried to lead evidence related to general contract for the sale of manure in an attempt to claim that clauses in those contracts would be the same in his contract. There were no prior course of dealings.

HELD: The contract of other 3rd parties had nothing to do with the contract in question and so this evidence was not relevant.

PRINCIPLE: To be relevant in the legal sense, the evidence must have some tendency to prove or disprove the matter at issue in the proceedings.

Relevant evidence may be subject to discretionary exclusion where the court forms the view that the probative value of the evidence is outweighed by its prejudicial effect.

Evidence can be relevant but not be of sufficient weight. Weight is a matter of strength; it deals with the facts of the issue – the sufficiency of evidence in support of a claim. *Williams v Smith*

Evidence may be relevant where it:

- 1) Shows some **logical connection** to the fact in issue *R v Buchanan*
- 2) Has the tendency to **prove proximity**
- 3) Shows the **nature of a relationship** *Wilson*
- 4) Shows a **connecting link**

3. RELEVANCE OF CIRCUMSTANCIAL EVIDENCE

Circumstantial evidence is evidence that is built up piece by piece to create an inference regarding the guilt of the party.

PLOMP V THE QUEEN (1963)

FACTS: Alleged a man killed his wife while swimming with her in the ocean. At the time he was having an affair with a woman whom he told he was a widower and will be able to marry her in the future. D argued that any evidence in regards to his affair could not be admitted until there was physical evidence linking him to the murder of his wife.

HELD: The evidence was relevant and admissible as circumstantial evidence.

WILSON V THE QUEEN (1970)

FACTS: Man allegedly shot his wife in the back of the head. He claimed that he put the gun down on a hay bale and the dog discharged it shooting her. There was a history of him physically assaulting/threatening her and of her saying he wanted to kill her.

HELD: The circumstantial evidence was allowed which showed his previous violence and wife statements etc

“To shut the jury off from any event throwing light upon the relationship between the husband and the wife would require them to decide the issue as if it happened in a vacuum rather than in the setting of a tense and bitter relationship”

McCARTHY & RYAN (1993)

Had circumstantial evidence – three pieces of evidence irrelevant on their own but relevant when combined. All three elements were deemed relevant to the case and therefore admissible as evidence.

4. MISLEADING OR CONFUSING EVIDENCE

Principle: There must be a nexus (connecting link) between the defendant’s earlier conduct and his conduct at the time of the incident.

The Court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might be misleading or confusing *R v Horvath*

R V BUCHANAN (1966)

FACTS: Accused was charged with manslaughter arising out of a collision. Accused admitted that he had consumed a large quantity of alcohol during the day of the collision. Two witnesses claimed that they saw the car driven by the accused travelling very fast on the wrong side of the road. Accused was convicted and appealed.

HELD: The evidence was admissible because there was a **connecting link** between the dangerous driving (witnessed) and the accident [i.e. there was a connection between the evidence and a relevant fact]

R V HORVATH (1972)

FACTS: Accused was charged with causing death by culpable driving. Witness gave evidence that he saw witness overtaking cars dangerously. In his statement the accused suggested that he may have fallen asleep at the wheel.

HELD: The evidence of the witnesses as not admissible because there was no nexus. The accident showed that the driver crossed onto the other side of the road for no reason. But the witness showed him crossing onto the road for a reason – to overtake cars.

R V STEPHENSON (1976)

FACTS: The accused, while driving his car, hit another car at the intersection, killing three of the people in the car and injuring another. Who the driver was out of the four was uncertain, and council for the accused wished to acquire and admit the blood alcohol readings of all four people (because the identity of the driver was uncertain)

HELD: Court held in order to receive the blood alcohol readings there must first be evidence that the car was being driven negligently; there was no evidence of this (i.e. no nexus). The blood alcohol readings could not be evidence for negligence anyway, only the manner in which the driver handled his car could [**A very narrow view of relevance**]

Presumptions

1. INTRODUCTION

A presumption is a rule of law which requires an **inferences of fact B** to be drawn from **proof of fact A**

A presumption a rebuttable.