

## 0. Introduction

### 0.A. The Evidence Act

### 0.B. Principles

### 0.C. Roles

## 1. Identify facts in issue

### 1.A. Is proof required?

1.A.I. No proof needed for matters of law <sup>s 143(1)</sup>

1.A.I. No proof needed for matters of not reasonably open to question <sup>s 144(1)</sup>

## 2. Witnesses

### 2.A. Witnesses must be competent and compellable

2.A.I. Competent: s 12

2.A.II. Compellable: s 12

### 2.B. Witnesses' conduct: ss 30, 32-34

2.B.I. Reviving memory: ss 32-34

2.B.II. Interpreters: s 30

### 2.C. Witness questioning

2.C.I. Generally – manner & form: s 26-29

2.C.II. Examination-in-chief & re-examination: ss 37-39

2.C.II.a. Leading Questions

2.C.II.b. Unfavourable witnesses

2.C.II.c. Re-Examination: s 39

2.C.III. Cross-examination: ss 41, 42, 43, 46

2.C.III.a. Improper Q'ing: s 41

2.C.III.b. Leading Qs: s 42

2.C.III.c. Prior inconsistent statements: s 43

2.C.III.d. Leave to recall witnesses: s 46

### 2.D. Granting leave: s 192(2)

## 3. Admissibility

### 3.A. Must be relevant

#### 3.A.I. Logical relevance

##### 3.A.I.a. Direct evidence

##### 3.A.I.b. Indirect evidence

##### 3.A.I.c. Circumstantial evidence

#### 3.A.II. Legal relevance

### 3.B. Hearsay evidence

3.B.I. Evidence of a previous representation made by a person ≠ admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation: s 59(1)

#### 3.B.I.a. Previous representation.

#### 3.B.I.b. Made by a person

#### 3.B.I.c. Intended assertion of fact

3.B.I.d. Must be adduced to prove the actual existence of that fact

#### 3.B.II. Judicial warning: s 165(1)(a)

#### 3.B.III. Exceptions: ss 61, 62, 65, 66A, 67

##### 3.B.III.a. First-Hand Hearsay: ss 62-68

3.B.III.a.i. Exception: Civil / Criminal Proceedings

3.B.III.a.ii. Exception: Civil Proceedings Only

3.B.III.a.iii. Exception: Criminal Proceedings

##### 3.B.III.d. Remote Hearsay: ss 69, 72

3.B.III.c. Relevant for non-hearsay purpose: s 60(1)

### 3.C. Opinion evidence

3.C.I. Evidence of an opinion ≠ admissible: s 76(1)

3.C.II. Exceptions: non-expert opinions

3.C.III. Exceptions: expert opinions

### 3.D. Identification evidence

3.D.I. Must be **criminal proceeding**: s 113

3.D.II. **Visual identification or photo evidence or photographic evidence**: ss 114, 115

3.D.II.a. Visual identification evidence: s 114

3.D.II.b. Picture identification evidence: s 115

3.D.III. Must give **judicial warning** if i.d. evidence is admitted: ss 116, 165

3.D.III.a. Factors against which the court may warn

3.D.III.b. **Call for reform** [the Innocence Project]

### 3.E. Credibility evidence ⇒ inadmissible: s 102

3.E.I. **Exceptions** in x-examination ⇒ admissible

3.E.II. **Exceptions** in re-examination: all evidence ⇒ admissible <sup>s 108(1)</sup>

3.E.III. **Exceptions** in all stages of trial ⇒ admissible

3.E.IV. **Further requirements** for credibility evidence

3.E.V. **Evaluating the witness's credibility**

### 3.F. Tendency ('Propensity') & Coincidence Evidence

3.F.I. **Inapplicability** of this Part (ss 94-101): s 94

3.F.II. **Tendency evidence**

3.F.II.a. **Exceptions** ⇒ admissible: s 97(1)

3.F.III. **Coincidence Evidence**

3.F.III.a. **Exceptions** ⇒ admissible: s 98(1)

3.F.IV. **Contextual Evidence**

3.F.V. **Further Restrictions on Prosecution**: s 101

3.F.VI. **Notice**: s 99

### 3.G. Character Evidence

3.G.I. **Multiple accused in a trial**

3.G.I.a. A party may apply for a **separate trial**

3.G.II. **Exceptions** ⇒ admissible

3.G.III. **Further Restrictions on Prosecution**: *Pfennig*

3.G.IV. **Advanced Rulings**: s 192A

3.G.V. **Directions**

### 3.H. Voir Dire: s 189

### 4. Exclusionary rules: ss 135-139

4.A. **Take evidence at its highest** [*IMM v The Queen*]

4.B. **Exclusionary rules: ss 90, 135-139**

4.B.I. **Discretionary** limitation: s 90

4.B.II. **Discretionary** exclusion: s 135

4.B.III. **Discretion to limit use of evidence**: s 136

4.B.IV. **Mandatory** exclusion of P's evidence if danger of unfair prejudice to D: s 137

4.B.V. **Mandatory** exclusion of improperly/illegally obtained evidence: s 138

4.B.VI. **Cautioning** of persons: s 139

### 5. Judicial Intervention: Warnings, Directions, Information

5.A. **Warnings**

5.A.I. **Warning against unreliable evidence**

5.A.II. **Forensic warning disadvantage**

5.A.III. **Murray Direction**

5.B. **Directions**

5.B.I. *Azzopardi* direction

5.B.II. *Prasad* direction

5.B.III. *Weissensteiner* direction

5.C. **Information**: to provide context e.g. s 108C

5.D. **Judicial comments**

5.D.I. **Permissible comments**

5.D.II. **Impermissible comments**

5.E. **Judicial intervention generally**

### 6. Standards of proof

6.A. **Balance of probabilities**

6.A.I. In **civil proceedings** <sup>s 140(1)</sup>

6.A.II. In **criminal proceedings, D's case** <sup>s 141(2)</sup>

6.A.III. Q as to **admissibility** <sup>s 142(1)</sup>

6.B. **Beyond reasonable doubt**

6.C. **Art of proof**