

EVIDENCE LAW

Section 7: Act binds the Crown.

Section 9: Act does not affect the operation of a principle or rule of common law or equity, unless it provides otherwise expressly or by necessary intendment.

Section 11: the power of a court to control the conduct proceedings is not affected unless provided for otherwise.

Sackville J, *Towney v Minister for Land and Water Conservation*: “the task of a Court is to apply the statutory language used by parliament, and not to substitute a different test merely because it reflects the pre-existing law.”

Heydon J, *Cross on Evidence*: There is an increasing tendency, especially in civil cases, to relax the exclusionary rules relating to evidence and its weight. The adversary system of procedure and the jury have contributed to the largely exclusionary nature of the law of evidence. The rules of evidence should be adapted to the purposes of the proceedings, and their circumstances.

| TYPE OF EVIDENCE | DESCRIPTION |
|------------------|---|
| Direct | <p>“Direct evidence is evidence which, if accepted, tends to prove the fact in issue” (<i>Festa v The Queen</i> (2001) 208 CLR 593, 596)</p> <p>Witness testifies from personal knowledge to an actual observation or perception of a fact in issue from one of their five senses. The fact finder must infer that the witness is a credible source for the evidence to be accepted in determining the existence or otherwise of facts in issue in the proceeding.</p> |
| Circumstantial | <p>“Works by building up a strong pattern of circumstantial detail which convinces by its truth to the sense of reality that we derive from our experience of life” (Graham Roberts)</p> <p>Witness testifies to facts that go to a fact in issue but are not sufficient to resolve it. If the evidence is accepted, the fact-finder must draw one or more inferences to be in a position to resolve that fact in issue. It can be prospectant (before the subject event), concomitant (at the time of the event) and retrospectant (after the subject event) along a time continuum.</p> <ul style="list-style-type: none">- Types of circumstantial evidence (Wigmore)<ul style="list-style-type: none">o Prospectant<ul style="list-style-type: none">▪ The occurrence of an act, state of mind or state of affairs in the past justifies and inference that the act was done, or state of mind or affairs existed, at the moment of time into which the court is inquiring▪ Proof that an act was validly done within the scope of a public duty is evidence that another act done before or after it was done within the scope of that duty (continuance) |

| | |
|----------|---|
| | <ul style="list-style-type: none"> • Degrees or relevancy when this kind of evidence is being considered • No test can specify the stage at which such evidence ceases to be of any weight – everything depends on the facts of the particular case • Presumption of continuance is no more than a convenient way of describing a process of logic or reasoning involving the drawing of inferences from established facts ▪ Course of business: to prove that an act has been done, it is admissible to prove any general course of business or office, whether public or private, according to which it would ordinarily have been done, there being a probability that the general course will be followed in the particular case ▪ Habit: the fact that someone was in the habit of acting in a given way is relevant to the question whether that person acted in that way on the occasion into which the court is inquiring <ul style="list-style-type: none"> • Not always easy to distinguish between the proof of isolated acts and the proof of habit. There is no rule against the reception of relevant evidence prejudicial to the character of the deceased when his death, its cause, or the state of mind of the person who brought it about is in issue but, when the evidence of habit refers to the practice of a party to the dispute, the prohibition on evidence which merely goes to show that this disposition is of a mind likely to do the wrongful act in question must always be borne in mind • Evidence of the habits of particular classes of persons may be admissible • To be admissible, evidence of habit must not be so generalised, or so related to circumstances dissimilar from those in issue, as not to have probative value |
| Original | Witness testimony includes a statement that has independent evidentiary value so that it goes to proof of a fact in issue without relying on its truth. It is relevant simply on the basis the statement was made, and its probative value does not depend on the credibility of the person who made the statement. |
| Hearsay | Witness testimony includes a statement or other representation made out of court by another person not called as a witness, and the |