

Evidence Exam Notes

Approach to Evidence Law

1. **What Court is hearing the case? In which jurisdiction is it?**
2. **Relevance – general rule: all relevant evidence is admissible, unless excluded**
3. **Who has the burden of proof? What is the standard of proof?**
4. **What are the rules for that type of evidence?**
 - Direct and Circumstantial Evidence
 - Documentary and Real Evidence
 - Competence and Compellability
 - Witnesses – special, protected or affected witnesses
 - Testimony
 - General Principles for testimony
 - Right to Silence (accused)
 - Prior inconsistent statements
 - Process of witness examination
 - Adverse Witnesses (Exception)
 - Finality Rule (Exception)
 - Character Evidence
5. **Exclusionary rules, discretions or privileges – do any apply?**
 - **Privilege**
 - Against self-incrimination
 - Legal professional privilege
 - ‘Without prejudice’ privilege
 - Public interest immunity
 - **Similar Fact Evidence** (exception)
 - **Hearsay Exclusion - Exclusionary rules have exceptions – do any apply here?**
 - Res Gestae
 - Original Evidence;
 - State of mind (not hearsay)
 - Relationship (not hearsay)
 - Common Law exceptions
 - Statutory Exceptions
 - Admissions/Confessions
 - **Discretions (to exclude confessions)**
 - Unfairness
 - Public Policy
 - Statutory
6. **Are there any procedural issues to think about?**
 - Directions
 - Corroboration/Summing Up

Preview -

Step One - Jurisdiction

What Court is hearing the case? In which jurisdiction is it?

What Court is hearing the case?

- **Evidence Act QLD (1977)**
 - **EAQ** – in QLD Courts
 - s79 Judiciary Act 1903 (CTH) - states own evidence law applies within state courts
- **Evidence Act Commonwealth (1995)** (Uniform Evidence Act)
 - Under *s 68 Judiciary Act 1903* - Cth matters in Qld courts - EAQ applies
 - **EAC** – in Federal Courts

Step Two -Relevance

Relevance – all evidence relevant to the facts is prima facie admissible (unless excluded)

- **Relevance** – capable of proving or disproving a fact in issue
 - **Not relevant – not admissible**
 - Different to weight – weight is how much trier of fact relies on the evidence based on its probative value
- **Probative Value** – tendency to prove or disprove facts in issue
 - Must be tested against the facts in issue
 - A fact is relevant if it has probative value – That is it proves or renders more or less probable some other fact in issue
 - **Fact in issue** – in criminal proceedings will be facts which support or refute elements of the offence or defence
- **S55 Evidence Act CTH** – Whether or not the evidence ‘could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceedings’
- **Evidence will lack relevance if it is equivocal** in terms of what it shows
 - **BBH v Queen** – sexual assault of daughter, evidence of son ‘could have looking for bee sting’
- **Sufficiently Relevant** – need probative connection
 - **Horvath v R (1972)** – driving 40 minutes prior to act – no probative connection between earlier time and time of the accident – no link
- **Logical Relevance**
 - **R v Buchanan [1966] VR 9**
 - Evidence from 30-40 minutes before accident whereby accused travelling at high speed on wrong side of the road – found to be a connecting link showing affect by alcohol
- **Legal Relevance**
 - **R v Stephenson [1976] VR 376**
 - Logical Relevance – seems to have probative value

- Legal Relevance – Weighing exercise probative value against opposing considerations such as potential to confuse, waste time or prejudice juries
 - E.G. not all logically probative/relevant evidence is legally admissible – may be too remote

Step Three - Who has the burden of proof? What is the standard of proof?

Burden of Proof

- Civil Case –
 - Plaintiff to prove elements of cause of action
 - Defendant to prove elements of defence
- Criminal Case –
 - Prosecution – burden to prove each element of the offence
 - Defence – burden when pleading a defence, justification or excuse

Standard of Proof

- **Beyond Reasonable Doubt** - standard for criminal
 - Balance of probabilities – when proving a defence, excuse or justification
- **Balance of probabilities** - in civil court

Step Four - What are the rules for that type of evidence?

- **Direct and Circumstantial Evidence**
- **Documentary and Real Evidence**
- **Competence and Compellability**
- **Witnesses – special, protected or affected witnesses**
- **Testimony**
 - **General Principles for testimony**
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 - **Adverse Witnesses (Exception)**
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- **Character Evidence**

Direct Evidence: Evidence that supports the truth of an assertion (in criminal law, an assertion of guilt or of innocence) directly - without having to draw an inference.

- E.G. Witness who testifies she saw the defendant stab the victim
- Doesn't require anymore then to listen to it..

Circumstantial Evidence: you have to infer relevant facts from related proven facts

- Only has probative force by drawing an inference
- Evidence of a secondary fact offered as proof of a principal fact
 - Examples of secondary facts: motive, credit, opportunity (contrast: confession, eyewitness testimony)

- Cumulative
- **Plomp v R (1963) 110 CLR 234** - Charged with murdering wife, said she had died in surf, introduced GF as wife before last wife died, insurance policy in her favour, introduced new mum to son, no evidence that anyone tried to grab her swim suit as she was taken by rip, she was a strong swimmer, no weather issues on the day
 - **In wholly circumstantial cases, accused can only be found guilty if guilty inference is only rational/reasonable inference available on all the evidence**
 - **Dixon CJ, 243** – ‘the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed.’
- **Shepherd v R (1990) 170 CLR 573** – Court rejected the ‘Indispensable links in a chain must be proved beyond reasonable doubt’ argument in this case
 - **Cumulatively joining it all together to create its strength**
 - Distinguish strands in a rope (Chamberlin and Baden-clay strands in rope type cases...) from links in a chain
- **R v Baden-Clay** – affair, financial stress, double life about to be exposed to wife and mistress, scratches on his face, DNA under Allison’s fingernails, leaves on body present in Baden-Clay’s yard, DNA matched, lie about phone charge etc..
 - **Appeal** – argued a Links in a Chain Case – where all pieces of evidence have to be proved BRD – but facts were not indispensable facts to reaching a conclusion that he had killed her
 - The facts were able to assist in proving guilty but neither were essential (so strands in a rope case)