

Relevance

Process:

1. **WHEN IS IT RELEVANT - Section 55** – can the evidence rationally affect the assessment of the probability of the existence of a fact in issue?
 - Not taken to be irrelevant only because it relates to credibility of witness, admissibility of other evidence or failure to adduce evidence
 - Told to mention: *Papakosmos*; *Smith*; *Evans* in exam
2. **RELEVANT EVIDENCE ADMISSIBLE - Section 56**

Evidence that is relevant is admissible, unless excluded by the operation of an exclusionary rule.

Section 55 – EA 1995 (NSW)

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**.

Exam

Firstly, evidence is inadmissible unless it is relevant: **s 56(2)**.

The key rationale of **s 55** is that there needs to be a **logical or rational connection** between the evidence and the facts to be proven: **McHugh J in *Papakosmas***.

- The test of relevance is a **test of logic**.
- In order to **establish relevance**, it is necessary to **point to a process of reasoning** by which the **information in question could affect the jury's assessment of probability** of the **fact in issue** at the trial: ***Washer v WA (2007)***.

In ***Papakosmas***, the HC held the evidence was relevant to proving the fact in issue, that is, no consent. It was also relevant in supporting the credibility of the complainant. What she said at the first opportunity was exactly the same complaint at court.

In ***Smith v The Queen (2001) 206 CLR 650***, the evidence was held to be irrelevant because it would not rationally assist the jury in making their own assessment as to whether the person in the photograph was the same person in the dock.

The police officers were in no better position than the jury to decide whether the defendant was in the photograph. Otherwise, the police was basically acting as part of the jury.

Therefore evidence which does not rationally assist the jury in making their own assessment will be deemed to be irrelevant.

Hence, Evidence is NOT relevant where Jury is in same position to make assessment: ***Smith v The Queen (2001)***.

On these facts, the evidence of [**type of evidence**] is relevant because it (directly/indirectly) affects the assessment of the probability of the existence of the fact in issue, being [**fact in issue of case**].

e.g. offence]: s 55(1) EA.

Evidence that is relevant in a proceeding, through s 55, is admissible in the proceeding: s 56 EA.

Section 56 – Evidence Act 1995 (NSW)

(1) Except as otherwise provided by this Act, evidence that is relevant in a proceeding is admissible in the proceeding.

Evidence that is not relevant in the proceeding is not admissible.

Therefore, Evidence that rationally affects the assessment of the probability of the existence of facts, which are relevant to the facts in issue, thereby affects the assessment of the probability of the existence of the facts in issue themselves; and satisfies the requirement of relevance.

Proving Relevance

Both direct and circumstantial evidence have a 'direct' connection to the facts in issue; and all evidence that is so connected to the facts in issue, must be either direct or circumstantial.

Direct Evidence

With direct evidence, the evidence – if accepted – establishes one or more of the facts in issue without the need for any further inference.

- Examples
 - Witness directly perceives the ultimate fact in issue, Document showing
 - fraudulent accounts, CCTV.

Circumstantial Evidence

Opening statement

- Although the evidence of _____ is merely circumstantial evidence because it has no direct bearing on the ultimate fact in issue, it is relevant if it merely makes the fact in issue more probable or less probable than it would be without the evidence because it would 'affect the probability': *Zaknic Pty Ltd v Svelte Corp Pty Ltd; Papakosmas*)

SAMPLE OF EXAM STRUCTURES

STEP 1 - Relevance: Is the evidence relevant?

LOOK AT THE FACTS – WHAT EVIDENCE IS BEING ADMITTED? IS IT RELEVANT TO THE MATTER AT HAND OR NOT?

Evidence is relevant:

Section 55(1) of the EA defines what evidence is relevant. On the facts, the evidence of **<INSERT EVIDENCE>** is relevant, as if it were accepted, it could **<INSERT DIRECTLY OR INDIRECTLY>** rationally affect the assessment of the probability of the existence of the fact in issue in the proceeding, being **<INSERT FACT IN ISSUE eg identity of the accused>** (*Smith 2001*).

<ONLY INCLUDE IF EVIDENCE OF MOTIVE> whilst **evidence of a motive** is not a substantive fact, and instead is an intermediary fact, it still goes towards asserting the mens rea element of murder and therefore, the fact in issue. Thus evidence of a motive is relevant.

Additionally, the **<INSERT EVIDENCE>** could be used by the jury in deciding whether **<INSERT FACT IN ISSUE>** (*Macrae 1995*) and therefore *prima facie* the evidence is relevant.

Pursuant to **section 56(1) of the EA** evidence that is relevant is admissible in the proceeding.

<NOW ADDRESS THE FOLLOWING>

1. If it is relevant do any of the exclusionary rules apply?
2. If not so excluded, is its probative value outweighed by prejudicial effect?

3. Do any of the discretionary exclusions apply or is a warning as to reliability sufficient?

<NOW GO TO s135, 136, 137, 138 IF YOU STILL WANT TO EXCLUDE RELEVANT EVIDENCE>

Evidence is not relevant:

Section 55(1) of the EA defines what evidence is relevant. On the facts, the evidence of <INSERT EVIDENCE> is likely to be irrelevant, as if it were accepted, it could not, either directly or indirectly, rationally affect the assessment of the probability of the existence of the fact in issue in the proceeding, being <INSERT FACT IN ISSUE eg identity of the accused> (Smith 2001). Therefore, as evidence is not relevant, no further question arises about its admissibility (Evans 2007).