

TOPIC 1: Introduction to the Uniform Evidence Act

1 Introduction

What is evidence law?

- The rules that define the type of information that can be considered by judges and juries to resolve disputes about facts in civil and criminal proceedings

→ Why not let it all in? Why restrict proof at trial at all?

- Purpose is to use accurate information
- Will striking evidence out improve accuracy?
- Problems with inexperienced juries
- Efficiency; effective not to allow all evidence into the court room
 - Only important and relevant information allowed
- Externalities; privileges (e.g. security)
- Balancing act; sacrificing the truth for other values (e.g. marriage)

→ Why not leave it all to the judge?

- Inconsistencies

The Uniform Evidence Acts

- Victorian Evidence Act 2008
 - Common law rules
 - Uniform Evidence Act 1995 (Cth)
- Case law: **interpretation and clarification** (VIC, NSW, Federal)
- Work-in-progress: some sections are over-complicated and confusing

2 Types of Evidence

3 Types of Evidence Governed by the *Evidence Act 2008*:

- **Witness Testimony:**
 - In-court testimony by persons (oral evidence or viva voice)
 - Believability
 - Cross-examination
 - Prosecution must prove the case, therefore the defence don't have to ask anything
 - Main **challenge** is whether we should believe it or not
- **Physical Objects or Exhibits:**
 - Murder weapons, objects containing fingerprints
 - Samples; blood, saliva
 - Main **challenge** is that it doesn't tell the whole story and can be misleading

- Circumstantial evidence
- **Documents:**
 - Airline tickets
 - Phone records
 - Diary or journals

Direct Evidence v Indirect Evidence:

- **Direct evidence**
 - Testimony can be direct or indirect
 - Direct; Eye-witness
 - Indirect;
- **Indirect evidence**
 - Gun with a fingerprint on it; indirect because it doesn't tell whole story
 - *Corey Travis Fuller-Lyons v The State of NSW* [2015] HCA

3 Evidence Admissibility

If the evidence survives all three tests, it will be admitted:

- 1. Is the evidence relevant? (YES)**
- 2. Does the evidence violate an exclusionary rule? (NO)**
- 3. Does the evidence satisfy the discretion of the trial judge? (YES)**

4 Burden of Proof

- Who is obliged to introduce evidence in court?
 - Prosecutor or accused (criminal)
 - Plaintiff or defendant (civil)
- The evidential burden
 - The sufficiency of evidence introduced to prove a claim
- The legal burden (or standard of proof)
 - The **persuasiveness** of evidence

1. Whose burden is it?

Criminal Proceedings –

- **The prosecution:** In criminal proceedings, it is usually the prosecution that must discharge both the evidential burden and the legal burden.

- 1. The prosecution must introduce sufficient evidence to support each element of the alleged crime.
- 2. If the evidential burden is met, the judge will allow the evidence to be considered by the jury.
- 3. The jury will decide whether or not the legal burden has been satisfied by the prosecution.
- **The defence:** The general rule is that the defence does not have to prove anything (innocent unless *proven* guilty).
 - Exceptions:
 - 1. Insanity plea - shifts both evidentiary and legal burdens to the defence.
 - 2. Defences - self-defence, provocation, duress – shift only the evidentiary burden to the defence the prosecution has to convince the jury that the evidence is not persuasive.

Civil Proceedings –

- The evidential and legal burden are upon the party making a claim (the plaintiff) or the party making a defence (the defendant).

2. The evidential burden:

- **The party who makes the claim must provide sufficient evidence that supports it.**
 - In a criminal trial, the prosecution must bring evidence that has the potential to **prove every element of the crime** in order for the judge or jury to consider the question of guilt.
- **The judge determines whether the evidentiary burden was met** (if a “no case” submission was made by the defense.)

3. The legal burden:

- The persuasiveness of the evidence
 - In a criminal trial, the persuasiveness of the evidence relates to the arguments made by the prosecution – is the evidence presented strong and persuasive enough to prove the case?
- Decided by the jury (or judge if there is no jury)

Standard of Proof:

- An argument about a fact in issue is considered persuasive if it satisfies the **standard of proof** (Evidence Act Sections 140-142)
- **Criminal Proceedings –**
 - Beyond reasonable doubt (prosecution);
 - Balance of probabilities (defence)