

## Wk. 1 – Evidence Law

### Rules of Evidence

1. Is the evidence relevant?
2. Is it 'admissible' (does it pass the exceptions for admissibility)?
3. How much weight will the court attach to the evidence even if its admissible?

**Facts in issue (FII)** – Essential facts that the counsel must prove to establish a case

**Facts relevant to FII** – facts that a party may present to court to support the FII. E.g. alibi, motive, seen at crime scene

**Relevance** – logical connection b/w evidence and facts in issue. It must be capable on its own or others, *affect the existence of one or more facts in issue*. Not a very high hurdle.

There are degrees of relevance; the evidence must be 'sufficiently' relevant *R v Buchanan & R v Horvath*.

**Primary** – the issue disputed in court

**Secondary** – issues that can arise in the course of a trial e.g. witness credibility, admissibility of confession.

**Rule of collateral finality** - answers of the witness given on replies to questioning under cross-examination on collateral issues are to be taken as final. Therefore, following an answer even if it is incorrect, the party cross-examining cannot attempt to establish the contrary. However, there are exceptions to the rule:

- Prior convictions
- Bias
- Reputation for untruthfulness
- Disability affecting reliability.

**Admissibility** – below are excluded evidence:

- previous consistent statement of a witness
- character evidence
- similar fact (propensity) evidence
- opinion evidence
- hearsay evidence
- privilege
- unlawfully obtained evidence

**Weight** - evidence must be capable of affecting the determination of the issues one way or the other. Jury must be certain beyond reasonable doubt that the accused committed the crime.

- Defence must show that there's reasonable doubt. If the defence can establish this, then he can be acquitted.

### Wk.2 – burden of proof

Burden of proof is different from evidential burden. Burden of proof is the obligation to persuade the court. Evidential burden is merely a duty that arises in the face of a *prima facie* case made out by the opponent to present evidence in rebuttal of such case.

**Criminal trials** – prosecution bears burden of proof *R v Cavkic* (2005) 12 CR 136 – reasonable doubt. Party carrying burden of proof also has an evidential burden. If latter establishes a *prima facie* case an evidential burden is cast upon opponent.

Burden of proof on accused 1) insanity defence 2) statutory provisions

**Civil trials** – he who asserts must prove