

LAWS399: SUMMARIES

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APPROACHING THE EXAM:

1. Set the scene

- Civil/criminal matter
- Who are the parties?
- Who is in the witness box? (All evidence comes through a witness)
- Whose witness is it? (Prosecution/defendant)
- What is the evidence? (A word, a sentence, a thing, a report, conduct, etc.)

2. What is the purpose of this evidence? (What is it trying to prove?)

Note: There is always a discretion to exclude evidence – go back to Part 3.11

EXCLUSION OF EVIDENCE

See: [Page 10](#).

<i>Section</i>	<i>Effect</i>	<i>Requirements</i>	<i>Criminal/Civil</i>
135 General discretion to exclude evidence	Discretion to exclude evidence if the requirements are met. [If the prosecution wants to exclude defence evidence, they will rely on this, or s 137 .]	If the probative value is substantially outweighed by the danger that the evidence might be unfairly prejudicial (<i>danger</i> that evidence can be misused), misleading and confusing, or an undue waste of time.	Both
136 General discretion to limit the use of evidence	Discretion to limit the use of evidence if the requirements are met.	If there is a danger that the evidence might be unfairly prejudicial, or misleading, or confusing.	Both
137 Exclusion of prejudicial evidence in criminal proceedings	Not a discretion – if the test is satisfied, the court has no choice as to whether to exclude the evidence.	If the probative value of the evidence is outweighed (not substantially) by the danger of <u>unfair prejudice</u> to D. <i>Lower threshold, limited scope.</i>	Criminal
138 Exclusion of improperly or illegally obtained evidence	Discretion to exclude illegally or improperly obtained evidence.	If the evidence was obtained improperly or illegally, it is not to be admitted unless the desirability (<i>think high probative value</i>) outweighs the undesirability of how it was obtained.	Both
139 Cautioning of persons	Guidance on what constitutes improperly obtained evidence.	If the person was under arrest, questions were conducted by an investigating official, and they did not caution the person.	Both

JUDICIAL WARNINGS

See: [Page 17](#).

<i>Section</i>	<i>Purpose</i>	<i>Requirements</i>	<i>Criminal/ Civil</i>	<i>Relevant case</i>
164 Corroboration requirements abolished	Abolishes the requirement of corroboration	Perjury and accomplice evidence still require corroboration. If there is a jury, the judge does not have to (but can) warn or direct a jury in relation to a lack of corroboration.	Both	
165 Unreliable evidence	Discretion to warn a jury of unreliable evidence	Section 165(1) – The evidence must be <i>of a kind</i> that may be unreliable. Section 165(2) – Judge in a jury trial must warn if a party <i>requests</i> . Section 165(3) – Warning does not have to be given if there are <i>good reasons for not doing so</i> .	Both	<i>R v Stewart</i> (2001) 52 NSWLR 301
165A Warning in relation to children's evidence	Removes reference to unreliability due to a child's age	A judge cannot reference unreliability due to age. A judge can warn about unreliability if the basis is not solely because of age.	Both	
165B Delay in prosecution	Duty to warn of delay and disadvantage due to delay	If the court is satisfied that D has suffered a delay, then the court must warn the jury of the nature of the disadvantage and the need to take this into consideration. The judge does not have to comply with this if there is a good reason not to warn the jury.	Both	<i>Longman v The Queen</i> (1989) 168 CLR 79. <i>Crofts v R</i> (1996) 186 CLR 427.