

### Week 3:

- *Hitch* - murder trial north Queensland, prosecution evidence was that deceased said she was going to meet accused and she was going to tell the accused of false pregnancy to extort money. Argument was that jury would infer that she acted on that intention...  
McMurdough?? J - evidence was not merely inadmissible hearsay but it was relevant to the issue of whether she intended to meet with the defendant, but there was no evidence that the defendant met her or discussed the pregnancy... McKenzie J - proving the accuseds intention is a step towards proving whether she actually met with the accused. These are somewhat consistent with Walton... Douglas J concluded that whole pregnancy issue was not admissible - contrasting with other member of the court.
- **Relationship evidence**
- Wilson's case (1970) - Wilson charged with murder. He said that he put the gun on a bale of hay and it just went off and killed his wife. He had a background of domestic abuse. people gave evidence that they had seen both of them in volatile fights. Evidence was said to be admissible - this was because any jury or finder of fact would want to know the character of the relationship. This was simply just direct evidence because they actually saw and heard - words were not used to establish the truth of the statements, just the character of the relationships
- The above is statutised in the Evidence Act - s132B
- **Res Gestae**
- Two heads of Res Gestae
  1. Things that happened at or close to the time of the event - *O'Leary* (case with everyone drinking at work camp and O'Leary was accused of bashing someone to death)
  2. Statements made at or close to the time of the event
- Both heads override any exclusionary rules of evidence
- Res Gestae statements allowed for proving contents of statement
- Words heard said during the contents of the event e.g. "stop if Fred, you're killing me"...  
Words that are clearly part of the event can be used as to the truth of their contents
- *Ratten v The Queen* - De Silva - when a situation of fact is being a considered, the question arises, when does the situation start and end... Evidence may be concerned with spoken words, the words themselves part of the Res Gestae...  
Is there a possibility of concoction? Was the statement made in circumstances of spontaneity or could it have been concocted?
- *Adelaide Chemical Company v Carlyle* - Dixon said that words spoken within minutes constituted mere narrative and not the Res Gestae
- *Vocisano* - a conversation which occurred minutes after an accident being merely narrative
- *Andrews* 1986 - see slides
- *Benz* - Mason said that statement 'my mother is just saick' would be a part of the Res Gestae
- See slides for obiter support of UK position on Res Gestae - UK position a more generous test
- **Common law exceptions to the hearsay rule**
- Statements by deceased persons
  - Dying declarations - applies only to trials of homicide charges i.e. someone is dying and they say 'Burt stabbed me' - need to demonstrate that dying person has a settled hopeless expectation of death

- Declarations against pecuniary or proprietary interests - if a person in life said 'I owe but \$100,000' and then they die, it is admissible as evidence because it is against their proprietary interests
- Declarations made in the course of duty - an official might make a declaration as part of their duty and then die i.e. 'a police officer saying something in the course of duty like 'I arrest you'.
- Statements about the maker's contemporaneous physical or mental health or feelings - can't be about past feelings as that is simply narrative
- Statements showing the nature of the business - the bookie rule e.g. people calling up a bookie and police can then use the truth of their contents - same with drug dealer
- Tripodi principle - if a criminal is a part of an organisation, then what they say is frequently said on behalf of the organisation. So, what a person says can capture, bind or incriminate another member of the organisation. e.g. if accused commits a bank robbery, approaches someone to ask them if they want in and to get a getaway vehicle. This person then approaches a third person and explains what the accused has offered and then this third person reports it to the police. The evidence of the second person's statement is admissible - similar to agency rule in corporations.
  - Read O'Hern? Ahern? Particularly Justice Gibbs sometimes called the conspirators rule - but not limited to conspiracy cases
  - Also, imagine drug dealer tells undercover policeman that he got the drugs off Bob and he is the best cook etc - if it can be established that Bob and the dealer have had previous association, then this statement is admissible against Bob.
  - Very powerful point - derived from ideas of agency but not always necessary to prove that there was formally the relationship of agency - *Kelly's case*
  - Also no necessary to prove that the middle person is criminally involved - O'Connell? Lawrie Connell? Jockey's case READ THIS
- Section 93B of *Evidence Act 1977*(Qld) - often used in the case of a battered spouse who is eventually killed and she has told family members or doctor about her beatings. This section is used to make the testimonies of her family and doctor admissible.
  - 'prescribed criminal proceeding' mention in the section means serious offences