

# Evidence Summary

## Relevance

- s55 and 56 need to be used together
- **s 55 Relevant evidence (establishes the threshold for relevant evidence)**
  - (1) Evidence is relevant in a proceeding that could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding
  - **Goldsmith v Dandilands (2002)** McHugh J-[E]vidence is generally admissible only if it **tends to prove a fact in issue or a fact relevant to a fact in issue**
    - It is not considered a difficult standard to meet. For that connection, it requires a minimal logical connection between the evidence and the fact in issue.
- **s 56 Relevant evidence to be admissible**
  - (1) Relevant evidence is admissible
  - (2) Evidence that is not relevant is not admissible

## Cases relating to s55-is the evidence relevant?

### **Smith v The Queen (2001) 206 CLR 650**

- **Facts:** Bank robbery where Smith and others were convicted. Bank security cameras photographed the robbers, but it was not of great quality. Two police officers gave evidence that it was Smith in the photo from their previous dealings with the appellant. The
- **Held:** In determining relevance, the majority (Gleeson CJ, Gaudron, Gummow and Hayne JJ) stated:
  - The police witnesses were held to be ‘in no better position to make a comparison between the appellant and the person in the photographs than the jurors’
  - The police’s evidence **could not rationally affect the assessment by the jury** of whether the photo was Smith, as **their material was no different to the material available to the jury from its own observation**
  - If the assessment of that probability is affected, the jury is affected by the knowledge of the police and substituting that for their own conclusion, not by any process of reasoning. The police’s evidence does not provide any logical basis for affecting the jury’s assessment.
- **Conclusion:** Police’s evidence not relevant

### **Evans v The Queen (2007)**

- **Issue: Relevance (Identity was fact in issue)**
- **Facts:** Accused was asked to wear clothes similar to person seen in security photographs – balaclava and overalls, saying words the offender at the scene had apparently said. In the courtroom, in front of the jury.
- **Conclusion:** evidence was relevant.
- **Held:**
  - **Heydon J and Crennan J-thought it was relevant** as the appearance of the counsel dressed in overalls in front of a jury is capable to making an impression favourable to the accused and evidence is relevant.

- Kirby J also thought it was **relevant**. When the appellant was dressed, there were apparent similarities, in the appearance and conduct of the appellant to the earlier evidence and descriptions given. Thus, this rationally affects the assessment of the probability of the existence of a fact in issue in the proceeding.

# Hearsay

## Structure

1. Relevance (s55 + 56)
  2. Is it hearsay Evidence? (PR, IAF analysis) → s59 excludes hearsay evidence
  3. S60 exception to admit hearsay evidence for non-hearsay purpose
- Hearsay rules operate to exclude out-of-court statements when they are offered to prove their conduct (ie. If it is hearsay, then it is inadmissible evidence)
  - **s 59 The Hearsay Rule – exclusion of hearsay evidence**
    - (1) Evidence of a previous representation made by a person is not admissible to prove the existence of a fact if it can reasonably be supposed that the person intended to assert by the representation.
  - *A previous representation is any representation made previous to testifying*
  - Definition of Representation
    - (a) an express or implied representation (whether oral or in writing)
    - (b) a representation to be inferred from conduct (i.e red card in football)
    - (c) a representation not intended by its maker to be communicated to or seen by another person (ie. Diary entry)
    - (d) a representation that for any reason is not communicated
      - (eg an announcement that people didn't hear)

## Approach to applying the hearsay rule (s59)

1. Identify the Previous Representation?
2. What is the Intended Asserted Fact contained in the Previous Representation? (what is the maker of the previous representation intending to assert by making the representation?)
3. What is the PR being adduced to prove (how is it relevant)?
4. If PR is being adduced to prove IAF, then hearsay and evidence is not admissible
5. Look at hearsay exceptions. If an exception to the hearsay rule applies, then evidence is admissible.

## Kamleh v The Queen (2005)

- **Issue: Application of s59**
  - **Facts:** Zappia and Kamleh were both co-defendants in this murder trial but were tried separately. A witness, Simoniuk is testifying what Zappia was telling him in 1&2.
  - *Statement 1: Zappia had turned up the TV* Zappia's statement that they turned up the TV could support inference that Zappia (and therefore Kamleh) was in apartment at time of shooting.
  - *Statement 2: Zappia and Kamleh were going to catch-up with Rasti (the murdered guy) because Rasti owed them something*
  - *Statement 3: Zappia and Kamleh gave out-of-court statements to the police on their whereabouts that evening*
- **Reasoning**
  - S1: It was hearsay because it was relevant to whether Kamleh was at the scene of the crime at the time of the killings.

- S2: not hearsay because it was not relevant for its content that seeing him meant killing him.
- S3: was relevant and hearsay because Zappia's statements to the police about where he and Kamleh were prior to the arrest were admissible to prove that they had both concocted an alibi together.

### ***Subramaniam v Public Prosecutor* [1956]**

- **Facts:** D charged with illegal possession of ammunition. Claimed to be acting under duress.
  - The big guy with the nickname Killer said, "You carry our weapons for us or you'll never see home again."
- **Held:**
  - **It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement.**
  - It was held to not be hearsay in this case. The evidence had been tendered to prove that the threats were made and the effect they had on the defendant, not to prove the truth of anything said by the defendants (That he needed to carry the guns).
- **Conclusion:** Not hearsay and evidence admissible

### **s 60 Exception – evidence relevant for a non-hearsay purpose**

- (1) The hearsay rule does not apply to evidence of a previous representation that is admitted because it is relevant for a purpose other than proof of an asserted fact.
- When a previous representation is offered to prove something other than what the speaker intended to assert, it is not excludable hearsay (ie. Non-hearsay evidence is admissible)

**S136 allows judge to limit the evidence for only hearsay purpose and not hearsay purpose**