

4. Admissibility

Thursday, 28 May 2020 9:14 AM

1. Is the admission **relevant** (ss 56, 55)
 - (NOTE: circumstantial evidence and provisional relevance)
 - **Pictures**: admissibility of injury etc. S 48: form
 - **Smith**: not relevant if something jury could **work out themselves** and evidence provides no extra information

2. If so, does any **exclusionary rule** apply (admissions may be hearsay or opinion evidence: ss 59, 76)
 - **Hearsay**
 - **Tendency**
 - **Privilege** (s 126)
 - **Opinion**
 - **Identification**
 - **Tendency** (s 97, s 101, case law)
 - **Coincidence**
 - **Character**

3. If so, is there an **exception** to the exclusionary rule (admissions are an exception to both the hearsay and opinion rules: s 81), **BUT exceptions to those exceptions**:
 - Admission is not **first-hand** (s 82)
 - Admission concerns a **third party** (s 83)
 - Admission was influenced by **violence** etc (s 84)
 - Admission of a **criminal D** may not be reliable (s 85)
 - Oral admission is recorded in an **unsigned document** (s 86)
 - **Admissions** (ss 82-85)

4. Do any **judicial discretions** apply to exclude the admission? (special discretion for admissions: s 90, other discretions may apply)

5. **Other rules** may operate to exclude the admission? (tape recording: CPA 1986 s 281) (*only discuss if relevant*)
 - a. S 135 (**unfair, misleading or undue waste of time**)
 - b. S 137 (**probative value/unfair prejudice** - e.g. Disturbing photos)
 - c. S 90 (**unfair**)
 - d. S 138 (**obtained illegally**)

Indigenous Question

- **Hearsay and opinion exceptions** for customs and traditional laws
- **Language**:
 - **Diana Eads**: linguistic traits of **Aboriginal English**
 - **EA**: **question and answer** process in court (narrative styles)