

CRIMINAL PROCEDURE & EVIDENCE

WEEKLY/FINAL EXAM NOTES

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WEEK #1: THE ADVERSARIAL CRIMINAL PROCESS

NATURE OF EVIDENCE LAW

Evidence law is the branch of law that defines the type of information that can be received by a decision-maker that may properly be used by the decision-maker in the resolution of the factual issues in dispute in a case. Information that can be received for this purpose is called 'admissible.' Information that is excluded is called 'inadmissible.' Information needs to be relevant, reliable and credible. Evidence law is, thus, the formalisation of the fact-finding inquiry that individuals perform as part of their everyday lives.

Evidence law is procedural not substantive, this means that, there are two types of rules of evidence. There are rules regulating matters of process concerning **how** evidence can be given and **who** can give the evidence. There are also rules prescribing what sort of information can be received by the courts to resolve issues in dispute.

The objectives of evidence law involve:

- 1) Truth - as the most obvious objective of the law of evidence is to ascertain the 'truth.'
- 2) Discipline – arguably, this area is flawed.
- 3) Protection – this objective requires that parties to litigation are treated fairly and protected from possible prejudices. This objective remains important and the rules of evidence that prohibit unfairly prejudicial evidence being admitted against an accused should be interpreted strictly.

The main legislation governing evidence is the [Evidence Act 1995 \(NSW\)](#).

BROAD APPROACH

Broadly, the structure is as follows:

- 1) *Is the witness competent?* If not, the evidence is not admissible. If the answer is yes, proceed to the next step.
- 2) *Is the evidence relevant?* If not, the evidence is not admissible. If the answer is yes, proceed to the next step.
- 3) *Is the evidence excluded by the application of an exclusionary rule?* For instance, the rules against hearsay, opinion, similar fact evidence and credibility evidence or the application of privilege, for instance, self-incrimination, matters of state, settlement negotiations or religious confessions. If the answer is yes, the evidence is not admissible. If the answer is no, proceed to the next step.
- 4) *Is the evidence excluded by the operation of a discretion in [S135](#), [137](#), or [138](#)?* If the answer is yes, the evidence is not admissible. If the answer is no, the evidence is admissible.

Thus, evidence is only admissible if it passes each of the 4 threshold tests above. If it fails any of the thresholds, it is inadmissible.

R V LOUISA COLLINS (1888)

Facts: Louisa Collins was charged in 1888 with the poisoning murder of her husband Michael Collins in Botany, NSW. She endured two coronial inquests, 4 trials and an appeal before finally being convicted and then sentenced to death.

- She was hung at Darlinghurst gaol, as she was the first woman to be hanged in Darlinghurst, and the last woman to be hanged in NSW.

- Her husband became ill, due to Louisa's alleged conduct of poisoning him, by placing rat poison in his milk, which were similar circumstances to how her first husband died.

Evidence & procedure: the following is a summary of the evidence that was available to the prosecution:

- Charles was described as being a strong, healthy and able-bodied 50-year-old before his sudden illness.
- A slight trace of **arsenic** was found in the exhumed body of Charles, 17 months after his death.
- Louisa's 10-year-old daughter May said that she has seen a box of 'rough on rats' rat poison in the kitchen before her father (Charles) had died.
- The symptoms of Charles' illness were consistent with arsenical poisoning.
- Louisa appeared indifferent to the fate of her husband Charles and refused to wear mourning clothes as was the custom of the time.
- Louisa told police and the life insurance agent that Charles was dying at the time when the doctor thought he would recover.
- Louisa took frantic steps to ensure Charles signed a will in her favour shortly before his death.

- Michael Collins was 26 years of age, fit and healthy and had never been seriously ill.
- The symptoms of his sudden illness were consistent with arsenical poisoning.
- Arsenic was found in Michael Collins' stomach, and in bodily fluids expelled before he died.
- Arsenic was also found in a small glass tumbler of milk that Louisa had given to Michael during his illness.
- Louisa was the person solely responsible for administering drunk and medicine to Michael during his illness before he died.
- Louisa's children said that their mother had forbidden them from drinking a jug of milk in the kitchen before Michael's death, saying that it was 'for Mick.'
- Michael had been a lay-about and a gambler and by the latter stages of his marriage to Louisa, had spent all of Charles' life insurance and had accrued considerable debt.
- Michael had begun to argue with Louisa about her frequent heavy drinking.

Summary of Louisa's evidence in defence:

- Arsenic may enter the body through other means other than oral ingestion.
- Both Charles and Michael had worked as wool washes and had carted sheep skins in Botany. Farmers were known to dip their sheep in arsenic baths to rid the wool of lice and ticks before sheering. Arsenic might have entered their bodies through handling the skins.
- Michael had a large sore on his leg that he may have treated with a paste of arsenic, as some people did at the time.
- Some people even consumed small amounts of arsenic for health purposes although, Charles and Michael were not in the habit of doing so or had ever done so.
- There was the possibility that the glass tumbler of milk had been tampered with because it was unsealed.
- Louisa had gone to considerable lengths to get medical assistance for Michael and had exhibited distressed behaviour during his illness and after.
- Michael had been very depressed after his baby's death and had the opportunity to commit suicide.

NATURE OF COURT PROCEEDINGS

Criminal proceedings: these are brought by the state against an individual who is suspected of committing a crime. The state is termed the 'prosecution' or the 'Crown.' The suspect is called the 'accused' or 'defendant.' Vindication or punishment is the ultimate aim.

Civil proceedings: these are brought by an aggrieved party against a party it claims has committed a legal wrong against it. The party bringing the action is termed the 'plaintiff' and the party being sued is called the 'defendant.' Redress is the ultimate aim.