
2. Relevance

Relevance

Is the evidence admissible?

- Evidence is admissible if the evidence is relevant to the proceeding (s 56(1)).
- Conversely, evidence is not admissible if the evidence is not relevant to the proceeding (s 56(2)).
- In all cases, questions of admissibility are determined 'on the balance of probabilities' (s 142).

Is the evidence relevant?

- Evidence is relevant if it could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding (s 55(1)).
- s 55(2): Evidence is not taken to be irrelevant only because it relates only to— (a) the credibility of a witness; or (b) the admissibility of other evidence; or (c) a failure to adduce evidence.
- Evidence may be logically relevant (tends to prove or disprove the fact in issue) but not legally relevant (see Stephenson).

Examples

- **Smith v R**
 - Facts: Was police testimony of the identity of a man in security photographs admissible?
 - Held (majority): NO
 - Why? The police witnesses were in no better position to make a comparison between the accused and the person in the photographs than the jurors. They possessed no special knowledge or advantage in recognising the person (in fact, the officers probably spent less time in the presence of the accused than the officers).

- The fact that someone else has reached a conclusion about the identity of the accused and the person in the picture does not provide any logical basis for affecting the jury's assessment of the probability of the existence of that fact when the conclusion is based only on material that is not different in any substantial way from what is available to the jury.
- **R v Stephenson**
 - Facts: The applicant's motor car collided with another motor car, killing 3 of the occupants and injuring 1. It is unknown which of the 4 occupants was the driver. The applicant wanted to get into evidence the positive blood alcohol readings on the deceased. Trial judge declined to allow this evidence.
 - Held (per curiam): IRRELEVANT EVIDENCE
 - Although logic is the test of relevance, not all evidence which is logically relevant is legally admissible. The logical connection between a fact and the issue to be determined may be so slight that the fact is treated as too remote and evidence of it as inadmissible. In some cases, such evidence is described as being irrelevant... [but] may be more correctly described as insufficiently relevant or too remotely relevant.
 - Here, two problems: 1) no evidence proving driver was intoxicated (75% chance) and 2) no evidence proving that the driver was also driving culpably. Hence connection between this evidence and the guilt of the applicant is "extremely tenuous."

Discretion to exclude evidence

Notwithstanding that the evidence is admissible, can we get it excluded?

- s 135** The court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might—
- (a) be unfairly prejudicial to a party; or
 - (b) be misleading or confusing; or
 - (c) cause or result in undue waste of time.
- Probative value: The extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue (s 3 Evidence Act).

- Unfairly prejudicial: The undue impact, adverse to an accused, that the evidence may have on the mind of the jury over and above the impact that it might be expected to have if consideration were confined to its probative force (Pfennig v R per Mason CJ, Deane and Dawson JJ).
For “unfair prejudice”, the prejudice must be more than evidence which strengthens the Crown case. The unfair prejudice has been expressed as a danger that the accused’s case may be damaged “in some unacceptable way by provoking some emotional response in the jury” (DPP v McRae).

OR

- s 136 The court may limit the use to be made of evidence if there is a danger that a particular use of the evidence might—
- (a) be unfairly prejudicial to a party; or
 - (b) be misleading or confusing.

OR

- s 137 In a criminal proceeding, the court MUST refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the defendant.