

Evidence Law Week 1 Lecture

Structure of the Evidence Act

- The Evidence Act is organised into four parts, each focused on a different aspect of evidence law:
 1. Formalities, definitions, and applicability of the Act;
 2. Types of evidence that can be adduced: witnesses, documents, and other evidence;
 3. Admissibility rules (such as relevance, hearsay, opinion, admissions, tendency and coincidence, credibility, and privileges);
 4. Standard and facilitation of proof.

Types of Evidence

Witness Evidence

- Oral or written statements provided by individuals affiliated with or who possess knowledge about the offence
- Implications may arise around how reliable witness evidence may be
- Witness evidence may fall into one of three categories:
 1. Honest and truthful evidence
 2. Honest but false evidence
 3. Intentionally false evidence
- One way to protect against unreliable false evidence is the introduction of a perjury offence

Document Evidence

- Can occur in many different forms
 - For example: an airline ticket, sales receipt, ingredients that can be used to make a bomb, transaction evidence, a diary or a note

Other Evidence

- Often referred to as real evidence
- Large array of evidence recovered from a crime scene that may be used as evidence
 - For example: a weapon from a crime scene, fingerprints, blood, saliva
- These exhibits generally serve as indirect evidence/circumstantial evidence
- It may show that the accused was at the crime scene, but often fail to show that the accused committed the crime

Fuller-Lyons v. New South Wales, HCA [2015]

- The High Court has unanimously allowed an appeal from a decision of the New South Wales Court of Appeal relating to the tort of negligence and inferential fact-finding.
- Fuller-Lyons, a cognitively impaired minor, was severely injured after he fell from a train moving at about 100kph.

- Originally it was held that Fuller-Lyons' body had prevented the rear doors from closing and that he fell and the State vicariously liable for the station attendant's negligence.
- The NSWCA allowed an appeal
- Held that in absence of direct evidence of how Fuller-Lyons fell from the train, the primary judge should have based his findings on an examination of alternative hypotheses reasonable available
 - It was no less possible that the door was kept ajar by an object rather than Fuller-Lyons body, and in the absence of affirmative conclusion that his body was visible from the train Fuller-Lyons could not prove the State was negligent.
- The High Court unanimously allowed the appeal, holding that the NSWCA erred in overturning the trial judge's finding that at least part of Fuller-Lyons must have been visible.
- Held there was no direct evidence of how the appellant fell from the train, and that, therefore, Corey's case depended upon indirect proof of three inferences of fact:
 - that he was trapped between the doors of the car
 - that his arm, leg and part of his torso were protruding from the car
 - that the protruding parts of his body were visible to a person standing on the platform.
- The High Court concluded that if the primary judge correctly concluded that the most reasonable and probable explanation was that Corey was trapped in the doors, that finding remains correct even if 'other possible explanations for the known facts cannot be excluded'.
- As the NSWCA accepted that Corey was trapped by the doors before the fall, it should have also upheld further finding that Corey came to be in this position as the result of the doors closing on him which was correctly characterized by the trial judge as the most likely inference "by a large measure."
- Ultimately, a family's life was determined by the indirect evidence and the factual inferences made by the judge.

Admissibility Rules

- Admissible evidence is evidence that is allowed in a courtroom
- Must satisfy all three tests in order to be admissible
 1. The evidence must be relevant
 2. The evidence must not violate any exclusionary rules
 3. The evidence must satisfy the discretion of the trial judge
- If evidence is not admissible, it is inadmissible and not allowed to be put before a jury

Proof

- The party obligated to introduce evidence in court:
 - Prosecutor or accused (criminal cases);
 - Plaintiff or defendant (civil cases)
- The evidential burden is the sufficiency of evidence introduced to prove a claim.
- The legal burden (or standard of proof) is the persuasiveness of the evidence

Evidential Burden

- The party who makes the claim must provide enough evidence that supports it.
- In a criminal trial, the prosecution must bring evidence that has the potential to prove every element of the crime for the judge or jury to consider the question of guilt.
- The judge determines whether the evidentiary burden was met
 - if a “no case” submission was made by the defence

Legal Burden

- In a criminal trial, the persuasiveness of the evidence relates to the arguments made by the prosecution
 - Is the evidence presented strongly and persuasively enough to prove the case?
- Decided by the jury (or judge if there is no jury)
- The persuasiveness of the evidence is linked with the standard of proof
 - For example, in a criminal trial, is the evidence presented by the Crown persuasive enough to prove the case beyond a reasonable doubt?

Who has the Burden?

Criminal Proceedings

- The Prosecution:
 - In criminal proceedings, it is usually the prosecution that must discharge both the evidential burden and the legal burden.
 1. The prosecution must introduce enough evidence to support each element of the alleged crime.
 2. If the evidential burden is met, the judge will allow the evidence to be considered by the jury.
 3. The jury will decide whether the legal burden has been satisfied by the prosecution.
- The Defence:
 - The general rule is that the defence does not have to prove anything
 - Exceptions:
 1. Insanity plea – shifts both evidentiary and legal burdens to the defence.
 2. Defences – self-defence, provocation, duress – shift only the evidentiary burden to the defence the prosecution has to convince the jury that the evidence is not persuasive.

Civil Proceedings

- The evidential and legal burden are upon the party making a claim (the plaintiff) or the party making a defence (the defendant).

Standard of Proof

- An argument about a fact in issue is considered persuasive if it satisfies the standard of proof – *Evidence Act* ss. 140-142
- In criminal cases:

- Beyond reasonable doubt (Prosecution)
- Balance of probabilities (Defence)
- In civil cases:
 - Balance of probabilities
- What certainty is to be reached for a reasonable doubt:
 - “A reasonable doubt is a doubt which the particular jury entertain in the circumstances” – *Green v The Queen* (1971) 126 CLR 28
 - “An imaginary or fanciful doubt or an unreal possibility is not a ‘reasonable doubt’” – s. 64 of the Jury Directions Act 2015 (Vic)
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Evidence Act 2008 S. 140 – Civil Proceedings—Standard of Proof

- (1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.
- (2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account—
 - (a) the nature of the cause of action or defence; and
 - (b) the nature of the subject-matter of the proceeding; and
 - (c) the gravity of the matters alleged.

Evidence Act 2008 s. 141 – Criminal Proceedings—Standard of Proof

- (3) In a criminal proceeding, the court is not to find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt.
- (4) In a criminal proceeding, the court is to find the case of an accused proved if it is satisfied that the case has been proved on the balance of probabilities.

Evidence Act 2008 S. 142 – Admissibility of Evidence—Standard of Proof

- (1) Except as otherwise provided by this Act, in any proceeding the court is to find that the facts necessary for deciding—
 - (a) a question whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or
 - (b) any other question arising under this Act—
 have been proved if it is satisfied that they have been proved on the balance of probabilities.
- (2) In determining whether it is so satisfied, the matters that the court must take into account include—
 - (a) the importance of the evidence in the proceeding; and
 - (b) the gravity of the matters alleged in relation to the question.

Presumptions

- Presumptions of law operate to shift the burden of proof:
- Presumptions of law are rules of evidence that affect how a fact in issue is proved.