

TOPIC 1 – INTRODUCTION TO EVIDENCE

- Evidence law
 - Rules that determine the info that fact-finders can and cannot receive to resolve factual issues in dispute in civil and criminal proceedings
 - Concerned with the process of how evidence can be given, who can give it and what types can be given
 - Not substantive, but crucial to make sure substantive law operates correctly
 - Doesn't create rights and duties
 - Party introducing evidence has to establish its relevance and admissibility
- **Objectives of evidence law**
 - Accurate & rational fact-finding
 - Truth → must be reliable
 - Disciplinary – discipline those who obtain evidence inappropriately
 - Protective – parties be treated fairly and protected from prejudices
- PP-Uniform Evidence Act applies in VIC
- **Evidence law in VIC**
 - *Evidence Act 2008* (Vic)
 - *Criminal Procedure Act 2009* (Vic);
 - *Evidence (Miscellaneous) Provisions Act 1958* (Vic);
 - Case law
- **Structure of the Act:**
 - Part 1 = formal/preliminary matters
 - Part 2 = witnesses/documents/other evidence
 - Part 3 = rules about admissibility of evidence
 - Hurdles that evidence must pass to be admitted
 - Hearsay rule
 - Part 4 = issues re proving matters
 - Standard of proof
 - Presumption of proof
 - Corroboration of evidence
 - Warnings to juries

UEA test of admissibility of evidence – if it fails a single stage = excluded:

- Is the witness **competent**?
- Is the evidence **relevant**?
- Is the evidence excluded by application of **exclusionary rule or privilege**?
- Is the evidence excluded by **operation of discretion**?
- **Criminal proceedings:**
 - state (prosecution/Crown) brings proceedings against individual (accused/defendant) who is suspected of committing crime with aim of vindication/punishment, and
 - must adduce evidence to prove each **element of charge** and rebut defences
- **Civil proceedings:**
 - P brings proceedings against D who it claims committed legal wrong with aim of redress for plaintiff, and
 - Must adduce evidence to prove **each element of cause of action** and rebut all defences

- **'Rule in Jones v Dunkel' =**

- if party, without giving satisfactory explanation why, does not call witness who would reasonably be expected to give evidence, adverse inference can be drawn against that party that witness's evidence would not have helped party's case
- not for criminal cases

Order of proceedings – first by plaintiff/prosecution

- examination in chief → cross-examination → re-examination
 - P/prosecution case closes after this
 - Then Defendant opens their case and does same process
- Then judge addresses questions of law and addresses jury
- **Voir dire – judge determines which evidence will be admitted**
 - Separate hearing from main trial (usually conducted without jury) for court to decide 'preliminary question':
 - i.e. question of fact that judge must determine to decide whether evidence should be admitted, evidence can be used against a person, or witness is competent or compellable

Section 189 - The voir dire:

- (1) If the determination of a question whether—
- (a) evidence should be admitted (whether in the exercise of a discretion or not); or
 - (b) evidence can be used against a person; or
 - (c) a witness is competent or compellable—
- depends on the court finding that a particular fact exists, the question whether that fact exists is, for the purposes of this section, **a preliminary question**.

Section 189(2): If there is a jury, a preliminary question whether—

(a) Particular evidence is evidence of an admission, or evidence to which section 138 (Discretion to **exclude improperly or illegally obtained evidence**) applies; or

(b) **Evidence of an admission**, or evidence to which section 138 applies, should be admitted—

is to be heard and determined in the jury's absence.

(4) If there is a jury, the jury is not to be present at a hearing to decide any other preliminary question unless the court so orders

Reason: so jury doesn't hear evidence against D that may be hard to rule out of their mind if the evidence turns out inadmissible

Section 189(8): If a jury in a proceeding was not present at a hearing to determine a preliminary question, evidence can't be adduced in the proceeding of evidence given by a witness at the hearing unless—

- (a) it is inconsistent with other evidence given by the witness in the proceeding; or
- (b) the witness has died

DPP v Zhang: Party seeking voir dire must:

- convince court to exercise discretion to grant it by establishing reasonable grounds, and
- court must identify party's objection to admission of evidence (which gives rise to voir dire) and the basis for it, and rule on whether the evidence has been admitted into the proceeding