

## LLB352 EVIDENCE NOTES

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### RELEVANCE

- Any evidence that could rationally affect the assessment of a probability of a fact in issue is relevant – ***Evidence Act 1995 (Cth), s 55(1)***
  - o Evidence is not inadmissible merely because it relates to:
    - The credibility of a witness – **The Act, s 55(2)(a)**
    - The admissibility of other evidence – **The Act, s 55(2)(b)**
    - A failure to adduce evidence – **The Act, s 55(2)(c)**
- Except as otherwise provided, relevant evidence is admissible and irrelevant evidence is inadmissible – **The Act, s 56**
- If relevance of a piece of evidence depends on the court making a particular finding, court may declare it relevant – **The Act, s 57**
  - o Must be reasonably open to making that finding or later reasonably open based on further evidence – **The Act, ss 57(1)(a) & 57(1)(b)**
  - o If relevance of evidence depends on the existence of a common purpose, court may use it to find a common purpose – **The Act, s 57(2)**
- Court draws inferences from evidence if relevance is questioned – **The Act, s 58**

### **Direct Relevance**

- Where evidence directly renders a fact in dispute likely (Ex: ‘I saw Amanda rob the bank’ in a case in bank robbery)

### **Indirect Relevance**

- Where evidence does not directly render a fact in dispute likely, but affects probative value of other evidence (Ex: ‘You were tired when you say you saw Amanda’)

### **Circumstantial Evidence**

- Where the weight of indirect evidence allows you to draw a logical inference (Ex: Amanda’s DNA was all over the bank, she has a balaclava and a load of money)

### ***Hollingham v Head Rule***

- The fact the defendant previously did something similar to what is alleged now is not relevant by itself, but may be when combined with other evidence

### ***R v Stephenson Rule***

- Nobody knew who was driving and the prosecution wanted to lead evidence that one of the people in the car was drunk to prove they were the driver
- Not relevant because there was no evidence the car was being driven dangerously

### ***R v Buchanan Rule***

- A claim by the defendant may render previously irrelevant evidence relevant
- Ex: defendant said he could drink a lot without being affected and someone saw him driving dangerously before – his statement rendered that evidence relevant

### ***Wilson v The Queen Rule***

- Evidence about relationships of parties from which inferences can be drawn is relevant
- Ex: wife said she was afraid her husband would kill her, then was killed ‘accidentally’

### **Relevance Checklist**

1. What are the facts in issue? What is agreed and what is contested?
2. Does the piece of evidence affect the possibility of this fact being proved or disproved?
  - a. Does it show some logical connection to a fact in issue?
  - b. Can it prove proximity to a fact in issue?
  - c. Does it show the nature of a relationship?
  - d. Does it show a connecting link?

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### **PRESUMPTIONS**

- An artificial starting point where the onus of proof is on a party disputing it to rebut

### **Examples of Common Presumptions**

- Presumption of legitimacy of a child born to married parents – ***Piggot v Piggot***
- Presumption of validity of marriage – ***Axon v Axon***
  - o Except with polygamy, where prosecution must prove a valid marriage – ***R v Umanski***
- Presumption of regular occurrence of official acts – ***Pertl v Kahl***
- Presumption of accuracy of scientific instruments (breathalyser) – ***Road Traffic Act 1974 (WA), s 70(2)***
- The presumption of innocence

