



LLB301 – EXAM NOTES

Semester 2 2020



Table of Contents

BACKGROUND	6
THEORIES ON THE LAW OF EVIDENCE.....	6
THE LAW OF EVIDENCE	6
RELEVANCE.....	8
THRESHOLD QUESTION	8
WHEN IS EVIDENCE RELEVANT? – s 55.....	8
ADMISSIBILITY – s 56	9
SECTION 57 – PROVISIONAL RELEVANCE	10
SECTION 58 – INFERENCES AS TO RELEVANCE	10
PROOF.....	11
PRIMA FACIE CASE – NO CASE SUBMISSION.....	11
STANDARD OF PROOF.....	12
BURDEN OF PROOF	15
<i>Legal Burden</i>	15
<i>Evidential Burden</i>	15
<i>Tactical Burden</i>	15
JUDICIAL NOTICE.....	17
MATTERS OF LAW – s 143	18
MATTERS OF COMMON KNOWLEDGE – s 144	18
CERTAIN CROWN CERTIFICATES – s 145	19
FACILITATION OF PROOF	20
EVIDENCE PRODUCED BY MACHINES	20
EVIDENCED PRODUCED BY MACHINES IN THE COURSE OF BUSINESS	20
ATTESTATION OF DOCUMENTS.....	21
SEALS AND SIGNATURES.....	22
DOCUMENTS OVER 20 YEARS OLD.....	23
MATTERS OF OFFICIAL RECORD.....	23
MATTERS RELATING TO POST AND COMMUNICATIONS	23
CORROBORATION	27
ADDUCING EVIDENCE.....	28
DOCUMENTARY EVIDENCE.....	28
<i>General Rule</i>	29
<i>Voluminous or Complex Documents</i>	32
OTHER EVIDENCE	33
<i>Views</i>	34
COURT’S CONTROL OVER PROCEEDINGS	37
GENERAL POWERS OF THE COURT.....	37
COURTS DISCRETION TO GIVE LEAVE, PERMISSION OR DIRECTION	37
VOIR DIRE	38
CALLING WITNESSES.....	40
OATHS AND AFFIRMATIONS	41
GENERAL RULE.....	42
SILENCE OF ACCUSED AT TRIAL	43
COMPETENCE AND COMPELLABILITY OF WITNESSES	46
GENERAL RULE	46

EXCEPTIONS	46
<i>Lack of Capacity</i>	46
<i>Sovereign and Others</i>	48
<i>Judges and Jurors</i>	49
EXCEPTIONS IN CRIMINAL PROCEEDINGS ONLY	49
EXAMINATION OF WITNESSES	53
COURT’S CONTROL OVER QUESTIONING	53
MANNER AND FORM OF QUESTIONING	54
REVIVING MEMORY	57
EXAMINATION IN CHIEF AND RE-EXAMINATION	59
<i>Leading Questions</i>	59
CROSS-EXAMINATION.....	63
CREDIBILITY	68
THE CREDIBILITY RULE	68
EXCEPTIONS TO THE CREDIBILITY RULE.....	70
<i>Cross-Examination</i>	70
<i>Cross Examination in Criminal Proceedings</i>	71
<i>Rebutting a Denial in Cross-Examination</i>	73
<i>Re-Establishing Credibility</i>	74
<i>Credibility of Persons who are Not Witnesses</i>	75
<i>Persons with Specialised Knowledge</i>	77
TENDENCY AND COINCIDENCE	79
TENDENCY OR COINCIDENCE	79
INITIAL QUESTIONS – APPLICATION AND USE FOR OTHER PURPOSES.....	79
TENDENCY	81
COINCIDENCE RULE	85
SIGNIFICANT PROBATIVE VALUE	87
NOTICE REQUIREMENTS.....	88
FURTHER RESTRICTIONS IN CRIMINAL PROCEEDINGS.....	90
CHARACTER EVIDENCE	92
COMMON LAW BACKGROUND	92
CRIMINAL PROCEEDING	92
EVIDENCE ABOUT THE ACCUSED PERSONS CHARACTER	92
EVIDENCE OF CHARACTER OF CO-ACCUSED	94
LEAVE REQUIRED TO CROSS-EXAMINE ABOUT CHARACTER.....	94
NOTE – SECTION 192A – ADVANCE RULINGS AND FINDINGS.....	95
IDENTIFICATION EVIDENCE.....	96
CRIMINAL PROCEEDING	96
EXCLUSION OF VISUAL IDENTIFICATION EVIDENCE	96
EXCLUSION OF EVIDENCE OF IDENTIFICATION BY PICTURES.....	99
DIRECTION TO THE JURY.....	102
ANOMALIES	103
MANDATORY AND DISCRETIONARY EXCLUSION	103
ADMISSIONS/RIGHT TO SILENCE.....	105
HEARSAY AND OPINION RULES EXCLUDED FOR ADMISSIONS.....	105
EXCLUSION OF EVIDENCE OF ADMISSION THAT IS NOT FIRST HAND	105
EXCLUSION OF EVIDENCE OF ADMISSION AGAINST THIRD PARTIES.....	106
EXCLUSION OF ADMISSIONS INFLUENCED BY VIOLENCE OF OTHER CONDUCT	107
RELIABILITY OF ADMISSION BY DEFENDANTS	107
EXCLUSION OF RECORDS BY ORAL QUESTIONING	109
ADMISSIONS MADE WITH AUTHORITY.....	110

PROOF OF ADMISSIONS	111
EVIDENCE OF SILENCE GENERALLY.....	111
EVIDENCE OF SILENCE IN CRIMINAL PROCEEDINGS FOR SERIOUS INDICTABLE OFFENCES	112
DISCRETION TO EXCLUDE ADMISSIONS	114
OPINION.....	117
THE OPINION RULE	118
EXCEPTION – EVIDENCE RELEVANT OTHERWISE THAN AS OPINION EVIDENCE.....	118
EXCEPTION – LAY OPINIONS	119
ABORIGINAL AND TORRES STRAIT ISLANDER.....	120
OPINIONS BASED ON SPECIALISED KNOWLEDGE.....	120
ULTIMATE ISSUE AND COMMON KNOWLEDGE ABOLISHED.....	122
JUDGEMENTS AND CONVICTIONS.....	124
EXCLUSION OF JUDGEMENTS AND CONVICTIONS	124
EXCEPTIONS.....	125
SAVINGS.....	125
HEARSAY	127
COMMON LAW BACKGROUND AND POLICY ISSUES.....	127
EXCLUSION OF HEARSAY EVIDENCE	127
EXCEPTION – RELEVANT FOR A NON HEARSAY PURPOSE	129
COMPETENCY	132
SECTIONS 63 – 66A	132
FIRST HAND HEARSAY	133
CIVIL PROCEEDINGS – MAKER UNAVAILABLE.....	134
CIVIL PROCEEDINGS WHERE MAKER IS AVAILABLE	135
CONTEMPORANEOUS STATEMENTS ABOUT A PERSON’S HEALTH	137
CRIMINAL PROCEEDINGS IF MAKER UNAVAILABLE.....	138
CRIMINAL PROCEEDINGS IN MAKER AVAILABLE	141
NOTICE REQUIREMENTS.....	144
OBJECTION TO TENDER OF HEARSAY EVIDENCE IN CIVIL PROCEEDINGS IF MAKER AVAILABLE	145
OTHER EXCEPTIONS TO THE HEARSAY RULE.....	146
BUSINESS RECORDS EXCEPTION – s 69	146
CONTENTS OF TAGS, LABELS AND WRITING.....	148
ELECTRONIC COMMUNICATIONS.....	148
ABORIGINAL AND TORRES STRAIT ISLANDER.....	149
RELATIONSHIPS AND AGE	149
PUBLIC OR GENERAL RIGHT	150
INTERLOCUTORY PROCEEDINGS	150
PRIVILEGE	152
GENERAL CONSIDERATIONS	152
CLIENT LEGAL PRIVILEGE	153
PROFESSIONAL CONFIDENTIAL RELATIONSHIP PRIVILEGE	163
JOURNALIST PRIVILEGE	167
SEXUAL ASSAULT COMMUNICATIONS PRIVILEGE.....	168
SECTION 297 – CRIMINAL PROCEDURE ACT	168
RELIGIOUS CONFESSIONS	169
PRIVILEGE IN RESPECT OF SELF INCRIMINATION.....	170
EVIDENCE EXCLUDED IN THE PUBLIC INTEREST	173
DISCRETIONS	177
PREVIOUS HURDLES	177
SECTION 135 – GENERAL DISCRETION TO EXCLUDE EVIDENCE.....	177
SECTION 137 – EXCLUSION OF PREJUDICIAL EVIDENCE IN CRIMINAL PROCEEDINGS	179
SECTION 136 – GENERAL DISCRETION TO LIMIT USE OF EVIDENCE.....	181

SECTION 138 – EXCLUSION OF IMPROPERLY OR ILLEGALLY OBTAINED EVIDENCE	182
SECTION 139 – CAUTIONING OF PERSONS	185
WARNINGS	187
SECTION 164 – CORROBORATION REQUIREMENTS ABOLISHED	187
SECTION 165 – UNRELIABLE EVIDENCE.....	187
SECTION 165A – WARNINGS FOR CHILDREN EVIDENCE	192
SECTION 165B – DELAY IN PROSECUTION.....	194

Background

Theories on the Law of Evidence

- Gilbert – ‘best evidence rule’
- Bentham – natural system of procedure rather than binding rules
- Stephen – ‘relevancy’
- Thayer – freedom of proof, mixed with group of exceptions
- See Waight & Williams for more detail

Modern Theories

- Most modern writers accept some form of Thayer’s thesis, particularly as developed by Wigmore (Thayer’s student) who wrote the *Treatise on the Anglo-American System of Evidence in Trials at Common Law* (1904)
- Most attempts to codify evidence law have been based around the work of Thayer and Wigmore
- But the law of evidence is a conceptual minefield and there is often no agreement on terminology

The Law of Evidence

- Consists of the rules and principles governing the facts at issue in a trial
- Commonwealth – *Evidence Act 1995* (Cth) – effective 18 April 1995
- NSW – *Evidence Act 1995* (NSW) – effective 1 September 1995

Uniform Evidence Law?

- The NSW and Cth Acts commenced in 1995 and are essentially identical
- Tasmania, Victoria, the ACT and the NT have also adopted uniform evidence law
- As a result, we have near uniformity in NSW, Tasmania, Victoria, the ACT, the NT and the Cth
- ALRC Report December 2005 which was a major review of the Evidence Acts resulted in change to some rules e.g. credibility
- Other amendments have been implemented by some and some have not
- With some exceptions, the Acts reflect the common law so the cases are generally still applicable.

The Approach of the Acts

- Reflect Thayer’s thesis in that, subject to the threshold question of relevancy, all evidence is admissible unless excluded by other rules
- The Acts can then be seen as widening the scope of admissibility, compared to the common law where they have departed from common law

Common Structure of the Rules

- Relevant evidence is admissible, unless otherwise excluded (ss 55-56)
- Categories of evidence (e.g. hearsay, opinion) are then expressly included or excluded by a general rule
- Those general rules are then subject to further exclude, or limit use
- Court has inherent power to control proceedings

Underlying Principles

- Relevance is a gateway
- Is it 'fair' to allow the evidence
- Is the evidence 'unreliable'
- Can unfairness/unreliability be overcome
- Probative value vs danger of misuse
- Integrity of the legal system
- 'Truth' is not a test for admissibility – that is a matter for the jury

Relevance

Section 55 – Relevant Evidence

- (1) The evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding
- (2) In particular, evidence is not taken to be irrelevant only because it relates to:
 - (a) the credibility of a witness, or
 - (b) the admissibility of other evidence, or
 - (c) a failure to adduce evidence

Section 56 – Relevant Evidence to be Admissible

- (1) Except as otherwise provided by this Act, evidence that is relevant in a proceeding is admissible in the proceeding
- (2) Evidence that is not relevant in the proceeding is not admissible

Threshold Question

- The first question is always – is the evidence relevant?
 - If it is not – then evidence is not admissible – s 56(2) – (there is no exception to this rule)
 - If it is relevant – then it is admissible UNLESS excluded by other rules

When is Evidence Relevant? – s 55

- To be relevant in a proceeding, the evidence must:
 - **if it were accepted, be capable of rationally affecting (directly or indirectly) the assessment of the probability of a fact in issue – s 55(1)**
- There must be a ‘logical connection between the evidence and a fact in issue’ *Papakosmas v The Queen* – although need only be minimal
- Merely requires the court to ask ‘could’ the evidence, if accepted, affect the probability, even indirectly, of the existence of a fact in issue in the proceedings?
- As the test is undemanding, the trial judge should be slow to exclude evidence unless it is clear that the evidence does not satisfy the definition of relevance under s 55

‘if it were accepted’

- Requires that relevance be determined on the assumption that the tribunal of fact accepts the evidence *Adam v R*

‘fact in issue’

- Fact in issue are those facts ‘necessary by law to establish the claim, liability, or defence forming the subject matter of the proceeding’ *ALRC26 vol 1 at 641*
- The elements of the offence or issues about facts which are subordinate or collateral facts which require evidence *Smith v R*
- It is therefore necessary to identify what are the issues at the trial

Probative Value

- The evidence, if accepted, must be capable of rendering the existence of the fact more or less probable than would otherwise be the case
- Probative value is defined in the Dictionary (of the Act) as ‘**the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue**’.
- Undemanding test – low bar – ‘could’ – doesn’t need to be highly relevant or probative *Zaknic Pty Ltd v Svetle Corp*
- If evidence is of some, albeit slight, probative value, then it is admissible unless some principle of exclusion comes into play’ *Neal v R*

‘evidence is not taken to be irrelevant only because it affects’ s 55(2)

- *Credibility of a witness*: evidence for credibility is relevant because it indirectly relates to the weight of the evidence given by the witness e.g. evidence that discredits sexual assault complainant reduces probability that the sexual assault occurred in the manner they alleged
- *Admissibility of other evidence*
- *Failure to adduce evidence*: a party may wish to adduce evidence only in order to prevent the drawing of a *Jones v Dunkel* or a *Weissensteiner* inference.

Case Examples

- *Neal v R* – evidence of unhappy marriage where husband raped a seven year old girl found irrelevant
- *R v Whyte* – evidence of rape victim telling mother ‘a man tried to rape me’ was relevant to her understanding of the events
- *Lithgow City Council v Jackson* – drawing by ambulance officer who attended the scene was irrelevant as was so ambiguous could not have probative value
- *Smith v The Queen* – police evidence on the identification of the accused through CCTV footage (and from prior dealings) was not relevant as police were in no better position than the jury to draw this conclusion from evidence already before them – could not rationally affect
- *R v Rahme* – evidence admissible against Defendant B was not admissible against Defendant A and therefore was disregarded as evidence against Defendant A

Admissibility – s 56

- Only relevant evidence as above is admissible – it then must be judged against the exclusionary rules or discretionary exclusions
- Irrelevant evidence is not admissible – no discretion falls to be exercised *Smith v R*

‘Evidence that is not relevant...is not admissible’

- Spigelman CJ said that ordinarily the words ‘not admissible’ in the act means ‘not admissible over objection’ *Seltsam Pty Ltd v McGuiness*
- This approach places significant responsibility on the conduct of the parties during litigation, and has the results that the provisions of the act which operate to exclude evidence need to be positively invoked by a party to prevent the admission of the evidence

- However, the NSW Court of Criminal Appeal has observed that wrongly admitted evidence has long been held to be capable of giving rise to a miscarriage of justice notwithstanding the absence of an objection *R v Chai*

Section 57 – Provisional Relevance

- (1) If the determination of the question whether evidence adduced by a party is relevant depends on the court making another finding (including a finding that the evidence is what the party claims it to be) the court may find that the evidence is relevant:
 - (a) if it is reasonably open to make that finding, or
 - (b) subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding
- (2) Without limiting subsection (1), if the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had, or were acting in furtherance of, a common purpose (whether to effect an unlawful conspiracy or otherwise), the court may use the evidence itself in determining whether the common purpose existed

- Section 57 recognises the reality of trial procedure where evidence is offered progressively such that often the relevance of an item of evidence is not apparent until other evidence is tendered later in the proceedings
- It allows evidence to be ruled provisionally relevant and provisionally admitted, subject to the admission of other evidence before the end of the trial *Nodnara Pty Ltd v Commissioner of Taxation*

Section 58 – Inferences as to Relevance

- (1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity
- (2) Subsection (1) does not limit the matters from which inferences may properly be drawn

- To assist in determining the relevance of a document or a thing, a court may examine the item and draw any reasonable inference, including an inference as to its authenticity or identity
- This 'self authentication' procedure recognises that most documents and objects produced in court are in fact authentic and that it is costly and burdensome to maintain the common law obligation on the parties to prove their authenticity

Proof

Prima Facie Case – No Case Submission

- At first appearance
- No case submission
- The first party must discharge the burden of proof to the required standard of proof on a prima facie basis
 - If the other party submits that there is 'no case' to answer, and the court accepts this, then the issue will be withdrawn from the tribunal of fact
- On the balance of probabilities/beyond a reasonable doubt, has the party led evidence that COULD establish their case
- A 'no case' submission should be made in the absence of the jury
- The trial judge retains the right to direct that s/he does not wish to hear the defendant and to dismiss the case *Benney v Dowling*
- A *Prasad (R v Prasad)* direction is no longer available
- A criminal defendant's no case submission must succeed if:
 - the prosecution leads **no** evidence of an essential element of the offence
 - the prosecution's evidence on an essential element **could not on any available assessment** satisfy the tribunal of fact beyond a reasonable doubt

May v O'Sullivan

- When at the close of the case for the prosecution, a submission is made that there is 'no case to answer', **the question to be decided** is not whether on the evidence as it stands the defendant ought to be convicted, but **whether on the evidence as it stands he could be lawfully convicted. This is really a question of law.** Unless there is some special statutory provision on the subject, a ruling that there is a case to answer has no effect whatever on the onus of proof, which rests on the prosecution from beginning to end
- After the prosecution has adduced evidence sufficient to support proof of the issue, the defendant may or may not call evidence. Whether he does or not, **the question to be decided by the tribunal is whether, on the whole of the evidence before it, it is satisfied beyond reasonable doubt that the defendant is guilty. This is a question of fact.**

On Appeal

- Can an appeal court which finds that the trial judge erroneously rejected a 'no case' submission by the appellant have regard to evidence subsequently brought by the appellant in the trial court
 - *R v Wood* – suggests that if the defence has still elected to lead the evidence and the conviction was, on the whole of the evidence, supportable, then it cannot be said that any substantial miscarriage of justice occurred

Standard of Proof

Civil Proceedings

Section 140 – Civil Proceedings: standard of proof

- (1) In a civil proceedings, 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 proceedings; and
 - (c) the gravity of the matters alleged

Civil Proceedings

- A proceeding is a civil proceedings unless it is a prosecution for an offence that is an offence against or arising under an Australian law
 - The High Court has held that proceedings for an offence charged under the Customs Act and the Excise Act the standard of proof is BRD *Chief Executive Officer of Customs v Labrador Liquor Wholesale*

Balance of Probabilities

- A tribunal of fact must be 'satisfied that it was more probable than not' *Carney v Newton*
- A party will not succeed merely because the party's case is more probable than that of the opponent, if the court considers neither case more probable than not to have occurred *Rhesa Shipping Co SA v Edmunds*
- 'Bare numerical probability can be sufficient to establish proof on a balance of probabilities' *Mazzaferro v Vozzo*

Court May Take into Consideration – s 140(2)

- Ordinarily, the more serious the consequence of what is contested in litigation, the more a court will have regard to the strength and weakness of evidence before it in coming to a conclusion *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission*
- The courts have emphasised that *Briginshaw* does not create a different standard of proof for serious allegations in civil cases, rather 'the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove' *Neat Holdings v Karajan Holdings*
- The strength of the evidence required to satisfy the standard of BOP may therefore vary depending on the three matters outlined in s 140(2) + any other relevant matters including:
 - 'the inherent unlikelihood, or otherwise, of the occurrence of the matter of fact alleged' *Qantas Airways Ltd v Gama*
 - the thoroughness and precision of the conduct of the trial. In *Maritime Union of Australia v Geraldton Port Authority* the applicant spent approximately 20

days cross examining the respondents witnesses and similarly putting through detailed submissions to the court concerning the credibility of a number of the respondents witnesses. RD Nicholson J consider these factors enhance the court's obligation to carefully weigh and examine the evidence before reaching a comfortable satisfaction that the tribunal has reached both a correct and just conclusion

- 'the longstanding common law rule that evidence is to be weighed according to the proof which it was in the power of one party to produce and the power of the other party to contradict' *Qantas Airways Ltd v Gama*

Circumstantial Evidence in Civil Cases

- Where the evidence is circumstantial, the circumstances must raise 'a more probable inference in favour of what is alleged' and 'it is enough if the circumstances appearing in the evidence give rise to a reasonable and definite interference' *Bradshaw v McEwans Pty Ltd*
- 'Where competing possibilities are of equal likelihood, or the choice between them can only be resolved by conjecture, the allegation is not proved' *Palmer v Dolman*
- Generally, 'it is not necessary that all reasonable hypothesis consistent with the non-existence of a fact, or inconsistent with its existence, be excluded before the fact can be found' *Re Idyllic Solutions Pty Ltd; ASIC v Hobbs*

Criminal Proceedings

Section 141 – Criminal Proceedings: standard of proof

- (1) 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
- (2) In a criminal proceeding, the court is to find the case of a defendant proved if it is satisfied that the case has been proved on the balance of probabilities

Prosecution

- Where the prosecution bears the legal burden, it must satisfy the court **beyond reasonable doubt**
- The prosecution must prove all the elements of a crime beyond reasonable doubt. However, they do not have to prove every fact or piece of evidence BRD unless it is an indispensable link in a chain of reasoning *Shepherd v The Queen*

Beyond Reasonable Doubt

- BRD is not defined. This is consistent with the High Court's approach to jury directions, which state that no additional explanation of the phrase should be undertaken *R v Dookheea*

Circumstantial Evidence

- Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts – multiple pieces of evidence which combine to create a case theory – links in a chain *Shepherd v The Queen*
 - As opposed to direct evidence – what a witness says that he or she saw or heard or did – in a direct evidence case, if the evidence is accepted beyond

reasonable doubt, it is capable of proving the guilt of the accused – strands in a cable

- The prosecution must prove all the elements of a crime beyond reasonable doubt. However, they do not have to prove every fact or piece of evidence BRD unless it is an indispensable link in a chain of reasoning *Shepherd v The Queen*
- Where a prosecution case is built on circumstantial evidence a jury should be directed that proof of guilt beyond reasonable doubt means that proof of guilt requires the jury to find that the only rational hypothesis that can be drawn from the evidence is that of guilt *Peacock v R*
- A jury cannot return a guilty verdict unless the Crown has excluded all reasonable hypothesis consistent with innocence *The Queen v Bayden Clay*

Defendant

- On occasions the defendant will bear the burden of proof in relation to an issue
- Where this occurs, the defendant's legal burden is satisfied upon a balance of probabilities. This burden is not to be confused with an evidential burden that might apply where a defendant raises a defence e.g. automatism, self defence, duress, provocation in cases of murder, honest and reasonable mistake – where, once the defence has been raised by evidence in the proceeding, the prosecution must satisfy the Court that the defence does not apply
 - For example in *Lockyer* the defendant raised the possibility that the deceased child was murdered by her mother. The court held that he did not have to prove his innocence. 'He merely sought to raise a reasonable doubt. Evidence of slight probative value is likely to be sufficient to satisfy the defendant's evidentiary burden in this context. Where such an inference arises from that evidence, the prosecution bears the legal onus to eliminate the that reasonable possibility as part of its obligation to prove that the defendant is guilty BRD'.

Admissibility of Evidence

Section 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
 - (b) the gravity of the matters alleged in relation to the question