

## Module 2A: Relevance

### What is Relevance

- The **foundational rule** of the law of evidence.
- **s.55(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 only to—
  - I. The **credibility of a witness**; or
  - II. The **admissibility of other evidence**; or
  - III. A **failure to adduce evidence**.
- Ordinary, non-legal concept (common sense)
  - I. Something is relevant to the determination of an issue (or argument, or question) if it helps us to decide that issue in a rational manner
  - II. Logical connection between the evidence and an issue

### Relevance Defined Abroad

- In the **United Kingdom**, the House of Lords' case of **DPP v Kilbourne (1973 AC 729)** is often cited as the **authority for the notion of relevance**.
  - I. In that case, it was said that evidence is relevant if 'it is logically probative or disapprobative of some matter which requires proof'.
    - In other words, **relevant evidence is evidence which makes the matter that requires proof more or less probable**.
- In the **United States**, relevance is defined in **rule 401 of the Federal Rules of Evidence** (United States): Evidence is relevant if:
  - I. It **has any tendency to make a fact more or less probable** than it would be without the evidence; and
  - II. The **fact is of consequence in determining the action**.
- In **Canada**, based on judicial pronouncements, relevance is understood in the following terms:

- I. Evidence is **relevant where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely** than that proposition would appear to be in the absence of that evidence; or
  - II. Evidence is **relevant when it renders the existence or absence of a material fact in issue more or less likely**; or
  - III. Evidence is **relevant when it tends to increase [or decrease] the likelihood of the existence of a material fact** at issue in the proceedings.
- In **New Zealand**, **s.7(3) of the Evidence Act 2006 (NZ)** defines relevance as:
    - I. Evidence is relevant in a proceeding if it tends to prove or disprove anything that is of consequence to the determination of the proceeding.

### Whether Evidence is Relevant

- When deciding whether a piece of evidence, if accepted, may help to determine an issue rationally (and therefore its relevance), court has to –
  - I. Assume that the **evidence is credible**.
  - II. **Leave it to fact-finder later to weigh up the credibility and reliability** of that evidence when determining the issue to which it relates
- Ordinarily then, the court suspends any consideration of whether the evidence is reliable or credible.
- An example of “evidence” that is **inherently incredible and therefore fails the test of relevance** is where a witness testifies that he observed an event while having an out-of-body experience. Such evidence will not have the capacity to rationally affect a fact-finder’s assessment as to how likely a fact in issue did occur (and therefore existed) or otherwise.
  - I. Put another way, it could not be accepted by a rational fact- finder as having any effect on how the fact-finder will assess whether a fact in issue did occur (and therefore existed) or otherwise.

### Facts in Issue

- Relevance of evidence is to “facts in issue”
  - I. **Civil matters:** Elements of cause of action or defence – is the evidence relevant to any of the facts required to establish the elements of the plaintiff’s cause of action or the defendant’s defence to the plaintiff’s claim?

- II. **Criminal matters:** Elements of the offence – is the evidence relevant to any of the facts required to prove the elements of the offence?