

TOPIC 1: RELEVANCE

EVIDENCE

Definitions

| WORD | MEANING |
|------------------------|---|
| Evidence | Material offered in court during a trial for the purpose of enabling the finder of fact to reach a verdict on the facts in issue in a particular dispute |
| Finder of fact | Judge, jury, magistrate |
| Verdict | Guilty/ non-guilty |
| Prejudicial | The risk of evidence being misused by the (jury/ judge/ magistrate) against the accused either by being used for an impermissible use or being given undue weight. Not just putting the accused in a bad light. |
| Probative Value | The degree to which evidence can rationally affect the assessment of the existence of a fact in issue. |

Categories of Evidence:

The evidence in question falls under the category of:

- **Real Evidence**
 - Fingerprints
 - Weapons
 - CCTV footage
 - Documents
- **Testimonial Evidence**
 - Oral evidence given by witnesses in court under oath
 - Documents (can also be testimonial)

Uses of Evidence (Direct vs Circumstantial Evidence):

| | DIRECT EVIDENCE (FACTS IN ISSUE) | CIRCUMSTANTIAL EVIDENCE (RELEVANT FACTS) |
|-----------------|--|---|
| MEANING | Evidence which, if accepted, tends to prove a fact in issue. → <i>Festa v The Queen</i> | Evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. → <i>Shepherd v The Queen</i> |
| EXAMPLES | <ul style="list-style-type: none">• I saw my 3-year-old snatch a chocolate chip cookie from the plate and eat it• Eyewitness of assault at a bar (direct evidence of what they saw and heard) | <ul style="list-style-type: none">• There were 5 cookies on the plate 2 minutes ago and now only 4 cookies are left. There were only 3 people in the house when the cookie disappeared. My son has crumbs on his mouth. He has chocolate on his fingers |

Rules of Evidence (Direct vs Circumstantial Evidence):

| RULE | MEANING |
|-------------------------------|---|
| Hearsay | <ul style="list-style-type: none">Hearsay evidence is testimony from an under-oath witness who is reciting an out-of-court statement, the content of which is being offered to prove the truth of the matter asserted |
| Opinion | <ul style="list-style-type: none">Evidence that constitutes an inference, evaluation, interpretation or belief rather than an observed fact (unless expert opinion). |
| Propensity/ Similar Fact | <ul style="list-style-type: none">Propensity is all evidence which shows that the accused has a tendency to commit crime.Similar fact is all evidence which shows that, on a previous occasion, the accused has performed the same act as that constituting the charged offence. |
| Credibility/ Character in XIC | <ul style="list-style-type: none">Character evidence is evidence that relates to whether an accused is of good or bad character. |

RELEVANCE

Relevance

Per the principle established in **Goldsmith v Sandilands**, 'evidence is relevant if it could rationally affect, directly or indirectly, the assessment of the probability of the existence of a fact in issue in the proceeding.' The fact in issue here is _____. The evidence here directly/ circumstantially goes to proving the fact that _____, therefore it is relevant.

- In **R v Neal**, the court held that evidence akin to **establishing a motive** was **relevant**
- If evidence is **NOT relevant**, then it is **INADMISSABLE** → **HML v The Queen**

TOPIC 2: EXAMINATION IN CHIEF (XIC)

WITNESSES

Prosecutorial Burden (calling witnesses)

| | CRIMINAL | CIVIL |
|---------------------------|---|--|
| CALLING WITNESSES: | Per the burden established in <i>R v Apostilides</i> , in a criminal proceeding, there is a prosecutorial duty to call all reliable, material witnesses, even if the evidence goes against their case. | Per <i>Jones v Dunkel</i> , if a party fails to call a witness that would be expected to give relevant evidence, an adverse inference may be drawn, allowing the court to infer that the uncalled evidence would not have assisted the party's case. |
| EXCEPTIONS: | Duty is not absolute: <ul style="list-style-type: none"> Where the witness is complicit in the carrying out of the offence → <i>R. v. Johnson</i> Where the witness has given prior indication, they will be untruthful → <i>Tien Tran v. Magistrates' Court of Victoria and Anor</i> | <ul style="list-style-type: none"> Rule is not automatic Court is not obliged to draw inference Depends on circumstances Does not apply to witnesses equally available to both parties or if their evidence would be unimportant or duplicative. |

Are they Competent?

Per s9(1) of the Evidence Act (SA), presumption that every person is capable of giving sworn evidence in any proceedings. On the facts here, ____ does not fall under any of the exceptions to this presumption, hence they are competent to give sworn evidence.

Exceptions to Competency

| | RULE |
|---|---|
| CHILD OR INTELLECTUAL DISABILITY | Per ss 6-7, 9(1) a person who does not have sufficient understanding of obligation to be truthful in court (young person or intellectual disability), then per s9(2) they can provide unsworn evidence if person understands the difference between truth and a lie & indicates they will tell the truth. <ul style="list-style-type: none"> Competence not about reliability, as in <i>R v Medich</i>, a witness diagnosed with Alzheimer's was found competent to testify. |

Exceptions to Compellability

If a person is competent, then they are also compellable, meaning they can be ordered to attend court and give evidence under the threat of penalty (e.g., subpoena).

| | |
|------------------------------------|---|
| CLOSE RELATIVE OF DEFENDANT | Per s21(1)-(2) close relatives can apply for an exception to testify if it will cause serious harm to themselves or their relationship with the accused. On the facts ____, is ____ (spouse/ domestic partner/ parent/ child), which meets s21(9) definition. Testifying would subject ____ to substantial risk of serious harm to their relationship with _____. However, the nature of the alleged offence and the important of CR's likely evidence to the proceedings, outweighs exposure to aforementioned risk. |
| CRIMINAL DEFENDANT'S | Per s18(1), accused is competent for the defence however, whether they testify is their own voluntary choice (they are not compellable). Nonetheless, if ____ decides to testify, then they cannot refuse to answer questions on the basis of privilege against self-incrimination. |

Examination in Chief

Witnesses must provide **oral testimony from memory** in court, and only testify facts and observations (not opinion or hearsay).

Exceptions

- Memory Exhausted
 - Per ***Hetherington v Brooks***, witnesses may use documents made/adopted when events were fresh in their mind if their memory is exhausted. On the facts, ___ cannot fully/ accurately recall the matter unaided, hence should be able to refresh their memory with the document. (e.g., police officers, emergency service responders, expert witnesses).
- Vulnerable Witness
- Child
- Cognitive Impairment
- Certain Victims Give Evidence In Special Pre-Trial Hearings (**S12ab**)

Leading Questions

Parties are **not allowed** to ask leading questions during an Examination in Chief (questions that assume a factual premises that has not been established by the victim)

- e.g., **Where were you** on the 15th of April vs
- **Did you** go to **university** on the 15th of April (suggests answer)

Exception to leading questions in XIC

Unless per **s27**, if party's own witness is hostile/ adverse to telling truth, not just forgetful they may ask leading questions. On the facts ___ made an earlier statement inconsistent with his or her testimony in court, and the inconsistency was significant, so leading question should be permitted.