

# TOPIC 1: RELEVANCE

## EVIDENCE

### Definitions

WORD	MEANING
<b>Evidence</b>	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
<b>Finder of fact</b>	Judge, jury, magistrate
<b>Verdict</b>	Guilty/ non-guilty
<b>Prejudicial</b>	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.
<b>Probative Value</b>	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"><li>• I saw my 3-year-old snatch a chocolate chip cookie from the plate and eat it</li><li>• Eyewitness of assault at a bar (direct evidence of what they saw and heard)</li></ul>	<ul style="list-style-type: none"><li>• 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</li></ul>

## Rules of Evidence (Direct vs Circumstantial Evidence):

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

## 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"> <li>Where the witness is complicit in the carrying out of the offence → <i>R. v. Johnson</i></li> <li>Where the witness has given prior indication, they will be untruthful → <i>Tien Tran v. Magistrates' Court of Victoria and &amp; Anor</i></li> </ul>	<ul style="list-style-type: none"> <li>Rule is not automatic</li> <li>Court is not obliged to draw inference</li> <li>Depends on circumstances</li> <li>Does not apply to witnesses equally available to both parties or if their evidence would be unimportant or duplicative.</li> </ul>

#### 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 <b>ss 6-7, 9(1)</b> a person who does not have sufficient understanding of obligation to be truthful in court (young person or intellectual disability), then per <b>s9(2)</b> 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"> <li>Competence not about reliability, as in <i>R v Medich</i>, a witness diagnosed with Alzheimer's was found competent to testify.</li> </ul>

#### 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 <b>s21(1)-(2)</b> 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 <b>s18(1)</b> , 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 15<sup>th</sup> of April vs
- **Did you** go to **university** on the 15<sup>th</sup> 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.