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The court assesses this by assuming the evidence is credible and reliable, focusing on its potential to make a meaningful contribution to resolving the case.

Definition and Assessment

- Probative value: The degree to which an item of evidence affects the probability of the facts in issue-how much does it persuade us toward or against a theory of the case?
- Probative value is a function of:
 - Inferential force (the strength of the logical connection between the evidence and the fact in issue).
- The High Court in *IMM v The Queen* held that, under the uniform evidence legislation, probative value **is assessed on the assumption that the evidence is accepted** (i.e., without considering credibility or reliability).
- **Probative value** of evidence means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue (Dictionary definition of Evidence Act 2008)
- Probative value: the extent to which the evidence could rationally affect the assessment of the probability of something being fought about in court

Factors assessing probative value factors:

1. Cogency of the Evidence:
 - **The evidence must be clear, specific, and contextual.** Vague or generalized evidence (e.g., disparate representations in *Ibrahim v Pham*) may fail.
 - Consider quality of evidence: detailed or not? When did it happen?
2. Strength of the Inference:
 - For tendency evidence, **the specificity of the tendency matters** (e.g., stealing black Porsches vs. general car theft).
 - For coincidence evidence, similarities in events/circumstances are critical
 - How likely the pattern reflects guilt
3. Impact on the Fact in Issue:
 - The evidence must **meaningfully increase the likelihood of the disputed fact.**
 - Consider how the pattern relates to the charged offence
4. How much do we know about the separate events / the separate character distinct from the facts in this case?
5. What do we know and how much do we know about the evidence?
6. How strong is the pattern? How similar is the coincidence?
 - Is it disconnected or very obvious?
7. How strong is the connection to central facts in dispute in this case? Is it related to other things?

Judicial Approach

- High Court Guidance:

- Judges must assess probative value by taking evidence "at its highest" (ignoring credibility/reliability issues at the admissibility stage).-> max probative impact that evidence can have
- Legislative Amendments (s 94(5)):
 - Courts cannot consider the possibility of collusion, concoction, or contamination when assessing probative value unless there is direct evidence (e.g., a witness admitting collusion).
- Assume the source of evidence and credible and reliable (IMM)
 - NOT what the probative value is but whether the evidence is significant

IMMv the queen:

The judge, when assessing probative value, should assume that the source of evidence is credible and reliable, then just work out whether the evidence is of any good

- Vic judge said: no dont assume that - you have to get that into consideration to reduce the prbative value, if someone may be lying
- Recently further endorsed in victoria :assumes the evidence is credible and reliable and then assesses what follows from that in terms of probative value
- In the basis upon the trial judge's proceedings, the judge will accept the evidence with the highest, and does not distort a finding as to the real probative value of the evidence
- The circumstances srrounding the evidence may indicate that its highest level is not very high at all, so you should take your evidence as the hightest , but ou still have to takie into account that it may still be a pretty bad evidence (the chain of reasoning / source may could still be weak
 - Eg , the witness saw the accused in foggy conditions, bad light -> does that identification have high probative value/ low probative value / low probative value? -> in this case, it is not convincing, -> when the court is assessing this, they should assume that the jury will be convinced by the source of evidence -> and that is how to determine the probative value of the jury

The HC: 'take it as high as any other identification, and then look for particular weaknesses in the evidence which would include reliability(adopted by Victoria)

- The other approach it is identification but a weak one, because it is simply unconvincing (NSW approach)
- In this case, the latter approach, as the statute requires

In the exam: here are two possible approaches, this is correct, but here is what follows, if anything from the differences

Prejudicial effect

- "Unfair prejudice" means the risk that evidence will be used improperly by the fact-finder,