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## Week 7 – Relevance

### Relevance

“The admissibility of evidence under the Evidence Act is a process that needs to be clearly thought out before the evidence is tendered. Evidence under the Act is tendered through a process of **logical reasoning**, connecting it with the issues in the case. Evidence is no longer tendered simply for historical reasons, or by some process of intuitive reasoning ... In relation to every piece of evidence in the case **no assumption as to its admissibility should be made.**”

[A Crown Prosecutor’s comment on the Evidence Act]

**Admitted = the piece of evidence may be considered by the court to help decide the case**

Could be oral testimony through Ws e.g. answer to a question, oral testimony by way of affidavit, a document or an item of real evidence (C may observe for itself)

Can now assume it has been adduced properly in compliance with Ch 2 EA and when it comes to admissibility – some items are clearly admissible and others are inadmissible (can’t be considered) and to be admissible, E must first pass the relevance test – based on reason or rationality. Rules of E can often make or break a case and dep on who has the evidentiary burden, each party will be trying to get pieces of E admitted or trying to find a rule by which they can have E excluded

### Note to Chapter 3 – Outline of this Chapter

This Chapter is about whether evidence adduced in a proceeding is admissible. Part 3.1 sets out the general inclusionary rule that relevant evidence is admissible.

Part 3.2 is about the exclusion of hearsay evidence, and exceptions to the hearsay rule.

Part 3.3 is about exclusion of opinion evidence, and exceptions to the opinion rule.

Part 3.4 is about admissions and the extent to which they are admissible as exceptions to the hearsay rule and the opinion rule.

Part 3.5 is about exclusion of certain evidence of judgments and convictions.

Part 3.6 is about exclusion of evidence of tendency or coincidence, and exceptions to the tendency rule and the coincidence rule.

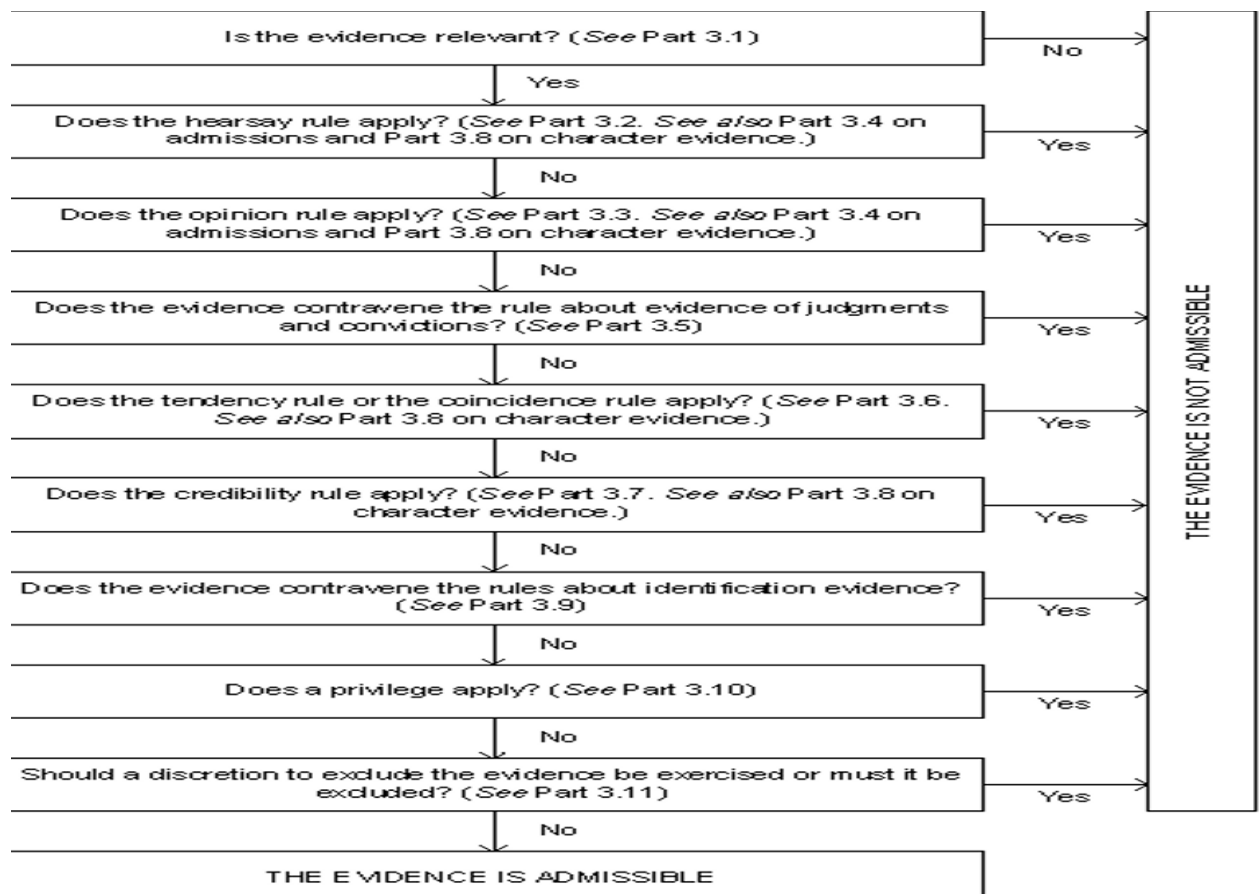
Part 3.7 is about exclusion of evidence relevant only to credibility, and exceptions to the credibility rule.

Part 3.8 is about character evidence and the extent to which it is admissible as exceptions to the hearsay rule, the opinion rule, the tendency rule and the credibility rule.

Part 3.9 is about the requirements that must be satisfied before identification evidence is admissible.

Part 3.10 is about the various categories of privilege that may prevent evidence being adduced.

Part 3.11 provides for the discretionary and mandatory exclusion of evidence even if it would otherwise be admissible.



“Evidence is relevant if it is logically probative or disprobative of some matter which requires proof.”

DPP v Kilbourne [1973] AC 729 [Lord Simon]

- Evidence is *probative* of something if it tends to show that thing to be true
- Evidence is *disprobative* of something if it tends to show that thing to be false.

Relevance should be thought of in terms of logical connection, not weight

## 55 Relevant 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 (a) the credibility of a witness, or (b) the admissibility of other evidence, or (c) a failure to adduce evidence. (says this bc THESE matters are not directly probative to facts in issue)

## 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.

## Facts in issue

- In civil matters, any facts necessary to make out the legal cause of action, and the legal defence
- In criminal matters, the factual elements of the criminal charge, and any defence
- E.g. say it's a negligence case and the insurance company admits liability – no E relating to liability will be relevant as liability is NOT a fact in issue e.g. damage – same thing however if it relates to the EXTENT of the damage( one says more, one says less, this E is relevant as it may be probative or disprobative)

## **Evidence ‘directly’ relevant to a fact in issue**

When the evidence itself is connected to the probable existence or non-existence of a fact in issue **itself**

**E.g** the poisoning of the wife – E of financial issues, arguing, shopping for arsenic are relative but when you look at each ind piece they don’t of itself prove he killed her – each piece still relevant bc helps fact finder in deciding if facts in issue proved – directly affect the reasoning of the fact finder in proving the existence or non e of the facts in issue

## **Evidence ‘indirectly’ relevant to a fact in issue**

When the evidence is connected to the probable existence or non-existence of a fact in issue **not of itself** but through other evidence.

E.g Joe and the wife – may be other E that is collateral and ind relevant to a fact in issue – not of itself but thru other E so it will ind affect the assessment of the probability of the ex of a fact in issue e.g. Alice will give E that she saw Joe put the poison in (this was directly relative and highly probative – may be E that Alice hates Joe or that she is half blind – these pieces of E would be indirectly relevant to the fact in issue in the case and would therefore be admissible.

## **Common law – logical and legal relevance**

What is logical and reasonable sometimes bears little relationship to what is logical to non lawyers – what degree of logical R is required before a piece of E bcomes legally relevant and therefore admissible at CL? Cases show that logical R not enough and legal R needed to show connection with facts in issue as they were pleaded

- **R v Buchanan [1966] VR 9** - B charged with manslaughter after car accident – admitted he had drunk alco during day b4 crash – E by a couple who saw B driving fast on wrong side of road about 35 mins b4 the accident – Q was whether this E should be admitted or not as being relevant? It was admitted as R as there was a connecting link btw the E and the fact in issue – whether B was affected by alco at time of accident? Had no alco been involved, connecting link between ZE what happened 35 mins earlier and the fact in issues would have been to distant abd therefore not legally R and inadmissible
- **R v Horvath [1972] VR 533** - H charged with culpable driving causing death when his car moved gradually onto wrong side of the road for no

apparent reason and crashed into other car – H said to popo he may have fallen asleep – W saw H overtaking ppl on wrong side of road 45 mins b4 accident – Q was whether this E was R and admissible – Held that the E was irrelevant and inad bc this E did not render the desired inference (that H drove his car neg across the road for no reason) more probable - in B the facts in issue requires proof that he was drunk at accident but in H the facts in issue needed proof that car veered across road for NO reason so what it had been doing 45 mins b4 could not logically assist in any determination.

**Hollingham v Head (1858) 140 ER 1135** – Plaintiff sold manure to def – d refused to pay saying the deal was done on condition that manure was of particular type but d said it was