

MLP334 Evidence Law

Victorian Evidence Law — Evidence Act 2008 (Vic)

Preview extract from the full 181-page, 30,094-word study guide covering Weeks 1–10.

What's included in the full notes?

The complete guide covers the foundations of evidence law, witnesses, relevance, documentary evidence, hearsay, opinion evidence, identification evidence, admissions, tendency and coincidence evidence, credibility, character and privilege.

The notes are organised by topic and include statutory explanations, key cases, practical examples, revision tables and exam-focused decision trees.

Sample Topic: Hearsay Evidence

1. The hearsay rule — Section 59

The hearsay rule prevents evidence of a previous representation from being admitted to prove a fact that the person intended to assert by making the representation, unless an exception applies.

To identify hearsay, ask three questions:

1. Was there a previous representation?
2. What fact did the person intend to assert?
3. Is the evidence being used to prove that fact?

The third question is particularly important. A statement is not necessarily hearsay simply because it was made outside court.

Example

During a trial, Mia gives evidence that her neighbour told her, “I saw Daniel break the window.”

The prosecution wants to use Mia's evidence to prove Daniel broke the window.

This raises the hearsay rule because the prosecution is relying on the neighbour's earlier statement to prove the fact asserted.

If the statement is instead tendered for a genuinely different purpose, the analysis may change.

2. First-hand hearsay

The Evidence Act 2008 (Vic) provides exceptions for certain first-hand hearsay evidence.

The relevant provisions include:

Provision	Subject
s 62	Restriction to first-hand hearsay
s 63	Civil proceedings where maker is unavailable
s 64	Civil proceedings where maker is available
s 65	Criminal proceedings where maker is unavailable
s 66	Criminal proceedings where maker is available
s 69	Business records
s 81	Admissions

An important distinction is whether the proceedings are civil or criminal and whether the person who made the representation is available to give evidence.

Sample Decision Tree: Hearsay

Is there a previous representation?

Is it tendered to prove an intended assertion?

Section 59

No

Consider the non-hearsay purpose and s 60

Yes

Hearsay rule applies unless an exception is available

Does an exception apply?

Consider ss 63–66, s 69, s 81 and other relevant provisions

Consider other exclusionary rules and conclude

Sample Topic: Opinion Evidence

1. General rule — Section 76

Section 76 generally excludes evidence of an opinion when it is tendered to prove the existence of a fact about which the opinion was expressed.

However, there are important exceptions.

2. Lay opinion — Section 78

Lay opinion evidence may be admissible where the opinion is based on what the witness perceived and is necessary to obtain an adequate account or understanding of that perception.

Example: A witness describes someone as appearing extremely frightened. This may be a permissible lay opinion where it summarises what the witness observed.

3. Expert opinion — Section 79

Expert opinion evidence may be admissible where a person has specialised knowledge based on training, study or experience, and their opinion is wholly or substantially based on that knowledge.

A person does not automatically qualify as an expert simply because they hold a professional title.

Key cases

Case	Legal significance
Dasreef Pty Ltd v Hawchar (2011) 243 CLR 588	Importance of demonstrating the connection between specialised knowledge and the opinion expressed
Honeysett v The Queen (2014) 253 CLR 122	Limits on expert opinion where the reasoning is not shown to be based on specialised knowledge

Sample Exam Approach

When answering an Evidence Law problem question, work through the following sequence:

1. Identify the evidence: What is being tendered, by whom and for what purpose?
2. Consider relevance: Apply ss 55–56.
3. Identify exclusionary rules: Does hearsay, opinion, tendency, credibility or another rule apply?
4. Consider exceptions: Does a statutory exception permit the evidence?

5. Consider discretionary or mandatory exclusion: Apply relevant provisions, including ss 135–138.
6. Conclude: Explain whether the evidence is admissible and for what purpose.