

LLB303 Evidence

SUMMER SEMESTER 2026

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Calling Witnesses
Apostilides establishes the starting position that the Crown alone bears the responsibility of deciding whether a person will be called as a witness. - The decision whether to call a person named on the indictment and from whom the defence wish to lead evidence must be made with due sensitivity to the dictates of fairness to the accused (Adel Muhammed El Dabbah). - A refusal to call the witness will be only justified by reference to the overriding interests of justice which is likely to be rare (Adel Muhammed El Dabbah). - The trial judge could have questioned the Crown prosecutor as to why they declined to call them to give evidence but would not have been permitted to adjudicate as to whether there were sufficient grounds for that decision (Apostilides). - It is only in exceptional circumstances that a trial judge can call a witness of their own volition (Apostilides). - Failure to call a witness who should have been called will only lead to a successful appeal if it occasioned a miscarriage of justice (ASIC; Apostilides). - The prosecution should call all available witnesses, however, they are not required to: - call a witness that they consider to not be truthful. - call a number of witnesses to an event who, in effect, repeat each other's evidence. - assume the role of defence counsel and look for witnesses who are contrary to their prosecution, only material witnesses.
Held in Brown v Dunn - Counsel may not suggest to the jury that a witness was being untruthful or mistaken in their evidence, or make submissions contrary to what that witness testified... - Unless...the allegations of untruthfulness or the nature of the contrary evidence which impugns what they've said, was made known to the witness - and they've been given an opportunity to comment on and resolve the inconsistency. - Putting the inconsistency to the witness allows them to defend their own evidence under oath or to qualify their own evidence. It also allows the party calling that witness to lead other corroborating evidence if available.
Form of Evidence
Means of Proof
Oral Testimony
A witness can give spoken evidence (<i>given in-person, via audio or video link or by sworn affidavit</i>) of a fact which is within their own personal knowledge. The evidence must be directly perceived through their five senses and they must not make an inference or speculate beyond what an ordinary person would. If it is outside their five senses, it may constitute opinion or hearsay (see exclusions).
Documentary
Documentary evidence involves reliance on written contents of a document to prove a fact in issue. A document is defined in sch 3 of the QEA and includes: (a) any part of a document in writing or of any other document as defined herein; and (b) any book, map, plan, graph or drawing; and (c) any photograph; and (d) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever; and (e) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and (f) any film, negative, tape or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and (g) any other record of information whatever. Examples: Recorded data which cannot speak for itself. Contract, text, letters, diaries, maps, photos, graphs, sketches, digital data, audio and video tapes. - Consider hearsay and the best evidence rule.
Producing a Document - A document is handed up to a witness. If the other party wishes to see the document, it must be provided. However, there is no requirement to produce if not 'called for'. - During X-Chief, the witness may be asked to identify the document and to explain its relevance and significance. - The document is not yet asserted as evidence of a fact in issue. Example: Documents used to refresh memory are 'produced' to the court.
Tendering a Document Once a document has been produced, if you want to tender it you must establish its relevance and admissibility