

CPEP Notes

1. Anatomy of Criminal Trial.....	2
2. Witness Questioning	2
3. Accused as a witness	7
4. Powers of Court	8
5. Logical Relevance	9
6. Legal Relevance [Exclusions/discretions]	10
7. Credibility	11
8. PIS [Previous Inconsistent Statement] Issues	15
9. Hearsay	16
10. First Hand Hearsay Exceptions	17
11. Remote Hearsay Exceptions.....	20
12. Accused/Co-accused's Character.....	22
13. Tendency & Coincidence Evidence	24
14. Opinion Evidence.....	28
15. Identification Evidence.....	31
16. Warning & Directions.....	33

1. Anatomy of Criminal Trial

1. Pre-trial hearings (s 139 CPA)

a. Advanced Determinations (s 192A)

- i. PQ's may be determined before trial commence and before jury sworn (s 130 CPA)
- ii. Court may make *advance ruling* before evidence adduced in procs if question arising in any proceedings regarding (s 192A)
 1. (a) Admissibility or use of evidence proposed to be adduced, OR
 2. (b) Operation of provis of any law in relating to evid proposed to be adduced, OR
 3. (c) Granting leave/permission/direction under s 192
- iii. Counsel + court must weigh up level of determinacy available at time advance determination is sought + consequence and likelihood of unknown variables arising later in trial (*Adam v R*)
- iv. No power for TJ to make an advance ruling requiring a discretionary determination (TKWJ)

b. Voir Dire (s 189)

- i. (1) Preliminary question (PQ) where court needs to determine if fact exists to decide if:
 1. (a) Evidence should be admitted (whether discretion is exercised or not), OR
 2. (b) Evidence can be used against a person, OR
 3. (c) Witness is competent or compellable
- ii. (2) PQs which must be heard in absence of jury include:
 1. (a) Whether particular evidence is:
 - a. Evidence of admission OR
 - b. Illegally/improperly obtained evidence that may be excluded under s 138 (a), OR
 2. (b) Whether that evidence should be admitted.
- iii. (3) In hearing of PQ regarding whether D's admission should be admitted, admission's (un)truth must be disregarded unless D introduced matter.
- iv. (4) Jury must be absent from hearing determining any other PQ unless court so orders.
- v. (5) Court may consider whether evidence heard in hearing for PQ:
 1. (a) Is likely to prejudice D, AND
 2. (b) Will be adduced in course of hearing to decide PQ, AND
 3. (c) Would be admitted if adduced at another stage of the hearing
- vi. (6) Self incrimination privilege exception (s 128(10)) does not apply to hearing to decide PQ
- vii. (8) If a jury is absent from hearing to determine a PQ, W cannot give evidence at hearing unless (8):
 1. It is inconsistent with other evidence given by the witness in the proceeding, (a) or
 2. Witness has died (b).

c. Standard of proof for admissibility - BOP (s 142(1))

- i. (2) Court MUST consider:
 1. (a) consider importance of evidence, AND
 2. (b) gravity of matters alleged

d. Matters of common knowledge do not need proof (s 144)

- i. (1) No proof required about knowledge that is not reasonably open to question and is:
 1. (a) Common knowledge where proceeding is being held or generally, OR
 2. (b) Can be verified by referring to authoritative doc can't reasonably be questioned.
 3. Knowledge should be so widely held as to give rise to the presumption that all persons are aware of it (*Properjohn*)
- ii. Court and jury is to take knowledge of that kind into account (3).
- iii. (4) Party must be given opportunity to make submissions, & refer to relevant info that relates to acquiring or consider CK in way that is necessary to ensure not no unfair prejudice
 1. Judge must tell parties what has been consulted and what conclusions were drawn so that they may correct the judge's mistakes/misapprehensions (*McAuslan*)

2. Opening address of P & D

3. P's case then D's case (s 28)

a. 3 stages of WQ

- i. EIX [*Examination in chief*]
- ii. XX [*Cross examination*]
- iii. RE-X [*Re-examination*]

b. Manner and form of WQ (s 29): (1) as party thinks fit, (2) direct evidence in narrative form etc.

4. D's case (As above)

5. Closing address of P & D

6. TJ sums up

7. Warnings and directions

2. Witness Questioning

1. Every person is *competent* or *compellable* to give evidence about fact EXCEPT (s 12)

a. Lack of capacity (s 13)

- i. (1) Person is not competent if cannot:
 1. (a) Understand question about fact; OR
 2. (b) Does not have capacity to give an answer to a question,