

LAW252 EVIDENCE

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RELEVANCE AND ADMISSIBILITY

If a piece of evidence seems to be logically relevant to proving or disproving a fact in issue, then consider it prima facie admissible (unless otherwise excluded).

- Direct evidence
- Indirect/credibility evidence
- Circumstantial evidence
- How to determine if evidence is relevant

PRESUMPTIONS

Presumptions are an artificial starting point, where the court considers something proved. The rebuttal of a presumption results in the shift of the onus of proof, and the party rebutting the presumption must bring the evidence to do so.

Common presumptions

- Presumption of legitimacy
- Presumption of validity of marriage
- Presumption of death
- Presumption of regularity
- Presumption of accuracy of scientific instruments
- **Presumption of innocence**

PRIMA FACIE CASE

A **prima facie case** is established when sufficient evidence has been presented for it to be clear that there is at least a real argument, and a logical and plausible story that stands upon on its own. No responding party has to prove anything at first instance; the evidential burden rests on the plaintiff and prosecution. If a prima facie case cannot be made out, then the defence or responding party can submit a no case to answer.

NO CASE TO ANSWER SUBMISSIONS

A **no case to answer submission** can be made when no prima facie case has been established, and there is nothing to defend against. A no case to answer can be made either on a **matter of law** (one of the elements of the offence is absent) or on a **matter of fact** (evidence is not such that a reasonable trier of fact could convict on it).

ONUS AND STANDARD OF PROOF

Evidentiary burden: each party must present sufficient evidence to the judge for the judge to determine that there is enough to go on to at least consider the matter in court. The party bears the onus or burden of establishing a prima facie case to answer. At first instance, the evidentiary burden rests with the plaintiff or prosecution.

Legal burden: The legal onus of proof lies with the person who alleges the thing that must be proved.

- **Criminal proceedings**
 - the prosecution bears both the evidentiary and legal onus of proof
 - If a defendant raises a defence, they have the evidentiary burden in respect to the defence.
 - The prosecution bears the legal onus of rebutting the presumption, and disproving the defence becomes an element the prosecution has to prove.
- **Civil proceedings**
 - Plaintiff has to prove their case and carries the evidential and legal onus of proof to establish the facts in issue of their cause of action.
 - Defendant bears the evidentiary and legal onus of proof to establish the facts in issue of any defences.

Standard of proof: refers to the level of proof a person must reach in order to have the court make a finding that the fact in issue has been proved.

- **Criminal proceedings:** beyond reasonable doubt for the prosecution.
 - Balance of probabilities for defence
- **Civil proceedings:** balance of probabilities

JUDICIAL NOTICE

The general rule is that all facts have to be proved by legally admissible evidence. However:

- The Court can take judicial notice of facts and thus excuse the party relying on them from having to prove them (indisputable facts; sufficiently notorious).
- A party can formally admit facts and thus do away with the need to have those facts proved.
- The parties can formally agree facts so that those facts do not need to be proved.

Where the court takes judicial notice of a fact, the party leading it or relying on it does not have to prove it, as the court takes it as proven. Judicial notice is given where facts are sufficiently notorious that no proof is needed. See *Parker v R* and *Holland v Jones* (fact so generally known that every reasonable person presumed to be aware of it).

Evidence Act 1906 (WA): ss 53-56, 71

s 53 Commonwealth and States etc., and their Acts to be judicially noticed

s 54 Seals of the Commonwealth and States to be judicially noticed

s 55 Official seals to be judicially noticed

s 56 Certain signatures to be judicially noticed

s 71 Certain law reports and texts may be referred to as evidence of laws

FORMAL ADMISSIONS

Civil proceedings: a party may, through its pleadings, formally admit facts, the making of such an admission relieves the party's opponent of the need to adduce evidence to prove the admitted fact.

Criminal proceedings: statutory provisions which allow the defendant to formally admit facts.

s 32 Admissions by accused persons in criminal cases

An accused person, either personally or by his counsel or solicitor, in his presence, may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence.