

# **EVIDENCE LAW SUMMARY**



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## **THE LAW OF EVIDENCE - INTRODUCTION**

Evidence is the information which provides grounds for belief that a particular fact or set of facts is true. It is not always true that all the evidence attained is correct and all the inferences drawn from them are true. Perfect knowledge is unattainable in an imperfect world. The law therefore has to be satisfied by degrees of probability of accurate truth finding.

## **RELEVANCE AND ADMISSIBILITY**

Relevance is the fundamental condition of admissibility of evidence. Evidence that is irrelevant is inadmissible. Relevant evidence is prima facie admissible, on the basis that its admission will tend to promote the aims of the law of evidence. However, it could be made inadmissible by virtue of an exclusionary rule. And those that still exist, such as the rule against evidence of character and other misconduct, tend to be less strict.

### ***Relevance***

English law does not have an authoritative statutory or common law definition of the core concept of relevance. The absence of the limits that might be imposed by such a definition permits flexibility in the application of the concept. Though, in common law - flexibility is purchased at the cost of some obscurity and inconsistency.

The word relevant means that any two facts to which it is applied are so related to each other that according to the common course of events, one either taken by itself or in connection with other facts proves or renders probable the past, present or future existence or non-existence. It is a relationship between facts.

Stephen's definition:

Relevance is concerned with the relationship between facts. It is important to note that the given item of evidence is relevant to something - the something being proper object

of proof in the case. The question therefore remains the precise analysis of the factual issue to which the evidence is claimed to be connected.

Stephen's definition requires relevance to be assessed according to the common course of things. In deciding whether something may be inferred about the existence of fact A from proof of fact B, reliance is to be placed on the common stock of knowledge about the world; in other words, on logic common sense and general experience.

Thayer - "the law furnishes no test of relevancy". The only laws which identify the existence of a relationship between facts are the laws of nature and human behaviour.

Courts prescribe certain matters to be relevant or irrelevant, but these concern substantive law. What the law deems relevant or irrelevant does not necessarily correspond to logical and everyday common sense relevance. E.g. for murder - most people would offer an explanation to the effect that an intentional act such as murder is generally done for a reason and that motiveless killings are rare. Therefore, if D had a reason to kill P it increases the probability of D's Guilt; it does this by placing him in a limited class of persons more likely than others to have committed the crime.

***Hollingham v. Head:***

P sued the plaintiff for the price of guano sold and delivered. Willes J – "it appears to me that the evidence, which was proposed to be given in this case, would not have shewn that it was probable that the plaintiff had made the contract - which the defendant contended he had made; for I do not see how the fact, that a man has once or more in his life acted in a particular way, makes it probable that he so acted on a given occasion."

He therefore rejected the generalisation based on the tendency of human behaviour to repeat itself. This approach has been rejected by many. It is often known that human behaviour generally is often repetitive. More particularly - many businessmen and traders use standard-form contracts to deal with their customers. It could be said that this case is better based on the ground of insufficient relevance of the evidence given the delay, expense and inconvenience of enquiring into transactions unrelated to the one in issue.

The relevance of a fact can be assessed taking the fact either by itself or in connection with other facts. The relevance of an item of evidence need not be considered in isolation from the other evidence in the case. The state of other evidence may critically affect the formulation of a background generalisation.

***R v. Ball:***

HL - guilty passion was used to prove incest after the coming into force of the Incest Act 1908. They had openly lived together and they had conceived a child. However, if they had different beds, then the question becomes whether they were likely to continue to indulge despite the criminalisation of such conduct.

The evidence is therefore more prejudicial than probative in the latter case.

The fact must prove or render probable existence of the fact in issue - in Stephen's test - a very high standard. It does not itself have to be strong enough to bear the whole case, but increases the probability through the weight of the evidence. It is not necessary that by proving A, it is probable that B must have occurred, it is simply by proving A, B is more probable having considered all the other relevant evidence. But Stephen's reference to other facts argue that probability is always to be assessed having regard to the other evidence in the case.

***Logical Relevance***

Rule 401 of the federal rules of evidence.

"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

***DPP v. Kilbourne:***

Lord Simon of Glaisdale:

Evidence is relevant if it is logically probative or disprobative of some matter which requires proof. Relevant evidence is evidence which makes the matter which requires proof more or less probable.

Relevance is a threshold criterion - provided that the evidence tends to increase or decrease the probability of a fact to be proved .....



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