



Computer Law & Investigation

Evidence Analysis Part 1

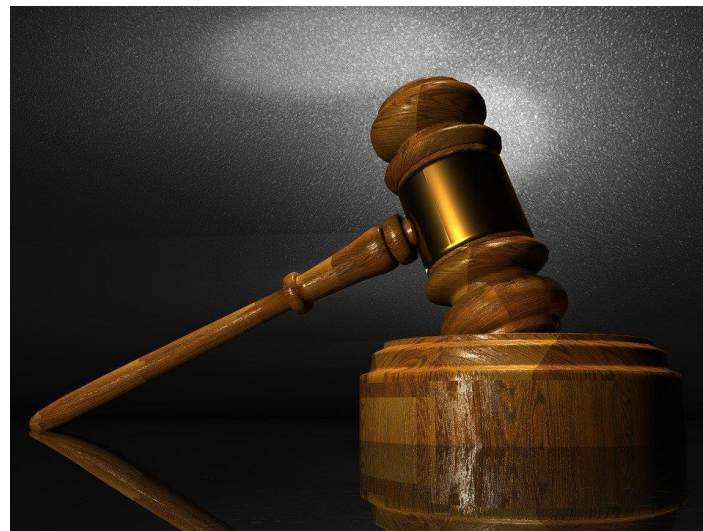
Introduction to Evidence Analysis

- ❑ Evidence may be defined as **the legal means which tend to prove or disprove any matter of fact**, the truth of which is submitted for judicial investigation in an open court of law.
- ❑ Thus in both criminal & civil proceedings, the rules of evidence must be complied with when drafting affidavits and when adducing oral evidence during trial.



Introduction

- All evidence being introduced during trial must be **relevant and admissible**.
- The rules of evidence in Singapore are found and governed by the provisions of the **Evidence Act** (Cap 97) and to a lesser extent the **Common Law**.



Introduction

Throughout the historical development of the **common law**, many **exclusionary rules** had evolved as a result of the recognition that certain types of evidence were not the best available or was unreliable or that the prejudicial effect of such evidence far outweighed its probative (believable) value, an example is the **rule against hearsay**.

Introduction

- The **Evidence Act**, on the other hand, is **inclusive** by nature and sets out **all provable facts** in terms of its **relevancy**. The Act, however, does provide **exceptions** to the various rules in that although relevant some facts may **not be admissible**. These operate somewhat like the common law exclusionary rules.
- As a matter of practice, a party's lawyer would be required to file a *Notice of Objections* to the Contents of affidavits of Evidence-in-chief of all the witnesses intended to be called. During trial, these objections would be adjudicated (to hear or settle by judicial process) upon by the judge

The Burden of Proof

The courts decision in every case will depend on whether the parties have satisfied the **burden and standard of proof** that has been imposed by the law on him/her.



The Burden of Proof

- Our starting point is Section 103 of the Act which clearly states that **whoever** desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts must bear the **burden of proving the facts in issue** to support his assertion.
- This provision is concerned with the proof of facts in issue. What is a fact in issue?
 - **“fact(s) in issue”** are all those facts which a plaintiff in a civil action or the prosecution in any criminal proceedings *must prove in order to succeed*, together with any further facts that the defendant or accused *must prove in order to establish a credible defence*.

The Legal Burden of Proof

- The facts in issue is sometimes known as the “**Legal Burden of Proof**”. In criminal cases, this burden always remains on the Prosecution in relation to the facts in issue throughout the whole trial (i.e. they have to prove it).
- This legal burden of proof must be distinguished with the “**evidential burden of proof**” specified under Section 104 of the Evidence Act.

The Evidential Burden of Proof

This concept means that the prosecution, in addition to legal burden of proof it bears, must also adduce (cite/provide) **sufficient evidence** to meet the standard required to prove the facts that are in issue.

So, if the prosecution's evidence is "weak", the defence may submit that there is "**no case to answer**" at the end of the prosecution's case. If satisfied this is really the case, the court must acquit the accused as the evidential burden has not been discharged by the prosecution.

The Evidential Burden of Proof

THE BURDEN OF PROOF

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DEFENDANT WINS

Plaintiff doesn't have enough evidence to support his case



DEFENDANT WINS

Defendant's evidence outweighs Plaintiff's evidence



PLAINTIFF WINS

Plaintiff's evidence outweighs Defendant's evidence

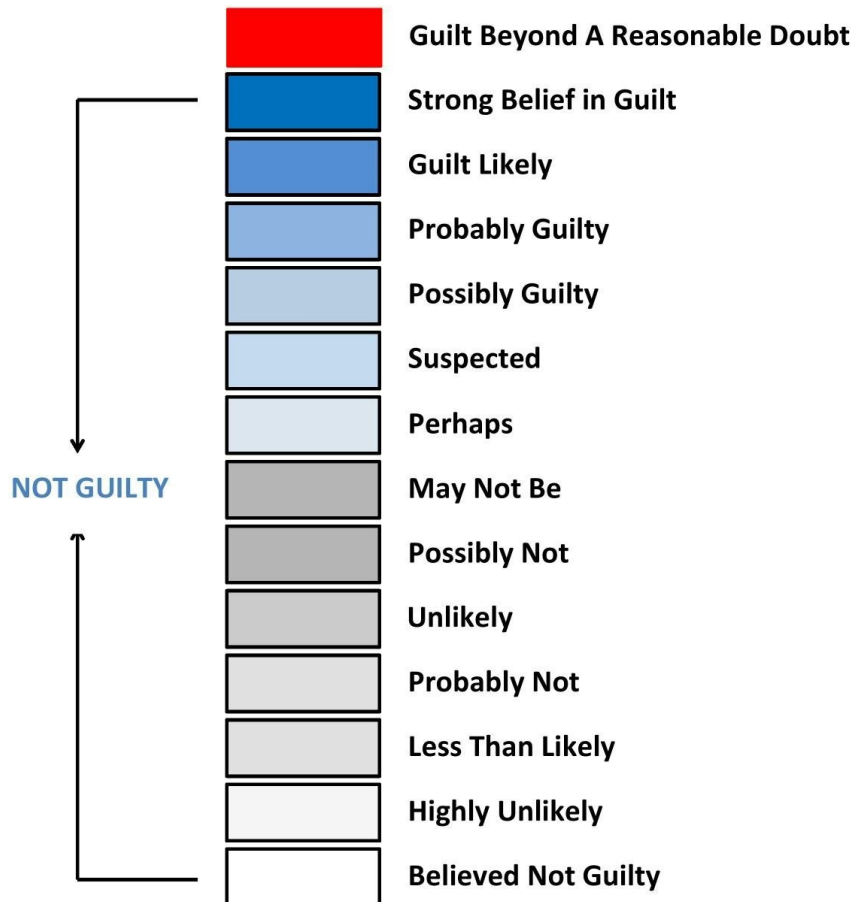
The Standard of Proof - Criminal

- ❑ In criminal cases, when the **prosecution** is required to prove the facts in issue (the ingredients or elements of the crime), he must do so “**beyond a reasonable doubt**”. P.P. v. Ang Soon Huat (1991), Jagatheesan s/o Krishnasamy v. P.P. (2006).
- ❑ If the **accused** relies on any defences or exceptions to liability spelt out in statutes, he must prove them based on a “**balance of probabilities**”. Govindasamy v. P.P.(1976)



Beyond Reasonable Doubt

BURDEN OF PROOF



*“It need not reach certainty, but it must carry a **high degree of probability**.....If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least possible’, the case is beyond reasonable doubt, but nothing short of that will suffice”. Lord Denning in the case of Miller v. Minister of Pensions [1947].*

The Standard of Proof - Civil

In **civil cases**, both the plaintiff and defendant, must as a general rule prove the facts in issue which they assert and also any defences they rely on based on a “**balance of probabilities**”. UN Pendey v. Hotel Marco Polo Pte Ltd (1980), Clarke Beryl Claire and Others v. SilkAir (Singapore) Pte Ltd (2001).



On the Balance of Probabilities

“ *It must carry a reasonable degree of probability. But not so high as is required in a criminal case. If the evidence is such that a tribunal might say ‘we think it **more probable than not**’ the burden is discharged, but if the probabilities are equal, then it is not”*. Lord Denning.



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PAGE 48

Circumstantial Evidence and Relevant Facts

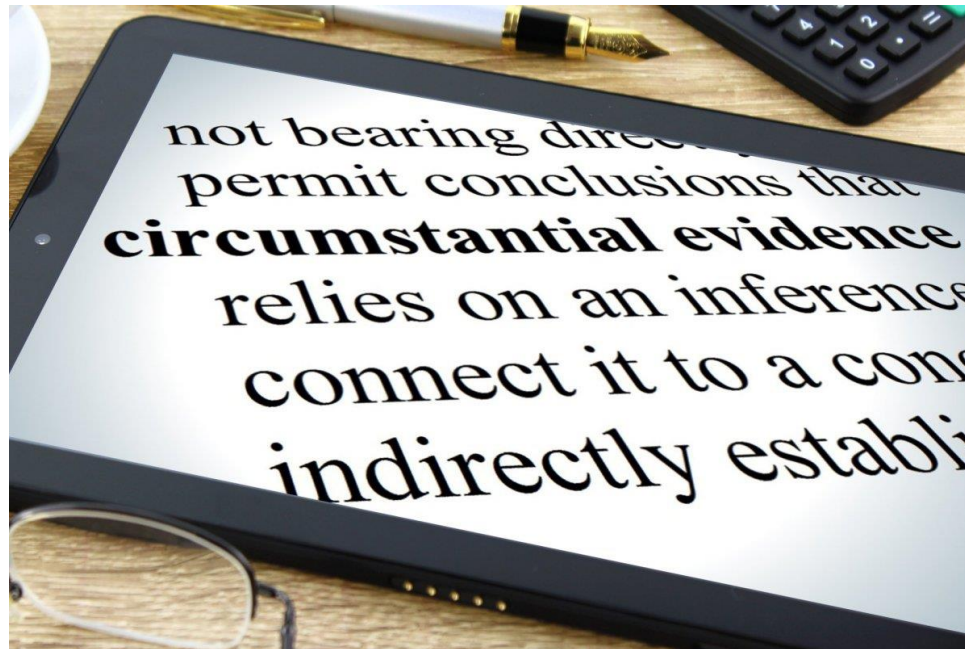


Photo by: <https://tinyurl.com/y9fyrb54>

Very often, direct evidence of the facts in issue is not available in which case the parties must rely on proving (other) facts which tend to prove the facts in issue. This form of evidence, circumstantial in nature, may be regarded as “facts relevant to the issue”.

E.g. A witness made a statement at a trial for murder that he saw the accused carrying a blood-stained knife at the door of the apartment in which the deceased was found.

The prosecution here invites the court to assume that the witness is telling the truth and also to infer that the accused inflicted the mortal wound with his knife.

Circumstantial Evidence

P.P. v. Chee Cheong Hin Constance (2006)

Ang Sunny v PP [1965-1967] SLR (R) 123

Sunny Ang Case (Accused convicted of murder on circumstantial evidence alone; body of victim was never found)

<https://www.youtube.com/watch?v=c1pG6aNwCMQ>



Relevant Facts

- Under the Evidence Act, a fact is relevant to another “when one is connected with the other in any of the ways referred to [under Part I of the Act]”
- Part I of the Act spells out a variety of general and specific categories of facts which are to be treated as relevant
- The general categories are covered by Section 6 to 11 of the Act

Relevant Facts



- **Section 6** – Facts which form part of the same transaction are relevant facts

Example - An accused is charged with murdering X by stabbing him in X's home.

Evidence of a passerby that he heard screams at the time of the murder would be relevant under section 6 as being part of the same transaction.

- **Section 7** – Facts which are the occasion, cause or effect of the facts in issue are relevant facts

Example - An accused is charged with murdering X by stabbing him in X's home.

The fact that the accused wore a shirt that is stained by X's blood is relevant under Section 7 as the effect of a fact in issue.

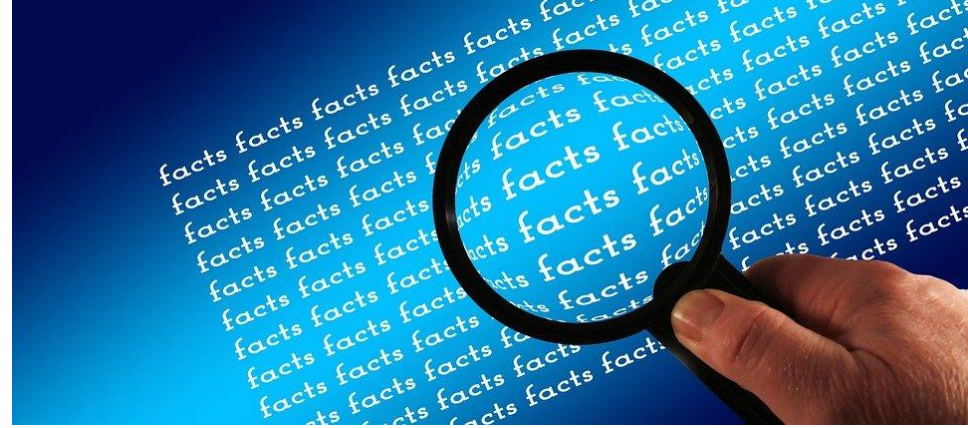
Relevant Facts

- **Section 8** – Facts which show motive, preparation and previous or subsequent conduct are relevant facts
- **Section 9** – Facts necessary to explain or introduce relevant facts are themselves relevant

Example - An accused is charged with murdering X by stabbing him in X's home.

The fact that the accused had a very heated argument with X shortly before the murder may be relevant under Section 9 as explaining the murder, as well as under Section 8 as showing possible motive.

Relevant Facts



- **Section 10** – Facts showing things said or done by conspirator in reference to a common intention or conspiracy are relevant facts
- **Section 11** – Facts which are normally irrelevant becomes relevant when:
 - ✓ They are inconsistent with any fact in issue or relevant fact

Example – Question is whether the accused committed murder in Singapore on a certain day? The fact that the accused was in Penang on that day is relevant

- ✓ If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable

Example – Did A commit the murder?

The circumstances show that the murder must have been committed by A, B, C or D. Every fact that shows that the murder could have been committed by no one else and that it was not committed by B, C or D is relevant

Similar Fact Evidence

Section 14 & 15 of the Act deals with situations under which the accused's acts or state of mind on occasions other than the present one giving rise to the offence charged, will be deemed relevant by virtue of their similarity to that offence.

- E.g. A sues B for injuries inflicted by B's ferocious dog. The fact that the dog had previously bitten X who had lodged a complaint to NEA would be a relevant fact
- Such facts would be admissible as a matter of law, but there is judicial discretion granted to exclude its admissibility if its effect is overly prejudicial (eg; evidence of bad character)

The Rule **Against** Hearsay

- Under **Section 62** of the Evidence Act requires direct evidence to be given.
- It is provided that a witness who gives oral evidence must testify as to what he himself perceived. He is NOT permitted to testify to facts in issue or relevant facts which are perceived by other persons and which were recounted to him.
- This is called the rule against “**Hearsay**”.



Rationale for the Hearsay Rule

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"I object, Your Honor! Hearsay evidence!"

- The rationale behind this principle is that the witness cannot verify the truth of the facts of which he has no personal knowledge.
- As the person who has personal knowledge is not in court, the accuracy of his perception cannot be assessed nor be tested in cross-examination.
- Moreover the possibility of fabrication is increased in situations of hearsay.

Admissions

- Section 17 of the Evidence Act defines **admissions** as “a statement oral or documentary which suggest any inference (ie arrive at a conclusion) as to any fact in issue or relevant fact”.

Simply, an admission is a statement made by a party, in civil or criminal proceedings, which is adverse to that party's case and tends to support the position of the other party

Example – Wife sues husband for divorce for adultery. Husband states out of court that he has had previous affairs, his statement is an admission.

- Section 21 further goes on to state that admissions may be proved against the person who made it and can be proved in both civil and criminal cases.
- In criminal cases, the admission may constitute a confession

Confessions

- ❑ Section 17(2) of the Evidence Act defines a **confession** as **an admission by an accused person which states or suggest the inference (ie arrive at a conclusion) that he committed the offence**
- ❑ Several conditions must be met before such a confession is admissible



Say it for the tape.' Credit: Photographee.eu

Confessions – Issue of admissibility

The conditions that must be met before a confession can be admitted in Court are:

1. In criminal cases, the accused must admit to all the elements of the offence that constitute the offence i.e. both the intention as well as the unlawful act
2. The confession or admission must be made voluntarily with no inducement, threat or promise
3. Procedurally, a confession will not be admissible if made to a police officer below the rank of Sergeant.

Corroboration

- ❑ This may be defined as independent evidence which implicates a person accused of a crime by connecting him with it. It covers evidence which confirms in some material particular not only that the crime has been committed, but also that the accused committed it.
- ❑ Corroboration is essentially concerned with the effect or weight of the evidence as distinct from its admissibility

Example - W, a witness, testifies that she saw X drive his car into a green car. Meanwhile, Y, a mechanic, testifies that when he examined X's car later that day in the car repair shop, he noticed green paint on its front bumper

Admissibility vs. Weight of Evidence

- ❑ The **admissibility of evidence**, which is a question of law, depends on:
 - The concept of “**relevancy**” of a sufficiently high degree
 - The fact that the evidence tendered does **not infringe any provisions under the Evidence Act**

- ❑ The “**weight**” of the evidence, on the other hand, is a question of fact and involves the court deciding on **the value it would place on the evidence**. This value (often termed “probative value” (ie believable) is significant in deciding **whether the court is likely to believe the evidence** despite it being admissible



Privilege

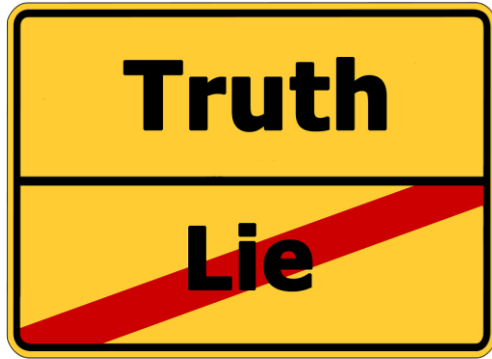
A **privilege** is an exceptional right or immunity given to a person or a class of persons. In the law of evidence, certain matters are **protected from disclosure** in court on the grounds of privilege



Privilege

Matters granted privilege by the Evidence Act includes:

- Marital communications
- Legal professional privilege
- Privilege against self-incrimination
- Public Interest privilege
- Protecting the identity of informers
- Statement made to police in the course of investigations (*refs to Letters of Representations sent to Police to reduce charges*)
- Privilege of judges and magistrates



When the Accused lies

- Where an accused lies about a material matter and his motive is to evade detection or to fabricate a defence, evidence of his lie may corroborate other evidence against him.
- But....the court must also be cautious not to treat a lie as evidence of guilt as it may have been innocently motivated (e.g. to buy time for himself) – Er Joo Nguang v PP (2000) 1 SLR (R) 756. Task for the court was to determine the motive behind the lies.

End Of Lecture