

LAW20009

Evidence Law

Week 3

Proof and Presumptions

Learning Objectives

Who has to prove what (burden of proof)

How much proof is needed (standards of proof)

Special rules for circumstantial evidence

When facts are presumed How to solve practical problems

Why this matters...

Criminal Practice: Burden determines charging decisions, plea negotiations, trial strategy

Civil Litigation: Affects case valuation, settlement positions, discovery strategy

Corporate Law: Due diligence investigations, compliance programs, internal investigations

Family Law: Custody disputes, property settlements, domestic violence applications

Administrative Law: Regulatory proceedings, professional disciplinary matters

FOUNDATION



Two types of burden:

Legal burden = ultimate responsibility to prove

Evidential burden = enough evidence to raise an issue



Key rule: Party making allegation usually proves it

BURDEN OF PROOF - CONCEPTUAL FRAMEWORK

1. Legal (Persuasive) Burden

- Ultimate responsibility for proving/disproving facts
- Determines who loses if evidence evenly balanced
- Generally fixed throughout proceedings
- "Burden of persuasion"

2. Evidential Burden

- Threshold obligation to produce sufficient evidence
- Enables issue to be considered by tribunal
- May shift during proceedings
- "Burden of going forward" or "burden of production"

LEGAL vs EVIDENTIAL BURDEN

Woolmington v DPP (1935):
Prosecution must prove ALL
elements beyond reasonable
doubt

**Defendant never has to prove
innocence**

Limited exceptions:

Mental illness defence *

Some statutory offenses

BEYOND REASONABLE DOUBT

- **Criminal standard = very high**
 - Not mathematical certainty
 - "Doubt reasonable person would have"
 - Protects against wrongful conviction
 - Academic estimates: 90-95% certainty

CIRCUMSTANTIAL EVIDENCE

Definition:
Evidence requiring inferences

Test: Must exclude any rational explanation consistent with innocence

Two models:

Links in chain = each step essential

Strands in cable
= multiple reinforcing evidence

CHAMBERLAIN CASE (DINGO BABY)

Facts: Baby disappeared, parents claimed dingo attack

Prosecution: Circumstantial evidence of murder

Result: Conviction quashed - alternative explanation not excluded

Lesson: Must exclude ALL reasonable alternatives

SHEPHERD CASE - INDISPENSABLE LINKS

Rule: If intermediate conclusion is essential to guilt, it must be proved beyond reasonable doubt

Test: Would case survive without this evidence?

If NO = indispensable link

If YES = just a strand

MODERN APPROACH

- **Courts prefer holistic assessment**
 - Look at all the evidence together
 - Avoid artificial compartments
 - Focus on overall strength
 - **Strategic tip:** Present evidence as reinforcing strands, not dependent links

CIVIL LAW - BALANCE OF PROBABILITIES

- **Civil standard = much lower than criminal**
 - "More likely than not"
 - Just over 50% certainty
 - Must be "actually satisfied"

BRIGINSHAW PRINCIPLE

- **Serious allegations need stronger evidence**
- **Three factors:**
 - How serious is the allegation?
 - How unlikely is this conduct?
 - What are the consequences?
 - **Standard stays the same, evidence quality varies**

CIVIL BURDEN ALLOCATION

- **Basic rule:** Whoever alleges something proves it
- **But consider:**
 - Who has better access to evidence?
 - What's fair and efficient?
 - Statutory modifications
- **Example:** Bailment - you prove loss, they justify it

PRESUMPTIONS - BASICS

- **Definition:** Facts assumed without proof
- **Three types:**
 - **Conclusive** - can't be challenged
 - **Rebuttable law** - can be displaced
 - **Rebuttable fact** - based on experience

COMMON PRESUMPTIONS



Regularity: People follow the law



Accuracy: Instruments work properly



Continuance: Things stay the same



Sanity: People are mentally responsible

JUDICIAL NOTICE



Section 144: No need to prove obvious facts



Two categories:

Common knowledge
Easily verified facts



Examples: Calendar facts, geography, the internet exists

CRIMINAL CHECKLIST

- What must the prosecution prove?
- Any defences with evidential burdens?
- Direct or circumstantial evidence?
- Links or strands?
- Any indispensable links?

CIVIL CHECKLIST

Who proves what?

Any presumptions apply?

How serious are the allegations?

What evidence quality needed?

TIPS

Prosecutors:

Build multiple evidence
streams

Avoid single points of
failure

Defence:

Attack weakest links

Find alternative
explanations

COMMON MISTAKES

Don't confuse:

- Legal vs evidential burden
- Standard vs strength of evidence
- Links vs strands
- Conclusive vs rebuttable presumptions



Remember: Criminal burden almost never shifts

PROBLEM-BASED LEARNING

- **Two problems:**

- Brett - Murder case (circumstantial evidence)
- Kelly v Traffikwerx - Civil negligence case

- **Method: IRAC Analysis**

- Issue - What legal questions arise?
- Rule - What legal principles apply?
- Application - How do rules apply to facts?
- Conclusion - What's the likely outcome?

PROBLEM 1 - BRETT'S MURDER CASE

• **Facts:**

- Brett charged with murdering wife Sue
- Circumstantial evidence case
- Financial motive + affair + ultimatum
- Physical evidence: knife, blood, injuries

• **Key Evidence:**

- Business financial problems
- Affair with Jenny + divorce ultimatum
- Sue's body found with kitchen knife
- Brett's fingerprints on knife
- Cuts on Brett's hands + blood traces

BRETT - ISSUE IDENTIFICATION

- **Three main questions:**

- **(a) Who bears the burdens of proof? (b) Does Brett have a case to answer? (c) Should Brett give evidence?**

- **Each involves multiple evidence law concepts:**

- Woolmington principles
- Circumstantial evidence rules
- Tactical considerations

BRETT - BURDEN OF PROOF

- **Prosecution's Legal Burden:**
 - ALL elements of murder beyond a reasonable doubt
 - Intent, causation, identity
- **Brett's Position:**
 - NO legal burden to prove innocence
 - MAY have evidential burdens for explanations
 - Low threshold - "reasonable possibility"
- **Key Point:** Brett doesn't have to prove cuts are innocent

BRETT - CIRCUMSTANTIAL EVIDENCE

- **Rational Hypothesis Test:** Must exclude ANY rational explanation consistent with innocence
- **Potential Innocent Explanations:**
 - Financial problems → divorce, not murder
 - Affair → divorce pressure, not murder motive
 - Kitchen knife → Brett's prints expected
 - Cuts from opening cartons
 - Blood from shaving cuts
- **Prosecution Challenge:** Prove these alternatives are NOT reasonable

BRETT - LINKS vs STRANDS

• **Chain Approach:**

- Financial/personal pressure
- Obtained knife with intent
- Attacked Sue
- Moved body
- Cleaned evidence

• **Cable Approach:**

- Multiple reinforcing evidence streams
- Motive + opportunity + physical evidence
- Even if doubts about individual pieces

- **Strategic Choice:** Attack weakest links vs challenge overall sufficiency



BRETT - CASE TO ANSWER

- **Test:** Could a reasonable jury convict?
- **Strong Evidence:**
 - Clear financial motive
 - Physical evidence linking Brett
 - Cleaning behaviour
- **Defence Challenges:**
 - Alternative explanations exist
 - High criminal standard
 - **Conclusion:** Likely has case to answer

BRETT - SHOULD HE GIVE EVIDENCE?

- **Arguments FOR:**
 - Explain cuts and blood innocently
 - Show character to the jury
 - Address the motive directly
- **Arguments AGAINST:**
 - No legal obligation
 - Cross-examination risks
 - Might create inconsistencies

Key Factors: Strength of prosecution case + Brett's credibility

PROBLEM 2 - KELLY v TRAFFIKWERX

- **Facts:**

- Derek died in a car accident
- Kelly claims inadequate signage
- Traffikwerx claims Derek ignored the diversion

- **Evidence Issues:**

- Derek's previous conviction
- Phone call about "way round"
- Witness confusion about vehicles
- Vehicle colour discrepancies

KELLY - BURDEN ANALYSIS

- **Kelly's Burden (Plaintiff):**
 - Prove duty, breach, causation, damages
 - Standard: Balance of probabilities
- **Traffikwerx's Burden:**
 - Prove contributory negligence
 - Derek ignored clear warnings
- **Much Lower Standard:** Just "more likely than not"

EVIDENCE (a) - PREVIOUS CONVICTION

- **Derek's failure to stop at 'Halt' sign**
- **Relevance:** Tendency to ignore traffic signs
- **Problems:**
 - Propensity evidence
 - Different circumstances
 - Single incident
- **Likely:** Admissible but limited weight

EVIDENCE (b) - PHONE CALL

- **"Unless I can find some way round them"**
- **Relevance:** Shows intention to avoid roadworks
- **Weight:** HIGH
 - Direct evidence of state of mind
 - Made shortly before accident
 - Shows deliberate plan
- **Strong evidence for contributory negligence**

EVIDENCE (c) - PHIL'S EVIDENCE

- **Saw "Lane Closed" sign being placed**
- **Problems:**
 - Distracted by phone call
 - Vehicle color confusion
 - Poor observation
 - Timing uncertainty
- **Weight:** LIMITED due to credibility issues

EVIDENCE (d) - TOM'S EVIDENCE

- **Saw white sedan ignore traffic direction**
- **Relevance:** Direct evidence of dangerous driving
- **Major Problem:**
 - Tom works for Traffikwerx (bias)
 - Derek drove RED 4WD, not white sedan
 - Possible misidentification
- **Weight:** Undermined by vehicle color error

EVIDENCE (e) - VEHICLE COLOR

- **Critical Issue: Derek drove RED 4WD Witnesses describe WHITE sedan**
- **Impact:**
 - Undermines Phil's reliability
 - Destroys Tom's evidence
 - Multiple vehicles possible
 - Memory/observation errors
- **Major blow to Traffikwerx defence**

KELLY - OVERALL ASSESSMENT

- **Kelly's Case:**

- Vehicle colour issues help her
- Evidence suggests delayed warnings

- **Traffikwerx Defence:**

- Phone call shows bad intent
- Previous conviction supports pattern
- BUT vehicle identification problems

- **Outcome:** Difficult to predict - credibility crucial

KEY LEARNING POINTS

- **Brett's Case:**

- Circumstantial evidence analysis is crucial
- Strategic decisions about defendant evidence
- Must exclude rational alternatives

- **Kelly's Case:**

- Witness reliability affects weight
- Basic factual errors destroy cases
- Civil standard easier but needs credible evidence

Both: Multiple concepts intersect in practice

EXAM TECHNIQUES

- **IRAC Method:**

- Issue - Identify ALL questions
- Rule - State principles with cases
- Application - Apply to specific facts
- Conclusion - Reach definite conclusions

- **Tips:**

- Structure answers clearly
- Address counterarguments
- Show practical understanding
- Use subheadings

WRAP-UP

- **Today We Covered:**
 - Burden and standard of proof
 - Circumstantial evidence principles
 - Civil evidence considerations
 - Practical problem solving
- **Key Takeaway:** Evidence law determines who wins and loses real cases
- **Questions?**