



LAW20009

Evidence Law

Week 1
Introductory Matters and Relevance

Housekeeping

- ▶ Introduction
- ▶ Workshops
- ▶ Extensions
- ▶ Special Consideration
- ▶ QEA Revision Session

Assignment 1A: Research assignment - Written submission	1000 words	Individual	1, 2, 3, 4	30%	11.59pm AEST Monday 1 September 2025 (Week 8)
Assignment 1B: Research assignment - Oral submission	6 minutes	Individual	1, 2, 3, 4	20%	11.59pm AEST Monday 8 September 2025 (Week 9)
Assignment 2: Exam	N/A	Individual	1, 2, 3, 4	50%	Exam Period 6-17 October 2025 (inclusive)

LEARNING OBJECTIVES

- ▶ **By the end of this lecture, you will be able to:**
 - ▶ Define evidence and distinguish it from proof
 - ▶ Explain the concept of relevance under s 55 of the Evidence Act
 - ▶ Identify and categorize facts in issue
 - ▶ Apply the logical connection test between evidence and facts in issue
 - ▶ Understand different types of evidence and when inferences can be drawn

WHAT IS EVIDENCE?

- ▶ **Definition:**
 - ▶ Information provided to the court to enable findings about facts in issue
 - ▶ Must assist the fact-finder in their task
 - ▶ Only useful if it would help determine the case
- ▶ **Key Point:** Evidence \neq Proof

EVIDENCE VS PROOF

▶ Evidence:

- ▶ Foundation of proof
- ▶ Raw materials/ingredients
- ▶ Information offered to court

▶ Proof:

- ▶ Final conclusion about truth/falsity
- ▶ What leads to acceptance of facts
- ▶ The "finished product"
- ▶ **Wells' Quote:** *"I have proved such and such a fact" means "I have led evidence of this fact: I hope the Court will accept and act upon it"*

THE RELEVANCE RULE - SECTION 55

- ▶ **Section 55(1):** *"The evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding."*
- ▶ **Key Elements:**
- ▶ "if it were accepted" - assume evidence would be believed
- ▶ "could rationally affect" - very low threshold
- ▶ "directly or indirectly" - circumstantial evidence allowed
- ▶ "probability" - not certainty, just likelihood

SECTION 56 - ADMISSIBILITY RULE

- ▶ **Section 56:**
- ▶ (1) Relevant evidence IS admissible (unless excluded by other rules)
- ▶ (2) Irrelevant evidence is NOT admissible (no exceptions)
- ▶ **The Gateway Principle:**
- ▶ Relevance = necessary but not sufficient for admissibility
- ▶ Like university entry requirements - meets minimum but doesn't guarantee admission
- ▶ **ALRC Standard:** "Minimal logical connection" - makes fact "more probable or less probable"

FACTS IN ISSUE - OVERVIEW

- ▶ Three Categories:
- ▶ Ultimate Facts in Issue
- ▶ Primary Facts in Issue
- ▶ Intermediate Facts
- ▶ Source of Ultimate Facts:
- ▶ Criminal: Elements of the offence charged
- ▶ Civil: Elements of cause of action + defences

ULTIMATE FACTS - CRIMINAL CASES

- ▶ **Smith v The Queen Definition:** *"Ultimate issues will be expressed in terms of the elements of the offence with which the accused stands charged"*
- ▶ **Example - Robbery:**
 - ▶ Taking of property
 - ▶ Belonging to another
 - ▶ Intent to permanently deprive
 - ▶ Use or threat of force
 - ▶ Absence of consent
 - ▶ **Plus:** Any defences raised by accused (self-defence, duress, etc.)

ULTIMATE FACTS - CIVIL CASES

- ▶ **Goldsmith v Sandilands:** *"Facts in issue reflect the material facts that constitute the claimant's cause of action... and those material facts that provide any justification or excuse for, or a defence to, the cause of action"*
- ▶ **Example - Negligence:**
 - ▶ Duty of care
 - ▶ Breach of duty
 - ▶ Causation
 - ▶ Damage

PRIMARY FACTS IN ISSUE

- ▶ **Definition:** Facts requiring proof that are not ultimate facts but once proved assist in deciding ultimate facts
- ▶ **Example:**
 - ▶ **Ultimate fact:** Defendant breached duty of care in driving
 - ▶ **Primary facts:** Speeding, wet road, texting, didn't brake
- ▶ **Relationships:**
 - ▶ **Chain:** One leads to next in sequence
 - ▶ **Cable:** Multiple facts combine for one conclusion

THE LOGICAL CONNECTION TEST

- ▶ **Section 55(1) Question:** Could evidence "rationally affect the assessment of the probability of the existence of a fact in issue"?
- ▶ **Key Principles:**
 - ▶ **Papakosmas:** "reliability is not the concern of relevance"
 - ▶ **Festa:** "not enough to say evidence is 'weak'"
 - ▶ **Low threshold:** Minimal logical connection required
- ▶ **Judge's Role:** Assume fact-finder will attach probative value → ask if reasonable fact-finder could use evidence

TYPES OF EVIDENCE - OVERVIEW

- ▶ **Three Main Categories:**
 - ▶ Testimony, Documents & Hearsay
 - ▶ Real & Demonstrative Evidence
 - ▶ Direct vs Circumstantial Evidence
- ▶ **Foundation Rule:** All evidence must be relevant under s 55 regardless of type

DIRECT VS CIRCUMSTANTIAL

- ▶ **Direct Evidence (Festa v The Queen):** *"Evidence which, if accepted, tends to prove a fact in issue"*
- ▶ **Examples:**
 - ▶ "I saw defendant hit victim"
 - ▶ Defendant's confession
 - ▶ CCTV of crime
- ▶ **Circumstantial Evidence (Festa v The Queen):** *"Evidence which, if accepted, tends to prove a fact from which the existence of a fact in issue may be inferred"*

THE PUBLIC HOUSE EXAMPLE

- ▶ Scrutton J in *R v Smith* (1915): *"If you see a man going into a public house, and you see him five minutes afterwards coming out, you can conclude that he has had a drink, on circumstantial evidence... from the place he has gone to, the purpose for which that place is used, and his action when he comes out"*
- ▶ **Key Points:**
 - ▶ Inference based on human experience
 - ▶ Not certain - even in 1915, other explanations possible
 - ▶ Shows how we reason from circumstances daily

DRAWING INFERENCES - R v RYAN FRAMEWORK

- ▶ **The Two-Step Test:**
 - ▶ **Step 1: Is the inference possible?**
 - ▶ Based on human experience
 - ▶ Sufficient conjunction between facts A and X
 - ▶ Regular pattern, not coincidence
 - ▶ **Step 2: Should the inference be drawn?**
 - ▶ Consider alternative explanations
 - ▶ Assess strength in specific circumstances
 - ▶ May require jury warnings

RYAN STEP 1 - POSSIBILITY

- ▶ **Mahoney JA's Test:** *"It is possible to draw the inference that X did exist if human experience has shown that in a sufficient number of cases where A has been found to exist, X will have existed"*
- ▶ **Example:** Distress → Sexual assault
 - ▶ Does human experience show this conjunction?
 - ▶ Is pattern sufficiently regular?
- ▶ **Complications with Human Behaviour:**
 - ▶ More variable than physical phenomena
 - ▶ Multiple possible causes for same behaviour

RYAN STEP 2 - COMPETING EXPLANATIONS

- ▶ **The Key Question:** Does the proposed inference emerge as "most likely" explanation?
- ▶ **Ryan Example - Other Causes of Distress:**
 - ▶ Physical assault (which occurred)
 - ▶ Embarrassment about being seen
 - ▶ Fear of questioning
 - ▶ Torn clothing and demeaning treatment
- ▶ **Rule:** Mere existence of alternatives doesn't prevent inference if main explanation "sufficiently more likely"

SPECULATION VS INFERENCE

- ▶ **Legitimate Inference:**

- ▶ Based on regular patterns of human experience
- ▶ Logical connection supported by evidence

- ▶ **Improper Speculation:**

- ▶ Based on assumptions or stereotypes
- ▶ Insufficient foundation

- ▶ **Examples:**

- ▶ **R v Hawes:** Drug addiction → current intoxication = speculation
- ▶ **Clay v The Queen:** Bedwetting without expert evidence = speculation

CASE STUDY 1 - SMITH v THE QUEEN

- ▶ **Facts:**
 - ▶ Bank robbery by 4 men captured on security cameras
 - ▶ Only issue: Was appellant one of the robbers in photos?
 - ▶ 2 police officers gave identification evidence
 - ▶ Both recognized appellant from previous encounters
- ▶ **The Relevance Question:** Could police evidence "rationally affect the jury's assessment of the probability" that person at trial is person in photos?

SMITH - THE HIGH COURT'S ANALYSIS

- ▶ **Key Finding:** *"The witness's assertion that he recognised the appellant is not evidence that could rationally affect the assessment by the jury"*
- ▶ **Reasoning:**
 - ▶ Police conclusion based on same data available to jury
 - ▶ Jury observed appellant during trial (probably longer than police)
 - ▶ No evidence of appearance change
 - ▶ Police had no advantage over jury in making comparison
- ▶ **Principle:** Evidence lacks relevance when witness has no better position than fact-finder

SMITH - WHEN IDENTIFICATION IS RELEVANT

▶ Relevant Identification Evidence:

- ▶ Different data sets (witness has info jury lacks)
- ▶ Appearance changes (witness knew defendant at relevant time)
- ▶ Distinctive features (gait, mannerisms not visible in dock)
- ▶ Connecting to other evidence (R v Goodall - jacket example)

▶ Distinguishing Cases:

- ▶ R v Marsh: Sister's lifelong knowledge of defendant
- ▶ Miller v R: Significant weight loss over 7 years

CASE STUDY 2 - R v FALZON

▶ **Facts:**

- ▶ Cannabis trafficking/cultivation charges
- ▶ Plants at 3 properties (jointly owned)
- ▶ \$120,800 cash hidden in defendant's home
- ▶ Issue: Relevance of cash evidence

▶ **Competing Theories:**

- ▶ **Crown:** Shows ongoing commercial operation
- ▶ **Defense:** Only shows past sales, not current intent

FALZON - THE COURT DECISIONS

- ▶ **Victorian CoA (Majority):** Cash irrelevant - only shows past conduct, improper propensity reasoning
- ▶ **Whelan JA (Dissent):** Cash relevant as circumstantial evidence of ongoing business
- ▶ **High Court (Unanimous):** *"Cash was an item of circumstantial evidence that, in conjunction with other indicia of drug trafficking, was capable of founding the inference... of carrying on a business of trafficking"*
- ▶ **Key Point:** Circumstantial evidence works cumulatively

SLIDE 24: RELEVANCE VS PROPENSITY

- ▶ **The Distinction:**
 - ▶ Evidence can be relevant for non-propensity reasons
 - ▶ Even if it incidentally suggests past misconduct
 - ▶ Key is identifying logical connection to current charges
- ▶ **Falzon Application:**
 - ▶ Cash relevant to show commercial operation (not propensity)
 - ▶ Supports inference about current intent to sell
 - ▶ Counters "personal use" defense
- ▶ **Contrast:** R v Wannouch - one bag's contents couldn't prove another bag's contents (speculation)

WORKSHOP - RELEVANCE EXERCISE

- ▶ **Scenario - The Bullet Box (Radi v The Queen):**
 - ▶ Drug supply prosecution
 - ▶ 991g methylamphetamine found in car
 - ▶ Box of bullets in passenger door
 - ▶ Crown theory: Bullets = handgun = indicium of drug supply
- ▶ **Your Task: Apply s 55(1) test:**
 - ▶ What's the fact in issue?
 - ▶ What's the logical connection?
 - ▶ Could evidence "rationally affect" assessment?
- ▶ **Time:** 5 minutes and then post your answer in the chat

WORKSHOP - MARRIAGE EVIDENCE

- ▶ **Scenario - The Unhappy Marriage (Neal v The Queen):**
 - ▶ Child sexual abuse charges (defendant 47, victim 7)
 - ▶ Evidence of defendant's "sexless marriage"
 - ▶ Crown theory: Marital problems → seeking sexual gratification elsewhere
- ▶ **Questions for Analysis:**
 - ▶ Is there logical connection between marital problems and child abuse?
 - ▶ What does human experience tell us?
 - ▶ How should court handle this sensitive evidence?
- ▶ **Actual Decision:** Evidence admitted with strong warnings about weak probative value

ROLEPLAY - OBJECTION HANDLING

- ▶ **Scenario:** Assault prosecution - Crown seeks to tender photographs of victim's injuries
- ▶ **Defense Objection:** "Not relevant to identity issue; will only inflame jury"
- ▶ **Roles:**
 - ▶ Crown: Argue relevance
 - ▶ Defense: Maintain objection
 - ▶ Judge: Rule on admissibility
- ▶ **Consider:**
- ▶ What are facts in issue?
 - ▶ How do photos meet s 55(1) test?
 - ▶ Relevance vs prejudice distinction

CIRCUMSTANTIAL EVIDENCE WORKSHOP

▶ The Burglary Case:

- ▶ Defendant's fingerprints on window frame
- ▶ Seen in area 30 minutes before break-in
- ▶ Stolen property in defendant's car
- ▶ False alibi to police
- ▶ Recent gambling debts (\$15,000)
- ▶ Alarm professionally disabled
- ▶ Only high-value items taken

▶ Analysis Tasks:

- ▶ Identify ultimate facts in issue
- ▶ Map inferential chains
- ▶ Apply Ryan framework
- ▶ Assess cumulative effect

QUICK ASSESSMENT QUIZ

- ▶ **Question 1:** Evidence is relevant under s 55(1) if it: a) Proves a fact beyond reasonable doubt b) Could rationally affect assessment of probability of fact in issue c) Is more probative than prejudicial d) Comes from credible source
- ▶ **Question 2:** In *Smith v The Queen*, why was police identification excluded? a) Officers not credible b) Photos poor quality c) Officers had no better position than jury d) Evidence was prejudicial

KEY TAKEAWAYS

- ▶ **5 Essential Principles:**
 - ▶ **Relevance is the gateway** - necessary but not sufficient
 - ▶ **Low threshold, high importance** - minimal connection excludes nothing vs everything
 - ▶ **Context always matters** - same evidence, different cases
 - ▶ **Inference ≠ speculation** - must be based on experience
 - ▶ **Practical application** - helps frame arguments and make rulings
- ▶ **Remember:** Every piece of evidence in every case must pass the s 55 test

LOOKING AHEAD - NEXT WEEK

- ▶ **Coming Up: When Relevant Evidence Gets Excluded**
- ▶ **Topics:**
 - ▶ Discretionary exclusions (ss 135-137)
 - ▶ Character evidence rules
 - ▶ Opinion evidence limitations
 - ▶ Hearsay exclusions
- ▶ **The Balance:** Truth-seeking vs Fairness protection
- ▶ **Assignment:** Find current criminal case, identify facts in issue and potential relevance objections

STUDY TIPS FOR SUCCESS

- ▶ **For Assignments and Exams:**
 - ▶ Always start with relevance - identify facts in issue first
 - ▶ Use statutory language - phrase answers in s 55(1) terms
 - ▶ Consider alternatives - for circumstantial evidence, what else explains facts?
 - ▶ Distinguish relevance from weight - logical connection vs believability
 - ▶ Practice systematically - work through problems step by step
- ▶ **Resources:** Anderson Ch 1, key cases, Evidence Act ss 55-58

FINAL THOUGHTS

- ▶ **Evidence Law is About:**
 - ▶ How we determine truth in legal systems
 - ▶ Balancing accurate fact-finding with procedural fairness
 - ▶ Fundamental challenge in any justice system
- ▶ **Relevance Principles:**
 - ▶ Apply across all areas of law
 - ▶ Criminal, civil, family, administrative
 - ▶ Essential foundation for legal practice