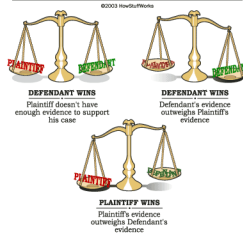


Evidence and the burden of proof

THE BURDEN OF PROOF

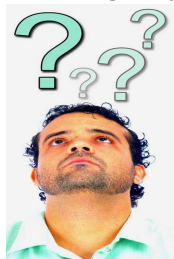


THE BURDEN OF PROOF

- That which is required to prove a legal case
- The burden is on the prosecution in a criminal case
- On the person instigating an action in a civil case

The defendant is to be presumed innocent until the Prosecution have satisfied the Court that he is guilty

- For criminal cases:
- beyond reasonable
- doubt

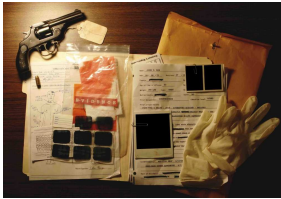


For civil cases

- On the balance
- of probabilities



WHAT IS EVIDENCE?



Evidence is something which tends to **prove or disprove** any fact or conclusion.

Quote from C.P. Harvey Q.C. on evidence:-

"Founded apparently on propositions that all Jurymen are deaf to reason, that all witnesses are presumptively liars, and that all documents are presumptively forgeries"

The Law Recognises Three Different Types:-

- 1. Oral Evidence
- 2. Documentary Evidence
- 3. Real Evidence

• **ORAL EVIDENCE**

given by witnesses on oath or affirmation. relating to a matter which the witness has actually seen or of which he has some direct personal knowledge



**DOCUMENTARY
EVIDENCE**

- Is evidence contained in documents produced for the inspection of the Court.
- Two types:
- public and private,



public documents consist of publications for public reference, such as public statutes, public registers and maps

Theft Act 1968
1968 c. 60



Private documents must be shown to be genuine before their contents may be given in evidence.

- Private documents
- are documents made
- for private purposes



Modern technology has opened up new possibilities in the form of tape, film, etc., so that the range of materials has expanded more than the original meaning

-



REAL EVIDENCE

- Inspection by the Courts or Jury of physical objects e.g. knife, car. Such objects are usually referred to as exhibits. Also photographs, tape recordings and radio recordings are admissible as real evidence.



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CLASSIFICATION OF EVIDENCE

- 1. Direct And Circumstantial Evidence
-
- 2. Primary And Secondary Evidence
-
- 3. Original And Hearsay Evidence

Direct evidence requires no mental process on the part of the Court or Jury to draw conclusions other than the acceptance of the evidence itself

e.g. a witness sees a car accident



Circumstantial evidence is evidence of certain facts from which the facts in issue may be inferred. It requires the Court not only to accept the evidence as given but to draw an inference from it.

- Witness sees a man running from a bank with a wad of notes



PRIMARY AND SECONDARY EVIDENCE

Primary evidence is the best that can be given or to put it another way the most effective evidence to prove a particular fact in issue.

Secondary evidence would be a copy or a photograph



ORIGINAL AND HEARSAY EVIDENCE

- **Original evidence** may be oral, documentary or real.
- E.g. a witness who was present at an accident can testify of their own knowledge of what took place



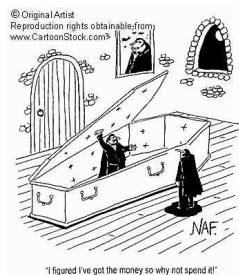
Hearsay evidence

- is evidence of what some other person, not before the Court, has said or written
- e.g. Second hand evidence, like gossip or rumour



In criminal cases the general rule is that **hearsay is inadmissible**
There are exceptions

-
- For example. Declarations made by "deceased people" in the "course of duty" may sometimes be admitted as truth of the facts stated, for generally people have no reason to lie.



Rule has been further relaxed by Statute

e.g. the Police And Criminal Evidence Act 1984 permits a document forming part of a record of a business to be admitted as evidence.

The act also covers records in the public sector as well as allowing computer records and microfilm entries to be admissible

The Criminal Justice Act 2003
Section 114(1) (d) brought about changes
Hearsay evidence can be admissible if:

- **“The court is satisfied that it is in the interests of justice for it to be admissible.”**



It is up to the judge's discretion

ILLEGALLY OBTAINED EVIDENCE

- Evidence obtained illegally in breach of the P.A.C.E. or the codes of practice **MAY** be rendered inadmissible with the risk that the Prosecution may fail.



Computer Evidence

- computers are not infallible '*hacking*' and '*viruses*' can affect information storage. These factors have been taken in to consideration when the drafting of section 69 of PACE took place



Section 69 (1) a document produced by a computer shall be admissible as evidence -

- As long as it is accurate
- And the computer was running normally with no problems



"...and we've converted this room into a home office."

Any Questions?