

# Flowchart of rules for the admissibility of evidence

**RELEVANCE**  
 “The fundamental rule governing the admissibility of evidence is that it must be relevant”: *Wilson v R* (1970) 44 ALJR 221 (per Barwick CJ); ss55-56 EA.

**OPINION**  
 [Normal] witnesses must give a plain account of what they actually perceived through their own physical senses, devoid of inference, evaluation, interpretation, belief or opinion.  
 EXCEPTION: Expert witnesses may give opinion evidence where (i) the fact in issue is such that special skill or learning is required to assess it; and (ii) the witness has sufficient skill or learning in that area: *Clark v Ryan* (1960) 103 CLR 486 per Dixon CJ at 489-492; *Weal v Bottom* (1966) 40 ALJR 436 per Barwick CJ at 438-9; ss76-80 EA.

**CREDIBILITY**  
 Evidence only of a witness’ credibility must not be led in evidence-in-chief. In cross-examination, credibility may be attacked but answers are final: *Piddington v Bennet & Wood* (1940) 63 CLR 533; ss102-108A EA.  
**EXCEPTIONS to PvB&W:**  
 (a) Prior convictions;  
 (b) Bias, impartiality or interest of witness;  
 (c) Prior inconsistent statements;  
 (d) Witness’ general bad character; and  
 (e) Witness’ physical or mental reliability.

**PRIVILEGE**  
 1. **LEGAL PROFESSIONAL PRIVILEGE:** Communications where *dominant* purpose is to provide legal advice are inadmissible: *Eso v Federal Commissioner for Taxation* (1999) 74 ALJR 339; ss117-126 EA  
 2. **“WITHOUT PREJUDICE NEGOTIATIONS”:** Are inadmissible save as to costs.  
 3. **PRIVILEGE AGAINST SELF-INCRIMINATION** (does not apply to corporations): *EPA v Caltex* (1993) 118 ALR 392; s128 EA.  
 4. **COMMUNICATIONS IN MARRIAGE** see *Evidence Act 1977 (Qld)* ss18, 21.

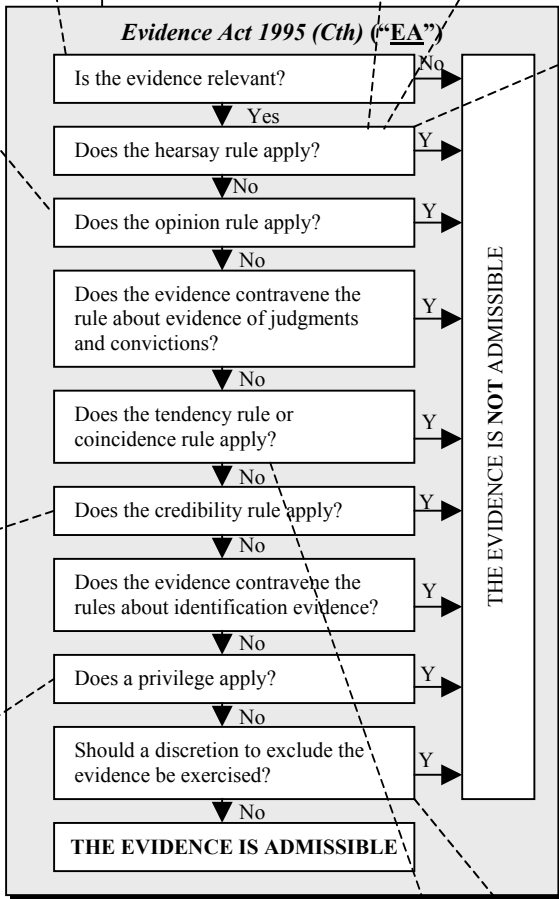
**HEARSAY**  
 Essentially, the rule against hearsay prohibits witnesses repeating out-of-court statements made by others in order to establish the truth of those statements: *Subramaniam v Public Prosecutor* [1956] 1 WLR 965 (PC); *Myers v DPP* [1965] AC 1001 – Austin Motors’ records; *Ratten v The Queen* [1972] AC 378 – “Get me the police!”; ss59-61 EA.

**IMPLIED HEARSAY**  
 Statements (and conduct) of a person other than the witness, which *were not intended to be assertive* of the fact they are tendered to prove, are still inadmissible as hearsay.  
*Walton v The Queen* (1989) 166 CLR 283 “Hello daddy”  
*R v Benz* (1989) 168 CLR 110 “My mother’s feeling sick”  
*Pollitt v R* (1992) 66 ALJR 613 “Roy got the wrong one”

**RES GESTAE (I)**  
 Incidents in the transaction are admissible if necessary for completeness: *R v O’Malley* [1964] Qd R 226 “kick the dog”; *O’Leary v R* (1946) 73 CLR 566 “drunken orgy”

**EXCEPTIONS TO THE HEARSAY RULE**

- ADMISSIONS/CONFESSIONS:** Admissions are statements made by the accused or parties to an action that are against their interests. Confessions are a special kind of admission in criminal matters whereby the accused gives a full acknowledgement of guilt. Admissions and *voluntary* confessions (ie. made without threat or inducement) are admissible: *R v Ireland* (1970) 126 CLR 321; ss81-90 EA.
- RES GESTAE (II):** statements made within the events leading to the trial (ie. part of the single transaction) are admissible [very strict test]: *R v Beddingfield* (1879) – deceased came out of room with throat cut – n/a; *Adelaide Chemical v Carlyle* (1940) 64 CLR 514 “the jar broke” – n/a; *Walton v R* (1989) 166 CLR 283.
- DECLARATIONS BY DECEASED**
  - Against interest;
  - In course of duty;
  - As to pedigree;
  - Dying declarations;
  - Contents of Will;
    - As to public or general rights
- STATEMENTS IN PUBLIC DOCUMENTS** (ss82-98 *Evidence Act 1977 (Qld)* – Business records); s69 EA
- STATEMENTS OF CONTEMPORANEOUS STATE OF MIND, EMOTIONS OR PHYSICAL CONDITION.**
- STATEMENTS PROVING NATURE OF BUSINESS** eg. Brothel
- EVIDENCE IN COMMITTAL OR OTHER PROCEEDINGS.**
- “FIRST-HAND” HEARSAY** (Commonwealth only) ss62-68 EA



**CHARACTER/PROPENSITY/TENDENCY**  
 Evidence of the general bad character of the accused or other party is inadmissible (*Attwood v R* (1960) 102 CLR 353) unless that person attempts to establish their own good character: *R v Perrier* [1991] 1 VR 697; *Lowery v The Queen* [1974] AC 85.  
 Evidence of other offences is inadmissible unless the evidence is “strikingly similar” ie. no other reasonable explanation: *Makin v AG(NSW)* [1894] AC 57; *Hoch v The Queen* (1988) 165 CLR 292; *Sutton v The Queen* (1984) 152 CLR 528; *Pfennig v R* (1995) 127 ALR 99 (HCA); ss94-101 EA.

**JUDGE’S DISCRETION**  
 A judge has a discretion to exclude evidence (eg. a confession) on the ground that it is highly prejudicial and not probative (reliable) or for public policy reasons (eg. evidence illegally obtained): *R v Ireland* (1970) 126 CLR 321; *Foster v R* (1993) 113 ALR 1; *Driscoll v R* (1977) 137 CLR 517; *Bunning v Cross* (1978) 52 ALJR 561; *Ridgeway v R* (1995) 69 ALJR 484; *R v Swaffield* (1998) 192 CLR 159; s130 *Evidence Act 1977 (Qld)*; ss135-139 EA.