

Worksheet 7.5- answers

Answer the following.

1. Hearsay evidence is **never** admissible. Is this true or false?

False. Hearsay is generally not admissible, but there are exceptions contained in section 16-22 of the Evidence Act 2006.

17 Hearsay rule

A hearsay statement is not admissible except—

- as provided by this subpart or by the provisions of any other Act; or
- in cases where—
 - this Act provides that this subpart does not apply; and
 - the hearsay statement is relevant and not otherwise inadmissible under this Act.

18 General admissibility of hearsay

(1) A hearsay statement is admissible in any proceeding if—

- the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- either—
 - the maker of the statement is unavailable as a witness; or
 - the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) This section is subject to sections 20 and 22.

2. When a person gives direct oral evidence in court, what are the benefits to the bench compared to reading a transcript of what he or she said, or an affidavit?

The benefit for the Judge or Justices hearing oral evidence from the bench is that they can observe the person's demeanour, delivery, tone of voice, body language and attitude. These aspects can assist the decision-maker to assess the witness's credibility and reliability. However it should be kept in mind that assessment of the evidence should not be made **solely** on these aspects.

3. If a defendant wants to adduce (mention or bring to court) **any evidence at all**, that is his or her right because of s 25(e) NZ Bill of Rights Act 1990 which states as a

minimum standard of criminal procedure that a defendant has the right to be present at the trial and to present a defence.

Briefly discuss this proposition.

A defendant does have the right to be present at trial and present a defence, however this does not create a right to present every little item or detail or point a defendant wishes to make, nor to unreasonably prolong proceedings, and so on. The right is of course “subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” per section 5 of the Bill of Rights Act. The provisions of the Evidence Act 2006 and the common law provide some of those limitations. One of those is the relevance rule. Only relevant evidence is admissible.

The court is not a forum for everything the defendant wants to say about his or her exemplary work record for example, unless it is relevant. If a defendant or lawyer begins to bring what you think might be irrelevant evidence (or might be leading to it) you can stop them and ask whether or not this is relevant and if you feel it is not relevant, you can ask that they stop this line of evidence.

4. If witness Jones, who was a passenger in a car whose driver is now defending a careless driving charge, says that she thinks her friend the defendant is a good driver because they have been friends for 15 years and he has never even had a ticket so he wouldn't be likely to have driven carelessly and she thinks the crash happened so quickly that it could not have been his fault..... how will the court treat this statement?

This is a statement of opinion. Section 24 of the Evidence Act 2006 provides:

24 General admissibility of opinions

A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard, or otherwise perceived.

Here, the witness's statement does not appear to be 'necessary to enable the witness to communicate anything about the actual circumstances of the charge', except that the crash was 'quick'. However the court may grant some leniency about its admissibility, or decide not to admit the evidence as it is opinion evidence with no relevance.

5. A doctor is a witness in a traffic case. The doctor says “it is my opinion that Ms Waller had suffered an unusual reaction to her prescribed medicines which could not have been predicted”. Is this opinion evidence admissible? Why or why not?

Yes. See section 25 Evidence act 2006.

6. Two Justices are considering an affidavit of evidence produced by a defendant in respect of charge under the Land Transport Act 1998. One says “most of this is inadmissible - he lives miles from anywhere, like a hundred k’s away, it’s full of irrelevancies, other people’s opinions and his opinions, and he tries to say that because he has successfully defended two cases before he clearly has a ‘propensity’ to be correct! We can’t have regard to **any** of this.”

What might the other Justice answer?

The other Justice will likely point out that section 144 of the LTA provides that if the deponent's usual place of residence is more than 80 km by road from the place of hearing, the court may receive an affidavit as evidence for all proceedings under the Land Transport Act 1998 or any regulations made under the LTA relating to driving.