



# UNIFORM EVIDENCE LAW GUIDEBOOK

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## CHAPTER 8: ADMISSIONS

*ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY*

### **Witness: Judy Dredd**

- Read the instructions in the text at the end of Chapter Eight carefully. You must keep the facts in issue squarely in your mind. At this stage, for the purpose of the criminal trial thread scenario, you are expected to be able to understand and apply the following sections of the Evidence Act: 28, 37, 55, 56, **59, 81, 82, 84, 85, 89, 90**, 137, **138**, 141, 142 & 189. You must also consider s 23V *Crimes Act 1914* (Cth).
- You have been asked to make submissions in relation to specific sections and specific cases. Whilst other sections and cases will undoubtedly be important, you must ensure that you are on top of focus legislative provisions and cases. This means you must be ready for basic questions such as:
  - What were the facts in that case? What were the facts in *issue*?
  - Why was it the subject of appeal?
  - How did the relevant section(s) come into play?
  - What part of the relevant section(s) came into play?
  - How were the sections construed?
  - What considerations or factual circumstances were taken into account by the judge or judges?
- Once you have understood the relevant legislative provisions and focus cases, you should analyse the witness statement of Judy Dredd and the Taped Record of Interview considering all information within each document. You should repeatedly ask yourself questions about the relevance of the evidence, how it supports or undermines your case, and whether its

probative value is outweighed by its prejudicial effect? In addition, you must now identify any hearsay evidence; consider whether any admissions have been made, and if so, whether any exclusion may apply.

- Given that s 138 discretionary considerations are relevant and that Judy Dredd will be cross-examined by defence counsel on a *voir dire*, defence counsel should prepare cross-examination that adduces evidence relevant to these considerations. For example, if a submission is to be made that any illegality or impropriety was 'deliberate' then cross-examination should be designed to draw this out.
  
- You will not have long to make submissions so get right to the point.
  
- **Specific Questions** that may be asked by judges in this exercise include?
  - Is the evidence hearsay? What are the admissions?
  - Was the evidence obtained improperly or in contravention of law?
  - How is s 138 construed? What discretionary considerations apply?
  - Would it be unfair to the defendant to allow use of the evidence? Why?
  - What does 'unfairness' mean? What is the relevance of any trickery?
  - What is the difference between the 'fairness' and 'public policy' exclusionary rules?

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