



UNIFORM EVIDENCE LAW GUIDEBOOK

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CHAPTER 12: IDENTIFICATION EVIDENCE

ADVICE FOR STUDENTS – TRIAL OF JAMES SWIFTY

Witness: Dolores Davidson

- Read the instructions in the text at the end of Chapter Eleven 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, 113, **114**, 115, **116**, **137**, 141, 142, 189.
- 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 Dolores Davidson. 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 closely consider the admissibility of in-court identification evidence.

- 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?
 - How is 'identification evidence' and 'visual identification evidence' defined?
 - Is there an assertion of identity or resemblance?
 - Can Dolores Davidson give any evidence going to the issue of identification that is not 'visual identification evidence'?
 - Is the holding of an identification parade a precondition to admissibility?
 - Would it have been reasonable to have held an identification parade?
 - What is the relevant time for holding a parade?
 - Did the defendant refuse to take part in an identification parade?
 - Is there a danger of 'unfair prejudice'?
 - What is the probative value of the evidence and how is this to be weighed against the danger of unfair prejudice?
 - How is s 116 relevant to the balancing exercise?

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