

SESSION 3: EVIDENCE

Question 1: With respect to each of the following objections, outline your reasons for admission or otherwise.

CSTB Records

Ms Masi has since been removed as Chair of the CSTB Central Supply and Tenders Board. The Secretary Mr Reuben objects to evidence being led from the new Chair that searches at the CSTB have failed to locate any applications by the Department of Works for the certificates of inexpediency.

Suggested Answer

Is this evidence relevant to the charges? Yes, it is an issue whether any such applications were made by the Department for the Certificates.

What is the nature of the evidence? Is it hearsay? If yes, there is an exception to the hearsay rule for Business Records. Would applications by the Department of Works for Certificates of Inexpediency be business records? Yes. The CSTB would keep all applications for Certificates of Inexpediency as part of their normal business practice. The documents would be made for the purposes of the business or in the course of the business.

Emails

The State intends to lead evidence that on 10 March 2022 Ms Masi wrote using her official email address to the Secretary's official email address attaching twenty certificates of inexpediency for each of the contracts. The Secretary responded via email thanking her for support for the important work of the State to the people of the country. He signed off: "As discussed, please tell Gracie to see me at the office next week."

The Secretary objects to the admission of the email correspondence.

Suggested Answer

Is this evidence relevant? Yes

Is it hearsay? Yes, but exception for business records. Do emails come within the definition of business records? Cases say yes but only business emails. This email was sent from one business address to another so would be captured by the exception and be able to be admitted into evidence.

The sign off to the email is also relevant as it provides details of a potential meeting between Rueben and Gracie.

The emails would also be admissible as evidence of conversations between two of the accused persons. They contain statements against interest so would amount to an exception to the hearsay rule.



Is your answer any different if one or other of the emails is from a private address like gmail?

Suggested Answer

Answer may be different as this may not fall within the 'business' record exception as the email was sent from a private email address. However, if the content of the email was purely business it should not matter that it was sent from a private email address.

Bank Records

Mr Reuben objects to the local bank records of payments from Hard Work Australia to his bank account on the basis that there is no statement from the bank in Australia producing the records there.

Suggested Answer

Is this evidence relevant? Yes

Is it hearsay? Yes, if trying to prove the truth of the records of payment.

There is an exception to the hearsay rule for business records. Would bank records of payment be 'business' records? Yes. Even in absence of a statement from the bank, they are records of payments that have been made by the bank. They should fall under the exception. An inference can be drawn as to the authenticity of the records from their appearance.

Also if printed from a computer that would fall within the description of a notorious scientific device so there is a rebuttable presumption with respect to their provenance.

CCTV

The State intends to lead CCTV footage it says shows that Mr Reuben and Mr Ono met on several occasions during the period at the coffee shop of the Hilton Hotel. On one occasion Mr Ono gives Mr Reuben a document folder.

Mr Reuben objects to the production of CCTV records on the basis that it is of poor quality.

Suggested Answer

Is evidence relevant? Yes.

There is case law that says that CCTV footage can be admitted into evidence. It is real evidence.

The quality of recording may mean the evidence does not have as much value. Why does the party want to rely on this evidence? To show the two met. In order to show this the CCTV would need to be of appropriate quality so that both men could be identified.



Telephone Records

The State produces telephone records from the country provider which show frequent telephone calls between the two men.

Mr Reuben objects on the basis that they are private communications.

The State produces downloaded extracts of text messages from his mobile phone. Mr Reuben objects on the basis that no expert witness has been called. Would your answer be different if extraction recovered deleted text messages.

Suggested Answer

Is evidence relevant? Yes

Can telephone records be admitted into evidence. Yes, they come under “notorious scientific or technical instruments” and a court can take judicial notice of such records. This means that the court will accept this evidence. Anything that can be easily taken from the phone can be admitted into evidence. This includes downloaded text messages that don’t require an expert to retrieve this information.

The answer may be different if you are dealing with deleted text messages. Do you need a person with expertise to recover these messages? If yes, you would need to call an expert witness who would explain to the court how they used their expertise to retrieve the deleted messages and what the messages said.

