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TOPIC

PROBATIVE VALUE OF EVIDENCE

SUBJECT ENGLISH JURISPRUDENCE

In English jurisprudence, the **probative value** of evidence refers to its weight or capacity to prove or disprove a fact in issue. It is the measure of the extent to which a piece of evidence can rationally affect the assessment of the probability of a fact.

1. Conceptual Framework

- **Definition**: Probative value describes the "logical force" or "weight" of evidence. If evidence has high probative value, it strongly supports a particular conclusion.

- **Admissibility**: A trial judge may exclude relevant evidence if its **probative value is outweighed by the danger of unfair prejudice** to the accused.

2. Factors Determining Probative Value

Several criteria influence how much weight a court assigns to a specific piece of evidence:

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- **Reliability**: The more scientifically sound or verifiable the evidence, the higher its value (e.g., DNA vs. a vague witness statement).
- **Credibility**: The trustworthiness of the source. If a witness has a motive to lie, the probative value of their testimony decreases.
- **Directness**: **Direct evidence** (e.g., an eyewitness seeing the crime) typically holds higher probative value than **circumstantial evidence**, which requires an inference to reach a conclusion.
- **Corroboration**: Evidence that is backed up by other independent facts gains significant probative strength.

3. Hierarchy of Evidence Types

Evidence Type	Probative Weight	Why?
DNA/Fingerprints	Very High	Scientifically unique and hard to refute.
Primary Documents	High	Original documents are considered the "best evidence" of

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		their contents.
Eyewitness Testimony	Variable	Highly persuasive but subject to human error/bias.
Circumstantial	Moderate	Powerful when multiple pieces point to one conclusion.
Hearsay	Low	Generally inadmissible because the original speaker cannot be cross-examined.

4. Legal Principles and Case Law

- **Section 137 (Uniform Evidence Law)**: Requires a judge to exclude evidence if its probative value is outweighed by the risk of unfair prejudice.

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- **The "At Its Highest" Rule**: In determining probative value for admissibility, judges often must take the evidence "at its highest"—meaning they assume the jury will find it credible and reliable, rather than judging its truth themselves at that stage.
- **R v Kilbourne [1973]**: Established that relevance is a matter of degree, and the "weight" of evidence is ultimately for the jury to decide.

5. Practical Challenges

- **Forensic Evidence**: Judges may struggle to assess the probative value of complex scientific data without expert assistance.
- **Prejudicial Impact**: Some evidence (like a defendant's past crimes) might be highly probative but is often excluded because it could unfairly bias a jury.

Summary of Key Distinctions

- **Atomism vs. Holism**: Courts debate whether to assess each piece of evidence alone (**atomism**) or as part of the entire case's "big picture" (**holism**).
- **Legal Weight vs. Fact**: While the judge determines the legal admissibility based on *potential* probative value, the jury determines the *actual* weight given to it during deliberations.

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