PROOF OF ISSUES

General rule: the facts in issue or relevant to an issue in dispute must be proved by admissible evidence

Facts in issue: a fact in issue is something that has to be proved in the proceedings – usually determined by examining the elements of the criminal offence the accused has been charged with and elements of any defences raised

Proved: see onus and standard of proof later in these notes

Admissible: For evidence to be admissible it must be directly, or indirectly, relevant to a fact in issue

EXCEPTION: JUDICIAL NOTICE

Principle: where a fact is so well-know that, in an effort to save time a resources, the court 'notices' it without requiring evidence about the fact.

Case to cite: ***Holland v Jones*** (1917) 23 CLR 149

Good quote: Judicial notice is taken where a "… fact is so generally known that every ordinary person may be reasonably presumed to be aware of it"

Example: Courts Jurisdictioncept photocopies of documents – it would be a waste of time for the court to hear evidence on how a photocopier can reproduce perfect replicas of documents

EXCEPTION: FORMAL ADMISSIONS

Principle: where facts are formally admitted/agreed between parties, they no longer need to be proved

Authority:

- ***Evidence Act 1906*** **(WA) s 32** – Admissions by accused shall be sufficient proof of the fact without other evidence
- ***Evidence Act 1995*** **(Cth)** – same as WA act but lawyer has to advised and client understands

RELEVANCE

IF A PIECE OF EVIDENCE IS NOT RELEVANT, IT IS NOT ADMISSABLE

Threshold test

To be relevant, the piece of evidence must has a sufficiently close connection to either a main fact or a collateral fact.

Main facts - these facts must be proven to succeed or facts that must be proved to establish a defence

- Facts to prove offence (determined by examining the substantive law and pleadings)
    - Plaintiff (civil) or prosecutor (criminal)
- Facts to prove defence (determined by examining the substantive law and pleadings)
    - Defendant (civil) or accused (criminal)

Collateral facts

- Either relate to:
    - Credibility of witness; or
    - Admissibility of items
- Impact on how other evidence is connected to a main fact - one step removed from the main facts, not directly tied to facts but are directly tied to evidence that is one step removed from the main facts

Direct and Indirect Relevance

Direct relevance:

- Evidence is directly relevant to a fact in issue when the evidence itself bears on the probable existence or non-existence of that fact

Indirect relevance :

- Evidence is indirectly relevant to a fact in issue when it affects the probative value of evidence said to be directly relevant to a fact in issue
    - Probative value: how much it goes towards proving something

Legal and Logical Relevance

Logical relevance:

- Logically = if you can link it to an issue or a collateral fact
    - Turns mind to fact in issue when hearing the evidence – low threshold
- Legally = involves weighting up the probative value of that evidence
    - Must have enough weight that is might make a difference in the case

Reason for distinction is due to time constraints – legal relevance gives courts the mechanism to say that, whilst it may be logically relevant, ultimately the benefit in terms of the case itself, its PV is so small that it will ultimately be a waste of time for courts to hear it

Take a liberal approach

- As noted in ***Festa v The Queen***, 'if evidence is of some, albeit slight, probative value, then it is admissible unless some principle of exclusion comes into play to justify withholding it from a jury's consideration.'
- In this sense, a liberal approach should be taken whether the threshold of legal relevance is met regarding a piece of evidence
- This is because, even if a piece of evidence is found to be relevant, it will not necessarily be admitted; there may be further tests and discretions which exclude the evidence due to its admissibility if it has sufficiently low probative value in what it is aiming to prove
    - For example, if the evidence is misleading, confusing or a waste of time (*see below*)
- If the evidence is found to be not relevant, it may not be received and no further issues arise regarding its admissibility: ***Smith v The Queen*** (650)

Evidence Act 1995 **(Cth)**

s55: relevant = evidence that could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding → evidence is not irrelevant merely because it relates only to

- the credibility of a witness; or
- the admissibility of other evidence; or
- a failure to adduce evidence.

s56: except as otherwise provided in Act, relevant evidence admissible; irrelevant evidence not admissible

s57: if determination of relevance depends on court making another finding, court may find evidence is relevant if it is reasonably open to make that finding; or subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding. → if relevance of evidence of an act done by a person depends on court making a finding that the person and another person had or were action in furtherance of a common purpose, court may use the evidence itself in determining whether the common purpose existed.

Misleading or confusing evidence

- Even if found to be relevant, it may be excluded on the discretion that it is misleading, confusing or a waste of time.
- Authority:
    - WA: as WA legislation is silent upon this, common law applies in WA courts
    - Cth: ***Evidence Act 1995*** **(Cth)** s 135

DIRECT AND CIRCUMSTANTIAL EVIDENCE

DIRECT EVIDENCE

- is evidence which, if accepted as being true, it completely disposes of the fact in issue: ***Festa v The Queen***
- Evidence from which you can directly infer a fact in issue
- Can be testimonial evidence – 'the evidence of a person who witness the event sought to be proved' ***Shepherd v The Queen***
    - e.g. charged with arson after his house burnt down, evidence of a person witnessing them doing it
- Anything that is direct evidence is relevant by nature
- Example: autopsy report – person is dead- completely disposes of issue of death

CIRCUMSTANTIAL EVIDENCE

- Evidence which, if accepted, tends to prove a fact from which the existence of a fact in issue may be inferred: ***Festa v The Queen***
- Won't necessary dispose of the issue of fact that it relates to as it requires the jury to infer a further fact or facts to prove a fact in issue
- evidence which, even if it is believed, does not prove the fact in issue unless and until the court draws an inference from the relevant circumstantial evidence to the facts in issue (e.g. motive, opportunity).
- Problem with circumstantial evidence is that an erroneous inference may be drawn

Motive as circumstantial evidence

- Facts supplying motive for particular acts or facts that explain the relationship between the participants – may be admitted into evidence as circumstantial evidence
- Can be highly relevant to issue of why the accused would commit the offence
    - 'motive, if proven, is a matter from which a jury might properly infer intention, if that is in issue, and in every case is relevant to the question whether the accused committed the offence charged' ***De Gruchy v The Queen***

Plomp v The Queen

Displays the cumulative effect of circumstantial evidence – more of a strands in a cable scenario

Facts: accused of murdering his pregnant wife based purely on circumstantial evidence

- He claimed that she drowned in surf – no witnesses
- Other circumstantial evidence was the Mrs Plomp was a fairly good swimmer who wouldn't have had problems with the conditions at the time, no weather issues that day
- Other evidence led that Mr Plomp was having an affair and represented to his mistress that he was a widower and desired to marry her, Mr Plomp also had a life insurance policy in favour for Mrs Plomp

Held: Evidence of motive was so strong in this case – it is unreasonable to suggest coincidence that Plomp's evident desire to get rid of his wife at that particular juncture, were fulfilled by her fortuitous death although a good swimmer and in circumstances which ought not to have involved any danger to her.

However – *see* "The Chamberlain Discretion" *below*

THE *CHAMBERLAIN* DIRECTION

Use for

- Criminal cases (that are)
- Entirely based on circumstantial evidence

Effect

- Operates as a mandatory direction that is to be given to the jury in trails where the accused's guilt is to be determined based wholly upon circumstantial evidence
- Arose from ***Chamberlain v The Queen (No 2)***
- Where the jury relies upon circumstantial evidence, guilt should not only be a rational inference but should be the only rational inference that could be drawn from the circumstances (***Shepherd v The Queen***).
    - Essentially, this acts as an "amplification" of beyond reasonable doubt standard of proof

Links in a Chain vs Strands in a Cable

- circumstantial evidence can be put together as links in a chain or strands in a cable and that is fundamentally important in a purely circumstantial evidence case
    - knowing how the evidence fits together in an argument that meets all the elements of an offence shows you what needs to be proven

While the prosecution bears the burden of proving all elements of the crime beyond reasonable doubt, it does not mean that every fact, every piece of evidence relied upon to prove an element by inference must itself be proved beyond reasonable doubt

- This distinction was examined in ***Shepherd v The Queen*** and explores the cumulative effect of circumstantial evidence and in particular, what a jury needs to be convinced of, beyond reasonable doubt, to find an accused person guilty.

	Links in a chain	**Strands in a cable**
What needs to be proved	Each piece of evidence must be proved B.R.D	No one of the pieces needs to be proved B.R.D, but cumulatively, they need to be B.R.D
Explanation	Each link of circumstantial evidence is indispensable must therefore by sufficiently strong to support the conclusion B.R.D before the ultimate inference (the accused's guilt) can be drawn If any link fails, the accused must be acquitted as the entire chain of reasoning will fail to meet the requisite standard of B.R.D	If one stand fails, it will not be fatal to the case. Used in situations where the prosecution has a number of pieces of circumstantial evidence that together are attempting to prove a fact in issue
*Example (using **Plomp**)*	Circumstantial evidence that Plomp was at the beach when his wife died – his presence is a link in the chain; the idea is fundamental to proving his guilt as if he was not there, he obviously could not have killed his wife This circumstantial evidence must be proved beyond reasonable doubt if this is the only evidence he was at the beach - supports the entire weight of the case beyond reasonable doubt	The other evidence about the wife being a strong swimmer, the weather conditions, other young lovers etc, are all strands in a cable, no own strand had to established beyond a reasonable doubt

DISCRETION TO EXCLUDE EVIDENCE

Discretion to exclude relevant evidence in a criminal proceeding

- Relevant evidence may be excluded in criminal proceedings due to "The *Christie* Discretion"
    - Arose in ***R v Christie*** (English case)
    - Australian formulation in ***Driscoll v The Queen***
        - HCA said possible for the trial judge in criminal matters to exercise discretion to exclude evidence in proceedings if firstly, the evidence is of very low PV and secondly, that the evidence is prejudicial to the accused
            - Particularly called for where evidence is of little or no weight but may be gravely prejudicial to the accused: Gibbs J in ***Driscoll v The Queen***

WHEN TO USE THE *CHRISTIE* DISCRETION

Use for:

- Criminal trial
- Evidence has low probative value; and
- Highly prejudicial effect

NOTE: Do NOT weigh up probative value against prejudicial effect – it is a two-step approach

Does the evidence have low probative value?

If so, does the evidence have a highly prejudicial effect on the accused?

If so → may be excluded by the trial judge due to "The *Christie* Discretion"

There is an analogous discretion found in ***Evidence Act 1995*** **(Cth)** s135 – discretion to exclude evidence on numerous grounds (unfairly prejudicial, misleading or confusion, results in waste of time)

- Compulsory language used in section 137 which only operates in criminal trials, which implores judge must exclude evidence if the PV is outweighed by the potential unfairly prejudicial effect on the accused

Minhaj v The Queen

Facts:

- The accused charged with intent to kill and also charged with assault. Alleged that he poured mineral turp on his wife and set her on fire, causing burns and that when he did this, he was trying to kill her but actually caused GBH
- Minhaj said that her clothing had caught on fire as she was warming milk on the stove
- Issue: admitting horrific photos of the burns.

Appeal: these photos had little PV because her injuries weren't being contested and the medical evidence could on its own establish extend of injuries and the photos had prejudicial effect because they have a tendency to make jury feel sorry for the victim

Held:

- Photos had significant probative value as they helped the jury distinguish between the stories
    - No turp was used in the accused story, therefore if there was turp the burn would happen much faster, burn would probably look like splashes of turp
        - therefore, court said it could be let in even though it was prejudicial
- Photos were no more distressing than might be anticipated and could materially assist the jury to determine how the burns occurred.

BURDEN OF PROOF

Evidential burden (evidentiary burden):

- Means the burden of adducing evidence on an issue sufficient to enable the judge to allow it to be presented to the fact finder (*textbook*)
    - Rationale: for a fact finder to find in favour of a party, there must be sufficient evidence
- The obligation to persuade the fact finder that they're capable of making a decision in your favour through presenting evidence
- The standard required to be met is some evidence must be presented (as opposed to B.O.P or B.R.D)
    - The evidentiary burden will not be met when the evidence, taken at its strongest, would not allow the fact finder to make the finding

Legal Burden (persuasive burden):

- Refers to the obligation of a litigant to ultimately persuade the fact finder that issues or facts in the case have been established to the requisite standard of proof (*textbook)*
- Obligation of a litigant who is a defendant in a civil or criminal case who seeks to raise an affirmative defence in particular circumstances (*textbook)*
- The standard to which the factfinder must be convinced in order to make a finding in favour of the party (*notes*)

- If plaintiff or prosecution fails to meet the evidentiary burden, then it is not possible for them to make their case, BUT just because a party meets evidentiary burden does not guarantee they will meet the persuasive burden too

- The standard varies:
    - "the Criminal standard" – Beyond reasonable doubt
    - "the Civil standard" – on the balance of probabilities

CRIMINAL CASES

Who bears the onus?

Offences - Evidentiary burden is on the prosecution and persuasive on the prosecution

- Unless a statutory provision states otherwise, the **prosecution bears the legal/persuasive burden** of every element and required mental element (necessary mens rea under common law, negation of any substantive defences under statute): ***Woolmington***
- Prosecution must therefore prove all elements of a criminal offence B.R.D
- Code application to QLD in ***R v Mullen*** (1938) 59 CLR 124. consequently, relevant to WA
- Example of statutory provision to the contrary: Criminal Code (WA), s26 (presumption of sanity)

Defences - evidentiary for defences is on accused, persuasive usually on prosecution except for insanity or statutory defence

- The general position, as outlined in ***Woolmington*** is that, except for the insanity or of a statutory defence, the prosecution will need to negate any defence beyond reasonable doubt, otherwise, the accused will receive the full benefits of such defence: ***Jayasena v The Queen***
    - This only relates to once the evidentiary burden has been met for a particular defence (they are not required to negate every defence to secure a conviction)

Once the defence meets the evidentiary burden of a defence, it is the prosecution's role to negate the defence beyond reasonable doubt.

CIVIL CASES

- Generally the party who is making the claim will carry the evidentiary burden

THE BURDEN OF PROOF IN CAUSES OF ACTION AND OFFENCES CREATED BY STATUTE

- Legislation can be express as to burden of proof
- Legislation can be silent as to burden of proof – where silent on the issue of who bears the onus of proof, it is a matter of statutory interpretation to determine who bears the onus of proof

Is it a simple offence?

- If so – ***Criminal Procedure Act 2004*** **(WA)** s 78 – accused must prove on the B.O.P that the defence applies

Is it indictable with no statutory exception?

- If so – ***Woolmington*** applies and the prosecution must negate the defence so long as some evidence is presented that the defence would apply

Where the legislation is silent, stat interpretation will determine whether a clause is part of the general rule or part of an exception

For an exception, there needs exist a legislative intention (by words or by implication) 'to impose upon the accused the ultimate burden of bringing himself within it': ***Chugg v Pacific Dunlop***

Where statute is ambiguous, under CL must look at various factors and is a matter of substance rather than form to find who the burden of proof falls on

Considerations:

- While <u>form</u> of language may provide <u>assistance</u> – no a determining factor and the matter should be determined "upon considerations of substance and not form"
    - Provisions do not have prescribed forms → just because it says 'except' does not necessarily mean the intention was to create an exception
- Whether the clause sets up some new or different subject matter from the rule
    - E.g. 'save in specified circumstances'; 'with specified qualifications'
    - If the first part has one subject matter (e.g. person) and the second has a different subject matter (e.g. fauna), it is more likely that the legislative intended to create an exception
- Whether the new matter is within the knowledge of the defendant only
    - If only the accused is capable of knowing – more likely a defence
    - If it is something that others can know and therefore prove, it will more likely be considered part of the offence

Remember! If:

- element of the offence – onus on prosecution – standard: B.R.D
- excuse/defence – onus on accused – standard: B.O.P

STANDARD OF PROOF

…the degree to which the fact finder must be persuaded of the existence of the facts essential to a claim or defence before it can find that such a claim or defence has ultimately succeeded (*Textbook*)

CRIMINAL CASES

Where the legal burden is borne by the prosecution

- Required standard of proof is 'proof beyond a reasonable doubt'
- Carries largely its ordinary meaning -is there any doubt based on the evidence? If this doubt reasonable or unreasonable?
- WA Court of Criminal appeal noted it was permissible for jury to know this doesn't require absolute certainty, with "practical certainty" or "moral certainty" enough to satisfy the threshold (***Goncalves v R***)
- ***Evidence Act 1995* (Cth)** s141(1) - *In a criminal proceeding, the court is not to find the case of the prosecution proved unless it is satisfied that it has been proved beyond reasonable doubt*

Where the legal burden is borne by the accused

- the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt – balance of probabilities (***R v Carr-Briant***)
- ***Evidence Act 1995* (Cth)** s141(2) - *In a criminal proceeding, the court is to find the case of a defendant proved if it is satisfied that the case has been proved on the balance of probabilities*

When sentencing

- Same principles as above apply when sentencing a convicted person
- ***Weininger v The Queen*** quoted ***R v Storey***: sentencing judge 'may not take facts into account in away that is adverse to the interests of the accused unless those facts have been established beyond reasonable doubt.' Or 'if there are circumstances which the judge proposes to take into account in favour of the accused, it is enough if those circumstances are proved on the balance of probabilities.'

CIVIL CASES

- General standard of proof for civil cases is "on the balance of probabilities"
- This is NOT an absolute standard – changes based on circumstances of the case alleged
    - Will be higher for quasi-criminal allegations such as fraud
- Non-exhaustive list of considerations in ***Evidence Act 1995* (Cth)** s 140(2)
    (a) the nature of the cause of action or defence; and
    (b) the nature of the subject-matter of the proceeding; and
    (c) the gravity of the matters alleged.

'NO-CASE' TO ANSWER

This is the test for determining whether a litigant has discharged the evidential burden

Defendant is saying in effect the evidentiary onus has not been met by the plaintiff or prosecution

Test: Consider all evidence led by a particular side and imagine all of that evidence is true and uncontradicted. If having done this, there is still an element of the cause of action not met in those circumstances, the evidentiary onus has not been met

In these circumstances, 'the issues is not whether the individual accused ought to be convicted but, rather, whether she could be convicted'. ***Reynolds v R*** referring to ***May v O'Sullivan***

Timing

- ***Criminal Procedure Act 2004 (WA)***, s108 permits 'no case' submission to be made at any time after close of prosecution case but you would generally make it straight after – wouldn't want prosecution to be able to cross examine and in doing so lead more evidence

Effect of an unsuccessful 'No-case' submission

Criminal cases - unsuccessful no-case submission

general rule is that you won't prevent you from leading evidence

Civil cases - unsuccessful no-case submission

general rule is that marks the end of any evidence to be called → you won't be allowed to lead evidence

BUT

Trial judge has discretion to permit the defendant to lead evidence

PRESUMPTIONS

Presumption of innocence: The prosecution is obliged to prove the case against the accused to the required standard and until this is done the accused is taken to be innocent; not merely "not guilty".

- Example: ***Liberato v The Queen*** (1985) 159 CLR 507.

Presumption of sanity: see ***Criminal Code (WA)*** ss26, 2

- Anyone who is contending they are not of sound mind will bear the onus of proving this – that they will need to overcome this presumption

COMPETENCE & COMPELLABILITY, REAL & DEMONSTRATIVE, DOCUMENTARY EVIDENCE

COMPETENCE AND COMPELLABILITY

ONLY FOR ORAL EVIDENCE – for written evidence → documentary evidence

The issues of competence and compellability relate to the person who is giving the evidence

Competence

- The ability of a person to understand and to answer a question of fact
- Most of the common law categories has been abolished by statute – practically everyone is competent

Compellability

- If they can be forced to give evidence, under pain of some legal sanction (usually contempt of court)

TYPES OF WITNESSES

Witnesses who do not believe in the Deity

See *Oaths Affidavits and Statutory Declarations Act 2005* (WA) s 4(2) and s 5(3) for the Western Australian provisions relating to this.

Prior conviction

Evidence Act 1906 (WA) s6 makes people who have a prior conviction and people who have an interest in the outcome of the proceedings competent to testify.

Children

Approach under statute:

- Tests apply for children under 12
- Can give sworn or unsworn testimony
- Ss106B, 106C also apply for people with mental impairment

s 106B Test: The child understands that the giving of evidence is a serious matter and that there is an obligation to tell the truth.
s106C Test: The child is able to give an intelligible account of events which (s)he has observed or experienced.

Conduct of inquiry of competency

- Before the evidence is taken, there must be an inquiry by the trial Judge.
- That inquiry should be conducted in the presence of the jury.
- If the decision is made that the child is not competent to take an oath or affirmation in accordance with s106B then consideration is given to whether the criteria provided by s106C can be met.
- If the child cannot meet the criteria provided by s106C then the child cannot give evidence.

See *Revesz* (1996) 88 A Crim R 253.

In *Hamilton v The Queen,* unreported; CCA SCt of WA; Library No 970082; 4 March 1997, Malcolm CJ found that this inquiry should be conducted in the presence of the jury, as if the child does end up being permitted to give evidence, the way that the child answers questions in the inquiry may be used by the jury in deciding the weight to be given to the testimony.

- The types of questions asked in the inquiry should generally not simply require a "yes" or "no" answer, as such questions make it difficult to assess the understanding of the child: *Grindrod v The Queen* [1999] WASCA 44.
- It is not necessary to undertake a s 106B inquiry prior to proceeding to a s 106C inquiry: *R v Stevenson* (2000) 23 WAR 92.

Direction to the jury

When an inquiry is seen by the jury, there is a standard direction that is given to the jury.

Other provisions:

- s106A - interpretation
- s106D - corroboration warning on evidence of child not to be given.
- ss106E, 106F – child witness entitled to support and assistance.
- s106G – cross-examination of protected witness by unrepresented accused.
- s106H – use of a relevant statement.
- ss106HA – 106HD – visual recording of interviews with children
- ss106I, 106K, ss106M-106Q, ss106S-106T
- Schedule 7

The accused

Approach under statute:

- Competent but not compellable: s 8(1)
- Can only be called upon his own application
- If they chose not to give evidence, cannot be of comment by prosecution: s8(1)(c)

The co-accused

- The *Evidence Act 1906* (WA) s 8 states that it does not make any difference whether the person has been charged "solely or jointly".
- Therefore, a person may "upon his own application" give evidence against a co-accused, but could not be compelled to do so by the prosecution. However, as soon as the person is no longer being tried in the same proceedings, (s)he loses his/her status as a co-accused and can be compelled to give evidence.

The accused's family

Approach under statute:

- Civil proceedings
    - Parties to civil proceedings, their spouses and former spouses are competent and compellable witnesses in the proceedings (s 7).
    - However, it is expressly made subject to other provisions of the Act. With the exception of family law proceedings in the Supreme Court of Western Australia or the Family Court of Western Australia, neither husband nor wife can be compelled to disclose any communication made to them by the other during the marriage (s 18)
- Criminal proceedings
    - the spouse of a person will be competent and compellable to give evidence if the person is charged with conspiring to commit, attempting to commit or actually committing an offence contained in Schedule 2 or if the person is charged on complaint of their spouse with an offence against the spouse's property (s 9(1)). s9(2) states that former spouses will be competent and compellable in all criminal matters.

Disabled persons

- provisions of s 106B and s 106C (which cover children under 12 and were discussed earlier) also cover people suffering from a mental impairment. Those provisions will take precedence over the more general provisions in s100A.
- For people with physical disabilities, interpreters can be used. s 102 says that the interpreter should be under oath. However, s 103 does permit the court to dispense with the requirement if satisfied that the person can interpret competently and impartially

MODE OF TAKING EVIDENCE: OATH, AFFIRMATION, AND UNSWORN EVIDENCE

Sworn evidence

- s 97 provides that, subject to a few exceptions listed in that section, evidence will be given on oath. The various approved forms of the oath are given in *Oaths Affidavits and Statutory Declarations Act 2005* (WA) s 4(1)

Unsworn evidence

- It is possible for a person who does not understand the nature of an oath or the obligation imposed by an oath or affirmation to give unsworn evidence under s 100A providing the person does understand that (s)he is required to speak the truth; and, if (s)he is a compellable witness, to tell everything (s)he knows about the matter to which the testimony relates, on pain of punishment.
- s 100A(2) says that the fact that the evidence was not given on oath or affirmation and in general the way in which the evidence was taken **must** be taken into account when assessing the weight and credibility to give the testimony.
- Remember that earlier we dealt with the specific provisions in s106B and s106C as they relate to children under the age of 12 and to mentally impaired people – those provisions take precedence over s 100A.

SANCTION FOR REFUSING TO GIVE EVIDENCE

If a witness who is required to attend court to give evidence fails to do so, the Evidence Act 1906 (WA) s 16 permits the court to ask the person to show cause why they should not be punished (in a way which will depend upon how the obligation to appear was imposed) and also, if there was no just cause or reasonable excuse, to issue a warrant to bring the person before the court to give evidence.