

Evidence Act 2008  
No. 47 of 2008  
Part 3.6—Tendency and coincidence

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**PART 3.6—TENDENCY AND COINCIDENCE**

**Note**

See also Division 2 of Part 4 of the **Jury Directions Act 2015**.

Note to Pt 3.6  
(Heading)  
inserted by  
No. 14/2015  
s. 71.

**94 Application**

- (1) This Part does not apply to evidence that relates only to the credibility of a witness.
- (2) This Part does not apply so far as a proceeding relates to bail or sentencing.
- (3) This Part does not apply to evidence of—
  - (a) the character, reputation or conduct of a person; or
  - (b) a tendency that a person has or had—
 if that character, reputation, conduct or tendency is a fact in issue.

**95 Use of evidence for other purposes**

- (1) Evidence that under this Part is not admissible to prove a particular matter must not be used to prove that matter even if it is relevant for another purpose.
- (2) Evidence that under this Part cannot be used against a party to prove a particular matter must not be used against the party to prove that matter even if it is relevant for another purpose.

**96 Failure to act**

A reference in this Part to doing an act includes a reference to failing to do that act.

**97 The tendency rule**

- (1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had

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a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind unless—

- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
- (b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

(2) Subsection (1)(a) does not apply if—

- (a) the evidence is adduced in accordance with any directions made by the court under section 100; or
- (b) the evidence is adduced to explain or contradict tendency evidence adduced by another party.

**Note**

The tendency rule is subject to specific exceptions concerning character of and expert opinion about an accused (sections 110 and 111). Other provisions of this Act, or of other laws, may operate as further exceptions.

**98 The coincidence rule**

- (1) Evidence that 2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally unless—

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- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
- (b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

**Note**

One of the events referred to in subsection (1) may be an event the occurrence of which is a fact in issue in the proceeding.

- (2) Subsection (1)(a) does not apply if—
  - (a) the evidence is adduced in accordance with any directions made by the court under section 100; or
  - (b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

**Note**

Other provisions of this Act, or of other laws, may operate as exceptions to the coincidence rule.

**99 Requirements for notices**

Notices given under section 97 or 98 are to be given in accordance with any regulations or rules of court made for the purposes of this section.

**100 Court may dispense with notice requirements**

- (1) The court may, on the application of a party, direct that the tendency rule is not to apply to particular tendency evidence despite the party's failure to give notice under section 97.

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- (2) The court may, on the application of a party, direct that the coincidence rule is not to apply to particular coincidence evidence despite the party's failure to give notice under section 98.
- (3) The application may be made either before or after the time by which the party would, apart from this section, be required to give, or to have given, the notice.
- (4) In a civil proceeding, the party's application may be made without notice of it having been given to one or more of the other parties.
- (5) The direction—
  - (a) is subject to such conditions (if any) as the court thinks fit; and
  - (b) may be given either at or before the hearing.
- (6) Without limiting the court's power to impose conditions under this section, those conditions may include one or more of the following—
  - (a) a condition that the party give notice of its intention to adduce the evidence to a specified party, or to each other party other than a specified party;
  - (b) a condition that the party give such notice only in respect of specified tendency evidence, or all tendency evidence that the party intends to adduce other than specified tendency evidence;
  - (c) a condition that the party give such notice only in respect of specified coincidence evidence, or all coincidence evidence that the party intends to adduce other than specified coincidence evidence.



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**101 Further restrictions on tendency evidence and coincidence evidence adduced by prosecution**

S. 101(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 55.21).

- (1) This section only applies in a criminal proceeding and so applies in addition to sections 97 and 98.
- (2) Tendency evidence about an accused, or coincidence evidence about an accused, that is adduced by the prosecution cannot be used against the accused unless the probative value of the evidence substantially outweighs any prejudicial effect it may have on the accused.

S. 101(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 55.21(b)).

- (3) This section does not apply to tendency evidence that the prosecution adduces to explain or contradict tendency evidence adduced by the accused.

S. 101(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 55.21(b)).

- (4) This section does not apply to coincidence evidence that the prosecution adduces to explain or contradict coincidence evidence adduced by the accused.
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