

# Book review:

## Exclusionary Provisions in the Uniform Evidence Law

Arjun Chhabra (author)

The Uniform Evidence legislation seeks to provide a balance between the right of the community to have certain evidence admitted in criminal proceedings and the rights of an accused to have that evidence excluded if its admission would operate to produce an unfair trial.

Nowhere is this more apparent than in the exclusionary provisions in the *Uniform Evidence Act* (UEA), which provide a framework for exclusion of evidence where the probative value is outweighed by its prejudicial effect. Concepts including ‘voluntariness’, ‘oppressive conduct’, ‘threats’, ‘reliability of admissions’ and ‘danger of unfair prejudice’ are the touchstone for this legislation which purports to guarantee fairness in the admission of evidence.

It is obvious that this part of the UEA is of paramount importance to criminal advocates at both ends of the bar table. In addition it is arguably the most interesting area of jurisprudence in the Act.

*Exclusionary Provisions in the Uniform Evidence Law* is the first legal text written by Arjun Chhabra, a barrister presently practicing in Sydney. A quick look at his LinkedIn profile will tell you that Chhabra has experience outside the criminal law including working as an investment banker and corporate lawyer. However, Chhabra has clearly drawn on his experience working in regional NSW as a solicitor for the Aboriginal Legal Service in producing a text that speaks directly to defence lawyers and prosecutors alike working in the Northern Territory (NT).

The text is intentionally limited in its scope. It offers a detailed examination of each of the exclusionary provisions contained in the *Uniform Evidence Act* – sections 84 (admissions influenced by violence), 85 (reliability of admissions), 90 (discretion to exclude admissions), 135 (general discretion to exclude), 136 (general discretion to limit), 137 (exclusion of prejudicial evidence), 138 (exclusion of improperly obtained evidence) and 139 (cautions). Most of these sections create a ‘discretionary-style’ test to be navigated with persuasive argument from the informed advocate. Chhabra appropriately describes these sections as “a last stand against evidence that has passed through every other gate of admissibility.”

Writing this review with a mind toward the practical utility of this text, I found Chhabra’s examination of section 85 immensely helpful. Anyone who runs contested matters in the NT will know that the Electronic Record of Interview is often the subject of argument on the voir dire. Chapter 3 explores the test contained in this section and neatly explains what should be an objective inquiry into the circumstances of an admission, finally setting out instructive case law—and this is very much the structure of each chapter. Each chapter features not only an insightful deconstruction of each of the exclusionary provisions but also a helpful compendium of seminal cases for quick reference. The text is navigable in the way that Odgers is but more succinct and immediately accessible.



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For those practitioners who are more familiar with the common law of evidence, this text is also particularly helpful as each chapter contains an explanation of the ‘common law predecessor’ of each section. Due to the relatively recent adoption of the *Uniform Evidence Act* in the NT, this analysis will be of particular value in this jurisdiction.

Certainly in the cut-and-thrust of the NT summary jurisdiction, it is critically important to be able to quickly point the Court to the correct exclusionary provision upon which you will rely to make your argument. The distinction between the general discretion to exclude as contained in section 135, the power to limit the use of evidence as contained in section 136 and the mandatory exclusion power as contained in section 137 can often be blurred. In his text, Chhabra explains the relationship between these sections, which party is entitled to rely on these sections, the order of application of each, and examples of evidence that might be excluded under each section. The analysis of these three sections can be found in chapters 5, 6 and 7 is possibly the most valuable part of the text.

The importance of this text cannot be understated—especially for practitioners working regularly with defendants and witnesses who do not speak English as a first language and who, almost invariably, have a limited understanding of criminal procedure. This text should be a daily addition to a criminal practitioner’s court bag, and be on the bar table in any contested hearing. A working, and informed understanding of these sections will ensure that the court is applying the correct test and that the defendant is receiving the fairest possible trial.