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Litigation Criminal Procedure Cram Notes

1st Edition



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1. INTRODUCTION

A. HOW TO USE CRAM NOTES

The Litigation – Criminal Procedure Cram Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied.

You should also answer the exam question using the ILAC method, which will ensure your answer is comprehensive.

- Issue** State the legal issue relevant to the problem
- Law** Identify the relevant case law and legislation
- Analysis** Analyse and apply the law to the legal issue. This is the most important part, so ensure your legal analysis is very thorough.
- Conclusion** Form a conclusion based on your analysis and application of the law, giving some practical advice to the hypothetical client.

It is very important to spend time perfecting your analysis section, as this is the part that examiners are most interested in. Do not worry if you reach the correct conclusion (there often isn't one clear answer) – examiners will give more weight to your legal analysis, and sometimes may even reward answers that propose an innovative and unconventional answer!

B. ABBREVIATIONS

The Litigation – Criminal Procedure Cram Notes will refer frequently to the following legislation by using abbreviations.

Legislation	Abbreviation
<i>Evidence Act 1995</i> (Cth)	EA
<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	LEPRA
<i>Criminal Procedure Act 1986</i> (NSW)	CPA

References to the LEPRA and CPA are to the law of New South Wales. However, similar legislation exists in other Australian jurisdictions.

2. ISSUES IN POLICE ACCOUNTABILITY

There are many systems for controlling police misconduct, including the police complaint system, the Police Integrity Commission, tortious liability, and the exclusion of evidence which has been illegally or improperly obtained (s 138 EA). Tortious liability and section 138 provides the only areas in which the court can exercise control over police misconduct.

3. DISCRETION TO ADMIT EVIDENCE

Where evidence has been obtained improperly or illegally as a result of police misconduct, s 138 of the *Evidence Act 1995* provides courts with the discretion to exclude such evidence.

Section 138

- (1) Evidence that was obtained:
 - (a) *improperly* or in contravention of an Australian law, or



(b) *in consequence* of an impropriety or of a contravention of an Australian law, is not to be admitted *unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence*

The section applies to improprieties as well as illegalities, extending to evidence obtained in consequence of, and not only directly as a result of, the illegality or impropriety. For example, this would extend to evidence found on premises where a search order was not validly executed, and any evidence thus collected would not be admissible. Note that s 138 is only effective if the matter proceeds to trial. It does not have any effect in the vast majority of cases which end with a guilty plea from the accused.

i. APPROACH

The following approach should be used in considering whether evidence will be admissible.

1) Threshold relevance test

The evidence must firstly be relevant. Section 55 provides the threshold test for relevance of evidence. If the evidence is considered relevant, the Evidence Act is applicable to the evidence, and s 138 will apply. If the evidence is irrelevant, it will be inadmissible and s 138 need not be considered.

Section 55 provides that evidence is relevant where, "if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding."

2) Section 138

The evidence may be excluded if the considerations in s 138 are made out. The approach is outlined as follows:

- 1) The accused has an evidentiary burden to show impropriety or illegality on the balance of probability
 - This may be a breach of the relevant legislation (such as the *Crimes Act* or *LEPRA* requirements), a deemed impropriety under s 138(2) or a failure to caution (s 139).
 - Note that only the conduct leading to the collection of the evidence will be examined.
- 2) If the burden is satisfied, the prosecution must persuade the court to nevertheless admit the evidence. Consider the:
 - Desirability to admit the evidence, against the undesirability. This involves a consideration of the competing public interests that:
 - o The guilty should be convicted; and
 - o The police who enforce the law should also uphold the law.
- 3) The court determines whether to admit the evidence by analysing the facts under s 138(3)

ii. SECTION 138(3) – CONSIDERATIONS AS TO DESIRABILITY/UNDESIRABILITY

Section 138(3) lists the factors which the court must consider before making a decision as to desirability under s 138(3). All the factors listed in subsections (a) to (h) must be considered. However, the court must balance the respective importance of each factor.

1) Probative value – s 138(3)(a)

The probative value of evidence is the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue. This is an extension of the



Lawful search and seizure can take place under three circumstances:

- 1) ancillary common law power (such as preventing breach of peace)
- 2) incidental power under a lawful arrest (the “in plain view” doctrine)
- 3) statutory power of search or search warrant (under the LEPR)

Often, a combination of these powers is used, such as a search under an arrest power. A search power will often be supplemented by common law powers. However, note that common law powers cannot supplement the s 21 LEPR power to search without arrest.

Unlawfulness and impropriety occurs where the search warrant or arrest is invalid, or the manner of search invalidates what might otherwise have been a lawful process. In such cases, s 138 EA would be relevant in excluding any evidence found.

B. SUSPICION ON REASONABLE GROUNDS IN RELATION TO SEARCHES/SEIZURE

The same test as that in section 4C, “Mental Element: Suspicion on reasonable grounds” above is applicable in relation to searches and seizure. The following cases show the application of the suspicion on reasonable grounds test to searches and seizures.

Nguyen v Elliott

- Fact: Nguyen was at a park bench known to be drug dealing area
- Prior to approaching him – did police have reasonable suspicion?
 - Nguyen’s had a prior conviction for drugs (inadmissible)
 - While the police didn’t see any drug dealing transactions, they observed many people coming and going, which is suspicious given that the area is known to be a haven for drug dealing (applying *Minh*)
 - Police were not just acting on a bare stereotype in this case (applying *Rondo*)
- While this should have given rise to reasonable suspicion, the magistrate held that there was no reasonable suspicion as the police were merely curious as to whether Nguyen had drugs. As such, the search was unlawful, as the magistrate disbelieved the police’s story after hearing all the evidence.

Darby v DPP

- Facts: A drug detection dog sniffed Darby and pushed his nose into Darby’s pocket. Darby claimed that the search was illegal.
- A search involves looking carefully to find something. There must be some degree of physical intrusion.
- The dog was used solely to identify the person with drugs, and not to search for the drugs
- The dog gives the police officer reasonable grounds for suspicion. However, if what the dog does is after the police from the mindset of reasonable suspicion, the dog’s acts in pushing his nose into Darby’s pocket would be a battery.

C. SEARCH, SEIZURE AND RETENTION UNDER THE COMMON LAW

At common law, some powers to search and seize arise from the power to prevent a breach of the peace. For example, reasonable steps to prevent breach of peace may extend to temporarily taking and detaining property (*Minto*). However, the common law search and seizure powers are generally used to supplement a valid search under the LEPR.

i. SEARCH OF PERSON AND SEIZURE WITH ARREST

1) Plain view doctrine (arrest of the person)

Upon arrest of the person (under the LEPR), the police are allowed under the common law to



seize those things which are in plain view and are within the immediate possession and control of the person. However, this does not extend to the whole premises.

- *Dillon v O'Brien* – police can seize items in possession that are likely to be material evidence, including items directly in front of the arrested person.
- *Elias v Pasmore* – police can also seize things in the immediate physical control of person arrested
- *Jeffrey v Black* – if the person is arrested outside, police cannot go into the house and search and seize. The house is beyond the immediate physical control of the person and is not in the plain view of the police.
- *Minnesota v Dickerson* – In this case, “in plain view” extended into feeling for objects.

2) **Timing of seizure before arrest**

The seizure of property before arrest can constitute a single continuous transaction (*McFarlane*) and thus be considered as part of the arrest. In addition, seizure of property on the same day as the arrest can also be seen as incidental and part of same operation as the arrest (*Field v Sullivan*).

ii. **RETENTION**

The seizure and retention of items seized in investigation can be used as evidence. However, even if an illegal search and seizure took place, the things illegally seized might still be retained as courts are unwilling to jeopardise a pending criminal investigation due to the inability to access crucial evidence (*Tye*). In such cases, such evidence may be admitted under s 138 EA. Alternatively, return of property is required if the police can get a copy of the items, or if there is no point in keeping such property (*TLC*).

Ghani v Jones

- This case provides the grounds for retention of seized property
- Retention without consent can occur where –
 - There are reasonable grounds for believing that a serious offence has been committed
 - The item seized thing is either the proceeds of the crime, the instrument of the crime, or material evidence to prove commission of the crime
 - There are reasonable grounds to believe that the person in possession has himself committed the crime, or is implicated as an accessory
 - Police will not to keep the article any longer than is reasonable necessary to complete their investigation or preserve for evidence.
 - The lawfulness of police conduct is to be judged at the time of seizure, and not in hindsight.

Mayhew v USA

- Facts: the police seized fake credit cards and passport, but also other personal property.
- Personal property cannot be retained if unrelated to the alleged offence
- The credit card and passport can be retained only if seizure was lawful, and such items would constitute evidence.
- It does not matter that the return of items would allow an offence to be committed.



D. SEARCH, SEIZURE AND RETENTION UNDER LEPR

i. SEARCH AND SEIZURE ON PREMISES FOR DANGEROUS ARTICLE

Section 22 of the LEPR provides police with a power to search, seize and detain dangerous articles on premises. Where a police officer is lawfully on any premises, they may seize a dangerous article if they have suspicion on reasonable grounds that it was used in the commission of an indictable offence. The “plain view” doctrine following an arrest of a person is also relevant to seizing items on premises.

ii. SEARCH OF PERSON AND SEIZURE WITHOUT WARRANT OR ARREST

Section 21 of the LEPR provides police with the power to stop, search and seize anything in the possession or control of a person without a warrant, where the police suspects on reasonable grounds that the item is:

- a stolen good
- something used or intended to be used for the commission of an indictable offence
- a dangerous article
- a prohibited plant or drug.

Under the common law, there is no power to search or detain without arrest. As such, the common law does not supplement the operation of s 21, and the only categories for search and detention of goods are those listed in s 21.

Section 21A provides an ancillary power to s 21, in relation to a search for items concealed in the person’s mouth or hair. However, s 21A can only be used where the requirements of s 21 are made out. In addition, note that a notification of the reason for exercise of power under s 201(1) must be complied with before making a request under s 21A.

iii. SEARCH OF PERSON AND SEIZURE WITH ARREST

Section 23 provides police with a power to search and seize items on the arrest of a person, if they have suspicion on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying:

- Dangerous items
- Items which could possibly be used for escape
- The proceeds of crime
- Items which may be used as evidence
- The instrument used in committing an offence

Section 23A provides an ancillary power to s 23, in relation to a search for items concealed in the person’s mouth or hair. However, s 23A can only be used where the requirements of s 23 are made out.

Section 24 provides a broader search and seizure power for a person in lawful custody (e.g. at the police station, police car and so on), allowing for seizure of any items found in that search.

- Custody extends to situations where there are reasonable grounds for believing that the person would not be allowed to leave (*R v Amad*)
- Custody involves some sort of physical restraint.

Due to the much wider nature of s 24, it is generally interpreted to only extend to those situations not covered by s 23. As such, statutory interpretation restricts the scope of s 24 to custody within the police station and the like, but does not extend to custody in the field.



In addition, the common law supplements the statutory power to seize, as noted above. This means that if the police arrest and search a person, the police can also seize those items “in plain view”.

iv. PERSONAL SEARCHES

In determining whether a personal search can be carried out, the following steps should be followed:

- 1) Is there an arrest or an arrest power (s 99)?
 - i. Which search power is being used? The search most often used is s 23 following the arrest of the person.
- 2) If there is no arrest power under s 99, the search will be under s 21

In each of the cases where a search power arises, the specific requirements of each section must be made out before a search occurs e.g. s 23 requires that the police officer be of the belief that it is prudent to search the person; s 24 requires the search to take place at the police station.

Section 3 of the LEPR provides definition for the different types of searches:

- Frisk search – quickly running hands over outer clothing, can search for anything that can be conveniently and voluntarily removed.
- Ordinary search – requires a person to remove only his overcoat, coat, jacket, gloves, shoes, socks, hat and so on, i.e. the outer layer of clothing.
- Strip search – requires a person to remove all clothes and to subject to an examination of the body, not including cavities.

1) Ordinary and frisk search

Section 26 provides police with the power to conduct a frisk search for knives or other dangerous implements at a public place or school if they suspect on reasonable grounds that such an implement is in the person’s custody. The fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody (s 26(3)).

Under section 30, a police officer may carry out a frisk or ordinary search where there is an existing search power (e.g. under s 21, 23, 24).

Section 32 provides for the requirements that are to be followed by the police when conducting a frisk, ordinary or strip search.

- The police must inform the person whether they are required to remove pieces of clothing and why it is necessary (s 32(2))
- The police must ask for the person’s co-operation (s 32(3))
- The search must be conducted in reasonable privacy and be conducted as quickly as is practicable (s 32(4))
- The search must be the least invasive kind of search practicable (s 32(5))
- The search must not extend to the genital area or breasts unless there is a suspicion on reasonable grounds that it is necessary (s 32(6))
- The search must be conducted by a police officer of same sex as the person being searched (s 32(7))
- A search of a person must not be carried out while the person is being questioned (s 32(8))
- The person must be allowed to dress as soon as the search is finished (s 32(9))



- If clothing is seized, the police must give the person reasonably appropriate clothing (s 32(10)).

2) Strip search

An additional mental element is required before strip searches can be undertaken. In addition to the procedural requirements in s 32 as stated above, a police officer may only conduct a strip search if there is suspicion on reasonable grounds that it is necessary for the purpose of the search and that the seriousness and urgency of circumstances require a strip search to be undertaken (s 31).

Section 33 provides the procedural rules for undertaking a strip search.

- The strip search must be conducted privately, not in view of a person of the opposite sex, and not in the presence of persons not necessary for the search (s 33(1))
- The search may take place in the presence of parent or guardian if the person consents (s 33(2)). However, a strip search of a child older than 10 but less than 18, or a person with impaired intellectual functions, should have support persons present at the search (s 33(3)). There is no strip search allowed for children under 10 years old (s 34).
- A strip search must not involve a search of a person's body cavities or an examination of the body by touch (s 33(4))
- The removal of clothing must not be more than reasonably necessary (s 33(5)).
- The visible inspection conducted must not be more than reasonably necessary (s 33(6)).

7. SEARCH WARRANTS

The principle justification of the warrant system is that it represents a control device, interposing a judicial officer (authorised officer) between police executive action and the private individual suspect, such that the suspect is protected from overzealous police practices.

A. DEGREE OF COMPLIANCE NECESSARY

The legislature has sought to balance the competing needs for an effective criminal justice system against arbitrary invasions of privacy and property, which are interests which the common law has always valued highly.

Thus strict compliance with statutory conditions governing the issue of search warrants is necessary to give effect to the purpose of the legislation (*George v Rockett*). However, technical errors will be overlooked, such as the wrong name being put on the warrant (*Benstead v Edwards*).

Hart v Commissioner AFP

- The court must give effect to the importance attached by the legislature to the use of search warrants as a legitimate tool in the detection and prosecution of offences
- Operational realities are more important – a strict level of compliance is not required.

Kennedy v Baker

- The court should construe statutes according to the ordinary meaning of the words given their context and legislative purpose. However, in resolving any remaining doubt or ambiguity, the rights and freedoms of the subject should be considered and given weight.
- The purpose of search and seizure powers is to provide for the gathering of information, to determine if offences have been committed, and to facilitate proof using evidence. As such, the search powers are not necessarily narrowly defined.



further questioning would cause emotional pain on him.

- Held: Section 84 does not require the isolation of single reason for influencing the defendant, and it may be a combination of factors. If the oppressive conduct of the police officer is one of those factors and the DPP has failed to negative such factors, the evidence obtained will be inadmissible

Oppressive

Oppression is defined as the exercise of authority or power in a burdensome, cruel or unjust manner. It may be possible in some cases to say that conduct will be oppressive if there was impropriety in the way that the confession or admission was obtained (*FitzGibbon*).

Inhuman and degrading conduct

A threat to scream and make a scene if a person did not make certain admissions did not amount to degrading conduct under s 84 (*Jung v Son*). It is not enough to have threats to embarrass.

R v LL

- Facts: The accused was a 14 yr old boy, arrested on a murder charge. The boy nominated his sister as a support person (but police did not tell her he is in custody for murder). She was told not to interrupt or speak, and sits behind the accused (who does not see her).
- The court held that there was inhuman and degrading conduct as:
 - The police tried to break down the accused's answers by denial or unfavourable replies
 - The police used searching questioning and suggested that the accused was lying
 - The accused's accounts of the events were challenged and denials ignored.
 - Upon the accused saying that he didn't want to comment upon the allegations, further questioning continued.
 - In addition, given the age of the accused, he was effectively denied a proper support person

ii. UNRELIABLE ADMISSIONS

Section 85 only applies to admissions made in the course of official questioning, or as a result of an act of another person who is capable of influencing the decision whether to prosecute. Evidence of an admission is inadmissible unless the circumstances in which admission made were such as to make it unlikely that the truth of the admission was adversely affected (s 85(2)).

In addition, s 138 EA provides that an admission will be deemed to have been obtained improperly if:

- the act or omission in the course of questioning was likely to impair substantially the ability of the person being questioned to respond rationally to the questioning (s 138(2)(a));
- the police officer made a false statement which was likely to cause the person being questioned to make an admission (s 138(2)(b)).

1) Circumstances surrounding making of admission

The focus of s 85 is on whether the official questioning was carried out in a way which may produce possibly untruthful or unreliable admissions. The court is only concerned with the circumstances, and not the possibility of untruthfulness of the admission. The onus is on the crown to establish on the balance of probabilities (s 142) that the admission was not unreliable.



R v Rooke

- Consider the circumstances of and surrounding the making of the admissions

Ye Zhang

- The case involved a broken relationship, and the police officer repeatedly questioned the accused about it. This amounted to an act which would likely to impair substantially the ability of the accused to respond rationally (s 138(2)(a)).

R v LMW

- The court accepted that the admissions could have been made as a result of acts of the police, who were the ones capable of influencing decision whether to prosecute (s 85(1)(b)), given that the accused blurted out an admission immediately upon being questioned by the police.

2) Factors relevant to likelihood of adversely affecting truth of admission

The matters to take into account in determining whether the admission was adversely affected include (s 85(3)):

- a. Any relevant condition or characteristic, including age, personality, education; and
- b. If admission made in response to questioning
 - i. Nature of questions and the matter in which they were put; and
 - ii. Nature of any threat, promise or inducement.

Both elements of (a) and (b) are relevant, and proving one is not sufficient. Personal characteristics include physical/psychiatric disabilities, state of mind and sobriety.

R v Rooke

- Any police impropriety would be relevant under s 85 (e.g. failing to electronically record questioning, unlawful detention, intimidatory behaviour, unduly persistent or aggressive questioning, threats or inducements)

R v Donnelly

- Facts: The accused made admissions to his cousin, a police officer. At the time, the accused was severely depressed and on drugs.
- The court rejected a s 85 argument, placing reliance on the fact there did not appear to be anything that the police had done to the accused to make him confess.

R v Esposito

- Although the accused was extremely vulnerable and in a drugged state, the police did nothing in the circumstances of the case to affect her admission. As such, there was no scope for an s 85 argument.

R v LMW

- The court held that s 85 did not apply as the child was not intimidated by the police officers to make an admission. There was nothing in the demeanour of the police officers to conclude that their presence or the questions asked would have adversely affected the reliability of the admissions.



iii. THE FAIRNESS DISCRETION

The fairness discretion in s 90 focuses on the fairness of the criminal trial with respect to the use of a confession against the accused. This is generally used as a safety net where all other sections fail to exclude the evidence.

Section 90 provides that an admission will be excluded if the evidence is adduced by the prosecution and the circumstances in which admission was made make it unfair to be used against the defendant.

A finding that the Crown has failed to negative influence for the purpose of s 84 does not necessarily carry the corollary that the admission was made as result of the oppressive conduct. Oppressive conduct could also be a factor considered for the purposes of s 90.

1) Admissibility of covertly recorded conversations

R v Swaffield

- Facts: an undercover police officer put on a pretence to obtain admissions from the suspect
- The court held:
 - The admissions were elicited in clear breach of the accused's right to choose whether or not to speak to police
 - Of critical importance for covert recording is the absence of a caution.
 - Unelicited admissions would not call for discretion to exclude.

R v Pavic

- Facts: Pavic made admission to a friend who had a wire. The friend gave no caution, but was an agent of the State. The meeting was not set up directly by police, but by the friend who spoke at the request of police who wired him.
- The court held that there was not interrogation by the friend, and that the admission was not elicited by the friend. Rather, Pavic's confession was "volunteered by him".

Pavitt

- Facts: police obtained warrant to listen to a telephone call, during which admissions were made. Consider:
- Extent to which freedom to choose to speak to the police has been impugned
 - o if interrogated by police, a caution is needed, even if the police is undercover (*Swaffield*). Determine also if the admission is elicited (*Swaffield*)
 - o Freedom to speak is impugned if the informer (an agent of the state) elicited the admission.
 - was the evidence obtained by an agent of the state? (*Pavic*)
 - exchange between the accused and the informer would not have taken place, but for the intervention of the state or its agents
 - was the evidence elicited?
 - "functional equivalent of an interrogation", or state agent exploited any special characteristics of the relationship to extract the statement
 - or was it merely made voluntarily in the course of conversation (*Pavic*)
 - o Absent eliciting behaviour, there is no violation of the accused's right to choose whether or not to speak to the police.
 - o If the accused speaks voluntarily, it is by own choice, and must be taken to have accepted the risk that the recipient may inform the police (*Pavic*)
- 2) court has a discretion to reject evidence if the circumstances point to unfairness to accused
- 3) Even if there is no unfairness, the court may consider the means by which the



confession was elicited, and reject evidence obtained at a price which is unacceptable having regard to prevailing community standards

- whether conversation was recorded in circumstances that it might be unfair
 - whether the accused previously indicated refusal to speak to police
 - covert recording is not, of itself, unfair or improper, at least where the recording was lawful.
 - whether the accused could have withdrawn from the conversation at any time.

Em v The Queen

- Facts: Em was arrested, taken to a police station and given a full caution. Em didn't talk on tape, but when questioned later, he made an admission which was covertly recorded. However, Em was told not he was under arrest, and only half the required caution was given.
- The High Court considered under s 90 whether the police exploited the accused's belief that if he was not recorded, the admission would be inadmissible
 - Police did not reinforce or contribute to the continuation of the mistaken assumption that what he said could not be used against him.
 - It was clear that he believed what he said could not be used in criminal proceedings, and there was no evidence that he turned his mind to the question again as a result of what was said, or that he had any doubt about it which might cause him to question it or that he had any desire to search for confirmation.
 - The majority of the court held it was not unfair under s 90
 - ◆ Even though the police kept the covert recording secret from him, because this would be virtually true of all cases of lawfully authorised covert surveillance
 - ◆ The mere fact that a conversation was being secretly recorded is not unfair, nor was the fact that it was made in the park and not at police station.
 - Freedom to speak was not impugned as the accused:
 - ◆ Knew that he was speaking to police
 - ◆ Knew he was being investigated
 - ◆ Previously been cautioned
 - ◆ Was not obliged to speak to police
 - ◆ Spoke to the police officers knowingly and willingly
 - ◆ Was free to leave.

2) The protective principle

Consider:

- Did police fail to comply with the LEPRA protective procedures, such as the Part 9 protection?
- Did a breach of those procedures place the defendant at disadvantage in the case?

In the *Huyhn case*, a delay in contacting a support person for a young person was held to breach the protective principle under s 90.

3) Forensic disadvantage

Police must adhere to protections in the relevant legislation (CPA, LEPRA and EA) to ensure that the confession is reliably corroborated and recorded if possible. This is to ensure that the lack of evidence surrounding the making of the admission would not place the accused at a forensic disadvantage.



s 90

s 90 focuses on effect of unlawful conduct on the particular accused in terms of fairness

s 90 places the burden of persuasion on the accused that it would be unfair to admit evidence of the admission

s 138

s 138 focuses on matters of public policy with fairness to accused being a minor consideration.

s 138 places burden of persuasion on DPP once the accused has persuaded the court that an illegality or impropriety had occurred

iv. DISCRETION TO ADMIT OR EXCLUDE IMPROPERLY OR ILLEGALLY OBTAINED EVIDENCE

Consider the possibility that the evidence may be admitted or excluded under s 138 EA. The discretion to exclude improperly or illegally obtained evidence applies to all evidence (including confessions) under s 138-139 of the EA. There is a greater focus on public policy (as opposed to the s 90 individual considerations of fairness to the accused).



We hope you have found the Litigation – Criminal Procedure Cram Notes useful for your studies.

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