

Criminal Investigation and Circumstantial Inference

A General Overview of the Relevant Legal Principles from an Investigative Perspective

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Facts, Evidence and Circumstantial Inference

Circumstantial inference is a logical way in which evidence can be used to prove facts in a criminal trial. A fact is something that happened or actually existed. The Evidence Act 2006 sets out the Rules of Evidence which govern how evidence may be admitted and used to prove facts in the criminal setting.

CRIMINAL INVESTIGATION

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FACTS

(Things that happened or actually existed)

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proved by evidence

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PROVED FACTS

|

logical deduction

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CIRCUMSTANTIAL INFERENCE

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PROOF BEYOND REASONABLE DOUBT

The Elements of a Criminal Offence

A criminal offence consists of elements which together define the offence. For example, the offence of burglary requires proof of identity, entry to a building or ship, without authority and with intent to commit an imprisonable offence therein. So, in this example there are five elements which must each be proved beyond a reasonable doubt.

In consideration of burglary the investigation will ask, "Is it a fact that the suspect committed this burglary?" "Is it a fact that entry was gained to the building?" "Is it a fact that the suspect had no authority?" "Is it a fact that the suspect had an intent to commit an imprisonable offence in the building?"

Defences Must Also Be Considered

In addition to the elements of the offence, a prosecution must also prove beyond a reasonable doubt that there is no defence to the allegation of criminal conduct. In the burglary example, it is a legal defence if the suspect had authority to enter the building, for example to recover their property. If a legal defence exists, then even if all of the other elements of the offence can be proved, there is no burglary. So, what if the defendant entered a house that he had authority to enter and then committed another offence once inside? All it means is that he has no liability for burglary but may have liability for the other offence committed inside the building.

Forms of Evidence

Evidence is how facts are proved. In the Criminal Court there are different ways in which evidence is defined and considered. An eyewitness to the burglary would give direct evidence to the Court explaining the facts of what they saw. An expert witness could give opinion evidence about the alarm system on the building. A Police witness could give direct evidence as to what the suspect told them. Although what the defendant told the Police witness is an out-of-court statement, and hearsay statements are generally inadmissible, the words of a defendant are an exception to the hearsay rule and are admissible as evidence.

Complexity of Criminal Investigation

Logically, the complexity of a crime depends upon its circumstances. A crime involving multiple people, whether they are victims, offenders, or both, will generally be more complicated to investigate and prosecute than a crime involving one offender and one offence.

It is always the case that the prosecution must prove beyond reasonable doubt every legal element of every offence charged against every offender charged. If eight people were charged with multiple burglaries, then each legal element of burglary must be proved against each of the eight offenders in respect of every burglary charged.

Circumstantial Inference

Circumstantial inference evidence is a logical deduction drawn from other facts which have themselves been proved. Perhaps inference could never work in a situation where the standard required certainty, but that is not the standard of proof in the Criminal Court, which requires the high standard of proof beyond a reasonable doubt.

As the complexity of a circumstance increases, there is often greater scope for circumstantial inference because there are more potentially relevant facts from which logical conclusions may be drawn.

Facts Incapable of Direct Observation

Even so, there are some facts that are incapable of direct observation and therefore can only be established by drawing logical inferences from other proved facts. An example is where the operation of an instrument of harm, such as within the human body, cannot be physically seen. In such a case, the surrounding facts, once proved, may provide a sufficient basis from which the Court may infer that the instrument of harm did in fact cause the harm alleged.

This contrasts with a circumstance in which the harmful causation occurs in plain view and can be directly observed by an eyewitness. Where the causative process

itself cannot be seen, the Court must necessarily determine that issue by drawing logical inferences from the surrounding proved facts.

Circumstantial Inference Cases

In a case where a factual matter necessary to prove one or more elements of an offence can only be established by circumstantial inference evidence, the case is properly described as a circumstantial inference case. This is because, without proof of that factual matter by circumstantial inference to the required standard of proof, one or more essential elements of the offence cannot be established and, consequently, there is no case.

Therefore, a successful prosecution would depend upon substantial accuracy and clarity in identifying, understanding, and proving all of the relevant facts which, when taken together, are capable of creating the necessary circumstantial inference.

The Rope Analogy

A long-standing analogy used to describe this process is the Rope Analogy. Under that analogy, each fact proved creates a strand of evidence. Individually, a single strand may be insufficient to prove the criminal allegation. However, when all of the proved strands are woven together, they form the evidential rope capable of proving the criminal allegation beyond a reasonable doubt – this is a Circumstantial Inference and would mean the case is evidentially a Circumstantial Inference Case.

Why We Have Published This Guide

Justice Watch New Zealand has published this guide to assist members of the public in understanding the fundamental legal principles governing criminal investigation, the law of evidence, and circumstantial inference. If you are reading this on our website, these principles may be of interest to you and may assist in understanding the information presented elsewhere on this site.

Many people are familiar with the idea of eyewitness evidence but are less familiar with the fact that many criminal prosecutions, particularly those involving complex circumstances, depend substantially upon circumstantial inference. In such cases, the Court determines the facts by drawing logical conclusions from other facts that have themselves been proved.

It is our hope that this guide provides a useful introduction to those principles and assists readers in understanding how complex criminal investigations are undertaken and how criminal allegations may be proved beyond a reasonable doubt.