



For Profitable Solutions

FLINT FORENSICS PTY LTD

ABN 65 103 438 277

Bruce Flint, Managing Director

IT'S ALL ABOUT MONEY!™



“Forensic Accounting Services”



For Profitable Solutions

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THE LEGAL DIMENSIONS FRAUD MAINTAINING THE INTEGRITY OF YOUR EVIDENCE

Presentation by
Bruce Flint CA, CFE

For CPA Australia's Financial Investigation and Forensic Accounting Symposium, September 2004

Liability Limited by the Accountants Scheme approved under the Professional Standards Act 1994 NSW

“Forensic Accounting Services”

Introduction

- Civil and Criminal Matters
- Proofs of Fraud
- Hearsay Evidence
- Rules of Evidence
- Confidentiality



Civil and Criminal Matters

- Expert Witness
- Credibility, Assumptions and Methodology
- Engagement Letter



Civil and Criminal Matters

- Purpose and Scope
 - To the extent you ask us to reach conclusions or form opinions, we are obliged to do so without regard to the impact that our conclusions may have on you, your client or any litigation.
 - You warrant to us that the information provided by you is accurate and complete.
 - You warrant to us that the information provided by you and that we rely upon will be admissible in court.



Civil and Criminal Matters

- Conflict of Interest
 - We will perform an internal search for potential client conflicts based upon the names of the parties that are provided. We are not aware of any circumstances that, in our view, would constitute a conflict of interest or would impair our ability to provide objective assistance in this matter. Should any unforeseen conflicts arise that would impair our ability to perform objectively, we would advise you immediately and determine our continued involvement in the engagement.



Civil and Criminal Matters

- Confirm Duty as an Expert

By this letter, we make you aware of the Federal and Supreme Court Expert Witness Code of Conduct. In these Code of Conduct Rules, you will find the following key items:

- “An expert witness has an overriding duty to assist the Court on matters relevant to the expert’s area of expertise;
- An expert is not an advocate for a party;
- An expert witness’s paramount duty is to the Court and not to the person retaining the expert.”



Civil and Criminal Matters

- Best Practice Reporting

Federal Court Practice Direction 1

- 2.6 At the end of the report the expert should declare that [the expert] has made all inquiries which [the expert] believes are desirable and appropriate and that no matters of significance which [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from the court.
- 2.9 If an expert's opinion is not fully researched because the expert considers that insufficient data is available, or for any reason this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.



Civil and Criminal Matters

- Best Practice Reporting
 - Assumptions
 - Methodology



Best Practice Reporting



Civil and Criminal Matters

- Burden of Proof
 - Criminal Cases
 - BEYOND REASONABLE DOUBT
 - Civil Cases
 - BALANCE OF PROBABILITIES



Proofs of Crime

- The Forensic Accountants Role
- Brief's of Evidence
- Crimes Act's
 - Crimes Act 1900 (NSW)
 - Crimes Act 1958 (VIC)
 - Criminal Code Act 1899 (QLD)
- Evidence Act's



Proofs of Fraud

- Criminal Proofs (Crimes Act 1900 NSW)

Example – Creditors Clerk paid a supplier to her own bank account and not the supplier.

Criminal Proof – Obtaining Money etc by deception (s178BA)

- Defendant
- By a deception
- Dishonesty
- Obtained for himself or another
- Money, a valuable thing, or financial advantages

Is this the only proof?



Proofs of Fraud

- Other Charges (Crimes Act 1900 NSW)

There are a number of charges that can be cross-referenced such as:

- Obtain access to program/data to defraud [s309(2)(c)]
- Obtain property by false pretences [s179]
- Obtain access to program/data for financial advantage [s309(2)(b)]
- Larceny by clerk or servant [s156]
- Embezzlement [s157]
- Obtain benefit by deception [s178BA]
- Obtain money etc by false representation [s527]



Proof of Fraud

- Criminal Proofs

Example – Creditors Clerk paid a supplier to her own bank account and not the supplier.

Criminal Proof – Larceny by clerks or servants:

- Defendant,
- Was a clerk or servant,
- That the property named in the charge was owned by his master or was in the power or possession of his master, and
- The defendant stole that property.

What you should be doing all the time?



Hearsay Evidence

- What is it?
- Criminal Matters.
- Civil Matters.
- Is there any difference?
- How do you maintain the integrity of your evidence?



Hearsay Evidence

- Exceptions

Statutory Exceptions

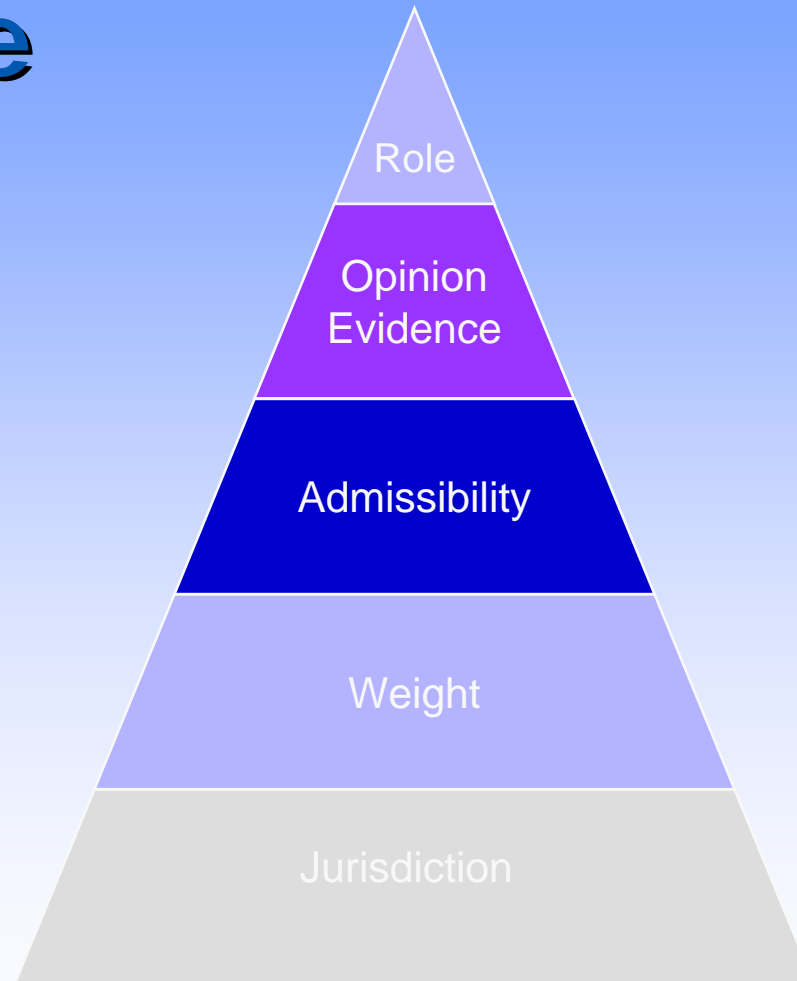
- Business Records
- Telecommunications
- Interlocutory proceedings
- Reputation as to relationships and age
- Reputation of public or general rights
- Contents of tags, labels and writing
- Contemporaneous statements about a person's health

Common Law exceptions

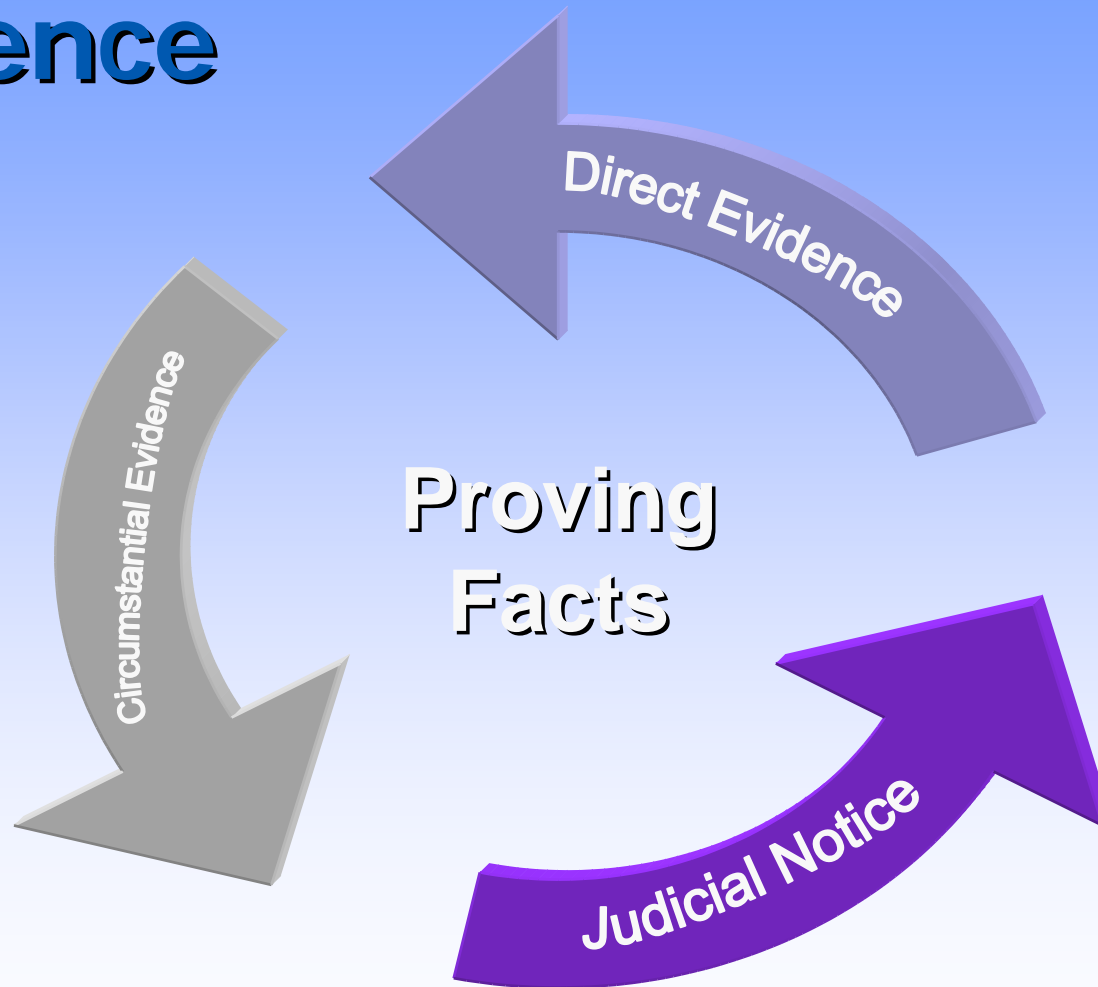
- Persons now deceased
- Public documents
- Confessions



Meeting the Needs of Evidence



Meeting the Needs of Evidence



Confidentiality

- Professional Code of Conduct
- Privacy Act



IT'S ALL ABOUT MONEY!™



When it's all about money,

Flint Forensics Pty Ltd is the **impartial** and **independent specialist** for:

personal and **commercial** litigation support.



“Forensic Accounting Services”

For Further Information

Flint Forensics Pty Ltd **is the solution.**

To find out more you can:

- Phone 02 9584 1474
- Visit the website www.flintforensics.com.au
- Email action@flintforensics.com.au

