Tendency

Judicial College of Victoria

Is evidence of a person's character, reputation, conduct or tendency being led to prove that the person has or had a tendency to act in a particular way or have a particular state of mind? **s 97**

→ **NO** → The tendency rule does not apply **s 97**

↓ **YES**

Does the evidence relate only to the credibility of a witness? **s 94(1)**

Does the proceeding relate to bail or sentencing? **s 94(2)**

Does the evidence relate to the character, reputation, conduct or tendency of a person which is a fact in issue? **s 94(3)**

→ **YES TO ANY** → The tendency rule does not apply **s 94**

↓ **NO TO ALL**

In criminal proceedings, is the evidence adduced by the accused about the character of the accused or co-accused persons **(ss 110 - s111)?**

→ **YES** → The tendency rule does not apply **ss 110 - 111**

↓ **NO**

Has notice been given in accordance with the relevant court rules or regulations? **ss 98, 99**

Is the evidence adduced in accordance with a court direction under **s100**?

Has the evidence been adduced to explain or contradict tendency evidence adduced by another party? **s 97(2)**

→ **NO TO ALL** →

↓ **YES TO ANY**

Does the evidence have, by itself or along with other evidence, significant probative value?

↓ **YES**

CIVIL PROCEEDING

CRIMINAL PROCEEDING
If the evidence is led by the prosecution against the defendant, does the probative value of the evidence substantially outweigh the prejudicial effect? **s 101** (see **s 101(3)** for exception)

→ **NO** →

↓ **YES**

Should a discretion to exclude or limit the evidence, or a mandatory exclusion be exercised? **Part 3.11**

→ **YES** →

↓ **NO**

THE EVIDENCE IS ADMISSIBLE TO PROVE A TENDENCY

THE EVIDENCE IS NOT ADMISSIBLE TO PROVE THE ACT OR STATE OF MIND

Note:

The court may waive the rules in **Parts 3.2-3.8** in certain circumstances **s 190**