

Fact Management and Decision-Making Skills: Adapting the Wigmorean Chart for Business Law Students

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I. INTRODUCTION

Those teaching law to business students commonly debate two teaching issues. One is essentially practical, whilst the other is academic. First, there is a tension between what business students require and what law tutors are trained or conditioned to provide. The tutors generally will have formal legal training, with many having experience of legal practice. As most of the authors are these same tutors, it is no surprise that most business law textbooks and materials follow a law school approach, “heavy on cases and ... black letter law.”[1] Yet few, if any, of their students aspire to become lawyers. In these terms, tutors and students are mutually alien. To achieve their business-oriented goals, people in business prefer to resolve conflicts and *prevent* legal problems.[2] Litigation is not desirable.

A second - academic - issue is that business students invariably struggle with the legal problem-solving exercises provided in their assessments.[3] This is because they are not steeped in the necessary legal reasoning, analysis and logic associated with dedicated law students.

These apparently unrelated needs of business students share common skills: (1) identifying issues, (2) organising and analysing facts, and (3) decision-making. A seemingly unrelated discipline is the science of proof, which was developed most graphically in 1913 by John Henry Wigmore.

Wigmore’s thesis was that legal studies focused on the *admissibility* of evidence whilst failing to develop any science of *proof*. Wigmore addressed this shortcoming with his chart method of analysing facts. He presented a visual method of identifying issues, organising and analysing facts accordingly, and consequential decision-making. His, and other developments that followed, invariably were based upon famous criminal law cases. But the principles developed are adaptable for uses beyond reviewing a criminal trial. So it should not be difficult or alien for business law lecturers to teach these skills, which would provide genuine benefits for business law students. The key is to adapt the Wigmore model for these needs.

The aim of this paper is to explain the Wigmore chart method, derive the essence of the necessary thought processes, and adapt the chart method to suit the needs of business law students, providing basic skills that will enhance work-related decision-making and academic legal problem-solving. It is possible to adapt Wigmore’s method for levels ranging from year one undergraduate to post-graduate; and for all lengths ranging from a one hour lesson integrated into a substantive law course, to a dedicated course lasting a month or longer.

II. THE WIGMOREAN CHART METHOD

In 1913, John Henry Wigmore published *The Problem of Proof*,[4] his “*novum organum*”[5] (new instrument) for the study of judicial proof. His contention was that although the work of legal practitioners fell into two distinct parts of admissibility and proof, the principles of *admissibility* had “monopolized” formal studies of evidence.[6] Wigmore instead focused on *proof*. His purpose was to establish a science of proof. Wigmore employed his method to analyse the evidence admitted in famous trials. Over the years, others have adopted and developed Wigmore’s method, and in the main based their studies upon criminal trials.[7]

Wigmore’s new instrument was a form of flow chart, mapping the issues, evidence, and inferences, using numbered symbols and connecting lines, with a separate key explaining the issue, evidence, or inference represented by each symbol. Its logic is binary, with every proposition tending support or undermine the ultimate issue.

There are a number of tasks in drafting a chart. Some should be completed before starting the chart, others whilst drafting it. It is a fluid process. For instance, one may offer a fact to the chart, then consider its probative value, and symbolise this accordingly. The primary task is to identify the issues. Normally there will be an ultimate issue (did A. murder X.?), and one or more necessary sub-issues (*e.g.* whether A. had the requisite intent to harm, and/or whether the killing was unlawful). Then the evidence must be organised and considered for its probative value towards the ultimate issue, via the sub-issue(s). This is achieved by analysing each supposed piece of evidence “into all its subordinate inferences.”[8] The chart can help distinguish *facts as alleged* from *facts as believed*. [9] The

method is to make necessary and reasonable inferences from each fact. “Any scheme which fails to provide this would be like a bridge with the bolts left out of the truss angles.”[10] Sometimes it is necessary to make a chain of inferences. In aid of the process, where appropriate, the chart can illustrate the issues, pieces of evidence, inferences, weakening and strengthening inferences, and supposed general truths being used in support of a particular inference.

Wigmore suggested a range of at least 30 symbols. The principal ones were:

[pic] (Circle) *Circumstantial evidence*.

[pic] (Square) *Testimonial evidence*.

[pic] (“More than”) *Explanatory evidence*. For circumstantial evidence, this weakens an inference by offering an alternative explanation. For testimonial evidence, it discredits the testimony.

[pic] (Closed triangle) *Corroborative evidence*. For circumstantial evidence, strengthening the inference, and closing down other possible explanations; for testimonial evidence, closing down possibility of witness error.

Where the explanatory evidence detracts from the desired inference, an arrowhead is placed on the line connecting the two, but *only* after the chart-maker has considered the matter (an example of the fluid nature of this method). Correspondingly, an ‘X’ is placed on the connecting line if *corroborative* evidence is considered effective. Wigmore offered slight variations to distinguish the prosecution and defence arguments, and provided a number of marks (such as dots, arrows and small circles) to qualify a symbol, say endorsing the proposition it represents, or marking evidence presented to the senses of the tribunal. Where an inference is based on a supposed general truth, the supposed general truth may be added with an appropriate symbol, say a circle (for circumstantial evidence), with its principal symbol number repeated with qualification letter, *e.g.* “4a”.

An introductory example used by Wigmore supposes that a prosecution witness at trial demonstrates hostility towards the defendant, and that recently the defendant had fired this witness. The probity of the witnesses’ evidence may be charted thus:

KEY

1. D. carried knife into his apartment.
2. Witness statement to that effect.
3. Witness was biased against D.
4. Witness recently fired by D.
- 4a. A person recently fired by a defendant will be biased against that defendant.
5. When testifying, witness displayed hostility towards defendant.
6. Statements by D. and Witness to that effect.

Here, 1 is an alleged fact that the defendant carried a knife into his apartment, and 2 is the testimony to this effect. The witnesses' bias is charted by 4 and the general truth behind this assertion by 4a. The inference is reinforced by 5.

Note how the chart works from top to bottom and from right to left. Wigmore proposed that the prosecution's (or claimant's) evidence be allotted to the right, with the defendant's case on the left. The arrowhead on the connecting line between 2 and 3 signifies, that after weighing matters, the chart-maker thinks the weakening inference discredits the testimony. The extra line on symbol 3 merely denotes that this is evidence offered by the *defendant* in a case.

III. ADAPTING WIGMORE'S CHART METHOD FOR BUSINESS LAW STUDENTS

A. Factors to Consider

There are four major factors to consider before adapting the Wigmorean analysis for business students: (1) the teaching time available; (2) the type of student; (3) moving the emphasis from criminal to civil law; and (4) the computer age.

First, it is unlikely that such a skills course would be allocated the same teaching time as other substantive law courses. Indeed, one option is to integrate it into another course (*e.g.* Employment Law, Corporate Governance, Negligence, Product Liability, Agency, Contract *etc. etc.*). As such, the proposed model could be used (with appropriate adaptations of length, details, legal topic, and even jurisdiction) where between one and four hours teaching time is available.

Second, the most obvious feature of the students is that they are not *law* students, although it is likely that they would have studied some law. These students would not have spent their studies devoted entirely to legal topics, absorbing forensic techniques daily. They will come to the course without the benefit of in-depth legal reasoning and analysis expected of law students. However, business students are at no disadvantage simply because they have not studied the rules of evidence, as Wigmore provided a method of *proof*, not admissibility.

Business students normally are keener than law students to see the practical benefits of their learning. Amongst other things this means learning how to avoid legal problems and how to resolve conflicts.[11] Thus, decision-making skills are useful and attractive to business students. These skills are likely to be required earlier in the process in business than they would in a legal environment. For instance, for a human resource department, conflicts can arise and be resolved long before litigation is even contemplated or lawyers are consulted. By the time a matter comes to the lawyers, the decision-making is likely to centre on whether to go to trial, or even the trial strategy. Where the chart method is taught on graduate courses, many students will have practical experience of these matters. This suggests that a less-technical broad-brush approach is appropriate.

Business students, who notoriously struggle with legal problem-solving exercises,[12] also would hope that any skills course would enhance their academic abilities. The most obvious benefit would be applying the disciplined and analytical thinking required by the chart method to legal problem-solving exercises. Where students (try to) adopt the conventional four-stage approach[13] of (1) identifying the issue (Wigmore's ultimate issue), (2) stating the rule (sub-issues), (3) applying the rule to the facts provided in the problem (organising and showing the relevance and probative value of each fact), and (4) concluding or providing "good advice" (decision-making), the benefits of "chart-method thinking" become obvious.

Third, moving the emphasis toward civil law need not be an obstacle at all. Although perhaps less prominent, civil wrongs are made up of elements in same way as criminal offences. For instance, a simple breach of contract claim may rest on whether a contract existed, with the elements being agreement, legal intent, and consideration. "Agreement" itself may be sub-divided into offer and acceptance, where relevant. In any case,

businesses may have to deal with criminal law for a number of reasons, ranging from corporate fraud to health and safety regulations. Further, some civil claims may turn on the criminal law (and vice versa),[14] as illustrated in the *Joyce v. Bingo* example below. So criminal law is not redundant. However, other factors may become more prominent in the civil law arena, such as litigation costs, the amount of compensation at risk if the matter were litigated, and the potential liability to others following an unfavourable precedent.[15] These factors could be relevant to the decision-making of an employer, worker, producer, or consumer, and so on. The Wigmore chart method cannot account for these factors. So business students should be informed of these limitations. The chart focuses on the likelihood of the truth of a particular proposition, and as such it is a major - but not necessarily the only - contributor to the decision-making process.

Finally, back in 1913, Wigmore advised that a sharp pencil and ruler was required for the task. Of course, nowadays, students would expect to draft their charts on a computer rather than by hand. So suitable software must be found.

This shapes the purpose of a Wigmore course for business students. First, it should provide practical decision-making skills for non-lawyers working in a business environment, especially where the decision-making may have legal consequences. Second, it should provide academic skills, especially for legal problem-solving. The task is to provide this without losing the essence of the Wigmorean method, which is identifying issues, marshalling facts, and decision-making. It should enable users to identify the relevance, credibility and probative value of facts, which means retaining the inferential skills and binary logic employed by Wigmore. The chart method inherently involves disciplined construction, analysis, and criticism of arguments.[16]

B. The Business Law Model

Any course should provide these skills at least at a basic level and preferably at a level that students could employ *and* develop, both practically and academically. Of course, it is not necessary that students draw a chart whenever a problem arises. The essence of this method is the disciplined analytical thinking employed during fact management and decision-making exercises. Familiarity with the Wigmore chart method can empower students in these tasks. Many will benefit simply by being able to visualise the necessary thought processes.

With these factors in mind, it becomes obvious that Wigmore's chart method needs to be simplified. The model proposed here has been pared down to a minimum to show how the basic goals can be achieved. Tutors may restore and develop details to suit their own requirements.

The major change is the abolition of a key list to the symbols. Instead, the explanatory words have been placed *inside* text boxes, which are appropriately marked with symbols. This makes the chart easier and quicker to comprehend, without the need to shift one's attention back and forth between the chart and the key list. Even a basic chart will contain some 30 or so symbols (and corresponding explanations), and so this is a considerable benefit.

The next stage is to decide which symbols to retain. The pared down model retains only issues, inferences (including weakening and strengthening ones), evidence, *common beliefs* (named *supposed general truths* by Wigmore), and indicators of the strength of belief by the chart-maker in a fact. This retains the essence of Wigmore's chart. The chart loses some of the original detail, such as marking defence or prosecution material, evidence that will be presented to the senses of a tribunal, or some of the more detailed indicators of credibility accredited by the chart-maker to a piece of evidence. The first two are closely associated with the trial stage and so are less urgent for non-lawyers. The more detailed indicators have been discarded for two reasons. First, to make the chart clearer. Second, unlike the legal practitioner, students will be required (in most cases) to explain and justify their fact management and decision-making. Indicators on the chart make sense to the chart-maker, but less so to others. For the purpose of teaching, it is better to require students to offer their opinions in class or by an accompanying explanatory note, which would vary in length depending on the size of the task. A written explanation is necessary if the work is to be assessed. Finally, one symbol will be added. Some elements of any crime are likely to be uncontested. Wigmore sensibly assumed that for practitioners this went without saying. Such an assumption should not be made for non-lawyers. For the sake of completeness and clarity of thinking, students should indicate any uncontested elements.

C. Appropriate Software

The obvious software to choose is Microsoft Office, because of its widespread availability. However, its flowchart facility is so multi-disciplinary, fragmented and complex, it is very time-consuming and unnecessarily demanding to set up and use. Nonetheless, a guide and example have been provided below should this be the only option (see

Appendix D). Other more dedicated software is available, such as SmartDraw Legal[17] and Rationale.[18] Whilst SmartDraw offers detailed charts, Rationale provides the basic needs and is easier to use. Hence, the illustrations are in Rationale, and a guide to use is provided in the student handout (Appendix A).

The Rationale *Group* chart allows the chart-maker to build the chart box-by-box. The boxes are easily connected (or disconnected), or made into sub-groups, which is useful where a large chart needs to be displayed on separate pages. These boxes can be colour coded, *e.g.* red to highlight a weakening inference. Symbols are available representing strengthening and weakening inferences (*plus* and *minus* signs), evidence (*Quote*) and supposed general truths (*Common Belief*). Boxes suggesting a proposition can be marked with a tick, cross, or question mark, as indicators of the chart-maker's opinion of the content. Although this opinion should be explained separately, these indicators will aid the chart-maker.

Whatever software is chosen, where the charts are to be assessed, it is better to provide just one template and insist that candidates use it. As well as minimising the marking time for tutors, this will help the grading to be consistent and transparent. The content rather than the format of the chart should be assessed, and markers should not be distracted by a candidate's choice of software or format.

D. Preparing Exercises

Writing scenarios for any particular course is straightforward. There are plenty of models in the case books, or other reports of first instance trials. Others may be drawn from experience in legal practice. Simply convert the evidence into a number of statements,[19] and adapt the volume of evidence according to the exercise. To test inferential skills fully, use circumstantial evidence. The benefit of drawing the scenarios from actual cases is that the exercises will have a ring of truth for the practically-minded business students, enhancing the course's credibility.

Where necessary, the legal issues or elements raised by a problem should be specified to the students. Unlike law students, they may not be expected to know the elements of an offence or civil wrong, nor do any legal research. The information provided will vary depending on the scenario, legal topic(s) involved, and (perhaps) jurisdiction. In the *Joyce v Bingo* exercise (below, Appendix A), students are told that this civil matter may turn on the criminal offence of theft, and so the elements of theft are provided.

D. Grading Formal Exercises

Formal exercises are graded according to the skills required to draft a chart. As noted above, it is better the students follow a single format (using same software, symbols *etc. etc.*), as this helps discussions, commentary and grading. A chart, with any accompanying explanatory note, should be graded according to following skills displayed:

- (a) Identifying the standpoint of the chart-maker (*e.g.* union official, HR manager; historian);
- (b) Collecting and ordering facts.
- (c) Identifying the relevance of the facts to the (legal) issues.
- (d) Identifying any disputed facts.
- (e) Showing the strengths and weaknesses of a case.
- (f) Making proper inferences.

Candidates will *not* be expected to show:

- (a) Knowledge of categories of evidence.
- (b) Knowledge of admissibility of evidence.
- (c) Sufficiency of evidence (*i.e.* producing *sufficient* evidence on an issue in order for that evidence to be submitted to the jury (or tribunal of fact).
- (d) Knowledge of any legal issues beyond those provided in the exercise.

A piece of work can be graded according to the number and quality of the skills displayed. Some may prefer to allocate a particular weighting to each skill, whilst others may consider this too restrictive or pedantic. The quality may be classified in the context of the level of expectation from the candidates according to their level (*e.g.* graduate, undergraduate year one *etc. etc.*) and the particular institution's guidelines or practice. As this may be a short course, it might be helpful to students to indicate the weighting of the mark within their overall studies.

E. The Classes

Where just one hour is available, the model could be used simply to implant the necessary thinking processes, providing the most basic skills for students to build upon and integrate into their legal studies and working life. For this purpose, simply use the lecture in Appendix A. Where more time is on hand, students can prepare exercises and discuss them in class, with the goal, perhaps, of a large formal assessment containing some 20 witness statements. Experience showed that where larger charts are required for the formal exercise (say, with some ten to twenty statements necessitating some 70-100 symbols), at least two seminars practicing charts on that scale are desirable.

The model proposed here is set someplace between. It is based on three hours' teaching with a goal of a formally assessed exercise, containing four pieces of evidence, envisaging a chart containing around 30-40 symbols. The three-hour allocation is divided into one lecture and two seminars, each a week apart. For the sake of illustration, some of the exercises are set in Manchester, but the location can be varied, or even disregarded, as appropriate.

IV. CLASS METHODOLOGY

A. The Lecture

In the lecture, the notion of fact management is explained, along with the acquired skills and academic and practical benefits. Then the basic Wigmore method is explained, by first distinguishing admissibility and proof (this is easily illustrated using a well-known rule of evidence, such as the hearsay rule). Then, step by step, the tutor shows how to build a chart, using a single employment case of dismissal for theft. This scheme integrates and demonstrates the three basic skills (identifying issues, managing facts and decision-making). With suitable AV equipment the tutor can build the chart on-screen for all to see. Otherwise, students can follow the process with the incremental charts in the handout.[20] This is followed by a four-stage protocol on how to draft a chart (Standpoint, Issues, Theories, and Drafting). Finally, a few words on how to use the software chosen to draft the chart (with a demonstration if the AV equipment allows).

B. Seminar One

The first exercise is based on one aspect of the infamous murder trial of Dr Crippen. Although this criminal matter may not be directly relevant to most business students, it is well-known and so has the benefit of engaging students' interest. Of course, other examples are available, which may be better known to the students in a particular jurisdiction or locality, or studying a particular course.[21] Students are asked to prepare a chart on the single issue of whether the alleged victim, Mrs Crippen, was in fact dead. A suggested chart is provided in Appendix C.

C. Seminar Two

This exercise is based on a racial discrimination complaint, in the fictional case of *Prince v. China Centre*. [22] Students should prepare a chart based upon four pieces of evidence, comprising three statements and the job advertisement. In addition, students should provide a written statement (no more than 500 words) explaining their decision. This exercise, being about the same size, is a dress rehearsal for the formal assignment.

D. The Formal Assignment

The formal assignment, *Jones v Handy Betting* [23] will be on the same scale and subject matter (here employment law) as the exercise used for seminar two.

Appendix A

STUDENT HANDOUT

FACT MANAGEMENT AND DECISION-MAKING

THE WIGMORE CHART METHOD

INTRODUCTION

1. Skills acquired

- (1) Identifying issues, marshalling facts, and decision-making.
- (2) Disciplined analysis, construction, and criticism of arguments.
- (3) Transferable into any business legal environment. Practical application in decision-making, adaptable for any area, say employment, corporate responsibilities, negligence, products liability *etc. etc.*
- (4) Transferable into academic legal problem-solving, for instance, combined with the four-part approach to problem-solving (identifying the issues, stating the rule, applying the rule, concluding (providing “best advice.”))

2. What is fact management?

Organising and analysing facts according to relevant issues.

For instance, a prosecution barrister will be handed a case in the form of a bundle of documents, typically containing a statements by witnesses (and perhaps experts). It is hardly ever in any sort of order and the first tasks are to sort out this bundle and assess the strength of the case and decide whether to prosecute. That is fact management.

Similarly, a line-manager, supervisor, or HR-manager could be presented with a “bundle” of facts, often disorganised, and will be required access the facts to make a decision, relating to e.g. discipline, dismissal or a grievance.

In 1913, Wigmore devised and published a clinical method of doing this task.

Although most lawyers would not draw up a Wigmore chart for every case, the chart represents their thought processes.

3. The *Wigmorean* analysis

Two principles of Evidence

- (1) Proof
- (2) Admissibility (including sufficiency)

We are going to look at proof only. The Wigmore method helps to (1) identify the relevant issues, (2) organise

and analyse the facts, and so (3) make best decisions.

Note the limitations of this method. It does not include other factors relevant to your decision-making, such as the costs, or the amount of compensation at risk, if the matter were litigated. This applies from the potential claimant's or defendant's standpoint.

4. Further reading

The articles are available via Athens. None of this reading is necessary to complete the assessment. Perhaps the most useful and accessible is Wigmore's original article, *The Problem of Proof*.

John H. Wigmore, *The Problem of Proof* 8 Ill L Rev 77 (1913); *The Science of Judicial Proof*, Little, Brown and Company (3rd ed. 1937); *Principles of Judicial Proof* (Rothmans, Colorado, 1971) (1931).

William Twining, *Theories of Evidence: Bentham & Wigmore* (Weidenfeld and Nicholson 1985).

Terence Anderson, David Schum and William Twining, *Analysis of Evidence: How to Do Things with Facts Based on Wigmore's "Science of Judicial Proof"*. (Cambridge University Press, 2nd ed. 2005).

Andrew Palmer, *A Proof-oriented Model of Evidence Teaching* Legal Education Review (2002) Vol. 13 No 2, 109 (2002).

For criticisms:

Peter W. Murphy, *Teaching Evidence, Proof and Facts: Providing a Background in Factual Analysis and Case Evaluation* 51 J. legal Ed. 568 (2001).

Paul Roberts, *Rethinking the Law of Evidence: A twenty-First Century Agenda for Teaching and Research* 55 Current Legal Problems 297 (2002).

5. Program

Lecture - The *Wigmorean* analysis

Seminar One - A single-issue chart: *Dr Crippen*

Seminar Two - A full chart based upon four pieces of evidence, *Prince v. China Centre*

Formal Assignment: *Jones v. Handy Betting Ltd*

HAND IN DATE:

THE WIGMORE CHART METHOD

1. Ultimate Issue

The starting point is the ultimate issue (something that must finally be proved) e.g.:

Crippen murdered his wife.

China Centre discriminated against Ms Prince on the ground of race.

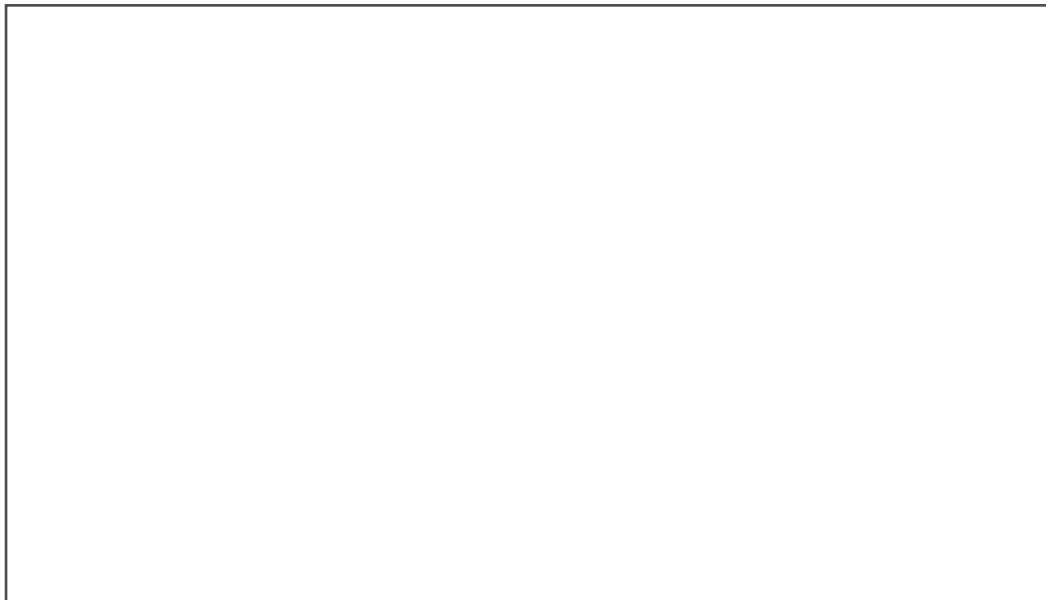
Bingo Ltd rightfully fired Joyce.

Note here how the standpoint of the chart-maker varies. It may be as a historian (Crippen), a worker (Prince), or an employer (Bingo).

2. Sub-Issues

To prove the ultimate issue it will normally be necessary to prove a number of matters which lead directly to it. These matters are the *sub-issues*. Take the example where Bingo Ltd fired Joyce for theft of company property. As the charts become more detailed, it is not strictly necessary to insert the phrase *sub-issue* into the boxes. Simply state the facts that (if true) would correspond to the issues, and do so in the context of the case. You will see this done in the more detailed examples further below.

In the case of *Joyce v. Bingo Ltd*, the issues could be charted thus:



3. Chains of Inference

The employer may review its decision to fire Joyce for a number of reasons. She may be suing for wrongful dismissal. Or the manager may wish to reassure himself that that an otherwise exemplary member of staff really did commit the theft, perhaps with a view to rehiring her, or for writing a recommendation. So much

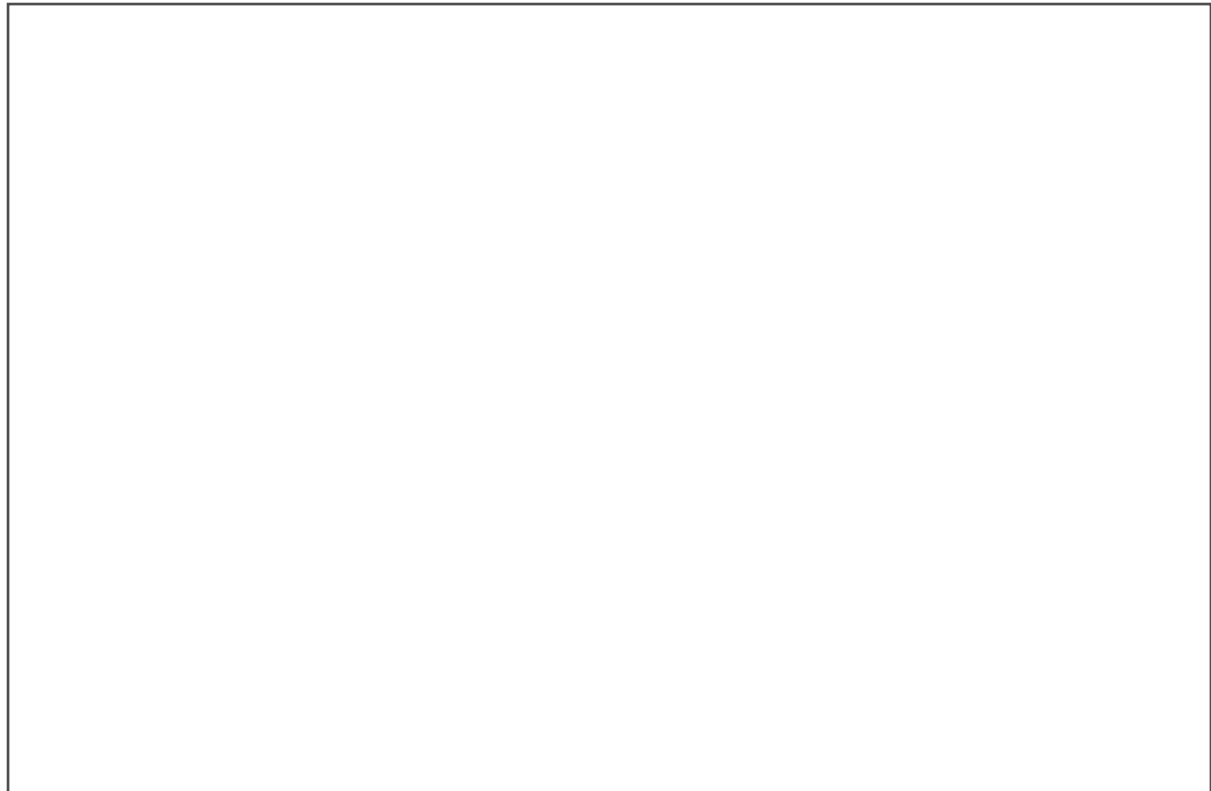
will turn on whether Joyce stole the DVD[[24]](the sub-issue on the right of the chart).

In most jurisdictions, to prove a case of theft the prosecution must show that there was (i) an unlawful appropriation (ii) of property belonging to another (iii) with, at the time, the intention of depriving that other permanently of the property. These have been chartered as further sub-issues (or sub-sub-issues) in the chart below.

Where legal elements form issues, the task can be quite challenging, because it is where law and fact merge. You have to decide what facts are required to establish a particular legal element. The chart below shows this.

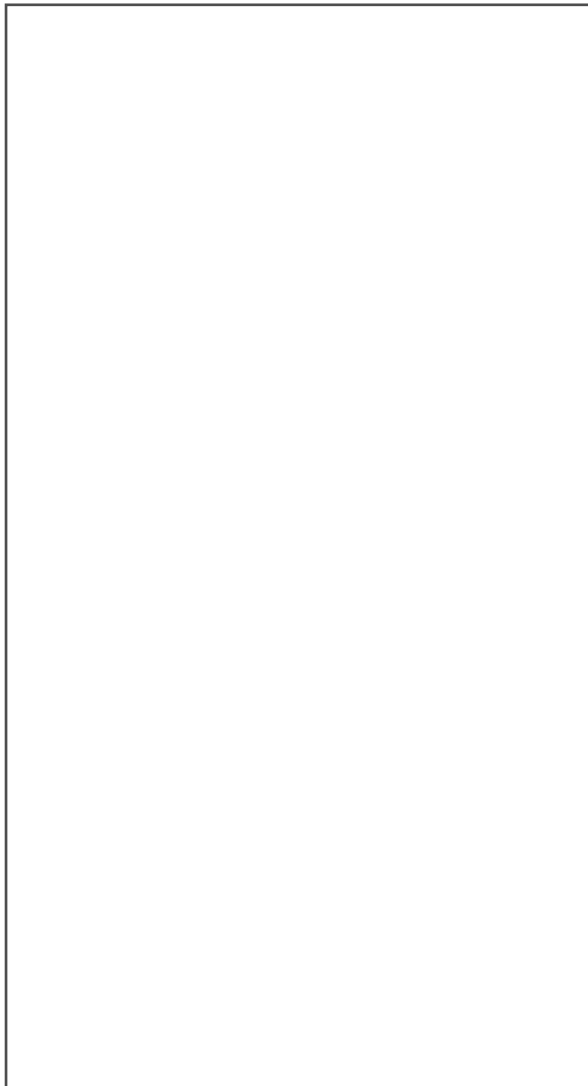
The person reviewing the evidence almost certainly does not directly know the facts. They were inferences drawn from other information. In this case one piece of such information is a statement made by Bingo's security guard. It read as follows:

"My job is wander around the store looking for any security issues. At about 5.25, just before closing time, I saw J. take a DVD disc from the shelf behind the counter for a customer. The customer apparently changed his mind. Suddenly, the siren of a passing fire engine distracted people in the store. At this moment, instead of replacing the DVD, J. dropped it into her handbag. I then watched her finish her duties and leave the store, at 5.35 pm, without paying for the DVD. Immediately afterwards I reported the matter to the store manager, and gave this statement."



4. Common beliefs

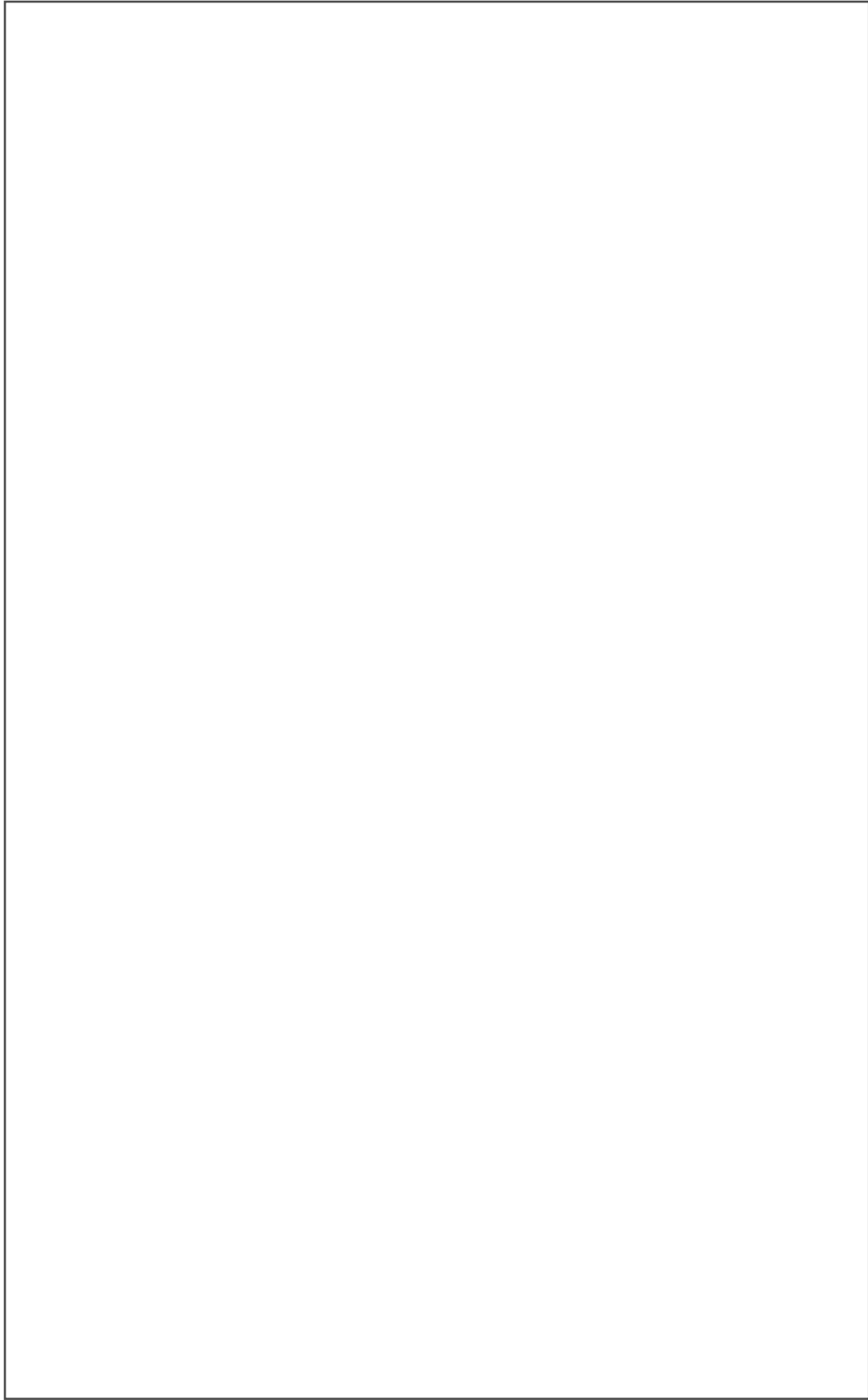
We can see that the four facts in the second row were drawn directly from the evidence. However, those inferences rely upon other - external - factors as well. These are *common beliefs* and are represented by a *Common Belief* symbol:



The object of the chart is to clarify matters - too much detail will defeat that object. So do not be too pedantic. But the point is to remember that most inferences at least partially will be based upon common beliefs, some of which are so important that they ought to be charted. It is a matter of judgment in each case.

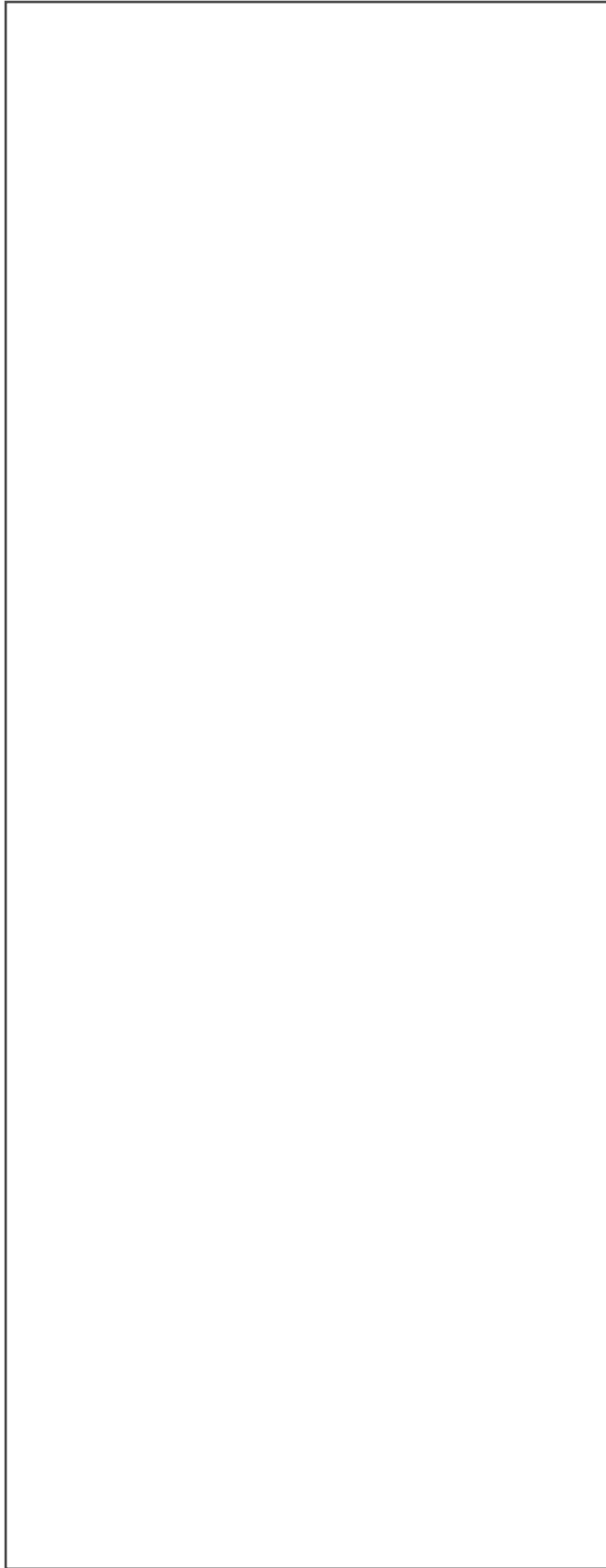
5. Strengthening and Weakening Inferences

Normally, any piece of the evidence is not as decisive as the security guard's statement first suggests: the store may have been crowded at the time, giving him only an interrupted view of the defendant; or the fire engine may have distracted the guard also. On the other hand, the assistant manager may be able to confirm her security guard's statement. Alternative theories might be that Joyce paid for the DVD earlier the day, or that she merely borrowed it to watch that evening. Represent strengthening inferences with a *plus* symbol in a green box, *and* weakening inferences by with a *minus* symbol in a red box.



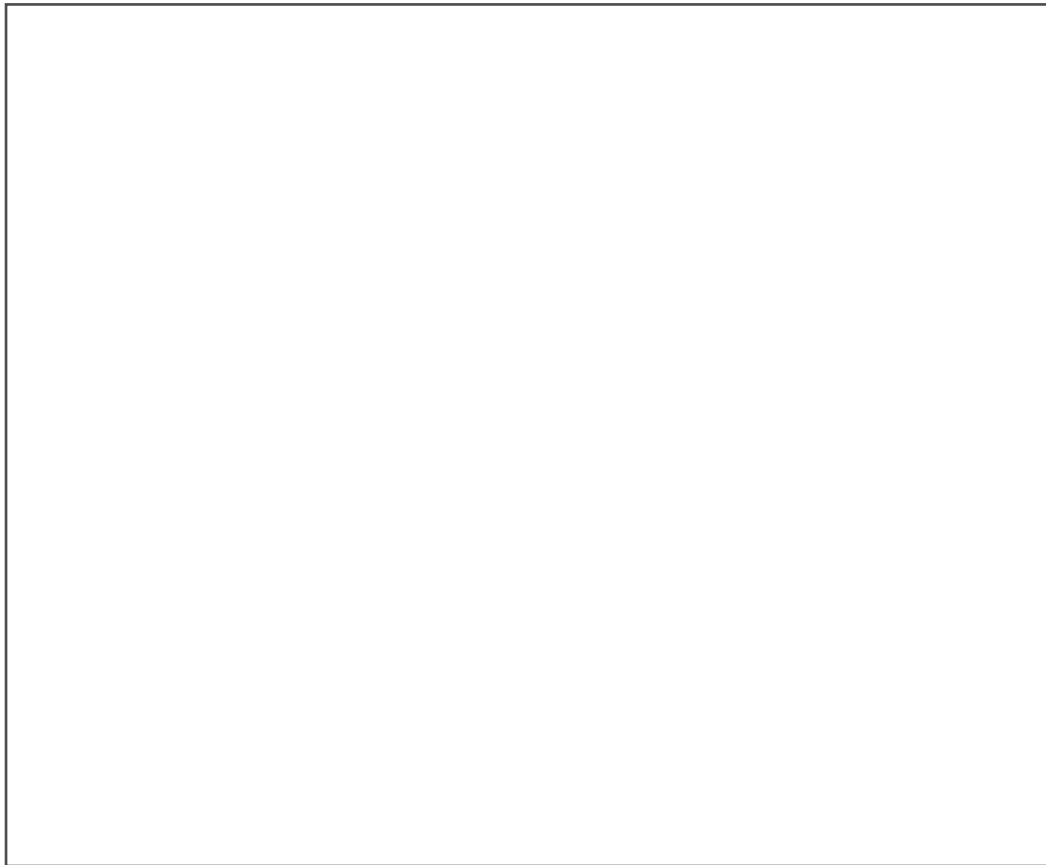
Here, the chart-maker has evaluated the evidence and decided that the assistant manager's confirmation outweighs any doubts of mistaken observation, and uses a tick symbol to indicate a belief in the proposition.

Another argument may be that Joyce paid for the DVD earlier in the day (note the common belief used here).



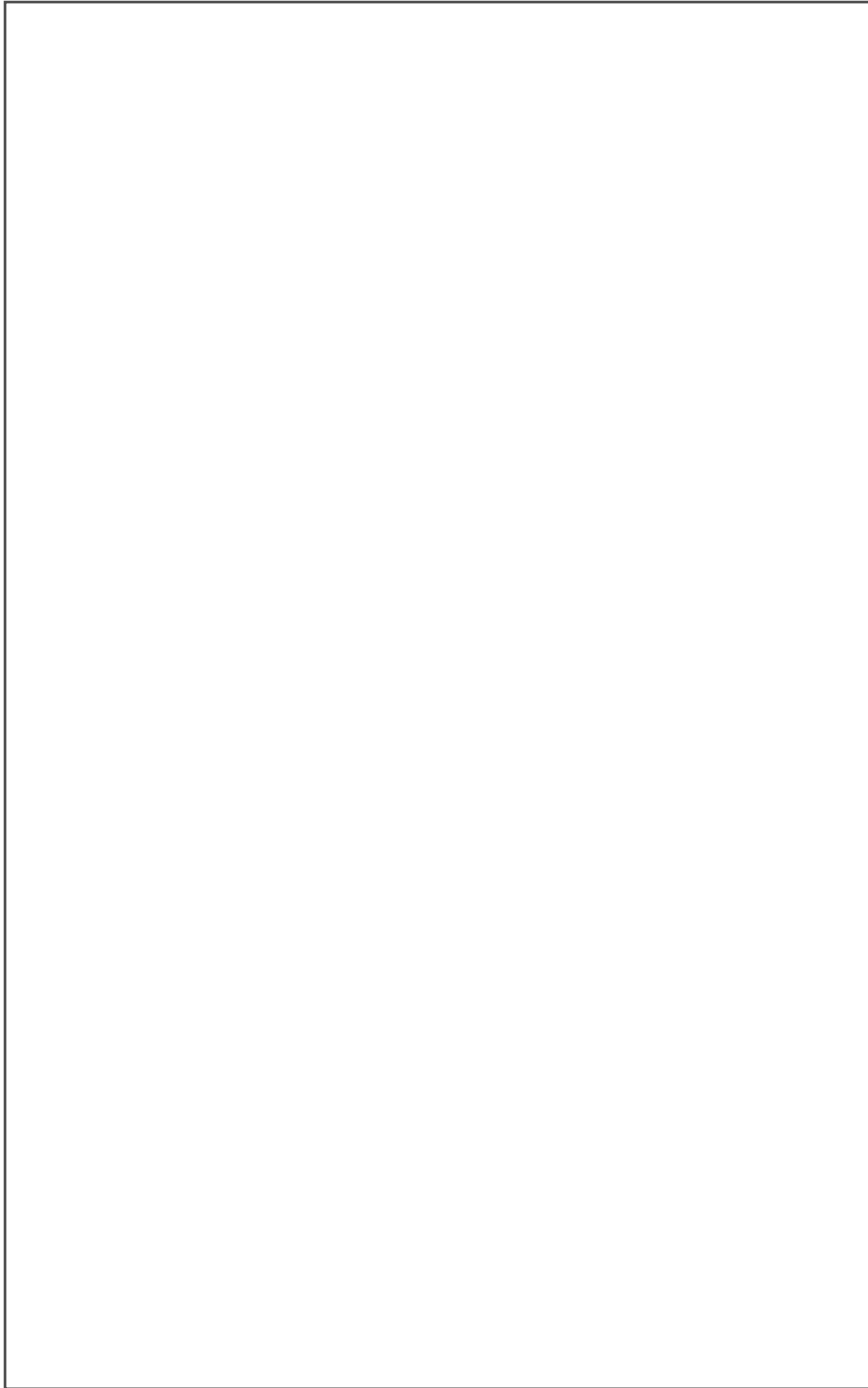
6. Uncontested Facts.

Some issues may be uncontested and so require no proof. For instance, it is unlikely that either party would deny the employment contract. [[25]] Show this on your chart with a green box:



7. Larger charts

Where the chart becomes too large to be legible on one sheet of paper, transfer one or more branches to a separate page. Mark the original thus:



HOW TO PREPARE A CHART[26]

1. Clarify standpoint.[27]

It is important to identify (i) your role, (ii) the objective, (iii) the materials available, and (iv) the time you come to the matter.

Your role could be a manager or supervisor, or trade union official, evaluating a worker's grievance or an employer's decision to take disciplinary action or dismissal. To do this you will need to evaluate the strength of your - and the worker's - case. The objective, of course, is the best possible outcome, but this could vary. For example, as a manager you may desire a compromise to preserve goodwill. Alternatively, where legal action is a possibility, you may aim for a decision that is safe legally. As a trade union official your primary objective may be a complete victory for the worker.

You should also consider the materials/evidence available to you. For example, some witnesses may be reluctant to come forward, yet could be subpoenaed should the matter reach litigation. If there are gaps in the material, you should account for this.[28]

The time when you come to matter could decide your objective. For instance, as a supervisor at the early stage of a grievance, you wish to resolve the matter informally and preserve goodwill. On the other hand, if litigation is likely, you may be aiming for a safe decision, for example, by not making informal concessions that could prejudice the employer at trial.

In other scenarios you may be studying the evidence as an barrister, deciding whether to go ahead with a prosecution. Or you may be a historian, reviewing the evidence relating to a *cause celebre* (such as *Dr Crippen*, below). Here, you may be trying to show that a convict was in fact innocent. This of course would be in retrospect, perhaps with new evidence, and outside of court

2. Establish the ultimate issue and the sub-issues.

Here you *must* first understand the elements of the alleged wrongdoing. For instance, in most jurisdictions, to prove a case of theft the prosecution must show that there was (i) an unlawful appropriation (ii) of property belonging to another (iii) with, at the time, the intention of depriving that other permanently of the property. Thus if you were minded to fire a worker for theft, you could evaluate the evidence according to these elements. In a typical claim for direct discrimination, the claimant (i) must be a worker/applicant, and (ii) must belong to a protected group (e.g. by race, sex *etc.*), and (iii) be less favourably treated (iv) because of that claimant's race, or sex *etc.*

There is no need for legal research, as the relevant legal elements are provided for each exercise.

3. Develop your theories.

You should formulate the strongest theories for each side. In the *Joyce v Bingo* case, for instance, one theory should be that Joyce stole the DVD, by slipping it in her bag whilst people were distracted, and then leaving without making payment. On the other side, the theory may be that she did not take the DVD at all (witness was distracted), or that she had paid for it earlier. (More than one theory is permissible.)

You should show the strongest case for each side. You may wish to draft a separate chart for the defence, or integrate it with weakening inferences (as done in the illustrations).

4. Drafting your chart

Draft the chart from top to bottom and from right to left. Where there is choice, place the most important symbols to the right, say evidence to the right of a common belief, as shown above in "5. Strengthening and Weakening Inferences." Place strengthening inferences to the right of a proposition, and weakening inferences to the left.

Remember that the chart works on binary logic, with every proposition tending support or undermine the ultimate issue. Work on the basis that one box stands for one proposition and no more.

SOFTWARE TO DRAFT YOUR CHART

In *Rationale* (Austhink.com) click *File* in the top left corner, then click *New*. On the left panel, click the *Build* tab, then the *Group* tab. Drag the boxes into your chart as you need them. You can link boxes by touching them until a purple line appears. Drag the box away to separate it.

If the boxes join with horizontal links, click *Flip Map* in the top tool bar.

To write in a box, double click the box. To write in bold, place an asterisk (“*”) at each end of the sentence.

To add “plus” or “minus” signs to a box, right click, and select *Change Box*, then *Dialogue*. To add symbols (*tick, cross, or question mark (Hmm)*) to a box, right click and select *Evaluate*.

For the *Quote* and *Common Belief* boxes, select *Basis* on the left pane.

To change the colour of a box, right click, select *Change Colour*.

To insert your chart into another document, such as a Word document, click to the top box (*Ultimate Issue*), then *Copy as Image*, from the top toolbar. In Word, you might need to paste the chart onto a landscape page. In which case, in Word, click *File, Page Setup, Landscape*, then click *Apply to* and select *This point forward*. To return the remainder of the document to normal, go back to *Page Setup*, and click *Portrait* and again, apply to *This point forward*.

Please use the following format:

- Ultimate Issue - Yellow box
- Sub-Issue - Blue box
- Uncontested - Write in upper case “UNCONTESTED” in green box.
- Evidence - *Quote* symbol.
- Common Belief - *Common Belief* symbol
- Strengthening Inference - Green box, containing “plus” sign.
- Weakening inference - Red box, containing “minus” sign.
- Your belief in a fact - Tick box.
- Your disbelief in a fact - Cross in box.
- Your uncertainty of the truth of a fact - Question mark in box.

If text becomes too lengthy for a particular box, reference the box with a number and write the text separately, with a reference to the box.

ASSESSMENT CRITERIA

The formal assignment will be graded according to following skills displayed:

- (a) Identifying the standpoint of the chart-maker (e.g. union official, HR manager; historian);
- (b) Collecting and ordering facts.
- (c) Identifying the relevance of the facts to the (legal) issues
- (d) Identifying any disputed facts.
- (e) Showing the strengths and weaknesses of a case.
- (f) Making proper chains of inference.

Candidates are *not* expected to show:

- (a) Knowledge of categories of evidence.
- (b) Knowledge of admissibility of evidence.
- (c) Sufficiency of evidence (*i.e.* producing *sufficient* evidence on an issue in order for that evidence to be submitted to the jury (or tribunal of fact)).
- (d) Knowledge of any legal issues beyond those provided in the exercise.

Your third-year marks will be weighted thus:

Optional units (3)	360 (120 x 3)
Vocational stream	120
Skills	60 (or one ninth of the third year)
Total	540

EXERCISE ONE - SEMINAR ONE

R. v. Crippen[[29]]

The mild-mannered Doctor Hawley Crippen and his showgirl wife, both Americans, lived together in London. Acquaintances said their marriage had disintegrated, with Cora Crippen teasing her husband by taking a string of lovers. Meanwhile the cuckolded Dr Crippen fell in love with Ethel Le Neve. The prosecution's theory was that the Doctor poisoned his wife, clinically dismembered her body, and buried her corpse under the cellar of their home; a grisly crime of passion perpetrated by a ruthless and dangerous man, allowing him to spend the rest of his life with his mistress. He was found guilty and hanged on 23 November 1910.

One problem for the prosecution was proving that Cora Crippen was in fact dead. For some time after her disappearance, Dr Crippen told friends that his wife had died when visiting California. When interviewed by Inspector Dew of Scotland Yard, Crippen changed his story. The embarrassing truth, he confessed, was that she had left him for another man.

However, the persistent Inspector searched the Crippen home several times and after his cane slipped on a loose brick in the cellar floor, he discovered some buried human remains. The head, bones and some organs had all been clinically removed, rendering it impossible to tell if the remains were male or female, let alone those of Mrs Cora Crippen.

But there was a clue. There was a mark in the shape of an isosceles triangle on the abdomen. Cora Crippen's sister testified that, when young, Cora Crippen had undergone an operation on her abdomen. A prosecution expert testified that this mark was consistent with an abdominal operation some years earlier, allowing for spread as the person got fatter as she aged. However, a defence expert stated that the mark was more consistent with a fold in the skin than a scar. Inspector Dew testified to the finding of the remains. Whilst the experts gave their evidence, a saucer containing the relevant piece of flesh was shown to the jury. The decision was theirs.

Draft a Wigmore chart to represent:

1. The ultimate issue;
2. The sub-issues;
3. Extend the chart *only* to display the evidence as to whether or not the remains found were those of Mrs Crippen. Use only the information given above.

At the time, English common law held that murder consisted of (i) the unlawful killing, (ii) of a person in being, (iii) under the King's peace, (iv) with malice aforethought, (v) and death occurring within a year and a day.

EXERCISE TWO - SEMINAR TWO

Prince v. The China Cultural Exchange Centre^[30]

Ms Prince, of Chinese origin, failed in her application for the post of Deputy Director of the Centre. She now alleges that the China Centre rejected her because of her Chinese origin.

You are the HR Officer charged with deciding whether to settle this claim, or fight it in litigation. Assume that a tribunal would admit all the evidence. Your first task is to decide whether Prince has a credible case of direct discrimination.

From the information provided (below) draft a Wigmore chart showing the supporting and opposing evidence to her case. Write an accompanying note explaining (1) the credibility of each piece of evidence charted, (2) your belief in any fact charted, (3) any inferences that require further information, (4) whether Prince has a credible case of direct race discrimination, and (5) any other explanations you consider necessary. This note should be no longer than 500 words.

The law: the claimant (i) must be a worker/applicant, and (ii) must belong to a racial group, and (iii) be less favourably treated by the Defendant (iv) because of that claimant's race. Note that Prince's Chinese origin qualifies her as belonging to a racial group.

The Manchester Bugle 24 March 2009.

Employment Opportunities - Executive Deputy Director

CHINA CULTURAL EXCHANGE **CENTRE**

- Reference: CA 07-08/25
- Location: , Manchester.
- Industry: Public Sector Non-Governmental Organisation
 - o Senior executive - General,
 - o Senior executive - Public sector
- Contract: Permanent
- Hours: Full Time

Salary: Starting Salary £34,508

An exciting opportunity has arisen to work in the China Cultural Exchange Centre, based in Manchester. We are looking for a bright committed candidate to carry out the functions commensurate of a deputy director of an international organisation, with a view eventually to succeed to current director.

The Deputy Director's duties include detailed arrangements for exchange visits between Manchester and China, providing information to enquirers, editorship of the three-monthly newsletter and routine accounting duties, as well as deputising for the director in the latter's absence. The Deputy Director must have an excellent command of Chinese especially the spoken language with first hand experience of China. The Deputy Director makes a working visit to China about once a year.

Closing Date: 5pm Wednesday 13 April 2009

For further information and how to apply, please visit our website at www.Chinaexcentre.gov.uk

Ms Prince's letter of complaint

28 April 2009

Dear Ms Orf,

On 1 April 2009, I applied for the post of Deputy Director of your Centre. I attended an interview on 20 April. I was most upset to receive your letter of rejection dated 25 April, and the reasons given make no sense to me.

As you are aware, I am of Chinese origin, had the requisite experience and qualifications. I speak fluent Chinese (Mandarin) and am familiar with China, having lived there until aged 21, and having made several return visits to relatives. (Although I have not visited for some 5 years). I have an upper-second class honours degree in economics from Manchester Metropolitan University.

I noticed at the interview, that out of eight candidates, I was the only non-white person. Further, no one on the interview panel (comprising four persons) was of Chinese origin, indeed, all the other staff I saw there were white English persons. In short, I felt that 'my face didn't fit'.

My sad, but inevitable conclusion is that I was not chosen because of my Chinese origin, and I consider this to be racial discrimination. If you do not settle this matter promptly, I will have no choice but to instigate formal proceedings.

Yours sincerely,

Ms Prince

China Exchange Centre's letter of rejection

25 April 2009

Dear Ms Prince,

It is with regret we inform you that you were not successful on this occasion in your application for the post of Deputy Director. There was an extremely strong field of candidates.

Yours sincerely,

Ms N. Orf

HR Manager

Statement of chair of the interview panel.

Mr V. Biast

The panel considered that Ms Prince was not suitable because she had made no recent visits to China and the job requires recent Chinese experience; her employment history shows that she had changed jobs frequently, which counted against her because we were looking for a person with the long-term potential to succeed the Director; and her work experience is mainly in journalism, which by its nature involves independent work, which might make her less amenable to working closely with the Director.

The successful candidate was a female aged 24 and white. She had a degree in modern languages with upper second-class honours in Chinese from Manchester Metropolitan University, which involved spending a year studying in China. Since graduating, aged 22, she worked continually (for 18 months) as a civil servant in social security. She also gained work experience during her university vacations. We considered that her recent Chinese experience and relatively stable employment record made her the most suitable candidate.

I acknowledge that all 24 members of staff (including the interview panel) at the China Centre are white, as were all the short-listed candidates, bar Ms Prince. But we are an equal opportunities employer. We choose our staff on merit only. Ethnic minority candidates should expect no special favours.

Signed

Dated: 3 May 2009

EXERCISE 3 - FORMAL ASSIGNMENT

Jones v. Handy Betting Ltd.

Mr Jones worked as one of three shift managers in the Manchester branch of Handy Betting, which is one of a chain of betting shops owned by the employer. Along with the other two managers, Mr Jones holds a key to the shop's safe. Last week he was fired, apparently for theft. He has now written to the company's HR department, complaining that he was fired not because of the theft, but because of his race. It is uncontested that Jones' co-managers, the area manager, and the appeal panel were white, whilst Mr Jones is black.

You are the HR Officer charged with deciding whether to settle this claim. Assume that a tribunal would admit all the evidence. Your first task is to decide whether Jones has a credible case of direct race discrimination.

From the information provided (below) draft a Wigmore chart showing the supporting and opposing evidence to his case. Write an accompanying note explaining (1) the credibility of each piece of evidence charted, (2) your belief in any fact charted, (3) any inferences that require further information, (4) whether Jones has a credible case of direct discrimination, and (5) any other explanations you consider necessary. This note should be no longer than 500 words.

The law: the claimant (i) must be a worker/applicant, and (ii) must belong to a racial group, and (iii) be less favourably treated (iv) because of that claimant's race.

Mr Jones' letter of complaint

1 August 2009

Dear Ms Golightly,

As you might be aware, I have worked for several years in the Manchester branch of Handy Betting and have never received a complaint about my work. I share the managing of the shop with two others, one John Handy, and one Elizabeth Handy, who are the son and daughter respectively of the business's owner Peter Handy. We work shifts. The shop is open from 7am to 11pm, Monday to Saturday. We normally work separate shifts, and at times (typically weekday mornings or late evenings) each of us could be alone in the shop, but at busy times (such as Saturdays) two of us are likely to work the same shift, along with other members of staff.

Last Tuesday the area manager made an unannounced visit to the shop, and fired me on the spot. He said it was because over several weeks money had gone missing from the shop's safe, and I was the only suspect.

I was shocked and now very upset. I wish to appeal against this decision because I am wholly innocent of any theft from the company.

Yours,

Paul Jones

Handy Betting's response

8 August 2009

Dear Mr Jones,

After hearing your appeal, I regret to inform you that it was unsuccessful. The panel unanimously agreed that, despite your unblemished employment history with us, it was perfectly logical to hold you responsible for the theft of money from the shop safe, as you spend time alone in the shop and have a key to the safe. The only other two key-holders were close and trusted relatives of the owner of the business, and so could not be considered suspects. The area manager had no option but to dismiss you.

Yours sincerely,

Ms Anne Golightly

Head of Human Resources and Chair of the Appeal Panel,

Handy Betting Ltd

Statement of Area Manager

4 August 2009

I am the area manager for Handy Betting Ltd, and have responsibility for the overall running and security of our outlets in Manchester. In July 2009 it came to my attention that on three occasions cash had been stolen from the safe of the Manchester branch. Only three persons have the key to that safe, Paul Jones, John Handy, and Elizabeth Handy. As John and Elizabeth are the children of the business' owner, I did not suspect them. So I confronted the only suspect, Paul Jones. It was important for obvious reasons that dishonest workers do not remain on the premises. He denied stealing the money, but I had little choice but to fire him. He became verbally aggressive, but I affected an American accent and told him: "Get your sorry black ass out of here." I now regret that statement, but it had nothing to do with my decision to fire him. After that Paul Jones immediately collected his belongings and left.

Signed

Douglas Sarky

Mr Jones' Response to the Appeal Panel's Decision

12 August 2009

Dear Ms Golightly,

I acknowledge the receipt of your letter dated 8 August denying my appeal.

I still protest my innocence and as a black person, I think I have lost my job because of my race, and not any proper evidence of dishonesty. Douglas Sarky made that very plain when he fired me. I add the observation that the area manager, my co-managers, and the appeal panel of three were all white persons. In fact, I was the only black person involved.

If you do not reconsider, I will instigate formal proceedings for racial discrimination.

Yours sincerely,

Paul Jones

Appendix B

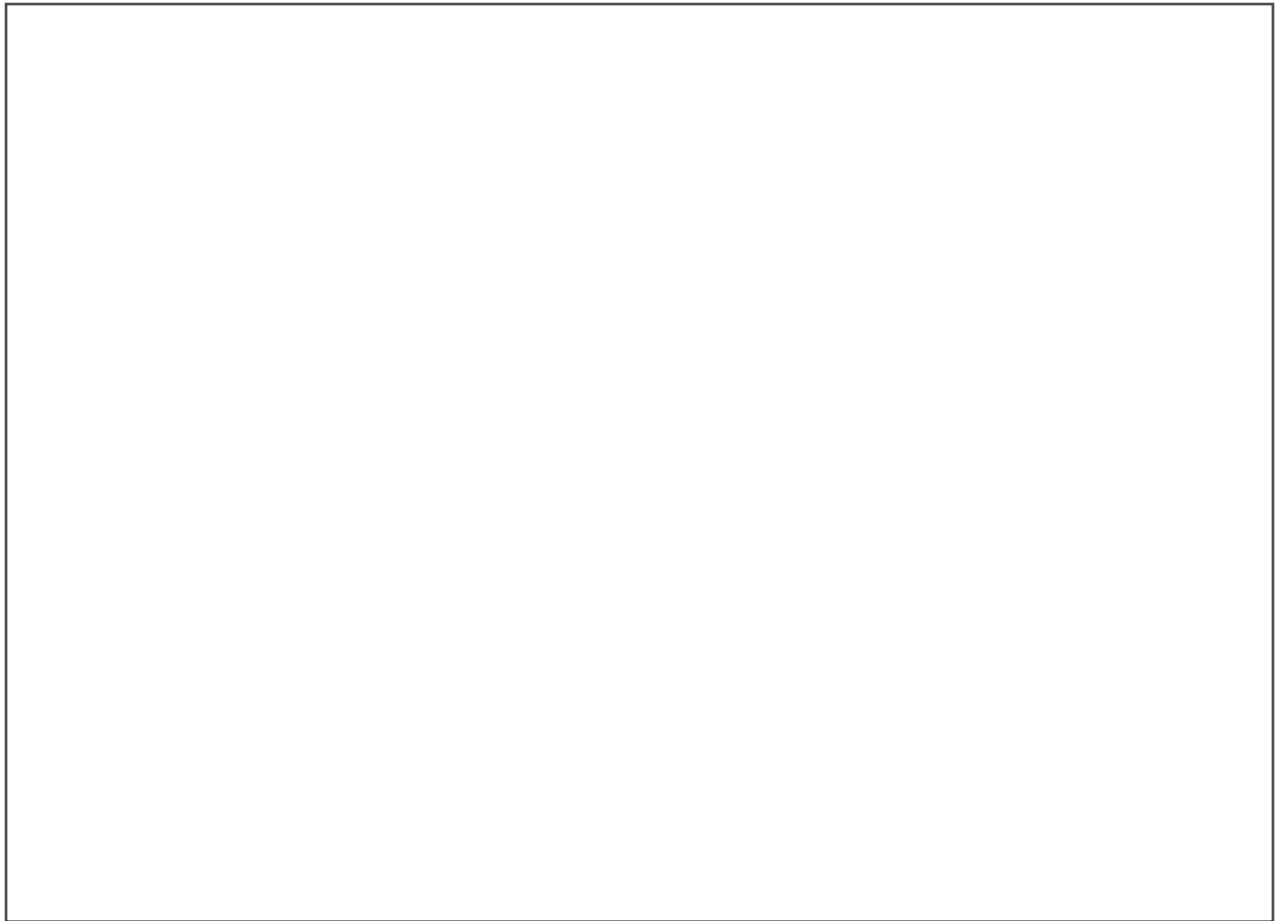
Prince v. China Centre

Full Chart



Prince v. China Centre

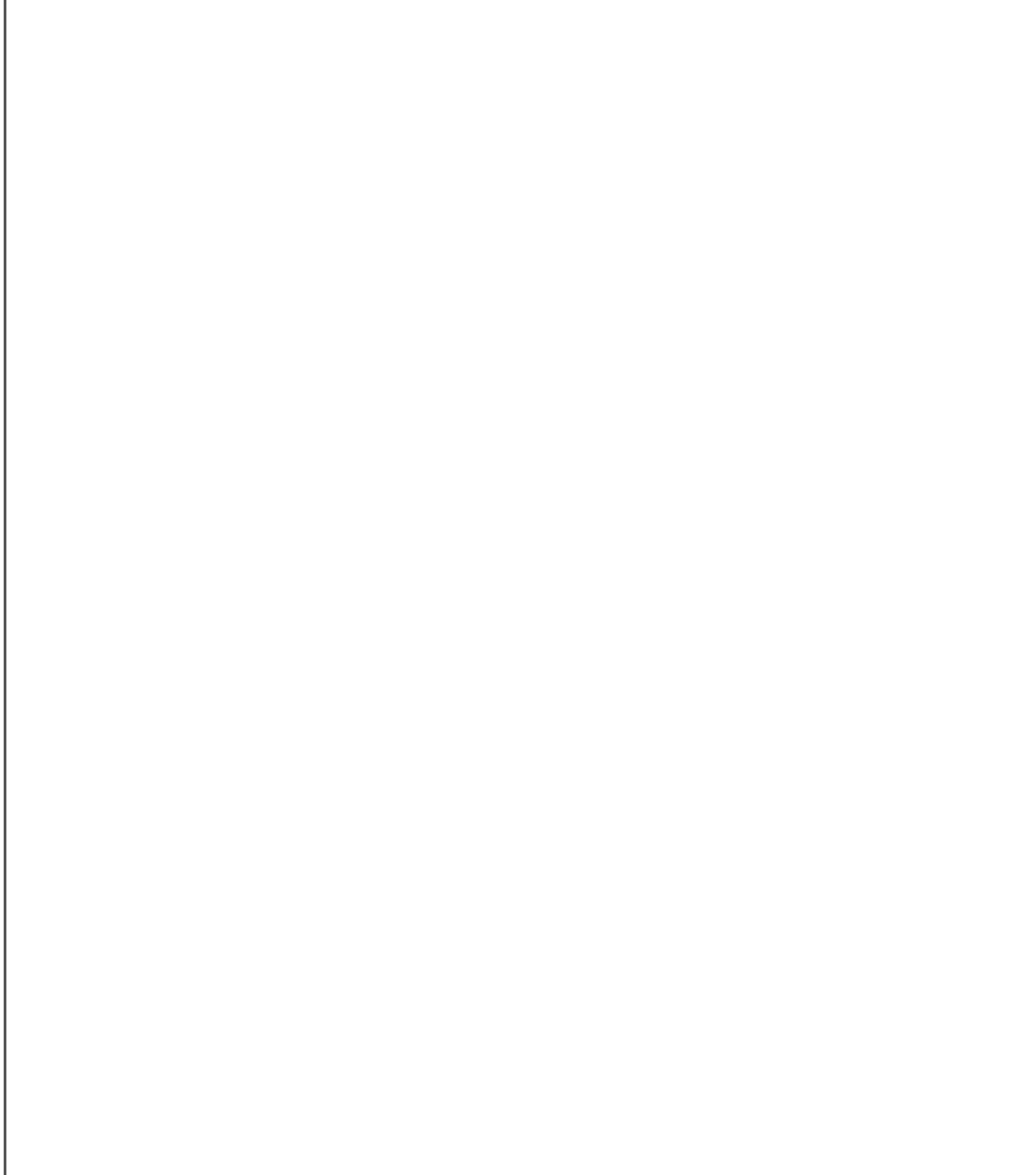
Separated charts



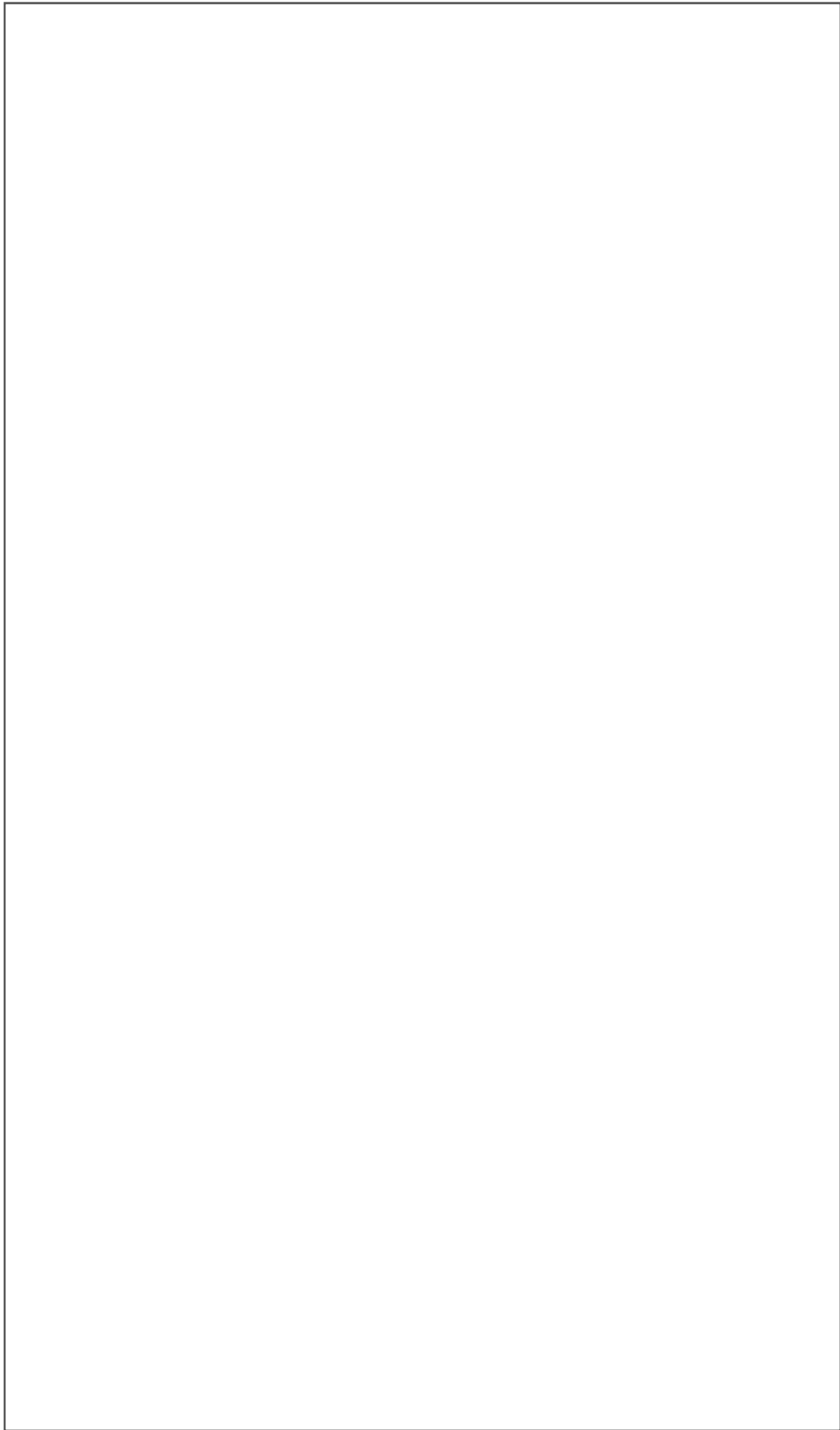
Prince v China Centre
CHART #1



Prince v China Centre
CHART #2

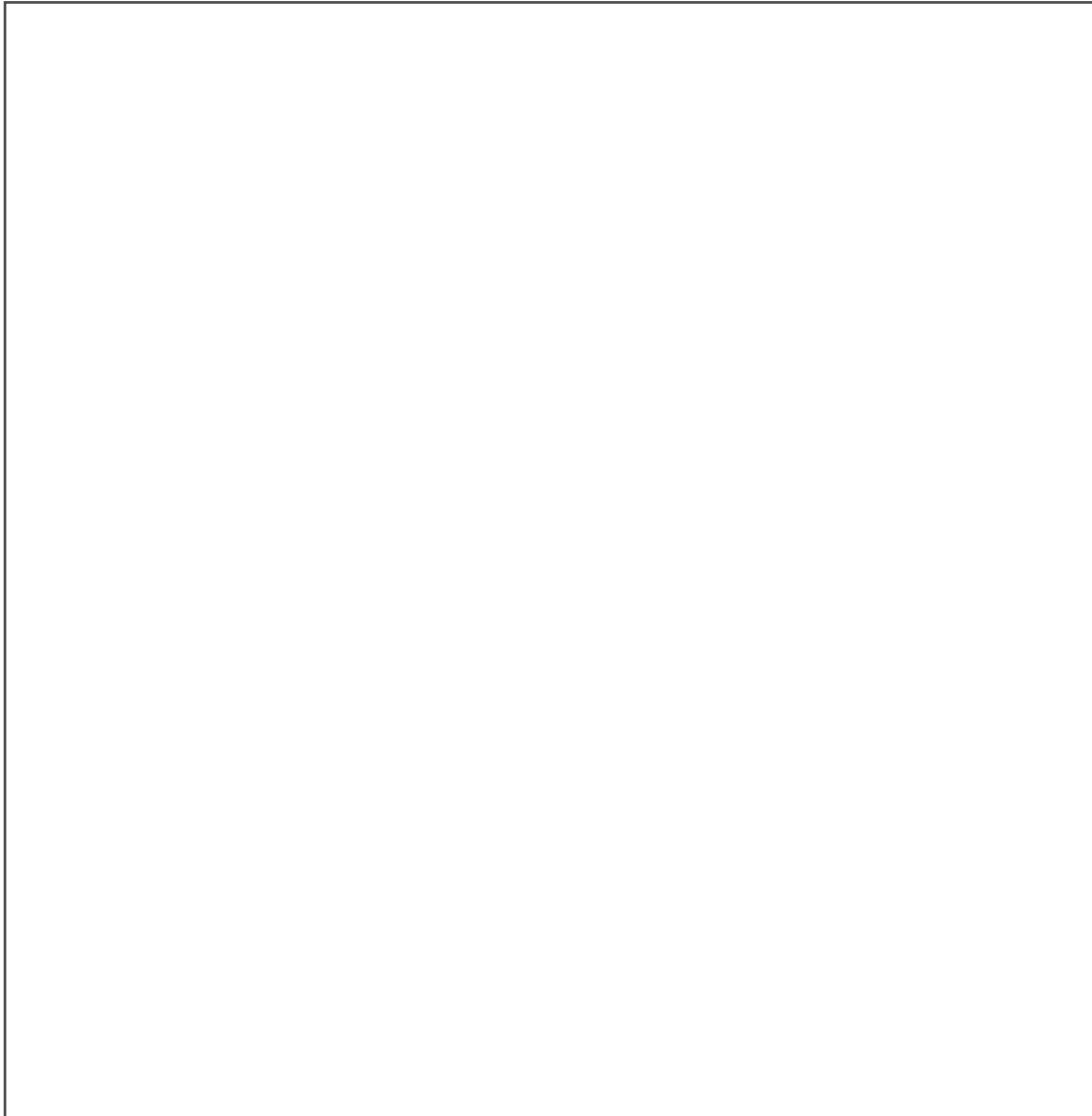


Prince v China Centre
CHART #3



Appendix C

R. v. Crippen - Suggested Chart



Appendix D

Drafting the Chart using Microsoft Office

Being a Microsoft product, there are many ways to achieve the same result. Each way is complicated. So the following is just one way of building your chart.

First, in the absence of the symbols available in Rationale, use a bold capital “CB” to mark a *common belief*, and place quotes in a plain square box.

It is easier (slightly!) to draft the chart in PowerPoint and then, (if required) paste it into your word document. (You may prefer to draft it in Visio, if available. The principles are similar.)

(a) PowerPoint 2003

Select PowerPoint, click *File*, then *New*, select blank slide from right column. You can now close the left and right panes.

Customise toolbars

1. Click *View*, *Toolbars*, select *Drawing*.
2. Click *Tools*, *Customise*, *Command*, *AutoShapes*. (a) Drag *Connectors*, to the *Drawing* toolbar. Open connectors on toolbar. Drag straight arrow, and elbow arrow into toolbar. (b) Repeat for *Flowchart*, and drag rounded rectangle to toolbar.

(b) Set defaults for all boxes

Landscape.

If a landscape view is preferred, click *File*, *Page Setup*, *Landscape*, then click *Apply to* and select *This point forward*. To return the remainder of the document to normal, go back to *Page Setup*, and click *Portrait* and again, apply to *This point forward*.

Customise boxes

Colour: Select and Rounded Rectangle. Right click, *Format AutoShape*, *Colours*, select Pale Blue. Tick *Default for New Objects*.

Size

No need to resize boxes. As your chart fills, you can compress it to fit the page, and boxes will reduce accordingly. Where a red or green box is required, click the box, and then click *Fill Colour* on the *Drawing* toolbar.

Select default text for boxes

Click, *Format*, *Font*, *Arial*, *Regular*, *8*, and tick *Default for new objects*.

(c) Set format for all boxes

It does not appear possible to set a default for these next features.

Select the first (and only) box, a rounded rectangle. Right click, *Add text*. Then double (left) click, and select *Text Box* tab. Select as follows:

Text anchor point - Top

Set all margins to zero.

Tick *Word wrap in AutoShape*

Justification (left) of text in boxes

Select All (Ctrl A). Then *Format, Alignment, Align Left*.

The text alignment may be lost if the chart is transferred to Word. In this case, repeat the process.

Now copy and paste this box many times for future use in your chart. If you select several (click with shift key), click *Draw* (in bottom corner) and *Group*, to drag the whole bundle to the side of your work to use as you build your chart. Repeat this for the square plain *Quote* boxes.

Connecting the boxes

Use the connectors in the tool bar to connect the boxes.

(d) Grouping

You may select all, or parts of your chart, and “Group” the boxes (click *Draw* (in bottom corner) and *Group*). This stabilises them with their connectors when the chart is growing, You must *Ungroup* them to perform many tasks. So if Microsoft refuses to do something, this may be the cause!

Arranging the chart to fit one page.

Select All (Ctrl A). Dots will appear defining the margins of your work. Use curser with left click on any dot to move margin and compress (or stretch) your chart into a smaller (or larger) space. If the chart becomes too busy, detach a section and display it on a separate page, with a cross-ref box marked e.g. “See Separate Chart #2.”

Prince v. China Centre - Microsoft

* University of Surrey. I must acknowledge the influence of Christopher Allen, who introduced me to the Wigmore Chart (and the Dr Crippen example used below) at the Inns of Court School of Law, London. I would also like to thank Robert Bird of the University of Connecticut and Susan Marsnik of the University of St Thomas, Minneapolis, for their comments on early drafts of this paper.

[1] Marc Lampe, *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*, 23 (1) Journal of Legal Studies Education 1, 1 (2006), available at www.blackwell-synergy.com. For a thoughtful and more comprehensive approach to teaching employment law to non-law students, see David Doorey, *Harry and the Steelworker* (or Teaching Labor Law to Non-Law Students)". Available at SSRN: <http://ssrn.com/abstract=1089168>.

[2] Lampe, *supra* note 1, at 10. See also Jordan T.L. Halgas, *Don't Try This at Home: Using a Multi-Layered Approach to Teach the Law of Sexual Harassment and Sexual Harassment Investigations* 23 (2) Journal of Legal Studies Education 217, 217-219 (2006), highlighting the risks and costs to employers of litigating sexual harassment claims. Available at www.blackwell-synergy.com.

[3] See *e.g.*, Ann Morales Olazábal, *Law as Haiku* 22 (2) Journal of Legal Studies Education 123 (2005), available at www.blackwell-synergy.com.

[4] John H. Wigmore, *The Problem of Proof* 8 Ill. L. Rev. 77 (1913).

[5] *Id.* at 77.

[6] *Id.* at 77.

[7] See *e.g.*, John H. Wigmore, *The Science of Judicial Proof*, (Little, Brown and Company 3rd ed. 1937); *Principles of Judicial Proof* (Rothmans, Colorado, 1971) (1931); William Twining, *Theories of Evidence: Bentham & Wigmore* (Weidenfeld and Nicolson 1985); Terence Anderson, David Schum and William Twining, *Analysis of Evidence* (Cambridge University Press, 2nd ed. 2005); Andrew Palmer, 'A Proof-oriented Model of Evidence Teaching' *Legal Education Review* (2002) Vol. 13 No 2, 109. For criticisms see, Peter W. Murphy, 'Teaching Evidence, Proof and Facts: Providing a Background in Factual Analysis and Case Evaluation' (2001) 51 J. legal Ed. 568; Paul Roberts, 'Rethinking the Law of Evidence: A Twenty-First Century Agenda for Teaching and Research' (2002) 55 *Current Legal Problems* 297 (2002).

[8] Wigmore, *supra* note 4, at 87.

[9] *Id.* at 85.

[10] *Id.* at 81.

[11] Lampe, *supra* note 1, at 1, 10, and references within.

[12] See *e.g.* Olazábal, *supra*, note 3.

[13] *Id.*

[14] See *e.g.*, *Fisher v. Bell* [1961] 1 Q.B. 394 (Div.Ct.). (Display for sale of switchblade in shop window held not to be an "offer" for the purposes of the criminal offence of offering for sale offensive weapons.)

[15] Anderson et al (2005), *supra* note 7, at 124.

[16] *Id.*

[17] See SmartDraw.com.

[18] See Austhink.com.

[19] Photographs or other forms of evidence may be used.

[20] See Appendix A below.

[21] For instance, accountancy students may be particularly engaged by some of the "Enron trials." More generally, see the "opportunity" aspect of the OJ Simpson criminal trial, in Anderson et al (2005), *supra* note 7 at 23, 112-122. For a collection of famous trials ranging from Galileo to Bill Clinton, and Thomas Moore to Charles Manson, see <http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm>.

[22] This exercise is based on the British case *King v. Great Britain China Centre* [1992] I.C.R. 516 (Court of Appeal), where the claimant prevailed.

[23] This exercise is inspired by two British cases: *Igen (formally Leeds Careers Guidance) v. Wong* [2005] I.C.R. 931 (Court of Appeal) where a black worker won her claim for discriminatory dismissal confirmed by an all-white appeal panel, and *Frames Snooker v. Boyce* [1996] I.R.L.R. 472 (Employment Appeal Tribunal), where a manager was fairly dismissed for theft, even though the owner's daughter (who was not dismissed) also had access to the safe.

[24] Alternatively, as (in the United Kingdom), an employer can defend an *Unfair Dismissal* claim by showing it acted "reasonably." In a case such as this, it would have to show only that it held a reasonable belief that Joyce stole the DVD. Unlike breach of contract claims (wrongful dismissal), it is not necessary to prove that the worker actually committed the wrongful act: *British Home Stores v. Burchell* [1980] I.C.R. 303 (Employment Appeal Tribunal), approved *Foley v. Post Office* [2000] I.C.R. 1283 (Court of Appeal). *Cf Boston Deep Sea Fishing & Ice Co. v. Ansell* (1888) 39 Ch. D. 339 (Court of Appeal).

[25] The causative issue (*Bingo fired Joyce because she stole the DVD*) can be particularly decisive in UK Unfair Dismissal claims, where the employer cannot use retrospective evidence or reasons to justify a dismissal. So if she were fired for another reason, she may prevail irrespective of whether she stole the DVD.

[26] For a detailed 'seven-step protocol' for doing this see Anderson et al (2005), *supra* note 7, at 124-134.

[27] Anderson et al have developed the standpoint from the original model, see Anderson *et al* (2005), *supra* note 7, at p 115-117.

[28] 'The failure to identify an objective that can be achieved based on the materials available is a common error that can have serious consequences.' (Anderson *et al* (2005), *supra* note 7, at 116).

[29] This exercise is based on one provided by Christopher Allen, of the Inns of Court School of Law, London. A suggested chart is provided in Appendix C.

[30] Suggested charts are provided in Appendix B.

UNCONTESTED

Motive:

P. was rejected because of her Chinese origin

6

3

2

1

5

4a

4

P. Treated less favourably: She was not hired.

P. was a job applicant

C. culturally disposed towards white candidates

P. belonged to racial group (Chinese)

Ultimate Issue

C. discriminated against P. on racial grounds

All-white organization likely to select from racial group with which it identifies
CB

C. chose lesser-qualified white candidate

P. better qualified than successful candidate

Successful candidate was white

P. was qualified for the job.

UNCONTESTED

UNCONTESTED

P. short-listed for interview

Someone selected for interview is likely to be qualified for the job.
CB

Statement of panel chair

UNCONTESTED

All staff were white

UNCONTESTED

G

Person shortlisted is likely to be qualified

All four persons on interview panel white.

Statements of HR manager and panel chair

Statement of panel chair

P. is Chinese and grew up in China

P. and successful candidate have good degrees.

Statements of P., HR manager, and panel chair.

P. has longer work experience

Race played no part in decision to reject P.

Successful candidate better qualified than P.

Employer would not short-list candidate who it would not consider hiring.

CB

Short-listing minority candidate a sham.

P. short-listed for interview.

UNCONTESTED

Employers do this to appear as an equal opportunities employer.

CB

Post required long-term commitment and recent experience in China

1. Job advertisement 2. Statement of panel chair
