

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence that you may use to determine the facts of a case: direct evidence and circumstantial evidence. You have direct evidence when a witness testifies directly about the fact that is to be proved, based on what the witness claims to have seen or heard or felt with the witness's own senses, and the only question is whether you believe the witness. You have circumstantial evidence where the witness cannot testify directly about the fact that is to be proved, but you are presented with evidence of other facts and then asked to draw reasonable inferences or conclusions from them about the fact that is to be proved.

Optional example: Let me give you an example. Your daughter might tell you one morning that she sees the mail carrier at your mailbox. That is *direct* evidence that the mail carrier has been to your house. On the other hand, she might tell you only that she sees mail in the mailbox. That is *circumstantial* evidence that the mail carrier has been there; no one has seen the mail carrier, but you may

**reasonably infer that the mail carrier has been there
because there is mail in the box.**

**There are two rules to keep in mind about circumstantial
evidence. The first rule is that you can draw inferences or
conclusions only from facts that have been proven to you. The
second rule is that any inferences or conclusions you draw must be
reasonable and natural, based on your common sense and life
experience.**

“[A]dequate proof in both civil and criminal cases may come from either direct or circumstantial evidence, or both.” Abraham v. Woburn, 383 Mass. 724, 730 (1981). See Klairmont v. Gainsboro Rest., Inc., 465 Mass. 165, 189 (2013). “When the evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof.” Commonwealth v. Tavares, 484 Mass. 650, 654 (2020), quoting Commonwealth v. Croft, 345 Mass. 143, 145 (1962). “Inferences need only be reasonable and possible and need not be necessary or inescapable.” Commonwealth v. Bonner, 489 Mass. 268, 275 (2022) (citations omitted).