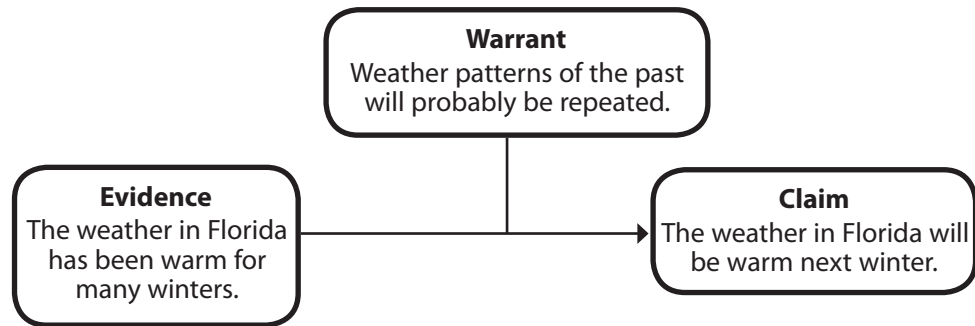


again be warm next winter. We can use that presumption as evidence for a number of arguments such as where the family might vacation next December. The following diagram illustrates the use of a presumption as evidence:



In some situations we make presumptions about particular persons based on our previous knowledge of that person's family characteristics. For instance, someone might argue that a member of the Kennedy family will probably seek a career in politics based on the fact that so many Kennedys have chosen the path. In this case, the presumption that a particular person of the Kennedy family will go into politics is based on a fact that many Kennedys do just that. Similarly, we presume our children will go on to live lives full of good deeds not because we will necessarily be here to observe those good deeds, but because of what we know about them yesterday and today.

The law of many nations contains a concept called a "rebuttable presumption." In the area of adoption law, a rebuttable presumption "is most commonly used to 'presume' that if a woman is married when she gives birth to a child, that her husband is the father."¹³ Thus, when we encounter a married woman and her husband with a child, we presume that the husband is the father. Each of us can think of numerous reasons why the presumption might be incorrect, but it is a presumption nevertheless. It is called a "rebuttable" presumption because a legal system has declared that the presumption stands until other evidence overcomes it.

The examples of presumptions presented so far have had to do with expectations about reality. What do we expect the world to be like? Sometimes, however, presumptions are not about expectations about how the world really is, but are about how we expect the world ought to be. These cases of presumption blur the distinction between evidence based on reality and evidence based on preference. One example of a presumption of how the world ought to be is the presumption of innocence that is followed in the legal systems of several nations. When we say that we presume a person is innocent until proven guilty, we do not mean that we think the greater likelihood is that the person really did not commit a crime. In fact, of those persons actually tried for crime, the statistical likelihood that they are guilty is much higher than the chances they will be found innocent. Having been arrested and charged with a crime are not, in reality, irrelevant to whether that specific person actually committed the crime. We certainly expect our police and our prosecutors to arrest and charge people with crimes only when they have actually committed the crimes (another presumption).

The presumption that operates in this case is a matter of preference, not a matter of reality. We presume an accused person innocent because we believe that *acting as if the accused is innocent* creates a better legal system and a better society in general. Because