

LLB303 – EVIDENCE – EXAM NOTES

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2.1 Hearsay

Introduction

EXCLUSIONARY RULE: Evidence which is hearsay is inadmissible unless an exception to the hearsay rule applies.

RATIONALE: There are four key reasons why hearsay is inadmissible (*Teper v The Queen*):

- It is not the best evidence.
- It is not delivered on oath.
- The truthfulness and accuracy of the person whose words are spoken to by another witness cannot be tested by cross-examination.
- The light which his/her demeanour would throw on his/her testimony is lost.

What is Hearsay

HEARSAY RULE: An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted: *Cross on Evidence*.

ELEMENTS: There are two elements (*Subramanian v Public Prosecutor*):

1. **Out-of-court statement made to a witness;**
 - Includes express and implied assertions: *Walton v The Queen*.
 - Includes verbal, conduct and written assertions: *Myers v DPP*.
2. **Used to establish the truth of the assertion.**
 - Evidence of statements tendered for a reason other than to prove the truth of the assertion is original evidence (not hearsay): *Myers v DPP*. Examples:
 - i. **Where the fact of making the assertion (whether it be true or not) is relevant to a fact in issue:** *R v Ratten*.
 - E.g. relevant to proving credibility: *Nicholls and Coats*.
 - E.g. things told to police to raise reasonable suspicion for a warrant.
 - ii. **Where the statement goes to the state of mind/knowledge of the maker, or the person to whom the statement was made, which is relevant to a fact in issue:**
 - Only admissible if used in conjunction with other evidence that corroborates the state of mind alleged: *Walton v The Queen*.
 - E.g. establishing the mental element of duress: *Subramanian v Public Prosecutor*.
 - E.g. demonstrating an intention to do something: *Walton v The Queen*.
 - E.g. indicating state of health/bodily feelings: *Ramsay v Watson*.
 - iii. **Statements which form a verbal portion of a relevant act, accompanying and explaining that act.**

Myers v DPP

ELEMENT 2 – EVIDENCE OF TRUTH OF ASSERTION – ENGINE BLOCK NUMBERS

A car stealing and re-badging operation involved the switching of engine block numbers. The Crown attempted to admit the engine block label as evidence of the truth of the assertion (that the number did not correspond to the car).

Held: inadmissible hearsay (but would likely fall under QEA s 93).

Nicholls v Coates

ELEMENT 2 – EVIDENCE TO PROVE STATEMENT WAS MADE – RELEVANT FACT – CREDIBILITY

There was evidence that a witness had made an out-of-court statement to the effect that he intended to give false testimony. The Crown attempted to admit this evidence to damage his credibility as a witness.

Held: admissible ONLY as evidence to his credibility – not used as evidence that he did give false testimony.

R v Ratten

ELEMENT 2 – EVIDENCE TO PROVE STATEMENT WAS MADE – RELEVANT FACT – HYSTERICAL CALL

A phone call was made to the operator for the police by a hysterical woman (“get the police!!!”). The woman’s husband was later charged with murdering her shortly after. Crown attempted to admit the testimony of the operator.

Held: admissible ONLY as evidence that the call was made. Was inadmissible for the purpose of proving the truth of the implied assertion (that the husband was threatening her).

Subramanian v Public Prosecutor

ELEMENT 2 – EVIDENCE TO PROVE STATEMENT WAS MADE – STATE OF MIND – THREATS

Defendant charged with possession of ammunition. He raised the defence of duress, contending that the terrorists told him “to carry the weapons or we’ll kill you”. He wanted to admit this statement to prove his state of mind.

Held: admissible.

Walton v The Queen

ELEMENT 2 – EVIDENCE TO PROVE STATEMENT WAS MADE – STATE OF MIND – GO TO TOWN

Man charged with murder of ex-wife. New wife testified against him – her story was corroborated by another witness (W2). W2 said she witnessed the victim answer a call to her ex-husband – she put the phone down and announced her intention to go to town to meet him. This confirmed the story given by the new wife.

Held: admissible as evidence of the ex-wife’s intention to meet her husband. The evidence was corroborated by a bus ticket which she later purchased.