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Admissions

Introduction

- Admission is defined as:
 - Previous representation that is made by a party to a proceeding that is adverse to the person's interest in the outcome of the proceeding.
 - Previous representation - one made otherwise than in the course of giving evidence in the proceeding; out of court statement.
- Critical to appreciate that it is IMMATERIAL whether the declarant intended to make the assertion of fact in the representation.
 - An admission includes an unintended implied representation that is adverse to the party/declarant.
- THEMES:
 - ONE. Whether evidence adduced is evidence of an admission.
 - First, whether the out-of-court statement is a representation.
 - If so, then: trial judge will be called upon to determine if the evidence is capable of being construed by the jury as an admission.
 - TWO. Consideration of cases where the evidence of the admission is prima facie inadmissible by reason of hearsay rule in s 59, but that rule is displaced by s 81.
 - THREE. Part 3.4 operates whether or not the admissibility of the evidence of the admission is affected by s 59.

What is an Admission?

Does the Statement Assert the Existence of a Fact?

- A statement cannot be an admission UNLESS it is a representation, being an assertion of the existence or non-existence of a fact.

<i>Case Name</i>	<i>Director of Public Prosecutions v Leonard (2001) 53 NSWLR 227</i>
Facts	'Sir, would you consent to a search of your vehicle?' 'Go for it, there is nothing in there mate'
Issue	Whether the reply above was an admission
Important principles	Representation: <ul style="list-style-type: none">• A representation is an assertion, stating, alleging, picturing or portraying of some matter other than itself.• The uttering of words by a person giving or refusing consent is NOT a representation that the person is consenting or refusing to consent, it itself constitutes the giving or refusing of consent.• Making of such an utterance should not be characterised as a representation about the maker's then state of mind.
Ratio decidendi	Giving of consent is NOT an admission.

Is the Previous Representation Adverse to the Declarant's Interests?

- Generally, the representation is 'adverse' where that finding will make it more difficult for the party to make out their cause of action, or on the other hand to avoid liability, including in a criminal proceeding, a finding of guilt.

- An exculpatory statement made by D will be an admission if it turns out to be 'harmful for the defence'
 - *R v Horton* (1998) 45 NSWLR 426, 438.

Is the Statement Capable of Being Construed as an Admission?

S 88. Proof of Admissions

For the purpose of determining whether evidence of an admission is admissible, the court is to find that a particular person made the admission if it is reasonably open to find that he made the admission.

- General Information
 - Judge must assume that the proffered evidence will be accepted by the jury
 - And THEN make his judgment as to whether, on this evidence, it is reasonably open to the jury to find that the person made the admission.
 - *R v Hall* [2001] NSWSC 827
 - S 88 deals both with the identity of the person said to be making the admission, AND whether what is done is an admission.
 - S 88 speaks of the court making a finding
 - This finding could only be made on the basis of what appears to the court to 'be reasonably open' rather than some conjecture as to what others might perceive
- **Where Evidence of the Admission is Affected by the Hearsay Rule in s 59**
 - Direct Statements by the Party
 - A party may clearly admit a fact in issue, such as D's statement 'I was at V's place the night V was killed', where a fact in issue was whether D was at V's place.
 - HOWEVER, there may be an issue as to whether what D said is capable of being construed as an admission.
 - Under s 88, the trial judge must determine if it is reasonably open to the jury to find that the statement is adverse to D.
 - Adoption of a Statement by the Party
 - The party may adopt a statement made by someone else to that party
 - E.g. (Q): did you shoot V intending to kill? (A): Yes
 - It is to be noted that the evidence of the statement to the party is adduced for the non-hearsay purpose of showing only that those words were used.
 - It is the party's reaction which provides the evidence of the admission.
 - Silence of Refusal to Answer
 - Party's failure to respond to some allegation or statement made to them may be taken to be an admission of what was put, if a denial could reasonably be expected in the circumstances.
 - Silence amounts to an admission.
 - BUT Civil and Criminal are different.
 - *Civil Cases*
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<i>Case Name</i>	<i>Munday v Askin</i> [1982] 2 NSWLR 369
Facts	Munday claimed that Askin said 'Don't underestimate some of these vermin'

Important principles	<p>Silence is not evidence of an admission, unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him than that he would not.</p> <ul style="list-style-type: none"> • In commercial transactions, for example, those circumstances may often be found to exist. <ul style="list-style-type: none"> ◦ BUT they do not exist here. • Inaccurate newspaper reports do not stand upon the same footing as a charge or assertion directly made. • Defendant's failure to correct such reports was NOT evidentiary of their truth.
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<i>Case Name</i>	<i>Permewan v Ippolito (1965) 85 WN Part 1 (NSW) 90</i>
Facts	Receipts for the payment of rent by I to P were held admissible on the ground that I's failure to object to the description of him as a tenant was evidence of an admission.
Important principles	<p>The significance of the evidence was that litigation was pending, between the parties, and as the Defendant, the man identified in the mind of the informants at least as the defendant, was handing over cheques in payment of rent, and receiving receipts, was described in the receipts as the 'tenant', and made no tests</p> <ul style="list-style-type: none"> • The documents were admissible for the purpose of supporting the inference of the existence of his tenancy.

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<i>Case Name</i>	<i>Kuhl v Zurich Financial Services Australia Ltd (2011) 243 CLR 361</i>
Important principles	<p>The rule of Jones v Dunkel permits an inferences, not that evidence not called by a party would have been adverse to the party, but that it would not have assisted the party.</p> <ul style="list-style-type: none"> • But the conclusion by the trial judge that the P deliberately withheld evidence reflected a stronger reaction.