

CH 7: DEFINING THE HEARSAY RULE

Hearsay: Representations made out of court used to prove the very existence of a fact. Party CANNOT adopt what someone said previously to prove the very fact in court (generally) due to unreliability and inability to cross-examine. At CL, the definition of hearsay is wide enough to catch previous representations that make unintended assertions of fact. The exclusionary rule in s59 is limited to intended assertions of fact.

Elements of the hearsay rule

UEA S59 - The hearsay rule – exclusion of hearsay evidence – pg 29 (TAB: Hearsay)

The default position is that everything that includes words (NOT just spoken words) represented outside of the court is hearsay. The person who said the original thing is the maker or declarant, who may or may not be the witness.

TO DETERMINE WHETHER OR NOT EVIDENCE IS HEARSAY EVIDENCE

A. Is it a 'Representation'?

The default position is that everything that is a communication OR a statement (something read/heard/said or expressed) is a representation

UEA definition of *representation* includes – does not cover the field

- (a) an express or implied representation, whether oral or in writing; and
- (b) a representation to be inferred from conduct; and
- (c) a representation not intended by its maker to be communicated to or seen by another person¹; and
- (d) a representation that for any reason is not communicated

R v Rose – NSWCCA held that 300 student's failure to respond to a police officer's request for information about the deceased was an implied representation that the students had no information of the kind requested. That is, an inference can be drawn that the person by silence or non-action made a representation of fact.

B. Is it a 'Previous Representation'? – something said/done out of court

This term has been given a broad construction to cover ALL representations made on other occasions except the proceedings before the judge in which the evidence is sought to be adduced; also, NOT related proceedings (i.e. interlocutory)

C. Made by a Person?

Does not include:

1. Animals;
2. Machines without human input (automatic thing that happens and is NOT inputted by a human-being e.g. typing) – this turns on whether its creation required human contribution and exactly what the nature of that contribution was

Hansen Beverage Co v Bickfords (Australia) Pty Ltd

Facts: Tender the audience reach – where people in the sample homes pressed the button when hear the television to represent that they were in the room when the television was on.

Middleton J: Such data is NOT automatically recorded by the meters WITHOUT human intervention of deliberately pressing the button to show a person or persons are in the room where the television is on. The reliance on the data derived from the sample homes MUST involved the presentation by a person that the person was in the room on the relevant occasion, namely when the television is operating.

(*Rook v Maynard*) As computer output was automatically traced through the system, it was not hearsay as it did not contain a human element. The computer undertook certain functions which were able to be proved by data resulting from the computer program itself.

¹ Can imply a representation that arises out of the express representation (through conduct or context)