

## Confessions and Statements against Interest

### CONFESSIONS AND STATEMENTS AGAINST INTEREST

#### (1) Terminology and the basic rule

**A confession would normally be hearsay evidence: it is, however, admissible as an exception to the hearsay rule.** That rule is uncontroversial and so the law in this area is largely concerned with exceptions to that exception: that is, when will a confession *not* be admissible?

Note that the term "statement against interest" is more accurate: a statement by the accused may be incriminating and admissible against him even though it does not amount to a full confession (e.g. he admits attacking the complainer but claims this was in self-defence; he admits sexual intercourse with the complainer in a rape case but claims this was consensual).

It is normal to refer to "confessions" in the criminal context and "admissions" in the civil context (*Walkers on Evidence*, 3rd edn, para 9.1), although practice varies. The issue is of less importance in civil cases, where there is no need to rely on an exception to the rule against hearsay to justify admitting the evidence given the abolition of the rule against hearsay in civil cases by s 2(1) of the Civil Evidence (Scotland) Act 1988, and will not be discussed further here.

Confessions are normally regarded as having high probative value: "the confession of guilt by an accused person is prejudicial to his own interests and may, therefore, initially be assumed to be true" (*Hartley v HM Advocate* 1979 SLT 26 per Lord Dunpark)

#### (2) Admissibility: the basic test, "Fairness test":

A confession will be inadmissible where it has been unfairly obtained. See e.g. *Brown v HM Advocate* 1966 SLT 105 at 107 per Lord Justice-General Clyde: "The simple and intelligible test which has worked well in practice...has what has taken place been fair or not?"

#### Determining whether the statement was fairly obtained:

It used to be thought that this was a matter for the jury but it is now established that this should be decided by way of a "trial within a trial" (*Thompson v Crowe* 2000 JC 173).

- Defence challenged the admissibility of evidence in this case on the ground of it having been obtained improperly.
- It was established that the trial judge alone should hear the arguments, not the jury and determine the admissibility of the statement by means of a trial within a trial.
- Only if deemed admissible could the jury be allowed to consider its value as an item of evidence.

# Confessions And Statements

**Chao Zhang**



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