

Hearsay

Have you ever played that game when you whisper something to someone else? Most of us probably have either at school or at Christmas when faced with only repeats on the television no one can quite stomach another game of charades or a round of eye spy with a relative who thinks that carpet begins with the letter 'k'!

For those of you that have missed out on this game, (I use the term missed out loosely), let me explain the rules. One person starts with a phrase such as say '*I have a red lorry*'. This phrase is then whispered to the person next to them, who then passes on the whisper to another person and so on. At the end to the amusement of everyone the last recipient probably along the lines of '*I would like an ice lolly*' relays a misquoted version of the message initially whispered.

What fun we all proclaim and we consider for a moment the concept of how second hand information from a reliable source potentially transforms miraculously into something else light years away from the original statement made.

Strangely enough when contracting many forget the fragility of relying on another's version of events as demonstrated within this parlour game and refer liberally to second hand knowledge at times under the notion of complete impeccability.

In law a version of this form of 'second hand knowledge' sometimes falls into the category of 'Hearsay'. Therefore bizarrely perhaps in terms of evidence a statement by someone other than the person who made the statement, as evidence of the truth of the fact, may be admissible in civil proceedings under the rules of Civil Evidence Act 1995.

Fortunately the floodgates are not then opened to allow uncontrolled breaches of natural justice to flood over the otherwise stringent rules that apply to evidence generally. Indeed the admissibility of this form of evidence is curtailed somewhat by reference not least to Section 4 of the Civil Evidence Act. This section lays down matters that the court may refer to, when considering whether or not to consider the hearsay evidence as admissible, as follows:

1. Is it reasonable that the original author of the statement cannot be present / does the manner of presentation suggest an attempt to effect/prevent the proper evaluation of its veracity; and
2. Was the original statement allegedly made, stated at the time/contemporaneously with the event referred to within the alleged statement; and
3. Is this hearsay evidence arising directly from the party that made the statement or is has it evolved through several layers of hearsay; and

4. Does any party to this hearsay evidence have any conflict of interest that may cause them to change the evidence through hearsay; and
5. Is the hearsay evidence all the statement or just a part, was it said consecutively or has it been edited, and was it said with another party for any particular purpose?

In respect of the above, absence of the original author of the statement may, with out good reason for their absence, cause the courts to draw adverse inference against the party issuing the evidence as can the fact that the recollection by the person originating the evidence was not made at the time of the matter/event. In respect of the other criteria they are quite self-explanatory, i.e. if the hearsay is as the parlour game the result of several layers of hearsay the chances potentially increase of the evidence becoming less accurate. If the party alleging the statement of another has any personal benefit to gain they may more easily miss represent the actual statement of some other person as may happen if they edit/take out of context or misuse the statement made.

The admissibility of this type of hearsay evidence is not confined to oral evidence; indeed a business record may be admissible under the Civil Evidence Act 1995 s9 (1) if certified by an officer of the business that the record refers to. Similarly computer statements under the Civil Evidence Act 1995 ss1-2 remain at first sight also admissible as hearsay evidence.

Therefore when considering your case do not preclude out the use of the evidence of hearsay. Indeed if used appropriately it may be powerful and importantly admissible evidence. For my part I hope therefore that I never have to act for a client on a matter involving the distinction between a red lorry and an ice-lolly, if hearsay evidence is used. I also hope I can find an excuse this year to avoid those inevitable parlour games.

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