

The Rule Against Hearsay in Civil Cases

In August 1988, the Commission published its Report on [*The Rule against Hearsay in Civil Cases \(LRC 25–1988\)*](#) which built on its Working Paper on the [*Rule against Hearsay \(LRC WP 9-1980\)*](#) and forms part of its First Programme of Law Reform.

The Commission concluded that, in the absence of any express dissent from any of the major recommendations in the Working Paper, it was compelled to assume that there was a general acceptance of the desirability of those proposals. However, it also gave careful consideration to the necessity for any further revisions in these recommendations. The recommendations in the Working Paper were confined to civil cases and the Commission decided to adhere to this position. The 1980 Working Paper contained a full statement of the law relating to Hearsay and a review of proposals made elsewhere for its reform. The Commission did not consider it necessary to reproduce all this material in this final Report but a chapter on developments subsequent to 1980 is included. Minor changes to the recommendations in the Working Paper are also identified. In this Report the law is stated as of 1st July 1988.

Nineteen recommendations in total are made which include a recommendation that:

1. (i) A party should be entitled to give in evidence against another party an admission made by that other party without giving advance notice and notwithstanding the fact that that other party does not testify, provided such an admission is proved by the best available evidence.
(ii) An admission should be defined as any statement made by a party himself adverse to his interest in the proceedings and should include-
 - a. A statement not based on personal knowledge.
 - b. A statement of opinion,
 - c. A statement containing assumptions as to the law.
(iii) Except in cases where conspiracy is alleged and there is independent evidence thereof, no statement made by any person other than the party himself should be admissible as an admission against that party.
(iv) Where a party calls a witness who is an agent or servant of another party for the purpose of enabling an out-of-court statement of that witness to be received in evidence, the rules restricting cross-examination of one's own witness should be waived by the court.

NOTE: Recommendation 1(iv) differs from the corresponding recommendation in the Working Paper. It proposed that

“where a party calls a witness who may be unfavourably disposed towards him for the purpose of enabling an out-of-court statement of that witness to be received in evidence the rules restricting cross-examination of one's own witness should be waived by the court.”

On further consideration, the Commission is satisfied that it would be impractical to permit cross-examination of one's own witness in the somewhat vaguely defined circumstances there envisaged. It is considered, however, legitimate to permit such cross-examination in the special case of a witness who is an agent or servant of another party and who, accordingly, has a specific relationship with that party.

Draft Legislation in Report

A draft *Hearsay in Civil Proceedings Bill* is included in the Report.

Information on Implementation

Recommendations of the Commission were implemented in part by the *Children Act 1997*. Also incorporated into Third Programme of Law Reform (Project 8: see now [Consolidation and Reform of Aspects of the Law of Evidence \(LRC 117-2016\)](#)).