

CHAPTER 10: Confessions

1. *'I am trying,' Rowe said with a flash of anger, 'to tell you all I know . . . In English law isn't a man supposed to be innocent until you prove him guilty? I'm ready to tell you everything I can remember about the murder, but I'm not a murderer.'* The plump man began to smile. He drew out his hands and looked at his nails and tucked them back again. *'That's interesting, Mr Rowe,' he said. 'You mentioned murder, but I have said nothing about murder to you, and no paper has mentioned murder . . . yet.'* (Graham Greene, *The Ministry of Fear*, 1943, Cambridge)

Assume that, following his interrogation by the plump detective, Rowe has been charged with murder and that, as part of its case, the Crown wishes to adduce in evidence what Rowe said to him on this occasion. Could Rowe contest the admissibility of this exchange under s 76 of PACE on the ground that his words constituted a 'confession' within the meaning of s 82(1)?

This question requires you to consider the definition of 'confession', set out in s. 82(1) of PACE, and the House of Lords' decision in *sub nom Hasan* [2005] 2 AC 467, on appeal from *R v. Z* [2003] 1 WLR 1489. This definition is considered in paras. 10.5-10.16.

2. *Whilst at work, Helot's gold Rolex watch disappears from a drawer of his desk during the lunch hour. Helot works in a secure area of the company, entry to which is by swipe card only. Immediately upon learning of the possible theft of the watch, Helot's employer, Draco, posts notices and sends an internal email to all employees in which he says that there is great concern at the loss and that the police will be informed at close of business if the missing watch is not retrieved. The notice and the email also remind staff that the swipe card system in force in this area enables the company to know exactly who was in that particular area at the relevant time, adding that theft is an automatic sacking offence under the terms of the staff's contracts of employment. Within ten minutes of circulation of the email, a fellow employee, Ooze, calls upon Draco and says: 'Look, I was in the area at the time. But so were a lot of other people. I want you to know the disappearance of that watch had nothing to do with me.' The watch is never found, but eventually various items of circumstantial evidence point to Ooze as the culprit and he is charged with theft.*

Advise the prosecution, which, at the trial, wishes to include in its case evidence of Ooze's reaction to Draco's messages. Discuss.

This question, too, requires consideration of the definition of 'confession' in s. 82(1) of PACE. Following *Hasan*, it is clear that only statements that are *ex facie* inculpatory will fall within this definition and be subjected to the conditions of admissibility of s.76 of

PACE. Other inculpatory actions and things said by an accused person may still be admissible, however, even if they fall outside the regime of s. 76.

3. *Chump, who has had no previous dealings with the police, is being questioned at the police station by PC Brisket, who suspects him of shoplifting. PC Brisket has cautioned Chump twice, because Chump said that he did not understand the caution the first time the policeman parroted it. Chump is very agitated and asks to see a lawyer. PC Brisket explains that, while that can be arranged, it does unfortunately tend to delay matters. 'Most suspects', PC Brisket adds, 'do not understand what their lawyer is telling them anyway. Frankly, nor does the lawyer!' Chump says: 'Look, my mum is really ill in hospital. I've got to see her. The doctor's put me on pills. Let's just get this over with. I'll say whatever you like.' PC Brisket switches on the tape recorder, the interview commences, and Chump confesses to shoplifting. PC Brisket goes round to Chump's flat and, just as Chump claimed, finds stolen goods concealed behind a partition in the bathroom. Discuss.*

This problem is concerned with the admissibility of C's confession. The situation is reminiscent of the facts in *R v. Beycan* [1990] Crim LR 185. Regarding C's cautioning, see para. 10.42.

A confession's admissibility will turn on the prosecution satisfying the conditions laid down in s.76(2)(a) (oppression) and s. 76(2)(b) (things said and done) of PACE, and not attracting exercise of judicial discretion either under s. 78 of PACE or at common law (PACE, s. 82(3)). Depending on the circumstances, depriving a suspect of legal advice may fall within s. 76(2)(b) and/or s. 78. Here, there is a question of causation in as much as C has two possible reasons for confessing – his mother's illness and his need of pills. In the case of the latter, is this a thing *done* or is it self-inflicted (see *inter alia*, *R v. Goldenberg* (1988) 88 Cr App R 285, para.10.32)?

If the question is held inadmissible, there is then the question of subsequently discovered facts under s. 76(4)(a) of PACE (see paras. 10.50-10.51).

4. *'Did he, Sherry?' I barked into the still face. The dead or dying man didn't move. I cautiously moved my fingers again so that his dead or dying head nodded, twice. Then I made his head jerk back, and let it gently down on the floor again. 'Well,' I said, standing up and facing Ringgo, 'I've got you at last.'* (Dashiell Hammett, 'The Farewell Murder' (1930) *Black Mask*, February)

*In this story, a private detective seeks to extract a confession to murder by manipulating a dying or, more likely, dead witness's head so as make it appear that the latter is nodding in assent. At the time, the killer, Ringgo, says nothing; later, under police interrogation, Ringgo confesses to the slaying. How would an English court approach the admissibility of this evidence? (Consider, *inter alia*, *R v. Christie* [1914] AC 545 and evidence deriving from statements made in the presence of a party.)*

As suggested in the question itself, *R v. Christie* [1914] AC 545 may be helpful. Additionally, PACE, s. 78 may need to be considered since the confession has been obtained by means of serious trickery (cf., e.g., *R v. Mason* (1988) 86 Cr App R 349).

5. *Where co-accused are jointly tried, if D1's confession is ruled inadmissible under s 76 of PACE, what use, if any, may D2 make of D1's confession?*

This question requires you to consider the provisions of s. 76A of PACE (see paras. 10-63-10.72).

6. *"A killer dubbed the Fat Ripper owned up to murdering three women after he was given cash to buy Mars Bars. Police say 20st Philip Smith, 36, moaned about £400 seized from his flat. He was given it back to buy hundreds of bars while in jail. At trial he finally admitted his Midlands killing spree. Police have just revealed the rant. They hope Brummie Smith will now admit to more murders."*

(The Sun, 4 January 2005, p 28)

Discuss the admissibility of this confession to three murders, imagining that Smith had recanted before trial.

The issue here plainly is whether S's admitting to three murders was "in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof ... notwithstanding that it may be true" (PACE, s. 76(2)(b)).