# Evidence Analysis Part 2

**Tutorial 9**

1. What is the rule against “hearsay”? Explain the rationale for maintaining such a rule in evidence.

Under Section 62 of the Evidence Act requires direct evidence to be given.

• It is provided that a witness who gives oral evidence must testify as to what he himself perceived. He is NOT permitted to testify to facts in issue or relevant facts which are perceived by other persons, and which were recounted to him.

The rationale behind this principle is that the witness cannot verify the truth of the facts of which he has no personal knowledge.

• As the person who has personal knowledge is not in court, the accuracy of his perception cannot be assessed nor be tested in cross-examination.

• Moreover the possibility of fabrication is increased in situations of hearsay

2. Explain what is a “confession” and discuss the conditions it must meet before it may be treated as admissible.

Section 17(2) of the Evidence Act defines a confession as an admission by an accused person which states or suggest the inference (ie arrive at a conclusion) that he committed the offence

1. In criminal cases, the accused must admit to all the elements of the offence that constitute the offence i.e. both the intention as well as the unlawful act
2. The confession or admission must be made voluntarily with no inducement, threat or promise
3. Procedurally, a confession will not be admissible if made to a police officer below the rank of Sergeant

3. Discuss the distinction between admissibility and weight of the evidence. How does this apply to computer output as evidence?

The admissibility of evidence, which is a question of law, depends on: ➢ The concept of “relevancy” of a sufficiently high degree ➢ The fact that the evidence tendered does not infringe any provisions under the Evidence Act

The “weight” of the evidence, on the other hand, is a question of fact and involves the court deciding on the value it would place on the evidence. This value (often termed “probative value” (ie believable) is significant in deciding whether the court is likely to believe the evidence despite it being admissible

4. What is the best evidence rule and how does it apply to the admissibility of computer output as evidence?

“Best that the nature of the case will allow”

Thus where there was nothing better, the court will resort to admitting evidence which would otherwise be inadmissible in other cases

This could also mean conversely that the rule may apply to cases in which evidence is excluded because better evidence was available