

## *Commercial: Bribery, Torture & Hearsay: Shagang Shipping Company Ltd v HNA Group Company Ltd [2020] UKSC 34*

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How are hearsay allegations of bribery and torture treated?

### *Facts*

The claim was pursuant to a guarantee of a contract to charter a vessel. The defence alleged that the guarantee was procured by bribery, evidenced by the confessions of those who had paid and received the bribe, so that the guarantee was unenforceable. In reply, the claimant alleged that the confessions were obtained by torture, so that they were inadmissible. No one with first-hand knowledge of the alleged bribery or torture gave evidence.

### *Commercial Court*

Robin Knowles J held that, although torture could not be ruled out as a reason for the confessions, the allegations of bribery had not been proved. The guarantee was enforceable. The claimant was awarded damages.

### *Court of Appeal*

On appeal, the case was remitted for redetermination because the correct question as to what weight to give confession evidence had not been asked or answered. All relevant matters were *not* taken into account. Irrelevant matters *were* taken into account.

The Chancellor of the High Court, Newey LJ and Dame Elizabeth Gloster DBE held that, where a statement alleged to have been made as a result of torture was not proved on a balance of probabilities, when assessing the weight to be given to the statement as hearsay evidence, the possibility that it was obtained by torture must be entirely disregarded.

### *Supreme Court*

There were four issues on appeal before the Deputy President of the Supreme Court, Lords Hamblen, Leggatt and Burrows.

#### Order of resolution

The first issue was whether the trial judge erred in the order in which he resolved the three questions. First, whether the confession evidence was admissible. Secondly, the weight to be given to that (hearsay) evidence. Thirdly, whether there was bribery.

Whereas the Court of Appeal held that these questions *must* be answered in turn, the Supreme Court held that, although this approach was *logical*, it was *not* mandatory: “In all the circumstances we do not consider the Court of Appeal’s criticism that the judge made an error by not deciding the issue of torture first to be justified. The approach taken was both legitimate and consistent with the way the case was put before him.”

#### Weighing confession evidence

The second issue was whether the trial judge erred in his approach to weighing confession evidence. The Supreme Court held that, although the trial judge did not fall into error:

“It would have been much more satisfactory if he had dealt in more detail with the content of the confessions, the circumstances in which the confessions were made and other factors bearing directly on their reliability, such as the evidence that each of the individuals had told others their confessions were false, before bringing into consideration other factors bearing on the likelihood or otherwise that the confessions were truthful, such as the lack of any plausible commercial reason for paying a bribe.”

### Appropriate matters

The third issue was whether the trial judge failed to take all appropriate matters into account, including the content, timing and circumstances surrounding the confessions.

The Supreme Court held that the conclusions had to be read together with the earlier part of the judgment. Upon doing so, it was clear that the trial judge had the appropriate matters in mind: “The real complaint is as to the degree of depth in which he did so and that he did not do so in a sufficiently systematic way. Such a shortcoming, whilst regrettable, does not involve an error of law or otherwise justify intervention by an appellate court.”

### Relevance of torture

The fourth issue was whether the trial judge had erred insofar as he relied on a finding that torture could not be ruled out:

“We conclude that the Court of Appeal was wrong to hold that, if the use of torture has not been proved on the balance of probabilities, a serious possibility that a statement was obtained by torture must be ignored by a court in estimating the weight to be given to the statement. Such an approach is contrary to principle. The true position is that, where there are reasonable grounds for suspecting that a statement was obtained by torture, this is a matter which a judge can and should take into account, along with all other relevant circumstances, in assessing the reliability of the statement as evidence of the facts stated. It follows that in the present case the judge was entitled to rely, as he did, on his finding that torture could not be ruled out as providing further support for the conclusion he had already reached that there was no bribe ...”

### *Disposal*

The appeal was unanimously allowed. The guarantee was enforceable. The Commercial Court judgment was restored, however, not without criticism: “In this case it is right to observe that the judge’s reasoning is not merely succinct but sparse. The judgment contains no sustained analysis of the main evidence and arguments. ... This can only encourage appeals.”