

The Witness' Privilege Against Self-Incrimination in the New Code of Criminal Procedure

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Abstract

This paper examines the witness' privilege against self-incrimination under Taiwan's new Code of Criminal Procedure. Before September 1, 2004, Article 186 of Taiwan's Code of Criminal Procedure provided that co-offenders are not allowed to make sworn testimony at trial or prosecutorial investigation proceeding. This was a very bizarre provision, of course. At then, neither parties nor the court could require co-offenders to make statements under oath. In other words, co-offender's unsworn statements could be admitted into evidence at trial, no matter they are favorable or unfavorable to the defendant. A co-defendant was never liable for perjury even if they lied before the court since they were not allowed to take oath. After September 1, 2004, the new Article 186 of Taiwan's Code of Criminal Procedure requires that all witnesses, except those who are under age 16 or could not understand the meaning of oath, have to take oath in making statements at trial or prosecutorial investigation proceedings. The new provision has changed the trial practice dramatically. On the one hand, a co-offender's statement is not admissible at trial unless he is under oath. On the other, a co-offender does not enjoy the privilege to lie at court anymore.

At the same time, Section 2, Article 186 of the new Code of Criminal Procedure provides that a judge or prosecutor shall warn the witness of his privilege against self-incrimination before he testifies. This is also a new provision added into the new Code. Before September 1, 2004, a judge or

prosecutor did not have such a duty to warn the witness of his privilege against self-incrimination since co-offenders were never allowed to take oath and would never commit perjury. Section 2, Article 186 was added to warn witnesses to think carefully before testifying because they are not immune from perjury anymore.

Before September 1, 2004, it was not important to define the meaning or the scope of the witness' privilege against self-incrimination since they were free to lie under the law. However, it becomes an extremely important issue because they are allowed and, sometimes, forced to take oath and make statements at trial. It is important to know when and on what conditions a witness could or could not assert his privilege against self-incrimination under the new Code.

Keyword: Privilege against self-incrimination, right to silence, joinder of offences, due process, Disqualification Rule, Competence Rule