

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

LL.B.

LL.B. Part II: Law of Evidence

COURSE CODE : LAWSII05
DATE : 15-MAY-02
TIME : 10.00
TIME ALLOWED : 3 hours 15 minutes

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TURN OVER

LAW OF EVIDENCE

Answer **FOUR** questions, including at least one question from **PART A** and at least one question from **PART B**.

PART A

1. “The nature and seriousness of much modern criminality requires the use of proactive techniques of investigation, frequently involving deception, covert surveillance and undercover operations. The courts should reject reliable evidence obtained by these means only in the most exceptional circumstances.”

Discuss.

2. “After the decision of the House of Lords in *Lambert* it is hard to see how a reverse onus can ever be justified in a criminal case.”

Discuss.

3. “The precise scope of the rule against hearsay has always been controversial. Fortunately the courts seem able to bypass the rule whenever its application would be particularly inconvenient.”

Discuss.

4. “It is generally agreed that the law on ‘similar fact’ evidence is complex and difficult to apply. There is less agreement on how to make the law simpler and easier, but one attractive option is for the judge to place the accused’s record before the jury in all cases, with an appropriate warning not to give it undue weight.”

Discuss.

PART B

5. Dave is charged with rape of Penny and indecent assault on Rosie, aged 7. Penny has stated to the police that Dave was an acquaintance whom she had always thought of as a “bit odd”. She has admitted that she had consensual sex with him once after a party a month ago because she was drunk and felt sorry for him. She says that the event which is the subject of the rape charge occurred at a party given by her friend Sarah. Dave persuaded her to accompany him to a bedroom by saying that he felt depressed and wanted to talk to her. Penny says that once they were in the bedroom Dave asked her for sex and when she refused he forced himself on her. She says that she was not drunk when this happened.

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Dave's statement to the police admits that he had sex with Penny at Sarah's party, but claims that she consented. He adds, "I was sure she was willing. She had a lot to drink and she came to the bedroom with me just like the first time." Dave also claims that his friend Ed told Dave that he, Ed, had sex with Penny at the party two hours previously. The prosecution have disclosed that one year ago Penny made a complaint of indecent assault against her former employer Frank. She later admitted that the complaint was untrue and that she had made it in revenge for being sacked.

Rosie is Sarah's daughter. Rosie has said in a recorded interview that she was asleep when Dave, whom she knew, came into her room during the party and put his hand up her nightdress. Sarah says that Rosie first told her of this incident three days later after Sarah questioned her on why she seemed upset. Dave has denied the incident, saying that Sarah and Penny are out to "get him" and have put Rosie up to making a false allegation.

Consider the evidential issues arising.

6. Alice and Bertie were employees of Consignments plc. Last year they became lovers, but the affair broke up when Alice became pregnant and Bertie denied that he was the father. They have been jointly charged with theft from Consignments plc of 25 computer disks containing confidential information about overseas customers. Alice was the first to be arrested and interviewed by the police. Damian, a senior police officer, refused her request for a solicitor on the ground that it would lead to the alerting of other suspects and would hinder the recovery of the disks. He then interviewed Alice between 10.30 pm and 3.00 am without a break. Finally Alice said, "All right, I admit taking twelve disks from the office. But I only did it because Bertie forced me to. I gave them to him. He's responsible for taking the rest. You'll find them all under the floorboards in the sitting room in his house". Acting on this information, Damian and other officers went to Bertie's house. Bertie was away. When the police failed to obtain an answer, they broke in without a search warrant, ripped up the floorboards in the sitting room, and found the disks. Next day, Alice was allowed to consult a solicitor, who was fully informed of the earlier interview. Afterwards, in the solicitor's presence, she was interviewed again, when she confirmed the truth of what she had said to Damian.

Bertie was later arrested and taken to the police station, where he refused the opportunity to obtain legal advice and gave a "no comment" interview to the police. After his release on bail he instructed solicitors. He told them that he had no knowledge of the disks in his house. He said that he now believes they were "planted" in his house by Alice in revenge for his denial that he was the father of her child. He remembered that when they parted she shouted to him, "You'll have plenty of time to think about your son when you're behind bars". He intends to give evidence of this at his trial.

Consider the evidential issues arising.

CONTINUED

7. Mark, Nigel and Rick are charged with murdering Sam by stabbing him outside a nightclub. The prosecution case is that Mark and Nigel attacked Sam as he left the club, and that Rick drove them away after the attack. Mark's defence statement claims that he stabbed Sam in self-defence. Nigel's defence statement says that he and Mark had agreed to beat up Sam but that Nigel did not know Mark had a knife. Rick's defence statement denies that he was the driver of the car.

Consider the evidential issues arising at trial in relation to the following matters:

- (a) Tina made a written statement to the police that she left the club a few minutes after Sam. Two men ran past her and she heard one say, "We shouldn't have stabbed him. He wasn't a threat." Further down the road she found Sam bleeding profusely. Sam gasped, "The man with the tattoo got me. I never had a chance." Mark has a tattoo. Nigel does not. Tina has now told her mother, Ursula, that she is afraid to give evidence.
- (b) Nigel fears that Mark may give evidence that Nigel did know about the knife. Nigel's defence has a copy of a statement that Mark made to Vic, a police officer, in interview that Mark did not stab Sam in self-defence, and that Mark also said that Nigel did not know about the knife. The judge has ruled in a pre-trial review that Mark's statement to Vic is not admissible for the prosecution because it was obtained by oppression.
- (c) Will, a tourist, left a note with the manager of his hotel saying that he had seen two men, one carrying a bloodstained knife, run down the road and get into a car with the registration number R1 CKY. The manager sent a letter to the police telling them what Will had stated in the note. Unfortunately the manager forgot to enclose the note with the letter. The note cannot now be found and Will cannot now be traced. R1 CKY is the number of a car registered in Rick's name.
8. Al, Bill and Colin, three security guards, are charged with assault occasioning actual bodily harm on Don, a prisoner serving a sentence for child sex offences whom they were transferring between jails. Don testifies at their trial that all three attacked him in the van during the journey. Counsel for Al suggests to Don in cross-examination that Al took no part in any attack and that Don has made a mistake in saying that he was an assailant. Counsel for Bill suggests to Don in cross-examination that there was no attack and that Don has made a malicious accusation against Bill. Counsel for Colin suggests to Don in cross-examination that Colin hit Don in self-defence after Don attacked him.

When Al testifies he states that he saw blows exchanged between Don and Bill and Colin, but that he took no part. Counsel for Bill then asks Al about Al's previous conviction for assault, eliciting the fact that it was on a suspected paedophile at a time when Al was working as a school caretaker. When Bill testifies he claims that Don injured himself and was not attacked. The trial judge gives the prosecution leave to ask Bill about his previous convictions for theft and indecent assault. Colin testifies that he hit Don in self-defence. He also says that he has no previous convictions (which is true). When cross-examined by the prosecution Colin admits that he has since been suspended from duty on suspicion of assaulting another prisoner.

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When summing up the case to the jury the judge directs the jury correctly as to the burden and standard of proof on the prosecution and tells them to consider the case against each defendant separately. He then adds that in considering the case against Al and Bill the jury may take into account their criminal records. The judge says nothing further concerning Colin. The jury convicts all three.

Advise the defendants as to grounds of appeal against conviction.

9. Eve is robbed at knifepoint of her handbag in the street one night. Fred, who saw the robbery, calls the police on his mobile phone. When the police arrive a few minutes later Eve tells them that, although she could not see the robber's face clearly because he was wearing a hooded jacket, she is fairly sure the robber was George, a white youth she knew at school three years ago. The police take Eve in their car round the area. A few minutes later she points out a man with a hooded jacket. When the police stop the car the man runs off, pursued by the officers. On arrest the man turns out to be George. A search of his pockets at the police station reveals a knife.

When George's solicitor, Henry, arrives at the police station he asks for an identity parade. The police refuse, saying that Eve has positively identified George. Meanwhile Fred has told the police that he did not see the robber's face at all clearly, but thinks that the robber was black. The police do not believe this statement because Fred has convictions for inciting racial hatred, and they do not tell Henry about Fred.

George then has a consultation with Henry at the police station. During the consultation George asks Henry to take a message to George's brother. Henry refuses to do this when he hears that the message is a request to George's brother to retrieve Eve's handbag from where George had hidden it before the police found him. Unknown to George and Henry their conversation is overheard through the wall by Irene, a cleaner working in the next room. Irene tells the police what she has heard.

George is charged with robbery. The police do not include any information about Fred in the case file which they give to the Crown Prosecution Service. This fact comes to light just before George's trial is about to start.

Advise the trial judge on the evidential issues arising.

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