

**UNIVERSITY COLLEGE LONDON**

*University of London*

**EXAMINATION FOR INTERNAL STUDENTS**

*For The Following Qualification:-*

*LL.B.*

**LL.B. Part II: Law of Evidence**

**COURSE CODE : LAWSII05**

**DATE : 06-MAY-03**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## 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 impact of Article 6 of the European Convention on Human Rights on the law relating to the privilege against self-incrimination and the accused's right to silence has been wholly beneficial."

Discuss.

2. "The existence of so many exceptions to the hearsay rule is a striking demonstration of the weakness of the justification for the rule and the difficulty of determining its proper scope."

Discuss.

3. "The law relating to prosecution evidence of the accused's bad character and other misconduct is unnecessarily complicated and difficult to apply. Paradoxically, however, it usually delivers fair results in practice. The case for far-reaching reform is not therefore made out."

Discuss.

4. When, if ever, and on what grounds should a court exclude prosecution evidence obtained by unlawful or unfair means?

**TURN OVER**

## PART B

5. Adam is charged with raping Bella after a New Year's Eve party, which they both attended. The prosecution's witness statements disclose that towards the end of the party Adam approached Bella, whom he knew from school, and said "Let's go into the garden; I think I'm going to faint". Bella agreed but when they reached the garden Adam forced her against a wall and raped her. Bella did not return to the party but went home immediately to have a bath because she "felt dirty". When her flatmate Cameron arrived home next morning he found Bella in tears. He said to her "That bastard Adam has done something, hasn't he?" Bella replied "Yes, he raped me".

When the police questioned Adam he at first denied having met Bella at the party. Later he said, "All right, I did see her. But I never said anything about feeling faint. She was the one who said that. We went into the garden and she was all over me. No way would I have had sex with her if she hadn't wanted it. Besides, she's always up for sex at parties. We had sex after her birthday party last summer, and Dan told me she had sex with him at a party on Boxing Day and she began it by saying that she felt faint."

Adam's solicitor has discovered that last year Bella made allegations of rape against two other men which she subsequently admitted were untrue. He has also discovered that two years ago she had an affair with Eric, a married man, and that after consensual intercourse with him she would have a bath, saying that she "felt dirty".

Discuss the evidential issues arising.

6. Frank is charged with robbery. He is alleged to have entered an off-licence, threatened the manager George with a gun and stolen the contents of the till. Harriet, a customer in the off-licence at the time, told the police that although she did not see the robber's face, she recognised his voice as that of Frank, whom she knew at university. She also recognised him by a tattoo of a bird, which the robber had on his arm. Frank has a tattoo of a bird on his arm. Ian, who was passing by when the robber rushed out of the off-licence, told the police that he thought he could recognise the man whom he saw. Ian picked out Frank on an identification parade but did so hesitantly, saying "I'm not sure. This looks like the man, but I couldn't see his mouth because he had a scarf wrapped round it."

CONTINUED

Shortly after the robber had fled George ran into the street for help. A little way down the road he met Jim, a homeless person, who said "A little boy came up to me a moment ago and shouted 'The man with the gun got into a white car and I got the number!'" Jim then added "the boy gave me this paper". Jim gave George the paper. On it was written M123 NPQ. Frank owns a white car with that number. The boy cannot be traced. Jim made a statement to the police but has since died of alcohol poisoning.

Frank's solicitor has asked the police to set up a voice identification parade, to be attended by Harriet, in the hope that his client can be eliminated from inquiries. The police have refused the request.

Consider the evidential issues arising.

7. Ken, Leo and Mike are charged with robbery. The case for the prosecution is that they attacked Nigel in the car park of a pub and that one of them stole Nigel's Rolex watch. All the defendants plead not guilty.

Ken's counsel cross-examines Nigel about his conviction in 1983 for indecent exposure. When Ken testifies he claims that he was with his girlfriend at her flat at the time of the incident. Ken has convictions for causing grievous bodily harm with intent, robbery and rape.

Leo testifies that Nigel was drunk and behaved like a madman, charging at Mike with a broken bottle and threatening to kill them all. Leo says that he and the other defendants acted to protect themselves and each other, and that the watch must have fallen off in the struggle. Leo has no previous convictions but was acquitted on a previous charge of robbery after pleading that he acted in self-defence.

Mike testifies that he had got into his car and was waiting for the other defendants to come out of the pub. He says that he heard shouting but could see nothing. Mike has previous convictions for indecent assault and possession of heroin with intent to supply.

Consider the evidential issues arising.

**TURN OVER**

8. Brassbound PLC is an English company which manufactures armaments. During the course of experiments to test a new machine gun Dirk, one of Brassbound's employees, is injured. He brings an action for negligence against Brassbound. Brassbound's directors engage an outside consultant, Naomi, to make a report on the incident. Naomi's report is made available to the company's board of directors, a safety expert employed by Brassbound and Brassbound's own legal department. Dirk's solicitor asks for a copy of Naomi's report but Brassbound refuses his request.

During pre-trial disclosure Dirk's solicitor inadvertently discloses to Brassbound's legal advisors an opinion of Dirk's counsel which includes a statement that Dirk is likely to be found guilty of contributory negligence because Dirk had admitted to his solicitor that he had been under the influence of cannabis at the time of the incident.

Dirk's solicitor asks Brassbound for a copy of the specifications for the gun and the protocol for testing it, but on instructions from the Ministry of Defence Brassbound refuses to disclose this information saying that it is contrary to the public interest to reveal it.

Acting on a tip-off the police search Dirk's locker at the Brassbound factory and find a packet of heroin. Dirk denies that it is his and says that it must have been planted there by one of the company's employees. The police refuse to disclose the name of their informant and charge Dirk with possession of heroin.

Consider the evidential issues arising.

**CONTINUED**

9. Sid and Ted are arrested for burglary of Bedside Manor, a country house, after a microphone concealed by the police in Sid's car records a conversation between them in which Sid refers to "doing a job at the Manor". At the police station Ted is interviewed by Inspector Lewis. Ted declines the services of a solicitor after being cautioned, saying that he knows his rights. Lewis interviews Ted for some time, but Ted says "No comment" to any question relevant to the burglary. Lewis then leaves the room, returning an hour later. He says to Ted "Look, we know you did it. Sid is making a full statement. He says the silver you took has your fingerprints all over it, and he says that it was you who stabbed the owner. Now, if you co-operate I'm prepared to charge you just with theft and wounding and not with burglary and causing grievous bodily harm with intent." Sid has in fact refused to be interviewed at all. Ted thinks for a while and then says "All right. We did do the job. The silver is buried in the wood. But it was Sid who stabbed the owner. I can't stand violence." Lewis finds the silver buried in the place indicated by Ted, but there are no fingerprints on the silver.

Sid maintains his silence and is placed in a cell. He has been there for several hours when he is joined in the cell by Vic. Vic is a pickpocket whom Lewis has promised to release without charge if Vic will draw Sid into conversation and try to get Sid to make an incriminating statement. Vic is wearing a concealed microphone. Vic flatters Sid by referring to him as a master burglar and persistently asks Sid for instructions on how to break into houses like Bedside Manor and how to deal with resistance from owners. Tiring of Vic's questions, Sid eventually explains how he and Ted broke in and stole the silver. He adds that he had to stab the owner because Ted was too much of a wimp to do it.

Consider the evidential issues arising.

**END OF PAPER**