

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 : 11-MAY-04

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

LAW OF EVIDENCE

Answer **FOUR** questions, including at least **ONE** from Part A and at least **ONE** from Part B. Candidates should assume that any relevant provisions of the Criminal Justice Act 2003 are in force.

PART A

1. 'Proper effect must of course be given to these provisions. But since they restrict rights recognised at common law as appropriate to protect defendants against the risk of injustice, they should not be construed more widely than the statutory language requires.' (*per* Lord Bingham C.J. in *R v Bowden*)

To what extent have the courts followed this principle in the interpretation of section 34 of the Criminal Justice and Public Order Act 1994?

2. 'It is clear that the 1998 Act must be given its full import and that long or well entrenched ideas may have to be put aside, sacred cows culled.' (*per* Lord Slynn in *R v Lambert*)

To what extent has this view of the Human Rights Act 1998 changed the approach of the courts to the consideration of reverse burdens of proof in criminal trials?

3. 'In the light of the Criminal Justice Act 2003 we must reconsider our view of both the scope and the rationale of the rule against hearsay evidence.'

Discuss.

4. 'At the heart of our criminal justice system is the principle that while it is important that justice is done to the prosecution and justice is done to the victim, in the final analysis the fact remains that it is even more important that an injustice is not done to a defendant. It is central to the way we administer justice in this country that although it may mean that some guilty people may go unpunished, it is more important that the innocent are not wrongly convicted.' (*per* Lord Woolf C.J. in *R v B*)

Evaluate the provisions of the Criminal Justice Act 2003 concerning evidence of bad character with reference to this statement.

TURN OVER

PART B

5. The police are engaged in a large-scale investigation of suspected dealing in Class A drugs at a public house in Brighton. During the investigation the following incidents occur. Advise in each case on the issues arising in connection with the admissibility of evidence.
- (a) Posing as a brewery representative, Constable Lewis is invited by the manager Dave to inspect the cellar where the beer is stored. When Dave is called away to the telephone Lewis opens a locked cupboard with a skeleton key. Inside he finds several packages of heroin.
 - (b) Sergeant Morse, a female officer, gets a job at the pub as a barmaid. Nancy, one of the other barmaids, tells Morse that if she wants any cannabis she should ask Eric, a barman, who "will sort her out". Morse asks Eric to supply her with cocaine. When Eric says he does not "do" cocaine, Morse repeats her request, adding that she will have sex with Eric if he will agree to her request. The next day Eric supplies Morse with cocaine.
 - (c) Sergeant Poirot decides that the investigation is proceeding too slowly. Without seeking authorization from the officer in charge of the investigation Poirot installs a hidden camera in the ladies lavatory of the pub. The camera records a number of sales of crack cocaine by Nancy.
6. Fergus and Gerry are charged with the murder of Harold, the lover of Fergus's wife Karen, on the afternoon of 1 April. The prosecution case is that Fergus and Gerry stabbed and killed Harold while he was jogging on Hampstead Heath. A week before his death Harold sent a letter to Karen saying that he was frightened because he had been told that Fergus was "out to get him". Harold also telephoned his brother Ian the day before his death to say that he had seen Fergus and Gerry watching his house.

Leo, while cycling near Hampstead Heath at about 3.00 pm on 1 April, heard someone shout "Oh don't Gerry, please. I won't see her again". A moment later he saw two men running out of a wooded area but did not see their faces. He reported what he heard and saw to P.C. Crippen who made a note of what Leo told him. Leo has since gone to work in New Zealand as a private detective. He now refuses to return to England to give evidence at the trial of Fergus and Gerry, despite an offer by the prosecution to pay all his expenses. He has written saying that he fears that if he assists the prosecution in any way Fergus and Gerry will use criminal contacts in New Zealand to take reprisals against him.

Fergus and Gerry both deny killing Harold. Fergus wants to call Mick, a convicted burglar, to testify to a conversation that Mick had while on remand in prison with a prisoner called Jerry who boasted to Mick how he and a friend had attacked a jogger on Hampstead Heath on 1 April. Jerry has since disappeared without trace.

Consider the evidential issues arising.

CONTINUED

7. The following facts are an alternative scenario to Question 6. Fergus and Gerry are charged with the murder of Harold, the lover of Fergus's wife Karen, on the afternoon of 1 April. The prosecution case is that Fergus and Gerry stabbed and killed Harold while he was jogging on Hampstead Heath.

Inspector Bucket arrests Fergus and Gerry on suspicion of murder after Michael, who was walking on Hampstead Heath on 1 April, says that he saw Fergus, whom he had known at school, and another man whose face he did not see, follow a jogger into a wooded area. Bucket first interviews Gerry and cautions him. Bucket tells Gerry that the solicitor Gerry has asked for has telephoned to say that he cannot arrive for several hours. At this news Gerry starts trembling and says that he feels frightened and ill. Bucket then questions Gerry about Fergus and Karen. At first Gerry refuses to answer any questions, but under persistent questioning from Bucket he begins to weep and says that Fergus forced him to hold Harold down while he, Fergus, stabbed him. Gerry adds that he did so only because he was terrified of what Fergus would do to him if he refused. Gerry's solicitor does not in fact arrive until the following morning. Gerry sees him privately and describes what has already taken place. Bucket then interviews Gerry again in the presence of the solicitor. Gerry repeats what he said in the first interview.

In interview Fergus tells Bucket that he had nothing to do with the killing and was in fact in Birmingham with his mistress Naomi on 1 April. Fergus says that he did not know anyone called Michael at school and demands an identification parade. The police refuse to hold any identification procedure, saying that it would serve no useful purpose since Michael has already positively identified him. Naomi subsequently tells Fergus's solicitor that she is willing to testify in support of Fergus but is worried that the prosecution will bring out her convictions for perjury and prostitution. She is also unsure whether the date of Fergus's visit to her was 31 March or 1 April.

Consider the evidential issues arising.

TURN OVER

8. Rick is charged with raping Sally on New Year's Day 2004. Sally's witness statement alleges that Rick, whom she knows, followed her home after a party at a nightclub on New Year's Eve, forced his way into her flat and raped her. Sally states that she felt too unwell to report the attack immediately and waited until her flatmate Tess returned from a holiday two-days-later. Tess's statement-says that Sally was very-moody and irritable when Tess returned to the flat. When Tess said she would go away again until Sally was in a better frame of mind Sally burst into tears and said that Rick had raped her. Sally has also told the police she is very worried about the stress of giving evidence at Rick's trial.

When the police questioned Rick he said, "She invited me to go home with her because she was drunk and wanted an escort. When we got into her place she was all over me. It was just like her birthday a few months ago when she did exactly the same". Rick's friend Vic has given a statement to Rick's solicitor saying, "Everyone knows Sally's up for it when she's had a few drinks. She had sex with me at the back of the club before she went home". Rick's solicitor has discovered that three years ago Sally made a complaint of rape against another man whom she accused of following her home after a party and raping her after forcing his way into her flat. The case was dropped after Sally withdrew the complaint and refused to give evidence at the man's trial.

Consider the evidential issues arising.

CONTINUED

9. Mick, the owner of a haulage company, hears a rumour that Ned and Olly, two of the company's drivers, are smuggling drugs in the company's lorries. During a routine audit of the accounts Mick begins to suspect that Penny, the company accountant, has been defrauding the company by undercharging customers in return for a share of the money they save.

Answer (a) **AND** (b).

- (a) Mick reports the drugs rumour to the police. The police inquiry includes the taking of a confidential statement from Tom, another driver, who says that he suspects Ned has drugs hidden in a lorry Ned has just driven into the U.K. from Amsterdam. With Mick's consent the police search the lorry and find drugs hidden in a spare wheel. When Ned is arrested he vigorously protests his innocence, claiming that he has been set up. He maintains that other drivers have a grudge against him because he refused to join their plan to organise a theft of some valuable freight he was transporting. The police persuade Rose, an elderly lady who lives in an apartment block down the street from Olly's house, to let them use her apartment for surveillance. That night the police observe a man, who they think looks like Olly, drive up in one of the company's lorries and post a package through the letter-box of Olly's house before driving off again. The package is found to contain drugs. Olly insists that he has been wrongly identified as the man concerned and asks for the surveillance records.

Advise the prosecution on their obligations of pre-trial disclosure, with particular reference to issues arising on the above set of facts.

- (b) Acting on the basis of his suspicions Mick summarily dismisses Penny from her job. She brings an action for wrongful dismissal. Mick seeks advice on the standard of proof he will have to meet if he wishes to justify the dismissal by reference to Penny's alleged fraud. Mick also seeks advice on whether he can claim privilege for correspondence passing between himself and the company's solicitor in which he admitted, in response to a question from the solicitor, that he did not have the evidence to back his suspicions of Penny and said that he would have to "create" the evidence. Unfortunately Mick's secretary posted a copy of the letter containing Mick's statement to Penny by mistake.

Advise Mick.

END OF PAPER