

**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 : 12-MAY-05**

**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**. Candidates should assume that all relevant sections of the Criminal Justice Act 2003 are in force.

### **PART A**

1. What principles should determine whether the imposition of a legal burden on the defendant in a criminal case is justified?
  
2. "Section 115 of the Criminal Justice Act 2003 significantly modifies the scope of the rule against hearsay evidence and compels us to reconsider the rationale of the rule."

Discuss.

3. Consider how a defendant's receipt or non-receipt of legal advice affects the use in evidence of a police interview where:
  - (a) the defendant gives a "no comment" interview; and
  - (b) the defendant makes a confession in the interview.
  
4. "Determining the relevance of evidence may require complex judgments which have to balance factors of logic, policy and degrees of probative value. Such judgments will become more problematic with the recent statutory recognition of the concept of "important explanatory evidence."

Discuss.

**TURN OVER**

## **PART B**

5. The police are investigating Rick's nightclub which they believe is a centre for supplying Class A controlled drugs. During the investigation the following incidents occur. Advise in each case on the evidential issues arising.
- (a) Constable Large goes undercover to get a job as a bouncer at the club. On his first night he uses a skeleton key to open a locked cupboard in Rick's office. Inside the cupboard he finds packages of heroin.
  - (b) Constable Swindell, a female plainclothes officer, gets a job at the club as a barmaid. She asks Tom, the barman, to supply her with cocaine. Tom refuses at first, but eventually supplies the cocaine after she tells him she will re-sell the drug at an inflated price to a wealthy friend and share the profit with Tom.
  - (c) Rick is arrested following the finding of the heroin in his office. At the police station Inspector Parker conceals a microphone in Rick's cell and listens in to a conversation between Rick and his solicitor. During the conversation Rick reveals that the heroin is part of a larger consignment, the rest of which is hidden in a warehouse. Parker obtains a warrant to search the warehouse where he finds the rest of the heroin.

**CONTINUED**

6. Alan and Bill are charged with rape of Petra. Petra's witness statement alleges that the offences occurred during a party at Alan's flat. She states that Alan took her into his bedroom on the pretext of showing her the new tattoo on his back, forced her on to the bed and raped her. When she struggled Alan hit her and she lost consciousness. She regained consciousness some time later to find that Bill was having intercourse with her. After she protested Bill withdrew and left the bedroom. When the police questioned Alan he said "Petra was drunk and she was really up for it. When I told her about my new tattoo she ripped my shirt off. She said she had wanted to have sex with me again ever since we did it at another party last year. After we had sex she just went to sleep". Bill told the police "I never touched her. She's making it up because I turned her down. She asked me for sex earlier that night but I said I wasn't interested in having sex with a drunken woman".

Bill's solicitor has discovered that two years ago Petra made a complaint against a man whom she accused of drugging her drink at a party and then raping her. Petra subsequently admitted that the complaint was false. Alan's friend Dave has given a statement to Alan's solicitor saying "I had sex with Petra at her flat the day before the party. She got really excited when I told her about the tattoo on my shoulder and tore my shirt off". Petra's flatmate Erica has told the police "Petra was very moody after the party. She wouldn't tell me anything about it for a week and then she said she had been raped by a bloke with a tattoo".

Consider the evidential issues arising, on the assumption that Petra will give evidence at trial in accordance with her statement.

**TURN OVER**

7. Ron and Sid are schoolteachers. Ron is charged with sexual assault on Mark, aged 12, one of the pupils taking part in a school camp. Ron and Sid are jointly charged with inflicting grievous bodily harm on Nick, a parent who was helping at the camp.

Mark has told the police that Ron asked Mark to go with him one evening to a nearby pond to search for newts. Mark says that Ron pulled down Mark's shorts and stroked his genitals. Mark adds that Ron gave him sweets and made him promise to keep the incident secret. When interviewed Ron denies the incident and tells the police that Mark has fabricated it because he had a grudge after Ron disciplined him. The police search Ron's house where they discover a collection of adult homosexual pornography. They also discover that at a school camp three years earlier Oliver, aged 14, alleged that Ron asked Oliver to come to Ron's tent one night and persuaded Oliver to stroke Ron's genitals in return for sweets. No charge was brought after Ron denied the incident. The police believe that at trial Ron will rely on his lack of any criminal record.

Nick has stated to the police that he had a row with Ron over Ron's behaviour towards the boys at the camp. He says that he was attacked by Ron and Sid as he returned to his tent later that night. Ron denies any attack and says that Nick injured himself by tripping over a tent peg. Sid tells the police "I was not involved – I'm a perfect gentleman. But I saw Ron running off after Nick went down". The police have now discovered that Sid has previous convictions for theft.

Consider the evidential issues arising.

**CONTINUED**

8. Rosie is walking home at night when on the other side of the street she sees a man rush up to Steve, who has just used a cash machine. The man punches Steve to the ground and makes off with his wallet. Rosie immediately telephones the police on her mobile and describes the robber. She says that he was white, very tall, with spiky blond hair. Constable Tom picks up Rosie in his patrol car and tours the area. A few minutes later they see a crowd of youths, one of whom is Gary. Gary is white, over 6 feet tall, and has spiky blond hair. Tom points him out to Rosie who says "That's him". When the car pulls up Gary runs off. He is pursued and arrested by Tom. At the police station Gary protests his innocence and asks to be put on an identity parade. The police refuse, saying that Rosie has already identified him and that in any event it would not be possible to organise a fair procedure.

Meanwhile Steve tells the police that he saw his attacker give the wallet to an accomplice. He says that he did not see the accomplice's face but Steve's description of him as a short black man with a limp fits Henry, who has several previous convictions for handling stolen goods. After being arrested and cautioned Henry declines the offer of a solicitor. During the interview Henry repeatedly denies having anything to do with the robbery of Steve. Inspector Vernon then says "We have got Gary in the cells. He says the robbery was your idea, and he is not happy. Would you like to talk to him?" Henry becomes distressed and says "I don't want to go anywhere near him. He's violent. I only took the wallet from him because he threatened to beat me up".

Gary is charged with robbery. Henry is charged with handling stolen goods. Consider the evidential issues arising.

**TURN OVER**

9. Alf and Bill are charged with the murder of Peter during a burglary of Peter's house.

The prosecution case is that Alf and Bill broke into the house and Alf hit Peter over the head when he confronted them. Alf's defence statement admits the burglary but says that it was Bill who hit Peter when Peter confronted them. Bill's defence statement admits the prosecution case but says that Alf broke their agreement not to use violence.

Consider the evidential issues arising at trial in relation to the following.

- (a) Diana, Peter's wife, made a written statement to the police that on the night of the burglary she and Peter were in bed when they heard a noise. Peter went to investigate. After a few minutes Diana went downstairs. She saw two men running out of the front door and heard one say "Alf – you said you wouldn't hit anyone". In the kitchen she found Peter unconscious. Diana has since told her friend Eve that she has received an anonymous telephone call warning her not to give evidence at the trial.
- (b) Bill wishes to call Frank, a police officer, to testify that Alf admitted to Frank in interview that he intended to hit anyone who got in his way and that Bill was an idiot for believing otherwise. The judge has ruled in a pre-trial hearing that Alf's statement is not admissible for the prosecution because it was obtained by means likely to render it unreliable. It is not known whether Alf will testify in his own defence.
- (c) Alf wishes to call a psychiatrist, Doctor Jung, to testify that Alf has a timid personality and is most unlikely to engage in violence. If Doctor Jung is permitted to testify Bill wishes to know if he can question Dr Jung on whether he failed his medical examinations three times and on Jung's previous conviction for obtaining property by deception.

**END OF PAPER**