

**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-06**

**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 courts are too ready to exclude evidence, or even to stop a prosecution altogether, where evidence has been obtained by unlawful or unfair means. If the courts are serious about getting at the truth they ought to admit all evidence that is relevant and probative, however it was obtained.”

Discuss.

2. For many years the hearsay rule was criticised for its lack of clarity and for having become divorced from its rationale. How far do the reforms made by the Criminal Justice Act 2003 meet these criticisms?
3. Consider, with reference to at least two topics that you have studied, how far Article 6 of the European Convention on Human Rights has had a beneficial effect on the development of the English law of evidence.
4. “The purpose of section 34 of the Criminal Justice and Public Order Act 1994 was to cut back the scope of the common law right to silence in the police station. Given the weakness of the justification for the right to silence the courts ought to have done more to further the statutory purpose by giving the section a wider application.”

Discuss.

**TURN OVER**

## PART B

5. Government concern about increasing public drunkenness amongst young people results in Parliament passing the (fictitious) Misuse of Alcohol Act 2006. Section 1 of the Act provides: "It is an offence for any person under the age of 25 to be in possession of alcohol in a public place without reasonable excuse." Section 2 provides: "For the purposes of section 1 it shall be for the defendant to prove on the balance of probabilities that he had a reasonable excuse." Section 3 provides: "A person guilty of an offence under section 1 is liable on summary conviction to imprisonment for not more than three months or to a fine of £1000 or both." A police patrol finds David, aged 20, sitting in a parked car at 2.00 am outside a nightclub with a case of beer on the back seat. At his trial for an offence under section 1 David tells the court that he had just bought the beer for his father at an all-night supermarket. The magistrates are uncertain whether they believe him and therefore, applying section 2 of the Act, convict him of the offence. On appeal David argues that section 2 is incompatible with the presumption of innocence under Article 6(2) of the European Convention on Human Rights.

How should the Divisional Court decide this issue? What difference, if any, would it make to your answer if the Act did not contain the provision in section 2?

6. Eric is charged with raping Pauline at a party. He is also charged with sexual assault on Rosie at the party. Pauline's witness statement alleges that during the party she and Eric, whom she knew slightly, went into the garden for a cigarette, and he then dragged her into a shed and raped her. Pauline states that she felt sick and dirty after the attack and went straight home without telling anyone. Pauline's flatmate Susie states that when she returned from holiday three days later she found Pauline very moody and irritable. When Susie stated that she would go away again until Pauline's mood improved Pauline burst into tears and said that Eric had raped her. Rosie's witness statement alleges that towards the end of the party she and Eric went to the shed for firewood. Eric tried to take off her dress but desisted when she screamed.

Eric tells the police in interview that he never went to the shed with Rosie and that her story is a complete fabrication. He states that Rosie was angry with him because he had rejected her suggestion earlier at the party that they should go to the shed for sex. He adds that Rosie made an identical complaint against his brother Frank two years earlier. The complaint was investigated but no prosecution was brought against Frank. Eric admits having sex in the shed with Pauline but states that it was with her consent. He states that he and Pauline had been having an occasional sexual relationship for the last year and shows the police nude photographs of Pauline which he says were taken when they were on holiday together a few months before the party.

Consider the evidential issues arising, on the assumption that Pauline, Rosie and Susie give evidence in accordance with their statements.

CONTINUED

7. Al and Bill are charged with the murder of Peter, a business rival of Al. The prosecution case is that Al and Bill, who is Al's cousin, tricked Peter into going to a disused warehouse in London where they shot him.

Inspector Morse arrests Al and Bill on suspicion of murder after Col, a vagrant asleep in the warehouse at the time, says that he was woken by the sound of a gunshot, and saw two men running out of the warehouse. Col says he recognized Al from a photograph of local business leaders in the newspaper. Col did not see the other man's face, but states that he was tall and thin, with dyed blond hair. This description fits Bill. At the police station Al refuses on the advice of his solicitor to answer any questions and demands that the police hold an identification procedure. Morse refuses, saying that there is no point since Al has been positively identified.

Meanwhile Sergeant Lewis interviews Bill under caution. Bill declines the services of a solicitor, saying that he has nothing to hide. He maintains that he was nowhere near the warehouse on the day in question. After some time Lewis tells Bill that his fingerprints have been found on a cigarette packet which a witness saw thrown away by one of the men running from the warehouse. This statement is untrue. Bill thinks for a while, then says, "OK, I was there. Al threatened to shoot me if I didn't help him. But I was just the lookout. It was Al who shot Peter".

Al and Bill are to be tried together. The prosecution believes that Bill will not give evidence. Al's defence statement indicates that he, Al, was driving to Scotland at the time of the murder. Col is available to give evidence.

Consider the evidential issues arising.

8. Sid and Ted are charged with the murder of Ron, a business rival of Sid, and are to be tried together. The prosecution case is that Sid and Ted, who is Sid's cousin, tricked Ron into going to a disused warehouse in London where they shot him. Sid and Ted both deny being anywhere near the warehouse at the time.

Vic, a vagrant asleep in the warehouse at the time, made a written statement to the police that he was woken by the sound of a gunshot, and heard the sound of more than one person running towards the door. They disappeared round a corner before he could see any of them but he heard a male voice say, "Nice work Sid. He won't be troubling us again". Vic has since disappeared after telling another vagrant, Will, that he had received threats from masked men that he would be killed if he gave evidence at Sid and Ted's trial.

Yvonne, Ron's sister, tells the police that a day before the shooting Ron had said to her that he was very worried because he had been told by Zoe, Sid's wife, that Sid and Ted had boasted that they would "get Ron". Zoe denies saying any such thing to Ron.

After his arrest Ted talks to his solicitor in a cell at the police station. Their conversation is overheard by Peter, a civilian worker who is cleaning an adjoining cell. Peter hears Ted say, "Me and Sid were at the warehouse, but I'm not going to admit anything".

Consider the evidential issues arising.

**TURN OVER**

9. Harry, Jeff and Karen are teachers who take a party of their pupils on an adventure weekend. Harry is charged with sexual assault on Liam, aged 14, one of the pupils on the weekend. Jeff is charged with sexual assault on Karen during the weekend.

Liam has told the police that Harry invited him to go to Harry's room one night to see a new computer game on Harry's laptop. While Liam was playing the game Harry put his hand down Liam's trousers. When interviewed Harry denied the incident and said that Liam had fabricated it because he had a grudge after Harry had disciplined him. The police seize the laptop and find a file containing the addresses of Internet sites for child pornography. They also discover that three years earlier Harry was acquitted of indecently assaulting a man, Mark, on Clapham Common after claiming that Mark had invented the incident. The police believe that at trial Harry will rely on his lack of any criminal record.

Karen has stated that she, Jeff and Harry had a late-night drinking session during which Jeff grabbed her and fondled her breasts. Jeff denies this allegation and says, "It wasn't me. I always behave properly. Mind you, I can't say the same about Harry". The police have now discovered that fifteen years ago Jeff was convicted of indecent exposure and that six months ago he was convicted of attempting to obtain money by deception from an insurance company.

Consider the evidential issues arising.

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