

UNIVERSITY OF LONDON

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LLB EXAMINATION
for External Students

PARTS I AND II EXAMINATIONS (Scheme A)
THIRD AND FOURTH YEAR EXAMINATIONS (Scheme B)
GRADUATE ENTRY LEVEL II (Route A)
GRADUATE ENTRY THIRD YEAR (Route B)

BSc DEGREES
for External Students

MANAGEMENT WITH LAW, LAW WITH MANAGEMENT, ACCOUNTING
WITH LAW AND LAW WITH ACCOUNTING FOR STUDENTS IN THE
EXTERNAL PROGRAMME

Evidence

Tuesday 19 May 2009 : 2.30 - 5.45 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **EIGHT** questions, **INCLUDING AT LEAST ONE FROM PART A AND ONE FROM PART B.**

Candidates should answer all parts of a question unless otherwise stated.

PART A

1. 'The civil standard of proof does not invariably mean a bare balance of probability.... It is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters.' (*B v Avon and Somerset Constabulary* (2001), *per* Lord Bingham of Cornhill CJ)

Discuss.

2. 'The central tenet of the Rationalist Tradition is that the direct end of adjective law is the achievement of rectitude of decision in adjudication.' (Twining and McCrudden)

To what extent is the admissibility of evidence in criminal trials determined by this 'central tenet'?

3. 'The complex mixture of detailed rules and broad discretions created by the Act places the law in the unhappy position of being neither sufficiently clear and flexible, nor at all predictable.' (Birch)

Discuss this criticism of the hearsay provisions of the Criminal Justice Act 2003.

4. How, if at all, would you justify the privilege against self-incrimination?

PART B

5. Alex is charged with the murder of Ben. The prosecution alleges that Ben's death arose from a street fight which developed when Ben was stopped outside a cinema by two men, Cedric and Alex. Alex attacked Ben and a fight between them took place. During the fight, Alex called to Cedric, who had so far not taken part but was carrying a knife, to 'use your blade on this guy'. Cedric then stabbed Ben, who died from the wound.

Cedric was arrested several days later. When interviewed under caution he admitted stabbing Ben at the instigation of another man, but he did not name Alex. In due course he pleaded guilty to Ben's murder. Before his arrest Cedric had a conversation with Deirdre, his partner, during which he admitted stabbing Ben and said that he had done so only because of what Alex had called out to him. After Cedric had pleaded guilty to murder and had been sentenced, Deirdre made a written statement to the police giving an account of what Cedric had told her about Alex's involvement.

Deirdre is now resident in New Zealand. She had originally agreed to give evidence for the prosecution at Alex's trial, but the police have recently been told that she has changed her mind. Cedric has refused to cooperate with the police in their investigations concerning Alex. The only other potential witness for the prosecution is Nathan, a prisoner on remand with Alex, who can testify that, when they were on exercise together, Alex admitted to him that he had told Cedric to stab Ben.

Discuss the evidential matters arising.

6. Edward, aged 29, is charged with raping Freda, aged 22. Freda says that she met him for the first time in a wine bar and that he invited her back to his house to see his collection of Victorian dolls when the bar closed at 11.00 p.m. She says that he tried to kiss her as soon as they were in the sitting room, but that she resisted. He flew into a rage, hurled her onto a sofa, and raped her. He then threw her out of the house. When Freda reached the flat where she was staying with her cousin, Gustav, she said nothing about what had happened. She went to work as usual the next day. After work she went for a drink with a colleague and told her that she had been raped by Edward. Her colleague said that she should go to the police, but Freda was not sure whether she should do so. Later that evening she told Gustav that Edward had raped her, and he persuaded her to inform the police. She gave the police a written statement, and shortly afterwards Edward was arrested.

At the police station Edward was interviewed under caution in the presence of a solicitor. He admitted having sex with Freda. 'But,' he said, 'she was the one who started it. She was begging for it. There's no way I'm guilty of rape.'

Edward wishes to give evidence in his own defence and to call Harry to say that he, Harry, had often seen Freda in wine bars trying to pick up men. Edward also wishes to call Iain, who has known Freda for several years. Iain says that usually Freda is a very quiet girl, but that from time to time she goes on drinking 'binges' and will then have sex with anyone. He also says that earlier in the evening of the alleged rape he had been in the same bar where Freda and Edward later met. On that occasion Freda had had a lot to drink, and at one stage had called out to him, 'Come over here, you gorgeous man! I need sex now!' Iain says that shortly afterwards they performed various sexual acts, but without full intercourse, in the men's lavatory and in a nearby car park.

Edward was convicted two years ago of theft, but has no other convictions. Freda has several convictions for being drunk and disorderly in a public place.

Discuss the evidential matters arising.

7. Jamie, aged 32, is charged with indecently assaulting Kate, aged 20. The case for the prosecution is that Jamie approached Kate in a museum and began a conversation about the exhibits. After a few minutes he touched her breasts. Kate ran to find an attendant and said to him, 'The man in the green jacket touched my breasts; I want him prosecuted!' The attendant said that she should report the matter to the police. When she did so, Detective Sergeant Pinkerton said, 'We've had a number of complaints like yours recently and we've narrowed the suspects down to six. Just look at these photographs and tell me which one assaulted you.' He then showed Kate six photographs; without hesitation she picked out a photograph of Jamie.

When Jamie's house was lawfully searched, the police discovered a collection of pornographic DVDs, some carnival masks and a green jacket.

Jamie says that he is the victim of mistaken identity. His solicitors asked the police to arrange an identification procedure, but the police told them that this would be a waste of time because Kate had already made a positive identification. Jamie wishes to call Lionel, a psychiatrist, to say that he has been treating Jamie for depression, and that Jamie could not have committed the offence because he currently lacks sufficient confidence to talk to strangers.

Last year Kate made an allegation of indecent assault against a man whom she had met for the first time in a supermarket. She subsequently refused to give evidence for the prosecution and the case against him was dismissed.

Discuss the evidential matters arising.

8. Dickie, a police detective, was investigating the theft of an antique bust of Plato from the Drones Club. Ned, a police informer, said to him, 'There's a rumour that Jasper and Woodrow were involved.' Dickie arrested Jasper, who at once asked for a solicitor. Dickie refused, saying that he knew others were involved in the offence and he feared that the bust would be sent abroad if he did not question Jasper at once. For fifty minutes Jasper, a heroin addict, denied any knowledge of the offence, but at the end of that time he was beginning to suffer from withdrawal symptoms. Dickie knew that this was the case and said, 'This can only get worse for you if I put you back in a cell. Now, do you want to tell me the truth?' Jasper said, 'I'll tell you if you give me bail. It was Woodrow who did the theft. I just hid the bust for him. I buried it in the park near the statue of Aristotle.'

The police later recovered the bust, but no fingerprints could be found on it. Dickie then arrested Woodrow and took him to the police station for questioning. He was allowed to contact his solicitor, who asked Dickie about the nature of the evidence against Woodrow. Dickie refused to provide any information, and so the solicitor advised Woodrow to give a 'no comment' interview. Woodrow followed that advice. A week later, however, Woodrow's solicitor sent Dickie a statement which set out Woodrow's defence in detail.

Both defendants have now been charged with burglary. They intend to plead not guilty and are separately represented. Their solicitors have asked the police to disclose the names of any informers involved in the case.

Discuss the evidential matters arising.

END OF PAPER