

THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

EVIDENCE

9 May 2023

1300 – 1430
(90 minutes)

Candidates are required to answer TWO out of three questions.

Candidates should note that, in examination answers, they are expected to cite relevant authority.

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Question 1

Steven is growing cannabis plants in his flat, which is one of twelve in a block of flats. The plants give off a very strong and distinctive smell. The communal stairwell in this block of flats now reeks of cannabis, because of Steven. One afternoon, two police officers are in this block of flats on an unrelated enquiry. The officers notice the smell immediately, and systematically knock on all the doors in the block until they reach Steven's door.

When they knock and Steven answers, the smell is overpowering and the officers start to question Steven about it. Steven admits that there is one cannabis plant in the flat "for personal use". The police officers ask to enter his flat "for a chat", and Steven allows this, whereupon the officers search the flat and discover a jungle of cannabis plants, and arrange for other officers to attend and seize the plants as evidence.

Steven is then told by the officers: "You told us it was one plant, that was a lie, now don't lie to us again". He admits he is in fact a big time cannabis grower. Police officers then caution him and interview him in his flat whilst they wait for their colleagues to arrive. Steven admits owning the flat, being the sole resident, and being responsible for the plants.

Whilst waiting for other officers, there is a knock at Steven's door. An officer shouts through the door "Who is it?" and voice shouts "It's Darren". The officer suspects Darren is here for drugs, and shouts back through the door "Do you want to buy some cannabis?". There is a pause... then Darren says "Eh, aye... alright..". Officers then open the door and detain Darren.

Discuss the admissibility of the physical evidence (the plants) and the statements from both Steven and Darren. Has the conduct of the police officers here jeopardised the admissibility of any of the evidence?

Question 2

What is "The hearsay rule" in criminal cases? Under what circumstances might the court depart from this rule?

Question 3

John is accused of two armed robberies, one at the Alpha Bank in Leith in January 2020, and one at the Beta Bank in Grassmarket in February 2021. The Crown leads evidence from witness Smith, who testifies to seeing a man running away from the Alpha Bank, wearing a Donald Trump mask, carrying a shotgun, and climbing into a red Ford Transit van. Witness Smith is prepared to state that the masked figure was John, based on a similarity of build, ie "heavy build".

There is also evidence from witness Jones, who remembers giving a statement to the police after the Bathgate robbery, but can't remember the terms of the statement. Witness Jones accepts that he was very drunk at the time of the incident. There is evidence from a police officer that witness Jones described a man of heavy build with a shotgun, wearing a Boris Johnson mask driving off in a red van.

In relation to each robbery, there is evidence from one other witness who describes seeing a masked man flee the scene.

At the close of the Crown case, John's counsel makes a no case to answer submission in terms of s97 of the Criminal Procedure (Scotland) Act 1995, which is rejected.

John's counsel then seeks to lead evidence from John's brother, Willard. Willard is prepared to admit to the Court that he (Willard) committed the robberies, but the Advocate Depute objects on the basis that John's Counsel has not intimated the defence of incrimination within the relevant time limits. The judge refuses to admit Willard's evidence, due to a lack of prior intimation.

In a panic after seeing Willard's evidence be excluded, John decides to give evidence on his own behalf, and during cross-examination he admits committing both robberies. John is convicted of both charges.

Discuss the admissibility and sufficiency of the evidence in this scenario, both at the stage of the s97 submission and at the close of all the evidence.

END OF QUESTION PAPER