

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

EVIDENCE

Wednesday 8 February 2017

**1000 – 1200
(Two Hours)**

**Candidates should answer THREE questions,
referring to appropriate authorities in support of their
answers**

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SECTION A

Question 1

"The law on of hearsay evidence in criminal cases is such a mess that the only way forward is to follow the approach of the civil law and abolish all rules restricting or forbidding its use."

Discuss.

Question 2

Police Scotland received a phone call from a department store in Edinburgh, saying that a number of expensive winter coats had just been stolen. A shop assistant from the department store told the police that he had seen a tall, redheaded woman acting suspiciously, but that the woman had left the store before the assistant could intervene or do anything.

Shortly afterwards the police stopped a woman matching that description, running through St Andrew Square. The police searched her and found that she was wearing two coats and carrying another two in a plastic bag. Her ID indicated that her name is Jane O'Sullivan. Jane claimed that she had bought the four coats from a market nearby, and produced a handwritten receipt for them. The police were unable to trace the vendor mentioned on the receipt.

At Jane's trial for theft, the shop assistant stated that he could not identify her as the accused because he could not remember what the woman he had seen acting suspiciously in the shop looked like. He noted that he would have told the police the truth when describing her.

Is the previous statement of the shop assistant admissible? Is the police evidence about his previous statement admissible?

Jane has previous convictions for theft. May the Crown refer to these convictions before the jury?

In summing up, the trial judge told the jury, "In these circumstances, it is for the accused to prove her innocence."

Why would the trial judge make such a claim? Discuss any objections that could be raised to this statement.

Question 3

Explain the different standards of proof in Scotland.

Question 4

Write brief notes setting out the law on TWO of the following points, with full reference to authority:

- a) judicial admissions.
- b) illegally obtained evidence in civil proceedings.
- c) failure to cross-examine in civil proceedings.

Question 5

Alan is charged with the following offences: (1) the rape of B, then 12 years old, in January 2011; (2) causing C, then 10 years old, to look at a sexual image, in November 2012; (3) the rape of D, then 25 years old, in April 2016. The evidence for the Crown consists of:

- a) evidence from B, C and D all testifying that Alan committed the individual crimes specified against them;
- b) recordings of police interviews with Alan in which he denies any sexual contact or involvement with B or C and admits having had sexual intercourse with D on the date in question, but claims that it was consensual;
- c) evidence from C's mother that on the date in question she heard C screaming when Alan was alone in C's room with him and that when she entered the room C was cowering in a corner shivering;
- d) evidence from D's colleague Elaine that D broke down at work late one afternoon and said that she had been raped by Alan the previous night.

At the end of the prosecution case, Alan's counsel makes a submission of no case to answer in respect of all three charges. Explain how the court would approach this

submission and assess the likelihood of its succeeding whether in relation to all, some or only one of the charges.

END OF QUESTION PAPER