



**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**EVIDENCE**

**Wednesday 7 February 2018**

**1000 – 1200  
(Two Hours)**

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

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**Question 1**

In what circumstances will real or documentary evidence be held to be inadmissible on the basis that it has been improperly obtained?

**Question 2**

Following various incidents in the town centre Ned is charged with breach of the peace. When the police arrived at the scene, Betty said that she had seen what had happened. She pointed to Ned and said that he has been involved. Ned is then arrested and is taken to the police station.

The police interview Elsie, who was also at the scene. She tells them that she saw something but wasn't sure if she could recognise the culprit if she saw him again. At an identification parade Elsie tells the police that Ned looks quite a lot like the man she saw.

At a later identification parade, another witness Jean picks out Ned as the culprit and tells the police that he was definitely the man involved. Prior to the trial Jean has disappeared and despite police efforts to find her she cannot be traced.

At the trial Betty fails to identify Ned and in her evidence she says that she had not pointed out anyone to the police at the scene. Elsie gives evidence that although she remembered taking part at an identification parade she cannot recall what she did or said there.

The procurator fiscal is considering leading evidence at Ned's trial from the various police officers involved with the investigation. Will this evidence be likely to help prove Ned's guilt?

**Question 3**

"The law on 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 4**

It is alleged that a girl aged 10 was subject to a sexual assault by indecent touching. The accused is the girl's father. The father is separated from his wife but had been granted a court order allowing him contact with his children. He has denied to the police that anything untoward has ever occurred between him and his daughter.

Shortly after the alleged incident the girl told of what happened to her younger brother (aged 7), who had been outside playing with friends and who had returned to the house.

Later the same day the girl also told her next-door neighbour of what had happened to her. The neighbour reported the matter to the police and with a view to giving evidence in any subsequent legal proceedings, the neighbour later made a statement to a police officer giving details of the story the girl had told her. The neighbour has now suddenly and unexpectedly died.

It is also thought that after the alleged assault the father had said to his wife that "I didn't mean to do it."

Discuss the implications of the above narrative in respect of the evidence which may be presented at the criminal trial of the father.

#### **Question 5**

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

- a) The Howden doctrine
- b) The admissibility of precognitions in evidence;
- c) Evidence of an accomplice.

**END OF QUESTION PAPER**