



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

EVIDENCE

Wednesday 8 August 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

"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

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

- (a) Special knowledge confessions.
- (b) The admissibility of precognitions, or statements as to what was said during the process of precognition, in evidence.
- (c) The presence of a witness in court during a trial or a proof.

Question 3

Frank has been charged with the theft by housebreaking of jewellery from various locations in Edinburgh. Answer each of the following questions relating to issues which arise during the course of the trial.

- (a) The Crown seek to lead evidence from two police officers that they found the jewellery in a desk drawer while executing a search warrant permitting them to search Frank's flat to locate a number of televisions alleged to have been stolen from a nearby electrical store. The defence object to admissibility of this evidence. Should the objection succeed?

- (b) The Crown seek to lead evidence from Lisa, one of the alleged victims of Frank's theft, to the effect that she saw Frank running away from her house after the break-in. She cannot identify Frank in court but says that she attended an identification parade where she picked the thief out. Can evidence about this identification parade be led?
- (c) The Crown call Frank's lodger Iain as a prosecution witness. During examination in chief Iain unexpectedly confesses that he also committed a separate theft (not on the complaint which is the subject of this trial) along with Frank. Can the Crown bring a prosecution against Iain at a later date in respect of this theft?
- (d) The defence incriminate Jill, Frank's daughter and allege that she committed the thefts. She is called as a witness and is warned as to the privilege against self-incrimination. Nonetheless, she answers a single question from Frank's solicitor and states that she committed the thefts and hid the jewellery in the desk drawer. The procurator fiscal then cross-examines her asking for details of how the thefts were carried out. She objects to answering, claiming that this would incriminate her further. Can she be required to answer?

Question 4

"There is no need for presumptions as part of the law of evidence."

Discuss.

Question 5

Bill and Mike were friends in high school but have lost touch and have not seen each other for over three years. One evening they bumped into each other, and spent the evening reminiscing over some wine. They end up in Bill's flat, where Mike spent the night.

Two days later, Mike told his flatmate Mo that Bill sexually had assaulted him during the evening he spent the night at Bill's flat. Mo insists that Mike report this to the police. When questioned by the police, Bill admits that he did touch Mike sexually, but maintains that Mike consented to this.

At a trial for sexual assault, Bill wishes to lead evidence of Mike's dependence on alcohol in his teens, and about Mike's previous sexual encounters, including sexual contact between the two of them 3 years ago. Is any such evidence admissible?

Bill has a previous conviction for a fraud. Is evidence of this conviction admissible?

Is the evidence from Mo as to Mike's statement admissible? If so, would this corroborate Mike's account?

END OF PAPER