

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**EVIDENCE**

**Wednesday 13 February 2019**

**1000 – 1200  
(Two Hours)**

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

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**Question 1**

What does it mean to say that a matter is "within judicial knowledge"? In what circumstance will a matter be so regarded?

**Question 2**

The police have interviewed a number of persons during their investigation of a murder committed in July 2018 in a street in Glasgow.

- a) They visit the house of Abe, who tells them that it was the local gang who 'did the job', that he (Abe) had agreed with the gang that he would bring the victim into the street but he had run away before the violence had started. Abe was not cautioned before making this statement.
- b) The police are holding a suspect, Bob, in police custody. He has been informed that he has the right not to say anything and that he can have access to a solicitor. In response to police questioning Bob makes a statement incriminating himself in the murder. He is then cautioned and charged with that crime. His reply to the charge is 'you can't prove anything'. As he is being led away a police officer says that they still want to clarify certain details about who else was involved. They ask Bob questions, and in his replies, he names various people as being party to the killing.
- c) A police officer then goes to the house of Colin. As he arrives Colin says "Look, I know that I've been in prison for violence but I've never ever used an axe." The police have not revealed that the victim died of axe wounds though a local newspaper ran a story about the murder as involving a possible axe attack.
- d) The police are holding Dave, who is aged 15, in custody. As the police are explaining that he has the right to have a solicitor present, Dave says that he doesn't like lawyers and doesn't want one now. The police ask Dave a variety of questions and in his answers, he admits that he was involved in the attack.

Abe, Bob, Colin, and Dave are soon to go on trial for murder. Advise the Crown on the use that can be made of the statement or statements made by each of the accused.

### Question 3

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

### Question 4

Alan stands trial accused of murdering Brian. He has lodged a special defence of alibi.

Answer each of the following questions relating to issues which arise during the course of the trial.

- a) The pathologist, Catherine, testifies that Brian died as a result of a stab wound. (No evidence of the use of a knife has been led at this point.) The advocate depute asks Catherine whether she believes beyond a reasonable doubt that the stab wound caused Brian's death. The defence object to this question. Should the objection succeed?
- b) David takes the oath in the normal form, swearing to Almighty God that he will tell the truth, the whole truth, and nothing but the truth. Unbeknown to Alan or his representatives, David is in fact the President of the North Edinburgh Atheists' Association. If Alan is convicted, can he argue on appeal that David's evidence should not have been admitted?
- c) The advocate depute seeks to call Alan's doctor as a witness. It is understood that she intends to ask the doctor whether Alan attended his surgery the day after the alleged murder with injuries consistent with Alan having been in a struggle. The defence object to the doctor being called as a witness. Should the objection succeed?
- d) The defence seek to lead evidence that Brian had assaulted Alan two months before the alleged murder. The advocate depute objects to this evidence being led. Should the objection succeed?
- e) The trial judge, in directing the jury on the standard of proof, explains that a "reasonable doubt" is a doubt which would cause a member of the jury to hesitate or pause before taking an important decision in the conduct of their own affairs. Alan's lawyer is unhappy with this direction, believing it to be too weak and imprecise. If Alan is convicted, can it be challenged on appeal?

### **Question 5**

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

- a) the effect of a failure to cross-examine a witness;
- b) public interest immunity;
- c) the prohibition on expert witnesses giving evidence on questions of ordinary human nature and behaviour.

**END OF QUESTION PAPER**