

**THE LAW SOCIETY OF SCOTLAND  
EXAMINATIONS**

**EVIDENCE**

**Wednesday 8 February 2023**

**0830 - 1130  
(Three Hours)**

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

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**Question 1**

Rachel makes a complaint of indecent assault against her male employer. The police attend to interview the employer but, after being given a full common law caution, he elects to say nothing to them. As the alleged incident took place in a room when only Rachel and the employer were present, the police subsequently tell Rachel that no proceedings can be taken against her employer due to a lack of any corroborating evidence.

A diligent police officer, however, recalls that 13 months before Rachel's complaint, a very similar complaint was made by Susan about the same employer, but again no proceedings had been taken due to the lack of any additional evidence. On researching past files, the officer further discovers that yet another similar complaint had been made by Tessa, one year before Susan, also against the same employer, and which again had not been proceeded with. The officer submits these findings to the procurator fiscal.

(a) If the Crown decides to charge the employer with the three indecent assaults, despite there only being the one witness in each of the three instances, on what basis, if any, might the Crown hope to achieve a conviction at trial?

(b) Assume now that, when the police first went to interview him after Rachel's complaint of indecent assault, and after being given the full common law caution, the employer made the following statement to the police: "I'm really sorry. It was me. I did do that to Rachel. And I did the same to my former employees Susan and Tessa in the past too. I'm really sorry and I'm glad you've caught me". Would this statement make any difference to the Crown's case at the trial?

(c) If Susan and/or Tessa were dead at the date of the trial, would it still be possible for the Crown to obtain a conviction against the accused in respect of the assaults on them?

**Question 2**

Is it true that evidence relating to the accused's criminal record is never admissible in Scotland? Discuss, with reference to relevant authority.

### **Question 3**

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

- (a) Judicial admissions.
- (b) The admissibility of precognitions in evidence.
- (c) Evidence of an accomplice.

### **Question 4**

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 Libby, 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 Libby tells the police that Ned looks quite a lot like the man she saw.

At a later identification parade, another witness Nellie picks out Ned as the culprit and tells the police that he was definitely the man involved. Prior to the trial Nellie 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. Libby 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 from the various police officers involved with the investigation. Will this evidence be likely to help prove Ned's guilt?

### **Question 5**

Explain the different standards of proof in Scotland.

**END OF QUESTION PAPER**