

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

EVIDENCE

Wednesday 28 July 2021

**0830 – 1130
(Three hours)**

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

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Question 1

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 2

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

Question 3

Bloggs has been charged with theft and assault.

The alleged theft of £200 from a till is stated to have occurred on 6 April 2020 at approximately 14:00 hours at a shop on the High Street, Edinburgh. CCTV from the premises has been obtained by police which shows, on the day in question, between the hours of 14:00 and 14:05 someone who clearly resembles Bloggs, entering the premises and taking the till before leaving at speed shortly thereafter. The manager of the shop allows the police to seize the footage and confirms that the date and time displayed on the footage is accurate and that £200 was in the till.

The assault is said to have occurred on Princes Street on 5 April 2020 between the hours of 13:00 and 13:10. Mr A, the complainer, speaks to someone punching him to the face from behind whilst he was walking westwards. He cannot identify the individual who committed the offence. Ms B who was walking eastwards on the day in question can speak to some sort of disturbance where a punch was thrown, and “a man” running away but as she was not wearing her glasses she can provide little more in the way of information.

Bloggs is well known to the police, who obtain information that he is residing in a flat in Leith. On the basis that “he has probably been up to no good”, they decide to attend the premises, without a warrant, and force entry despite being told by the property owner that they were not entitled to enter. Whilst in the flat, they obtain an item of clothing, lying on the ground, from Bloggs’s room which is covered in blood. Forensic testing reveals a split DNA profile on the clothing which matches that of Bloggs and Mr A.

Consider the strength of the evidence against Bloggs.

Question 4

Jake is facing two charges on indictment.

Charge 1 is attempting to pervert the course of justice, by way of attempting to bribe a juror sitting in a High Court trial that occurred in November 2020. Mrs C speaks to being approached by Jake whilst she was serving on a High Court jury in Glasgow, where a renowned gangland figure was being prosecuted, and being offered a large sum of money in return for delivering a “not proven” verdict in the case. She states that Jake approached her in a black Mercedes as she entered her vehicle in the High Court car park following the conclusion of evidence in the case and offered her cash to acquit. He used the specific phrase “this case has got not proven written all over it” whilst offering her money. She can clearly identify Jake as being the individual who approached her and offered her the money. The gangland figure involved was acquitted during the trial in question. Mrs C spoke to the police immediately after the incident and told them what had occurred. The police began an investigation belatedly following the verdict, but no other juror spoke to being approached in this way. No charges were brought in respect of the case at this stage due to an insufficiency of evidence.

Charge 2 on the indictment is a second charge of attempting to pervert the course of justice in respect of another High Court Trial that occurred in Glasgow in March 2021. In this case, the same gangland figure was being prosecuted for a separate matter. A police officer at this stage, aware of the matters raised by Mrs C, decided to pose as a prospective juror in the case, at the conclusion of the evidence, prior to a verdict being returned. The officer, PC Eric, donned an outfit and false moustache in order to closely resemble a serving juror. Jake approached this police officer, whilst he was in the court car park, in his black Mercedes, and made a similar offer of cash in return for delivering a not proven verdict whilst stating “this case has got not proven written all over it.” PC Eric made an immediate arrest and administered a caution.

Jake was thereafter taken to the local police station to be interviewed. In the car on the way there, PC Ernie, tells Jake repeatedly that if he just answers some questions at this point, before his solicitor is involved, then it will be easier for everyone. He tells Jake that the police know that what he did in respect of both jury trials and that unless he admits to matters now, he is going to make life hell for his family. Eventually Jake states admits that he’s “sorry for what he has done.”

Analyse the facts disclosed concerning charges 1 and 2 from an evidential perspective, and comment on any matters that arise with reference to appropriate legal authority. Is there a sufficiency of evidence in this case?

Question 5

“The development and the application of the law related to the admission of bad character and sexual history evidence in Scotland in cases involving sexual offences is unnecessarily complicated, yet serves an important purpose?”

Do you agree? In your answer, provide an example of the types of evidence that the law seeks to prohibit in this area.

END OF QUESTION PAPER