



THE HONORABLE SOCIETY OF KINGS INNS
ENTRANCE EXAMINATION
AUGUST 2011

Examination: Law of Evidence

Date: Friday 19 August 2011

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiner: Ms Ruth Cannon BL

External Examiner: Mr Patrick Marrinan SC

Instructions:

Candidates must answer Question 1 from Section A and TWO questions from Section B.

Question 1 carries 50 marks.

All other questions carry 25 marks each.

Section A

Question 1

Simon, a postman, disappeared while delivering the post on the 1st May 2009. One year later his remains were found buried in a field behind a house belonging to Michael, the local schoolmaster, and used by Michael as his principal residence.

Michael is subsequently charged with Simon's murder, on the basis of the following:-

- (i) A statement from Sarah, Michael's girlfriend, about a previous sexual relationship she had had with Simon. This relationship had taken place over a six month period ending a year prior to Simon's death, throughout which period Sarah had been living with Michael as his girlfriend. Sarah, who ends by saying that she never disclosed this relationship to Michael at any stage, is happy to give oral evidence as to the facts set out in her statement, provided that she can do so by video-link.
- (ii) A statement from Alison, Michael's previous girlfriend, made to Gardai in 2004 detailing numerous acts of violence carried out towards her by Michael in the course of their relationship. Alison subsequently died of breast cancer before any further action could be taken on foot of this statement.
- (iii) A notebook, found with Simon's remains, containing an entry headed "Houses on Route", apparently listing the houses to which he was required to deliver post on the date of his death. The order in which the houses are listed corresponds to the route which Simon would normally have taken as part of his delivery. There are ticks against the first ten houses, but not against Michael's, which is the eleventh house, nor against any subsequent house on the list.
- (iv) A statement by Annie, housekeeper for the local priest, Damien, that when snooping in Damien's diary, she read a note, made by Damien, of Michael's confession to the murder of Simon. She does not remember reading whether or not this confession was made in the confessional box. Annie is happy to give oral evidence confirming what she saw in the diary. Damien is claiming privilege in respect of the diary, and also in respect of any statements made to him by Michael regarding the murder.

Advise the defence as to the likely admissibility of each of the items of evidence outlined above.

(50 marks)

SECTION B

Question 2

Trevor, a member of the Gardai, is charged with the attempted rape of Elizabeth, a 28 year old woman. The rape is alleged to have taken place at a music festival which Trevor attended while off duty. He denies that he ever met Elizabeth at the festival.

Susan, the organiser of the festival, is called as a witness for the defence and gives evidence that Trevor was with her at all times during the festival and that neither of them ever met Elizabeth.

In the course of cross-examination by the prosecution, Susan discloses that she first met Trevor when they acted as volunteers for an organisation supporting the homeless, and goes on to state that he is a good man who has done much good work for the victims of crime over the years.

The prosecution now seeks to cross-examine Trevor about an allegation of sexual harassment made against him by a female colleague, which resulted in his suspension for two months some years ago. His colleague subsequently dropped the allegation, the suspension was lifted and no further action was taken.

Advise Trevor.

(25 marks)

Question 3

Critically discuss the circumstances in which evidence which has been illegally but not unconstitutionally obtained may be admissible in criminal proceedings.

(25 marks)

Question 4

Mary, a 35 year old woman, is arrested on suspicion of the murder of her seven year old daughter, Lucy, who has been found drowned in a pond in the family farm.

Mary suffers from depression and anxiety, and has been taking the anti-depressant Heroxa on a daily basis for many years. It is documented that withdrawal from Heroxa can have serious side-effects, including nausea, mood swings, electric shocks to the brain, diarrhoea and dizziness. These side-effects commence within six hours of the first tablet missed, and intensify for a period of three days thereafter, following which the effects plateau out, subsequently reducing gradually.

After Lucy's death, Mary refused to eat, drink or take any medication, including Heroxa. She was arrested two days later, and detained for a period of six hours, at the end of which period she made a confession, stating that she had drowned Lucy because she couldn't bear to look at her any longer.

The arrest and the detention complied with all relevant statutory requirements; however an issue has arisen in relation to the admissibility of the confession in view of the following:-

- (i) The fact that Mary had last taken Heroxa approximately 56 hours prior to making the confession;
- (ii) The fact that she also asked, ten minutes before making the confession, whether or not a doctor was available and was told that although all possible efforts would be made to find her a doctor, it would probably take at least half an hour before the doctor would arrive.

Advise the prosecution as to Mary's chances of challenging the admissibility of the confession.

(25 marks)

Question 5

Critically outline the privilege normally accorded to 'without prejudice' communications in civil proceedings and the exceptions, if any, thereto.

(25 marks)