



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

EVIDENCE

Wednesday 10 AUGUST 2005

**1000 – 1200
(Two Hours)**

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

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Candidates are required to answer THREE questions only. All answers should be fully reasoned and supported by adequate citation of authority.

1. Sam has been charged with theft of goods from a supermarket. The evidence against Sam consists mainly of a confession which he is alleged to have made in the police car after his arrest at the supermarket en route to the police station. Sam had been cautioned at the time of his arrest and prior to getting into the car. The caution was in the following terms: "When we get to the police station we are going to ask you some questions. Anything you say might be taken down and used as evidence later". In the car Sam admits that he took some things off the shelf but only because he was extremely stressed. He had recently lost his job, his wife had left him and he had the care of his three young children who were hungry.

At the police station the police set up an interview with Sam and proceeded to tape record it. Once the tape started Sam stated that he had nothing further to add to what he said in the police car.

After legal advice Sam subsequently pleads not guilty to the charge of theft and lodges a defence of diminished responsibility. He intends to give evidence that he was clinically depressed and on prescribed medication. At the trial his solicitor objects to the admissibility of the confession made in the police car.

With reference to the case law in this area, discuss:

- a. the admissibility of the confession
 - b. the effect on the burden and standard of proof of the defence of diminished responsibility.
2. Discuss the significance of the following issues in relation to the law of evidence:
- a. Opinion evidence
 - b. Public interest immunity certificates
 - c. Presumptions
3. Discuss the significance of the following cases in relation to the law of evidence:
- a. Smith v Lees 1997 JC 73
 - b. Brown v Stott 2000 JC
 - c. Thompson v Crowe 2000 JC 173

4. The rule against hearsay was abolished in relation to the civil law of evidence in 1988. The rule has been retained in relation to the criminal law of evidence. Discuss the rationale for the retention of this rule.

5. Discuss the operation of the principle of distress as corroboration.

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