



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EVIDENCE

Wednesday 10 MAY 2006

**1000 – 1200
(Two Hours)**

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

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EXAMINATIONS**

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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. Acting on a tip-off from an informant, the police suspect that Harry, an antiques dealer, may also be handling stolen goods. They arrive at his house at 4 am on Sunday morning. He is asked to dress and accompany them to the police station to assist with enquiries. At the police station Harry is questioned and on the strength of his statement, the police obtain a search warrant for his premises. They find goods, which are known to be stolen, located in his warehouse. Harry swears that he knows nothing about these goods. He states that they could have been placed there by two associates in the antiques business both of whom he allowed to use the store for goods in transit. These associates had keys to his premises. Harry is then charged with reset. At the trial Harry's solicitor objects to the circumstances under which Harry was detained and arrested.
 - (a) What is the admissibility of the evidence available to the Crown?
 - (b) Are any presumptions raised by the evidence?
 - (c) Who carries the burden of proof in relation to this charge and to what standard?
 - (d) (i) What procedures ought to have been followed prior to Harry being questioned by the police? AND
 - (ii) What are the consequences of any failure to follow these procedures?
2. Discuss the main difficulties which led to the enactment of the Sexual Offences (Procedure & Evidence) (Scotland) Act 2002 and comment on whether this legislation is likely to be effective.
3. Discuss the policy reasons behind the privilege attaching to lawyer-client communications. In particular discuss:
 - (a) Whether these reasons are valid; and
 - (b) Whether there are any circumstances whereby the privilege does not attach.
4. Discuss the use of distress as corroboration.
5. What are the main principles governing the admissibility of improperly recovered evidence?

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