

# Contents

<b>Preface</b>	v
<b>Acknowledgments</b>	ix
<b>List of Figures</b>	xix
<b>Abbreviations</b>	xxi
<b>Table of Cases</b>	xxiii
<b>Table of Statutes</b>	xlv
<b>Introduction</b>	<b>1</b>
<b>Brief History</b>	2
<b>Admissibility of Evidence</b>	3
<b>Classification of Evidence</b>	5
<b>Function of Judge and Jury</b>	8
<b>Matters not Susceptible of Proof</b>	13
Formal Admissions	13
Judicial Notice	13
Presumptions	14
<b>Further Reading</b>	14
<b>1 Burden of Proof</b>	<b>15</b>
<b>Introduction</b>	16
<b>The Meaning of "Burden of Proof"</b>	16
The Overall (Also Referred to as "General" or "Legal") Burden	17
The Specific Proof Burdens	17
The Evidential Burden	17
Proof and Evidential Burdens Distinguished	18
<b>Woolmington v DPP and Defences</b>	21
Shifting of Burdens	23
The Overall Burden	25

<http://www.pbookshop.com>

<b>Summary</b>	25
<b>Reverse Proof Burdens as Exceptions to <i>Woolmington</i></b>	25
<b>The Common Law Reverse Proof Burdens</b>	26
<b>Statutory Express Reverse Proof Burdens</b>	26
Express Reverse Proof Burdens; Compatibility with article 6(2)	27
<b>Compatibility</b>	28
The Presumption of Innocence	29
An Inroad into article 6(2)	29
Justification	33
Proportionality	33
<b>Other Considerations About Reverse Proof Burdens</b>	35
Conviction even though the Court has a Doubt	35
The Defendant's Knowledge	36
Citation of Authority	36
Footnote to <i>Kebilene</i>	36
<b>Statutory Implied Reverse Proof Burdens</b>	37
<b>Implied Burden on the Defendant?</b>	37
Implied Reverse Burdens and the Presumption of Innocence	42
The Standard of Proof in Criminal Proceedings	42
.....	
● <b>Summary</b>	44
● <b>Exercise</b>	44
● <b>End of Chapter Question</b>	45
● <b>Further Reading</b>	46
● <b>Self Test Questions</b>	47
.....	
<b>2 : The Examination of Witnesses</b>	49
.....	
● <b>Introduction</b>	50
● <b>The Privilege against Self-incrimination</b>	50
● <b>The Power of the Court to Call Witnesses and ask Questions</b>	53
● <b>Court Procedures</b>	54
● <b>Submission of "No Case to Answer"</b>	55
● <b>Direction to Acquit or Convict</b>	56
● <b>Examination-in-chief</b>	56
Refreshing to the Memory	56
● <b>Cross-examination</b>	59
Restrictions on Questions in Cross-examination	62
Facts in Issue	63

Matters of Credit (Credibility)	64
The Witness's Capacity to Give Accurate Answers	65
Finality of Answers	66
Exceptions to Finality	66
<b>Re-examination</b>	<b>70</b>
<b>Special Measures Directions for Defendants and Vulnerable and Intimidated Witnesses</b>	<b>70</b>
SMD for Eligible Witnesses other than the Defendant	70
Categories of Eligible Witness	73
SMD for the Defendant	75
Section 19	75
The Meaning of "Quality"	76
<b>The Complainant's Sexual Behaviour—Youth Justice and Criminal Evidence Act 1999 s.41</b>	<b>77</b>
The Meaning of "Sexual Behaviour"	77
The Initial Procedure	78
Questions/Evidence Under s.41(5)	80
Questions/Evidence Under s.41(3)	80
<b>Previous Statements: Criminal Justice Act 2003 &amp; Criminal Procedure Act 1865 subsections (3–5)</b>	<b>83</b>
Previous Statements Consistent with Present Testimony; the Rule Against Narrative	83
Previous Statements Inconsistent with Present Testimony	86
● <b>Summary</b>	<b>92</b>
● <b>End of Chapter Question</b>	<b>92</b>
● <b>Further Reading</b>	<b>94</b>
● <b>Self Test Questions</b>	<b>95</b>
<b>3 : Competence and Compellability</b>	<b>97</b>
<b>Introduction</b>	<b>98</b>
<b>Basic Issues</b>	<b>98</b>
<b>Special Classes of Witness</b>	<b>100</b>
The Defendant	100
Spouses and Civil Partners	101
Children	103
Competence and Compellability of Judge	106
● <b>Further Reading</b>	<b>104</b>
● <b>Self Test Questions</b>	<b>104</b>

	<b>Evidence via Deposition</b>	106
	<b>Evidence via Television Live Link and Video Recording</b>	106
	Criminal Justice Act 1988	106
	Criminal Justice Act 2003	107
	Youth Justice & Criminal Evidence Act 1999—Eligible Witnesses	107
	● <b>Summary</b>	111
	● <b>End of Chapter Question</b>	111
	● <b>Further Reading</b>	113
	● <b>Self Test Questions</b>	113
<b>4</b>	<b>Hearsay</b>	<b>115</b>
	● <b>Introduction</b>	116
	● <b>Initial Definition</b>	116
	● <b>Common Law Hostility</b>	118
	● <b>Hearsay, Assertions and Original Evidence</b>	119
	Distinguish Hearsay from Original Evidence	119
	Assertions	120
	● <b>Preserved Common Law Exceptions</b>	126
	Res Gestae	126
	<b>The Police and Criminal Evidence Act 1984 s.74</b>	130
	● <b>Criminal Statutory Hearsay</b>	133
	Oral Hearsay	134
	Business and Other Documents Admitted Under Chapter II of Part 11, Section 117	141
	Multiple Hearsay	145
	Capability to Make a Statement: Section 123	145
	Credit of the Maker of the Statement: Section 124	145
	Stopping a Case where the Evidence is Unconvincing: Section 125	146
	Discretion to Exclude Evidence: Section 126	146
	Overall Considerations with Regard to Exclusion of Hearsay Evidence	147
	● <b>Summary</b>	151
	● <b>End of Chapter Question</b>	151
	● <b>Further Reading</b>	153
	● <b>Self Test Questions</b>	154

<b>5</b>	<b>Opinion</b>	<b>155</b>
<hr/>		
	Introduction	156
	Non-expert Opinion at Common Law	156
	Expert Opinion at Common Law	156
	Expertise	156
	Subject Matter	158
	Facts on which Expert Evidence is Given	163
	Notice	164
<hr/>		
	● Summary	165
	● End of Chapter Question	165
	● Further Reading	166
	● Self Test Questions	166
<hr/>		
<b>6</b>	<b>Confessions</b>	<b>167</b>
<hr/>		
	Introduction	168
	The Statutory Meaning of "Confession"	169
	Judicial Direction on Confessions	171
	The Voir Dire (from Old French: "To Speak the Truth")	171
	The Burden and Standard of Proof at the Voir Dire	172
	The Function of Judge and Jury	173
	Questions at the Voir Dire and their Subsequent Use	175
	Editing the Confession Statement	176
	"Confession is Evidence only Against the Maker of it"	176
	Special Rule for Conspiracies or Offences Involving a Common Enterprise	176
	The Effect of the Criminal Justice Act 2003 Section 114(1)(d)	
	(the "Safety Valve")	181
	Section 76A	181
	Oppression	183
	Circumstances Rendering any Confession Unreliable	185
	Causation and the Meaning of "Unreliability"	186
	Confessions by Mentally Handicapped Persons: s.77(1)	188
	Facts Discovered in Consequence of Inadmissible Confessions	191
<hr/>		
	● Summary	192
	● End of Chapter Question	192
	● Further Reading	194
	● Self Test Questions	194

106  
106  
106  
107  
107  
111  
111  
113  
113  
115  
...  
116  
116  
118  
119  
119  
120  
126  
126  
130  
133  
134  
141  
145  
145  
145  
146  
146  
147  
151  
151  
153  
54

http://www.pdfshop.com

<b>7</b>	<b>Evidence Illegally, Improperly or Unfairly Obtained</b>	<b>195</b>
	<b>Introduction</b>	<b>196</b>
	<b>Exclusion of Evidence Improperly Obtained</b>	<b>197</b>
	Common Law Exclusion	197
	<b>Section 78(1)</b>	<b>198</b>
	<b>Article 6 of the European Convention on Human Rights</b>	<b>200</b>
	Abuse of Process—Staying the Proceedings	201
	Entrapment	203
	A Test of Entrapment	204
	<b>Facts Discovered in Consequence of Inadmissible Confessions</b>	<b>210</b>
	<b>Section 78(1) and the Courts' Approach to Breaches of the PACE Codes of Practice</b>	<b>211</b>
	<b>Summary</b>	<b>214</b>
	<b>End of Chapter Question</b>	<b>217</b>
	<b>Further Reading</b>	<b>219</b>
	<b>Self Test Questions</b>	<b>219</b>
<b>8</b>	<b>Silence</b>	<b>221</b>
	<b>Introduction</b>	<b>222</b>
	<b>CJPOA</b>	<b>223</b>
	Section 34—"Effect of Accused's Failure to Mention Facts When Questioned or Charged"	223
	Failure to Account for Objects, Substances or Marks (s.36), or Presence at the Scene (s.37)	231
	A Prima Facie Case	232
	The Meaning of Sections 34(5), 36(6) and 37(5): the Common Law	232
	Common Law Adverse Inferences from Lies	235
	In-court Silence	237
	● <b>Summary</b>	<b>239</b>
	● <b>End of Chapter Question</b>	<b>239</b>
	● <b>Further Reading</b>	<b>241</b>
	● <b>Self Test Questions</b>	<b>242</b>

<b>9</b>	<b>Evidence of Character</b>	<b>243</b>
	<b>Introduction</b>	<b>244</b>
	<b>Jury Trial, Indictments and Cross-admissibility</b>	<b>244</b>
	<b>The Meaning of "Character"</b>	<b>245</b>
	<b>The Defendant's Character</b>	<b>246</b>
	Good Character	246
	Bad Character of the Defendant	250
	<b>Bad Character of Witnesses other than the Defendant</b>	<b>272</b>
	<b>Miscellaneous</b>	<b>274</b>
	Section 108	274
	Section 109	274
	Section 110	275
	Collusion and Contamination	275
	● <b>Summary</b>	<b>276</b>
	● <b>End of Chapter Question</b>	<b>276</b>
	Avoiding Common Errors	279
	● <b>Further Reading</b>	<b>279</b>
	● <b>Self Test Questions</b>	<b>279</b>
<b>10</b>	<b>Corroboration, Suspect and other Fallible Evidence</b>	<b>281</b>
	<b>Introduction</b>	<b>282</b>
	<b>Corroboration Required by Statute</b>	<b>282</b>
	The Meaning of Corroboration	282
	No General Corroboration Requirement at Common Law	282
	Corroboration Required as a Matter of Law (Statute)	283
	Conclusion	283
	<b>Additional Evidence Required as a Matter of Practice</b>	<b>284</b>
	Witnesses with a Motive to Misrepresent	284
	Visual Identification—the <i>Turnbull</i> Guidelines	287
	Voice Recognition	292
	● <b>Summary</b>	<b>292</b>
	● <b>End of Chapter Question</b>	<b>293</b>
	● <b>Further Reading</b>	<b>295</b>
	● <b>Self Test Questions</b>	<b>295</b>
	<b>Index</b>	<b>297</b>