

GX 1945

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2002/2003

Exam Code(s)	2BL1, 2BL2, 2CW1, 3BL1, 3BL2, 3CW1, 4BL2, 1EM1, 1OA1.
Exams(s)	2 nd 3 rd & 4 th LL.B. 2 nd & 3 rd Bachelor of Civil Law Erasmus and Occasional
Module Codes(s)	LW318
Module(s)	Evidence
Paper No.	1
Repeat Paper __ Special Paper __	
External Examiner(s)	Professor G.R. Sullivan
Internal Examiner(s)	Mr. F. Comerford
<u>Instructions</u>	Answer FOUR questions
Duration	THREE Hours
No. of AnswerBooks	
<u>Requirements:</u>	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	
Department(s)	LAW

1. You are asked to advise McGregor, a young journalist about evidential issues arising from her action against a best selling novelist, Chuwitt for breach of copyright. McGregor wrote a short story five years ago when she was 16 in a school magazine about a child named Jacob with supernatural abilities. In McGregor's story, if Jacob stared at a photograph of a person, he would have a vision of whatever that person was seeing at the very moment when Jacob was staring at the photograph. This was so, no matter how far away that person was or whether or not Jacob knew the person in the photograph and regardless of how long ago the photograph was taken. Two years ago, a book written by a best selling crime author, Chuwitt was published. It was called *Other Peoples' Eyes* and was a thriller about a group of agents called the Jacobins who work for the Secret World Government and who have supernatural powers identical to those described in McGregor's short story. McGregor believes her story was plagiarised and has instituted proceedings against Chuwitt.

McGregor is aware of the following pieces of information which might be of significance at the hearing of the case.

- (a) McGregor believes that Steerforth who is Chuwitt's literary agent will give evidence that 10 years ago he saw the first draft of *Other Peoples' Eyes* and that this draft described "the Jacobins" and their powers in exactly the manner as the final version of the book. This would mean that Chuwitt came up with these ideas years before McGregor wrote her story. McGregor's solicitor has discovered that Steerforth was convicted for perjury three years ago in relation to evidence he gave in a breach of contract case involving one of his other clients.
- (b) Discovery has been ordered in this case and in the list of documents supplied by Chuwitt's solicitors is a document listed as "*An account of Mr. Chuwitt's creative sources furnished to his solicitors to allow them to prepare for the hearing*". This document was listed as a document in respect of which a claim was being made and it was not furnished to McGregor's solicitors. McGregor thinks it would be useful to see this document. McGregor can call Dorrit, the editor of a literary magazine as a witness. Dorrit will say that two and a half years ago, shortly before the publication of *Other Peoples' Eyes*, Dorrit commissioned an article from Chuwitt in which he discussed his creative sources and shortly after that Chuwitt showed him but didn't allow him to read the article in the course of a dispute between them about an unrelated matter. Chuwitt and Dorrit had a serious falling out and Chuwitt refused to furnish the article to Dorrit.

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- (c.) Ellery, a Professor of Crime Literature from an American University has investigated Chuwitt's writing and has turned up remarkably close plot parallels between two of his previous novels and two short stories by a deceased Australian writer which were published in an obscure New Zealand literary magazine in 1934.
- (d) McGregor has a copy of a letter written by Chuwitt's solicitor, Atwater to his cousin. This letter contains the line. *"By the way, I know you think Chuwitt is the greatest thing since Raymond Chandler but I can tell you, from my dealings with him, he has the imagination of a tape recorder."*

Identify the evidential rules which will govern the admission in evidence of any of these pieces of information and advise McGregor as to the likely outcome of the application of the rule in respect of each piece of information. Support your answer by case law where appropriate.

- 2. Discuss the circumstances in which statements made by a person who has since died may be offered as part of the evidence before the Court in a civil trial. Support your answer by case law where appropriate.
- 3. Discuss the significance within the law of evidence of the US Supreme Court's decision in *Daubert v Merrill Dow* (1993). Does the decision have any scope for application in Irish law?
- 4. Blackacre is making a claim for personal injuries which includes a claim for loss of earnings to date and into the future in the sum of €840,000.00. Blackacre is suing his employers, Suremark and in his claim, Blackacre is maintaining that he suffered soft tissue injuries to his back at 8.20 am on a Monday morning when he slipped on a banana peel which must have been dropped on the floor by one of his fellow workers. His employers, Suremark believe that the claim is fraudulent and believe that if Blackacre suffered an injury, he suffered it over the weekend and has manufactured a false claim in an effort to obtain compensation.

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From the documentation prepared at the time of the accident, Suremark are aware that Blackacre's claim is likely to be supported by Rawls. Rawls, works for a courier company and it is believed that he will say that he was making a delivery to another factory in the same industrial estate but that he got the buildings mixed up and went into the Suremark factory to ask if this was the right factory and that he saw Blackacre fall and helped him up. He will say that after he brought Blackacre over to a chair, he confirmed from him that he was in the wrong factory and he then left. It is also believed that if he is asked, Rawls will say that this was the first time he ever gave evidence as a witness in any case.

Suremark are in a position to call the following pieces of evidence at the hearing of the action:

- (a) The managers from all of the five other factories in the area who will say from their records that in relation to each of their respective factory that no delivery was made to the factory by any courier company on that Monday morning and that no delivery was expected at the factory from any courier company on that Monday morning.
- (b) Finch, a solicitor who will say that two years ago he was present in Court when Rawls gave evidence in support of a plaintiff in a case arising from a road traffic accident.
- (c) Crosby, a nightclub owner who will give evidence that at 10.45 pm on the previous day, Rawls was ejected from the nightclub by the door staff and that he spoke to Rawls at that time and Rawls was incredibly drunk.

Discuss if there are any circumstances in which Suremark will be allowed to introduce the information as provided by these witnesses or call these witnesses to give this evidence. If such circumstances exist, describe the circumstances. Support your answer by case law where appropriate.

5. Assume that the government is concerned that too many confidential state documents are coming into the public domain as a result for orders for discovery made in civil proceedings taken against the State. Accordingly a Cabinet sub-committee has proposed that the Freedom of Information legislation should be amended to include the following provision "*The confidentiality of any documents in the possession of public bodies which would be withheld from disclosure on foot of an application under the Freedom of Information Act shall be respected by the Courts in all civil proceedings.*" Advise the government as to the effectiveness of such a provision in removing document from the ambit of discovery and identify problems that might

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arise in the introduction of a measure intended to restrict the availability of documentation within the process of discovery. Support your answer by case law where appropriate.

6. Discuss the admissibility of a dock identification of an accused person by an eye-witness to a crime where that eye-witness has not identified the accused on any other occasion since the crime was committed. Support your answer by case law where appropriate.

7. In January, Donoghue, a suspected drug dealer was shot and killed in Galway by a lone gunman.

In August, Detective Gardaí in Cork, investigating rumours that a large consignment of contaminated cocaine had arrived in Cork, arrest Mitchell under Section 2 of the Criminal Justice (Drug Trafficking) Act, 1996 at 11.30 pm. The Inspector in charge of the investigation has received confidential information that Mitchell took delivery of the consignment of cocaine. The cocaine came from Spain and the Gardaí have been advised by police in Spain that the cocaine has the potential to kill dozens of people if it isn't found. The investigating Gardaí believe that this is so. All appropriate statutory procedures including those relating to notifications and conditions of detention are complied with by Gardaí during the first six hours of questioning.

After approximately five and a half hours, Mitchell has started to admit that he has an involvement in drug dealing and his denials about any knowledge of the whereabouts of a consignment of cocaine are becoming less firm. When it is put to him that he will be in a far worse position if the cocaine kills someone, he appears to be wavering and says that he knows he can't bear being responsible for someone's death.

As the expiration of the six hour period of detention approaches, the investigating guards believe that the period of detention should be extended and the circumstances are outlined to a Chief Superintendent who appears to agree that the extension is necessary but who suffers a heart attack just when he was about to authorise the extension. He is rushed to hospital unconscious.

Attempts are made to contact another Chief Superintendent but as the six hour period expires, these attempts haven't been successful. The investigating Gardaí believe that if Mitchell is released, they will not find out where the drugs are and it is likely that the contaminated cocaine will kill someone. The Gardaí continue

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with the questioning. Six hours and forty five minutes after he was initially arrested, Mitchell makes a full confession in relation to all his criminal dealings and in the course of this admits to being the gunman who shot Donoghue. He says that the killing has preyed on his mind. In his confession, he informs the Gardai as to the whereabouts of the consignment of cocaine.

A Chief Superintendent arrives at the Garda station just after Mitchell has finished making his statement and immediately directs that Mitchell be charged with all the crimes to which he has confessed. Mitchell makes no statements after this and the guards recover the consignment of cocaine exactly where Mitchell said it was but it turns out that the cocaine wasn't contaminated. The Chief Superintendent who suffered the heart attack dies in hospital three days later.

Discuss the admissibility of Mitchell's confession to the murder of Donoghue. Support your answer by case law where appropriate.

8. *Answer (A) OR (B)*

- (A) Ripley is charged with the murder a 24 year old woman. The woman's body was discovered and a post mortem reveals that she suffocated because of the manner in which a gag was fixed over her mouth.

Two eye-witnesses who were the last people to see the murder victim alive, will give evidence that they saw Ripley walking the same area a few minutes after they saw the murder victim. Ripley denies this and states that they are mistaken.

Ripley was charged two years ago with the abduction and sexual assault upon a 21 year old woman named Nichols. The case went to trial. Nichols gave evidence that she had been abducted by a masked man and that she had been kept blindfolded and gagged before being released after four days. She identified Ripley as her abductor from the sound of his voice. In the course of the trial, she described how the gag was fixed over her mouth and that said that she had great difficulty breathing. Her evidence as to how the gag was fixed over her mouth was very similar to the medical evidence in respect of how the gag was fixed over the mouth of the murder victim. The jury acquitted Ripley of the charges arising from the offences committed against Nichols.

Ripley was convicted 8 years ago for indecently assaulting a female co-worker, McClelland, at a Christmas party while drunk. The evidence was that he groped McClelland and refused to stop when she protested. He pleaded guilty and was given a suspended sentence.

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Discuss whether the prosecution are entitled to call the evidence of Nichols and McClelland as part of the prosecution evidence in chief in the prosecution of Ripley for murder. Set out the legal rule that will govern the admissibility of such evidence and support your answer by case law where appropriate.

- OR -

- (B)** Discuss the circumstances in which the prosecution can cross-examine an accused person as to previous instances of past misconduct other than the crime for which he is being tried. Support your answer to statute law and case law where appropriate.

END