

GX 1719

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2003/2004

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)	Prof. P. McCutcheon
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. Discuss briefly the significance within the law of evidence of any three of the following five cases:

Clark v. Ryan, (1960) 103 CLR 486 (High Court of Australia)

The People v. Casey (No.2), (H.C., S.C., 1963 IR 33)

D.P.P. v. John McGrail (C.C.A. 1990 2 IR 38)

Murphy v. Kirwan, (H.C., S.C., 1993 3 I.R. 501)

D.P.P. v. Special Criminal Court (H.C., S.C. 1999 1 IR 60)

2. Rascob was an Olympic basketball player from Eastern Europe who played for an Irish team as a professional. While playing brilliantly in an important match against a rival team he was fouled by Naughton, one of the opposing players. Naughton, ran into Rascob and knocked him to the ground. During this contact, Naughton's right foot trod on Rascob's left ankle. Rascob suffered a severe fracture. The fracture did not heal properly and Rascob was never able to play basketball again.

Rascob believes that Naughton intended to inflict an injury on Rascob which would prevent him from continuing in the game. Rascob sues Naughton in the High Court in negligence and for assault seeking compensation for the injury and for his loss in earnings as a professional basketball player.

Rascob will be offering evidence in a variety of forms and from various witnesses in relation to the incident but as part of his evidence to prove Naughton's intent, Rascob wishes to offer call witnesses as part of his evidence in chief in relation to the following incidents:-

- (a) In a game that took place, three weeks before Rascob was injured, Naughton fouled another player, Mullet, by spoiling his shot. Mullet wasn't injured by the foul but Mullet ran at Naughton afterwards intending to attack him and while doing so, Mullet slipped and broke his ankle
- (b) In a game during the previous season, Naughton ran into another star player, Stoa, and knocked him to the ground, breaking five of his ribs. Naughton's team went on to win that game.
- (c) Nine years before, when he was 15, Naughton attacked his older brother, Al, and broke his wrist, because Al was beating him in a chess game.

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Rascob's lawyers have given details to Naughton's lawyers of all the evidence that they have gathered. Naughton has decided that he won't give evidence himself at trial and is trying to gauge the strength of Rascob's case. Advise Naughton as to whether Rascob can call witnesses to prove these matters set out at (a.), (b.) and (c.) above as part of the case he is making against Naughton. Identify any rule of admissibility which might apply and support your answer by case law where appropriate. Solely consider the admissibility of this evidence as part of Rascob's evidence in chief without giving any consideration to the issues relating to admissibility that might arise if Naughton were to give evidence.

3. Discuss the distinction in a civil trial between evidence which is relevant as to the facts in issue and evidence which is relevant solely as to credit. Support your answer by case law where appropriate.
4. A man who introduced himself as Fairfax attended at the offices of a solicitor, Parker and informed Parker that he wanted to set up a limited liability company. Fairfax was particularly concerned about the personal liability of a director when a company went into liquidation and then asked what steps had to be taken to change directors and what steps a person who was no longer a director could take to ensure that a Court wouldn't hold him responsible for the actions of the company. Over the weeks that followed, a company called "Blank Limited" was incorporated and various documents were prepared and signed. Parker noticed that Fairfax signed all these documents with his left hand. He made some comment about this and Fairfax told him that he had been born right handed up but had broken his right wrist very badly while playing tennis when he was 15 years old and had to learn to write with his left hand and had done so ever since.

Parker has no further dealings with Fairfax but approximately six months later, he was served with a witness summons by Stegman Limited in relation to proceedings between Stegman Limited and Fairfax. It transpired that Stegman Limited, one of the largest businesses in the town, was owed €130,000.00 by a company called "Malfit Limited" which appears to have no assets. The lawyers for Stegman Limited have discovered that Malfit Limited had changed its name to "Malfit Limited" from "Blank Limited" and Parker's office has been identified as the original registered offices of "Blank Limited". At all times, the employees of Stegman Limited had dealt with Malfit Limited through Fairfax and they say he signed a personal guarantee in respect of Malfit Limited's liabilities. The two named directors of Malfit Limited can't be located and Fairfax is insisting that he was only an employee of the company. He has admitted he did sign company incorporation documents and was originally a director but this was as an agent of the directors and he never acted on his own behalf.

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Fairfax is asserting that he didn't and wouldn't sign any guarantee. He is asserting that the guarantee must be a forgery. Handwriting experts have confirmed that the signature on the guarantee is completely different from the handwriting on other documents signed by Fairfax, including the company incorporation documents. This is despite the assertion by Stegman employees that they saw Fairfax sign the guarantee.

On hearing that Parker had been served with a witness summons, Fairfax immediately sent Parker a letter asserting that he had dealt with Parker as a client and that he is insisting that Parker refuse to answer any questions in relation to Fairfax on the grounds of privilege.

Advise Fairfax whether he can prevent the disclosure by Parker of any details in relation to all the dealings, transactions and conversations between them. Support your answer by case law where appropriate.

5. *"The truth is that no one has yet invented or discovered a mode of measurement for the intensity of human belief. Hence there can be yet no successful method of communicating intelligibly ... a sound method of selfanalysis for one's belief,"* J. Wigmore, Evidence 325 (3d ed. 1940). Discuss the effectiveness of the concept of Corroboration within the law of evidence as a method for ensuring that suspect evidence is properly analysed by a jury prior to coming to a decision. Support your answer by case law where appropriate.
6. Kullper is believed by the Gardai to be the most successful burglar in Dublin and on the 15th of April, they were delighted when he was caught, together with another man Hogan, carrying a heavy chest containing a collection of medals out of a private house in Dublin. The medals and the house are owned by Carter. Carter returned to the house, in the company of a man named Devlin, just as Kullper and Hogan were coming out the door with the chest.

Kullper and Hogan were both arrested and interviewed on video tape on the day of their arrest. Kullper responded *"Fresh cod and chips please"* to every question he was asked but Hogan gave a detailed account about how he was tricked by Kullper into going into the house to collect the chest. He said that Kullper told him that Kullper had purchased a chest from the owner of the house and that he had believed him. The Gardai decided to accept Hogan's story and use him as a witness against Kullper.

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On the day of the arrest, Carter and Devlin both give detailed statements to the Gardai which set out all everything that happened, how they caught Kullper and Hogan and how they held them in their sight at all times, until the Gardai arrived. Carter stated that he owned the chest and medals and that he hadn't given Kullper permission to enter the house to take them away. He says there is no truth to any suggestion that he sold the chest or the medals. Devlin's account is consistent with this.

Three months before the trial is due to start, Carter suffers a stroke. He makes a substantial recovery but loses all memory of all his activities in the 8 months before the stroke. This period includes the capture of Kullper and the making of the statement to the Gardai. The medical advice is that this is a permanent loss of memory. The Gardai then checked with Devlin, who told them that although it mightn't have been evident at the time, he had been drinking heavily and he doesn't actually remember anything at all of the incident. The Gardai don't believe he had any drink taken on the day but believe that he appeared very frightened when he told them that he couldn't remember anything. Devlin denied that there has been any attempt to intimidate him.

The Gardai also checked with Hogan. Hogan told them that he would give evidence on exactly the same lines as are set out in the statement he made to the Gardai on being arrested. "Word for word." he assured him. The Gardai do not believe him.

Assume that Hogan will join Carter and Devlin in telling the jury on oath that he has no memory of the day in the question and has no memory of making any statements to the Gardai. Advise the prosecution if the jury can be told of the statements of Hogan, Carter and Devlin and discuss the basis on which they can be considered by the jury.

Support your answer by case law where appropriate.

7. On the 20th of June, a blue Opel was stopped by the gardaí in a checkpoint set up to check tax, insurance and certificates of road-worthiness, two men, Farrier and McKeach, were travelling in the car. Farrier was the driver and at the checkpoint, he blurted out "This is McKeach, he just told me that he was in on that bank robbery in Thurles." McKeach immediately yelled out "*You dirty tout*" and hit Farrier.

The gardaí arrested both men under the s.4 of the Criminal Justice Act, 1984 at 12.15 pm and they were driven to the Gardai station in Thurles. At Thurles, McKeach was told that he is entitled to a solicitor and he indicated that he didn't need a solicitor. At approximately 3.30 pm, he was taken to an interview room and the interview was recorded by video camera.

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At the start of the interview, he was cautioned that he need not answer any questions but that any answers he did give might be used in evidence. He was then questioned for 1 hours and 43 minutes. Near the end of the interview, the Gardai told him, incorrectly and without any foundation in fact, that Farrier had confessed to being one of the bank robbers and that Farrier had identified McKeach as one of his accomplices. It was suggested to McKeach that if he were to give a bit more co-operation than Farrier, he would be given very favourable treatment. McKeach responded by saying, *"Come on, if you really want to know about the job, you'll have to do a lot better than that, otherwise I'm staying as I am."*

McKeach was returned to his cell and while he was in his cell, at approximately 5.35 pm, Sexton, who was married to McKeach's sister, arrived with a solicitor and announced that he didn't want to see McKeach himself but he wanted the solicitor to see McKeach so that the solicitor could act as McKeach's solicitor. The Member in Charge at the station told Sexton that McKeach had already waived his right to a solicitor. The Member in Charge said that Sexton could see McKeach to ask him if he wants to change his mind about a solicitor but until McKeach says he wants a solicitor, the solicitor couldn't be treated as if he were McKeach's solicitor. Sexton didn't want to see McKeach and Sexton and the solicitor left the station without seeing McKeach.

At 6.05 pm, a Chief Superintendent arrived at the station and was told that the Detective-Sergeant in charge of the investigation was out of the station for half an hour but that the Detective Sergeant had mentioned that he had to speak to McKeach again and the detention should be extended. The Chief Superintendent then extended the period of detention for a further six hours.

McKeach was taken for interview again at 8.20 pm. This interview was recorded on video-tape as well and at the start, McKeach said *"Look it, you can talk as much as you like but I'm not saying anything."* McKeach refused to respond in any way for about 20 minutes, but when he was asked about the tragic death of his mother, he began to talk about his family. At approximately, 9.20 pm, one of the Gardai said *"You know it's a pity but I guess if there is a full investigation of this, we will have to take a look at your brother again."* In response to this, McKeach said *"Okay, what is the point of it all. You know I was there. I'll make a statement."* McKeach then gave a full narrative account of his part as one of the armed robbers who carried out the bank robbery in Thurles. This account was very detailed and these details were confirmed by subsequent Gardai enquiries. He stated that Farrier was not involved and the Gardai subsequently establish to their satisfaction that this was so. The reference to McKeach's brother was a reference to the fact that he has been questioned on three occasions in the past year on suspicion of being involved in the production of child pornography.

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McKeach is about to face trial on charges arising from the bank robbery. There is other evidence linking him to the robbery but the prosecution intend to lead evidence of the statements made by McKeach which are referred to the account as set out above. Identify the legal rules which would affect the admissibility of these statements and give a brief outline of their application. Support your answer by reference to relevant case law and to relevant statutory or constitutional provisions.

8. Answer (A) OR (B)

(A) In 1930, in the United States, Cardozo C.J. stated in the case of People -v- Zuckowitz, 172 NE 466 "*In a very real sense, a defendant starts his life afresh when he stands before a jury, a prisoner at the bar.*" Discuss the extent to which this accurately reflects the law governing the admission of evidence of bad character of an accused person in Irish criminal trials today.

OR

(B) Discuss the extent to which the English decisions of Makin v. Attorney General of New South Wales, [1894] AC 57, Boardman v. D.P.P. [1975] A.C. 421 and D.P.P. v. P [1991] 2 AC 445 accurately state the law which applies in Ireland in relation to the admission of evidence of past misconduct of the accused as part of the evidence in chief offered by the prosecution. Support your answer by reference to relevant case law.

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