

SUMMER EXAMINATION 1998/1999

LL.B. - ALL YEARS
OCCASIONAL STUDENTS

EVIDENCE (LW318)

Professor A. Ashworth
Mr. F. Comerford

Time allowed: **THREE** Hours.

Answer **FOUR** Questions.

1. Charlie Lemon, the playwright is being sued by Humbolt a former government minister for breach of copyright arising from the production of Lemon's play, The Renata Suite. Humbolt's contention is that the manner in which he lived his life was a work of creative genius and the principal character in the play, Rinaldo is so accurate a representation of Humbolt that Lemon had plagiarised the artistry by which Humbolt's practiced politics and led his life. Humbolt wishes to present the following pieces of evidence to prove that the details of incidents during his life which are nearly identical to scenes within the play.
- (a) In the second act, Rinaldo makes his maiden speech in the Dail. Humbolt wishes to offer in evidence a transcript of his own last political speech made from the back of lorry outside a church gate at Creggs, Co. Roscommon. The speech was never published but a local man, O'Shea took notes on the speech at the time it was being made and O'Shea is available in Court to give evidence that the notes are accurate. The themes of the speech as set out in the transcript are the same as the themes in Rinaldo's speech.
 - (b) In the play, Rinaldo as a government minister is forced to resign when it becomes public knowledge that he used departmental resources to provide an apartment for his mistress. Humbolt wishes to have notes of cabinet meeting released which will demonstrate that the minister who succeeded him to the Department of Environment made exactly that charge against Humbolt at the cabinet table but the Taoiseach managed to persuade the Minister to withdraw the charges and the charges were never made public. Humbolt intends to subpoena the Head of the Civil Service and require him to produce notes of the cabinet meetings and if he fails in that, he will offer evidence of the discussion himself.
 - (c) At a point in the play when Rinaldo requires a transfusion, a doctor states that it is lucky that Rinaldo has such a common blood type. Humbolt wishes to call his own doctor to give evidence that Humbolt has a very common blood type and wishes to subpoena all the G.P.'s of every other minister he can identify to highlight how many government ministers in the last three decades have had unusual blood types.
 - (d) Throughout the play, Rinaldo quotes extensively from Shakespeare and all the quotes are from Henry the IV, Part I and Coriolanus. Humbolt never made a habit of quoting from Shakespeare but these two plays were the only two of Shakespeare's plays that he ever read as they were set texts of his examinations at school. Humbolt wishes to call Professor Allcut, a professor of literature who will offer his expert testimony that there were many more apt quotations from Shakespeare that could have been used by Rinaldo and that these quotations would have been known to someone of Lemon's educational qualification and that it is Professor Allcut's opinion that Lemon deliberately restricted Rinaldo to quotations from these two plays.

- (e) Humbolt knows that Lemon conferred extensively with Tomchek a solicitor in order to ensure that the Court scenes in the play are plausible. Humbolt is convinced that Lemon must have made significant references to Humbolt's own life during these discussions and wishes to call Tomchek as a witness and ask him about any discussion concerning Humbolt.

Advise Humbolt as to any objections that might be made to each of these pieces of information on the basis of the rules of evidence. State briefly how you believe the evidential rules will be applied in the circumstances of this case. Support your answer by a brief outline of the arguments and by reference to case law where appropriate.

2. Violet and Iris are twin sisters and they worked at a bookbinding factory. One day, Iris called for medical assistance for Violet who was lying unconscious near the foot of an internal stairway inside the factory. Iris stated that she was walking towards the stairway when Violet was walking down the stairs and that Violet was walking perfectly normally and tripped. Subsequent examination reveals that capping over the edge of the step, at the site where Iris stated Violet fell, had lifted creating a rise of almost a centimetre. Violet was taken to hospital and recovered consciousness after a few hours but never returned to work.

Violet commenced proceedings, suing her employers, the owners of the factory for negligence arising from the condition of the stairway. The medical evidence called on her behalf will be that she is suffering from ongoing medical symptoms as a result of the accident. These symptoms include; intermittent bouts of dizziness, which make it unsafe for Violet to drive a car or operate machinery, a significant risk of epilepsy, a period of pre-accident amnesia of several days before the accident and a number of phobias. Her lawyers have indicated that because of one of these phobias, Violet will not be called to give evidence in her own case or even attend in Court but they will rely on the evidence of Iris to establish how the accident happened and on the medical evidence.

The employers are denying that the accident happened in the manner alleged by Violet and Iris and are aware of the following information:

- (a) Violet has a conviction for assault arising from an incident six months ago when she hit a shop assistant who accused her of trying to get the change of a twenty pound note when she had only tendered a ten pound note. A local businesswoman, Aoife, who is involved in collecting money for charity, is prepared to give evidence that last year Violet was expelled from Helpcare, a local charitable organisation because she admitted that she had kept for her own use over £300.00 that she collected on behalf of the charity. Violet repaid the money and there was no complaint to the guards and there was no prosecution. An employee of the company, Pascal, a personnel manager, who interviewed Violet for her job three years ago, can give evidence that she asked if she could be paid off the books as she wanted to keep on claiming unemployment payments. He will say that at the time, he thought it was a joke and treated it as such but on reflection, he is sure that she was serious.
- (b) It is common knowledge in the factory that Iris has been having an affair with Hector who is also an employee in the factory. Hector is married to Anne. The evidence of two other employees can be called to prove the fact of the affair. The evidence would be that Hector's wife Anne has no knowledge of the affair and that Iris knows Anne quite well socially and meets her regularly, sometimes in the company of Hector and has met her on many occasions since the affair started. A local shopkeeper, Robert, could also give evidence that over ten years ago, when Iris was teenager, he caught her shop-lifting in his shop. He did not call the Guards but contacted her parents and told them about the incident and eventually agreed that matters would go no further provided she never entered his shop again.

Advise the employers of the extent to which they will be allowed to use this information about Violet and Iris in defending the civil claim brought against them. Assume that Violet will not be called as a witness by any party to the dispute. Support your answer by case law where appropriate.

3. In a judgment of the Supreme Court delivered on the 14th of October, 1993, in the case of *Bula Ltd. and others v. Crowley and others*, Finlay C.J. stated that "a person entitled to and consulting a lawyer should be able to place unrestricted and unbounded confidence in the professional agent and that the communications he so makes should be kept secret unless with his consent it is disclosed." Discuss the extent to which a client dealing with a solicitor would be justified in having unbounded confidence that the secrecy of the communication would be maintained. Support your answer by reference to case law where appropriate.
4. Outline the circumstances in which a confidential and private communication between two people neither of whom is a lawyer, will be exempt from disclosure to the Courts and discuss if an agreement that the communication would not be disclosed to any Court in advance of the communication would be respected by the Courts. Support your answer by reference to case law where appropriate.
5. Victor Auley is the son of a successful businessman and he is the trustee for a large trust fund held for the benefit of his two sons, Abel, aged 16 and Cain, aged 14. Two years ago a fraudulent transaction resulted in nearly all of the £1,000,000.00 held to his sons' benefit being removed from the trust fund. The bank bears no responsibility for this loss and the money is lost to the two boys. Enquiries at the time indicated that Victor Auley had made an error without which this fraud could not have taken place but it appeared to be a trivial and honest error and the drastic consequences did not appear to have been foreseeable. One year ago, Abel made a complaint to the Gardai that after he was given £1,000.00 for his 15th birthday by an uncle, he had been approached by his father Victor Auley who asked him for £500.00 of that money to cover a gambling debt and when Abel refused, Victor Auley threatened to beat him so badly that he'd be in hospital for a week. Abel indicated that his mother Evelyn, Victor Auley's wife, had heard this threat.
- Evelyn was interviewed by the Gardai and admitted hearing the threat and then broke down and gave a detailed statement about overhearing her husband, Victor Auley, speaking on the phone to an unknown person which indicated that her husband had been responsible for, carried out and profited from the embezzlement of the monies from the trust fund.
- Victor Auley is charged with the embezzlement of almost £1,000,000.00 held in the trust fund for the benefit of Abel and Cain and is charged with obtaining £500.00 by threat of violence from Abel. Evelyn is the main prosecution witness on the embezzlement charges; both Evelyn and Abel are prosecution witnesses in respect of the charges relating to the £500.00. Both have indicated they are willing to testify against Victor Auley.
- A week before the trial is due to commence, the Gardai learn that there has been a family reconciliation and that Evelyn and Abel are no longer willing to testify.
- Advise the prosecution as to whether Evelyn and Abel can be compelled to testify against Victor Auley. Support your answer by reference to case law and statute law where appropriate.
6. "The onus is never upon the accused to raise a doubt in the minds of the jury" Walsh J. in *The People (Att.Gen) -v- Quinn*, 1965 I.R. 366 S.C. Identify the significance of this case within the law of evidence and on the basis that the onus is never on the accused to raise a doubt in the minds of the jury, discuss when it can be said that an onus of proof does rest upon the accused in a criminal jury trial. Support your answer by reference to case law where appropriate.
7. Bligh is charged with manslaughter arising out of collision in Galway Bay. Bligh was teaching his girlfriend Christine how to water-ski and was steering his speedboat while she was skiing behind. There was no one else in the speedboat and while Bligh was looking back at Christine, the speedboat collided with the side of a sailboat killing both its occupants.

Bligh refused to make a statement to the Gardai at any point but the prosecution believe that Bligh will offer the defence that the people in the sailboat were also to blame for the accident in that he had turned to avoid the boat but they were oblivious to him and turned back across his path. In the circumstances, the prosecution wish to offer the following pieces of evidence against Bligh.

- (a) After the collision Bligh telephoned his brother in Waterford telling him what happened. His brother has told Gardai that he had been drinking when he got the call and can't remember the conversation but Bligh made the call on a mobile phone that could be scanned and his conversation was legitimately overheard by a radio operator on a Naval vessel approaching the scene of the accident. The conversation contains a clear statement by Bligh that he knew it was dangerous to water-ski without one person to steer and another person to watch the skier. Assume that there was no breach of any right of privacy or any other constitutional or legal rights.
- (b) Christine made a statement, in a state of extreme distress as she was pulled from the water to the naval personnel who rescued her that she saw the two people in the sailboat yelling, gesturing wildly and trying to avoid the approaching speedboat. The Gardai believe that she will give testimony at trial that she doesn't remember saying this and that her impression is that the people in the sailboat turned into the path of the speedboat.
- (c) Fletcher, one of the two people in the sailboat did not die until five hours after the accident and shortly before he died, muttered "He should have seen us. We were yelling. He should have seen us." The words were heard by a member of the nursing staff who can give evidence of them.
- (d) The control panel the speedboat contained an electronic recording device which recorded the speed of the engine and the use of the throttle. These records can be read by an expert at the speedboat manufacturers in Holland by comparing them to microfilmed records of engine performance after other technicians have extracted the information from the control panel. Tasman, one of the engineers in Holland has informed the Gardai that these records show that the speed of the engine was being increased up until the time the impact and he is prepared to travel to Ireland to give this evidence.

Advise the prosecution as to legal grounds on which Bligh might object to the admissibility of each of these pieces of information and discuss the strength of these objections and how they might be countered. Support your answer by case law where appropriate.

Answer (A) OR (B)

(A) During the course of a criminal trial, evidence of bad conduct on the part of the accused other than details of the offence with which he is charged is sometimes introduced by the prosecution as part of the evidence in chief or is introduced by the prosecution in cross-examination pursuant to the provisions of s.1(f) of the Criminal Justice Evidence Act, 1924. Leaving those two bases for offering such evidence aside, discuss other avenues by which evidence of such bad conduct can be communicated to the jury directly or by implication. Support your answer by case law where appropriate.

- OR -

(B) Discuss the circumstances, if any, where conduct which could amount to a breach of the constitutional rights of an accused person held in Garda custody which results in the making of inculpatory admissions will not automatically result in the exclusion of those statements as evidence. Support your answer by reference to case law where appropriate.