EVIDENCE LAW
MODEL EXAM

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IRAC method of completing exams

Issues - Outline the issues that you are going to discuss.

Rules - Define the legal rules that are relevant to the question.

Application - Apply the legal rules to the facts of the question (this is the hard part!).

Conclusion - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.

ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question One

To what extent may the accused avoid adverse inferences under section 34 of the Criminal Justice and Public Order Act 1994 by

a) relying on legal advice not to answer questions in a police interview;

b) tendering a prepared written statement and then refusing to answer questions?

SAMPLE

a) It is important to note that **S.34** does not exclusively refer to *adverse* inferences. **S.34 (2)** permits inferences to be drawn. To read the section as if to only include adverse inferences would be to restrict parliament's meaning given to those words expressed in the statute. Mentally incapacitated people may remain silent for psychological reasons that may or may not be connected to the offence cautioned or charged. To draw adverse inferences in such situations would be to read the statute too narrowly. Taking a wider view than intended may also cause unfairness, restrict rights or risk injustice for the accused. In **R v. Bowden**[1] *Lord Bingham* stated, "Proper effect must be given to these provisions (**of CJPOA**)… they should not be construed more widely than the statutory language requires." The jury is concerned with the truth or otherwise any explanation given by the defendant of his reasons for not mentioning the matter during earlier questioning. If the defendant gives exculpatory explanation for his failure to mention a fact which the jury accepts as true or possibly so, it would obviously be unfair to draw any adverse inference to him from his failure to mention it.[2] **The ECHR** have made it clear that the right to silence under **Article 6(1)** is not an absolute right and so the drawing of adverse inferences from an accused's silence, either at trials or at police interviews, could not of itself be considered incompatible with the requirements of a fair trial. However, it would be incompatible with the right to silence to base a conviction solely or mainly because of the exercise of the qualified right. This has been repeated in ECHR judgments such as **Condron v. UK**[3] and more recently in the case of **R v. Beckles**.[4] …….

[1] (1999) 2 Cr.App.R. 176 at 181.

[2] Lord Bingham in R v. Webber (2004) 1 W.L.R 404.

[3] (2001) 31 EHRR 1

SAMPLE

Question Two

What do you understand by "free proof"? What problems would arise if all rules of evidence were abolished?

Where there are no constraints on the admission and evaluation of all probative evidence, this would be "free proof" as understood by Bentham. I certainly share sympathy for this concept that admits all the information of probative factual issues and give the fact finder discretion in the assessment. I accept that it is impossible for the adjudication process to arrive at conclusions that are 100% correct, common sense would agree, but by removing non-discretionary rules and replacing them with the free hand of a judge it could be argued that by admitting all probative information, decisions are more likely to be correct. *Bentham* allowed for modification of his natural system, derived from utilitarian principles, by reference to its costs such as considering the benefits of receiving evidence and balancing these with the costs, delay and vexation. My understanding of the latter, placing utilitarian principles aside, would be to prohibit information that may disrupt public policy or for public interest reasons. Breaches of Article(s) in ***ECHR*** may also be included***.*** *Bentham's* underlying concept that rectitude is the object of the judicial trial and is achieved best through a flexible system of guidelines rather than rules is persuasive, but there are other competing issues that are required to be addressed. My understanding is that this is a feasible concept if the courts have unlimited time and resources and no competing values…….

[4] (2004) EWCA Crim 2766.

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Question Three

How Satisfactory does the Law of evidence resolve competing interests in disclosure and non-disclosure of material gathered in the course of a criminal investigation?

At the heart of the question lies the need for full and accurate disclosure of all relevant evidence in the course of an investigation of any crime. This is necessary to prevent miscarriages of justice and uphold the defendant's right for a fair trial under Article 6 of the ECHR. However, as recently held in **Edwards and Lewis v. UK** the right to have all evidence disclosed is not absolute. But it is nevertheless a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, had to be adversarial and that there had to be equality of arms between the prosecution and defence…….

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