

# RECORDER (MIDLAND) QUALIFYING TEST 2008 – MATERIALS

## (1)

### COMMUNITY ANTI-SOCIAL BEHAVIOUR ACT 2007

#### 1. - Meaning of anti-social behaviour

- (1) Anti-social behaviour is any action by a person which has or was reasonably likely to pester, harass or distress any person.
- (2) To constitute anti-social behaviour there must be more than one act prohibited by subsection (1) above.

#### 165.- Hearsay

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated in it, but only if
  - (a) the court is satisfied that it is in the interests of justice for it to be admissible; or
  - (b) any other provision of this chapter makes it admissible.

#### 167.- Unavailable witnesses

- (1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated in it if:
  - (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
  - (b) the person who made the statement is identified to the court's satisfaction; and
  - (c) any of the five conditions mentioned in subsection (2) is satisfied.
- (2) The five conditions are:
  - (a) .....
  - (b) that the relevant person is unfit to be a witness because of his bodily or mental condition.

#### 178.- Admissibility of evidence

- (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the

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admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

### **201.- Contempt of court**

- (1) Any contempt of the court may be dealt with summarily by the court.
- (2) Any person found by the court to be in contempt may be fined up to £20000, or imprisoned for up to 6 months.

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(2)

## COMMUNITY ANTI-SOCIAL BEHAVIOUR RULES 2007

### 1. The Paramount Objective

- (1) In all decisions of the court, it shall seek to further the Paramount Objective so far as is practicable
- (2) The Paramount Objective is to deal with all matters justly.
- (3) Dealing with matters justly includes –
  - (a) ensuring that all cases are dealt with expeditiously and fairly;
  - (b) ensuring that the parties are on an equal footing;
  - (c) identifying the issues in the case at the earliest opportunity.
  - (d) narrowing the issues between the parties.
  - (e) giving appropriate directions to ensure the orderly dispatch of business;
  - (f) avoiding delay;

### 2. The Court's Case Management Powers

- (1) In furthering the Paramount Objective the court may take any step or make any order for the purpose of furthering the Paramount Objective including compelling a witness to attend a trial.....

### 35. Expert evidence

- (1) Any report of any expert witness shall:
  - (a) Be signed by the witness
  - (b) Contain a declaration as to the witness' duty to the court
  - (c) Unless it is in response to a report served by the other party be served no later than eight weeks before the date set for the trial.
  - (d) If it is in response to a report served by the other party be served no later than two weeks before the date set for the trial
- (2) A witness is not to be regarded as an expert unless he or she is registered as an expert with the Incorporated Council of Experts.

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(3)

## CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

### Article 6

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.....

(2) .....

(3) Everyone charged with a criminal offence has the following minimum rights:

.....

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

*The Convention is imported into the law of England and Wales by the Human Rights Act 1998*

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(4)

**Luca v Italy**

**European Court of Human Rights, First Section**

**27<sup>th</sup> February 2001**

**[2001] Crim.L.R 747**

*Article 6(3)(d) – right to examine witness for and against – conviction based solely or mainly on witness statement.*

The applicant was convicted of drug trafficking. The principal evidence against him was a witness statement made by “N” early in the investigation.

N had been arrested in possession of cocaine and had told the police that he had obtained it from the applicant. N was subsequently charged with the offence of possession, and had decided to exercise his right of silence. As a result, the applicant was not able to demand his presence as a witness at trial or cross-examine him.

*Held*, finding a violation of Article 6(1) and (3)(d), as a matter of principle, the evidence against an accused must be presented before him in a public, adversarial hearing. The principle may be subject to exceptions, as long as the rights of the defendant are sufficiently protected. Although it may be possible for the prosecution to rely at trial on witness statements obtained during the course of the investigation – where, *e.g.* the witness refuses to give evidence at trial because of justifiable fears for his or her safety – the accused must be given an adequate opportunity to contest the truth of the evidence, either during the course of the investigation or at trial. The applicant’s defence rights were not sufficiently protected, since he was convicted solely, or to a large degree, on the basis of a statement by a witness whom he was never able to question.

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(5)

R v Al-Khawaja

Court of Appeal (Criminal Division)

6<sup>th</sup> September, 3<sup>rd</sup> November 2005

[2006] 1 Cr.App.Rep 184

*Admissibility, death, right to examine witnesses, witness statements*

EVIDENCE

**Witness**

*Prosecution witness dying before trial – judge allowing witness statement to be read to jury – whether defendant's Convention right to fair trial breached – Human Rights Act 1998, sch.1, Pt 1, Art 6(3) (d)*

The appellant was accused of sexually assaulting two females and was charged with two counts of indecent assault. By the time of the trial the first complainant had died. The prosecution case was that the allegations of the two complainants were mutually supportive. The Crown also relied on allegations of sexual assault which were not charged in the indictment made by two other women. No suggestion was made that the four women knew each other or were aware of the details of the others' allegations. The prosecution applied to admit in evidence the witness statement made by the first complainant. The judge held it was in the interests of justice for the statement to be admitted pursuant to s.23, 25 and 26 of the Criminal Justice Act 1988. The appellant was convicted. The appellant appealed on the ground that since it had not been possible to cross-examine the first complainant it had been a breach of Art.6(3)(d) of the Convention for the protection of Human Rights and Fundamental Freedoms to admit her statement in evidence.

**Held**, dismissing the appeal, that where a witness who was the sole witness of a crime had made a statement to be used in its prosecution and had died, there was a strong public interest in the admission of the statement in evidence so that the prosecution might proceed. Although that public interest did not override the requirement that the appellant have a fair trial, the provision in Art.6(3)(d) that the person charged should be able to examine the witness against him was just one specific aspect of a fair trial. If the opportunity was not provided the question was whether the proceedings as a whole, including the way evidence was taken, were fair. In the present case the complainant had not absented herself through fear or otherwise, nor had she exercised a right to keep silent. The reason was death which brought considerations of its own. In the circumstances the rights of the appellant under Art 6 of the Convention had not been infringed by the admission of the statement and his trial had not been unfair.

*[You do not need to have the provisions of the Criminal Justice Act 1988, except that you should know that they allowed for the reading of a deceased witness' statement provided the court gave leave on the basis that it was in the interests of justice to do so. When considering the interest of justice the court had to consider, inter alia, the risk of unfairness to the defendant if he were not able to controvert the statement.]*

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## Witness statements – relevant to questions 3,4, and 5.

### **Statement of Stephen White**

I am a pensioner living alone in single storey sheltered accommodation on the Welbrook Estate.

I have known the defendant for many years as I used to live next door to his family when he was growing up. I was very friendly with his father.

Over the past six months I have reported the defendant to the police three times for acts of vandalism.

On Thursday 6<sup>th</sup> March 2008 at about 5.30pm I was outside my front door on the grass when the defendant appeared. He said "You grass – you're dead" and pointed two fingers towards me as if he were pointing a gun. Because of the previous incidents but more because of his general reputation I was frightened that he would carry out his threat.

### **Statement of Emily Jones**

On Thursday 6<sup>th</sup> March I was on my way home from college. I think it was about 4.45pm. As I passed Stephen White's home I saw the defendant, whom I know as he was in the same class at school as my older brother, speaking to Mr White, whom I also know. Mr White was leaning out of his front window. I did not hear what was said although it looked as if they were not very friendly towards each other.

### **Statement of James Alan Wilson**

I live in a flat on the 3<sup>rd</sup> floor of Timpson House on the Welbrook Estate. I do not have paid employment but I am Chair of the local Neighbourhood Watch Committee. I own a red Ford Fiesta.

On Friday 7<sup>th</sup> March 2008 I was at home. At about 11pm I looked out of my window and saw three males in their late teens or early twenties approach my car. I had a reasonable but not completely clear view. I did not recognise any of the males.

Two of the males had shaven heads and the third had shoulder length hair. This male went right up to my car – the others were about six feet away. I could not see exactly what happened but I think he must have broken the window of the car as I then saw flames coming from inside it. I had left the car secure about an hour before.

I immediately called the police but they arrived so quickly that they must have been passing. I saw the longer haired male and one of the shaven headed males being arrested. The third male escaped.

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## Statement of PC Jennings

Confirms arrest of two of the three as set out by Mr Wilson and that the defendant has shoulder length hair.

## Interview of the defendant

### Concerning 6<sup>th</sup> March

He said he was not there. Stephen White is an old man who is confused. Emily Jones has never liked him and is lying.

### Concerning 7<sup>th</sup> March

He says that he was with two others – the one arrested and a third man he names. He was not beside the car but the man who escaped was. As that man ran away he accidentally knocked the defendant into the side of the car.

## Scientist – Selina Davidson

Found residue on the defendant's clothing consistent with that from the burnt car.

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## Note as to Lay Representatives, McKenzie Friends and Vexatious Litigants

**Lay Representatives** are advocates without general rights of audience, who are permitted, at the discretion of the court, to address it and to conduct the case on behalf of the Litigant in Person.

**McKenzie Friends** render assistance in presenting a case. They are people who quietly assist a Litigant in Person by taking notes and making suggestions or giving advice to the Litigant in Person when called upon. They may assist the Litigant in Person with managing the paperwork in the case. Unlike a Lay Representatives, they may not address the court or tribunal directly.

**Vexatious litigants.** There are a variety of ways in which a persistent and troublesome litigant may be made vexatious. All you need to know for the purposes of this exercise is that if such an order is made the person subject to it may not bring proceedings without leave of a court.