

# TABLE OF CONTENTS

	PAGE
<i>Preface</i> .....	v
<i>Foreword to Sixth Edition</i> .....	vii
<i>Table of Cases</i> .....	ix
<i>Table of International Cases</i> .....	lvii
<i>Table of Statutes</i> .....	lxi
<i>Table of Statutory Instruments</i> .....	lxxi
<i>Table of European Convention on Human Rights</i> .....	lxxiii

PARA

**Part 1**  
**INTRODUCTORY**

**1. Introduction**

1. The Meaning and Classification of Evidence.....	1-01
A. Direct and indirect evidence.....	1-03
B. Original and hearsay evidence.....	1-04
C. Primary and secondary evidence.....	1-05
D. Circumstantial evidence.....	1-06
(1) Motive.....	1-07
(2) Acts preparatory to the commission of the offence	
(3) Fingerprints	
(4) Lies told by the defendant.....	1-08
(5) Possession of recently stolen goods.....	1-09
(6) Presumptions of fact	
2. The Best Evidence Rule.....	1-11
3. Admissibility and Relevance.....	1-12

2. Real Evidence.....	2-01
1. Chattels.....	2-02
2. Documents.....	2-05
3. Inspection and View.....	2-06
4. The Admissibility of Photographs and Recordings: General Principles.....	2-09
5. Photographs	
A. Admissibility.....	2-11
B. Photographs as evidence.....	2-12
C. Proving identity by photographs.....	2-13

6. Tape Recordings.....	2-16
A. Admissibility.....	2-17
B. Procedure for recording and documentation.....	2-22
C. Procedure at trial.....	2-25
7. Video Recordings.....	
A. Admissibility.....	2-31
B. Video recordings as evidence.....	2-33
C. Interpreting the recording.....	2-34
(1) Eye-witnesses.....	2-35
(2) Experts.....	2-36
(3) Identifying witnesses.....	2-37
D. Commentary by non-experts.....	2-39
8. Automatic Recordings.....	2-43
<b>3. Documents.....</b>	<b>3-01</b>
1. Meaning and Classification.....	3-02
2. Private Documents.....	
A. Primary evidence.....	3-04
B. Secondary evidence.....	3-07
(1) Copies.....	3-08
(2) Copies of copies.....	3-09
(3) Microfilm copies.....	3-10
(4) Hearsay statements.....	3-11
C. Admissibility of secondary evidence.....	3-12
D. Bankers' books.....	3-15
3. Public Documents.....	3-18
4. Judicial Documents.....	3-21
A. Civil proceedings.....	3-22
B. Proof of convictions and acquittals.....	3-23

**Part 2**

**BURDEN AND STANDARD OF PROOF**

<b>4. Burden and Standard of Proof.....</b>	<b>4-01</b>
1. Burden of Proof.....	4-02
A. The legal burden.....	
(1) The rule.....	4-03
(2) The burden on the prosecution to negative the defence.....	4-07
(3) Exceptions to the rule.....	4-10
B. The evidential burden.....	4-27
C. The burden of establishing the admissibility of evidence.....	
(1) Confessions.....	4-34
(2) Competence of witnesses.....	4-35
(3) The admissibility of other evidence.....	4-36
2. Standard of Proof.....	4-37
A. Proof beyond reasonable doubt.....	4-38

B. Directions to the jury.....	4-40
C. Proof on the balance of probabilities.....	4-46
D. Standard of proof on other issues.....	
(1) Fitness to plead.....	4-48
(2) Confessions.....	4-49
(3) Other questions of admissibility of evidence.....	4-50
<b>5. Proof Where Evidence is Not Necessary.....</b>	<b>5-01</b>
1. Presumptions.....	5-02
2. Formal Admissions.....	5-07
3. Judicial Notice.....	5-08
4. The Effect of Previous Acquittals and Convictions.....	5-13
A. Acquittals.....	
(1) Acquittals cannot be challenged.....	5-14
(2) Defence entitled to rely on previous acquittal.....	5-21
B. Convictions as evidence of the offence charged.....	
(1) Admissibility under s.74.....	5-27
(2) Relevant to an issue.....	5-29
(3) Discretion to exclude.....	5-33
(4) Directions to the jury.....	5-36
(5) Other rules.....	5-37

**Part 3**

**EXCLUSIONARY RULES AND EXCEPTIONS**

<b>6. Evidence of Opinion.....</b>	<b>6-01</b>
1. General Rule.....	6-02
2. Exceptions to the General Rule.....	
A. The opinions of non-experts.....	6-07
(1) Matters of impression and narrative.....	6-08
(2) Witness's own condition.....	6-09
(3) Handwriting.....	6-10
(4) Voice recognition.....	6-11
B. The opinions of experts.....	6-12
(1) Admissibility.....	6-13
(2) The expert as witness.....	6-32
(3) Proving facts upon which expert opinion is based.....	6-45
(4) Function and weight of expert evidence.....	6-47
<b>7. Character.....</b>	<b>7-01</b>
1. Introduction.....	7-01
2. Good Character.....	7-06
A. What evidence may be given?.....	7-08
B. Evidence in rebuttal.....	7-11
C. Directions to the jury.....	7-12

D. Spent convictions	
(1) The practice.....	7-22
(2) Spent convictions and good character.....	7-26
3. Bad Character—General.....	7-28
A. Abolition of the previous law.....	7-29
B. Bad character defined.....	7-30
4. Bad Character of the Defendant.....	7-41
A. Which gateway?.....	7-42
(1) Agreement between the parties.....	7-43
(2) Adduced by the defendant.....	7-44
(3) Important explanatory evidence.....	7-45
(4) Matter in issue between the defendant and prosecution.....	7-47
B. Makes it no more likely that he is guilty of the offence.....	7-54
C. Cross-admissibility.....	7-55
(5) Evidence must have substantial probative value between the defendant and a co-defendant.....	7-58
(6) Evidence to correct a false impression.....	7-61
(7) Attack on another person's character.....	7-63
(8) Contaminated evidence.....	7-65
5. Bad Character of Others.....	7-67
A. Important explanatory evidence.....	7-69
B. Substantial probative value.....	7-70
C. Evidence in rebuttal.....	7-71
(1) Ancillary provisions of general application.....	7-72
(2) Appeals.....	7-74
(3) Complainants in proceedings for sexual offences.....	7-75
(4) Section 41 and art.6 of the European Convention on Human Rights.....	7-78
(5) Consent—Youth Justice and Criminal Evidence Act 1999 s.41(3).....	7-79
<b>8. Hearsay: 1. Hearsay Generally</b>	
1. Introduction	
A. What is hearsay?.....	8-01
B. Hearsay evidence distinguished from evidence of previous consistent statements.....	8-02
C. Hearsay distinguished from “original evidence”.....	8-03
(1) A statement as a fact in issue.....	8-04
(2) A statement in a document as circumstantial evidence.....	8-05
(3) Words in a statement may be relevant to an issue in the case.....	8-06
(4) A statement may explain the state of mind of the person to whom it is made.....	8-07
(5) A statement may explain the defendant's state of mind on some other occasion.....	8-08

(6) A statement may explain the state of mind of the speaker.....	8-09
D. Proposals for reform.....	8-10
(1) The Law Commission Consultation Paper (1995) and Report (1997).....	8-11
(2) The Auld Report.....	8-12
2. Criminal Justice Act 2003 sections 114–134.....	8-13
A. The hearsay rule and the European Convention.....	8-14
B. General principles of admissibility: Criminal Justice Act 2003 sections 114, 115, 134	
(1) Hearsay admissible under conditions: section 114.....	8-17
(2) Statutory definitions.....	8-18
(3) “Statements . . . evidence of any matter stated”: s.115.....	8-21
(4) The interests of justice: section 114(1)(d).....	8-26
(5) Hearsay admitted by leave of the court: section 114(2).....	8-31
(6) Exclusion on other grounds.....	8-36
C. The principal categories of admissibility.....	8-37
(1) The witness is unavailable: section 116.....	8-38
(2) Business and other documents: section 117.....	8-52
(3) Statements admissible at common law.....	8-61
(4) Confessions.....	8-82
(5) Admissions by Agents.....	8-83
(6) Common enterprise.....	8-84
(7) Expert evidence.....	8-85
D. Previous statements: sections 119–122	
(1) Previous inconsistent statements.....	8-86
(2) Other previous statements of witnesses.....	8-87
(3) Multiple hearsay: section 121.....	8-90
E. Safeguards	
(1) Capability: section 123.....	8-92
(2) Credibility: section 124.....	8-93
(3) Stopping the case where the evidence is unconvincing: section 125.....	8-95
(4) General discretion to exclude evidence: section 126.....	8-97
(5) Directions to the jury.....	8-98
F. Miscellaneous	
(1) Representations other than by a person.....	8-99
(2) Statements and depositions.....	8-101
(3) Schedules and glossaries.....	8-108
(4) Evidence at retrial.....	8-109
(5) Proof of statements in documents.....	8-110
(6) Failure to comply with procedural requirements.....	8-111

<b>9. Hearsay: 2. Confessions</b> .....	9-01
1. What Amounts to a Confession?.....	
A. The meaning of "confession".....	9-04
B. Admission by conduct.....	9-05
C. Failure to reply to an accusation.....	9-06
D. Failure to reply to written allegations.....	9-10
E. Vicarious admissions.....	9-11
F. Exculpatory statements.....	9-13
2. When is a Confession Admissible?.....	9-15
A. Admissibility under sections 76 and 76A.....	9-16
(1) Sections 76(2)(a), 76A(2)(a): oppression.....	9-17
(2) Sections 76(2)(b) and 76A(2)(h): unreliability.....	9-20
B. Exclusion under section 78.....	9-25
C. Violation of rights under the European Convention.....	9-27
D. Breaches of statute and code.....	
(1) General principles.....	9-28
(2) Access to legal advice.....	9-34
(3) Conduct and records of interviews.....	9-38
(4) What amounts to an interview?.....	9-45
E. Common law discretion, statutory duty.....	9-49
F. Procedure for determining admissibility.....	9-50
3. Rules Concerning the Use of Confessions.....	9-54
A. General rules.....	9-55
B. Confession by mentally handicapped person.....	9-59
C. Function of the jury.....	9-61
D. Matters provable by admission.....	9-62
4. Evidence Obtained in Consequence of an Inadmissible Confession.....	9-63

## Part 4

EXCLUSION THROUGH DISCRETION PRIVILEGE OR  
CONVENTION RIGHTS

<b>10. The Discretion to Exclude Evidence</b> .....	10-01
1. The Common Law Discretion.....	10-02
A. Prejudicial effect outweighing probative value.....	10-03
B. Improperly obtained evidence.....	10-05
C. Justices' discretion.....	10-08
D. European Convention on Human Rights.....	10-09
E. Section 82(3).....	10-11
2. The Discretion under section 78.....	10-13
A. Exercise of the discretion.....	
(1) Generally.....	10-15
(2) Improperly obtained evidence.....	10-17
(3) The European Convention on Human Rights.....	10-27
(4) Conclusion.....	10-29
B. Review of discretion.....	10-30

C. Procedure.....	10-31
<b>11. Privilege</b> .....	11-01
1. The Privilege against Self-incrimination.....	11-02
A. The general rule.....	11-02
B. Taking the objection.....	11-04
C. Statutory provisions abrogating the privilege.....	11-08
D. The privilege against self-incrimination under article 6 of the Convention.....	11-12
(1) The nature and degree of the compulsion.....	11-13
(2) The existence of safeguards.....	11-14
E. The right of silence.....	11-15
(1) The common law rules.....	11-16
(2) Inferences from the defendant's silence: the 1994 Act.....	11-17
2. Legal Professional Privilege.....	11-31
A. The general rule.....	11-32
B. Exceptions to the general rule.....	11-34
C. Absolute nature of the rule.....	11-36
D. Expert witnesses.....	11-37
E. Documents in a lawyer's possession.....	11-38
F. The admissibility of privileged documents.....	11-39
G. Lawyer/client communications under the European Convention on Human Rights.....	11-41
3. Other Confidential Communications.....	11-42
<b>12. Public Interest</b> .....	12-01
1. Information for the Detection of Crime.....	12-02
A. The rule.....	12-02
B. Exceptions to the rule.....	12-05
C. The rule in relation to observation posts.....	12-09
D. Other cases.....	12-11
2. Public Interest Immunity.....	
A. The rule.....	
(1) Generally.....	12-12
(2) "Class" or "contents" claims.....	12-13
(3) Extension of the rule.....	12-14
(4) The balancing exercise.....	12-16
(5) Judicial reliance on material not disclosed on grounds of public interest immunity.....	12-18
(6) Conclusion.....	12-20
B. Procedure.....	
(1) Making the application.....	12-21
(2) Keeping the ruling under review.....	12-24
(3) Summary trials.....	12-25

**13. Convention Rights**

- 1. Introduction .....13-01
- 2. The Human Rights Act 1998 .....13-03
- 3. The Convention Rights .....13-09
  - A. Article 3: prohibition of torture, inhuman or degrading treatment .....13-10
  - B. Article 5: right to liberty and security .....13-11
  - C. Article 6: right to a fair trial .....13-14
    - (1) Article 6(1): The fairness of the proceedings .....13-15
    - (2) Article 6(2): The right to be presumed innocent .....13-20
    - (3) Article 6(3): the minimum rights .....13-22
  - D. Article 8: right to respect for private and family life .....13-24
- 4. Violations of Convention Rights .....13-27

**Part 5**

**IDENTIFICATION AND CORROBORATION**

**14. Identification** .....14-01

- 1. Visual Identification .....14-02
  - A. General rules: the *Turnbull* guidelines .....14-03
  - B. Withdrawing the case from the jury .....14-06
  - C. Supporting evidence of a visual identification .....14-08
  - D. Cases in which *Turnbull* is not applicable .....14-10
- 2. Identification in Court: Dock Identification .....14-13
- 3. Identification Out of Court
  - A. Code D .....14-16
  - B. When identification procedures are to be used .....14-17
  - C. Video identification and identification parades .....14-18
  - D. Identification at a group identification or confrontation .....14-22
  - E. Street identifications .....14-25
  - F. Recognition by a witness .....14-28
  - G. Breaches of the Code of Practice .....14-29
  - H. Prosecution disclosure .....14-32
  - I. Evidence of out-of-court identification .....14-33
- 4. The Use of Photographs for Identification .....14-37
- 5. Admissibility of Identification Based on Photographic Images .....14-40
- 6. Admissibility of Photofits and Sketches .....14-42
- 7. Other Forms of Identification
  - A. Identification by fingerprints .....14-44
  - B. Identification by DNA .....14-45
    - (1) The expert's evidence .....14-47
    - (2) Disclosure .....14-48
    - (3) Summing-up .....14-49
  - C. Possession of incriminating articles as evidence of identity .....14-51

- D. Voice identification .....14-52
- E. Miscellaneous cases .....14-53

**15. Corroboration and Suspect Evidence**

- 1. The Corroboration Rules
  - A. Common law rules .....15-01
  - B. Statutory provisions .....15-02
    - (1) Perjury .....15-03
    - (2) Speeding .....15-04
    - (3) Other rules .....15-06
    - (4) Functions of judge and jury .....15-07
  - C. Abolition of the common law rules .....15-08
  - D. The effect of abolition .....15-10
- 2. The Evidence of Suspect Witnesses .....15-15
  - A. Witnesses with a purpose of their own to serve
    - (1) The rule in *Beck's case* .....15-16
    - (2) Development of the rule .....15-17
  - B. Co-defendants .....15-19
  - C. Procedure .....15-20

**Part 6**

**RULES CONNECTED WITH THE TRIAL**

**16. Functions of Judge, Jury and Justices** .....16-01

- 1. Trials on Indictment by both Judge and Jury: The Functions of Judge and Jury .....16-02
  - A. Functions of the judge .....16-04
    - (1) Admissibility of evidence .....16-05
    - (2) Trial-within-a-trial .....16-07
    - (3) Questioning witnesses .....16-09
    - (4) Case for the jury .....16-10
    - (5) Summing-up .....16-13
    - (6) Directions to convict .....16-23
  - B. Functions of the jury .....16-24
- 2. Trials on Indictment Without a Jury .....16-25
- 3. Summary Trials: Functions of Justices
  - A. Admissibility of evidence .....16-27
  - B. Submission of no case .....16-29
  - C. Reasons for conviction .....16-30
  - D. Review of justices' findings of fact .....16-31

**17. Competence and Compellability of Witnesses**

- 1. The General Rule .....17-01
- 2. Children .....17-03
- 3. Persons of Unsound Mind .....17-04
- 4. Incapacitated Witnesses .....17-06

5. The Defendant	
A. The Youth Justice and Criminal Evidence Act 1999 s.53 and the Criminal Evidence Act 1898 s.1 (as amended)	17-09
(1) As a witness for a co-defendant	17-11
(2) As a witness for the prosecution	17-12
(3) Accomplices	17-13
B. The Criminal Justice and Public Order Act 1994 s.35	17-14
(1) Application of the section	17-16
(2) Operation of the section	17-18
(3) Summing-up	17-20
(4) Convention rights	17-22
6. The Defendant's Spouse or Civil Partner	17-24
A. As a witness for the prosecution	17-25
(1) Violence against a wife	17-28
(2) Offences against children	17-29
B. As a witness for the defence	17-30
C. Former spouses	17-31
D. Polygamous marriages	17-32
E. Comment on the failure of a spouse to give evidence	
(1) By the prosecution	17-33
(2) By the judge	17-34
<b>18. Disclosure</b>	
1. Introduction	18-01
2. The disclosure regime: Criminal Procedure and Investigations Act 1996	18-03
A. Introduction to the Act	18-04
B. Primary prosecution disclosure (section 3)	18-05
C. Compulsory defence disclosure (section 5)	
(1) The defence statement	18-09
(2) Alibi evidence (section 6A(2)(3))	18-10
(3) Updated disclosure by the accused (section 6B)	18-11
(4) Notice of intention to call defence witnesses (section 6C)	18-12
(5) Notice as to experts instructed by the accused (section 6D)	18-13
(6) Further provisions as to disclosure by the accused (section 6E)	18-14
(7) Faults in disclosure by the accused (section 11)	18-15
D. Prosecutor's continuing duty of disclosure (section 7A)	18-17
(1) Disclosure post-conviction	18-18
E. Disputes about disclosure (section 8)	18-19
(1) Time limits (sections 12 and 13)	18-20
(2) Public interest (sections 14-16)	18-21
(3) Confidentiality provisions (sections 17 and 18)	18-22
3. Code of Practice: Part II of the 1996 Act	18-23
4. The European Convention on Human Rights	18-25

5. Other Statutory Rules	
A. Expert evidence	18-28
B. The defence in serious fraud cases	18-29
<b>19. Course of Evidence</b>	
1. Calling Witnesses	
A. Obligation on the parties	
(1) Prosecution	19-01
(2) Defence	19-03
B. Order of witnesses	19-04
C. Witnesses remain out of court until called	19-05
D. Power of judge to call witnesses	19-06
2. Swearing Witnesses	19-08
3. Vulnerable and Intimidated Witnesses	19-11
A. Witnesses eligible for assistance	19-12
B. Certain accused persons eligible for assistance	19-14
C. Special measures directions	19-15
D. The special measures available	
(1) Screens	19-19
(2) Live link	19-22
(3) Evidence in private	19-24
(4) Removal of wigs and gowns	19-25
(5) Video-recorded evidence-in-chief	19-26
(6) Video-recorded cross-examination or re-examination	19-33
(7) Intermediaries and communication aids	19-34
E. Status of evidence and warning to jury	19-35
F. Witness anonymity orders	
(1) The current legislation	19-36
(2) Procedure	19-37
(3) Criteria	19-38
(4) Directions	19-39
4. The Order of Evidence	
A. Procedure	19-40
B. Evidence after the close of the prosecution case	19-41
(1) Omission to call technical evidence	19-43
(2) Evidence not available before	19-44
(3) Evidence in rebuttal	19-45
C. Evidence after speeches	19-47
<b>20. Previous Consistent Statements</b>	20-01
1. The Rule against Previous Consistent Statements	
A. The general rule	20-02
B. Exceptions	20-03
(1) (Recent) complaints	20-05
(2) Statements forming part of the res gestae	20-08
(3) Statements to rebut allegations of (recent) fabrication	20-09

CONTENTS

(4) Statements relating to a previous identification.....	20-13
(5) Previous statements by accused persons .....	20-15
2. Memory Refreshing .....	20-22
A. Before the witness gives evidence .....	20-23
B. While the witness is giving evidence .....	20-26
(1) The writing.....	20-28
(2) Producing the document for inspection.....	20-31
(3) Exhibiting the document.....	20-32
<b>21. Examination of Witnesses</b>	
1. Introduction .....	21-01
2. Examination-in-Chief.....	21-03
A. Leading questions	
(1) General rule.....	21-06
(2) Exceptions .....	21-07
B. Discrediting a party's own witness	
(1) Common law .....	21-11
(2) Criminal Procedure Act 1865 section 3 .....	21-12
3. Cross-examination.....	21-18
A. General rule .....	21-19
B. Cross-examination by accused in person .....	21-21
C. Cross-examination on documents .....	21-23
D. Proof of previous inconsistent statements .....	21-26
E. Cross-examination as to credit.....	21-30
4. Re-examination .....	21-35
Index .....	PAGE 623

PART 1

INTRODUCTORY

## CONTENTS

(4) Statements relating to a previous identification.....	20-13
(5) Previous statements by accused persons .....	20-15
2. Memory Refreshing .....	20-22
A. Before the witness gives evidence .....	20-23
B. While the witness is giving evidence .....	20-26
(1) The writing.....	20-28
(2) Producing the document for inspection.....	20-31
(3) Exhibiting the document.....	20-32
<b>21. Examination of Witnesses</b>	
1. Introduction .....	21-01
2. Examination-in-Chief.....	21-03
A. Leading questions	
(1) General rule.....	21-06
(2) Exceptions.....	21-07
B. Discrediting a party's own witness	
(1) Common law .....	21-11
(2) Criminal Procedure Act 1865 section 3.....	21-12
3. Cross-examination.....	21-18
A. General rule .....	21-19
B. Cross-examination by accused in person .....	21-21
C. Cross-examination on documents.....	21-23
D. Proof of previous inconsistent statements.....	21-26
E. Cross-examination as to credit.....	21-30
4. Re-examination .....	21-35
Index .....	PAGE .....623