Contents

Preface Xi

Table of statutes xiii

Table of cases xxi

Introduction

•	evance and admissibility of evidence	15
The respective fu	nctions of judge and jury 17	
•	st evidence principle' 24	
	proof is unnecessary 25	
Judicial findings as		
*	ce, unfairly obtained evidence and suspect 43	
	d as a matter of public policy 58	
Further reading		
Self-test question	s 65	
_	sumptions and the burden of proof of proof' and the 'evidential burden' 68 en' 70	67
The prosecution's cases 72	s legal burden of proof in criminal	
When the defend of proof 74	ant in a criminal case bears the legal burde	n
The standard of p	roof 80	
The evidential bu	rden 82	
The judge's 'invisi		
The burden of pro- evidence 8	oof when establishing the admissibility of 5	
Presumptions and	the incidence of the burden of proof 86	5
Reversal of the but Human Right	urden of proof and the European Conventi s 87	on or

Further reading 115 Self-test questions 115

Chapter three Witnesses: competence, compellability and various privileges 117

The competence of witnesses in civil and criminal cases 118

The compellability of witnesses 120

Sworn and unsworn evidence 128

Privileges enjoyed by certain classes of witnesses 129

Public interest immunity 147

Further reading 152

Self-test questions 153

Chapter four The course of the trial 155

The right to begin 156

The role of the judge 157

The judge's right to call a witness 158

Examination-in-chief 159

Hostile witnesses 160

Cross-examination 165

Re-examination 183

Calling evidence relating to witnesses' veracity 184

The Crown's right to reopen its case 189

Special protections extended to various classes of witness in criminal cases 192

Further reading 216

Self-test questions 217

Chapter five Witnesses' previous consistent statements and the remnants of the rule against narrative 219

The rule excluding previous consistent statements 220

Evidence-in-chief delivered by video recording (Criminal Justice Act 2003, s 137) 242

Statements made by the accused when first taxed with incriminating facts 243

Statements made by the accused when incriminating articles are recovered 245

Further reading 246

Self-test questions 246

Chapter six Character and credibility 247

Issue and credit 247

The concept of 'credibility' 249
Bringing out the character of the parties and their witnesses 250
Evidence of the defendant's good character 254
Further reading 263
Self-test questions 264

Chapter seven Evidence of the defendant's bad character 267

Whether or not to admit evidence of a defendant's misconduct on other occasions 268

- The admission of evidence of a defendant's bad character in criminal cases: Part 11 of the Criminal Justice Act 2003 273
- II. Similar fact evidence in civil cases 338Further reading 341Self-test questions 342

Chapter eight The opinion rule and the presentation of expert evidence 345

The general rule excluding evidence of opinion 346

Four exceptions to the opinion rule born of necessity 347

The principal exception to the opinion rule: expert opinion 349

Scientific evidence: the presentation of DNA evidence 368

The presentation of scientific evidence: Bayes theorem and instructing the jury in mathematical probabilities 371

Further reading 373

Chapter nine The rule against hearsay 375

The rationale underlying a rule against hearsay 376

I. Hearsay in criminal cases 379

II. Hearsay in civil proceedings 441

Further reading 446

Self-test questions 446

Chapter ten Confessions 449

Self-test questions 374

What constitutes a 'confession' under PACE, s 82(1)? 452
At common law an accused's silence may amount to an admission 453

Can a denial ever amount to a 'confession' under PACE, s 82(1)? 456

The conditions of admissibility of confessions under PACE 459 What if the accused, having first made an inadmissible confession, later makes a further confession which is obtained by proper methods? 478

Confessions by mentally handicapped persons (PACE, s 77) 479

The admissibility of evidence discovered in consequence of an inadmissible confession 479

The status of 'mixed statements' 481

An accused's statement to the police is not evidence against other co-accused 481

An accused's right to use his co-accused's confession (Criminal Justice Act 2003, s 128) 485

Further reading 492 Self-test questions 492

Chapter eleven Drawing adverse inferences from a defendant's omissions, lies or false alibis 495

- Inferences drawn from the defendant's silence: the Criminal Justice and Public Order Act 1994 496
- II. The silence provisions of the Criminal Justice and Public Order Act 1994 502
- III. Inferences drawn from lies told by the defendant 542
- IV. Inferences drawn from false alibis put forward by the defendant 546

Further reading 547 Self-test questions 548

Chapter twelve Identification evidence 549

The inherent unreliability of evidence of identification 550
The Court of Appeal's decision in *Turnbull* 550
Identification procedures and PACE, Code D 560
Code D and the various methods of identification 568
Dock identifications 569
Police photographs 570
Identifications made from photographs and videotape 571
Photographic identification and the expert *ad hoc* 572
Other assorted means of identification, including tracker dogs 576

Further reading 577
Self-test questions 578

Chapter thirteen Documents 579

What is a 'document'? 580

Proof of 'public documents' and 'judicial documents' 580

Proof of 'private documents' by primary evidence 581

Proof of 'private documents' by means of copies 582

Proof of 'private documents' by means of other forms of secondary evidence 583

Bankers' books 585

Self-test questions 587

Index 589