



Practical Guide to Evidence

Christopher Allen



fourth edition



PRACTICAL GUIDE TO EVIDENCE

..... FOURTH EDITION

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To Tom and Minnie

Rules capable of rendering right decisions secure are what the nature of things denies. To the establishment of rules by which misdecision is rendered more probable than it would otherwise be, the nature of man is prone. To put the legislator and the judge upon their guard against such rashness is all that the industry of the free inquirer can do in favour of the ends of justice.

Jeremy Bentham

It may safely be laid down as an universal position, that the less the process of inquiry is fettered by rules and restraints, founded on extraneous and collateral considerations of policy and convenience, the more certain and efficacious will be its operation.

Thomas Starkie

..... PREFACE TO THE FOURTH EDITION

The last edition of this book was finished at a time when the evidence provisions of the Criminal Justice Act 2003 had not been brought into force. The courts since then have been engaged in interpreting and applying the new legislation, and their work is reflected in this edition. I have paid particular attention to cases on the definition of 'evidence of bad character' such as *Machado* (2006), *Brummitt* (2006) and *McNeill* (2007); to the guidelines laid down by the Court of Appeal in *Hanson* (2005); and to other decisions on the various 'gateways' under s 101 of the Act such as *Renda* (2005), *Highton* (2005), *Wilkinson* (2006), *M (Michael)* (2006), *Singh* (2007), *Mustapha*, (2007) and *Campbell* (2007).

Decisions on the new hearsay law have not been so numerous, but I have taken the opportunity to provide an account of the decision in *Maher v DPP* (2006) which, while breaking no new ground, seemed to be useful as an example of how several provisions of the Act were applied to a not uncomplicated set of facts. Among other topics that have required attention are reverse burdens of proof, section 41 of the Youth Justice and Criminal Evidence Act 1999, the judgment of the House of Lords on the definition of a confession in *Hasan* (2005), the decision of the Court of Appeal in *O* (2006) on previous consistent statements, and developments in the law relating to opinion evidence. I have also said rather more than in previous editions about the influence of the European Convention on Human Rights on evidence law.

Innovations in this edition are the reading lists and exercises that follow each chapter. Their object is to help students, particularly those working on distance learning courses, to broaden their understanding of the subject and to test their progress.

Christopher Allen
January, 2008

..... EXTRACT FROM PREFACE
..... TO THE FIRST EDITION

With evidence, it is easy to miss the wood for the trees. One of the main reasons for this is that the subject is as much about reasoning with facts, the use of language, and the application of principles as it is about rules of law. I have tried to write a book that will make this clear. My experience of teaching and examining has shown that many students find it hard to understand evidence outside the context of factual situations, and even harder to apply what has been learned to different sets of facts in problem questions. I have tried to cope with these difficulties by providing detailed illustrations from the cases. Where a point has seemed particularly important I have provided several examples of the law at work, in the hope that if one example fails to make things clear another may succeed. I have tried to keep particularly in mind the needs of students who are studying part time or for an external degree. In a full time class any obscurities or ambiguities in a text can be resolved quickly before they develop into difficulties with the subject, but for the part time or external student it is vital to get things as clear as possible from the start. I cannot claim to have achieved this completely, but I have tried to do so. I owe a special debt of gratitude to Stephen Guest, who has read much of my manuscript. It has benefited greatly from his comments. Of course, he must not be taken to endorse all the opinions here, and any errors that remain are mine alone. Many of the chapters have their origins in lectures and seminars given at the Inns of Court School of Law, at University College London and on London University's External Programme. I am grateful to my students for helping me to clarify my ideas about how to present this subject.

Christopher Allen
Gray's Inn
April 1998

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