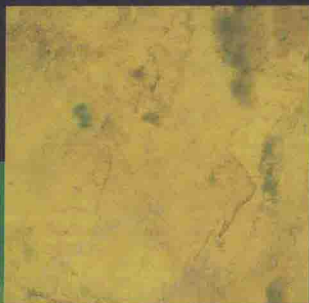


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MURPHY ON
EVIDENCE

Peter Murphy



EIGHTH EDITION

MURPHY ON EVIDENCE

EIGHTH EDITION

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PREFACE TO THE EIGHTH EDITION

During the lifetime of this edition, this book will approach its twenty-fifth anniversary. As it does so, it has found a new publishing home. Because of the recent acquisition of Blackstone Press by Oxford University Press, it will now bear the OUP imprint. This is, therefore, an appropriate time to thank old friends and new. In 1979, after a major publishing house had rejected the book on the ground that the fictitious case of Edward Coke and Henry Littleton I had created as a teaching vehicle was too salacious, John Gibbs of Financial Training Publications agreed to publish it after a single pleasant lunch. He did so the following year, under the FTP hallmark title *A Practical Approach to Evidence*, and the fictitious case remained as written. The formation of Blackstone Press by John's colleagues, Alistair MacQueen, Heather Saward and Jonathan Harris, provided an amicable transition to a specialist legal publishing house, where every edition up to and including the seventh was prepared with meticulous care and the utmost professionalism in every respect under the eagle eye of my editor, Derek French. Along the way, Blackstone changed the name of the book to *Murphy on Evidence*. I owe more than I can say to these old friends for so many years of cooperation which were both rewarding and tremendous fun. I now also have the pleasure of thanking my new colleagues at OUP who have worked so hard in preparing this eighth edition, in particular Roxanne Selby, and Jane O'Regan, and my editor, Dan Leissner.

In several previous editions I have drawn attention to what I see as the steady erosion of the rights of the accused through statutory and judicial modifications of the law of evidence. These continue, as witness the current proposals to destroy the double jeopardy rule and to limit the right to trial by jury. But it would be unfair of me not to record that the judicial treatment of the European Convention on Human Rights since the passage of the Human Rights Act 1998 has surpassed my expectations. In a number of cases, led by *Lambert* [2002] 2 AC 545, and *R (on application of Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] 3 All ER 1, the courts have unflinchingly championed the accused's right to a fair trial and given renewed impetus to some domestic rights which were under threat, including legal professional privilege. For those concerned with the rights of persons accused of crime, this has been something of an oasis in an otherwise increasingly hostile legal desert.

This eighth edition has been thoroughly updated. All the important statutory changes and decisions in the field have been dealt with, the decisions encompassing not only those of English courts but also those of the European Court of Human Rights. At the time of writing, the Criminal Justice Bill 2003, as written as at 21 May 2003, foreshadows some radical reforms of the law of evidence in the areas of hearsay and character evidence in criminal cases. Because this reform is not only radical, but also

inevitable and probably imminent, I have referred to the provisions of the Bill in more detail than would be usual with proposed legislation whose form could yet change, and the text of the relevant chapters is included in two appendices. I have also reviewed the whole book with a view to improving its accessibility and style. The former chapter 1, which had become long and dealt with a number of subjects, has been divided into two chapters. Following the suggestions of a number of teachers who use the book, the fictitious case has been moved to the end of the book where it does not interrupt the flow of the text. There have been many more minor adjustments. I hope this will make the book ever more helpful to those teachers and students who use the book, to whom I owe the greatest debt of all.

I have tried to state the law as at 15 March 2003, though it has proved possible to include a few later materials.

Peter Murphy
Houston

EXTRACT FROM PREFACE TO THE FIRST EDITION

The law of evidence underlies the whole practice of law in every field capable of leading to litigation. Not only a thorough understanding of the rules of admissibility, but also a mature feel for the weight and tactical significance of evidence should be a part of the foundation of every practice. Cases are probably won and lost more often for reasons of evidential acumen, or the lack of it, than for reasons of any other sort. At the same time, evidential problems have a habit of arising, to quote a celebrated rule to be found in Chapter 14 of this book, '*ex improviso*, which no human ingenuity could foresee'. Law and practice can almost always be made the subject of prior research; as often as not, evidence presents problems without warning calling for immediate reaction. Failure to object at the right time, or the making of an unfounded objection may in some cases have serious consequences for the fate of the piece of evidence concerned, or the case as a whole. One's opponent's objections, whether well or ill founded must be dealt with. A colleague at the Bar once said to the author that there was, in his opinion, only one rule of evidence, namely a reaction of instinct on hearing any words spoken in court, which said either, 'Yes, that's all right', or 'No, we can't have that'. That sort of instinct exists and very often works even before the witness speaks at all; it takes time to develop; time, and a thorough knowledge of the rules; but it is of incalculable importance.

Given all this, it is somewhat surprising to survey the textbooks on the subject and to find that they are prone to two distinct tendencies. There are those which treat the subject in a highly academic way, divorced from the realities of practice. There are those which treat the subject as a mass of apparently unrelated minutiae, divorced from any discernible theme. There is also, happily, the matchless but demanding work of Professor Cross, comparisons of which are vain. The present work is intended simply to meet the long-felt need of students for the Bar examinations, now joined by students for the Law Society's examinations, and those on degree courses, for a book soundly based around the considerations of practice in the courts. It is hoped that those concerned professionally with the law of evidence may also find it useful. There are, no doubt, many matters of great interest in academic terms which will not be found here; but equally, the important, recurring issues are dealt with in the context of their practical operation, and of the rules of practice which apply to them.

Islington
1 July 1980

TABLE OF CASES

- A M & S Europe Ltd v EC Commission Case 155/79 [1983] 1 All ER 705 ... 485
- A (No 2) [2002] 1 AC 45 ... 603–4, 605–6
- A T & T Istel v Tully [1993] AC 45 ... 473
- Abadom [1983] 1 WLR 126 ... 382
- Absolam (1988) 88 CR App R 332 ... 55
- Acton Justices, ex parte McMullen (1990) 92 Cr App R 98 ... 348
- Adams [1980] QB 575 ... 67
- Adams [1996] 2 Cr App R 467 ... 8
- Adams (No 2) [1998] 1 Cr App R 377 ... 8
- Agar (1989) 90 Cr App R 318 ... 459
- Ahmed [1994] Crim LR 669 ... 601
- Air Canada v Secretary of State for Trade [1983] 2 AC 394 ... 442, 449, 450, 451, 452, 454
- Ajodha v the State [1982] AC 204 ... 42, 43
- Alladice (1988) 87 Cr App R 380 ... 69, 289, 290
- Allan v UK (2003) 36 EHRR 12 ... 62
- Allen v Dundas (1789) 3 TR 125 ... 395
- Anderson [1988] QB 678 ... 128
- Anderson v Whalley (1852) 3 Car & K 54 ... 556
- Andrews [1987] AC 281 ... 245–6
- Angeli [1979] 1 WLR 26 ... 106, 107, 386, 668
- Apicella (1985) 82 Cr App R 295 ... 67
- Argent [1997] 2 Cr App R 27 ... 319, 323
- Arnold v National Westminster Bank plc [1991] 2 AC 93 ... 401–2
- Ashburton (Lord) v Pape [1913] 2 Ch 469 ... 63, 64, 432, 433, 434
- Ashford Magistrates' Court, ex parte Hilden [1993] QB 555 ... 347
- Ashworth Hospital Authority v MGN Ltd [2001] 1 WLR 515 ... 507–8
- Asiatic Petroleum Co Ltd v Anglo-Persian Oil Co Ltd [1916] 1 KB 822 ... 440
- Aspinall [1999] 2 Cr App R 115 ... 17, ... 292
- Associated Provincial Picture Houses Ltd v Wednesbury corp [1948] 1 KB 223 ... 648
- Ataou [1988] QB 798 ... 496–7
- Attard (1958) 43 Cr App R 90 ... 220–1
- Attorney-General v Bowman (1791) 2 Bos & P 532 ... 168
- Attorney-General v Bradlaugh (1885) 14 QBD 667 ... 32
- Attorney-General v Clough [1963] 1 QB 773 ... 470
- Attorney-General v Hitchcock (1847) 1 Ex 91 ... 619, 625
- Attorney-General v Mulholland [1963] 2 QB ... 477 469, 470, 502
- Attorney-General's Reference (No 7 of 2000) [2001] 1 WLR 1879 ... 482
- Augustien v Challis (1847) 1 Ex 279 ... 654
- Aziz [1996] AC 41 ... 135, 137, 138, 303
- B (Minors) (Care Proceedings: Issue Estoppel), Re [1997] Fam 117 ... 396, 403
- Bagshaw [1984] 1 WLR 477 ... 646
- Bailey [1993] 3 All ER 513 ... 61, 73
- Baldry (1852) 1 Den 430 ... 296
- Balfour v Foreign and Commonwealth Office [1994] 1 WLR 681 ... 441, 446
- Barclays Bank plc v Eustice [1995] 1 WLR 1238 ... 495
- Barker [1941] 2 KB 381 ... 281, 282
- Barker v Wilson [1980] 1 WLR 884 ... 662
- Barking and Dagenham LBC v O [1993] Fam 295 ... 491
- Barrington [1981] 1 WLR 419 ... 178–9, 180
- Barton (1986) 85 Cr App R 5 ... 605
- Bashir [1969] 1 WLR 1303 ... 600
- Baskerville [1916] 2 KB 658 ... 645
- Bass [1953] 1 QB 680 ... 557–8, 563
- Bastable v Bastable [1968] 1 WLR 1684 ... 112
- Bater v Bater [1951] P 35 ... 109
- Beard [1998] Crim LR 585 ... 626
- Beattie (1989) Cr App R 302 ... 578
- Beck [1982] 1 WLR 461 ... 646
- Beckles v UK (2003) 36 EHRR 13 ... 317
- Beddingfield (1879) 14 Cox CC 341 ... 244, 245, 246
- Bellamy (1985) 82 Cr App R 222 ... 542–3
- Belmarsh Magistrates' Court, ex parte Gilligan [1998] 1 Cr App R 14 ... 347
- Beresford v St Albans Justices (1905) 22 TLR 1 ... 32
- Berrada (1989) 91 Cr App R 131 ... 136
- Beveridge (1987) 85 Cr App R 255 ... 56

- Biggin [1920] KB 213 ... 150
- Birch v Somerville (1852) 2 ICLR 253 ... 547
- Bircham [1972] Crim LR 430 ... 597
- Bishop [1975] QB 274 ... 147, 148
- Blake and Tye (1844) 6 QB 126 ... 263–4
- Blake v DPP (1992) 97 Cr App R 169 ... 460
- Blastland [1986] AC 41 ... 48, 201, 208–9, 294
- Blick (1966) Cr App R 280 ... 683–4
- Bliss (1837) 7 Ad & El 550 ... 243
- Blunt v Park Lane Hotel Ltd [1942] 2 KB 253 ... 472, 474
- Blyth v Blyth [1966] AC 643 ... 106–7, 112
- Bond [1906] 2 KB 389 ... 172
- Bowden [1999] 1 WLR 823 ... 498
- Boyes (1861) 1 B & S 311 ... 474
- Boyle v Wiseman (1855) 11 Ex 360 ... 655
- Bradshaw (1985) 82 Cr App R 79 ... 248, 382
- Brasier (1779) 1 Leach 199 ... 537, 538
- Bray (1988) 88 Cr App R 354 ... 346
- Brennan v UK (2002) 34 EHRR 18 ... 291–2
- Breslin (1984) 80 Cr App R 226 ... 573
- British Steel Corp v Granada TV Ltd [1981] AC 1096 ... 501–2
- Britzman [1983] 1 WLR 350 ... 55, 147, 161, 162
- Brooks (1990) 92 Cr App R 36 ... 187
- Broome v Broome [1955] P 190 ... 444
- Brophy [1982] AC 476 ... 296
- Brown v Matthews [1990] Ch 662 ... 457
- Brown v Stott [2001] 2 WLR 817 ... 482
- Brown v Wren Brothers [1895] 1 QB 390 ... 32
- Browning [1995] Crim LR 227 ... 565
- Bruce [1975] 1 WLR 1252 ... 152
- Brune v Thompson (1842) 2 QB 789 ... 681
- Brutus v Cozens [1973] AC 854 ... 39
- Bryant [1979] QB 108 ... 135, 136
- Bryce [1992] 4 All ER 567 ... 55, 69
- Buccluch (Duke of) v Metropolitan Board of Works (1872) LR 5 HL 418 ... 545
- Buckley (1873) 13 Cox CC 293 ... 250
- Buckley v Law Society [1984] 3 All ER 313 ... 463
- Buckley v Rice Thomas (1554) Plowd 118 ... 370
- Bumper Development Corp v Commissioner of Police of the Metropolis [1991] 1 WLR 1362 ... 387
- Burke (1858) 8 Cox CC 44 ... 619
- Burke (1985) 82 Cr App R 156 ... 162, 163
- Burke and Kelly (1847) 2 Cox CC 295 ... 569–70, 571
- Burmah Oil Co Ltd v Bank of England [1980] AC 1090 ... 442, 443, 447, 451–2, 453–4
- Busby (1982) 75 Cr App R 79 ... 623
- Butler (1986) 84 Cr App R 12 ... 179
- Butterwasser [1948] 1 KB 1 ... 140–1
- Calcraft v Guest [1889] 1 QB 759 ... 432, 433, 434
- Calderbank v Calderbank [1976] Fam 93 ... 512
- Callis v Gunn [1964] 1 QB 495 ... 65, 66, 269
- Camelleri [1922] 2 KB 122 ... 575
- Camelot Group plc v Centaur Communications Ltd [1999] QB 124 ... 17
- Campbell v Tameside MBC [1982] QB 1065 ... 430–1, 449, 450, 451, 452, 455
- Campbell v UK (1992) 15 EHRR 137 ... 484
- Canale [1990] 2 All ER 187 ... 68
- Carr-Briant [1943] KB 607 ... 90
- Castillo [1996] 1 Cr App R 438 ... 346
- Castle v Cross [1984] 1 WLR 1372 ... 238, 673
- Central Criminal Court, ex parte Francis and Francis [1989] AC 346 ... 495, 499
- Chadwick (1934) 24 Cr App R 138 ... 40
- Chalkley [1998] QB 848 ... 52–3, 68, 69, 70, 73
- Challenger [1994] Crim LR 202 ... 138
- Chambers v Mississippi 410 US 284 (1973) ... 207
- Chandler [1976] 1 WLR 585 ... 311, 312, 313
- Chandor [1959] 1 QB 545 ... 189–90
- Chapman [1912] 29 TLR 117 ... 471
- Chapman [1969] 2 QB 436 ... 222–3
- Chard v Chard [1956] P 259 ... 691
- Chatwood [1980] 1 WLR 874 ... 267
- Cheng (1976) 63 Cr App R 20 ... 559
- Chief Constable of West Midlands Police, ex parte Wiley [1995] 1 AC 274 ... 427, 430, 431–2, 447–8
- Ching (1976) 63 Cr App R 7 ... 104
- Chipcase v Chipcase [1939] P 391 ... 691–2
- Chitson [1909] 2 KB 945 ... 127–8
- Christie [1914] AC 545 ... 50, 308–9, 312, 569, 570, 571
- Christou [1992] QB 979 ... 55, 61, 73, 288
- Churton v Frewen (1865) 2 Drew & Sm 390 ... 429
- Cia Martiartu v Royal Exchange Assurance Corp [1923] 1 KB 650 ... 82–3
- City of Birmingham DC, ex parte O [1982] 1 WLR 679 ... 456–7
- Clarke (1977) 67 Cr App R 398 ... 187
- Cleghorn [1967] 2 QB 584 ... 636
- Clingham v Kensington and Chelsea LBC, *The Times* 20 February 2001 ... 338

- Cobra Golf Inc v Rata [1998] Ch 109 ... 473
 Cocks (1976) 63 Cr App R 79 ... 44
 Cole [1990] 1 WLR 866 ... 357, 358
 Commissioner of Police of the Metropolis v Locker [1993] ICR 440 ... 455
 Commissioners of Customs and Excise v Harz [1867] 1 AC 760 ... 277
 Commonwealth v Cleary (1898) 172 Mass 175 ... 574
 Compagnie Générale Maritime v Diahan Spirit SA (The Ymnos) [1981] 1 Lloyd's Rep 550 ... 216
 Comptroller of Customs v Western Electric Co Ltd [1966] AC 367 ... 221, 267
 Computer Machinery Co Ltd v Drescher [1983] 1 WLR 1379 ... 512
 Conde (1868) 10 Cox CC 547 ... 247
 Condrón [1997] 1 WLR 827 ... 312, 315, 316, 323–4
 Condrón v UK [2000] Crim LR 679 ... 314, 316–17, 524
 Connelly v DPP [1964] AC 1254 ... 408
 Conquer v Boot [1928] 2 KB 336 ... 398
 Constantine (Joseph) Steamship Line v Imperial Smelting Corporation Ltd [1942] AC 154 ... 80, 81
 Conway v Rimmer [1968] AC 910 ... 426, 431, 441, 442, 443–4, 444, 446, 450, 451, 452, 454
 Cook [1959] 2 QB 340 ... 57, 161, 162
 Cook [1987] QB 417 ... 556–7, 566
 Cooper (1985) 82 Cr App R 74 ... 631
 Corke v Corke and Cook [1958] P 93 ... 565
 Cottrill [1997] Crim LR 56 ... 436
 Coventry Newspapers, ex parte [1993] QB 278 ... 455
 Cowan [1996] QB 373 ... 315, 317, 330, 524, 527–8
 Cox [1993] 1 WLR 188 ... 288
 Cracknell v Willis [1988] AC 450 ... 695
 Craig [1975] 1 NZLR 597 ... 497
 Crampton (1990) 92 Cr App R 369 ... 279
 Crest Homes plc v Marks [1987] AC 829 ... 473
 Crippen, Re [1911] P 108 ... 409
 Crompton (Alfred) Amusement Machines Ltd v Customs and Excise Commissioners (No 2) [1974] AC 405 ... 430, 431, 461, 464, 465, 466
 Cunningham [1985] Crim LR 374 ... 635
 Customglass Boats Ltd v Salthouse Bros Ltd [1976] RPC 589 ... 370
 Cutts v Head [1984] Ch 290 ... 512
 D [1996] QB 283 ... 411
 D [2003] QB 90 ... 597
 D (Minors) (Conciliation: Disclosure of Information) [1993] Fam 231 ... 457
 D v NSPCC [1978] AC 171 ... 49, 455–6, 462–3, 465, 466
 Da Silva [1990] 1 WLR 31 ... 556, 559
 Dadson (1983) 77 Cr App R 91 ... 662
 Daly [2002] 2 Cr App R 201 ... 322
 Daubert v Merrell Dow Pharmaceuticals Inc 509 US 579 (1993) ... 379–80
 Davies [1962] 1 WLR 1111 ... 390
 Davis [1993] 1 WLR 613 ... 437, 438–9, 445
 Davis [1998] Crim LR 659 ... 225
 Day [1940] 1 All ER 402 ... 635
 Daye [1908] 2 KB 333 ... 652
 Deakin [1994] 4 All ER 769 ... 517
 Delaney (1988) 88 Cr App R 338 ... 289
 Dellow's Will Trusts, Re [1964] 1 WLR 451 ... 109–10
 Derby Magistrates' Court, ex parte B [1996] AC 487 ... 483, 484, 485, 491, 492, 497–8
 Derbyshire County Council v Times Newspapers Ltd [1992] QB 770 ... 15
 Devonport [1996] 1 Cr App R 221 ... 264
 Dibble (1908) 1 Cr App R 155 ... 300
 Dillon [1982] AC 484 ... 694
 Dodson [1984] 1 WLR 871 ... 674
 Doe d Gilbert v Ross (1840) 7 M & W 102 ... 658
 Doe d Mudd v Suckermore (1836) 5 Ad & El 703 ... 668
 Donaldson (1976) 64 Cr App R 59 ... 301
 Doran (1972) 56 Cr App R 492 ... 635
 Douglass (1989) 89 Cr App R 264 ... 145
 DPP, ex parte Kebilene [2000] 2 AC 346 ... 93
 DPP v A & BC Chewing Gum Ltd [1968] 1 QB 159 ... 375
 DPP v Boardman [1975] AC 421 ... 176, 181, 182, 184–5, 190, 606
 DPP v Camplin [1978] AC 705 ... 385
 DPP v Humphrys [1977] AC 1 ... 396, 406, 407–8, 409
 DPP v Kilbourne [1973] AC 729 ... 31
 DPP v McGladrigian [1991] RTR 297 ... 69
 DPP v McKeown [1997] 1 WLR 295 ... 238, 359
 DPP v P [1991] 2 AC 447 ... 173–4, 176, 177, 180, 187, 606
 DPP v Ping Lin [1976] AC 574 ... 271, 274, 275, 278
 DPP v Smith [1961] AC 290 ... 687

- Dubai Aluminium Co Ltd v Al-Alawi [1999] 1 WLR 1964 ... 495
- Dubai Bank Ltd v Galadari (No 7) [1992] 1 WLR 106 ... 490
- Duncalf [1979] 1 WLR 918, [1979] 2 All ER 1116 ... 157–8
- Duncan (1981) 73 Cr App R 359 ... 302, 303
- Duncan v Cammell Laird & Co Ltd [1942] AC 624 ... 440, 442, 444
- Dunkley [1927] 1 KB 323 ... 143
- E. G. Music v S. F. (Film) Distributors* [1978] FSR 121 ... 196
- Edwards [1975] QB 27 ... 97, 98
- Edwards [1991] 1 WLR 207 ... 623
- Effik (1992) 95 Cr App R 427 ... 279
- Ellis v Home Office [1953] 2 QB 135 ... 444–5
- Elworthy (1867) LR 1 CCR 103 ... 655
- Emmerson (1990) 92 Cr App R 284 ... 276
- Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 2) [1981] 1 NZLR 153 ... 442
- Essex CC v R [1994] Fam 167 ... 490, 491
- Everett [1988] Crim LR 826 ... 279
- Ewing [1983] 2 All ER 645 ... 160
- Ewing [1983] QB 1039 ... 106, 107, 386, 668
- Exall (1866) 4 F&F 922 ... 23–4
- F (An Infant) v Chief Constable of Kent* [1982] Crim LR 682 43
- Falconer-Atlee (1973) 58 Cr App R 348 ... 135
- Ferguson v R [1979] 1 WLR 94 ... 103
- Flack [1969] 2 All ER 784 ... 190
- Flemming (1987) 86 Cr App R 32 ... 41
- Folkes v Chadd (1782) 3 Doug KB 157 ... 370
- Forbes [1999] 2 Cr App R 501 ... 622
- Foster (1834) 6 Car & P 325 ... 244
- Fowler (1988) 86 Cr App R 219 ... 129
- Fox [1986] AC 281 ... 67, 69
- Fox v General Medical Council [1960] 1 WLR 1017 ... 578–9
- Foxley v UK (2000) 8 BHRC 571 ... 484
- France [1979] Crim LR 48 ... 157, 158
- Francis [1990] 1 WLR 1264 ... 635
- French (1993) 97 Cr App R 421 ... 357
- Friend [1997] 1 WLR 1433 ... 525–6
- Frost (1840) 9 Car & P 129 ... 634, 637
- Frye v US 293 F 1013 (1923) ... 379, 380
- Fulcher [1995] 2 Cr App R 251 ... 137
- Fulling [1987] QB 426 ... 275, 276, 277, 278, 284, 289
- Funderburk [1990] 1 WLR 587 ... 616, 619, 620, 623
- Funke v France (1993) 16 EHRR 297 ... 482
- G (A Minor) (Social Worker: Disclosure), Re* [1996] 1 WLR 1407 ... 457–8
- G (An Infant) v Coltart* [1967] 1 QB 432 ... 407
- G v DPP* [1998] QB 919 ... 541
- Galbraith [1981] 1 WLR 1039 ... 47
- Garcin v Amerindo Investment Advisers Ltd [1991] 1 WLR 1140 ... 586
- Garton v Hunter [1969] 2 QB 37 ... 653
- Gatty v Attorney-General [1951] P 444 ... 696
- Geering (1849) 18 LJ MC 215 ... 195
- General Mediterranean Holdings SA v Patel [2000] 1 WLR 272 ... 49, 483–4
- Gianetto [1997] 1 Cr App R 1 ... 172–3
- Gibson (1887) 18 QBD 537 ... 219, 220
- Gilbert (1977) 66 Cr App R 237 ... 313–14
- Gilfoyle [1996] 3 All ER 883 ... 224, 248
- Gilfoyle [2001] 2 Cr App R 57 ... 379
- Gillespie (1967) 51 Cr App R 172 ... 631
- Gliniski v McIver [1962] AC 726 ... 240
- Goddard v Nationwide Building Society [1987] QB 670 ... 63, 433–4, 435–6
- Gokal [1997] 2 Cr App R 266 ... 212–13, 358
- Goldenberg (1988) 88 Cr App R 285 ... 279, 280
- Golder [1987] QB 920 418
- Goodright d. Faro v Hicks (1789) Bull NP 296 ... 168
- Goodwin v UK (1996) 22 EHRR 123 ... 17, 507
- Governor of Brixton Prison, ex parte Levin [1997] AC 741 ... 359, 360
- Governor of Brixton Prison, ex parte Osman [1991] 1 WLR 281 ... 431, 446, 459, 495
- Governor of Pentonville Prison, ex parte Passingham [1983] 2 AC 464 ... 550
- Grant v Southwestern & County Properties Ltd [1975] Ch 185 ... 652
- Gray (1973) 58 Cr App R 177 ... 104
- Gray [1995] 2 Cr App R 100 ... 262
- Great Atlantic Insurance Co v Home Insurance Co [1981] ... 429
- Green v New River (1792) 4 TR 590 ... 394
- Greenough v Eccles (1859) 5 CB NS 786 ... 582
- Grossman (1981) 73 Cr App R 302 ... 663, 664–5
- Guildhall Magistrates' Court, ex parte Primlaks Holdings Co (Panama) Inc [1990] 1 QB 261 ... 499

- Guinness Peat Properties Ltd v Fitzroy Robinson Partnership [1987] 2 All ER 716 ... 436
- Gunewardene [1951] 2 KB 600 ... 627
- H [1995] AC 596 ... 181-2
- H [2001] Crim LR 815 ... 347
- H (Minors) (Sexual Abuse: Standard of Proof), Re [1996] AC 563 ... 110-11, 112-13, 689
- H v Schering Chemicals Ltd [1983] 1 WLR 143 ... 382-3
- Hacker [1994] 1 WLR 1659 ... 129
- Halawa v Federation Against Copyright Theft [1995] 1 Cr App R 21 ... 44
- Hall v R [1971] 1 WLR 298 ... 310, 311, 312
- Halpin [1975] QB 907 ... 255
- Hampshire [1996] QB 1 ... 517, 541
- Harmony Shipping Co SA v Saudi Europe Line Ltd [1979] 1 WLR 1380 ... 370, 492
- Harris (1927) 20 Cr App R 144 ... 584
- Harris v DPP [1952] AC 694 ... 66, 189
- Harris v Tippett (1811) 2 Camp 637 ... 623
- Harry (1986) 86 Cr App R 229 ...
- Harvey v Smith-Wood [1964] 2 QB 171 ... 581
- Haslam (1916) 12 Cr App R 10 ... 142
- Hasson [1997] Crim LR 579 ... 417
- Hayes [1977] 1 WLR 234 ... 537-8, 539, 541, 542, 543, 549
- Heaney and McGuinness v Ireland [2001] Crim LR 481 ... 481-2
- Hehir v Commissioner of Police of the Metropolis [1982] 1 WLR 715 ... 430
- Helliwell v Piggott-Sims [1980] FSR 356 ... 62
- Henry Coxon, The (1878) 3 PD 156 ... 251
- Hepworth (CCA) [1955] 2 QB 600 ... 103
- Hetherington v Hetherington (1887) 12 PD 112 ... 688
- Higham v Railway (1808) 10 East 109 ... 250
- Hogan [1974] QB 398 ... 408
- Hollington v F. Hewthorn & Co Ltd [1943] KB 587 ... 410, 411, 416, 422
- Holloway [1980] 1 NZLR 315 ... 190
- Holmes (1871) LR 1 CCR 334 ... 600
- Holy Trinity, Kingston-upon-Hull (Inhabitants) (1827) 7 B & C 611 ... 655
- Hornal v Neuberger Products Ltd [1957] 1 QB 247 ... 109, 110
- Horseferry Road Magistrates' Court, ex parte Bennett (No 2) [1994] 1 All ER 289 ... 431
- Horsford (1898) *The Times* 2 June 1898 ... 247
- Horwood [1970] 1 QB 133 ... 183-4
- Hoskyn v Commissioner of Police of the Metropolis [1979] AC 474 ... 532, 533
- Howe v Malkin (1878) 40 LT 196 ... 242
- Hunt [1987] AC 352 ... 89, 96, 97
- Hunter v Chief Constable of the West Midlands Police [1982] AC 529 ... 422
- Hutchinson (1822) 2 B & C 608n ... 251
- Ibrahim v R [1914] AC 599 ... 269
- Inder (1977) 67 Cr App R 143 ... 187
- Ingram v Percival (DC) [1969] 1 QB 548 ... 684
- Inquiry under the Companies Securities (Insider Dealing) Act 1985 [1988] AC 660 ... 504-5, 506
- Iqbal [1990] 1 WLR 756 ... 356
- Isaacs (M.) & Sons Ltd v Cook [1925] 2 KB 391 ... 453
- Isequilla [1975] 1 WLR 716 ... 270, 271
- ITC Film Distributors Ltd v Video Exchange Ltd [1982] Ch 431 ... 62-3, 435
- Jarvis (1754) 1 East 643 ... 96
- Jayasena v R [1970] AC 618 ... 77
- Jeffrey v Black [1978] QB 490 ... 61, 65, 66
- Jelen (1989) 90 Cr App R 456 ... 57, 273
- Jenion, Jenion and Wynne, Re [1952] Ch 454 ... 233-4
- Jenkins (1945) 31 Cr App R 1 ... 160
- Johannsen (1977) 65 Cr App R 101 ... 186
- Johnson [1988] 1 WLR 1377 ... 461
- Johnson [1995] 2 Cr App R 41 ... 178
- Johnson v Gore Wood & Co [2002] 2 AC 1 ... 399
- Jones (1846) 1 Den 166 ... 494
- Jones (1909) 3 Cr App R 67 ... 147
- Jones [1997] 2 Cr App R 119 ... 263
- Jones v DPP [1962] AC 635 ... 126-7, 128, 130-1, 141-2, 144, 155, 226-7
- Jones v Metcalfe [1967] 1 WLR 1286 ... 219-20
- Jones v Owens (1870) 34 JP 759 ... 60
- Joy v Phillips, Mills & Co Ltd [1916] 1 KB 849 ... 32
- K (T. D.) (1992) 97 Cr App R 342 ... 470
- Kajala v Noble (1982) 75 Cr App R 149 ... 652, 655-6, 660
- Kane (1977) 65 Cr App R 270 ... 633
- Keane [1994] 1 WLR 746 ... 451, 459
- Kearley [1992] 2 AC 228 ... 229-30
- Keenan [1990] 2 QB 54 ... 287
- Kelsey (1981) 74 Cr App R 213 ... 557

- Kemble [1990] 1 WLR 1111 ... 548, 549
 Kennaway [1917] 1 KB 25 ... 128
 Khan (1986) 84 Cr App R 44 ... 530
 Khan [1995] QB 27 ... 52
 Khan [1997] AC 558 ... 52, 60, 61–2, 68, 73
 Khan v R [1967] 1 AC 454 ... 227–8
 Khan v UK (2001) 31 EHRR 1016 ... 62
 King [1967] 2 QB 338 ... 183
 King [1983] 1 WLR 411 ... 489
 Kirk [2000] 1 WLR 567 ... 293
 Kirkpatrick [1998] Crim LR 63 ... 152
 Kostovski v Netherlands (1989) 12 EHRR 434 ... 18, 213
 Krausz (1973) 57 Cr App R 466 ... 600
 Kuruma Son of Kaniu v R [1955] AC 197 ... 60–1, 65–6
- L (A Minor) (Police Investigation: Privilege) [1997] AC 16 ... 483, 491–3, 494
 L v UK [2000] 2 FLR 322 ... 494
 Lake (1976) 64 Cr App R 172 ... 299
 Lamb (1980) 71 Cr App R 198 ... 166–7
 Lambert [2002] 2 AC 545 ... 17–18, 75, 79, 87, 89, 90, 91, 92, 93, 95
 Land Securities plc v Westminster City Council [1993] 1 WLR 286 ... 411
 Langton (1876) 2 QBD 296 ... 558
 Lapworth [1931] 1 KB 117 ... 532
 Latif [1996] 1 WLR 104 ... 70
 Lawless (1993) 98 Cr App R 342 ... 597
 Leach v R [1912] AC 305 ... 532
 Leatham (1861) 8 Cox CC 498 ... 60
 Lee (1975) 62 Cr App R 33 ... 150
 Leeds Magistrates' Court, ex parte Dumbleton [1993] Crim LR 866 ... 495
 Legge v Edmonds (1855) 25 LJ Ch 125 ... 261
 Lego Systems A/S v Lego M. Lemelstrich Ltd [1983] FSR 155 ... 370
 Levison v Patent Steam Carpet Cleaning Ltd [1978] QB 69 ... 81
 Lilley v Pettit [1946] KB 401 ... 254
 Lillyman [1896] 2 QB 167 ... 575, 576–7
 List [1966] 1 WLR 9 ... 51
 Liverpool Juvenile Court, ex parte R [1988] QB 1 ... 42, 43
 Liverpool Roman Catholic Diocese Trustees Inc v Goldberg (No 2) [2001] 4 All ER 950 ... 372
 Lloyd v Powell Duffryn Steam Coal Co Ltd [1914] AC 733 ... 233
 Lobban v R [1995] 1 WLR 877 ... 58, 298
- Looseley [2001] 1 WLR 2060 ... 71–2
 Lovett [1973] 1 WLR 241 ... 165
 Lowery v R [1974] AC 85 ... 9, 166, 377
 Lui Mei Lin v R [1989] AC 288 ... 294, 295, 613
 Lunt (1986) 85 Cr App R 241 ... 175
 Lydon (1986) 85 Cr App R 221 ... 232–3
- M and R (Minors) (Sexual Abuse: Video Evidence), Re [1996] 4 All ER 239 ... 375, 378
 M (T) [2000] 1 WLR 421 ... 30, 173
 McCay [1990] 1 WLR 645 ... 571
 M'Cue (1831) Jebb 120 ... 394
 MacDonnell v Evans (1852) 11 CB 930 ... 654
 McGarry [1999] 1 WLR 1500 ... 317
 McGranaghan [1995] 1 Cr App R 559 ... 191
 McGrath v Field [1987] RTR 349 ... 56
 McGreevy v DPP [1973] 1 WLR 276 ... 23
 McGuire (1985) 81 Cr App R 323 ... 251
 MacKenney (1981) 72 Cr App R 78 ... 628
 MacKenzie (1992) 96 Cr App R 98 ... 283
 Mackie (1973) 57 Cr App 453 ... 30
 McLeod [1994] 1 WLR 1500 ... 158, 159, 164
 M'Naghten's Case (1843) 10 Cl & F 200 ... 87–8
 McQuaker v Goddard [1940] 1 KB 687 ... 683
 McTaggart v McTaggart [1949] P 94 ... 511
 Magee v UK (2001) 31 EHRR 35 ... 291
 Mahadervan v Mahadervan [1964] P 233 ... 690–1
 Mahmood [1997] 1 Cr App R 414 ... 417
 Mankuola [1995] 1 WLR 1348 ... 639, 641, 648, 649
 Mankuola v Commissioner of Police of the Metropolis [1992] 3 All ER 617 ... 427
 Makin v Attorney-General for New South Wales [1894] AC 57 ... 123, 125, 130, 175–6, 184, 185, 189
 Manchester Crown Court, ex parte Rogers [1999] 1 WLR 832 ... 486
 Mansfield [1978] 1 WLR 1102 ... 187–8
 Marks v Beyfus (1890) 25 QBD 494 ... 458–9, 460, 462
 Marsh (1985) 83 Cr App R 165 ... 619
 Marsh [1991] Crim LR 455 ... 288
 Marshall [1977] Crim LR 106 ... 221–2, 224
 Marsham, ex parte Pethick Lawrence [1912] KB 362 ... 547
 Martin [1988] 1 WLR 655 ... 356
 Martin [1996] Crim LR 589 ... 348
 Martin [2000] 2 Cr App R 42 ... 139
 Mason [1988] 1 WLR 139 ... 55, 68, 293

- Matthews (1989) 91 Cr App R 43 ... 288
- Matto v Wolverhampton Crown Court [1987] RTR 337 ... 52, 69
- Maugham v Hubbard (1828) 8 B & C 14 ... 560
- Maxwell v DPP [1935] AC 309 ... 142, 155, 156, 163, 194
- Maxwell v Pressdram Ltd [1987] 1 WLR 298 ... 505–6
- May (1952) 36 Cr App R 91 ... 55, 272, 286
- Mellor v Walmesley [1905] 2 Ch 164 ... 251
- Memory Corp plc v Sidhu [2000] 1 All ER 434 ... 474
- Mercer v Chief Constable of the Lancashire Constabulary [1991] 1 WLR 367 ... 593
- Mercer v Denne [1905] 2 Ch 538 ... 251
- Middlebrook (18 February 1992, unreported) ... 52
- Miller (1952) 36 Cr App R 169 ... 165
- Miller [1986] 1 WLR 1191 ... 284
- Miller v Minister of Pensions [1947] 2 All ER 372 ... 102–3
- Mills [1962] 1 WLR 1152 ... 556, 557
- Mills v Cooper [1967] 2 QB 459 ... 400
- Mills v R [1995] 1 WLR 511 ... 253
- Minors [1989] 1 WLR 441 ... 238, 346, 673
- Minter v Priest [1930] AC 558 ... 486
- Mir [1989] Crim LR 894 ... 152
- Mitchell (1892) 17 Cox CC 503 ... 310–11
- Mole v Mole [1951] P 21 ... 511
- Monroe v Twistleton (1802) Peake Add Cas 219 ... 534–5, 536
- Mood Music Publishing Co Ltd v De Wolfe Ltd [1976] Ch 119 ... 196
- Morris (1969) 54 Cr App R 69 ... 187
- Mortimer v M'Callan (1840) 6 M & W 58 ... 661
- Moshaid [1998] Crim LR 420 ... 321
- Mountford [1999] Crim LR 575 ... 321–2
- Murdoch v Taylor [1965] AC 574 ... 150, 151, 165
- Murray v UK (1996) 22 EHRR 29 ... 17, 290–1, 292, 314, 317
- Mustafa (1976) 65 Cr App R 26 ... 188
- Myers [1998] AC 124 ... 207, 210, 294–5, 300, 354, 613, 614
- Myers v DPP [1965] AC 1001 ... 47, 202–3, 205, 228, 230, 231, 232, 236, 360
- Nagrecha [1997] 2 Cr App R 401 ... 620
- Neale (1977) 65 Cr App R 304 ... 166
- Neill v North Antrim Magistrates' Court [1992] 1 WLR 1220 ... 347
- Neilson v Lougharne [1981] QB 736 ... 431
- Newton v Woods [1987] RTR 41 ... 695
- Nicholas (1846) 2 Car & K 246 ... 247
- Nimmo v Alexander Cowan & Sons Ltd [1968] AC 107 ... 98
- Nixon v US 418 US 683 ... 442
- Noor Mohamed v R [1949] AC 182 ... 50–1, 66, 177, 189
- Norton [1910] 2 KB 496 ... 308
- Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133 ... 501
- Nottingham Justices, ex parte Lynn [1984] Crim LR 554 ... 664
- Novac (1976) 65 Cr App R 107 ... 185–6
- Nowaz [1976] 1 WLR 830 ... 660
- Nye (1977) 66 Cr App R 252 ... 31, 246
- O (Restraint Order: Disclosure of Assets), Re [1991] 2 QB 520 ... 473
- Oakwell [1978] 1 WLR 32 ... 573
- O'Boyle (1990) 92 Cr App R 202 ... 295
- O'Brien [2000] Crim LR 676 ... 627
- O'Connor (1987) 85 Cr App R 298 ... 417–18, 419
- O'Connor v Marjoribanks (1842) 4 Man & G 435 ... 535
- Ohio v Roberts 448 US 56 (1980) ... 211
- Okafor [1994] 3 All ER 741 ... 288
- O'Leary v R (1946) 73 CLR 566 ... 28–9
- O'Loughlin [1988] 3 All ER 431 ... 40
- Omychund v Barker (1745) 1 Atk 21 ... 10
- Osborne [1905] 1 KB 551 ... 575, 576
- Osbourne [1973] 1 QB 678 ... 568, 570, 571
- Owner v Bee Hive Spinning Co Ltd [1914] 1 KB 105 ... 660
- Oxfordshire CC v M [1994] Fam 151 ... 491
- Oyesiku (1971) 56 Cr App R 240 ... 578
- P [2002] 1 AC 146 ... 62, 73
- Palastanga v Solman [1962] Crim LR 334 ... 635
- Paris (1992) Cr App R 99 ... 276
- Parker (1960) 45 Cr App R 1 ... 248
- Parkes v R [1976] 1 WLR 1251 ... 312
- Parris (1988) 89 Cr App R 68 ... 289
- Partington v Partington and Atkinson [1925] P 34 ... 409
- Patel [1981] 3 All ER 94 ... 236, 237
- Payne [1963] 1 WLR 637 ... 65
- Pearce [2002] 1 WLR 1553 ... 530–1
- People v Collins (1968) 438 P 2d 33 ... 8

- Perry [1984] Crim LR 680 ... 54
- Peterborough Justices, *ex parte* Hicks [1977] 1 WLR 1371 ... 488–9
- Pettman (2 May 1985 unreported) ... 29
- Phené's Trusts, *Re* (1870) LR 5 Ch App 139 ... 691
- Phillips (1936) 26 Cr App R 17 ... 622–3, 625
- Philp (1830) 1 Mood CC 263 ... 268
- Piers v Piers (1849) 2 HL Cas 331 ... 690
- Pilcher (1974) 60 Cr App R 1 ... 634
- Pitt [1983] QB 25 ... 477, 529–30
- Podmore (1930) 22 Cr App R 36 ... 232
- Pommell [1999] Crim LR 576 ... 142–3
- Powell [1985] 1 WLR 1364 ... 55, 163, 164
- Prager [1972] 1 WLR 260 ... 55, 275, 276, 286–7
- Prater [1960] 2 QB 464 ... 645
- Pressick [1978] Crim LR 377 ... 405
- Preston-Jones v Preston-Jones [1951] AC 391 ... 688
- Price v Earl of Torrington (1703) 1 Salk 285 ... 250
- Priestly (1965) 51 Cr App R 1 ... 270, 275, 276, 277
- Prince v Samo (1838) 7 Ad & El 627 ... 633
- Prouse v DPP [1999] All ER (D) 748 ... 280
- Purcell v M'Namara (1808) 1 Camp 199 ... 394
- Queen Caroline's Case (1820) 2 Brod & Bing 287 ... 617
- Quinn [1962] 2 QB 245 ... 10–11, 70
- Quinn [1990] Crim LR 581 ... 69
- R (Hertfordshire CC), *ex parte* Green Environmental Industries Ltd and Another [2000] AC 412 ... 481
- R (on application of Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax [2002] 3 All ER 1 ... 484–5, 494, 495
- R (Saifi) v Governor of Brixton Prison and Another [2001] 1 WLR 1134 ... 53
- Rackham [1997] 2 Cr App R 222 ... 139
- Radak [1999] 1 Cr App R 187 ... 213, 357–8
- Rance (1975) 62 Cr App R 118 ... 188, 191
- Rank Film Distributors Ltd v Video Information Centre [1982] AC 380 ... 473, 474–5
- Rankine [1986] QB 861 ... 460
- Raphael, Raphael v d'Antin, *Re* [1973] 1 WLR 998 ... 416
- Ratten v R [1972] AC 378 ... 226, 229, 230, 244–5
- Read v Bishop of Lincoln [1892] AC 644 ... 682
- Redfern v Redfern [1891] P 139 ... 472
- Redgrave (1981) 74 Cr App R 10 ... 132–3
- Rennie [1982] 1 WLR 64 ... 279
- Reynolds [1950] 1 KB 606 ... 517
- Rhesa Shipping Co SA v Edmunds [1985] 1 WLR 948 ... 81–2
- Rice [1963] 1 QB 857 ... 231, 232, 233
- Richardson [1969] 1 QB 299 ... 625–6
- Richardson [1971] 2 QB 484 ... 555, 558
- Rider (1986) 83 Cr App R 207 ... 644
- Riley (1887) 18 QBD 481 ... 600
- Rimmer [1983] Crim LR 250 ... 377–8
- Rio Tinto Zinc Corp v Westinghouse Electric Corp [1978] AC 547 ... 475, 477, 478
- Roberts [1942] 1 All ER 187 ... 565
- Roberts [1997] 1 Cr App R 217 ... 61, 73, 280
- Robertson [1987] QB 920 ... 416, 417, 418–19
- Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee [1937] 2 KB 445 ... 653
- Robson [1972] 1 WLR 651 ... 105–6, 108
- Rodley [1913] 3 KB 468 ... 178, 179
- Rogers v Home Secretary [1973] AC 388 ... 430, 431, 439, 461–2, 463, 465
- Ross v US 374 F 2d 97 (8th Cir 1967) ... 679
- Rowe and Davis v UK (2000) 30 EHRR 1 ... 439, 446, 451
- Rowe v Rowe [1980] Fam 47 ... 403
- Rowson [1986] QB 174 ... 294, 295, 613, 614
- Rowton (1865) Le & Ca 520 ... 116, 131, 132, 133, 143, 369
- Rumping v DPP [1964] AC 814 ... 432–3
- Rush & Tompkins Ltd v GLC [1989] AC 1280 ... 509–10
- S v S [1972] AC 24 ... 689
- Salabiaku v France (1988) 13 EHRR 379 ... 93, 95
- Sambasivam v Public Prosecutor, Federation of Malaysia [1950] AC 458 ... 405–6, 406–7
- Samuel [1988] QB 615 ... 55, 68, 289, 290
- Sang [1980] AC 402 ... 51, 52, 53, 56, 57, 59, 61, 64–5, 67, 68
- Sankey v Whitlam (1978) 142 CLR 1 ... 442
- Sat-Bhambra (1988) 88 Cr App R 55 ... 42, 43, 272
- Sattin v National Union Bank (1978) 122 SJ 367 ... 196–7
- Saunders [1899] 1 QB 490 ... 239
- Saunders [1996] 1 Cr App 463 ... 16–17
- Saunders v Punch Ltd [1998] 1 WLR 986 ... 507
- Saunders v UK (1997) 23 EHRR 313 ... 16, 17, 479–80, 481, 482

- Savage v Chief Constable of Hampshire [1997] 1 WLR 1061 ... 460
- Sawoniuk [2000] 2 Cr App R 220 ... 29–30, 126
- Scaife (1836) 2 Lewin 150 ... 252
- Scarrott [1978] QB 1016 ... 180, 186
- SCF Finance Co Ltd v Masri (No 3) [1987] QB 1028 ... 400
- Schofield (1917) 12 Cr App R 191 ... 297
- Science Research Council v Nassé [1980] AC 1028 ... 447, 449, 465–6
- Scott v R [1989] AC 1242 ... 50, 52, 357
- Seaman (1978) 67 Cr App R 234 ... 188
- Secretary of State for Defence v Guardian Newspapers Ltd [1985] AC 339 ... 503–4, 505, 506
- Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696 ... 15–16
- Secretary of State for the Home Department, ex parte Simms [2000] 2 AC 115 ... 485
- Seelig [1992] 1 WLR 148 ... 277, 313
- Sekhon (1986) 85 Cr App R 19 ... 563
- Selvey v DPP [1970] AC 304 ... 57, 146, 147, 160–1, 162, 163
- Senior v Holdsworth, ex parte Independent Television News Ltd [1976] QB 23 ... 652
- Serio v Serio (1983) 4 FLR 756 ... 111
- Setz-Dempsey (1993) 98 Cr App R 23 ... 357
- Shand v R [1996] 1 WLR 67 ... 573
- Sharp [1988] 1 WLR 7 ... 199, 303
- Shaw (1888) 16 Cox CC 503 ... 622
- Sheen v Bumpstead (1863) 2 Hurl & C 193 ... 364
- Shenk v Switzerland (1988) 13 EHRR 242 ... 60
- Shenton v Tyler [1939] Ch 620 ... 535–6
- Shepard v US 290 US 96 ... 247
- Shepherd (1980) 71 Cr App R 120 ... 193–4
- Shone (1982) 76 Cr App R 72 ... 237
- Sidhu (1994) 98 Cr App R 59 ... 29
- Simpson [1983] 1 WLR 1494 ... 679
- Sims [1946] KB 531 ... 130, 174, 182, 184, 185, 189
- Slatterie v Pooley (1840) 6 M & W 664 ... 657
- Smith (1915) 11 Cr App R 229 ... 177
- Smith [1959] 2 QB 35 ... 277, 280
- Smith [1976] Crim LR 511 ... 557, 565–6
- Smith [1979] 1 WLR 1445 ... 377
- Smith [1994] 1 WLR 1396 ... 313
- Smith v East India Co (1841) 1 Ph 50 ... 453
- Smurthwaite [1994] 1 All ER 898 ... 70
- Sociedade Nacional de Combustíveis de Angola UEE v Lundqvist [1991] 2 QB 310 ... 478
- Sodastream Ltd v Thorn Cascade Ltd [1982] RPC 459 ... 370
- South Ribble Magistrates' Court, ex parte Cochrane [1996] 2 Cr App R 544 ... 556
- South Shropshire DC v Amos [1986] 1 WLR 1271 ... 510
- Southern (1930) 22 Cr App R 6 ... 184
- Sparks v R [1964] AC 964 ... 48, 207–8, 209
- Speedlink Vanguard and the European Gateway [1987] QB 206 ... 397
- Spencer [1987] AC 128 ... 646
- Spinks [1982] 1 All ER 587 ... 299
- Staines [1997] 2 Cr App R 426 ... 16, 17, 480
- Stannard (1837) 7 Car & P 673 ... 135
- State v Coetzee [1997] 2 LRC 593 ... 95
- Statue of Liberty, The [1968] 1 WLR 639 ... 238, 673
- Steel, Wappett v Robinson, Re [1903] 1 Ch 135 ... 369
- Stevens [1995] Crim LR 649 ... 30
- Stirland v DPP [1944] AC 315 ... 142, 156
- Storey (1968) 52 Cr App R 334 ... 300, 301, 303
- Stradling v Morgan (1560) 1 Plowd 199 ... 485
- Straffen [1952] 2 QB 911 ... 187
- Stretton (1986) 86 Cr App R 7 ... 596
- Stroud v Stroud [1963] 1 WLR 1080 ... 632
- Stuppel v Royal Insurance Co Ltd [1971] 1 QB 50 ... 413, 422
- Sturla v Freccia (1880) 5 App Cas 623 ... 254, 255
- Subramaniam v Public Prosecutor [1956] 1 WLR 965 ... 225, 227
- Sullivan v West Yorkshire Passenger Transport Executive [1985] 2 All ER 134 ... 45
- Sumitomo Corp v Credit Lyonnais Rouse Ltd [2002] 1 WLR 479 ... 490
- Summers [1952] 1 All ER 1059 ... 103
- Suruipaul v R [1958] 1 WLR 1050 ... 221
- Talbot v Bekshire CC [1994] QB 290 ... 399
- Tanner (1977) 66 Cr App R 56 ... 161
- Tasmania, The (1890) 15 App Cas 223 ... 44
- Taylor v Anderton [1995] 1 WLR 447 ... 448, 455
- Taylor v Chief Constable of Cheshire [1986] 1 WLR 1479 ... 656, 674
- Taylor v Director of the Serious Fraud Office [1999] 2 AC 177 ... 466
- Taylor v Taylor [1965] 1 All ER 872 ... 696–7
- Taylor v Taylor [1970] 1 WLR 1148 ... 412–13, 422
- Teasdale [1993] 4 All ER 290 ... 138

- Teixeira de Castro v Portugal [1998] 28 EHRR 101 ... 72-3
- Teper v R [1952] AC 480 ... 10, 234-5
- Thomas [1998] Crim LR 887 ... 358
- Thomas v David (1836) 7 Car & P 350 ... 624
- Thompson (1976) 64 Cr App R 96 ... 583
- Thompson [1995] 2 Cr App R 589 ... 58
- Thompson v R [1918] AC 221 ... 174, 182-3, 184, 185, 188
- Thompson v R [1998] AC 811 ... 135, 138-9
- Thompson v Trevanion (1693) Skin 402 ... 243-4
- Thomson [1912] 3 KB 19 ... 612
- Thomson [1966] 1 WLR 405 ... 146
- Tilley [1961] 1 WLR 1309 ... 668
- Timson [1993] Crim LR 58 ... 139
- Tobi v Nicholas [1988] RTR 343 ... 246-7
- Tompkins (1977) 67 Cr App R 181 ... 436
- Toohy v Commissioner of Police of the Metropolis [1965] AC 595 ... 378, 626-7
- Treacy [1944] 2 All ER 229 ... 294, 613, 631
- Tricoglus (1976) 65 Cr App R 16 ... 179-80
- Truman (Frank) Export Ltd v Commissioner of Police of the Metropolis [1977] QB 952 ... 489
- Turnbull [1977] QB 224 ... 568, 571-3, 647
- Turner (1975) 61 Cr App R 67 ... 206-7, 266
- Turner [1975] QB 834 ... 377
- Turner [1995] 1 WLR 264 ... 459
- Turner v Louisiana 379 US 466 (1965) ... 211
- United States v Sliker 751 F 2d 477 (2d Cir 1984) ... 655
- Unterpertinger v Austria (1986) 13 EHRR 175 ... 213
- Van Omeron v Dowick (1809) 2 Camp 42 ... 681
- Varley [1982] 2 All ER 519 ... 151
- Vel v Chief Constable of North Wales [1987] 151 JP 510 ... 43
- Virgo (1978) 67 Cr App R 323 ... 564
- Vye [1993] 1 WLR 471 ... 136
- Wainwright [1998] Crim LR 665 ... 147
- Waldman (1934) 24 Cr App R 204 ... 156
- Walker [1994] Crim LR 763 ... 600-1
- Walker [1998] Crim LR 211 ... 279
- Wallace Smith Trust Co Ltd v Deloitte Haskins and Sells [1997] 1 WLR 257 ... 452
- Wallwork (1958) 42 Cr App R 153 ... 538, 577
- Walsh (1989) 91 Cr App R 161 ... 289
- Walters v R (PC, Jamaica) [1969] 2 AC 26 ... 103, 104
- Walwin (L. E.) & Partners Ltd v West Sussex CC [1975] 3 All ER 604 ... 398-9
- Ward [1993] 1 WLR 619 ... 284, 445
- Warren v Warren [1999] QB 488 ... 544, 545
- Waters (1997) 161 JP 249 347
- Watson v Little (1860) 5 Hurl & N 572 394
- Watts [1983] 3 All ER 101 ... 55, 157, 162-3, 164
- Wauchope v Mordecai [1970] 1 WLR 317 ... 412
- Waugh v British Railways Board [1980] AC 521 ... 487-8, 492
- Waugh v R [1950] AC 203 ... 253
- Weekes (1983) 77 Cr App R 207 ... 141
- West [1996] 2 Cr App R 374 ... 178
- Western v DPP [1997] 1 Cr App R 474 ... 303
- Wetherall v Harrison (DC) [1976] QB 773 ... 684
- Wheeler [1917] 1 KB 283 ... 522
- Wheeler v Le Marchant (1881) 17 ChD 675 ... 487
- White v R [1999] 1 AC 210 ... 577
- Williams v DPP [1993] 3 All ER 365 ... 61, 73
- Williams v Home Office [1981] 1 All ER 1151 ... 454
- Williams v Summerfield [1972] 2 QB 513 ... 664
- Williams v Williams [1988] QB 161 ... 663
- Willshire (1881) 6 QBD 366 ... 695-6
- Winfield [1939] 4 All ER 164 ... 134
- Wink (1834) 6 Car & P 397 ... 575
- Wong Kam Ming v R [1980] AC 247 ... 296
- Wood (1841) 5 Jur 225 ... 134
- Wood (1982) 76 Cr App R 23 ... 673
- Woodcock (1789) 1 Leach 500 ... 252
- Woodhouse v Hall (1980) 72 Cr App 39 ... 228-9, 230
- Woolf v Woolf [1931] P 134 ... 32
- Woolgar [1991] Crim LR 545 ... 534
- Woolmington v DPP [1935] AC 462 ... 86, 90, 92
- Wright [2000] Crim LR 851 ... 41
- Wright v Doe d Tatham (1837) 7 Ad & El 313 ... 230, 234
- Wu Chun-Piu v R [1996] 1 WLR 1113 ... 266
- X (1989) 91 Cr App R 36 ... 586
- X Ltd v Morgan-Grampian (Publishers) Ltd [1991] 1 AC 1 ... 503, 504, 507
- X, Y and Z v UK (1997) 24 EHRR 143 ... 531
- Yacoub (1981) 72 Cr App R 313 ... 517
- Young [1995] QB 324 ... 546
- Z [2000] 2 AC 483 ... 192-3, 406, 407, 409

TABLE OF STATUTES

Affiliation Proceedings Act 1957 ... 643

Arbitration Act 1979

s.1(7)(b) ... 401

Bankers' Books Evidence Act 1879

s.3 ... 661

s.4-s.5 ... 661

s.6 ... 546, 661

s.7 ... 662, 663, 664

s.9 ... 662

Banking Act 1979

Sch.6 ... 662

Children Act 1989 ... 483, 490, 491, 492, 493,
494, 689

Part IV ... 491

s.1(1) ... 490

s.1(3) ... 111

s.31 ... 491

s.31(2) ... 110, 111, 113

s.96 ... 518, 541, 550

Children and Young Persons Act 1933

s.38 ... 541

s.38(1) ... 518, 539, 643

s.38(2) ... 539

s.43 ... 362

Children and Young Persons Act 1963

s.16(2) ... 167-8, 621

Children and Young Persons Act 1969 ... 455,
463

Civil Evidence Act 1968 ... 12, 201, 204, 206,
211, 333, 334, 335, 338, 339, 340, 342, 383,
423, 564, 581, 673

Part I ... 345, 365

s.2 ... 333, 345

s.2(1) ... 216

s.4 ... 333, 334, 350, 351

s.5 ... 334, 359

s.8 ... 340

s.9 ... 259, 342, 367

s.9(3) ... 368

s.11 ... 411, 412, 414, 415, 416, 421

s.11(1) ... 411

s.11(2) ... 411

s.11(2)(a) ... 412, 413

s.11(4) ... 415

s.12 ... 411, 414, 415, 687

s.12(1)-(2) ... 414

s.12(4) ... 415

s.12(5) ... 414

s.13 ... 411, 414, 415

s.13(1) ... 415

s.13(2A) ... 415

s.13(3)-(4) ... 415

s.14(1) ... 476

s.14(2)-(3) ... 476, 477

s.14(4)-(5) ... 477

s.16(1)(a) ... 472

s.16(3) ... 500

s.16(4) ... 500, 688

s.16(5) ... 472

s.18(2) ... 477

s.18(5) ... 48

Civil Evidence Act 1972 ... 12, 334

s.1 ... 365

s.2 ... 383

s.2(1)-(2) ... 365

s.3 ... 375

s.3(1) ... 375, 669

s.3(2) ... 388

s.3(3) ... 375, 669

s.4(1) ... 387

s.4(2) ... 388

Civil Evidence Act 1995 ... 12, 22, 36, 201, 203,
205, 211, 219, 228, 235, 241, 248, 250, 254,
261, 264, 265, 334, 337, 338, 340, 344, 359,
361, 365, 368, 369, 383, 561, 564, 581, 584,
628, 651, 665, 673

s.1 ... 217, 365, 561, 564

s.1(1) ... 338

s.1(2) ... 199-200, 338, 368

s.1(2)(a) ... 365

s.1(2)(b) ... 217

s.1(3)-(4) ... 340

s.2 ... 340

s.2(1)-(3) ... 339

s.2(4) ... 339-40

s.3 ... 340

s.4 ... 341

s.4(1) ... 341

s.4(2) ... 340, 341

s.4(2)(a) ... 341

s.5(1) ... 337-8, 543-4

s.5(2) ... 342, 628

s.6 ... 342, 561, 564, 580, 584, 631

s.6(1) ... 561

s.6(2) ... 561, 562, 564, 579, 584

s.6(3) ... 561, 562, 584, 618

s.6(4) ... 561, 562, 564