

A blurred silhouette of a person wearing a dark, long-sleeved shirt, standing in a brightly lit area. The person's face and features are indistinct due to the blur. The background is a bright, out-of-focus light source, possibly a window or a bright light fixture, creating a high-contrast scene.

L-4

# Evidence 1

Criminal Lit

# Abbreviations

AR – Actus Reus

MR – Mens Rea

ABH – Actual Bodily Harm

GBH – Grievous Bodily Harm

D – Defendant

PC – Police Constable

PS – Police Station

PACE – Police Powers And Criminal Evidence Act 1984

CJPOA – Criminal Justice And Public Order Act 1994

CJA – Criminal Justice Act 2003

CDA – Crime and Disorder Act 1998

YJCEA – Youth Justice and Criminal Evidence Act 1999

WS – Witness Statement

## Evidence

Types and Admissibility

Confession

Witnesses and Summons



# 1. TYPES AND ADMISSIBILITY

## Burden

1. **Prosecution** – must prove guilt “beyond reasonable doubts”: offence has been committed and the defendant is responsible
2. **Defence** – evidential burden to introduce necessary evidence before the court, **Except:**  
Prove defence in: *insanity, diminished responsibility* etc.

## Evidences

**Oral Evidence:** is given greatest weight

**Evidence Of Identity:**

- (a) Witnesses;
- (b) Samples

**Witnesses of Facts**

**Expert Witnesses**

**Real Evidence:** objects e.g. weapon

**Documentary Evidence:** different records (e.g. PC’s note book), photographs, documents

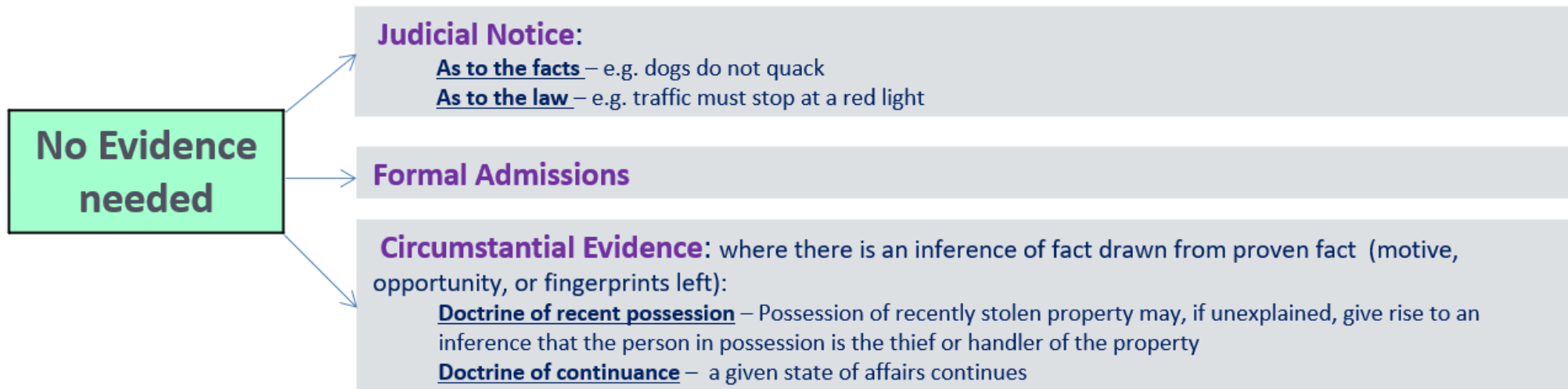
**Written statements and depositions:** includes any affidavit, affirmation or statement made upon oath.

. Deposition **may be read as evidence** at the trial unless the trial judge directs otherwise. **2 options as to deposition:**

- Court issues a **summons** requiring a person **to attend before a magistrate to have evidence taken in the form of a deposition** [CDA 1998, sch. 3, para. 4]
- Court **orders** the examination of any witness, whose attendance for examination might be required, to be **conducted before any judge or officer of the court or other person** appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence

**Video Evidence/Special measures** - court can direct in respect of vulnerable and intimidated witnesses; to guarantee the anonymity of witnesses: (a) screening the witness from the accused;

- (b) giving evidence by live link;
- (c) giving evidence in private, available for cases where sex offences or modern slavery, servitude, forced labour or human trafficking
- (d) ordering the removal of wigs and gowns
- (e) video recording of evidence-in-chief or cross-examination
- (g) examination through an intermediary for a young or incapacitated witness
- (i) a witness anonymity order applying to the police investigation and pre-trial disclosure



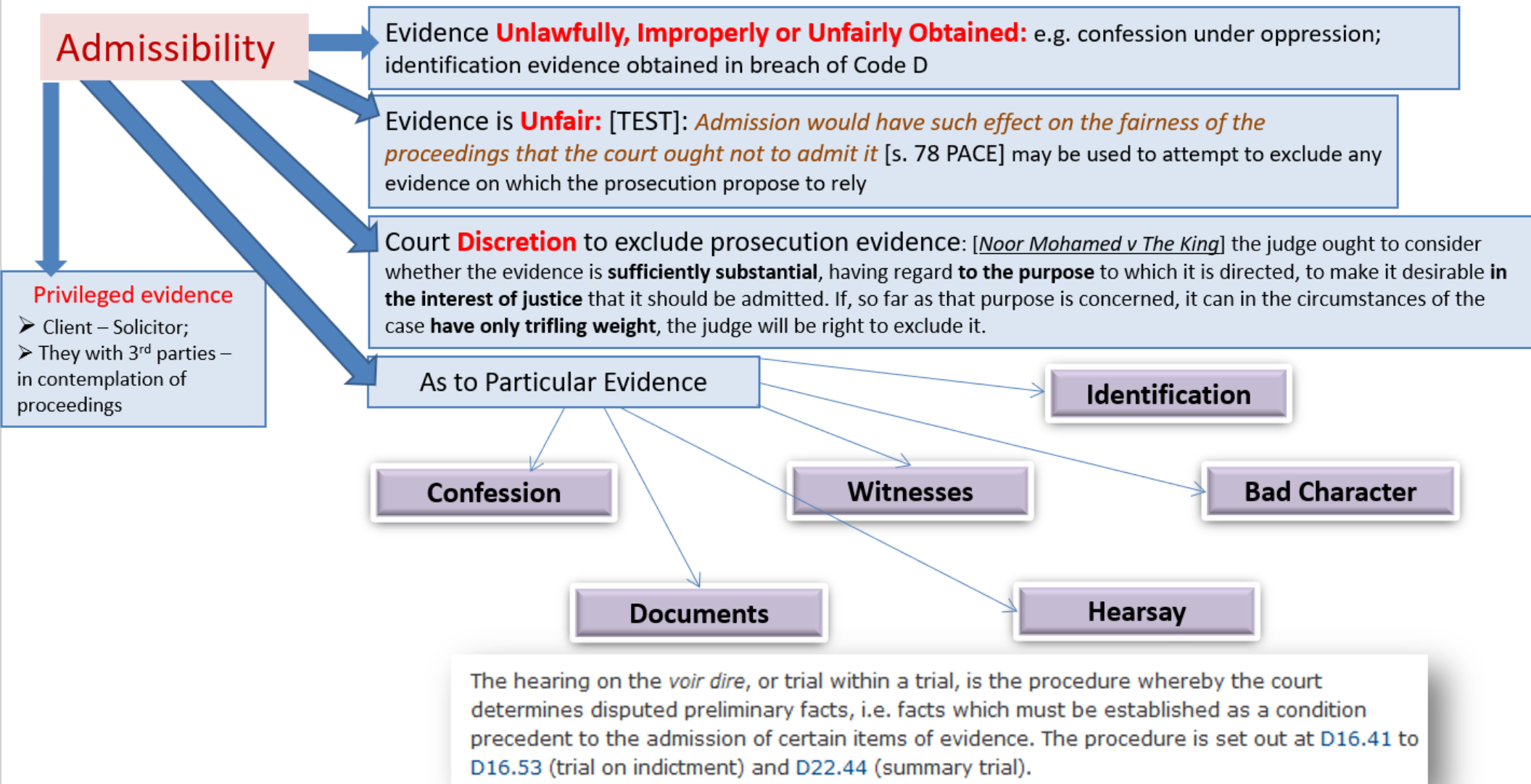
## Evidential Safeguards

**Evidence Legally Obtained** e.g. identification, samples, confession

**Evidence Unlawfully, Improperly or Unfairly Obtained**

**Corroboration Rule** – at common law one witness is insufficient and must be supported by independent evidence. Evidence, to be capable of constituting corroboration, must:

- (a) be relevant and admissible
- (b) be credible
- (c) be independent
- (d) implicate the accused



## 2. CONFESSION

- If defendant confessed, but changed his mind - Can be used in evidence against him
- It is admissible until excluded
- Warn the client not to talk in jail

### TEST [s.76 and 78 PACE]

1. Obtained by **oppression**: torture; degrading treatment; threat [s.76 PACE]
2. Under influence of something **done or said by the police to render it unreliable** [s. 76 + R vs. Paris]: 300 times asked if guilty]
3. Admission would have such effect on the *fairness of the proceedings* that the court ought not to admit it [s. 78 PACE] – **unfair evidence 11**

#### Examples:

- application of force
- failure to secure access to a solicitor
- improper record of the interview
- failure to provide safeguards re valuable suspect
- substantial breach of the Codes

### The fact that confession is wholly or partly excluded shall not affect admissibility of:

- a. any fact disclosed by the defendant during the confession;
- b. the particular way in which the defendant speaks, writes, expresses himself

### 3. WITNESSES AND SUMMONS

**GENERAL RULE**, the evidence which may be adduced is restricted to evidence of matters tending directly or indirectly to **prove or disprove the facts in issue**





There is no property in witness

→ *Right to **cross-examine**: witness under oath may be asked leading questions*

*If own witness – **examination in chief**: cannot ask leading questions; exception: dealing with hostile witnesses that is at the discretion of the judge*

***Re-examination** - After cross-examination, a witness may be re-examined by the party who called him. This applies even in the case of a hostile witness, who may be re-examined on any new matters which arose out of cross-examination*

## Summons

*Securing the attendance of a witness, whether by witness order or witness summons*

### If Witness Refuses to Testify?

#### Penalty may be imposed by the court:

- a) A witness who refuses to answer a proper question may be found to be in **contempt of court** and face the penalty of imprisonment
  - b) A witness who refuses to testify runs the risk of **committal** to prison as a contemnor
- The witness may change his mind

# Evidence

1. **ss.76, 78 PACE**
2. **[R vs. Paris]**
3. **Legal Practice Companion: Evidence at trial or LPC Handbook**
4. **Criminal Litigation Practice and Procedure, Deborah Sharpley (CLP): "Evidence" / Introduction to evidence; Confession Evidence; Exclusion of evidence**
5. **Criminal Litigation, Martin Hannibal and Lisa Mountford: "Introduction to Criminal Litigation" / An introduction to the law of criminal evidence and advocacy; "Investigation and the Decision to Charge" / Challenging unlawfully and unfairly obtained evidence; "4. Proving the Case - The Rules of Criminal Evidence" / The burden of proof; Witness evidence; Corroboration, the 'Turnbull guidelines' and opinion evidence; Private privilege**