

EVIDENCE AND PROOF

In theory and practice

Practical Exercise 5

R v Bruce Confessions & Discretionary Exclusion

Learning goals

The purpose of this practical exercise is two-fold. First, students will continue to build upon their knowledge of the rules regarding the admissibility and use of confessional evidence, as well as their advocacy skills. Second, the exercise will also form the basis of an individual assignment.

Students taking the role of counsel must formulate and present an argument which demonstrates a thorough knowledge of the rules regarding the admissibility of confessional evidence and its use at trial and in particular to canvass arguments relating to:

- the voluntariness of confessional evidence;
- the exclusion of confessional evidence in exercise of the fairness and/or public policy discretions.
- the *voir dire* procedure for determining these issues.

Students must also demonstrate capacity to apply those rules persuasively in a practical context. Note: this is not a witness examination exercise, but a legal argument about the admissibility of items of evidence. Counsel presenting will each have about 25 minutes to make their arguments.

Assessment

Oral application: Students will be individually assessed on their oral participation as counsel.

Written assignment: In addition, students undertaking the role of counsel must complete a written assessment based on this application. That assessment must be submitted by 2.00 pm on Friday 28 October 2011. Instructions for the written assessment are on MyUni in the "Assessments" folder.

Who do you represent?

Groups which represented the Plaintiff in the *Sanchez* case appear for the Prosecution in this exercise; groups which represented the Defendant appear for the Defence in this exercise.

This application is made by the Defence acting for Martin Bruce, however, different judges may call on either Defence or Prosecution to address the Court first.

Exchange of document before application

You should provide an Outline of Argument to your opposing counsel and the judge. The judge can be provided with the Outline in class but you should provide opposing counsel with the Outline *at least 24 hours prior to the in-class exercise* so each of you has a chance to consider the other's submissions. You will be informed of which team you will be appearing against by your seminar leader in advance of the practical exercise to facilitate this exchange of documents. Your Outlines can be revised after the application and prior to submission for Assignment 2.

The Prosecution Case

Refer to the Case File. There are no additional materials relied on by the prosecution for this Practical Exercise.

Defence Instructions

Mr Bruce's instructions are that Sergeant York had pointed a gun at him when he and Tracy first arrived at his home on Sunday 15 May. Having a gun brandished at him whilst he was barely clothed made him feel very uneasy.

Mr Bruce says that after he let the officers search his home and they presented him with the bag they found in the bin, York said to him: "You're in deep shit Marty my lad. I'm going to be retired from the force before you're eligible for parole this time." Mr Bruce further instructs that there was then the following exchange:

I said "What do you mean, Mr York?"

He said "This handbag exactly matches the description of the one stolen from a tourist yesterday. We've got you on this one, son. Do you know what the maximum for robbery is? And with your priors – it's not looking good Martin. Why don't you tell me what happened."

I said "Ok, Mr York, sir. And if I do you'll be able to help me out, right?"

He said "I wouldn't worry about that, Martin. We've got plenty on you – CCTV, fingerprints on the bag and, of course, your priors. . If you talk I might be able to help you, but now you need to help yourself."

After that exchange, Mr Bruce says he told Detective York about the incident with the tourist. He says he was scared and confused the whole time police were at his place. He says he was in his undies and was feeling pretty unsteady from getting on the grog the previous night. Everything was just spinning and happening so fast. He says he didn't really understand why the police were there, but just felt they would leave if he talked and told them what they wanted to hear.

Mr Bruce is 31 years old. He has been in foster care since he was 11 years old. He has a record for prior offending and was most recently convicted of assault in 2007, but an 18-month sentence of imprisonment was suspended upon him entering into a bond to be of good behaviour for 3 years. Since that incident (in 2007), Bruce has been under ongoing medical supervision, which involves treatment with antidepressants and other sedatives.

The Application

Defence counsel, acting for Mr Bruce, is instructed to apply for a ruling that the records of interview in which Bruce participated should not be admitted into evidence at the forthcoming trial. Prosecution counsel will oppose this application.