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Level 6
CRIMINAL LITIGATION
Subject Code L6-18

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 18 – CRIMINAL LITIGATION

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.
- You are permitted to take your own clean/unannotated copy of the case study materials and a statute book, where permitted, into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEX Examination Regulations – Online Examinations or with the CILEX Examination Regulations – Online Examinations with Remote Invigilation.

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ADVANCE INSTRUCTIONS TO CANDIDATES

You are employed as a trainee lawyer by Kempstons LLP. You are currently working in the criminal litigation department. Kempstons holds a standard criminal legal aid contract with the Legal Aid Agency and participates in several local duty solicitor schemes. Among the cases being dealt with in the department are the following:

CASE ONE – KARL LOVELL

This client, aged 16, has been arrested on suspicion of wounding with intent and possession of a bladed article. The alleged offence arises in the context of a history of violence between two rival gangs from neighbouring areas of Luton. According to the police, members of one gang were lured to a small industrial estate and were then ambushed by a group including your client. Three members of this first group sustained stab and slash wounds. In one case, the injuries are said to be life-altering but not life-threatening.

The life-altering injury involves a serious gash to the face, which is likely to result in permanent scarring. It is this injury which it is claimed your client caused. CCTV and mobile phone data clearly places your client in the vicinity of the offence. Your client has been arrested, and the police have advised you that they propose to release him under investigation pending the result of a VIPER identification procedure, which they want to carry out. The eyewitnesses are workers at a unit on the industrial estate, not members of the rival gang.

Your client has informed you that he was present at the scene, but that he went reluctantly and in order to not lose face with other members of the gang, most of whom are several years older than he is. He tells you that he had nothing to do with the actual stabbings and did not at any time have a knife or other blade in his possession. He does know which of his fellow gang members were responsible but does not wish to say anything that might incriminate them.

He is estranged from his parents, who have virtually disowned him because of his involvement with the gang, but is on good terms with his older sister, with whom he has been living for the past three months. He has not previously come to the attention of the police.

CASE TWO – JOE CLARKE

This client, aged 27, has been charged with two offences of handling stolen property, and has been bailed by the police pending his initial appearance in the magistrates' court. Joe Clarke received telephone legal advice (not from Kempstons) following his arrest on 29 November 2021 and gave a no-comment interview. He was then charged with the offences. A summary of the prosecution case as contained in the Initial Details of the Prosecution Case (IDPC) is provided in **DOCUMENT 1**, and details of your instructions from Joe Clarke are contained in **DOCUMENT 2**.

CASE THREE – MARLA BRATHWAITE

This client, aged 25, has elected summary trial on a charge of assault occasioning actual bodily harm to Emma Sanderson. The alleged offence occurred in a restaurant, when the complainant Sanderson approached your client and accused her of trying to induce the complainant's boyfriend to end their relationship so that Marla Brathwaite could start one with him.

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What commenced as a verbal altercation developed into pushing and shoving, and it is alleged that your client then struck the complainant two or three times about the head and shoulders with a large pepper grinder, causing a broken nose and various cuts and bruises. Your client states that she was simply reacting to the actions of the complainant, who was threatening her with a wine bottle.

At the time of the alleged offence, your client was employed as a shop manager. You have ascertained that she was not eligible for legal aid on financial grounds, but she has recently been made redundant and is currently in receipt of Universal Credit. She is of good character and hopes to join the Royal Navy.

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[NOTE TO CANDIDATES: You should assume that all statements are in proper form and that continuity of possession is properly established for all exhibits. The IDPC relates to two separate incidents. The first is a robbery at a jewellers' store and an associated allegation of handling property stolen in the robbery; the second relates to handling a motorcycle that had been reported stolen some time previously.]

Evidence in relation to the robbery and associated handling

Hannah Peterson, manager of David Lewis Jewellers, Franklin Street, Bedford, describing the robbery itself: Two men entered the shop at about 17.45 just before closing time on Tuesday, 23 November 2021. Both 20–30, average build, white. One had a local Bedford accent; one had a Liverpool accent. Wearing dark jackets, sweatshirts and jeans. The one with a Liverpool accent produced a handgun and demanded goods. Ms Peterson handed over the contents of two trays. They were then disturbed by a customer entering the shop and made off. The customer turned out to be an off-duty police officer and he apprehended the man with the Liverpool accent. List of the stolen property is attached: 28 gold chains total value £2,900 and 31 diamond engagement rings total value £37,890. On the following day, Ms Peterson was shown 28 gold chains, which she was able to identify as those stolen. On 29 November, she was shown five diamond rings. From the description and markings, she could say that they were similar in all respects to five of the rings stolen in the robbery and valued at £8,400.

PC 267 Lomas: Went into David Lewis Jewellers at 17.45 on 23 November 2021 while off duty to look for a birthday present for his wife. Interrupted by chance an apparent robbery. Apprehended one robber he now knows as Kevin Jones, but the other got away and was seen to go in the direction of the Drummond Street car park. Jones found to be in possession of 28 gold chains.

PC 126 Briggs: On 24 November 2021, obtained CCTV tapes from Drummond Street car park for the period 17.00–21.00 on 23 November. At about 17.20, a white male (Male A) was seen to enter the car park on a Honda motorcycle, the number plate of which could not be seen. He parked it and could be seen loitering in the car park. At 17.50, a second white male (Male B) was seen to enter the car park from the direction of Franklin Street. Male B approached Male A and handed a small bag to him; contents invisible. Male B always had his back to the camera and could not be identified. Male A's face could be seen briefly on several occasions, both while loitering and during the encounter with Male B. PC 126 Briggs recognised Male A as being Joe Clarke, as he had had previous dealings with him.

DC 3254 Sharma (West Midlands Constabulary): As part of routine enquiries relating to the proceeds of crime, visited 'The Cash Machine', pawnbrokers, Erdington Road, Birmingham on 26 November 2021. Had received notification of the theft of jewellery in Bedford among other similar reports. On checking the records at The Cash Machine saw that a person named as Joe Clarke, identified by a driving licence, was recorded as pawning five rings on 25 November. These rings answer the description of five of the rings referred to in the report concerning the Bedford offence. The amount loaned against the rings was £1,500. DC 3254 Sharma took possession of the rings and a copy of the register entry for further enquiries to be made.

[NOTE TO CANDIDATES: The register entry is not reproduced here. The licence number recorded is Joe Clarke's actual licence number. The address given is 46D Harpur Street, Bedford, and the entry is signed 'J Clarke'.]

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James Neill, pawnbroker proprietor: Advised that the person in question was aged 25–30, swarthy complexion, lightly built and average height.

Evidence in relation to the motorcycle

Damian Cox: 'I am the owner of a Honda motorcycle JG04 TRU. On 7 November 2021, I parked this as usual in the yard to the side of my home, 53 Albany Ave, Cardington, at about 22.00. When I went to get it at 09.00 the following day, it had disappeared. I did not authorise anyone to take it. I believe it has a sale value of £400.'

In relation to the arrest and interrogation

PS 213 Voyce: On 29 November 2021 at 19.45 hours, acting on information received and together with PC 228 Cowane, I went to 23 Kingston Terrace, Bedford, where I arrested Joe Clarke, previously known to me, on suspicion of handling stolen property, the proceeds of a robbery at David Lewis Jewellers on 23 November. I cautioned Clarke. There was no reply. I indicated that I wished to search the flat occupied by Clarke for evidence relating to the offence. Clarke agreed to the search. In a cupboard drawer in the kitchen, I found an envelope with the name Kevin on it. In the envelope were banknotes to a value of £1,500. I took possession of the envelope and contents. In the yard of the property was a Honda motorcycle JG04 TRU. Clarke stated it was his. I checked the number against our records, and it transpired that it had been reported stolen in Cardington some time previously. I arrested Clarke for theft of the motorcycle and again cautioned him. He made no reply.

Clarke was conveyed to Bedford police station and produced to the Custody Officer at 21.15 hours. Clarke received telephone legal advice from a duty solicitor in relation to a proposed VIPER identification procedure, to which he consented. Clarke was then released under investigation, once he had provided a VIPER video sequence.

Following a positive VIPER identification by James Neill and PC 126 Briggs, I rearrested Clarke at 17.30 hours on 6 December. At 18.45 hours, Clarke was interviewed under caution. He made no comment in interview.

At 20.00 hours, Clarke was again presented to the Custody Officer. He was charged with two counts of handling stolen property, namely: five gold rings of the value of £8,400, the property of David Lewis Jewellers; and a Honda motorcycle JG04 TRU, of the value of £400, the property of Damian Cox. Clarke made no reply. He was released on conditional bail to appear before Bedford Magistrates' Court on 13 December.

[NOTE TO CANDIDATES: The official record of the VIPER identification procedure created by the identification officer forms part of the IDPC. It is not reproduced here.]

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DOCUMENT 2

I am Joe Clarke, of Flat 1, 23 Kingston Terrace, Bedford (DoB: 21.1.94). I am currently on bail pending my first court appearance, charged with two offences of handling stolen property, both of which I intend to deny. I have a number of previous convictions for threatening behaviour, assault and drink driving, and am therefore well known to many police officers. I am not currently subject to any order of the court, and I have no convictions for dishonesty. I am employed as a building labourer by Helpston Construction Ltd and have worked for them for three years. My mother is manager of a care home and would stand bail for me. I have always lived in the Bedford area.

The first I knew of these matters was on the evening of 29 November. Two police officers came to my flat and told me they were investigating a robbery at a jewellers in town the previous Tuesday. They said I had been identified as one of those involved and arrested me. They told me to let them search the flat, and found an envelope containing £1,500 in cash. This money is not actually mine but belongs to a friend. It is money he has been saving for a holiday, but he said he couldn't keep it at home, as his brother has a bad gambling habit and might steal it, so he asked me to look after it for him. He gave it to me only a few days before the police searched my flat.

As they were leaving, they noticed a motorbike in the yard wrapped up in a tarpaulin for protection. They asked about it and I told them it was an old bike which I had been given for spares, as I was renovating a similar bike of my own. In fact, the person who gave it to me was the same friend whose money I was looking after. They checked the bike, and then called the control room. They then said that the bike had been reported stolen from Cardington earlier in November, and they arrested me for stealing it. I said nothing in relation to either arrest.

I was then taken to Bedford police station. I asked for legal advice and spoke to a duty solicitor. He told me that the matter on which I was originally arrested was linked to a robbery at David Lewis Jewellers in Franklin Street. Apparently, at 17.45 on 23 November, just before closing time, two men went into the shop and threatened the manager with a gun. She handed over a large quantity of gold chains and some diamond engagement rings, and they ran off. One was arrested at the scene by an off-duty police officer. Apparently, he is a youth from Liverpool called Kevin Jones. I know him slightly, and I sometimes see him around town, but we are not friends. Indeed, we fell out badly a few months ago, when his girlfriend chucked him and started going out with me. In fact, she had decided to get rid of him before she met me, but Kevin didn't believe this, and he once threatened to sort me out.

The other man has not been apprehended. However, apparently closed-circuit TV in the Drummond Street car park shows a person believed to be him meeting another man and handing over what is believed to be the proceeds of the crime. Apparently, a police officer who viewed the CCTV images thought I was this second man.

I had nothing to do with this incident. I spent the whole day of 23 November, from about 11.00 to 23.00 with a girl, Kate Ehiogu. Kate is not my regular girlfriend. At the time, I didn't want my regular girlfriend to find out about this, but it no longer matters, because the day after I was charged, she told me we were finished.

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As far as the bike is concerned, it was given to me by a friend. I had no idea it had been stolen. It was pretty beaten up, and my friend told me that he had been using it for off-road scrambling. I don't want to name this person, because if the bike is stolen, this will get him into trouble, and I know he has been convicted of stealing cars and bikes before.

When I explained all this to the duty solicitor, he advised me to give a no-comment interview, which I did. He also advised me to agree to a VIPER identification, which the police wanted to undertake as apparently an eyewitness had given a description that resembled me.

Joe Clarke's comments on the prosecution case as contained in Document 1

Peterson and Lomas: 'I cannot comment. I assume a robbery did take place as they describe, but I was not involved.'

Briggs: 'I was not there. It must be a case of mistaken identity.'

Sharma and Neill: 'I did not pawn the rings. I am 27, quite dark, but not, I would say, swarthy, although otherwise I fit the description given. The address is one I used to live at. It was on a driving licence I lost about a year ago. I assume someone found it.'

Cox: 'Again, I accept that his bike was stolen, but not by me, and I received it in good faith.'

Voyce: 'I don't recall agreeing to the search, but apart from that he is correct.'

VIPER procedure: 'The witnesses are mistaken.'

End of Case Study Materials