

CASE STUDY MATERIALS

January 2020
Level 3
CRIMINAL LITIGATION
Subject Code L3-11



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 11 – 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

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or textbooks into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

Turn over

* This unit is a component of the following CILEx qualifications: **LEVEL 3 CERTIFICATE IN LAW AND PRACTICE** and **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

CASE STUDY MATERIALS

ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer working for John Martingale, the lawyer in charge of the Criminal Litigation Department of Kempstons Solicitors, Manor House, Kempston, Bedford, MK42 7AB.

You have been asked to review the attached documents from the files of Bobby Saunders and Paulina Nowak:

- Document 1** Attendance note – client Bobby Saunders
- Document 2** Witness statement of Derek Leech
- Document 3** Witness statement of Martha Leech
- Document 4** Transcript of tape-recorded interview – Bobby Saunders
- Document 5** Advance information regarding Paulina Nowak
- Document 6** Client’s instructions – Paulina Nowak

DOCUMENT 1

ATTENDANCE NOTE

Date/time: 18 December 2019 – 09.30 am
Client: Bobby Saunders
Matter: Criminal Damage
Attended by: John Martingale (JM) – duty solicitor
Attendance with Investigating Officer: 6 units
Attendance with client: 4 units

JM was called to attend Bobby Saunders at Kempston Police Station. Upon arrival, JM spoke to the custody officer and asked to consult the custody record.

JM then asked to speak with the investigating officer.

Attending the investigating officer, Sheila Dreyfus, who confirmed as follows:

At 1.40 am 18 December 2019, we attended a burglar alarm call-out to the secondary school – Kempston Academy. Officers arrived at the school at 1.50 am at the same time as the school caretaker, who granted them access to the premises. There was no sign of forced entry to the playground or the school buildings.

The officers reported graffiti, in red spray paint, to the external front walls of the main school building, which included pictures of male genitalia and lewd sexual messages about the headteacher of the school. The caretaker confirmed that the graffiti had not been there the previous evening, when he had locked the gates at 7.00 pm. He has provided a statement to this effect.

The officers conducted a search of the school grounds and retrieved a man's black glove from the fence of the school playground. This was taken for forensic analysis. They also retrieved a canister of red spray paint from a rubbish bin in the playground, which has also been sent off for forensic analysis.

At approximately 1.55 am, we received a phone call from Mr Derek Leech, who had called to report the school alarm sounding and to report having seen someone running away from the school. Officers attended on him at his home and obtained a witness statement. He has given a description of the person he saw running away from the school. Mr Leech reported seeing the individual get into a taxi on Salisbury Avenue.

Turn over

CASE STUDY MATERIALS

Our officers obtained CCTV footage from the 24-hour casino on Salisbury Avenue and from that we were able to trace the taxi driver, Mr George Waller. Our enquiries with Mr Waller revealed that he had picked up a young male, approximately 18–21 years old, matching the description provided by Derek Leech. Mr Waller says that he took the young man to 8 Fairfax Close, Kempston. He also states that the young male seemed very agitated, and was on the phone during the journey, talking about a missing glove. Mr Waller has provided a witness statement to that effect.

At approximately 7.00 am, our officers attended at 8 Fairfax Close. A female in her mid-forties answered the door and gave her name as Mrs Helen Saunders. When asked if a young male lived at that address, she explained that she lived there with her two sons – Bobby and Vinnie. Vinnie was 16 years old and was on his way to school, as he was in his final year at Kempston Academy. Bobby was in the house getting ready to go out for the day with his care worker, as he has severe learning difficulties. As the officers were talking to Mrs Saunders, they observed a young male run out of the back door. The officers chased the male, apprehended him and transported him to the police station. The male suspect confirmed his identity as Bobby Saunders.

Attending Bobby Saunders (DOB: 16 May 2000) on the matter of criminal damage

Bobby stated the following:

'I couldn't sleep last night and so I went out for a walk on my own. I went out just after midnight. I walked all over the place. I ended up right across town near the leisure centre and Kempston Academy school. I suddenly realised that I had been walking for ages and I was feeling very tired and cold. I decided to run for a taxi. I took a short cut across the school playground. I managed to get a taxi outside the casino on Salisbury Avenue. I called my brother while I was in the taxi, to ask him to leave a key for me so I could get in. I realised that I had lost a glove somewhere and I was quite upset, as I had borrowed the gloves from my brother.

'Early this morning, I was in the kitchen when there was a loud knock on the door. Mum answered it and I could hear voices. I panicked and I ran out of the house. I don't like it when people I don't know come to the house. I get scared about strangers and visitors. The police chased me and pushed me to the ground. One of them smashed my head against the pavement and elbowed me in the back. It really hurt. I was really frightened. I was put in the back of the police car and taken to the police station. I had no idea what was happening. All they kept saying was, 'Get in the back of the car. You are coming with us.' I did not even realise that I had been arrested, until they interviewed me. They told me nothing.'

Bobby told me that when he cut through the school, he saw a female putting something into a bin in the playground. When that person saw Bobby, he states that she threatened him, saying: 'You never saw me here. If you breathe a word to anyone, I will come for you.' He said that he did not mention this in interview, because he was frightened by the threat made to him by the female and he could not think straight in the interview.

Bobby has instructed me that he intends to plead not guilty.

Bobby has no previous convictions.

DOCUMENT 2

WITNESS STATEMENT – DEREK LEECH

WITNESS STATEMENT:

(CJ Act 1967, s.9; MC Act 1980, s.5A(3)(a) and s.5B; Crim PR, Part 27)

Statement of: Derek Leech
Address: 108 Bow Street, Kempston, Bedfordshire, MK22 5PU
Age / Date of Birth: Over 18
Occupation: Electrician

Who states:

This statement (consisting of 1 page(s) signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated: 18 December 2019

Signed: *D Leech*

Shortly after 1.40 am on 18 December 2019, I was walking home from the cinema on my own. I had been to watch a late-night showing of the latest James Bond movie. I had just turned the corner from Salisbury Avenue onto Bow Street, where I live. As I turned the corner, I heard a loud alarm sound, like a burglar alarm. I looked down the street and realised it was the school alarm, at Kempston Academy. At the same time, I saw a person running towards me at great speed. They hurried past me and turned right onto Salisbury Avenue.

I would describe the person as medium height and slim build. I could not see their face, as they were wearing a parka-style coat with the hood over the face, and they ran past so quickly. They were wearing dark-coloured trousers and the coat was a dark-green colour. I am unsure whether it was a male or female. I did notice that they were wearing only one glove, which struck me as odd.

I doubled back and watched the person head a little way up Salisbury Avenue and get into a taxi outside the casino. I was not able to see the registration plate of the taxi, as I was too far away and it was dark, but I did notice that it was a Hackney Carriage style taxi. I then continued home, where I found my wife waiting for me, as she was about to leave for work. I phoned the police as soon as I got home to report what I had seen.

I would not be able to recognise the person if I saw them again. I am willing to attend court in relation to this incident, if required.

Turn over

DOCUMENT 3

WITNESS STATEMENT – MARTHA LEECH

WITNESS STATEMENT:

(CJ Act 1967, s.9; MC Act 1980, s.5A(3)(a) and s.5B; Crim PR, Part 27)

Statement of: Martha Leech
Address: 108 Bow Street, Kempston, Bedfordshire, MK22 5PU
Age / Date of Birth: Over 18
Occupation: Community Midwife

Who states:

This statement (consisting of 1 page(s) signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated: 18 December 2019

Signed: *M Leech*

At approximately 1.30 am on 18 December 2019, I was looking out of my living room window, watching for my husband coming home from the cinema. I am a community midwife and I was on call that night. I had just received a call to attend a birth, so I was checking whether I could see my husband approaching, as he was due home around that time.

Our house is opposite Kempston Academy school. As I was looking out, I could see someone in the school playground. They were putting something in the bin. I then saw a second person running across the playground. I opened my window to try to see if I could hear anything.

The person I had seen putting something in the bin shouted something to the second person. I could not hear what was said, but it was a female voice.

I would not be able to identify either person, as it was dark. I could only see that the first person, the female, had a rucksack on her back and a short bomber-style jacket. The second person I saw running across the playground was wearing very dark clothes with a big hood over their face.

I watched as the second person continued to run across the playground and climb over the side fence and onto the road further down Bow Street, running towards the Salisbury Avenue end. I saw the first person disappear around the back of the school. I then heard the school alarm sounding and I saw my husband turn the corner onto our road. The second person was running in his direction, and I watched him hurry past my husband and turn the corner onto Salisbury Avenue.

My husband arrived home a couple of minutes later. I left him on the phone to the police, as I had to get to Kempston Birth Centre.

I would not be able to recognise either person if I saw them again. I am willing to attend court in relation to this incident, if required.

DOCUMENT 4

TRANSCRIPT OF TAPE-RECORDED INTERVIEW

KEMPSTON POLICE RECORD OF AUDIBLY RECORDED INTERVIEW

INTERVIEW OF: Bobby Saunders
DATE OF BIRTH: 16 May 2000
ADDRESS: 8 Fairfax Close, Kempston
DATE: 18 December 2019
INTERVIEW AT: Kempston Police Station

TIME COMMENCED: 8.50 am
TIME CONCLUDED: 9.13 am
DURATION OF INTERVIEW: 23 minutes

TAPE REFERENCE NO: 65/8/00/BS
INTERVIEWING OFFICERS: DS 234 Mark Palmer and DC 175 Carla Richmond
OTHER PERSONS PRESENT: None
Signature of officer preparing record: *Carla Richmond*

Tape times

8.50 am

PARTICULARS OF INTERVIEW

The police officers introduced themselves as DS Palmer and DC Richmond.

8.53 am

DC Richmond stated that Bobby had been arrested in relation to criminal damage at a school.

Palmer: So then, Bobby, where were you at around 1.40 am this morning?

Saunders: I was out walking.

Palmer: Who were you with?

Saunders: On my own.

Palmer: Of course you were. How convenient.

Saunders: I always go walking on my own. It helps me think straight.

Palmer: Where were you walking?

Saunders: All over town. I walked for miles and miles. I couldn't get to sleep. Walking helps me to feel tired and switch off from the world.

Palmer: Did you pay a visit to Kempston Academy?

Saunders: I cut through the playground at the end of my walk, when I realised how late it was getting.

Turn over

CASE STUDY MATERIALS

Palmer: 'Cut through' – is that what you call it?

Saunders: I don't know what you mean. I don't understand what you are saying.

Palmer: What were you doing at the school?

Saunders: Nothing. I just said. I cut through as a short cut.

08:58 am

Palmer: Come on Bobby, don't mess with us. We know what you were up to last night. Don't waste our time pretending you were on a late-night nature walk.

Saunders: I don't know what you want me to say.

Palmer: Oh I think you do, young lad. Feeling creative were you? Fancy yourself as a graffiti artist?

[Palmer shows Bobby a photograph.]

For the benefit of the tape, I am showing the suspect a photograph of graffiti found on the walls of the school at approximately 01.50 this morning, around the time that you were taking your short cut.

09:01 am

Saunders: I was just taking a short cut. I don't know anything about any graffiti.

Palmer: Just tell us what you were really doing at the school and then we can finish up in this interview and all get home for the day.

Saunders: Really. I don't understand. I was just walking round and round. Round and round. Walking. Please stop asking me so many questions. It's hurting my head. I can't think straight.

Palmer: Just tell us what we want to know and then I can stop the questions.

Saunders: I don't know what you want me to say. Please just stop.

[Saunders puts his hands over his ears and closes his eyes.]

I want to go home. Can I ring my Mum?

CASE STUDY MATERIALS

09:06 am

Palmer: Just tell us the truth about last night and you can go home to your mum – there is no need to bother her with a phone call now.

Saunders: I've been asking since I arrived to call my Mum and you all keep saying no. Please just stop. I have told you already. I can't tell you what I don't know. Is the solicitor here yet?

Palmer: No, the solicitor will be hours yet. They have lots of people to see, Bobby. We might as well just sort this out ourselves.

Saunders: I can't breathe properly. My chest feels tight. I think I might be sick.

Palmer: Let's just get this wrapped up then, Bobby. Do you recognise this glove? For the benefit of the tape, I am showing the suspect exhibit BS/2, which is a large, black, man's glove to fit the right hand.

Saunders: It is my brother's glove. How did you get that? He needs that back.

Palmer: Tell us the truth about last night and you may be able to get the glove back. Did you graffiti the walls of Kempston Academy last night?

Saunders: Stop. Stop. Please make it stop.

Palmer: Did you spray rude pictures and messages on the walls of the school last night? Did you do this?

[Palmer slams the photograph down on the table in front of Bobby.]

Saunders: [does not answer]

09:12 am

Palmer: I'm getting irritated now, Bobby. For the last time, **WAS IT YOU WHO SPRAYED GRAFFITI ON THE SCHOOL WALLS?** [shouting]

Saunders: Okay. Okay. Stop now. Stop. I did it. Whatever you are saying – I did it. All of it. Everything. Anything. Can I go home now? Can I have the glove back?

Interview terminated and Saunders charged with criminal damage with a value of £3,000.

Turn over

DOCUMENT 5

ADVANCE INFORMATION – CLIENT: PAULINA NOWAK

The charge sheet details one charge of theft of £2,400 cash on 2 January 2020 from Bets4You.

There is a statement from Arek Kunowski, the owner of Bets4You, a small independent high street betting shop. He says he is the former fiancé of Paulina Nowak. He was at work in his betting shop on 2 January when, towards the end of the day, Paulina Nowak came in and demanded money. He was the only person in the shop at the time. Arek Kunowski says that she came in ranting about how unfair it was that he was making money, while she was unable to work because she was stuck at home raising their children. Arek Kunowski confirmed that he and Paulina Nowak have three children together. He states that she became hysterical and was screaming and shouting about money, and how she was entitled to money from him. Arek Kunowski says that Paulina Nowak smelled strongly of alcohol. He states that he told her to go away and stop pestering him for money and that she stormed off out of the shop. Arek Kunowski states that he was so agitated when Paulina Nowak left, that he went to the side door for a cigarette, before locking up to calm his nerves.

Arek Kunowski says that he had almost finished his cigarette, when the betting shop burglar alarm started to sound. He immediately went back into the shop and found the shop's takings gone. He also found the fire door wide open, which is what had triggered the alarm. There had been £2,400 in cash in the office, bagged up and ready for him to deposit at the bank on his way home that day. He confirmed that there was no one in the shop when he went for the cigarette or when he came back in afterwards. Arek Kunowski stated that the money was betting shop takings from that day.

Arek Kunowski confirmed that the exchange in the shop between him and Paulina Nowak was in Polish, as Paulina Nowak does not speak any English.

There is a statement from Kelly Jacklin, who is employed as a store detective at the mini-supermarket across the road from Bets4You. Kelly Jacklin was at work on 2 January and was inside the supermarket talking to a regular customer, when she heard an alarm sounding outside. She immediately ran out onto the street, realised that it was the betting shop alarm and saw a woman, who she now knows to be Paulina Nowak, approximately 50 metres from the shop. The woman started to run when she saw Kelly Jacklin. Kelly Jacklin says that she chased Paulina Nowak and apprehended her by the main road. Kelly Jacklin says that she arrested Paulina Nowak and escorted her to the supermarket, where she called the police and detained Paulina Nowak until the police arrived. Kelly Jacklin states that Paulina Nowak said nothing during the arrest, despite being asked for her name and address. Kelly Jacklin did add that she thought that she saw Paulina Nowak throw something into the hedge as she was chasing her, but that she could not be sure of this.

Having taken a statement from Kelly Jacklin, the attending officers arrested Paulina Nowak and searched her bag, which revealed an identity card showing her to be Paulina Nowak, aged 31. The police carried out a search of the local area. They recovered a Bets4You takings bag containing £2,400 cash from the hedge, approximately 10 metres from where Kelly Jacklin had apprehended Paulina Nowak. A hair sample was obtained from the bag and sent for forensic analysis.

CASE STUDY MATERIALS

The police informed Paulina Nowak that they wished to take a hair sample, but she refused. Paulina Nowak gave a 'no comment' interview.

Paulina Nowak has the following previous convictions and bail history:

20.03.2012 – Theft from a shop – s.1(1) Theft Act 1968 – (fine)

20.03.2012 – Failure to surrender to bail – s.6(1) Bail Act 1976 – (fine)

[NOTE TO CANDIDATES: The statements referred to in this document are not included in these case study materials and are not required for this assessment.]

Turn over

DOCUMENT 6

CLIENT'S INSTRUCTIONS – PAULINA NOWAK

Paulina Nowak gives instructions in Polish through an interpreter, as she does not speak or understand any English.

Paulina Nowak instructs you that she is not guilty of the offence.

Paulina Nowak says that she was previously engaged to Arek Kunowski, the owner of the Bets4You betting shop, but that it ended bitterly six months ago. She is the mother of three young children – Zuzanna, aged 1, Lena, aged 3, and Eliaz, aged 5. Arek Kunowski is the father of all of her children.

She states that she had been into the betting shop at about 4.45 pm on 2 January 2020. She says that she went to the shop to ask him why he had not paid any money towards the children for the last month. She has not worked since the children were born. Paulina Nowak says that Arek Kunowski laughed in her face when she asked about the money for the children and called her names such as 'pathetic' and 'desperate'. She says an argument developed and that she got very upset and burst into tears, at which point she left the shop.

Paulina Nowak says that she then headed up the street towards the bus stop, when she heard a woman shouting and running after her. She says the woman was dressed in a black uniform and was shouting in English. She says she panicked and started running towards the main road, but she was unable to cross because of the traffic, and the woman caught her, grabbed her by her arm and escorted her to the supermarket. The woman was talking in English to her, but Paulina Nowak was unable to understand anything that was said. Paulina Nowak says she was detained in a small room until the police arrived, and then she was taken to the police station.

Paulina Nowak says that she did not say anything during the police interview, because it was conducted in English and she was unable to understand any of the questions. She did not have a solicitor in the interview, as she says she was unaware that one was available. She also did not make a phone call, as again she did not realise that she had a right to do this. She had no idea why she had been brought to the police station until we took these instructions from her in Polish. She did not even realise that she had been arrested, or what for.

Paulina Nowak instructs you that she has recently been diagnosed with breast cancer and is about to start a lengthy course of chemotherapy.