

# Index

- abuse of process, stay of proceedings as, 179–184
- access to solicitor *see* legal advice
- accuracy of identification, expert evidence as to, 425
- accusation, statements made on, 352–353
- admissibility
  - decision as to, 3
  - relevance, and, 24, 26, 29
  - rules of, 29–30
- admission *see* confession
- advance information, disclosure of, 440
- adversarial proceedings
  - inquisitorial proceedings compared, 15, 22
  - process of, 14–15
  - truth-centredness, 22
- adverse inference
  - arising of, 73, 74, 75
  - common law as to, 99–100
  - definition of, 71–72
  - directions to jury as to, 75–80
  - failure/refusal to explain objects, substances or marks on person/clothing, 94–95
  - failure/refusal to explain presence at particular place, 96–97
  - legal advice to remain silent, 85–88, 91–94
  - silence at trial, 97–99
  - and waiver of legal professional privilege, 98–99
- adverse statement *see* ‘wholly or partly adverse’ statement
- advice to remain silent *see* legal advice, to remain silent
- advocate’s role in trial, 340
- affirmation, 317
- age of person, expert evidence as to, 425
- agent provocateur*, illegally and improperly obtained evidence, 169–176
- agreed statement, 355–356
- all-party agreement
  - as to admission of hearsay, 234
  - character evidence, 265, 288
- allegation of fabrication, statement rebutting, 349
- anonymity order *see* witness
- attack on another person’s character, evidence as to, 283–285
- attempted offence, corroboration of, 377
- bad character *see* character evidence
- ‘balance of probabilities’ *see* standard of proof
- ‘beyond reasonable doubt’ *see* standard of proof
- biased witness, evidence of, 359
- bodily unfit witness, 213–215
- burden of proof
  - allocation, 62
  - civil proceedings, 35–36, 55
  - defence *see* reverse onus
  - evidential burden *see* evidential burden
  - exceptions to general principle, 38
  - general principle, 2, 34, 36–38
  - legal burden *see* legal burden
  - prosecution, 2, 34, 35–36, 36
  - reverse onus *see* reverse onus
  - see also* standard of proof
- business document as hearsay, 225–227
- capability of witness *see* witness
- capacity of witness *see* witness
- case of recognition, 393–394
- caution, questioning under *see* silence
- cell confession
  - admissibility, 139–140
  - corroboration, 386–388
- character evidence
  - adduced by defendant, 265–266
  - admissibility, 245–248
  - admissibility ‘gateways’, 262, 264–265
  - all-party agreement as to, 265, 288
  - attack on another person’s character, 283–285
  - ‘bad character’ defined, 253–262
  - civil proceedings, 292
  - correcting false impression given by defendant, 280–283
  - of credibility, 245–246
  - definition of, 244
  - development of law of, 249–253
  - discretion to exclude, 263–264, 277–279, 285
  - good character, 288–292
  - of guilty knowledge, 285
  - hearsay as, 229
  - important explanatory evidence, 266–269, 287

- character evidence (cont.)
  - introduction to, 244–245
  - 'misconduct' defined, 258–259
  - of non-defendant, 286–288
  - offence committed by defendant when a child, 285
  - prejudicial effect of, 246–248
  - of propensity, 245–246, 270–277
  - relevant to important matter between prosecution and defendant, 269–279
  - 'reprehensible behaviour', defined, 259–262
  - of reputation, 257–258
  - statutory provisions, 253
  - substantial probative value regarding important matter
    - between defendant and co-defendant, 279–280
    - as to non-defendant, 287–288
- child witness *see witness*
- childhood offence by defendant, character evidence as to, 285
- circumstantial evidence defined, 5
- civil partner as witness, 304–309
- civil procedure, 7
- civil proceedings
  - burden of proof, 35–36, 55
  - character evidence, 292
  - disclosure
    - closed material procedures, 460–462
    - procedure generally, 438–439
  - facts of case, 3
  - hearsay, 240–241
  - illegally and improperly obtained evidence, 184
  - informal admissions, 144
  - judge's role, 15
  - privilege against self-incrimination, 72–73
  - standard of proof, 56–57, 61, 62
  - trial procedure, 344
- closing speech, 8, 14
- clothing, silence as to marks on, 94–95
- co-defendant
  - confession, 142–144
  - as witness, 303, 309
- cocaine usage and effects, expert evidence as to, 419
- code of conduct, breach of, 165–167
- collateral facts, definition of, 4
- collateral issues, finality rule, 357–359
- common enterprise, hearsay evidence as to, 233
- common law
  - discretion
    - before PACE 1984, 150–155
    - post-PACE 1984, 134, 155–156
  - hearsay, 227–234
  - opinion evidence, general rule, 414
  - silence and, 99–100
- communication aid, use of, 326
- compellability *see witness*
- competence *see witness*
- complaint by complainant, 351–352
- confession
  - application to exclude, 114–115
  - cell confession
    - admissibility, 139–140
    - corroboration, 386–388
  - civil proceedings, informal admissions, 144
  - co-defendant's, 142–144
  - credibility assessment, 116
  - definition, 110, 111
  - exclusion
    - application for, 114–116
    - disciplinary principle, 135
    - discretion at common law, 134–135
    - discretion under statute, 127–134
    - 'fruit' of inadmissible confession, 136–139
    - judicial integrity principle, 136
    - mandatory rules, 116–127
    - police improprieties *see police interview below*
    - protective principle, 136
    - reasons for, 135–136
    - reliability principle, 135
    - exculpatory statement, 112–113
    - fabricated confession, 107–108
    - 'fruit of the poisonous tree', 136–139
    - as hearsay, 103, 114, 232–233
    - 'in words or otherwise', 113–114
    - introduction, 103–104
    - 'made to a person in authority or not', 113
    - mentally handicapped person's, 140–142
    - 'mixed' statement, 111–112
    - obtained by oppression, 118–121
    - police interview
      - deception against defendant, 133–134
      - failure to inform of level of offence, 131
      - failure to inform of right to legal advice, 131–132
      - no accurate contemporaneous record, 130
      - no caution before, 131
      - oppressive methods, 118–121
      - refusal of access to solicitor, 132
      - trickery against defendant, 133–134
    - reliability, 103–110
    - unreliability
      - exclusion for, 121–127
      - safeguards against, 108–110
      - voir dire*, 115–116
      - 'wholly or partly adverse' statement, 110–113
    - corroboration
      - attempted offence, 377
      - cell confession, 386–388
      - definition of, 375
      - discretionary care warning, 383–388
      - introduction to, 373–374
      - legal requirement of, 375–377
      - lies as evidence of guilt, 405–408
      - 'Lucas direction', 405–408

- 'Makanjuola warning', 374, 383–385
- mandatory care warning, 388–389
- mentally handicapped person's confession, 388–389
- no longer legally required, 381–383
- perjury, 375–377
- speeding offence, 377
- unreliable witness
  - improper motive, 379–380
  - special categories of, 378–379
  - warning as to, 378, 380–381
- covert listening device, illegally and improperly obtained evidence, 176–179
- credibility
  - assessment of, 116
  - evidence of, 245–246
- 'crime control' model, 21–22
- criminal justice system
  - open justice principle, 23–24
  - Packer's models, 21–22
- criminal procedure
  - disclosure process, 9
  - Human Rights Act 1998 and, 9–10
  - overview of, 7–9
  - reforms, 10–11
- criminal proceedings
  - adversarial nature of, 14–15
  - trial procedure see trial procedure
- cross-examination see trial procedure
- deceased witness, hearsay evidence from, 212–213
- deception, confession obtained by, 133–134
- decisions, legitimacy principle, 23
- defence
  - adversarial proceedings, 14
  - burden of proof, 36
  - closing speech, 8, 14
  - disclosure by
    - background to introduction of, 443–445
    - concept of, 443
    - contents of defence statement, 446–449
    - procedure, 9
    - service of defence statement, 445–446
  - examination of witness, 8
  - objective of, 22
  - opening speech, 8
  - silence and see silence
  - submission of no case to answer, 8, 17
- defence statement, service of, 8
- defendant
  - evidence of state of mind, 193, 420–425
  - as witness, 297–303, 308–309
  - witness for, 308–309
- defendant's IQ, expert evidence as to, 425
- definitions see words and phrases
- Dennis, Ian, judicial integrity principle, 136
- description evidence and identification distinguished, 396
- diminished responsibility, reverse onus, 39–44
- direct evidence, definition of, 5
- disciplinary principle, 135, 159–160, 163
- disclosure
  - of advance information, 440
  - civil proceedings
    - closed material procedures, 460–462
    - procedure generally, 438–439
    - consequences of non-disclosure, 450
    - continuing duty of, 449
    - criminal proceedings, 9, 439, 440
    - by defence
      - background to introduction of, 443–445
      - concept of, 443
      - contents of defence statement, 446–449
      - service of defence statement, 445–446
    - initial duty of prosecution disclosure, 442–443
    - introduction to, 436–437
    - public interest immunity see public interest immunity
    - rationale for, 437–438
    - reform of rules, 441–442
    - sanctions for defence non-disclosure, 451–454
    - section 8 application, 449–450
    - summary trial, 446
    - time limit, prosecution failure to observe, 450–451
    - trial on indictment, 441, 447
    - of unused material, 454
    - of used material, 439
  - discretion
    - common law
      - before PACE 1984, 150–155
      - post-PACE 1984, 134, 155–156
      - rules distinguished, 148–150
      - statutory, 127–134, 156–158
      - as to unfair evidence, 263–264, 277–279, 285
    - discretionary care warning as to corroboration, 383–388
    - dock identification, 404–405
    - document used for memory refreshing, 349–350
    - documentary evidence
      - definition of, 6–7
      - as hearsay, 225–227
    - due process
      - avoidance of error, 23
      - exclusion of evidence, 23
      - Packer's model of, 22
    - ear print, identification by, 404
    - entrapment, illegally and improperly obtained evidence, 169–176
    - error, due process and avoidance of, 23
    - evidence
      - categories of, 5–7
      - definition of, 2
      - introduction to, 1
      - preliminary issues as to, 13
      - terminology see words and phrases

- evidence in private, special measures direction, 322–323
- evidence of fact, opinion evidence distinguished, 413–414
- evidential burden
  - legal burden distinguished from, 35, 36
  - operation of, 62–65
- ex parte* application
  - for public interest immunity, 455–456
  - without notice, 456–460
- examination of witness *see* trial procedure
- exclusion
  - common law discretion
    - before PACE 1984, 150–155
    - post-PACE 1984, 155–156
  - disciplinary principle, 159–160, 163
  - discretion and rules distinguished, 147–150
  - due process, 23
  - and fairness of trial, 23
  - judicial integrity principle, 161–163
  - justice and, 23
  - principles of, 158–159, 163
  - protective principle, 136, 160–161, 163
  - reliability principle, 135, 159, 163
  - statutory discretion, 156–158
- exculpatory statement
  - as confession evidence, 112–113
  - in ‘mixed’ statements, 111–112
- expert evidence
  - as to accuracy of identification, 425
  - admissibility of, 414
  - as to age of person, 425
  - as to cocaine usage and effects, 419
  - competence to be expert witness, 425–426
  - as to defendant’s IQ, 425
  - as hearsay, 233–234
  - matters not requiring expert knowledge, 419–425
  - matters requiring expert knowledge, 415–419
  - as to mental disorder, 416
  - as to ordinary meaning of words used
    - in legislation, 425
  - procedural matters, 430–431
  - reform of law of, 431–432
  - reliability of expert witness, 427–430
  - scientific evidence, 416–419
  - as to state of mind, 420–425
  - ‘ultimate issue rule’, 431
- fabricated confession, 107–108
- fabrication, statements rebutting allegations of, 349
- facial mapping evidence, 403
- fact-finder, judge as, 17–18
- factum probans* *see* relevant facts
- factum propanum* *see* facts in issue
- failure to mention facts *see* silence
- fairness of trial, exclusion of evidence and, 23
- false impression, character evidence correcting, 280–283
- family tradition, hearsay evidence as to, 229
- fearful witness, hearsay evidence from, 219–225
- finality as to collateral issues, 357–359
- fingerprint, identification by, 403–404
- footwear impression, identification by, 404
- formal admission
  - definition of, 4
  - making, 65
- former civil partner as witness, 309
- former spouse as witness, 309
- ‘fruit of the poisonous tree’, 136–139
- ‘golden thread’ *see* burden of proof
- good character *see* character evidence
- gowns and wigs, removal of, 323
- group identification, 399
- guilty knowledge, character evidence as to, 285
- hearsay
  - all-party agreement as to, 234
  - capability of witness, 239
  - civil proceedings, 240–241
  - common law admissibility, 227–234
  - definition of, 7, 189–191, 201–208
  - development of law of, 199–201
  - further safeguards, 239–240
  - and human rights, 236–238
  - and interests of justice, 234–236
  - introduction to, 188–189
  - multiple hearsay, 238
  - non-contentious evidence, 239
  - non-hearsay statements, 191
  - original evidence distinguished from, 191
  - reliance on unreliable evidence, 239–240
  - statutory admissibility, 208–227
  - statutory regime, 201
  - undue waste of time if admitted, 240
- hostile witness, 353–355
- human rights
  - criminal procedure and, 9–10
  - hearsay and, 236–238
- identification
  - accuracy
    - expert evidence as to, 425
    - factors, 391
  - case of recognition, 393–394
  - description evidence distinguished, 396
  - dock identification, 404–405
  - by ear print, 404
  - facial mapping evidence, 403
  - failure to follow procedures, 399–400
  - by fingerprint, 403–404
  - by footwear impressions, 404
  - group identification, 399

- identification parade, 398
- identity of suspect not known, 397
- introduction to, 373–374
- lip reading evidence, 403
- mistaken identification, 390–392
- by palm print, 403
- photographic evidence, 401–403
- procedures for, 396–397
- quality assessment as to evidence, 394–396
- suspect known and available, 397–399
- suspect known but not available, 399
- Turnbull* warning, 392–393
- video evidence, 401–403
- video identification, 398
- visual identification evidence, 389–390
- voice identification, 400–401
- identity
  - evidence of, 197–199
  - evidence of previous identification, 350–351
- illegal conduct and improper conduct
  - distinguished, 164
- illegally and improperly obtained evidence
  - agent provocateur*, 169–176
  - breach of code of conduct, 165–167
  - categories of, 164
  - civil proceedings, 184
  - common law discretion
    - before PACE 1984, 150–155
    - post-PACE 1984, 155–156
  - covert listening device, 176–179
  - denial of access to legal advice, 164–165
  - disciplinary principle, 159–160, 163
  - discretion and rules distinguished, 148–150
  - entrapment, 169–176
  - exclusion of, 147–148
  - illegal conduct and improper conduct
    - distinguished, 164
  - introduction to, 147–148
  - judicial integrity principle, 161–163
  - principles of exclusion, 158–159, 163
  - protective principle, 160–161, 163
  - reliability principle, 159, 163
  - statutory discretion, 156–158
  - stay of proceedings as abuse of process, 179–184
  - trickery, 167–169
- important explanatory evidence *see* character evidence
- improper conduct and illegal conduct distinguished, 164
- improper motive of witness, corroboration of, 379–380
- improperly obtained evidence *see* illegally and improperly obtained evidence
- 'in words or otherwise', confession, 113–114
- incapable witness, hearsay evidence from, 213–215
- inconsistent statements as hearsay, 239
- informal admissions in civil proceedings, 144
- innocence *see* presumption of innocence
- inquisitorial proceedings
  - adversarial proceedings compared to, 15
  - truth-centredness of, 22
- insanity and reverse onus, 39
- integrity principle *see* judicial integrity principle
- intelligence (IQ), expert evidence as to defendant's, 425
- inter partes* application for public interest immunity, 455
- interests of justice, hearsay and, 234–236
- interpreters and other intermediaries, use of, 325–326
- interview *see* police interview
- intimidated witness, 317–318, 328–330
- 'items subject to legal privilege' defined, 475
- judge
  - civil proceedings, 15
  - criminal proceedings, 15–16
  - discretion *see* discretion
  - as fact-finder, 17–18
  - summing up, 16–17
  - as umpire, 18
  - as witness, 309
- judicial integrity principle, 136, 161–163
- judicial notice
  - definition of, 4–5
  - types of, 65–66
- jury
  - directions to, 75–80
  - juror as witness, 310
  - juror's misconduct, 20–21
  - protection of, 20–21
  - right to jury trial, 19–20
  - role of, 15–16, 19
  - secrecy rule, 20
- justice
  - and exclusion of evidence, 23
  - hearsay and interests of justice, 234–236
- later reliance on fact in defence, 83–84
- law of evidence *see* evidence
- lawful authority, reverse onus and, 39
- legal advice
  - denial of access to, 164–165
  - failure to inform of right, 131–132
  - privilege, 469–474
  - refusal of access, 132
  - to remain silent
    - adverse inferences, 85–88
    - relevance of defendant's reasons to follow, 91–94
    - waiver of legal professional privilege, 88–91
- legal burden and evidential burden distinguished, 35, 36
- legal professional privilege *see* privilege
- legitimacy principle, 23
- level of offence, failure to inform of, 131
- lies as evidence of guilt, '*Lucas* direction' as to, 405–408
- lip reading evidence of identity, 403

- litigation privilege, 474–475
- live television link, 322, 331–332
- ‘Lucas direction’, 405–408
- lying, evidence of reputation for, 358–359
- ‘made to a person in authority or not’, confession, 113
- ‘Makanjuola warning’, 374, 383–385
- mandatory care warning as to corroboration, 388–389
- mark on person/clothing, silence as to, 94–95
- material fact *see* fact in issue
- medical condition affecting reliability, evidence of, 359
- memory
  - no recollection of events, 351
  - refreshing of *see* trial procedure
- mental disorder, expert evidence as to, 416
- mental state, *res gestae* statement as to, 232
- mentally handicapped person’s confession, 140–142, 388–389
- mentally unfit witness, 213–215
- misconduct
  - character evidence, 258–259
  - juror’s, 20–21
- mistaken identification, 390–392
- ‘mixed’ statement, 111–112
- multiple hearsay, 238
- no case to answer, 8, 17
- no recollection of events, 351
- non-contentious evidence, ‘section 9’ statement, 239
- non-defendant, character evidence as to, 286–288
- non-disclosure *see* disclosure
- non-hearsay statement, 191
- non-leading question, 344–345
- oath, 316–317
- object found in possession, silence as to, 94–95
- open justice principle, 23–24
- opening speech, 8, 342
- opinion evidence
  - evidence of fact distinguished, 413–414
  - expert evidence *see* expert evidence
- general rule at common law, 414
- introduction to, 412–413
- non-expert witness, 414, 415
- ‘perception evidence’ defined, 414
- oppression, confession obtained by, 118–121
- order of proceedings *see* trial procedure
- ordinary meaning of words used in legislation, expert
  - evidence as to, 425
- origin, evidence of, 197–199
- original evidence, definition of, 7
- original evidence, hearsay distinguished, 191
- overseas witness, 215–216
- Packer, Herbert, models of criminal justice system, 21–22
- palm print, identification by, 403
- ‘perception evidence’ defined, 414
- perjury, corroboration as to, 375–377
- person, silence as to marks on, 94–95
- persuasive burden *see* legal burden
- photographic evidence of identity, 401–403
- physical sensation, *res gestae* statement as to, 232
- police interviews
  - deception against defendant, 133–134
  - failure to inform of level of offence, 131
  - failure to inform of right to legal advice, 131–132
  - no accurate contemporaneous record, 130
  - no caution before, 131
  - oppressive methods, 118–121
  - refusal of access to solicitor, 132
  - and right to silence *see* silence
  - trickery against defendant, 133–134
- possession of object, silence as to, 94–95
- pre-prepared written statement, 82–83
- pre-trial disclosure *see* disclosure
- prejudicial effect of evidence, 246–248
- presence at particular place, silence as to, 96–97
- presumption of fact, 67
- presumption of innocence, reverse onus and, 50–55
- presumption of law, 67–68
- previous consistent statement, 347–353
- previous conviction
  - admissibility of, 66–67
  - trial procedure, 358
- previous identification, evidence of, 350–351
- previous statement
  - as hearsay, 239
  - inconsistent statements, 358
- privilege
  - civil proceedings, 478–481
  - criminal proceedings, 481–482
  - introduction to, 466
  - ‘items subject to legal privilege’ defined, 475
  - legal advice privilege, 469–474
  - legal professional privilege
    - law of, 466–469
    - overview of, 471
    - waiver as to legal advice to remain silent, 88–91
  - litigation privilege, 474–475
  - public interest immunity, 477
    - against self-incrimination, 72–73, 476–477
    - ‘without prejudice’ communication, 476
  - professional privilege *see* privilege
- proof
  - matters not requiring, 65–67
  - see also* burden of proof; standard of proof
- propensity, evidence of, 245–246, 270–277
- prosecution
  - adversarial proceedings, 14
  - burden of proof, 2, 34
  - closing speech, 8
  - direct evidence, 3

- disclosure, 8, 9
- examination of witness, 8
- objective of, 22
- opening speech, 8
- weight of evidence, 17
- witness, 305–308
- protective principle, 136, 160–161, 163
- public information as hearsay, 228–229
- public interest immunity
  - ex parte* application, 455–456
  - ex parte* without notice, 456–460
  - inter partes* application, 455
  - law of, 477
  - scope of, 455
- questioning under caution *see* silence
- re-examination *see* trial procedure
- real evidence, definition of, 6
- reasonable excuse, reverse onus and, 39
- reasonable expectation to mention fact, 84–85
- record of interview *see* police interview
- refreshing of memory *see* trial procedure
- relevance
  - admissibility and, 24, 26, 29
  - decision as to, 3, 24–29
- relevant facts, definition of, 4
- reliability
  - of confession, 103–110
  - medical condition affecting reliability, evidence of, 359
  - see also* entries at unreliable
- reliability principle, 135, 159, 163
- removal of wigs and gowns, 323
- 'reprehensible behaviour' defined, 259–262
- reputation
  - character evidence as to, 257–258
  - hearsay evidence as to, 229
  - for lying, evidence of, 358–359
- res gestae* statement
  - as hearsay, 229–230
  - trial procedure, 352
- reverse onus
  - arising of, 38–39
  - diminished responsibility, 39–44
  - express statutory provisions, 39–44
  - implied statutory provisions, 45–50
  - insanity, 39
  - lawful authority, 39
  - presumption of innocence, 50–55
  - reasonable excuse, 39
- right to legal advice, failure to inform of, 131–132
- right to silence *see* silence
- rules and discretion distinguished, 148–150
- safeguards against unreliable evidence, 108–110
- scientific evidence, 416–419
- screen, use of, 320–322
- secrecy rule, 20
- 'section 8' application, 449–450
- 'section 9' statement, 239
- self-incrimination, privilege against, 72–73, 476–477
- shoe impression, identification by, 404
- silence
  - adverse inference *see* adverse inference
  - common law, 99–100
  - direction to jury, 75–80
  - failure to mention fact, 74–75
  - introduction to, 71–72
  - later reliance on fact in defence, 83–84
  - legal advice as to *see* legal advice
  - limits on right to silence, 73
  - as to mark on person/clothing, 94–95
  - as to object found in possession, 94–95
  - police caution, 71, 80–82
  - pre-prepared written statement, 82–83
  - as to presence at particular place, 96–97
  - privilege against self-incrimination, 72–73
  - reasonable expectation to mention fact, 84–85
  - as to substance found in possession, 94–95
  - at trial, 97–99
- solicitor *see* legal advice; privilege
- Sovereign as witness, 309
- special measures direction
  - application for, 328
  - for communication aid, 326
  - descriptions of measures, 320–326
  - eligibility rules, 329
  - for evidence in private, 322–323
  - improving quality of evidence, 330
  - for interpreters and other intermediaries, 325–326
  - intimidated witness's eligibility, 328–330
  - introduction of, 317–318
  - for live television link, 322
  - rationale for, 318–320
  - for removal of wigs and gowns, 323
  - for screen, 320–322
  - statutory framework, 327–330
  - for video-recorded evidence, 323–325
  - vulnerable witness's eligibility, 327–328
- special provisions for child witness *see* witness speeches, opening and closing, 8
- speeding offence, corroboration as to, 377
- spontaneous statement as *res gestae*, 230–231
- spouse as witness, 304–309
- standard of proof
  - civil standard, 56–57, 61, 62
  - criminal standard, 56–61, 62
  - degrees of certainty, 56
  - general principle, 34, 55–56
- state of affairs, evidence of, 193–196

- state of mind
  - evidence as to, 191–193
  - expert evidence as to, 420–425
- statement accompanying an act, as *res gestae*, 231
- statement made on accusation, 352–353
- statement rebutting allegations of fabrication, 349
- statement relating to physical sensation or mental state, as *res gestae*, 232
- stay of proceedings as abuse of process, 179–184
- summary trial
  - disclosure, 446
  - procedure, 343–344
- summing up by judge, 16–17
- surveillance, illegally and improperly obtained evidence, 176–179
- sworn evidence, 315
- terminology *see words and phrases*
- testimony *see trial procedure*
- third party, evidence of state of mind of, 191–193
- trial by jury, right to, 19–20
- trial on indictment, disclosure, 441, 447
- trial procedure
  - advocate's role, 340
  - agreed statement, 355–356
  - civil trial, 344
  - collateral issues, finality rule, 357–359
  - complaint by complainant, 351–352
  - criminal trial, 341–344
  - cross-examination
    - as to complainant's sexual history, 363–369
    - by defendant, 359–363
    - procedure generally, 342, 356–357
  - evidence of biased witness, 359
  - evidence of general reputation for lying, 358–359
  - evidence of medical condition affecting reliability, 359
  - evidence of previous identification, 350–351
  - examination-in-chief, 342, 344–353
  - examination of witness, 8, 342
  - finality, 357–359
  - hostile witness, 353–355
  - introduction to, 339
  - memory refreshing
    - in court, 347
    - documents, 349–350
    - out of court, 345–347
  - no cross-examination on inadmissible evidence, 357
  - no recollection of events, 351
  - non-leading question, 344–345
  - opening speech, 342
  - order of proceedings, 340
  - previous consistent statement, 347–353
  - previous conviction, 358
  - previous inconsistent statement, 358
  - re-examination, 342, 379–380
  - res gestae* statement, 352
  - statement made on accusation, 352–353
  - statement rebutting allegations of fabrication, 349
  - summary trial, 343–344
  - 'testimony' defined, 7
  - unfavourable witness, 353
  - trickery
    - confession obtained by, 133–134
    - illegally and improperly obtained evidence, 167–169
  - Turnbull* warning, 392–393
  - 'ultimate issue rule', 431
  - umpire, judge as, 18
  - unavailable witness, hearsay evidence from, 210–212
  - undue waste of time, hearsay evidence excluded as, 240
  - unfavourable witness, 353
  - unfit witness, hearsay evidence from, 213–215
  - unreliable confession, exclusion of, 121–127
  - unreliable evidence
    - safeguards against, 108–110
    - stopping of case due to reliance on, 239–240
    - see also* corroboration; identification
  - unreliable witness *see corroboration*
  - unsworn evidence, 316
  - untraceable witness, hearsay evidence from, 216–219
  - unused material, disclosure of, 454
  - used material, disclosure of, 439
  - video evidence of identity, 401–403
  - video identification, 398
  - video-recorded evidence, 323–325
  - visual identification evidence, 389–390
  - voice identification, 400–401
  - voir dire*, 115–116
  - waiver of legal professional privilege, legal advice to remain silent, 88–91
  - warnings as to unreliability *see corroboration*
  - waste of time, hearsay evidence excluded as, 240
  - weight of evidence, decision as to, 3, 30
  - 'wholly or partly adverse' statement, 110–113
  - wigs and gowns, removal of, 323
  - 'without prejudice' communication, 476
  - witness
    - affirmation, 317
    - anonymity orders
      - applications for, 334
      - conditions for making, 335
      - further considerations, 335
      - introduction of, 333–334
      - statutory framework, 334
    - bodily unfit person, 213–215
    - capability of, 239
    - child, 311–313, 330–331
    - civil partner, 304–309
    - co-defendant, 303, 309
    - communication aid, 326

- compellability
  - civil partner's, 304–309
  - for co-defendant, 309
  - co-defendant's, 303
  - by defendant, 308–309
  - defendant's right not to testify, 299–303
  - definition of, 296
  - former spouse or former civil partner, 309
  - general statutory presumption of, 296–297
  - judge's, 309
  - juror's, 310
  - as prosecution witness, 305–308
  - Sovereign's, 309
  - spouse's, 304–309
  - summary of rules, 310
- competence
  - child's
    - civil proceedings, 313
    - criminal proceedings, 311–313
  - civil partner's, 304–309
  - for co-defendant, 309
  - co-defendant's, 303
  - defendant's
    - evidence for prosecution, 297–298
    - evidence in own defence, 298–299
  - as defendant's witness, 308–309
  - definition of, 296
  - former spouse or former civil partner, 309
  - general statutory presumption of, 296–297
  - to give expert evidence, 425–426
  - to give sworn evidence, 315
  - to give unsworn evidence, 316
  - judge's, 309
  - juror's, 310
  - mentally ill witness, 313–314
  - as prosecution witness, 305–308
  - review of at trial, 314
  - Sovereign's, 309
  - special cases of, 311
  - spouse's, 304–309
  - summary of rules, 310
- deceased witness, 212–213
- for defendant, 308–309
- defendant as, 297–303, 308–309
- evidence
  - sworn, 315
  - unsworn, 316
- evidence in private, 322–323
- examination of see trial procedure
- expert witness see opinion evidence
- fearful, 219–225
- former civil partner, 309
- former spouse, 309
- hostile witness, 353–355
- interpreters and other intermediaries, 325–326
- intimidated witness, 317–318, 328–330
- introduction to, 295–296
- judge as, 309
- juror as, 310
- live television link, 322, 331–332
- mentally ill person, 313–314
- mentally unfit person, 213–215
- not appearing as live witness, 239
- not required to come to court, 239
- oath, 316–317
- overseas, 215–216
- for prosecution, 305–308
- removal of wigs and gowns during witness's evidence, 323
- screen, use of, 320–322
- Sovereign as, 309
- special measures directions *see* special measures directions
- special provisions for child witness
  - application of, 330
  - primary rule, 330–331
  - primary rule limitations, 331
- spouse, 304–309
- sworn evidence, 315
- testimony *see* trial procedure
- unavailable witness, 210–212
- unfavourable witness, 353
- unfit, bodily or mentally, 213–215
- unreliable witness *see* corroboration
- unsworn evidence, 316
- untraceable, 216–219
- video-recorded evidence, 323–325, 332
- vulnerable witness, 317–318, 327–328
- words and phrases
  - adverse inferences, 71–72
  - 'beyond reasonable doubt' *see* standard of proof
  - 'character evidence', 244
  - circumstantial evidence, 5
  - collateral facts, 4
  - compellability, 296
  - competence, 296
  - confession, 110, 111
  - direct evidence, 5
  - documentary evidence, 6–7
  - evidence, 1
  - facts in issue, 2–3
  - formal admissions, 4
  - 'fruit of the poisonous tree', 136–139
  - group identification, 399
  - hearsay, 7
  - hostile witness, 353–355
  - identification parade, 398
  - 'important explanatory evidence', 287
  - 'in words or otherwise', 113–114
  - 'items subject to legal privilege', 475
  - judicial notice, 4–5

494 Index

- words and phrases (cont.)  
    'made to a person in authority or not', 113  
    'matters in issue between the defendant and the prosecution', 270  
    'mixed' statement, 111  
    original evidence, 7  
    'perception evidence', 414  
    perjury, 375  
    real evidence, 6
- relevant facts, 4  
*res gestae*, 229–230  
spontaneous statements, 230  
testimony, 7  
unfavourable witness, 353  
video identification, 398  
'wholly or partly adverse' statement, 110–113  
'without prejudice' communications, 476  
written statement, pre-prepared, 82–83