**CHAPTER 1:** Relevance and admissibility of evidence

1. *When, if ever, may the Crown adduce evidence of an accused's extravagant lifestyle when prosecuting offences involving the possession of drugs (a) with and (b) without intent to supply?*

You will need to consider paras 1.12–1.15. This topic provides a particularly good example of the principle of relevance at work. The Court of Appeal has had to consider this question in a surprising number of instances, and notably in *R v. Guney* [1998] 2 Cr App R 242. Although, as a rule of thumb, the possession of large amounts of cash, etc. is unlikely to assist in establishing that a defendant was in possession of drugs, as a matter of common sense such evidence may help to show that a defendant was likely to have been in possession of drugs with intent to supply (i.e., was dealing in drugs). However, as *R v. Guney* itself shows, this is far from being a law of nature. In each individual case it will be necessary to determine whether the evidence is relevant to a matter in issue in the case. The general principles that can be extruded from the case law were helpfully tabulated by Clarke, L.J. in *R v. Wright* [2004] EWCA Crim 1546 (see para 1.15).

2. *What do you understand by the principle of 'double jeopardy'? Does issue estoppel have any role to play in the criminal law?*

You will need particularly to consider paras. 1.39-1.43. 'Double jeopardy', *stricto sensu*, signifies that an accused may not be tried—i.e., stand in jeopardy of conviction—twice for the same offence. If an accused is accused a second time of having committed an offence for which s/he already been tried or in respect of which s/he stood in jeopardy of being convicted, the accused may raise the formal pleas in bar of either *autrefois convict* or *autrefois acquit*, as appropriate. The above definition is inadequate in at least two ways, however. First, the decision in *Connelly v. DPP* [1964] AC 1254 has made clear that additionally a trial judge has discretion to stay prosecutions as an abuse of process if a second prosecution is brought on substantially the same facts, even if that second charge is not technically an offence of which the accused might have been convicted at the first trial, and the judge considers the course taken by the prosecution to be oppressive. Second, Parliament has made inroads into the principle of double jeopardy in the Criminal Procedure and Investigations Act 1996, ss. 54-57, which allows a second trial to take place in certain circumstances if an acquittal has been tainted by intimidation, and by the Criminal Justice Act 2003, ss. 75 ff, which again allows a second prosecution to take place where 'new and compelling evidence' has emerged implicating an acquitted person in the offence for which s/he has been previously acquitted.
Regarding 'issue estoppel', this requires you to consider whether the doctrine of estoppel, which can play a significant role in civil proceedings (see paras. 1.36-1.38), has any place in the criminal sphere. You will need to consider the House of Lords' decision in *D.P.P. v. Humphrys* [1977] AC 1. You will also find it profitable to read Mirfield's paper, 'Shedding a Tear for Issue Estoppel' in [1980] Crim LR 336.

3. *When in practice do the courts allow the Crown to adduce evidence of (i) a third party's convictions and (ii) evidence deriving from a lawful intercept of a transmission over a public communications system?*

Part (i) invites you to reflect on s. 74 of the Police and Criminal Evidence Act 1984, an enactment discussed in paras. 1.47-1.55. The statutory reversal of the old common law rule in *Hollington v. Hewthorn* [1943] KB 587 is not without its difficulties. Notably, because s.74(2) places the burden of proof on any accused who wishes to contest a third party's convictions—a task not made easier given the likelihood that any such third party will prove unwilling to participate in the trial—the courts have sometimes been reluctant to allow the prosecution to invoke s. 74. Also, in cases involving conspiracy charges there is considerable potential for unfairness as juries will almost certainly encounter difficulty in keeping separate the two issues of whether there was a conspiracy and whether the defendant was a party thereto (see, e.g., *R v. Robertson* (1987) 85 Cr App R 304.)
Part (ii) requires consideration of paras. 1.96-1.107 and the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA), along with similar provisions in the Investigatory Powers Act 2016: see para 1.98. The underlying principle of inadmissibility of the contents of lawfully authorized intercepts is counter-intuitive, although its rationale was well explained by Lord Mustill in *R v. Preston* [1994] 2 AC 130. RIPA has been strongly criticized by some and subjected to repeated analysis by the courts.

4. *In what circumstances ought trial judges to look to abuse of process rather than exercise their discretion to exclude evidence under PACE, s 78?*

This requires you to consider paras. 1.56-1.78. The question turns on the distinction between trials where evidence is excluded because its admission may exert an adverse effect on the fairness of the proceedings (PACE, s. 78) and trials that are stayed because the proceedings themselves will be unfair either because it will not be possible for the defendant to receive a fair trial or because it would offend the court's sense of justice and propriety to be required to try the case (see *R v. Maxwell* [2011] 1 WLR 1837).