

Entrance Exam 2002

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THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

SEPTEMBER 2002

Examination: Law of Evidence

Date: Monday 2 September 2002

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiners: Dr Caroline Fennell
The Hon Mr Justice Hardiman

Instructions:

Candidates should answer Question 1 from Section A and TWO questions from Section B.

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Section A

1. Moira owns a public house in Macroom. Recently, she has experienced a spate of arson attacks on the public house, and has become concerned about whether Garda protection in the town is sufficient. On several occasions she has brought this to the attention of the local Gardai, requesting that they visit the pub more often. Last night Moira's pub was virtually destroyed by fire, leading to the death of two winos in the backyard, who were overcome by smoke-inhalation. Only the staff living quarters in the basement, remain habitable. The Gardai have long suspected Moira's son Joe of drug dealing in the town, and on this occasion think he caused the fire through one of his drug-making experiments. They immediately conduct a search of Moira's burnt out pub, discovering some shards of glass, which they say, are part of the drug making equipment.

Joe is found sleeping off a hangover in the staff accommodation of his girlfriend Kate who works in the bar. The Gardai enter the room and arrest Joe. When Joe asks why he is being arrested, Garda Orange says: 'You know very well'. When Joe replies: 'I have no idea', Garda Black retorts: 'Yea, right'. The two Gardai then bring Joe to a nearby Garda station. On arrival at the station at 11pm, Garda Orange tells the member in charge to authorise Joe's detention under section 2 of the Criminal Justice (Drug Trafficking) Act 1996. The member in charge does so unquestioningly. Shortly thereafter Moira arrives at the station with a solicitor, who requests to remain with Joe while he is being questioned. This is refused. Before leaving with the solicitor, Moira admonishes Joe to tell the truth to save the family's reputation. At midnight the member in charge tells Joe to get some sleep. Joe says he wants to be questioned now and go home. The member in charge however simply wishes him good night. At 8am, the following morning, Joe is questioned by Garda Orange and Black. At 12 noon Joe's detention for 6 hours is extended by the local superintendent by a further period of 18 hours. He then continues to be questioned by the two Gardai; and then a further period of 24 hours detention is sanctioned. In the course of this time he is more or less continually questioned and is moved to three different stations, none of which have video-recording facilities, and on each occasion just ahead of his solicitor arriving at the station in question. During all of these sessions Joe remains silent. On the only occasion when he meets with his solicitor, Garda Orange remains

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present the entire time. Finally just as Joe is being brought to court to have his period of detention extended, Garda Orange & Garda Black ask Joe will they have to go talk to his girlfriend Val, to find out who was responsible for the fire. Joe immediately makes a full statement admitting his involvement in the fire. Joe is then charged with manslaughter, to which he pleads not guilty.

The Defence objects to the admissibility of the following evidence:

- Fingerprint evidence on the glass shards found which match Joe's fingerprints
- The Garda memorandum of the statement made by Joe

Based on the information in the above scenario:

- (1) Set out the legal basis grounding those defence objections and
- (2) Outline the likely prosecution response to those arguments made by the defence.

Section B

2. Con, a successful property developer, is anxious to discuss his latest parcel of land and its potential future development with his solicitor, for the purpose of ascertaining how he can avoid planning regulations. Before he reaches his solicitor's office, he meets Jane, a well known journalist, whom he confides in about the methods he uses to persuade planning officials about the wisdom of his ways. He then meets with his solicitor who advises him on how best to conduct his affairs while avoiding breaching planning. On arriving home later on that day, he discovers his house has been searched-with his wife's consent-and he now faces prosecution for possession bundles of counterfeit 100 Euro notes, found in brown paper bags in his attic. Moreover Jane telephones him to inform him that she is planning a feature in a Sunday newspaper on the whole question of the cosy relations between planners and developers, in the area, but assures him she will not reveal sources. Con is now concerned that a statement he was compelled to make to Inspectors, appointed to investigate companies under the Companies Act 1990, last year, will come back to haunt him. He is also concerned that his wife, to whom he tells all, will reveal everything to the pastor of her new found church, and is worried about his solicitor revealing the extent of his involvement in property dealing in the city through a number of guises that would not up to now be readily identifiable as him. Jane proves his only comfort, assuring him that she cannot in law reveal her sources. Con seeks your advice as to the likelihood of any or all of these sources of information being used against him in any future legal proceedings.

3. Sara alleges she was abused 20 years in an orphanage. Her friend Jack undergoes hypnosis and discovers he too was abused while in that institution. Returning home one evening on the bus, Sara recognises Anne, the former mother superior of the orphanage (now retired), who abused her. Sara's daughter, Zoë, observes her mother becoming upset, and tells her not to worry that the nun is just a 'weirdo' who often sits too close to her on the bus. Sara makes a complaint to the police. Anne is shocked to be questioned in relation to offences perpetrated against Sara. She wishes strenuously to defend her case, and has the backing of her community of religious, but is conscious of a previous conviction for drunk driving. Jack's hypnotist Jules is convinced that both Jack and Sara exhibit signs of abuse. Discuss the evidentiary issues arising.
4. (a) Consider the extent to which the admissibility of opinion evidence in Irish courts usurps the function of the jury.

OR

- (b) Consider the extent to which the recognition of public interest privilege in Irish law interferes with the administration of justice.

