

# DEGREE OF BARRISTER-AT-LAW

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## ENTRANCE EXAMINATION

# LAW OF EVIDENCE

## August 2021

**DATE** | Wednesday, 18 August 2021

**TIME** | 3.5 hours

**EXAMINER** Ms Ruth Cannon BL

**EXTERNAL EXAMINER** | Mr Patrick Marrinan SC

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### Instructions

A candidate must answer **Question 1** (50% of marks) and **TWO** other questions (each 25% of marks).

This paper is 3 pages long including the cover sheet.

# LAW OF EVIDENCE

## Q1 | COMPULSORY QUESTION

**50 MARKS**

Jessica surprises an intruder in her apartment, who subsequently stabs her. The intruder, who is wearing black clothing and a balaclava helmet, then leaves through the window. With great difficulty, Jessica manages to crawl out of the front door of the apartment into the common area of the apartment building, where she is found by a neighbour, Susan, just outside the lift. Jessica is subsequently taken to hospital, where she dies two hours later.

While waiting for the ambulance called by Susan, Jessica tells Susan that she believes the intruder who stabbed her to have been her own brother Shane, as she recognised his shoes and voice. Shortly before her death, Jessica makes a similar statement implicating Shane to a nurse at the hospital. A post-mortem determines Jessica's stabbing to have occurred three hours before her death, approximately one hour before she was found by Susan.

Shane, who was involved in a long-running property dispute with Jessica regarding family property, is subsequently charged with Jessica's murder.

The prosecution wishes to have Jessica's statements implicating Shane admitted in evidence against him.

The prosecution also wants to adduce evidence of a previous stabbing attack on a former girlfriend of Shane, which was also carried out by a man in black clothing wearing a balaclava. The perpetrator of the attack was never charged, but Shane's ex-girlfriend is willing to testify that she believes him to be the person who stabbed her.

Advise the prosecution as to the admissibility of the following:

- (i) the statement made by Jessica to Susan;
- (ii) The statement made by Jessica to the hospital nurse;
- (iii) The evidence of Shane's ex-girlfriend to the effect that he was the person who previously stabbed her.

# LAW OF EVIDENCE

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**Q2**

**25 MARKS**

Critically discuss the distinction between litigation privilege and legal advice privilege.

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**Q3**

**25 MARKS**

To what extent have the rules on allocation of the burden of proof been influenced by the constitutional presumption of innocence? Critically discuss.

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**Q4**

**25 MARKS**

Critically discuss the circumstances, if any, in which unconstitutionally obtained evidence may be admissible against an accused in criminal proceedings in this jurisdiction.

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**Q5**

**25 MARKS**

Dora is charged with the murder of her cousin, Thomas, by shooting. Dora claims that she shot Thomas in self-defence in circumstances where he was about to physically attack her with a chair. Dora's husband, George, originally told police that Dora's action in shooting Thomas was unprovoked by any violence on the part of Thomas. However, George now refuses to testify against Dora.

Advise the prosecution as to whether George can be compelled to testify for the prosecution in Dora's trial for the murder of Thomas.