



THE LAW SOCIETY OF SCOTLAND  
QUALIFIED LAWYERS ASSESSMENT

**EVIDENCE**

10 May 2021

1300 – 1430  
(90 minutes)

Candidates are required to answer TWO out of three questions.

Candidates should note that, in examination answers, they are expected to cite relevant authority.

## Question 1

In what circumstances will real or documentary evidence be held to be inadmissible on the basis that it has been improperly obtained?

## Question 2

Alan stands trial accused of murdering Brian. He has lodged a special defence of alibi.

Answer each of the following questions relating to issues which arise during the course of the trial.

- (a) The pathologist, Catherine, testifies that Brian died as a result of a stab wound. (No evidence of the use of a knife has been led at this point.) The advocate depute asks Catherine whether she believes beyond a reasonable doubt that the stab wound caused Brian's death. The defence object to this question. Should the objection succeed?
- (b) David takes the oath in the normal form, swearing to Almighty God that he will tell the truth, the whole truth, and nothing but the truth. Unbeknown to Alan or his representatives, David is in fact the President of the North Edinburgh Atheists' Association. If Alan is convicted, can he argue on appeal that David's evidence should not have been admitted?
- (c) The advocate depute seeks to call Alan's doctor as a witness. It is understood that she intends to ask the doctor whether Alan attended his surgery the day after the alleged murder with injuries consistent with Alan having been in a struggle. The defence object to the doctor being called as a witness. Should the objection succeed?
- (d) The defence seek to lead evidence that Brian had assaulted Alan two months before the alleged murder. The advocate depute objects to this evidence being led. Should the objection succeed?
- (e) The trial judge, in directing the jury on the standard of proof, explains that a "reasonable doubt" is a doubt which would cause a member of the jury to hesitate or pause before taking an important decision in the conduct of their own affairs. Alan's lawyer is unhappy with this direction, believing it to be too weak and imprecise. If Alan is convicted, can it be challenged on appeal?

### Question 3

Fraser is charged with the theft by housebreaking of jewellery from various locations in Edinburgh. Answer each of the following questions relating to issues which arise during the course of the trial.

- (a) The Crown seek to lead evidence from two police officers that they found the jewellery in a desk drawer while executing a search warrant permitting them to search Fraser's flat to locate a number of televisions alleged to have been stolen from a nearby electrical store. The defence object to admissibility of this evidence. Should the objection succeed?
- (b) The Crown seek to lead evidence from Fraser's wife Gillian. Gillian does not wish to give evidence. Can she be forced to do so?
- (c) The Crown seek to lead evidence from Hettie, one of the alleged victims of Fraser's theft, to the effect that she saw Fraser running away from her house after the break-in. She cannot identify Fraser in court but says that she attended an identification parade where she picked the thief out. Can evidence of this identification parade be led?
- (d) The Crown lead evidence from Fraser's lodger Iain who unexpectedly confesses that he also committed a separate theft (not on the complaint which is the subject of this trial) along with Fraser. Can the Crown bring a prosecution against Iain at a later date in respect of this theft?
- (e) The defence incriminate Jillian, Fraser's daughter and allege that she committed the thefts. She is called as a witness and is warned as to the privilege against self-incrimination. Nonetheless, she answers a single question from Fraser's solicitor and states that she committed the thefts and hid the jewellery in the desk drawer. The procurator fiscal then cross-examines her asking for details of how the thefts were carried out. She objects to answering, claiming that this would incriminate her further. Can she be required to answer?

**END OF QUESTION PAPER**