

DEGREE OF  
BARRISTER-AT-LAW  
THE HONORABLE SOCIETY OF KING'S INNS

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ENTRANCE EXAMINATION

# LAW OF EVIDENCE

## 2024

DATE: 14 August 2024

TIME: 3 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

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## Q1 | COMPULSORY QUESTION

50 MARKS

Samuel is charged with the murder of his wife, Delilah, who drowned in the Irish Sea in 2017. Samuel claims that he was swimming with Delilah when she was suddenly swept away by the current. The prosecution contends that Samuel held Delilah's head underwater and drowned her. Delilah's corpse was washed up two days later.

In 2023, a mobile phone registered in Samuel's name is delivered anonymously to the office of the Director of Public Prosecutions, together with a typed card giving the pin number of the phone for access purposes.

In text messages subsequently found on this phone, sent to another mobile number registered in the name of Samuel's mother, Una, the sender confesses to having killed Delilah with the assistance of a friend, Sean. In the text messages, it is stated that Sean provided sleeping tablets, which the sender then put into Delilah's coffee prior to her final swim so that Delilah could not resist attempts to drown her.

Samuel does indeed have a friend called Sean. When questioned, Sean admits to having provided Samuel with sleeping tablets but says that he did so in the belief that Samuel needed them to sleep at night and that he had no knowledge that the tablets would be used for the purposes of murdering Delilah. Sean is willing to testify for the prosecution.

Una, who suffers from early-stage dementia, refuses to say anything about the text messages other than that she will not be giving evidence for the prosecution against her only son.

Advise the prosecution on the following points:

- (i) Can Una be compelled to give evidence for the prosecution?
- (ii) Can the text messages be admitted in evidence?
- (iii) Does any warning have to be given to the jury in respect of Sean's testimony? If so, what is the nature of that warning?

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Q2

25 MARKS

Critically discuss the extent, if any, to which the test laid down by the Privy Council in *Makin v Attorney General for New South Wales* [1894] AC 57 remains relevant in this jurisdiction to the question of admissibility of an accused's previous misconduct to prove their guilt in respect of the offence with which they are charged.

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Q3

25 MARKS

Critically discuss the extent, if any, to which rebuttable presumptions of law operate to vary the rules applicable to the burden of proof in civil proceedings.

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Q4

25 MARKS

Annabel, a nurse, is attacked and raped one evening late at night, when leaving the hospital in which she works. After the incident, Annabel goes home, where she has dinner with her flatmate Sarah, but does not tell Sarah about the rape. Annabel reports the rape to the Gardaí the next morning. Kevin is subsequently arrested and charged with the rape of Annabel.

Annabel intends to give oral evidence at Kevin's trial consistent with her initial statement to the Gardaí. Advise as to whether this initial statement can be put before the jury to add credibility to Annabel's oral evidence.

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Q5

25 MARKS

Critically discuss the extent to which evidence obtained during an unlawful search of a dwelling house is admissible in criminal proceedings.