



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EVIDENCE

Wednesday 19 MAY 2004

**1000 – 1200
(Two Hours)**

**Candidates should answer THREE questions,
referring to appropriate authorities in support of
their answers.**

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Candidates are required to answer THREE questions only. All answers should be fully reasoned and supported by adequate citation of authority.

1. With reference to the case law and to statutory provisions, discuss the circumstances in which the accused in a criminal trial may have his character attacked.

2. In March 2004 the Scottish Parliament enacted the Vulnerable Witnesses (Scotland) Act. Discuss the main measures contained in the legislation and explain the problems they are intended to remedy.

3. "...an irregularity in the obtaining of evidence does not necessarily make that evidence inadmissible" (LJ-C Aitchison in *HMA v McGuigan* 1936 JC 16 at 18).

Discuss this assertion using case law to illustrate your answer.

4. Discuss the rationale underlying the restrictions on admissibility in respect of EACH of these categories of evidence:
 - (a) Hearsay evidence;
 - (b) Privileged evidence

5. Brian goes into the Meridian Arms pub for a drink. While waiting in the queue Brian gets jostled accidentally by Chas. Brian swears at Chas who responds with further insults. Brian then lunges at Chas and tries to punch him. Chas, who holds a black belt in Tae Kwon Do, deflects Brian with ease with a rapid front kick and Brian lands on Don who is sitting quietly having a pint. As Brian weighs 16 stone, Don sustains a broken arm. Don is a professional musician. He is self-employed. He is unable to work for 6 weeks, loses a lucrative contract and his injury results in loss of earnings of £8,000.

Chas is prosecuted for assault. He claims provocation and self-defence. Don sues both Brian and Chas who he considers were involved in a brawl and their actions jointly and severally led to his injury. In responding individually to the writ, Brian and Chas blame each other.

In the ensuing criminal and civil proceedings, who carries the burden of proof, and to what standard? Provide authority for your answers.