



**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

EVIDENCE

Wednesday 18 MAY 2005

**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. Discuss the circumstances under which sexual history evidence may be admitted in rape trials.

2. Discuss the competence and compellability (by both prosecution and defence in criminal cases) of the following categories of witnesses:-
 - (a) a child aged 7 years of age
 - (b) the heir to the throne
 - (c) a cohabitee complainer who has been assaulted by her partner
 - (d) the spouse of a co-accused

3. Describe the impact of the case of *Moorov v. HMA* 1930 JC 69, and the development of the law since that decision.

4. John has an accident at work. He loses part of his finger while carrying out an operation involving a circular saw which he had been using without the protective guard provided for it. There were no witnesses to the accident. John had only been working in the factory for a couple of weeks and it had become his practice not to use the protective guard because he had been told by his workmate Derek that no one in the factory used the guard as it slowed down the saw and made it less effective. John's employers allege they issued strict guidelines for safe usage of the saw.

John wishes to sue his employers for the pain and suffering caused by the injury and the permanent loss of the top of his left index finger. He wants to call Derek as a witness but Derek has since left the job and moved to Spain. John seeks your advice about his chances of success with his claim.

Advise John.

5. What is meant by the reverse onus of proof and what effect has the Human Rights Act 1998 had in this area of the law of evidence?