



THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EVIDENCE

Wednesday 9 AUGUST 2006

**1000 – 1200
(Two Hours)**

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

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EXAMINATIONS**

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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. Moira is charged with murdering her husband Tom to whom she has been married for 10 years. Her defence team intend to lead evidence to demonstrate that for years Moira has been a battered woman who lived in fear of Tom. They will lead evidence to show that during the marriage she has been hospitalised on several occasions with serious physical injuries allegedly inflicted by Tom, although it is acknowledged he has no convictions for assault. The defence propose to lead evidence to show that on the night of his death he had threatened to kill her.

Discuss the burden of proof in the following circumstances:

- the burden carried by the Crown in seeking a conviction for murder
 - the burden carried by Moira if her defence is one of diminished responsibility
 - the burden carried by Moira if her defence is that she acted in self-defence
2. Scots law is one of the few jurisdictions to retain a rule of corroboration. With reference to appropriate illustrations from case law, discuss the advantages and disadvantages of this rule.
 3. The Sexual Offences (Procedure & Evidence) (Scotland) Act 2002 permits the introduction of character evidence of the accused in certain circumstances. Explain what these circumstances are and discuss the relationship of this statutory rule with the general rules of character evidence in regard to all witnesses.
 4. The essential test of whether or not a confession will be admissible evidence is the extent to which it was fairly obtained. With reference to the relevance case law, discuss how the fairness test operates in practice.
 5. Discuss the rationale underlying the rules of admissibility in respect of EACH of these categories of evidence:
 - a. Opinion evidence
 - b. Privileged evidence