

## Law of Evidence

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NICOLA MONAGHAN



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## Preface

The law of evidence is a fascinating subject which covers a range of controversial and complex topics, from the admissibility of confessions and other evidence obtained as a result of police brutality or trickery, to the dangers presented by mistaken visual identification evidence, and the impact of a defendant's refusal to answer questions or the admissibility of his previous convictions on the verdict. Much of the study of the law of evidence focuses on the admissibility of certain types of evidence: the law seeks to control the admissibility of evidence to ensure that the tribunal of fact has access to evidence that is relevant and reliable. The rules governing admissibility are often complicated and nuanced, requiring a solid understanding of more general principles relating to the purpose of the trial process, due process, justice, fairness and legitimacy.

The first two chapters of the book provide an introduction to the subject and to these preliminary principles. Chapter 3 explores matters concerning proof, including the burden and standard of proof in criminal and civil proceedings. Chapters 4 to 6 cover the investigative stage of evidence gathering and focus on the impact of the defendant's silence in the police station on the trial and the admissibility of illegally or improperly obtained evidence, including confession evidence. Chapters 7 and 8 deal with the admissibility of hearsay evidence and character evidence respectively. Chapters 9 and 10 cover the rules relating to the competence and compellability of different categories of witnesses and the testimony given by witnesses, such as the different types of questioning permitted in examination-in-chief and cross-examination. They also deal with the rules relating to the cross-examination of a complainant regarding their sexual history and the measures which may be used to assist an intimidated or vulnerable witness to improve the quality of the evidence that they give. Chapter 11 examines the safeguards provided by the law where the prosecution seeks to rely on hazardous evidence. Chapter 12 considers the admissibility of opinion and expert evidence, and Chapters 13 and 14 explore the rules of disclosure, public interest immunity and privilege.

This book is predominantly written for students studying a module on Evidence at undergraduate level, but it would also serve as an introduction to the subject for students studying Evidence at postgraduate level. The chapters in this book could have been ordered in a variety of different ways and the order in which the chapters are presented here should not deter students or lecturers from approaching the substantive content in a different order. It is certainly not necessary to take these chapters in the order in which I have placed them: the chapters can be taken in any order and where appropriate I have used cross-referencing to assist the reader in identifying areas of overlap and in linking the topics together.

While it is an interesting subject academically, the law of evidence is also of crucial importance for practitioners who must have a precise and detailed understanding of the rules of procedure and evidence, and be able to draw upon this quickly at any moment in court. The law of evidence is in constant development: important legislative reforms take place on an almost annual basis, and the appeal courts regularly interpret these and existing statutory provisions.

The book takes a practical approach to the law of evidence and aims to present the subject in an accessible and engaging manner. Students are sometimes deterred from studying evidence because the subject has a reputation for being technical and difficult. In writing this book, I have sought to make the subject more accessible. I have endeavoured to break down the subject in a structured way and present the legal principles clearly and concisely, setting out the context within which the relevant legal principles operate and explaining how the law works in practice. Where appropriate, I have used visual aids, such as diagrams, flowcharts and tables, to assist the reader by presenting an overview of topics and demonstrating how principles and provisions fit together. I hope that I have achieved my aims and that this approach appeals to students, with the ultimate aim of attracting students to study Evidence modules.

One of the distinguishing features of this book is the incorporation of a range of important extracts from key cases, statute and academic literature to introduce the reader to both original sources and academic commentary. I hope that readers will use these extracts along with the annotated further reading lists at the end of each chapter to delve further into the legal arguments and academic opinions surrounding the subject.

I am grateful to my editor, Valerie Appleby, for her support and guidance throughout the writing process. My thanks are also due to Helen Francis, Marta Walkowiak, Charles Howell, Bethany Gaunt and all at Cambridge University Press who have been involved in the editorial process, design and production of the textbook. I would like to express my sincere thanks to Sinead Moloney, who persuaded me to write this textbook and commissioned it initially, for encouraging me throughout the writing process. Finally, I am also grateful to Chris, for his support and for tolerating me devoting countless weekends to writing.

Any errors are my own. I have endeavoured to state the law as at 1 June 2014.

This book is dedicated to my grandmother, Dee.

Nicola Monaghan  
*London, June 2014*